Contents

Tables and Figures vii
Contributors 00
Preface 00

Part I Patterns and Dynamics of Congressional Change 1

1. The New World of U.S. Senators 1
   Barbara Sinclair

2. The House in a Time of Crisis: Economic Turmoil and Partisan
   Upheaval 27
   Lawrence C. Dodd and Bruce I. Oppenheimer

3. Congresswomen’s Pursuit of Power in a Partisan Environment 59
   Kathryn Pearson

Part II Elections and Constituencies 91

4. Voters, Candidates, and Issues in Congressional Elections 91
   Robert S. Erikson and Gerald C. Wright

5. Partisanship, Money, and Competition: Elections and the
   Transformation of Congress since the 1970s 117
   Gary C. Jacobson

6. Parties, Members, and Campaign Contributions in the House of
   Representatives 145
   William Bernhard and Tracy Sulkin

Part III Parties and Committees 167

7. The Dynamics of Party Government in Congress 167
   Steven S. Smith and Gerald Gamm

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8. Richard Fenno’s Theory of Congressional Committees and the Partisan Polarization of the House 193
   John H. Aldrich, Brittany N. Perry, and David W. Rohde

9. Filibustering and Parties in the Modern Senate 221
   Gregory Koger

10. Legislative Effectiveness and Representation 237
    Craig Volden and Alan E. Wiseman

Part IV Congress, the President, and Public Policy 265

    Sarah A. Binder and Forrest Maltzman

12. Energy Legislation from the OPEC Embargo to Obama’s Sidestep of Congress 287
    Bruce I. Oppenheimer

13. The Dynamics and Dysfunction of the Congressional Budget Process: From Inception to Deadlock 319
    James A. Thurber

    Catherine E. Rudder

15. Congressional Leadership of War Opinion? Backlash Effects and the Polarization of Public Support for War 377
    Douglas L. Kriner and William G. Howell

Part V Congress and Political Change 401

16. The Modern Congress 401
    Joseph Cooper

17. Party Polarization and Policy Productivity in Congress: From Harding to Obama 437
    Lawrence C. Dodd and Scot Schraufnagel

    Lawrence C. Dodd and Bruce I. Oppenheimer

Suggested Readings 475

Index 000
# Tables and Figures

## Tables

<table>
<thead>
<tr>
<th>Table Ref.</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-1</td>
<td>The Increase in Filibusters and Cloture Votes, 1951-2011</td>
<td>8</td>
</tr>
<tr>
<td>1-2</td>
<td>The Increasing Frequency of Extended-Debate–Related Problems on Major Measures</td>
<td>11</td>
</tr>
<tr>
<td>1-3</td>
<td>Where Major Measures Failed</td>
<td>20</td>
</tr>
<tr>
<td>4-1</td>
<td>Regression of 2010 Democratic Vote on 2009–2010 Incumbent Ideology, 2008 District Presidential Vote, and 2010 Candidate Spending</td>
<td>106</td>
</tr>
<tr>
<td>4-2</td>
<td>Voters’ Perceptions of the Ideology of Their Representative</td>
<td>109</td>
</tr>
<tr>
<td>5-1</td>
<td>Candidate Effects in U.S. House Elections 1972-2010 (by Decade)</td>
<td>138</td>
</tr>
<tr>
<td>6-1</td>
<td>Hill Committee Giving in the 2002, 2004, and 2006 Election Cycles</td>
<td>150</td>
</tr>
<tr>
<td>6-2</td>
<td>What Explains Members of Congress's Giving and Receiving?</td>
<td>153</td>
</tr>
<tr>
<td>6-3</td>
<td>Member to Member Contributions in the 2002-2006 Election Cycles</td>
<td>157</td>
</tr>
<tr>
<td>6-4</td>
<td>The Dynamics of Member-to-Member Giving</td>
<td>159</td>
</tr>
<tr>
<td>10-1</td>
<td>Average Impact of Various Activities on Legislative Effectiveness Score (93rd through 110th Congress)</td>
<td>247</td>
</tr>
<tr>
<td>10-2</td>
<td>Determinants of Legislative Effectiveness</td>
<td>252</td>
</tr>
<tr>
<td>11-1</td>
<td>Determinants of Senate Confirmation (1961-2006) (Nominations to the U.S. Courts of Appeals)</td>
<td>276</td>
</tr>
<tr>
<td>11-2</td>
<td>Polarization and Confirmation Success, 1947-2010</td>
<td>278</td>
</tr>
<tr>
<td>15-1</td>
<td>2006 Iraq War Experiment</td>
<td>383</td>
</tr>
</tbody>
</table>
Tables and Figures

15-2 2010 Afghan War Experiment 386
15-3 Recent Congressional Appeals and Support for the Iraq War 392
17-1 Variables Associated with Topical Legislation Passed: Congress as the Unit of Analysis, 67th–111th Congress 452
17-2 Variables Associated with Topical Legislation Passed: Congressional Digest Articles as the Unit of Analysis, 1921–2010 454
17-3 Divided versus Unified Government and Policy Productivity, 1921–2010 457
18-1 Distribution of House Seats (by Party and Region) 000
18-2 Distribution of Senate Seats and Seats to Be Contested in 2012 (by Party and Region) 000

Figures

3-1 Women in the Senate 1981–2012, by Party 61
3-3 Average Number of One-Minute Speeches, 101st–111th Congresses 65
3-4 Average Number of Bills Sponsored, 100th–111th Congresses 66
3-5 Average Party Unity Percentage, by Gender and Party, 1987–2011 69
3-6 Average Number of Speeches with Partisan Rhetoric, by Congress 73
4-1 Democratic House Seats and Vote Share, 1946–2010 93
4-2 Partisanship and House Seat Shares, 1946–2010 94
4-3 The Incumbency Advantage in the House, 2008 100
4-4 Representatives’ Roll Call Ideology, 2008–2010, by District Presidential Vote in 2008 104
4-5 Ideology and the House Vote, 2010 107
5-1 Ideology and Party Identification of Voters, 1972–2008 119
5-2 Party Loyalty and Ticket-Splitting, 1952–2008 120
Tables and Figures

5-3 Ticket-Splitting by Republican Presidential Voters in the Southern Congressional Elections, 1952-2008  121

5-4 Correlations between District-Level Presidential and House Vote, 1952-2010  122

5-5 Correlations between District-Level Presidential and Senate Vote, 1952-2010  123

5-6 The Polarization of U.S. House Constituencies, 1952-2010  124

5-7 The Polarization of Senate Constituencies, 1952-2010  125

5-8 Ideological Divergence of Electoral Constituencies of House and Senate Parties, 1972-2008  126

5-9 Average Campaign Spending in House Elections, 1972-2010  127

5-10 Campaign Spending by Incumbents and Challengers in Close and Not Close Races, 1972-2010  128

5-11 House and Senate Members’ Contributions to Other Candidates’ Campaigns, 1990-2010  129

5-12 House and Senate Members’ Contributions to Congressional Campaign Committees, 1990-2010  130

5-13 Party Spending in House and Senate Elections, 1990-2010  131

5-14 Independent Spending in House and Senate Races, 1978-2010  132

5-15 Competitive States and Districts, Measured by the Adjusted Presidential Vote, 1972-2008  135

5-16 The Competitiveness of House Elections, 1972-2010  136

5-17 Winning Against the Partisan Grain, 1972-2010  139

6-1 Hill Committee Giving in the 2002, 2004, and 2006 Election Cycles  151

6-2 Members of Congress’s Overlap in Giving with their Party Leaders  161

7-1 The Conditional Party Government Thesis  169

7-2 Differences between the House Parties in Average Liberal-Conservative Score, 1878–2010  173
Tables and Figures

7-3 Dispersion among House Democrats and Republicans, 1879–2010 173

7-4 Differences between the Senate Parties in Average Liberal-Conservative Score, 1879–2010 174

7-5 Dispersion Among Senate Democrats and Republicans, 1879–2010 177

8-1 Partisan Rules Votes: 83rd-111th Congresses 201

8-2 Partisan Amendment and Final Passage Votes on Ways and Means Legislation: 92nd-110th Congresses 207

8-3 Partisan Rules, Amendments, and Final Passage Votes on Appropriations Legislation: 92nd-111th Congresses 212

9-1 Percent of Roll Call Votes Held Tuesday through Thursday 224

9-2 Filibusters and Cloture Votes in the Senate, 1901-2010 226

9-3 Party Unity in the Senate, 1961-2010 228

9-4 Average Partisanship on Cloture Votes by Year 229

9-5 Median Coalition Size on Final Passage Votes, 1901 to 2010 231

10-1 Estimated LES by Electoral Safety and State Legislative Experience 256

11-1 Confirmation Rates for Judicial Nominations, 1947–2010 269


13-1 Party and Supercommittee Common Space Scores 333

15-1 Categorization of Experimental Cues Regarding War 382

15-2 Congressional Speeches Supporting and Opposing George W. Bush 388

15-3 Public Support for the U.S. Invasion of Iraq 390

17-1 The Hypothesized Relationship between Polarization and Legislative Productivity 441
<table>
<thead>
<tr>
<th>Table</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>17-2</td>
<td>Percentage of Topical Legislation Passed, by Congress, 67th–111th</td>
<td>444</td>
</tr>
<tr>
<td>17-3</td>
<td>Polarization by Congress</td>
<td>445</td>
</tr>
<tr>
<td>17-4</td>
<td>Relationship between Polarization and Legislative Productivity in a Depolarized Setting</td>
<td>446</td>
</tr>
<tr>
<td>17-5</td>
<td>Relationship between Polarization and Legislative Productivity in a Polarized Setting</td>
<td>447</td>
</tr>
<tr>
<td>17-6</td>
<td>Relationship between Moderate Polarization and Legislative Productivity</td>
<td>448</td>
</tr>
</tbody>
</table>
Part I
Patterns and Dynamics of Congressional Change

1. The New World of U.S. Senators

Barbara Sinclair

The U.S. Senate has the most permissive rules of any legislature in the world, but the extent to which senators make full use of their prerogatives under the rules has varied over time. In the clubby, inward-looking Senate of the 1950s senators were highly constrained in the use of their prerogatives. By the 1970s, as the Senate became more outward looking, individuals and small groups of senators routinely employed extended debate and the amending process for their own individual purposes. In the contemporary Senate, increasingly cohesive party contingents aggressively exploit Senate rules to pursue partisan advantage. Intense partisan polarization when combined with nonmajoritarian rules greatly alters how the Senate functions and leaves the chamber in continual danger of policy gridlock.

- A courtly older gentleman—probably a conservative southern Democrat, perhaps even white haired and clad in a white linen suit—working in committee behind closed doors.
- A policy entrepreneur—Democrat or Republican, liberal or conservative—pursuing his cause singly or with a few allies on the Senate floor, aggressively using nongermane amendments and extended debate as his weapons.
- A partisan warrior, acting as a member of a party team, dueling with his opposing party counterparts in the public arena and on the floor, using all the procedural and PR tools available.

These three images capture the differences among the Senates of the 1950s, the 1970s, and the 1990s and beyond. To be sure, they are simplifications, and some elements of the 1950s Senate and many of the 1970s Senate persist. Yet the Senate of the early twenty-first century is very different from the 1950s Senate, which fictional and some journalistic accounts still often depict as current, and it is appreciably different from the 1970s Senate.
The U.S. Senate has the most permissive rules of any legislature in the world. Extended debate allows senators to hold the floor as long as they wish unless cloture is invoked, and that requires a supermajority of sixty votes. The Senate's amending rules enable senators to offer any, and as many, amendments as they please to almost any bill, and those amendments need not even be germane. The extent to which senators make full use of their prerogatives under the rules has varied over time. The Senate of the early twenty-first century is characterized by increasingly cohesive party contingents that aggressively exploit Senate rules to pursue partisan advantage, but also by the persistence of the Senate individualism that developed in the 1960s and 1970s.

In this chapter I briefly examine how and why the Senate changed from the 1950s to the present. I then analyze the impacts of intensified partisanship and of continuing individualism on how the contemporary Senate functions and on legislative outcomes.

Development of the Individualist, Partisan Senate

The Senate of the 1950s was a clubby, inward-looking body governed by constraining norms; influence was relatively unequally distributed and centered in strong committees and their senior leaders, who were most often conservatives, frequently southern Democrats. The typical senator of the 1950s was a specialist who concentrated on the issues that came before his committees. His legislative activities were largely confined to the committee room; he was seldom active on the Senate floor, was highly restrained in his exercise of the prerogatives the Senate rules gave him, and made little use of the media.

The Senate's institutional structure and the political environment rewarded such behavior. The lack of staff made it hard for new senators to participate intelligently right away, so serving an apprenticeship helped prevent a new member from making a fool of himself early in his career. Meager staff resources also made specialization the only really feasible course for attaining influence. Restraint in exploiting extended debate was encouraged by the absence of the time pressure that would later make extended debate such a formidable weapon; when floor time is plentiful, the leverage senators derive from extended debate is much less. Furthermore the dominant southern Democrats had a strong constituency-based interest in restricting and thus protecting the filibuster for their one big issue—opposition to civil rights.

The majority of senators, especially the southern Democrats, faced no imminent reelection peril so long as they were free to reflect their constituents' views in their votes and capable of providing the projects their constituents desired. The system of reciprocity, which dictated that senators do constituency-related favors for one another whenever possible, served them well. The seniority system, bolstered by norms of apprenticeship, specialization, and intercommittee reciprocity, assured members of considerable independent influence in their area of jurisdiction if they stayed in the Senate long enough, and it did not make that
influence dependent on their voting behavior. For the moderate to conservative Senate membership, the parochial and limited legislation that such a system produced was quite satisfactory. The Senate of the 1950s was an institution well designed for its generally conservative and electorally secure members to further their goals.

Membership turnover and a transformation of the political environment altered the costs and benefits of such behavior and induced members to change the institution; over time, norms, practices, and rules were altered. The 1958 elections brought into the Senate a big class of new senators with different policy goals and reelection needs. Mostly northern Democrats, they were activist liberals, and most had been elected in highly competitive contests, in many cases defeating incumbents. Both their policy goals and their reelection needs dictated a more activist style; these senators simply could not afford to wait to make their mark. Subsequent elections brought in more and more such members.

In the 1960s, the political environment began a transformation. A host of new issues rose to prominence—first civil rights, then environmental issues and consumer rights, the war in Vietnam and the questions about American foreign and defense policy that it raised, women’s rights and women’s liberation, the rights of other ethnic groups, especially Latinos and Native Americans, of the poor, of the disabled, and by the early 1970s, gay rights. These were issues that engaged, often intensely, many ordinary citizens, and politics became more highly charged. The interest group community exploded in size and became more diverse; many of the social movements of the 1960s spawned, or already had, interest groups. A hoard of environmental groups, consumer groups, women’s groups, and other liberal social welfare and civil rights groups joined the Washington political community and made it more diverse. Then, in response to some of these groups’ policy successes, for example on environmental legislation, the business community mobilized. In the 1970s many more businesses established a permanent presence in Washington, and specialized trade associations proliferated. The media—especially television—became a much bigger player in politics.

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

From the mid-1960s through the mid-1970s, senators did just that. They increased the number of positions on good committees and the number of subcommittee leadership positions and distributed them much more broadly. Staff was greatly expanded and made available to junior as well as senior senators. Senators were consequently able to involve themselves in a much broader range of issues, and they did so. Senators also became much more active on the Senate floor, offering more amendments and to a wider range of bills. Senators exploited
extended debate to a much greater extent and the frequency of filibusters shot up.\textsuperscript{7} The media became an increasingly important arena for participation and a significant resource for senators in the pursuit of their policy, power, and reelection goals.

By the mid-1970s the individualist Senate had emerged. The Senate had become a body in which every member, regardless of seniority, considered himself entitled to participate on any issue that interested him for either constituency or policy reasons. Senators took for granted that they—and their colleagues—would regularly exploit the powers that the Senate rules gave them. Senators became increasingly outward-directed, focusing on their links with interest groups, policy communities, and the media more than on their ties to one another.

The 1980 elections made Ronald Reagan president and, to almost everyone’s surprise, brought a Republican majority to the Senate. As president, Reagan was more conservative and confrontational than his Republican predecessors of the post–World War II era, and his election signaled an intensification of ideological conflict that increasingly fell along partisan lines.

Realignment in the South, the Proposition 13 tax-cutting fever, the rise of the Christian Right, and the increasing prominence of supply side economics were changing the political parties. In 1961 not a single senator from the eleven states of the old Confederacy was a Republican; by 1973, seven were, and by 1980 the number had risen to ten. In 2012 the number stood at sixteen, or 73 percent of the senators from the once solidly Democratic old South. As conservative southern Democrats were replaced by even more conservative southern Republicans, the congressional Democratic Party became more homogeneously liberal and the Republican Party more conservative. Outside the South as well, Republican candidates and activists were becoming more ideologically conservative.

Voting on the Senate floor became increasingly partisan. In the late 1960s and early 1970s, a majority of Democrats opposed a majority of Republicans on only about a third of Senate roll call votes. By the 1990s, from half to two-thirds of roll calls were such party votes, and that has continued; in the 111th Congress (2009–2010) it reached 75 percent. The frequency with which senators vote with their partisan colleagues on party votes increased significantly as well. By the 1990s a typical party vote saw well over 80 percent of Democrats voting together on one side and well over 80 percent of Republicans on the other. In 2011 majorities of Democrats and Republicans opposed each other on 51 percent of Senate recorded votes, and 94 percent of Democrats opposed 89 percent of Republicans on a typical party vote.\textsuperscript{8}

Partisan polarization has made participation through their party more attractive to senators than it was when the parties were more heterogeneous and the ideological distance between them less. Recent Senate party leaders have sought to provide more channels for members to participate in and through the party.\textsuperscript{9} Increasingly senators of the same party are acting as a party team and are exploiting Senate prerogatives to gain partisan advantage.

Over this same period, the Senate membership has become more diverse. Although most senators are still white men, the 112th Congress (2011–2012)
included seventeen women—an all-time high—one Japanese American, one of Hawaiian and Chinese descent, and two Latinos. (There have been no African Americans since Obama’s appointed successor was replaced.) By contrast, in the 85th Congress (1957–1958) every senator was white and only one was female. The greater diversity influences how the Senate operates, but its impact is much less than those of individualism and intense partisanship.

The Legislative Process in the Contemporary Senate

What effect has the combination of individualism and partisanship had on the legislative process in the Senate? Individualism changed the way Senate committees work and altered even more floor-related legislative routines, complicating the Senate majority leader’s job of floor scheduling and coordination. Intensified partisanship exacerbated the problems the majority leader faces in keeping the Senate functioning as a legislative body.

Senate Committees and the Pre-Floor Process

Senators hold multiple committee assignments and usually lead at least one subcommittee, often more. In the 112th Congress, senators averaged 4 committee assignments and 8.4 subcommittee assignments each; members of the majority party averaged 1.7 chairmanships. Thus senators are stretched very thin; they treat their committees not as work groups in which to participate regularly but as arenas in which they pick and choose whether to participate depending upon their interest in the subject being considered. Senators rely heavily on staff for committee work. Committee decisions on many issues are made by the “interesteds,” who make up considerably less than the full committee membership. A major tax bill will elicit active participation from all the members of the relevant committee; a rewrite of copyright law, important but narrower and more technical legislation, may be left to a handful of senators.

Because of senators’ workloads and the large number of subcommittees, subcommittees are usually “starring” vehicles for their chairs. The chairs can use their subcommittees to publicize problems and policy solutions, to cater to allied interest groups, to promote themselves, or to do all three. Under most circumstances, other senators, even the chair of the full committee, are too busy to interfere. When Democrats took control of the Senate in 2007, subcommittees as well as full committees became vehicles for oversight of the George W. Bush administration. The Iraq war, the firings of U.S. attorneys, and many other administration actions became targets for hearings. Although often instigated by the committee or subcommittee chair on his or her own initiative, these hearings promoted the Democratic Party’s message: that congressional Republicans had given President George W. Bush a free pass and had abdicated the Congress’s responsibility to examine how the administration implemented the law and check any abuses.
The marking up of bills most frequently takes place in full committee. Senators on the subcommittee do not have time to go through two markups, and they know that any interested committee member not on the subcommittee would insist on having a say at the full committee level.

Even in this period of heightened partisanship, Senate committees not infrequently work in a bipartisan fashion. Bill sponsors know that their legislation’s chances of surviving the Senate floor are much better if it has broad support. Committee chairs usually try to negotiate the “chairman’s mark,” the legislative language from which the committee will work, with their minority party counterpart and other interested committee members. In 2011, for example, Tom Harkin, chair of the Committee on Health, Education, Labor and Pensions (HELP), and Mike Enzi, the committee’s ranking member, worked together to draft a bill reauthorizing the No Child Left Behind Education Act that garnered bipartisan support in the committee. Conflict within committees is also sometimes damped down by senators’ tendency to postpone contentious issues until floor debate. When negotiating and marking up the bill reauthorizing farm programs in 2007, the Agriculture Committee agreed to put off amendments for stricter crop payment limits; highly controversial, that issue would be fought out on the floor again in any case. To report legislation in a timely manner and to maintain its bipartisan style of internal decision making, the Appropriations Committee regularly agrees to withhold divisive, policy-related amendments until the floor.

Committee decision making must be sensitive to the policy preferences of interested senators who are not members of the committee. Because any senator can cause problems for legislation on the floor, and may in fact be able to block it from getting to the floor, committee proponents of particular legislation have considerable incentive to try to anticipate other senators’ views and bargain with those with intense preferences before the committee reports the bill. Senate committees are perforce highly permeable.

Senate committee decision making is, nevertheless, more likely to be partisan than it used to be. In the Congresses of the 1960s and 1970s, the Senate committee process was partisan on less than one in ten major measures; that increased to about one in seven in the 1980s. In the Congresses of the 1990s and 2000s (103rd–110th), the Senate committee process was partisan on about a quarter of the major measures considered, and the figure rose to almost 40 percent in the 111th Congress.

With the intensification of partisanship, majority party committee contingents have also become increasingly responsive to their party leader and their party colleagues. Majority leaders now often involve themselves in the substance of legislation in committee, as well as after a bill has been reported. Then–majority leader Bill Frist, R-Tenn., was a major participant in negotiating the substance of the bill adding a prescription drug benefit to Medicare in 2003. The lobbying and ethics reform bill that the Senate debated in early 2007 was the result of negotiations between majority leader Harry Reid, D-Nev., and minority leader Mitch McConnell, R-Ky.; it never went through committee. And, after the HELP
and Finance Committees reported very different health care reform bills in the summer and fall of 2009, Reid played a central role in putting together the bill that went to the floor and was passed by the chamber right before Christmas, on December 24, 2009.

Majority Leadership and the Senate Floor

In the contemporary Senate, floor scheduling is of necessity an exercise in broad and, in the end, bipartisan accommodation. Although he is not the Senate’s presiding officer and lacks many of the powers the House Speaker commands, the Senate majority leader is as close to a central leader as the chamber has, and he is charged with the scheduling of legislation for floor consideration. To bring legislation to the floor, the majority leader uses his right of first recognition, a prerogative the leader has had under Senate precedents since the 1930s. The majority leader can move that a bill be taken off the calendar and considered, but the motion to proceed is a debatable motion—and thus subject to filibuster. Or he can ask unanimous consent that the bill be taken off the calendar and considered, a request that can be blocked by any senator’s objection. Clearly, any senator can cause problems for the majority leader.

*How Senators Cause Trouble: The Strategic Use of Senate Rules.* Understanding the problems of legislative scheduling in the Senate and the routines that have developed requires a look at the strategic use of Senate rules by the individualistic and now also highly partisan Senate membership.

The filibuster—the use of extended debate to prevent a vote on a motion or measure unless a supermajority, now usually 60, can be mustered—is certainly the best-known strategic use of Senate rules. With the development of the individualist Senate, the use of extended debate and of cloture to try to cut it off increased enormously (see Table 1-1). To be sure, the data must be regarded with some caution. Exactly when lengthy debate becomes a filibuster is in part a matter of judgment. Furthermore, as I discuss below, filibusters have changed their form, and threats to filibuster have become much more frequent than actual talkathons. As a consequence, cloture is sometimes sought before a filibuster manifests itself on the floor. Nevertheless, experts and participants agree that the frequency of obstructionism has increased. In the 1950s filibusters were rare; they increased during the 1960s and again during the 1970s. By the late 1980s and the 1990s they had become routine. Cloture votes have increased in tandem, and more than one cloture vote per issue is now the norm.

As filibusters became more frequent, the character of the filibusters and of the targeted legislation broadened. By the 1970s liberals as well as conservatives frequently used this weapon, and senators used it on all sorts of legislation, parochial as well as momentous. For example, as Congress was rushing to adjourn in October 1992, Sen. Alfonse D’Amato, R–N.Y., held the floor for fifteen hours...
Senators use actual or threatened filibusters for a variety of purposes. Their aim may be to kill legislation, but it may also be to extract substantive concessions on a bill. Sometimes senators' use of extended debate is a form of position taking; senators may know that they cannot kill or weaken the legislation but may want to make a strong statement about their position and the intensity of their feelings about it. Targeting one measure to extract concessions on another, sometimes known as “hostage taking,” has become an increasingly frequent use of extended debate.

Nominations as well as legislation can be filibustered. In the late 1990s Republicans killed a number of President Bill Clinton’s judicial nominations by refusing to report them from committee. Democrats, lacking a Senate majority during much of the early 2000s and thus unable to prevent nominees they considered too extreme from being reported out, blocked a number of President George W. Bush’s judicial nominations on the floor. Republicans failed to get the requisite sixty votes to cut off debate and bring to a vote the nomination of Miguel Estrada to the Court of Appeals for the District of Columbia; after the seventh unsuccessful cloture vote, Estrada withdrew. President Barack Obama’s judicial and many of his executive branch nominees have routinely faced extended-debate related problems. In 2011, Democrats forced cloture votes on seven nominations. The five which failed blocked confirmation votes on two well regarded appellate

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**Table 1-1** The Increase in Filibusters and Cloture Votes, 1951–2011

<table>
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<td>1987–1992</td>
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*one year only

court nominees (Republicans considered both too liberal); Mari Carmen Aponte as the U.S. ambassador to El Salvador (Republicans objected to an op ed she had written on gay rights and to a long-ago boyfriend of hers); and Richard Cordray as Director of the Consumer Financial Protection Bureau (Republicans objected to the structure of the Bureau, which had been set up under the Dodd-Frank financial regulation reform bill passed in 2010.).

Senators now often block nominees they do not oppose to gain a bargaining chip for use with the administration. In 2003 Sen. Larry Craig, R.-Idaho, placed holds on every U.S. Air Force promotion; these, of course, are normally routinely approved. Senator Craig had no objections to any of the personnel up for promotion; he wanted to make the air force deliver on a promise that he claimed it had made to station several planes at a base in Idaho. Frustrated by the Federal Emergency Management Agency treatment of a couple who were his constituents, Sen. Mark Pryor (D-Ark.) in October 2011 placed holds on all Treasury Department nominees. Only after FEMA had reached an agreement with the couple over mistakenly-awarded disaster relief funds did Pryor release his hold. Note that in both these cases, it was members of the president’s party who held up the nominations. “Hostage taking” as a strategy is not limited to the president’s opponents.

The offering of many, not necessarily germane amendments on the floor is a signature characteristic of the individualist Senate. When major bills are considered, dozens of amendments are routinely offered. Budget resolutions frequently see more than forty amendments offered and pushed to a recorded vote; on the FY2010 budget resolution, there were 38 roll call votes on amendments. The 2009 economic stimulus bill and the 2010 financial services reform bill (Dodd-Frank) were also subject to amending marathons, with 26 amendment related roll calls on the former and 28 on the latter and many more amendments disposed of without roll calls. During floor consideration of the Department of Defense authorization bill in late 2011, 104 amendments were pending simultaneously; that is, they had been offered and had to be disposed of before the bill could come to a passage vote.

Most amendments are germane, and the sponsor’s aim is to influence the substance of the bill. But individual senators do use nongermane amendments to pursue their personal agendas and to bring to the floor issues that the leadership might like to avoid. Among the amendments offered to a 2007 bill on student loans were ones repealing the alternative minimum tax, barring the Federal Communications Commission from reinstating the Fairness Doctrine, requiring voters in federal elections to present photo identification, and expressing the sense of the Senate that detainees at Guantanamo Bay, including senior members of al Qaeda, should not be transferred to the United States.

With the growth of partisan polarization, the minorities making use of Senate prerogatives are more often organized, partisan ones. In the 103rd Congress (1993–1994) the minority Republicans explicitly set out to deprive President Clinton and the majority Democrats of policy successes and used actual and threatened
filibusters to do so. Clinton’s economic stimulus package; campaign finance and lobbying reform bills; and bills revamping the Superfund program and revising clean drinking water regulations were among the casualties. When they could not kill legislation, they often used their numbers to extract concessions. From 1995 through 2000, the Democrats, now in the minority, employed extended debate to kill many Republican priorities, including ambitious regulatory overhaul legislation and far-reaching property rights bills; they used the same strategy to force concessions on much other legislation. The ideological polarization that coincides with the partisan polarization means that Democrats and Republicans have very different, and often conflicting, notions of what constitutes good public policy. Consequently the minority party in the Senate has strong incentives to use its prerogatives to stymie the majority, and the minority’s efforts to do so have only intensified in recent Congresses (see below).

In the 1990s exploiting Senate prerogatives to attempt to seize control of the agenda from the majority party became a key minority party strategy. The lack of a germaneness requirement for amendments to most bills severely weakens the majority party’s ability to control the floor agenda. If the majority leader refuses to bring a bill to the floor, its supporters can offer it as an amendment to most legislation that the leader does bring to the floor. The majority leader can make a motion to table the amendment, which is nondebatable. That does, however, require his members to vote on the issue, albeit in a procedural guise, and the leader may want to avoid that. Furthermore, even after the minority’s amendment has been tabled, the minority can continue to offer other amendments, including even individual parts of the original amendment, and can block a vote on the underlying bill that the majority party wants to pass. The leader can, of course, file a cloture petition and try to shut off debate, but he needs sixty votes to do so.

The minority party can use this strategy to bring its agenda to the floor, and if the strategy is accompanied by a sophisticated public relations campaign (which the Senate parties are increasingly capable of orchestrating), it can draw favorable publicity and sometimes pressure enough majority party members into supporting the bill to pass it. In 1996 Senate Democrats used this strategy to enact a minimum wage increase. In 2001, campaign finance legislation passed the Senate before the Democrats took control of the chamber. John McCain, R-Ariz., and the Democrats had threatened to use the add-it-as-an-amendment-to-everything strategy, which would have wreaked havoc with the consideration of President Bush’s program. Furthermore, Republicans knew that the cost of trying to stop campaign finance from being considered would be terrible publicity, so the Senate Republican leadership capitulated and agreed to bring it to the floor.

The majority’s limited agenda control can also create problems for legislation the majority wants and has the votes to pass. The minority can sometimes come up with “killer” amendments that result in the defeat of a bill that otherwise would command a majority. In the 111th Congress conservative Republicans offered an amendment to the District of Columbia Voting Rights Act that would repeal the District’s strict gun control provisions; although the amendment’s passage did not
prevent the bill, which Republicans strongly opposed, from passing the Senate, it killed the bill in the House.

Getting Legislation to the Senate Floor. Given the extent to which senators, as individuals and as party teams, now exploit their prerogatives, how does the Senate manage to legislate at all? As shown in Table 1-2, major legislation is now very frequently subject to some sort of extended-debate–related problem discernible from the public record. Since the early 1990s, about half of the major legislation that was vulnerable to a filibuster actually encountered some sort of filibuster-related problem, and in the period 2007-2010 that rose to about 70 percent. If measures protected by rules from filibusters (budget resolution and reconciliation bills) are included, the proportion decreases only marginally.

The Senate has long done most of its work through unanimous consent agreements (UCAs). By unanimous consent senators agree to bring a bill to the floor, perhaps to place some limits on the amendments that may be offered or on the length of debate on specific amendments, and then maybe to set a time for the final vote. Some UCAs are highly elaborate and govern the entire floor consideration of a bill, but a series of partial agreements is more frequent than a single comprehensive one. As a highly knowledgeable participant explained, “Usually you have a UCA only to bring something to the floor, and then maybe you have another one that will deal with a couple of important amendments, and then perhaps a little later, one that will start limiting amendments to some extent, and then perhaps one that specifies when a vote will take place. So it’s done through a series of steps, each of which sort of leaves less and less leeway.”

Ordinarily, Senate floor consideration of legislation begins with the majority leader asking and receiving unanimous consent to take a bill off the calendar and proceed to consider it. This seemingly simple and easy process for getting legislation to the floor has been preceded by an elaborate consultation process to ensure

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**Table 1-2**  The Increasing Frequency of Extended-Debate-Related Problems on Major Measures

<table>
<thead>
<tr>
<th>Years*</th>
<th>Measures Affected (in percentages)a</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960s</td>
<td>8</td>
</tr>
<tr>
<td>1970s–1980s</td>
<td>27</td>
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<tr>
<td>1990s–mid–2000s</td>
<td>51</td>
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<tr>
<td>2007–2008</td>
<td>70</td>
</tr>
<tr>
<td>2009–2010</td>
<td>72</td>
</tr>
</tbody>
</table>


*aFigures represent percentage of “filibusterable” major measures that were subject to extended-debate–related problems.

Source: Author’s calculations.
that unanimous consent is forthcoming. The party leaders oversee the negotiation of unanimous consent agreements. The majority and minority party secretaries of the Senate now are the most important staffers involved; they serve as clearing-houses and points of continuous contact between the parties and often do much of the negotiating.

When the majority leader, after consultation with the relevant committee chair, decides that he wants to schedule a bill, the process begins. To ensure that there will be no objections to the consent request on the floor, it must be cleared with the minority leader, committee leaders, other senators who have expressed an interest in the bill, and in effect every senator on both sides of the aisle. The party secretaries keep the list of those senators who have requested that they be consulted before the bill is scheduled. If a fellow party member has expressed opposition to the bill being brought to the floor, negotiations may be necessary to take care of his or her concerns. When the leaders reach a tentative agreement, both parties put out a recorded message on their telephone hotline and also send an e-mail to all Senate offices. The message lays out the terms of the agreement and asks senators who have objections to call their leader within a specified period of time. If there are objections, they have to be taken care of. When every senator is prepared to assent to the unanimous consent agreement, the majority leader takes it to the floor and makes the request.

When a senator informs his leader, directly or through the party secretary, that he wishes to be consulted before a measure is scheduled, the senator may only want to be sure that he or she is not otherwise committed, is prepared for floor debate or ready to offer an amendment. Often, however, such a notification is a hold. “A hold,” as a knowledgeable participant explained, “is a letter to your leader telling him which of the many powers that you have as a senator you intend to use on a given issue.” Most holds, then, are threats to object to a unanimous consent agreement, and in a body that conducts most of its business through UCAs, that is, in effect, as a leadership staffer said, “a threat to filibuster.”

The party secretaries confer every morning and tell each other what new holds there are on legislation or nominations. They do not reveal the names of the members who have placed the holds, so holds can be secret. The Senate has made a number of attempts to mandate disclosure but none have been particularly effective. Of course, holds are often invitations to negotiate and those, of necessity, have to be made public. “There’s no point in taking a hostage, if you’re not going to write a ransom note,” a knowledgeable participant explained.

Visible filibusters, then, are just the tip of the iceberg. The Senate’s permissive rules have much more effect on the legislative process through filibuster threats than through actual filibusters (see Table 1-2; remember that holds and filibuster threats, as well as actual filibusters, are reflected in the figures). “Classic” filibusters, with the Senate in session all night, senators sleeping on cots off the Senate floor, and filibusters making interminable speeches, no longer occur. Occasionally the majority leader will force senators opposing a matter to take to the floor. The judicial nomination of Miguel Estrada was debated for almost one
hundred hours over the course of a month before the majority leader filed a cloture petition, and during that period the Senate did little else.\textsuperscript{22} However, once the first cloture vote failed, Majority Leader Frist went on to other business (though there were more cloture votes). Most of the time the majority leader does not force such a prolonged showdown.

Since holds are nowhere mentioned in the Senate rules, why do Senate leaders condone, and in fact maintain, the hold system? “It’s to the majority leader’s advantage to have holds because it gives him information,” a knowledgeable observer explained. “He’s always trying to negotiate unanimous consent agreements, and he needs to know if there are pockets of problems, and holds do that.” An expert concluded succinctly, “The only way you could get rid of holds would be to change the rules of the Senate drastically.”

Critics often argue that leaders should be tougher and call members’ bluff more often. The threat to filibuster supposedly inherent in holds would in many cases prove to be empty rhetoric if put to the test, such critics claim. In fact, holds are not automatic vetoes. A hold cannot kill must-pass legislation such as appropriations bills. A hold “doesn’t mean the legislation won’t come to the floor,” a former majority leader explained; “leaders are always bringing up legislation that has a hold on it; they do it all the time. But you know what you’re getting into, that somebody is likely to obstruct, that you’re going to have to jump through a lot of procedural hoops.” Although holds are certainly not absolute, the time pressure under which the Senate operates gives them considerable power. Frist could let the Estrada nomination dominate floor business in February 2003 because it was early in the first year of a Congress and not much legislation was ready for floor consideration. By March that situation had changed. If Republicans had forced Democrats to continue, it would have been at the expense of President Bush’s initiatives. As a staffer explained, “Holds are effective because the majority leader has a finite amount of time. If there are going to be cloture votes and the like, it can take days to ram something through this place. You can’t do it on every bill. You can only do it on a selected few bills.” Senators, most of whom have legislation they want considered on the floor as well as many other demands on their time, want floor time used productively, and the majority leader needs to use the time efficiently if he is to pass as much of the party agenda as possible. In making a choice of which bills to bring to the floor, the majority leader must consider how much time a bill will take, as well as the likelihood of successful passage.

As a result, senators who want their bills to receive floor consideration are under tremendous pressure to negotiate with those who have holds on them. “Things that aren’t a top priority for the majority leader, he wants you to work it out,” a senior staffer explained. “If you go to him and say you want something brought to the floor, he’ll say, ‘You work it out. You find out who has holds on it. You work out whatever problems they have, and I’ll schedule it when you’ve worked it out.’” In fall 2007, Sen. Tom Coburn, R-Okla., placed a hold on a bill providing suicide prevention services to veterans because he opposed a section instructing the Veterans Affairs Department to track the veterans helped;
Sinclair Coburn claimed that that might prevent those veterans from being able to buy handguns. Although no one else opposed the bill, the sponsors were forced to remove the provision in order to move the bill. In the 109th Congress, Frist never scheduled a major telecommunications bill because there was a Democratic hold on it and the committee chair was unable to assure Frist that he had sixty votes. Thus a measure often must command a substantial majority simply to get to the floor. When time is especially tight—before a recess and at the end of a session—a single objection can kill legislation.

Majority and Minority, Cooperation and Conflict

Keeping the Senate functioning as a legislature requires broad accommodation; it dictates satisfying every senator to some extent. A reasonably cohesive majority party can run the House of Representatives without consulting the minority. The Senate only runs smoothly when the majority leader and the minority leader cooperate, and not always then. The party leaders consult on a daily basis. “The two leaders talk extensively to each other during the day,” a knowledgeable participant explained. “You see it during votes. We’ll have two or three votes a day at least, usually, and that’s one of the times when they confer. But they have to talk to each other; if they don’t, that’s when things break down.” A telephone hotline connects the leaders’ offices directly to facilitate quick communication. The leaders often work together to get unanimous consent agreements and to get essential legislative business done.

Yet the Senate leaders are party leaders, elected by their party members in the chamber, and those members expect them to pursue partisan advantage. With the increase in partisan polarization, the often narrow margins, and the shifts in partisan control of the chamber, senators’ expectations that their leader promote their collective partisan interests have intensified. With the changes in the character of politics and the role of the media in political life, those expectations have also changed in form. Over the second half of the twentieth century, the role of the media in American politics increased enormously. National politics has come to be played out on the public stage much more than formerly, often with audience reactions determining who wins and who loses. In the 1990s policy battles increasingly came to be fought out in public through public relations, or PR, wars. Whether in the majority or in the minority, senators now expect their party leader to promote their collective partisan interests through message strategies directed at the public as well as by internal procedural and legislative strategies.

These expectations create a dilemma for the leaders, especially for the majority leader. Majority party senators expect their leader to promote the party agenda by passing legislation and publicizing party positions and successes. They also expect him to keep off the floor the other party’s agenda, which often consists of issues on which the minority party and a significant segment of the public agree, thus putting some members of the majority party in a tough position. And all
senators expect their leaders to keep the Senate functioning. Yet in the Senate, unlike the House, a majority is not sufficient to act. To keep the Senate functioning requires supermajorities, and that almost always requires the majority leader to accommodate the minority to some extent.

The conundrum of leading a nonmajoritarian chamber in a partisan age has only become knottier in recent years. The minority party increasingly perceives obstructionism as its best strategy for furthering its policy and political objectives. Given the ideological divide between the parties, a bill that both consider better than the status quo of no new legislation often does not exist, especially on the most salient issues of the day. And even on nonideological issues the minority may benefit from making the majority look incapable of governing.26

Democrats frequently used extended debate to obstruct when they were in the minority during the George W. Bush administration and minority Republicans ratcheted up the employment of obstructionist strategies still more after they lost their majority in the 2006 elections, as Table 1-2 shows: More and more often, the minority forces the majority to muster 60 votes just to debate a bill. By refusing to agree to bring up by unanimous consent and then voting against cloture on the motion to proceed, minority Democrats in the 109th Congress (2005-06) blocked several Republican attempts to repeal the estate tax and refused Republicans an up-or-down vote on a constitutional amendment banning gay marriage. They killed legislation on abortion notification by refusing to allow the bill to go to conference and killed drilling in the Arctic National Wildlife Refuge (ANWR) by blocking a vote on the conference report that contained the provision. Some legislation on the Republican Party agenda did pass—a bill on class action lawsuits and one overhauling bankruptcy laws. Democrats had blocked both in the previous Congress, and Republicans had been forced to make substantial compromises to get the sixty votes necessary for passage. On legislation altering offshore drilling policy, House Republicans were forced to swallow a weak Senate bill to get any legislation at all. Minority Democrats also used the Senate’s permissive amending rules to force votes on issues—such as the minimum wage—that they wanted to highlight.

In the 110th Congress Republicans—newly but barely in the minority—made even greater use of obstructionist strategies. The number of filibusters, defined as matters on which cloture was attempted, jumped to 54 in the 110th and the number of cloture votes to 112, an all-time record. Bills allowing the government to negotiate drug prices with pharmaceutical companies for Medicare patients, making union organizing easier, and giving the District of Columbia a vote in the House of Representatives, all Democratic Party priorities, were blocked from floor consideration when Republicans refused to allow votes on the motions to proceed. Resolutions expressing opposition to the “surge” in Iraq were also blocked from an up-or-down vote, as were various other anti-Iraq provisions. The price of an up-or-down vote on a bill raising the minimum wage was the attachment to it of large tax breaks for small business. Republicans allowed legislation implementing the 9/11 Commission’s recommendations to go to conference only
after Democrats agreed to a UCA guaranteeing that the provision allowing collective bargaining for Transportation Security Agency screeners would be dropped. Democrats claimed that in addition to these obvious stalling tactics, Republicans were “slow walking” the process on uncontroversial bills so as to make them look incompetent. The minority leadership, they complained, dragged out the process of arriving at UCAs and then Republican senators insisted on offering multitudes of amendments, thus eating up precious floor time.

Political circumstances—a new president who had run on an ambitious agenda and a Congress in which the same party had big majorities in both chambers—were much more conducive to major legislative accomplishments in 2009-10. And, in fact, the 111th Congress was extraordinarily productive—perhaps the most productive Congress since the Great Society Congresses of the mid-1960s. A massive stimulus bill, health care reform that went a long way toward providing universal coverage, and major financial services regulation reform (Dodd-Frank) are best-known, but other significant legislation enacted includes the Lilly Ledbetter Fair Pay Act, a major change in the student loan program to free up more money for loans, food safety and child nutrition bills, a credit card regulation bill, legislation to allow the FDA to regulate tobacco, an expansion of the hate crimes covered by federal law, and repeal of “Don’t Ask Don’t Tell.” The Senate also ratified the New START treaty.

Yet, despite the favorable conditions, passing this legislation was often extraordinarily difficult and the problem was most often the Senate. Over the course of the congress, Senate Democrats numbered between 58 and 60, a huge majority by recent standards. But Republicans decided even before the congress began that their best strategy was all-out opposition. Most Republicans sincerely opposed the Democratic agenda on policy grounds and they were confident that Republican activists would reward them for refusing to compromise. They believed that, in any case, if Obama’s policies appeared to work, Obama and the Democrats would get the credit even if the Republicans had participated in passing it. The Republican strategy meant that Senate Democrats would have to amass 60 votes for essentially everything except measures, primarily budget resolutions and reconciliation bills, protected from filibusters by rules.

Getting to 60 was often difficult and required painful concessions; furthermore, even when 60 votes were in hand, the process could be excruciatingly slow. To pass the stimulus bill early in 2009, Majority Leader Harry Reid needed the votes of at least two Republicans. The price for the three votes he got was a significant cut in the size of the stimulus, with considerable aid to the states being deleted. (One of the Republicans, Arlen Specter, quickly discovered that his vote for the stimulus had so enraged the Republican base in his home state of Pennsylvania that he would lose in the 2010 primary. He switched to the Democratic party and, with the seating of Al Franken once the Minnesota recount was decided, gave the Democrats a Senate majority of 60."

The cloture process is time consuming and cumbersome. Any senator may circulate a cloture petition. When the senator has gathered sixteen signatures the
petition is filed; after a one-day layover, the Senate votes. Even after a successful cloture vote, debate does not necessarily end immediately. Senate rule 22, the cloture rule, places a cap of thirty hours on consideration after the cloture vote, and opponents can insist on the time. The thirty hours does include time spent on quorum calls and voting as well as on debate. The rule also requires that amendments considered after cloture must be germane.

If opponents are determined, supporters may need to impose cloture at more than one stage in a bill’s progress through the chamber. Thus, extended debate can occur on the motion to proceed to consider the measure, on specific amendments, on the measure itself, on various motions related to going to conference, and on the conference report. No single measure has ever been subject to filibusters at all these stages, but it is not uncommon for cloture to be sought at several stages. To pass the tobacco regulation bill in 2009, supporters had to win cloture votes on the motion to proceed, the Dodd amendment in the nature of a substitute, which was the committee bill, and on passage. The process took two weeks of Senate floor time.

Because filibuster threats in their various forms have become so routine, 60 vote requirements for passage of legislation are now sometimes written into unanimous consent agreements. The majority agrees because it saves time; the minority may extract substantive concessions or, for a variety of possible reasons, may not want to go through the time consuming cloture process either. And, if cloture is invoked, the minority may not insist on using the 30 hours. Yet a minority intent on making its opposition dramatically evident, perhaps to convince its activist base it fought to the bitter end, can stretch the process out for days.

The health care reform bill’s passage in the Senate in 2009 illustrated how excruciatingly difficult the process can be when the minority insists on using all its prerogatives. At 7 a.m. on Christmas eve morning, the bill passed the Senate on a straight party line vote of 60 to 39. The Senate had debated the bill for 25 days, without breaks for weekends since early December; not only did Democrats have to win five cloture votes, Republicans forced 30 hours of debate after each, only relenting on the last so that senators could beat a major snowstorm out of Washington on Christmas eve; provisions that a large majority of the Democratic membership strongly supported had to be dropped to get the requisite 60 votes. This case vividly illustrates why the “make them filibuster” strategy cannot be routinely employed.

The majority party and its agent, the majority leader, are not without weapons to combat obstructionist strategies. The majority leader’s right of first recognition allows him to use a tactic called “filling the amendment tree”— that is, offering amendments in all the parliamentarily permissible slots, thus preventing other senators from offering their amendments, and then usually filing for cloture. Although no complete list of all the instances when majority leaders have used this parliamentary tactic is available (identifying them is not easy), experts agree that the practice has increased in recent years. Majority Leader Frist appears to have done so on initial consideration of legislation six times in 2005-2006; Reid
did it nine times in 2007-2008 and even more frequently in 2009-2010. Minority Leader McConnell has claimed that Reid filled the tree 43 times in the 2007 through 2010 period.29

The majority leader can sometimes use the explicit or implicit threat to fill the tree as a bargaining tool to get the minority to agree to unanimous consent agreements placing some limits on the amendment process. In fact, UCAs specifying that certain amendments require 60 votes to pass have become relatively common in recent years. In the 109th Congress, 6 amendments were subject to a 60 vote requirement in UCAs; this shot up to 33 in the 110th Congress. Minority party members agree to such UCAs because the UCA gives them an up-or-down vote on their amendment and, in most cases, they know their amendment would, in any case, fail to get a simple majority. The sponsors’ primary motive may well be to publicize their own proposals or to force their opponents to cast a difficult-to-explain vote.

Threatening to fill the amendment tree may induce the minority to bargain; actually doing so may block amendments altogether. But its limitation as a strategy, in either case, is that, unless the majority leader can muster 60 votes (or at least persuade the minority he can do so), he cannot bring the bill at issue to a passage vote. In the late 1990s, Majority Leader Trent Lott used the tactic a number of times, but because Democrats maintained high cohesion on cloture votes, it usually just led to gridlock. In eight of the 15 times it was employed by Frist and Reid in the 109th and 110th Congresses, the Majority Leader either had to pull the bill off the floor or to withdraw his amendments so as to allow other senators to offer theirs. Unless the majority is very large, the strategy requires special circumstances to work. In early 2007, Reid filled the amendment tree on the continuing resolution (CR) necessary because Republicans had not passed most of the appropriations bill for FY07; he then filed for cloture, a vote Democrats won. The result was that the CR passed the Senate quickly and in a form identical to the House bill, which was the aim. Reid was able to succeed with such aggressive tactics because the CR was must-pass legislation, the deadline was imminent, and Republicans were leery about calling attention to their own dereliction.

Reid’s big majority in the 111th Congress made filling the amendment tree an often successful tactic. For example, Reid used it in December 2009 on the health care bill; after the bill had been on the floor for a number of days and he had cobbled together a compromise that all 60 Democratic senators could support, Reid offered that compromise as a manager’s amendment, filled the amendment tree, and then immediately filed for cloture. These moves meant that no further amendments would be in order until Reid’s were disposed of and, if cloture were invoked, he could run out the clock—that is, prevent his amendments from coming to a vote until the post-cloture time had expired and so no other amendments could be offered. The minority party complains bitterly when the tactic is used. However, when the majority party is required to get a supermajority to pass almost everything, then, once the 60 votes are in hand, the majority leader has every incentive to fill the tree and cut off amendments.
In the 112th Congress, with the Democratic majority reduced to 53, the dilemmas inherent in leading a nonmajoritarian chamber in a hyper-partisan environment became even more marked. Reid could sometimes use strategies like filling the tree to protect his members from having to take politically perilous votes. He could actually pass legislation only with minority party acquiescence, which was often not forthcoming. In the spring and summer of 2011, the Senate spent many days considering a small-business research bill and an Economic Development Administration reauthorization, both noncontroversial bills, but was never able to get to a passage vote on either. Numerous amendments were debated, but reaching a UCA to end debate proved to be impossible and cloture votes failed. In the fall, Democrats failed to force an up-or-down vote on President Obama’s jobs bill when Republicans defeated cloture on the motion to proceed; a similar fate befell most of the component parts of the jobs bill, which Democrats sought to bring up separately.

Reconciliation bills—ones making changes in law in accordance with instructions in the budget resolution—are not subject to filibuster. Consequently the temptation for the majority party to accomplish its policy goals through the budget process is strong. The big tax cuts that President Bush requested in 2001 and 2003 were enacted through reconciliation bills whose passage only required a simple majority. In 2010, after the Senate Democrats lost their 60 vote majority, they knew they would not be able to pass a health care reform bill making the necessary compromises with the House version through the normal process. The House agreed to pass the Senate bill, and the “fixes” to the Senate version on which the House insisted were included in a reconciliation bill. Democrats were also able to include a major revision of the student loan program in the reconciliation bill. Senate rules, most importantly the Byrd rule barring extraneous matters in reconciliation bills, restrict the use of this strategy. (The student loan provisions met the Byrd rule test because they saved money.) The Byrd rule can only be waived by a three-fifths supermajority.

With limited exceptions, as long as the minority can command forty-one votes it can prevent the majority from acting. Only damage to the minority party’s reputation or to the reelection chances of its members acts as a constraint.

Individualism, Partisanship, and Legislative Outcomes

How does the combination of individualism and intense partisanship that characterizes the contemporary Senate affect legislative outcomes? As shown in Table 1-3, the likelihood of a major measure’s becoming law is less in recent Congresses than in earlier ones. In the Congresses since the early 1990s, during which half or more of the major legislation was subject to some sort of filibuster problem, 40 percent of the major measures failed enactment. By contrast, in the earlier Congresses, characterized by less filibuster activity, 28 percent of the major measures failed. Of course there are many steps in the legislative process, and these figures by themselves do not prove that the Senate is responsible for the increase in
Sinclair

Table 1-3 Where Major Measures Failed

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<th>What Happened</th>
<th>Percentage of Failed Measures</th>
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<td>87th-101st Congresses</td>
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<td>Passed by neither House nor Senate</td>
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<td><strong>Passed by House but not by Senate</strong></td>
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<td>Passed by House and Senate</td>
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<tr>
<td>Total number of failed measures</td>
<td>112 (of 405 measures)</td>
</tr>
<tr>
<td>Percentage of total measures that failed</td>
<td>27.7</td>
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</tbody>
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Source: Author’s calculations.

legislative failures. However, as also shown in Table 1-3, in the more recent Congresses legislation was much more likely to pass the House but fail in the Senate than the reverse; in the earlier Congresses, the difference was not very great.

Does the increasing frequency with which measures encounter extended-debate-related problems in the Senate explain this pattern? Filibuster problems do, in fact, depress a measure’s chances of surviving the legislative process. In Congresses between the 1960s and 2010, 28 percent of major measures that did not encounter such a problem, either because senators chose not to use their prerogatives or because the measure enjoyed statutory protection, failed to be enacted; 41 percent of those that did experience a filibuster problem failed to become law. Inasmuch as filibusters and filibuster threats are by no means always intended to kill legislation, these figures suggest a considerable effect.

Thus the combination of individualism and intense partisanship that characterizes the contemporary Senate does depress the likelihood of bills’ successfully surviving the legislative process. Yet given the Senate rules and the ways that senators currently exploit them, it is perhaps more surprising that the Senate manages to legislate at all. The Senate does pass a lot of legislation, both must-pass measures such as appropriations bills and other major bills. To be sure, some measures—budget resolutions and reconciliation bills, most importantly—are protected from filibusters and nongermane amendments by law; that has been vital to the passage of some of the most important legislation of the last decade. But considerable legislation without such protection gets through the Senate as well.

Dodging Legislative Breakdown?

Clearly the Senate could not function if senators maximally exploited their prerogatives; if, for example, every senator objected to every unanimous consent...
agreement on any matter that he or she did not completely support. What, then, has kept senators as individuals and as party teams from pushing their prerogatives over the limit and miring the Senate in gridlock? And is true legislative breakdown now an imminent danger?

Asked that question, senators, staff members, and informed observers uniformly respond that almost all senators want to “get something done” and are aware that many senators’ exploiting their prerogatives to the limit would make that impossible. As one knowledgeable insider phrased it, “I like to think of the Senate as a bunch of armed nuclear nations. Each senator knows he can blow the place up. But most of them came here to do something, and if he does blow things up, if he does use his powers that way, then he won’t be able to do anything.” Using one’s prerogatives aggressively entails concrete short-run costs, most also argued. “If you do object [to a unanimous consent request], it’s going to hurt someone and maybe more than one person,” a senior staffer explained; “so the next time you want something, it may very well happen to you.”

Similar considerations have tended to restrain senators as party teams and especially restrain their leaders. The leaders are very much aware that as much as senators want to gain partisan advantage on the big issues, they also want, for both reelection and policy reasons, to pass bills. As the earlier discussion of the interactions between the party leaders indicated, the leaders are instrumental in maintaining the cooperation necessary to keep the Senate functioning. They do so by working together closely, by adeptly employing both procedural and peer pressure to encourage the recalcitrant to deal, and by accommodating to some extent all senators with problems. Although the procedural resources and the favors the leaders command are fairly meager, they do have one persuasive argument for inducing cooperation. As a knowledgeable insider put it, senators “can use the powers they have to create chaos and confusion on the floor, in which case senators don’t have a life, where the floor debate goes on to all hours without any knowledge of when anything will happen, or they can defer to their leaders to create a structure with some predictability, and then they do have a life. And that’s the bargain they have made.” Leaders are not shy about using senators’ desire for predictability and time off to pressure them. As a Capitol Hill reporter stated, “Vows to cancel a recess, hold a session late into the night or meet through the weekend have in recent years become standard parts of a Senate Majority Leader’s repertoire.”

Leaders also need to concern themselves with guarding the party’s reputation within the chamber and with the public. The minority party’s influence within the chamber depends on its being able to block cloture when a party effort is made to do so, and that has tended to require using obstructionism selectively. The minority has to avoid being perceived as obstructionist on legislation popular with the public.

In its everyday functioning, the contemporary Senate exhibits a peculiar combination of conflict and cooperation, of aggressive exploitation of rules and accommodation. The hottest partisan legislative battles are studded with
unanimous consent agreements. Thus the Senate will agree by unanimous consent on a time to begin consideration of a motion to proceed that everyone knows the minority will block. And the more intense the partisan fight, the more frequently the majority and minority leaders confer. On bills not at the center of partisan conflict, senators routinely cooperate across the partisan divide. As a senior aide expressed the consensus, “If you really want to move stuff, if it’s not a big partisan matter, a big ideological issue, and you really want to move it, then you really have to be bipartisan. You’ve got to work out the difficulties, and you’ve got to work across the aisle.” Bipartisanship is especially important on legislation of secondary importance because the majority leader requires that the problems be resolved before he attempts to bring those bills to the floor. Senators as individuals do put holds on one another’s bills, but they also often attempt to accommodate one another on an individual basis in ways that extend far beyond what occurs in the House. A staffer explained such responsiveness not by norms of civility and reciprocity but by the facts of life in the contemporary Senate. It is “because they need to accommodate you to move something,” the aide continued. “They want to get something done. They want to get legislation, and to do that you have to take care of people’s problems.”

Thus senators’ acute awareness of the weapons all senators command can work to produce cooperation and some restraint. Yet in an era of intensified partisanship combined with the continuing individualism that has characterized the Senate since the 1970s, the Senate legislative process is fragile. Senate party leaders are under considerable pressure from their members to pursue partisan advantage aggressively, and partisan battles aimed at electoral gain are zero-sum. Most of the time, the Senate has managed to maintain the minimum restraint and cooperation necessary to avoid total gridlock, yet the chamber regularly seems to teeter on the precipice of legislative breakdown.

In the last few years, Senate functioning has become increasingly problematic. The minority party seems to perceive less danger to its reputation in almost constant obstructionism, perhaps because attentive citizens are themselves so split along coinciding ideological and partisan lines. The majority has become increasingly frustrated and has sometimes acted in ways that have exacerbated partisan rancor. In 2005, after Democrats had blocked a number of Bush judicial nominees, Majority Leader Frist threatened to change the rules for presidential nominations through a highly controversial procedure that required only a simple majority. This “nuclear option” would have entailed the Senate’s presiding officer ruling—against established Senate precedents—that cutting off debate on nominations only requires a simple majority. Democrats would, of course, have appealed the ruling, but only a simple majority is required to uphold a ruling of the chair. A deal put together by seven Democrats and seven Republicans averted the move.34

In response to Republican obstructionism in the 110th and 111th Congresses, a number of mostly junior Democratic senators advocated significant changes in the filibuster rule at the beginning of the 112th Congress. Whether changing
Senate rules at the beginning of a Congress requires a two-thirds vote or just a simple majority is a contested question, but Democrats would certainly have to do it with a simple majority or not at all. A rules fight, whether successful or not, would aggravate the already high level of partisan animosity and, to avoid that, Reid made a “gentleman’s agreement” with McConnell that the minority would not routinely object to motions to proceed and the majority would not routinely fill the amendment tree.35

The agreement did not halt minority obstruction nor the procedural arms race that characterizes the contemporary Senate. In response to Reid’s more frequently filling the amendment tree, which itself was a response to what majority Democrats perceive as Republicans’ attempts to drag out the process on everything interminably, minority senators in 2010 came up with a tactic that got them an indirect vote on their amendments after cloture even if the tree had been filled. First employed by Senator Jim DeMint, it entailed moving to suspend Senate rules to permit consideration of a specific amendment. Because suspending the rules requires a two-thirds vote, the minority does not expect to prevail but the mover can insist on a recorded vote, thereby forcing opponents on the record.

In October 2011, during consideration of a broadly supported China currency manipulation bill, Democrats fought back. After cloture was invoked, Reid and McConnell agreed that there would be seven votes on Republican motions to suspend the rules. However, when Reid proposed a unanimous consent agreement listing which amendments would be addressed, McConnell objected because Reid had not included the Johanns amendment on farm dust. Reid explained that he could not get agreement on his side of the aisle to include that amendment, but McConnell retorted that Republicans would not allow Reid to choose which amendment they could offer via suspension of the rules. Operating without an UCA, Reid then offered one of the motions on his list and raised a point of order against his own motion on the grounds that it was dilatory. In accordance with precedent, the presiding officer overruled Reid’s point of order. Reid appealed the ruling of the chair and won on a party-line 51-48 vote, thereby reversing existing precedent and, in effect, changing Senate rules with a simple majority.

Republicans, of course, were livid. “The fundamental nature of cloture is to make consideration of the pending measure finite,” Reid argued. “… The logical extension of allowing for the consideration of further amendments, notwithstanding cloture, leads to a consideration of a potentially unending series of amendments.”36 Reid was turning the Senate into the House, McConnell charged, allowing only amendments he himself approved. Chuck Schumer, third-ranking in the Democratic leadership, summed up the situation thus:

You are frustrated because you feel the tree is filled all the time and you cannot make amendments. But we are frustrated because the 60-vote rule—which has always been used here—is now used routinely, which never has been done before…. [D]istrict court judges…. Routine appointees—assistant secretaries of this, deputy secretaries of that—60 votes. …
In the past, the motion to proceed was not routinely blocked. And almost every single bill—on minor bills—we had a filibuster on technical corrections to the Transportation bill, where 287 was written down by mistake instead of 387. It was filibustered—60 votes. So our defense is to fill the tree.37

Whether this Senate can continue to dodge legislative breakdown is an open question.

Notes

The definitive work on the Senate in the 1950s is Donald Matthews’s U.S. Senators and Their World (New York: Vintage Books, 1960). The title of this chapter is intended as a tribute to Don and his classic. All unattributed quotations in the main text of the chapter are from interviews conducted by the author.

7. Binder and Smith. Politics or Principle?
8. CQ Weekly, January 16, 2012, 117; party support score figures are adjusted for absences.
10. Computed from committee and subcommittee lists on Senate committee websites, accessed through www.senate.gov.
15. See Richard Beth, “What We Don’t Know about Filibusters,” paper presented at the annual meeting of the Western Political Science Association, Portland, Ore., March 15–18, 1995; also Sinclair, *Unorthodox Lawmaking*, 1st ed., 47–49; Koger, Filibustering. Sources for the data are given in the note to Table 1-1. The House Democratic Study Group publication relies on data supplied by Congressional Research Service experts; these experts’ judgments about what constitutes a filibuster are not limited to instances in which cloture was sought. For the 103rd through the 110th Congresses, instances in which cloture was sought are used as the basis of the “filibuster” estimate. One can argue that this overestimates because in some cases cloture was sought for reasons other than a fear of extended debate (for example, as a test vote or to impose germaneness). However, one can also argue that it underestimates because those cases in which cloture was not sought—perhaps because it was known to be out of reach—are not counted. For an estimate based on a different methodology, see Table 1-2.
17. Frustrated, President Obama appointed Corday via a recess appointment in early 2012; because the Senate was not technically in recess, that move was controversial and likely to be challenged in court. Joseph Williams, “Obama and the definition of ‘recess,’” *Politico*, January 2, 2012.
20. Holds and threats to filibuster, as well as actual extended-debate–related delay on the floor, were coded as filibuster problems (see below). The definition of major legislation used here—those measures in lists of major legislation published in *CQ Almanacs* and the *CQ Weekly* plus those measures on which key votes occurred, again according to *Congressional Quarterly*—yields forty to sixty measures per Congress. Thus, although truly minor legislation is excluded, the listing is not restricted to only the most contentious and highly salient issues.
30. Based on selected Congresses 87th–111th. Measures that did not get far enough to encounter the prospect of a filibuster problem are coded as missing data on the filibuster variable.
Chapter Two describes the shift of the House of Representatives from the era of committee government in the mid-twentieth century to the highly polarized and closely contested form of party government witnessed in the early 21st century. The authors argue that the contested and polarized nature of contemporary House politics is rooted in the closely divided partisan makeup of the nation and reinforced by the stratagems state legislatures use to aid their preferred parties during congressional redistricting. The inability of either party to gain electoral dominance of the House in the early 21st century has led to dramatic swings in the ideological orientation of House policymaking, thereby undercutting long-term commitment to major policy goals, and has helped induce a fiscal crisis capable of upending the nation’s recovery from the Great Recession. Resolution of the crisis mentality in the House almost certainly depends on the coming of sustained electoral shifts among voters toward one party or the other.

Throughout our careers, the House of Representatives has been in nearly continuous turmoil. From the demise of committee government and its replacement briefly with subcommittee government, to the growing strength of party leadership during the Tip O’Neill and Jim Wright speakerships, to the fall of Wright in prelude to the Republican revolution of 1994, to the brief apex of Newt Gingrich and his subsequent fall, to the consolidation of party control that followed, to the instability of party control since 2006, change has been the most consistent institutional feature.

No party has become comfortable with majority status during this recent period of fierce competition and sudden shifts in party control. Of necessity, party leaders have concentrated on the electoral consequences of their actions, with the majority determined to sustain itself while the minority works to supplant it. These behaviors have had profound effects on the House’s governing functions because parties and their leaders must consider the electoral ramifications of every decision. Unpredictability of majority control has persisted since the Republican victory in 1994, but most noticeably since the 109th Congress. And this unpredictability has been reinforced by the severe economic crisis of recent years.

In this chapter we focus extensively on the last decade. Before doing so, it is essential that we first provide the historical context in which to analyze the contemporary House.
I. The Committee Government Era and its Aftermath

As the Era of Committee Government was ending in the early 1970s, the House was evolving fitfully into an institution in which parties and party leaders became the locus of decision making. Beginning with the revolt against Speaker Joseph Cannon in 1910, the last of the all-powerful late 19th and early 20th century czars, the House was a largely unchanging institution in which committees under the leadership of chairs, insulated by seniority, dominated proceedings. Parties and party leaders were often at the mercy of member loyalties to their committees and their constituencies. In the period following the ideological split between northern and southern Democrats in 1937, southerners reaped disproportionate influence due to seniority advantages. On many issues they worked in a conservative coalition with Republicans to frustrate the legislative preferences of their party, its congressional leadership, and its presidents. As the 1970s began, the power of committee chairs intertwined with the dominance of the conservative coalition was ending.

Both external changes affecting the composition of the House parties and internal reforms making committee chairs accountable to their party caucuses transferred significant powers from committees and to parties and their leaders. The external changes were a byproduct of the 1965 Voting Rights Act. With the registration of large numbers of previously disenfranchised black voters in the South, the ideological composition of southern Democratic House members moderated. To win Democratic primaries, candidates had to take less conservative stances on civil rights and social welfare policies among other issues. The policy difference between southern and northern House Democrats diminished and eventually led to a more homogeneous and liberal party. As this occurred, conservative white southerners moved into the Republican party and began electing southern Republicans to the House. The growth of southern Republicans made it a more conservative party in which liberals and moderates were less comfortable. The transformation occurred gradually through the 1970s and 1980s and culminated in 1994 with Republicans winning control of the House for the first time in forty years. Republicans also won a majority of southern House seats for the first time since the end of Reconstruction. Regional and ideological distinctions between the two House parties have subsequently become even more pronounced.

Internally, the greater homogeneity of the membership of the two parties enabled the party organizations and leadership to amass greater authority. Most of the changes occurred within the majority party, the Democrats until 1994 and the Republicans for the following twelve years. Democrats revitalized the party caucus, made its Steering and Policy Committee a vehicle for the party leadership to influence the election of committee chairs and committee assignments, invested the Speaker with additional power over scheduling, and provided a new budget process as a potential tool for centralizing policy decision making.
Over time Speakers O’Neill and Wright enlarged the authority of the party leadership as a more homogeneous party membership accepted increased influence of party. Fewer members were concerned that the leadership would push policies that were at odds with their individual preferences or would create electoral difficulties for them. Instead a stronger party and leadership could help overcome the collective action problems in passing legislation they favored. A stronger party also made the Democrats more accountable with the electorate for policy outcomes. During the Reagan and George H.W. Bush presidencies, they could place blame on Republican presidents. However, with the election of Bill Clinton in 1992, House Democrats became an easier target for Republican critics. This development helped set in motion the upheavals in partisan control in the 1990s and the partisan instability of the current period.

II. Newt Gingrich and the Republican House, 1995-1998

Even before Clinton, Republicans began a more aggressive assault on Democratic dominance. The impetus for this attack came from the younger and more conservative Republicans. Their goal was to end Democratic control of the House by combining the growing number of southern Republicans with the pre-existing group of House Republicans, having a conservative party replace the conservative coalition. In the Ninety-eighth Congress (1983-1985), Newt Gingrich and other junior Republicans organized the Conservative Opportunity Society and challenged the House Democrats on procedural, policy, and political grounds. 2 They also mounted sustained assaults on the ethics of House Democrats, leading among other things to the resignation of Speaker Jim Wright, D-Texas. In addition, many House Republicans embraced term limits as a vehicle to undermine Democratic dominance of Congress. In March 1989, House Republicans narrowly elected Gingrich as their minority whip over a more moderate candidate. As the prospective party leader, Gingrich pushed Republicans closer to confrontation with Democrats, pointing to the 1994 elections.

Gingrich and the House Republicans built their 1994 campaign around a common national agenda, the Contract with America, a direct attack on the ‘liberal’ agenda and long-term Democratic control. The Contract was dedicated to extensive reform of the House and the implementation of conservative policies. In addition, they attacked Democrats for supporting the Clinton administration’s budget package of spending cuts and tax increases to cope with the deficit. No Republican House member or senator voted for the legislation. Thus, Republicans could place accountability directly on the Democrats. Republicans focused on winning open seats, defeating freshmen Democrats elected in 1992, and challenging a few key Democratic leaders, such as Speaker Tom Foley.

The result was the first Republican House majority since 1952. In winning control of the House, the Republicans gained 52 seats, the largest swing since
1948, defeating 34 Democratic incumbents, including Speaker Foley, and picking up 18 open seats. In the South, Republicans turned a 54-83 deficit into a 73-64 advantage. In the aftermath of the “Republican Revolution,” the challenge for their Speaker Newt Gingrich and for House Republicans was whether they could sustain and build on their majority and shift national policy.

Following the 1994 elections and through much of the 104th Congress (1995-1997), it appeared that czar leadership, akin to the 1889-1910 era, had returned to the House. Speaker Gingrich controlled the House and its committees to an extent comparable to Cannon.3 Ironically, he built on what Democrats had done to strengthen the Speakership. Crediting Gingrich for leading them to majority status, House Republicans granted him powers that had been stripped from the Speakership in 1910.4 Gingrich's personal choices were appointed to chair committees, even when it meant bypassing more senior members. Republican committee chairs were limited to three terms, depriving them of the ability to establish independent long-term bases of power. The new Speaker influenced the appointment of key committee slots. With Gingrich loyalists on the Rules Committee, the Speaker had tighter control over the agenda and the scheduling of House legislation than the previous Democratic speakers had exercised. The only restraint on him was a four term limit Republicans placed on their Speakers. Gingrich’s powers ensured cooperation from the standing committees, often having them do little more than rubber stamp legislation the party leadership had drafted. And once legislation came to the floor he pushed for united Republican support.

The high point of Gingrich's effectiveness came during the first hundred days of the 104th Congress, when House Republicans acted on the major promises of the Contract with America. Buoyed by his success, Gingrich challenged President Clinton for national policy leadership in late 1995. The public blamed the resulting government shutdowns over the budget impasse more heavily on Gingrich and House Republicans. It demonstrated the limits of the speakership. The party never fully recovered after the budget 'train wreck,' with many Republicans blaming Gingrich for the debacle.

Recognizing their electoral vulnerability in 1996 owing to their performance during the budget crisis and the likely reelection of a Democratic president, Gingrich and House Republicans moderated their policy stances, even increasing the minimum wage. In addition, they campaigned on the theme that a Republican majority in the House was essential to limiting the liberal policies of a second Clinton administration. Democrats made small seat gains in the 1996 election, but Republicans succeeded in maintaining control. Their narrowed majority limited their opportunity for legislative accomplishments and cast doubt on whether the party would consolidate long-term dominance of the House. Unhappiness among House Republicans with Gingrich festered, coming to a head in mid-1997 when a group of Republican members plotted unsuccessfully to oust Gingrich from the Speakership.5

As the midterm election approach, Speaker Gingrich pushed the impeachment of President Clinton over the Monica Lewinsky scandal to unite House
Republicans and lead them to success in the 1998 elections. The public again stood with Clinton. For the first time since 1934, the president’s party gained seats in a midterm election. Republicans barely remained the majority party. Gingrich took the blame for what was interpreted as a political calamity, stepped down as Speaker, and resigned from the House.

III. The Hastert Speakership, 1999-2006

Although it is tempting to focus on the impact of Gingrich’s personal stamp on the speakership, much of the institutional power remained when a more personally restrained speaker, Dennis Hastert of Illinois succeeded Gingrich. An increasingly homogeneous House Republican Conference did not remove powers from the leadership, although there may have been some greater sharing within the leadership. With the first group of Republican committee chairs having completed their three term limit at the end of the 106th Congress, Hastert made sure that the leadership maintained tight control over replacing them, as candidates had to interview with a leadership dominated party committee and make commitments to expedite the party’s legislative agenda.

During Hastert’s eight years as speaker, he faced many of the same contextual advantages and constraints that Gingrich had. He and his leadership team drew on most of the same internal powers that Gingrich had utilized, although Hastert did not pursue national policy leadership. With his strong powers, the ideological homogeneity of his party, and majority party status, he had the resources to ensure party success within the House. But he still confronted great complexities externally. Thus, like his predecessor, Hastert was never able to expand his majority. That meant that every election presented the possibility of his party becoming the minority.

During the 106th Congress, Hastert and fellow Republicans worked with President Clinton and some Democrats to build a legislative record. They generated sufficient legislative accomplishments to avoid being labeled a “Do-Nothing Congress,” although journalists Richard Cohen and Eliza Carney aptly called the 106th a “Do-Little Congress.” The 2000 elections reduced their majority yet again, while George W. Bush’s victory gave the party united control of government for the first time since Eisenhower’s election. With Bush as president, the Republican speaker was no longer the prime party spokesperson. Instead his role became one of mobilizing House Republicans to pass Bush’s legislative program. Because majority rule limited opportunities for obstruction, the Speaker and a unified majority party provided reliable support for President Bush. Hastert and his leadership team moved in 2001 to pass the president’s proposed tax cuts and approved a budget resolution that embraced his tax and spending priorities. When Democrats gained narrow control of the Senate in 2001, the House became even more clearly the President’s key ally. After the terrorist attacks on 9/11, the House continued the largely successful push of Bush’s taxing and spending program and proved most faithful to his initiatives on terrorism and
homeland security, eventually taking a special role in crafting a resolution in support of the president’s authority to wage war in Iraq.

With a faltering economy, one might have anticipated that the Democrats would challenge for control of the House in the 2002 midterm election. In the aftermath of 9/11, however, and with military action in Iraq on the horizon, the public focus was on issues of national security and advantaged the Republicans. They made modest seat gains in the House and won back control of the Senate. The Democrats appeared in disarray as Richard Gephardt resigned as Minority Leader and was replaced with Nancy Pelosi, the first woman floor leader in either chamber.

The Republican momentum towards majority party consolidation in the House relied increasingly on Bush’s success in conducting the war on terrorism and winning the peace, especially after the incursion into Iraq in mid-March of 2003. Bush’s request in his State of the Union address for large new tax cuts, however, complicated the need for supplemental appropriations to fund the war. House Republicans were disappointed when Bush settled for the Senate’s smaller tax cut proposal. Thereafter, much of the first session of the 108th Congress was preoccupied by the need to craft periodic supplemental spending legislation to pay for the war as conditions in Iraq deteriorated.

In the midst of these stresses on the country’s fiscal condition, the Bush administration achieved its most improbable legislative success when it persuaded Congress to enact a prescription drug provision as part of the Medicare program that Democrats had created in the 1960s, challenging the Democrats on an issue on which they had previously claimed ownership. Many conservative House Republicans balked, seeing this new entitlement as fiscally irresponsible. Nevertheless the House Republican leadership pushed the final bill to passage, asserting that the legislation ensured long-term Republican control of Congress by cracking the Democrats’ core support base.

Although Bush was comfortably reelected, House Republicans were only able to add three seats and much of that gain was due to Majority Leader Tom DeLay’s strategy of ‘re-redistricting’ Texas congressional seats for the 2004 election. Although his part in the redistricting and other matters later exposed DeLay to House Ethics Committee investigations and legal charges, he seemed the heir-apparent for the Speakership should Hastert step down.

Expectations thus were high for Republican success as the 109th Congress convened. Republicans saw their general election victories as “a mandate … to overhaul every major program of the nation’s social safety net, including Social Security.” House Republicans expected to do this while holding their majority in 2006, but it was not to be. Instead, by the fall of 2006, reputable analysts would call the 109th Congress a ‘do-nothing’ Congress, Republicans would lose their majorities in the House and Senate, and the Republicans’ bid for long-term dominance of Congress derailed. External factors, as well as legislative failures and issues of political corruption, contributed to the demise of the Republican majority. The mounting casualties of the Iraq War, combined with the administration’s
failures in emergency relief efforts following Hurricane Katrina in New Orleans, took their toll on the president’s job ratings. In the House, several scandals, including those involving ethics violations, prosecutions of members, staff, and lobbyists, and resignations quickly multiplied. Most notably, DeLay was eventually indicted on campaign finance charges, resigned from the party leadership, and gave up his seat in the spring of 2006.

Democrats took advantage of the policy and personal failings of House Republicans. In particular, Democrats “recruited candidates in unlikely districts and searched especially for Iraq war veterans.” Minority Leader Pelosi also proved to be a particularly effective fundraiser and campaigner, making House elections focus on national issues, especially stressing Republican responsibility for the Iraq War. Democrats won more seats in the 2006 election than Republicans had won in any of the six preceding ones, although their majority would also be a narrow one. In the aftermath of the election, Hastert decided against standing for Minority Leader and subsequently resigned from the House.

IV. Speaker Pelosi and the Democrats’ Return, 2007-2010

After more than a dozen years of narrow Republican House majorities, the 2006 congressional elections put the Democrats back in the driver’s seat. They appeared to be in a strong position to dominate politics in the 110th Congress and position the party to contest effectively for united party control of government in 2008. Yet despite public dissatisfaction with the Iraq War and Republican government that had swept the Democrats into power, the large number of partisan safe-seat Republican districts limited their gains. Looking to 2008, they thus had to protect their majority gains in seats while trying to expand it. By the winter of 2007, the controversy over the Iraq War would fade in significance in comparison to the concerns about economic collapse. In the short-run, these developments and the Democrats’ response to them would allow them to expand their House and Senate majorities, win the presidency, and look towards the serious prospect of reconsolidation of national power. But then they themselves would become victims of the Great Recession, and perhaps of partisan overreach in response to it. Even with historic levels of policy accomplishment in the 111th Congress they would suffer great setbacks in the 2010 election, with Republicans regaining control of the House.

The 110th Congress

House Democrats had limited authority to use in ending the Iraq war, which was the preferred alternative of their liberal base. Moreover, they faced potential backlash from moderate voters if they appeared to abandon the troops or destabilize the Middle East in haste to end the war. Having recruited successful candidates more moderate or even conservative than the bulk of the Democratic caucus, it was unclear how unified the Democrats could be in pursuing their
domestic agenda. And the president possessed the power of veto, a powerful block to the Democrats legislative efforts, or even 60 votes in the Senate to invoke cloture. Finally, they now had to organize the House and demonstrate that they could proceed more effectively on their agenda than had the Republicans.

The responsibility to guide the House and the Democratic party through turbulent times fell to the first female Speaker of the House, Nancy Pelosi. Pelosi won unanimous support of her caucus to be their nominee as Speaker, ensuring her election, amid widespread appreciation for the role she had played in returning her party to power. Inexplicably, she almost immediately stumbled in ways that many feared would portend difficulties in managing the new majority party when she intervened in the Majority Leadership race to endorse the candidacy of John P. Murtha against Steny Hoyer of Maryland, the minority whip in the previous Congress. The caucus elected Hoyer as majority leader, raising questions about how effective the Democrats leadership team would prove to be. Yet Pelosi demonstrated little bitterness with the defeat, embraced Hoyer, and appeared to work closely with him thereafter.

In an effort to demonstrate her party’s ability to act forcefully in the majority, and to consolidate her own status as leader, Pelosi chose to open the first session of the 110th Congress by passing a set of long-term policy proposals – dubbed ‘Six for 06’ — during the first 100 legislative hours of the new Congress. Thereafter she turned to ensuring that the House would vote on and pass nonbinding measures opposing the president’s plan to increase the number of troops in Iraq, signaling to the party’s anti-war base that the Democratic House remained committed to ending the War. In addition to policy initiatives, Speaker Pelosi moved to organize the House in ways that were less centralized and leadership-dominated than had been the case under Gingrich and Hastert, although more party-based than in the Democrats’ previous period of House control. Further, “the new majority also pushed through a sweeping ethics and lobbying package and strict new rules on the budget process and disclosure of earmarks – funds designated for specific projects, usually in members’ districts.”

By the fall of 2007, Pelosi had gained firm control of the legislative process in the House of Representatives, showing herself to be both a policy activist and a legislative and political pragmatist. She kept an eye on the party’s election prospects in 2008, particularly aiding the 42 Democratic freshmen whose reelection was necessary to maintain the majority. Election assessments in late November 2007 showed Democrats well placed to maintain their majority. Nevertheless, there were also troubling signs indicating that the party could take nothing for granted. In particular, public opinion polls pointed to ‘a crisis of confidence in Congress,’ with public support markedly lower than the thirty percent approval of the president. Given the implosion of the Republicans in 2006, the low approval numbers for the 110th Congress necessarily pricked fears that 2008 could produce a housecleaning of the Democratic Congress.

As the second session opened in January of 2008, the Republicans began to refer to it as a ‘do-nothing Congress.’ This tactic lost momentum as the nation’s
economy continued to deteriorate to the point that the President and members of both congressional parties embraced the need for the government to act decisively to stimulate the economy. The first effort was the early-February passage of a $151 billion plan to provide tax rebates as a means to stimulate the nation's economy. Highly visible to constituents, the plan illustrated both the willingness of Congress to act and its capacity to engage in bipartisanship when confronted with economic crisis. Thereafter, as the nation's misery deepened, President Bush signed legislation extending benefits to jobless workers, and a rescue plan for Fannie Mae and Freddie Mac (combined with a foreclosure relief package). In September, Congress began discussing a bailout of the auto industry.

In late September, as a growing panic on Wall Street threatened a meltdown of the nation's economy, Secretary of the Treasury Paulson presented President Bush and Congress with a $700 billion bailout plan for the nation's financial system. In the week prior to a scheduled recess of Congress, designed to allow members to return to their constituencies for five weeks of election campaigning, members of the House and Senate found themselves confronted with one of the most extraordinary requests for immediate discretionary authority by any executive official in the nation's history. Paulson and Federal Reserve Chairman Ben Bernanke argued that a cascading collapse of financial institutions and the nation's overall economy could occur if Congress and the President failed to have the government buy distressed securities. Congress moved rapidly to assess the situation, with the presidential candidates leaving the campaign trail to return to Washington to be part of the deliberations.

Amidst great anxiety and anger, and concern for the implications of their decisions for the power of Congress and for the uncertain economic future of the nation, the House initially voted against the bailout, with a significant number of Democrats joining a majority of Republicans in doing so, to the disappointment of Pelosi and her leadership team. Thereafter, following modification of the bailout proposal in the Senate and its passage there, House Democrats rallied to support the bill, joined by both the Republican and Democratic leadership but opposed by most rank and file Republicans.

The cooperative effort of the Republican President and the Democratic Congress to stave off economic collapse proved an extraordinary development in a presidency that had been characterized by the highest levels of party polarization in a century or more. Support in the House for the economic proposals of the president's advisers came more reliably from the Democrats than from his own Republicans. A president reviled by the Democrats for his war policies found them coming to the aid of his administration, demonstrating their commitment to legislative activism in behalf of a strong federal government, and seeking to calm domestic waters in the weeks leading up to the November elections. Unclear, of course, was how the large commitments of taxpayers' funds envisioned in the programs would play out in the 2008 election.

On election day, the nation's citizens responded with a broad victory for the Democrats. Barack Obama won the presidency with a clear popular vote and
Electoral College majorities. Democrats added 7 seats to their majority in the Senate and 21 seats to their House majority. For the first time in fourteen years, Republicans were without a toehold in government. With these increases in the Democrats’ congressional majorities and their capture of the White House, the party appeared to be in a strong position to assert united party leadership of the government, address the pressing economic issues, wind down the unpopular wars, and, with success in these endeavors, consolidate long-term control of national government. Close observers of the House mistakenly concluded that the party’s majority in that chamber would be “difficult for Republicans to overturn anytime soon.” Only in the context of American politics since 1994 was the Democratic victory a large one. Given the dimensions of the economic crisis, the Democratic House gains were surprisingly modest and did not guarantee Democrats a sustained governing majority.

As a new Democratic President moved to replace the outgoing Republican, he was taking his party into united control of government at a moment in time that Paul Light, a leading scholar of administration transitions, considered “the most difficult transition since Abraham Lincoln,” even more challenging in ways than the one faced by Franklin Roosevelt in 1933.

The 111th Congress

Members returned to Washington in mid-November, to organize for the 111th Congress and complete a lame duck session. Both parties maintained their core leadership. The Democrats eliminated term limits on committee chairs. On the Republican side, Boehner stayed on as minority leader. Roy Blunt did step down as the Republican’s minority whip and a younger conservative stalwart, Eric Cantor, replaced him.

On the Democratic side of the aisle, the biggest immediate concern was passing President Obama’s stimulus bill. Simultaneously, progressives in the party pushed to move rapidly on universal health care and the withdrawal from Iraq. Conservative Blue Dogs focused on spending and taxes. Numerous members were pushing for Obama to honor a pledge of middle class tax cuts. And there was considerable concern across the party that, however it proceeded, it should not “overreach” its electoral mandate, as Clinton and the 103rd Congress had appeared to do.

On the Republican side the conservative Republican Study Committee threatened to break with Boehner should he seek to compromise unduly with the Democrats. The depleted ranks of moderate House Republicans struggled to maintain senior positions in the party and committee system against conservative dominance. Convinced that the public remained deeply suspicious of large-scale government activism, House Republicans increasingly believed that their interests lay with united party resistance to such initiatives.

Speaker Pelosi decided in the week following the elections to attempt to “govern from the center” in the new Congress, joined in this by Senate Majority
Leader Harry Reid. Having gained power by running more conservative candidates in swing districts in the last two elections, House Democrats risked losing these seats and their majority if they pushed the agenda that the most liberal members favored. Governing from the center and moving in a relatively deliberate fashion to address the recession also allowed them to pursue some bipartisan support. This effort started in the lame duck Congress, as the Democratic leadership sought to enact a small initial stimulus of $100 billion to jump-start the economy and to enact financial support for America's automakers.

All such plans soon vanished, however, amid a much more rapid deterioration of the economy than analysts had expected. Simultaneously, the lame duck session proved unproductive as the factional realities in his party restrained Boehner. And most Democrats wanted an aggressive response to the deteriorating economy.

Faced with these shifting realities, Obama and the Democratic leadership in Congress embraced a massive economic stimulus in excess of $800 billion, together with an aggressive bailout of the auto industry. They were also considering major reform of the financial industries in an effort to forestall such economic crises in the future, as well as a move toward universal health care.

To limit the ability of an ascendant conservative Republican faction to obstruct the president’s legislative agenda, Democrats implemented a series of rules changes designed, according to Rules Chairwoman Louise Slaughter, D-NY, to allow the House “to function more efficiently.” The changes included the elimination of term limits on committee chairs, ending the practice that Republicans had adopted in 1995. They also eased the majority's ability to avoid pay-as-you-go requirements and restricted the minority's ability to derail legislation. In April the House would join the Senate in adopting a fiscal 2010 budget resolution that permitted a health care overhaul to be considered under expedited budget reconciliation, if necessary, to sidestep a Senate filibuster.

In the subsequent 18 months the House Democrats generated a remarkable level of leadership and, in league with the Democratic Senate and President Obama, enacted one of the most activist domestic programs in American history. Within a month of the Inaugural the Congress passed a $787 billion stimulus program focused largely on projects designed to save or create jobs. In the remainder of the first session came laws regulating the credit card industry to protect consumers, efforts to prop up the failing auto industry, the expansion of health care insurance for low-income children, and substantial increases in discretionary spending by Congress to further stimulate the economy. As large as the combined stimulus efforts were, Republicans and Blue Dog concerns kept them more modest than advocates of the stimulus strategy proposed. And despite its liberal Democratic reputation, Congress and the President continued substantial funding for the wars in Iraq and Afghanistan.

In the second session, Democrats completed work on two historic laws. The House and various committees had devoted much of its time in 2009 to crafting health care legislation covering virtually all citizens, as had the Senate. At the
end of the year, with the Senate and House crafting very different bills, House Democrats under the strong leadership of Speaker Pelosi moved to compromise with Senate Democrats, dropping the ‘single-payer’ option and agreeing to the Senate bill. Combined with other provisions adopted as part of the reconciliation process, Democrats avoided a Senate filibuster and enacted the Patient Protection and Affordable Care Act. President Obama signed it into law on March 23rd, setting in motion a moderated form of universal health care, capping a struggle that had begun during the Truman administration.

Seemingly a great accomplishment, the passage of the health care law failed, at least in the immediate moment, to generate broad appreciation among citizens fearful about jobs and their economic future or to rally support within the Democratic base. When Democrats turned to jobs’ legislation following passage of the health care bill, Republicans blocked their efforts.

Democrats also completed final action on legislation that would overhaul the regulation of the financial services industry, altering aspects of banking and securities law going back as far as 1933. Although it enjoyed popular support, this legislation also united many in the financial world against the Democrats in ways that would subsequently give Republicans considerable advantages in raising campaign funds.

These and related developments, including legislation passed in a productive lame duck Congress that occurred following the November 2010 elections, insured that the 111th Congress would go down in history as one of the major activist Congresses of the past century. It did so while operating at levels of party polarization that had stalemated previous Congresses, as detailed in Chapter 17 of this volume. Success, however, came at a great cost to congressional Democrats, particularly in the House, as the public became increasingly concerned with the length and depth of the recession and as Republican critics increasingly argued that Democrats had overreached, particularly with the health care program, depriving issues of jobs and employment the attention they warranted.

During the 111th Congress, House Republicans stood united in opposition to most of the Democrats’ policies. Their opposition came to the fore early, in response to Obama’s push for a large economic stimulus to help jump-start the economy and generate job growth. Only one House Republican voted for the House version and none for the final stimulus bill.

Following the enactment of the economic stimulus program, conservative groups throughout the nation, many headed by longtime Republicans, began to organize against additional government activism. They joined with congressional Republicans and mounted extensive opposition to the Democrats’ agenda, with “the specter of government-managed health insurance, restrictions on carbon emissions, and higher taxes” generating support for such groups. These ‘inside the beltway’ lobby groups were soon joined by an external and citizen driven social movement.

Coming to the fore almost spontaneously in the winter and spring of 2009, the Tea Party movement captured the attention of disillusioned Americans
suffering through the recession throughout all regions of the nation.\textsuperscript{40} It mobilized supporters around a populist anti-government, anti-tax agenda, seeing government as the problem responsible for the crisis, not the solution, with bailouts and stimulus programs seen as only adding to the taxing and spending problems. Over the subsequent two years the Tea Party movement would generate extensive protests; give rise in 2010 to a Tea Party Caucus in Congress; and produce a number of candidates for Congress in Republican primaries, including challengers to incumbent Republicans. Those successful primary campaigns, and House Republicans’ embrace of the Tea Party, positioned the movement and the party to ride to power on any electoral backlash against the Democrats.

Simultaneously, less ideological independents nationwide, and much of the committed Democratic base, were increasingly demoralized by the recession, the failure of Democrats to bring the crisis to a rapid end, and, among some, the perceived willingness of President Obama to compromise with intransigent Republicans. Moreover, the House party faced ethical scandals, most notably one involving charges of financial and fundraising improprieties against powerful House Ways and Means Committee chair, Charles Rangel.

Against this backdrop, and amid a highly contentious national congressional campaign, House Republicans won a 2010 election victory of proportions unimaginable in November of 2008, making up all the ground lost across the two previous House elections. To better understand the nature of their victory, the continuing tendency of the House to swing unexpectedly between Republican and Democratic control, and the implications of these factors for the 112th Congress, let us turn now to an in-depth assessment of contemporary electoral politics in the House, starting with 1994.

V. The 2010 House Elections

The 1994 midterm election was not only monumental in bringing a Republican majority to the House of Representatives for the first time in four decades, but also signified a series of major changes in the dynamics of House elections, with significant implications for the House as a governing institution. Gary Jacobson analyzes many of these changes as they affect the electoral behavior of parties and candidates and voting behavior in House elections in Chapter 4. Our focus overlaps with his but is geared more to linking the changes in House elections with the way the body functions. More specifically, we view the 2006, 2008, and 2010 House elections as a culmination of the changing forces in House elections, with these changes making possible the national partisan swings seen in these three elections. The repeated partisan swings have then yielded the repeated swings in partisan control and agenda politics we have now seen in the House. But these swings are based on factors that also make contemporary party control of Congress, and the consolidation of a party’s agenda, exceedingly tenuous. Thus a new landslide election is likely to be followed by yet another partisan upheaval one or two elections down the line.
The five successive elections after the Republican 1994 takeover did keep the partisan balance in a stable, but narrow, range in which the Republican party was incapable of expanding its narrow majority but the Democrats were able to reclaim majority status. Although many elections from 1996–2004 focused on national issues, none produced a sizeable national partisan swing, with external events or internal missteps preventing the parties from taking advantage of short term openings. That changed in 2006, and again in 2008 and 2010, with two elections in which the Democrats took advantage of opportunities that favored them and a third in which Republicans, through aggressive exploration of their opportunities, established a majority larger than they held at any point between 1995 and 2007. To understand why these three most recent elections experienced such partisan swings, we must first provide a context that helps clarify why these successive nationally based campaigns were possible.

Understanding the Electoral Context

Several crucial changes have occurred in House elections over the past two decades that provide the context for the seemingly unrestrained partisanship that constrains the current working of the institution. First, voters in the past two decades are increasingly loyal to their own party in House elections and are less likely to defect to support incumbents of the other party than they were from the mid-1960s through much of the 1980s. Some incumbency advantage (as measured by exceeding the vote that the incumbent would be expected to receive from the partisan composition of the district) still exists, but it is considerably reduced. There are several things intertwined with the decline in incumbency advantage and the increased loyalty to one’s party candidates in House elections. Since the 1994 House elections, when Republicans used a national campaign theme of The Contract with America, the parties have increasingly run national campaigns for the House rather than having candidates run individual campaigns. Greater party involvement in recruiting House candidates, raising and spending money on their behalf, and providing research, policy messages, and technical support have produced more homogeneity and less individuality in House campaigns. As party has become a more important factor in vote decisions, there is less room for the influence of incumbency.

Second, a greater percentage of House seats are very safe in terms of their underlying partisan composition. There are a number of explanations for why this has occurred. These include incentives both parties have to create districts that are safe for their own incumbents, partisan plans that pack the other party’s voters into a small number of very safe districts, and the ways in which efforts to help aid the election of black or Hispanic representatives have led to more politically homogeneous districts. The representatives in these safe partisan districts do not have to appeal to independent voters or opposite party partisans to be reelected. Instead, their main reelection concern is a potential primary challenge, not a general election challenge. Thus, incumbents have incentives to present themselves
as party loyalists rather than moderating their issue stances to broaden their base of support. With so many overwhelmingly safe Republican or safe Democratic districts, fewer incumbents try to build vote support beyond what they get from the underlying partisan composition of the district. Instead they find it useful to emphasize their party ties and ward off potential primary challengers.

Third, and most important for understanding how the context of House elections is shaping the institution, party control of the House has been up for grabs in every election since 1994. By contrast, in nearly every House election from 1956–1992, it was assumed that the Democrats would remain the majority party. In every election from 1956–1992, the Democrats won more House seats than the majority party won in the seven elections that followed. From 1994–2006, the majority party never won more than 233 seats in any House election. At most, a sixteen seat shift would have changed party control of the House. Surprisingly, given this narrow margin, Republicans retained the majority party for six Houses in a row, yet they were never able to build a comfortable margin. The threat of returning to minority status was always present. Even when the Democrats finally expanded the majority in the 2008 election above that 233 seat threshold, they were not as secure as they had been prior to 1994. In this environment the parties must focus on the electoral consequences of their actions.

Other partisan dynamics unpinning House elections changed after 1994 as well. The relationship between the percentage of the national two party vote for the House of Representatives and the percentage of the seats that each party wins is different. Prior to 1994, the winning party in terms of the national vote for the House realized a sizeable bonus in terms of the percentage of the seats it won. In the ten elections from 1974–1992, the Democrats, who were continuously the majority party, averaged 54.6 percent of the national vote for the House but won an average of 61.4 percent of the seats, a mean bonus of 6.8 percent, ranging from 4.2 percent in 1986 to 10.3 percent in 1976. This seat reward for the winner of the overall vote in a legislative election is a common phenomenon for legislatures, not just for the House of Representatives. The explanation is that there are a disproportionate number of competitive seats and the winning party in terms of the overall vote cast for the legislature wins most of the highly competitive contests. Thus, for each increase of one percent of the vote that the victorious party wins, it receives more than one percent of the seats.

The seat bonus has greatly diminished and in some years nearly disappeared. In five of the eight elections from 1994–2010, the bonus has been less than one percent, and it has never been larger than 3.5 percent. In large part this is just another indication of the marked decline in the number of party competitive House districts and, as noted above, the large number of seats that are safe for one party or the other. Only in 2008 and 2010 was the party that won the national vote for the House able to push its seat total beyond 233 (53.6 percent of the seats). Prior to 1994, a party that won as much of the national vote for the House that the Democrat won in 2008 (55.5 percent) or Republicans won in 2010 (53.4 percent) would have won proportionately more seats.
Partisan Balance and Ongoing Shifts in Chamber Control

Thus, for nearly two decades, the House has remained in very close partisan balance. Either party is capable of being the majority party, and the size of that majority has often been very narrow. Even in an election in which one party has a big advantage in terms of the national partisan swing, perhaps winning 55 percent of the national vote for the House, it is unlikely to produce an overwhelming majority of House seats. As we will analyze shortly, the close partisan balance in the country since 1994 has repercussions for the way the House of Representatives operates currently. The majority party places a primary focus on retaining its majority while the minority party concentrates on displacing it and winning control of the House.

Given the current partisan balance in the American electorate, and the way that voters of different partisan predispositions are distributed across the 435 House districts, each party probably has 170 or more seats that are safe, except under the most unusual of circumstances. As the majority party expands the size of its majority, it takes on more vulnerable seats, and the remaining minority party seats are more secure. We can get a better feel for how this dynamic plays out and the electoral insecurity it creates for the majority party by examining the House seats that switched between the Democrats and the Republicans in the 2006, 2008, and 2010 elections.

Two related aspects of the Republican seat gains in the 2010 election demonstrate the insecurity of majority party status, the number of seats that Republicans won from Democrats in districts that John McCain carried in 2008 and the number of seats that they reclaimed from Democrats that Republicans had held prior to 2006 or 2008.

The Democrats won 256 seats in the 2008 election, adding to their modest majority after the 2006 election. The short term forces of the 2006 and 2008 elections were strongly favorable to the Democrats. With President Bush’s low job approval rating, district specific effects from soldiers killed in the Iraq War, and an unusually large number of Republican incumbents involved in scandal, partisan forces worked heavily in favor of Democrats in 2006. They defeated 22 incumbent Republicans and won 7 open seats previously held by Republicans, while retaining all of their open seats and not suffering a single loss of an incumbent to a Republican challenger. In 2008, following the financial meltdown, Democrats built on their House gains of two years earlier, making a net gain of 21 House seats. Again they retained all of their open seats and won 12 open seats that Republicans had held. In addition, Democrats defeated 14 Republican incumbents while Republicans defeated only five Democratic incumbents.

In those two elections the Democrats had substantially increased the number of marginal seats that they held. With Republicans down to 178 House seats, there were only a couple of isolated Republican-held seats left that were vulnerable. After all, these were seats that Republicans were able to retain through two consecutive elections where the national partisan trend in the electorate swung...
against them. In reducing Republicans to their hardcore of districts, Democrats now held many Republican-leaning districts in which their incumbents were vulnerable. In fact, 49 Democrats in the 111th Congress held seats in districts that John McCain had carried in 2008. Given Obama’s seven percent margin in the national popular vote, the McCain districts were ones with a sizeable Republican advantage. As the partisan forces swung back, Republicans reclaimed districts that had a Republican tilt. Of those 49 seats, Republicans won 37 in 2010 while they retained all but three of the seats that Republican House members won in 2008 in districts that Obama had carried.

In addition, a large percentage of the Republican seat gain came from winning back seats that Democrats had initially won from Republicans in 2006 and 2008. Of the 52 incumbent Democrats whom Republicans challengers defeated in 2010, 35 of them had won their seats in 2006, 2008, or in a special election by either defeating a Republican incumbent or winning a Republican-held open seat. Many of these seats were just going back and forth as the partisan winds shifted, with incumbents unable to build sufficient advantage to offset partisan electoral swings.

This shifting of seats back and forth between the two parties has had an impact on the number of “junior” members—those serving in their third or less term, in each party. Because of Democrats winning Republican seats in 2006 and 2008, their junior members increased to 96 in the 111th Congress while Republican juniors numbered only 54. With Republicans defeating so many junior Democrats in 2010, the number of junior Democrats dropped to 53 in the 112th Congress while Republican juniors surged to 117. Junior members comprise nearly half of House Republicans but are only slightly more than a quarter of House Democrats. And as we will discuss, the influence, and perhaps the inexperience, of these junior Republicans, many with Tea Party links, affected the ability of the Republican House leadership to run the institution.

Another facet of the three most recent House elections is that many of the seats held by more ideologically moderate members have often been the casualties in the election losses that each party has suffered. Between retirements and election defeats in 2012, the number of Democrats belonging to the fiscally conservative Blue Dog Coalition in the House decreased from 51 in the 111th Congress to 22 in the 112th. Corresponding changes in 2006 and 2008 resulted in the defeat of moderate House Republicans. The loss of moderate members of both parties over recent elections adds to the more polarized partisanship that the House has experienced.

Increasing Regional Dominance

Recent House elections have also affected the regional composition of the two parties. Most notably, Republican strength in the South continues to grow. Democrats’ modest inroads in the South in 2006 and 2008, increasing their number of southern House members between the 109th and 111th Congresses
from 51 to 62 of the 142 from that region, were more than erased in 2010. The number of Republicans from the South reached a new high as they outnum-
bered the Democrats 102-40. Of the 40 Democrats, 21 were either African American or Latino and represented majority minority districts. In addition, four white Democrats represented seats with sizeable, and in some cases overwhelm-
ing, minority populations. The deep South states of South Carolina, Georgia, Alabama, Mississippi, and Louisiana combined now have only a single white Democratic House member. The South is not as solidly Republican as it was once solidly Democratic, from the end of Reconstruction until the early 1960s, but it is nearly so in white majority districts. Partially offsetting the Republican advantage in the South has been the growing dominance of Democrats in House elections in the East. Republicans did win back some eastern seats in the 2010 election, reducing the Democrats’ advantage from 77-18 to 64-31. But that was still lower than the 36 seats the Republicans held in the East after the 2004 elections. And only the Republican domination of the Pennsylvania redistricting for 2002 kept the Democratic advantage from being greater.44

In many ways the regional representation of the parties in the House more closely reflects the strength of the parties in presidential elections. Republicans dominate in the South and Democrats do so in the East and on the west coast. Just as presidential elections focus on a small number of swing states, party leaders focus on a modest number of competitive House districts. The cleavages among House members of the two parties that were at one time cross cutting are increas-
ingly reinforcing. The two parties in the House are not just more ideologically homogeneous. They are more racially and regionally dominated as well. This undercuts incentives for compromise. The paradox is that while the vast major-
ity of the individual House members of both parties represent non-competitive constituencies and are seemingly free to stake out and vote as polar opposites on legislation, they exist in an institution in which partisan balance between the two parties is very narrow and where being the majority party rests on an ability to win seats in that fraction of the House districts that remain competitive.

We should note that with the boundaries of House districts following redis-
stricting for the 2002 election, the Republicans have had an advantage over the Democrats in terms of the number of districts which have a favorable partisan lean. And this advantage is likely to persist after the 2012 redistricting. Many Democratic voters are packed into overwhelmingly safe, densely populated, urban districts. Thus, if one looks at the 2000 presidential vote using the bound-
aries for the 2002 House districts, George W. Bush won in 238 of those districts to 197 for Al Gore, despite the fact that Gore narrowly won the national popular vote.45 In addition, Republicans also controlled redistricting in some key states, including Florida, Ohio, Pennsylvania, and later in Texas.46 Following the 2010 elections, Republicans held a 19-6, 13-5, 12-7, and 23-9 House seat edge in those states, respectively. Given those lopsided partisan advantages, one has to recall that the first three of those states are considered toss-ups in presidential elections.
With Republican success in gubernatorial and state legislative elections as well as in congressional elections in 2010, they seemingly were in an even stronger position to build on the districting advantage they possessed. That is likely the case, but there are some countervailing trends. In some states, Republicans may have already maximized the number of seats that they can win through partisan redistricting. Plus the growth of Hispanic populations in California, Arizona, and Texas are gradually making some districts that were previously safe for Republicans more vulnerable. Still, it is likely that Republican advantage in House districts will persist. In an election where the national two party vote for the House was equal, Republicans will win a majority of House seats.

The 2010 Election and the Tea Party Movement

As noted above, there was every expectation that Republicans would make gains in 2010 House elections. There were a large number of vulnerable Democratic seats and very few vulnerable Republican seats. Plus the slow recovery of the economy under a Democratic president and controversy surrounding the passage of the Affordable Care Act meant that the Democrats were certain to suffer losses.

So one might argue that the circumstances were ripe for major Republican House gains even without the Tea Party movement. But it is hard to separate these underlying explanations. Although the fundamentals for a Republican seat gain were in place, the Tea Party movement clearly helped to highlight the vulnerabilities of the Obama administration and a House with a Democratic majority. Despite the fact that the Tea Party was not unified organizationally, it did establish a national platform for articulating a message, much as the Contract with America did. The Tea Party endorsed candidates in both primaries and the general election. Of the 80 freshmen Republican House members elected in 2010, 67 had Tea Party endorsements, plus the Tea Party label allowed these candidates to separate themselves from a Republican brand that was significantly tarnished during the Bush administration.

The funding of many of the campaigns of the Tea Party House candidates differed from those who were elected in the 1994 Republican revolution. Newt Gingrich recruited and had a substantial role in funding many in the 1994 class through GOPAC and other party related entities. Party sources and leadership PACs were important to many of the Republicans in the 2010 class, but they also received funding from a range of entities in the form of large independent expenditures. Some of these groups pre-dated the Supreme Court decision in Citizens United, but that decision seems to have been a catalyst in their growth as well as stimulating new unlimited independent contributions that the decision legalized. Although some of these contributions were linked to Republican House party leaders, others were from groups or individuals with varied agendas. To many of the Tea Party candidates, many of the Republican House leaders were too closely linked to the shortcomings of the Bush administration and had
betrayed conservative principles. Unlike the 1994 class, the Tea Party members of 2010 had far fewer incentives to follow the lead of the Speaker.

Unlike the Tea Party Republican Senate candidates, many of the House candidates did not receive the same degree of media attention or public scrutiny. Moreover, several of the more extreme Senate candidates were in more competitive elections than their counterparts seeking House seats. Controversial Senate primary winners in Colorado, Connecticut, Delaware, and Nevada proved to be liabilities in the general election and may have prevented a Republican majority. In the House, however, the weaning that voters exercised in a number of key Senate races did not occur and more of the very extreme Tea Party candidates may have won seats.

As in 1974 and 1994, previous elections that witnessed one party elect a large number of new House members as part of a strong national trend, the Class of 2010 provided the potential to serve as a key mobilizable resource in altering the House. In 1974, the newly elected Watergate class of Democrats led to the removal of several incumbent committee chairs, democratization of the House, and the eventual strengthening of the party leadership. Twenty years later, Republican freshmen gave the new speaker, Newt Gingrich, greater authority than any House leader since 1910. The question coming out of the 2010 election was would these Tea Party members have a similar influence on the distribution of influence within the House and would the House Republican leadership be able to orchestrate its political and policy agenda.

VI. Speaker Boehner and the Tea Party Congress:

House Politics in the 112th Congress

As the 112th Congress convened, the new Republican House faced a Democratic Senate and President. Two broad paths forward appeared before it. The first looked to ideological challenge of the Obama administration and the imposition of an alternative Republican agenda for the nation. In pushing this path, conservative and Tea Party Republicans saw the 2010 elections as signaling the public’s desire for a rapid turn away from government activism, including “Obamacare,” and towards massive reduction in spending and taxes.

Like the Gingrich strategy in the 104th Congress, advocates of this path believed that they could hold hostage must-pass legislation and force a Democratic president and Senate to bend to their will. Having learned from Gingrich’s weakness under fire, they would refuse to cave to the President. They would have an ally in Majority Leader Eric Cantor. They would have firm control of standing committees, with the Republicans’ decision to reimpose term limits on committee chairs bringing a new generation of conservatives into these positions. And they believed that Speaker John Boehner would embrace their more conservative goals to maintain conference support against Cantor, his competitor for party leadership.

The other path was less radical. It would take the Congress towards a new season of bipartisan cooperation and compromise, as foreshadowed in the lame
duck Congress following the November elections. Hailed by observers as the most productive lame duck session of the postwar era, its many accomplishments included passage of a law repealing the ‘don’t ask, don’t tell’ policy and the two-year extension of the Bush-era tax cuts. Other issues remained unresolved, including action on appropriations legislation and raising the debt ceiling, but the work of the lame duck session left observers more hopeful that the 112th Congress would not result in gridlock. Moreover, the Republican Speaker would be John Boehner – a legislative realist committed to the art of the possible – making the second path feasible.

This alternative path would concentrate on legislating and governing, with Republicans seeking to find common ground with Democrats on programs to aid economic recovery. Most critically, Congress would focus on policy debates and actions designed to reduce uncertainty in the nation's financial community and create a stable, predictable political and economic climate.

The election results and the Tea Party’s momentum almost certainly preordained the first path from the outset. As in 1995, the nation would again witness a year of high drama, as House Republicans attempted to use critical must-pass legislation to force the Obama administration and Senate Democrats to accept their policy preferences. Not until momentum waned and public disenchantment grew would House Republicans turn, in fits and starts, to the second path and bipartisan cooperation, with members increasingly concerned with the 2012 elections.

First Session

Responding to election promises to challenge Obama and the Democrats at the earliest possible moment, Speaker Boehner and the Republican conference made a vote to repeal the Affordable Care Act their first major legislative statement. Only three Democrats’ joined them. The bill was dead on arrival in the Senate. With the symbolic health care vote behind them, Republicans had to choose between addressing immediate policy problems, like job creation legislation, or attempting to force the Senate and President to accept far-reaching change in spending and taxes. To do the latter, they would withhold support for two must-pass bills, on appropriations and the debt ceiling, thereby upending the regularized order of congressional policymaking.

Speaker Boehner had worried that sustained conflict over appropriations and the debt ceiling could get out of hand, leading to a party misstep similar to the 1995 government shutdowns. He worked hard to educate his conference members about the perils of such a strategy, but without success.

On January 20, 2011, the conservative Republican Study Committee released a proposal to cut $2 trillion in federal spending over the coming decade, starting with a cut of $80 billion from the pending 2011 appropriations legislation. Thereafter came two and a half months of intense negotiations over appropriations as the country appeared ever-closer to a government shutdown. As the final deadline for passage of all appropriations approached in early April,
Boehner reached an agreement with Senate majority leader Harry Reid for “about $39 billion in cuts compared with present spending patterns.” Obama hailed the compromise that passed with two hours left before the government shutdown as “the largest annual spending cut in our history.” Yet rather than ending fiscal controversy, this was just a prelude to continued brinksmanship.

On the heels of the appropriations deal, Chairman Paul Ryan of House Budget Committee unveiled his committee’s 2012 budget resolution. It focused more on a ten year plan to pare federal spending by $5.8 trillion and enact new tax cuts than on a budget for the upcoming fiscal year. It included a plan to end Medicare, as historically structured, and replace it with a limited, privatized alternative; a vast reduction in benefits provided by Medicaid; repeal of the core provisions of “Obamacare”; and a proposal to cut other domestic spending in half. Supported by all but four House Republicans, and opposed by all Democrats, the resolution passed the House on April 15th, 2011, by a vote of 235 to 193.

The proposal immediately set off controversy nation-wide. Facing certain rejection by the Democratic Senate, the main effect of the resolution was to set up a “tense showdown” between the House, the Senate, and the President “over an administration request to raise the federal debt limit,” a request which had to be approved by August 2nd in order for the nation to avoid default on its debts.

Tea Party Republicans and conservative House supporters saw this third major vote — on the debt ceiling — as an opportunity to force Obama and the congressional Democrats to accept draconian long-term budget cuts or face the prospect of default and economic calamity. They pushed Speaker Boehner to exploit the opportunity. Possibly in fear of the loss of the Speakership, Boehner announced in May that a vote to raise the federal debt ceiling “would have to be accompanied by equally large spending cuts.” The Democrats, fearing that the young Tea Party Republicans, inexperienced with the realities of governing, might well push the House party over the edge and generate a default, decided against calling Boehner’s bluff.

Instead, Obama and congressional Democrats negotiated, first through an informal bipartisan committee of House and Senate members that Vice President Biden headed and then through private negotiations between Speaker Boehner and the President. Twice during the summer, “Boehner and Obama engaged in secret talks aimed at forging a nearly $4 trillion package” that included major changes to discretionary and entitlement spending and overhauled the tax code, using some of that revenue to reduce the deficit. Under great pressure from House Republican opponents of tax increases, “both times Boehner walked away from the talks.”

In ways elaborated in Chapter 13 and Chapter 14 in this volume, the debt ceiling stalemate was resolved only as the August deadline was imminent. Obama and House and Senate leaders announced on July 31, 2011, that they had reached a compromise. Congress would create a Joint Select Committee on Deficit Reduction – almost immediately dubbed the supercommittee – and authorize it to propose ways to cut the deficit by $1.2 to 1.5 trillion through spending cuts
and/or revenue increases, setting November 23rd as its deadline. If the committee failed, the act mandated massive and automatic across-the-board spending cuts, applied equally to national security funding and domestic programs for the 2013 fiscal year. The expectation was that such looming cuts, expected to take effect in January 2013, would constitute a fiscal cliff for the nation — that is, a massive sudden drop in government spending on domestic and defense programs — so ominous in its potential economic, social, and national security consequences that Congress and its supercommittee would desperately seek to avoid it, thereby inducing an immediate compromise plan.

The supercommittee informed Congress on November 22 that in fact it had failed to find a way forward, despite a good faith effort. Democrats’ insistence that some part of the deficit reduction come through increased taxes on top wage earners, so that poor and middle class Americans dependent on various social and educational programs not bear the full brunt of pain, was unacceptable to Republicans – committed as they were to no-new-taxes pledges. An additional reason for the failure, according to Ronald Brownstein, was that “many Republicans believe time is on their side. That optimism is rooted in the widespread conviction among the party that it has a strong chance of holding the House in 2012 while recapturing both the Senate and the White House.”

Reflecting on developments in the first session in December 2011, Major Garrett of the National Journal provided a succinct summary of the year’s events. Garrett observed that “three events this year – the prospect of a government shutdown in May, the looming government default in August, and the deadline for the deficit-reduction super committee to act in November – have overshadowed everything…. Meanwhile, everyone else in Congress stood by, waiting for the crisis to pass. Virtually all other productive work ground to a halt.” Overview evaluations of the first session would largely accord with those Garrett offered, as illustrated by coverage in the Washington Post.

On December 6th the Post reported that the first session was headed towards becoming one of the least productive first sessions in modern history, in terms of laws passed. On December 18th Chris Cillizza of the Post wrote that “failure has become the new normal on Capitol Hill,” and called 2011 the worst year ever for Congress, at least as he could recall, with much of the blame focused on Tea Party Republicans. And as the year ended, the Washington Post-ABC News poll reported that “the GOP has the lowest-ever approval rating for its congressional performance.”

The news reports also reflected widespread apprehensions that House Republicans had been willing to risk the nation’s economic recovery for partisan advantage, in pushing the debt ceiling crisis. This concern would gain traction in 2012 as news outlets reported on a new book by political scientists Thomas Mann and Norman Ornstein. It maintained, as reported by the Post, that “the idea of deliberately jeopardizing the credit rating of the United States by toying with a purposeful default on the country’s debt was a carefully planned strategy … — the brainchild of Eric Cantor of Virginia, the House
majority leader.” The possibility that the House Republicans had sought to generate an economic downturn prior to the 2012 elections would become part and parcel of public discussion by the summer of 2012, with growing concern that the continuing failure of Congress to address the fiscal cliff was undermining business confidence in the economy and thereby undercutting the recovery.

For their part, Democrats fared only marginally better in public assessments at year’s end. Twenty-seven percent of the public approved of their 2011 performance in the Washington Post/ABC poll, compared with the 20 percent for Republicans. House Democrats had pulled back from the aggressive edge they showed in the 111th Congress. As a result, they had not stumbled badly, in some embarrassing efforts at overreach. But they had not articulated a clear message that would rally the base or inspire independent voters in 2012. Instead, the fate of House Democrats remained linked to its party’s president and to the public’s reactions to Republican brinksmanship.

Second Session

President Obama opened 2012 with a concentrated effort to hold the ‘do-nothing’ Congress responsible for the 2011 stalemate, as he focused particularly on the obstructionist role of House Republicans. He was aided by January reports showing that 84 percent of the public disapproved of Congress. He was also aided by perceived rivalry within the House Republican leadership between the offices of Speaker Boehner and the more unyielding conservative and politically ambitious Majority Leader Cantor.

A critical test for House Republicans came with the February deadline for extending the payroll tax cut for workers. Boehner feared that a fight over the extension, with conservatives using it to seek additional reductions in domestic spending, could bring back to public salience the stalemated politics of 2011. The president could then use the fight to reinforce public unhappiness with House Republicans. To defuse conflict within his conference, Boehner appointed three freshmen to the House-Senate panel charged with crafting a compromise. As a welcomed surprise, the effort succeeded in producing a compromise bill, with one freshman conference member explaining that “we’ve learned from our experiences” and a senior House Republican on the committee saying, “when you’re in the majority, you have to govern.”

With the vote in support of Obama’s tax cut extension, a more sober Republican conference signaled its desire to take the second path forward that it had rejected in January of 2011, positioning its members in a more favorable light for the November elections. To keep their conservative base happy, House Republicans focused considerable attention over the coming months on crafting plans for party action in 2013, should it win the 2012 elections. The most visible effort in this regard came with the 2013 budget resolution crafted by the House Budget Committee under the leadership of Chairman Paul Ryan. Presenting a
slightly revised version of their 2012 budget resolution, it continued to call for transformative change.

House Republicans largely succeeded in the winter and spring in avoiding high level conflict with Obama and the Democrats and moved forward on legislation designed to create a record of accomplishment. There was a moment in May of 2012 when Speaker Boehner raised the prospect of another debt ceiling crisis; doing so appeared to satisfy conservative elements within his conference with no intention pursuing such a fight. And in June the House Republicans moved to hold Attorney General Holder in contempt of Congress, maintaining that he had withheld vital information. This political attack on the Obama administration’s performance over a seemingly minor incident left many commentators concerned that hostility toward the president might again get out of hand. Nevertheless, House Republicans continued in their effort to build a concrete record of accomplishment, compromising with the Democratic Senate in the process.

On June 29th, much of the hard work paid off when Congress gave final approval to legislation that, as summarized by Jonathan Weisman of the New York Times, “combines a two-year transportation measure with bills to extend subsidized student loans and revamp federal flood insurance, wrapping up a bruising session with measures that will be popular on the campaign trail.”

Building viable legislative coalitions to pass the different parts of the legislation separately had proved essentially impossible, and yet bundling them together in one bill violated Republicans’ promises during the 2010 elections that they would never embrace such strategies. Now, facing the need to build a record of action, the House Republican majority coalesced with the Democratic minority to pass the bundled bill, 373 to 52, with all “no” votes coming from Republicans.

The House Republican leaders saw the passage of the act as an important accomplishment in their effort to create a solid record and defuse Obama’s attack on them. Much to their consternation, the timing of the vote left the bill’s passage largely overlooked by the media, as the attention of the nation and the Congress was riveted by the Supreme Court decision the previous day on the Affordable Care Act.

With the Supreme Court decision upholding the constitutionality of the health care legislation, the relative calm that had descended on Boehner and his conference during the second session was upended. Expecting the Court to strike the law down, House Republicans responded to the announcement with fury. Despite having already held 30 votes to repeal all or part of “Obamacare,” Majority Leader Cantor announced that he had scheduled yet another vote to repeal it on July 11th.

A unified Republican conference again renounced the Affordable Care Act in opposition to its near-unanimous support among Democrats. Yet this time, with many members having returned to Washington after visiting their districts during the July 4th recess, the atmosphere surrounding the vote seemed more conflicted among Republicans. Thus members of the conference, “particularly those up for re-election in more moderate districts,” were feeling concerned about
casting a vote that could be seen as favoring the repeal of popular elements such as “the law's mandated coverage of people with preexisting conditions, its prohibition on rescinding insurance coverage when a customer gets sick and its coverage for young adults under 26.”

For Democrats, the Court decision gave them a great reprieve, certifying that their hard work on the signature achievement of the 111th had not been in vain. If the party could survive the 2012 elections holding one or more of the houses of Congress or the Presidency, the act might be fully implemented in the next presidential administration. Moreover, now that attention was shifting to the attractive components of the act, perhaps its renewed salience could aid in winning competitive seats in 2012.

We end our story here, midway through the second session of the 112th Congress, unaware of what will happen in the remainder of the year. We must close the story with tentative observations.

We begin by stating the obvious. The intense period of high drama, institutional stalemate, and governing crises during the first session — together with the severe damage the experience may have caused the economy — could cast a long and dark shadow over the 112th Congress. On July 12, 2012, the headline article of the Business section of the New York Times noted growing evidence that the crisis over the debt ceiling had put the economic recovery at great and increasing risk. Should another severe economic downturn in fact materialize, the events of 2011 and the roles of various movers and shakers in the debt ceiling crisis may become critical issues preoccupying the nation for decades to come. A central concern will be the role of the House of Representatives, particularly its Republican majority.

Looking to the second session, the good news is that many Tea Party Republicans came with time to recognize the limits of high-level institutional confrontation and the important role Congress plays in legislating and governing. With these developments, the second session moved forward on important legislative work and the new members learned the art of legislative compromise, under the tutelage of Speaker Boehner. Perhaps such learning will pay off, should Congress decide to confront the emerging “fiscal cliff” and address it in meaningful ways.

Finally, there is a way to see the 112th Congress, even with its 2011 stalemate, in a positive vein. If one of the roles of representative assemblies is to articulate and deliberate alternative visions of national governance, the 112th fulfilled that role, with House Republicans promoting a visionary policy perspective sharply in contrast with the one dominating national life since the New Deal. If one pairs the 111th and 112th Congresses together, these two Congresses of the Obama presidency have charted out as stark a set of contrasts over policy vision as one has seen in modern times. Together they have pushed the nation to consider carefully how it wishes to proceed into the future. Moreover, the House of Representatives has operated as a central player, perhaps the critical player, in etching out these contrasting agendas and bringing them to public salience.
VII. Conclusion

It is far easier to analyze the direction the House has taken over the past forty years than it is to foresee where the House is now going. The one thing that has been most constant, during our study of the modern House, is that it changes continuously and to a greater extent than we anticipated. The other constant has been the way internal and external context shapes change.

Since 1994, the most important defining contextual features that have moved the House are its strong, cohesive, and polarized parties, the authority that rests with the party leaders, the existence of a large number of districts that are safe for the candidates of one party or the other, and the close partisan balance between the two parties. Thus, the contemporary House is an institution where the overwhelming majority of its members come from partisan safe seats and have little to fear in terms of electoral competition from a candidate of the other party, but where majority control of the institution is very competitive. Accordingly, it is easy for either party, should it find itself in the majority, to overreach and provide an opening for the opposition to supplant it.

Party leaders, being more concerned with keeping their party in the majority than their members are, often try to rein in their party as elections near and take more pragmatic stands on issues. In addition, both parties and their leaders increasingly focus on the electoral implications of legislative decision making, often sacrificing good public policy for political advantage. And complicating matters further, either party when in power may find that external environmental factors generate crisis conditions and national partisan swings sufficient to remove it from power, even as it enjoys electoral security in a large number of seats and has seemed to play its political cards well.

Neither House party thus has been able to establish a comfortable majority since 1994. Narrow Republican control persisted for twelve years, perhaps giving Republicans a false sense of security. Since the 2006 election, however, neither party can feel comfortable. The outcome of House elections in ten to fifteen percent of the seats that are subject to national partisan swings may determine which party is in the majority. Yet members elected from the large number of safe seats may push more extreme policy positions because their personal electoral threat comes from an even more extreme primary challenger. Losing majority control may be a secondary concern to these members compared with the prospect of facing a primary opponent or compromising on policy. Clearly, this is now more a dilemma with the Tea Party movement within the Republican party although Democrats were certainly not immune to this problem, especially when they were in the majority.

Paradoxically, the results of these electoral arrangements mean that each House party presents a strong and contrasting vision of the future, adding to the drama and angst that comes with the partisan shifts. What is as yet unclear is whether the American public is as enthusiastic in subscribing to either vision for any length of time as are the parties’ House members.
Will this scenario persist over the current apportionment decade and beyond, with the two parties alternating as the majority for a congress or two or depend for electoral success on the partisan vagaries of presidential politics? Or will one party establish a firmer governing majority, not just in the House but in the Senate and in presidential selection and move the policy agenda and its resolution in a given direction for a sustained period?

Having witnessed forty years of great change in the House of Representatives, we would be among those least likely to anticipate that the current arrangement will continue. In such a scenario, with ongoing partisan swings built into the electoral context of the House for the next decade or two, neither of the two parties would be able to establish a firm House majority, with each focused on winning enough seats to be in the majority. With each party focused on electoral considerations, the resolution of major policy issues would be a secondary concern. This certainly would be a disheartening development.

Nevertheless, we note that, despite the wringing of hands over the demise of moderate House members in both parties, there appears little inclination in either party to recruit a large number of moderates as House candidates. The Democrats did this to a modest degree in 2006 and 2008 with some immediate payoff in growing the party’s membership in the House above 250 seats. But those moderate members proved among the most vulnerable in the 2010 election to the national tide that favored the Republicans, so that Democrats may be hesitant to invest extensively in this strategy again. And the Tea Party movement within the Republican party is certainly not conducive to producing moderate nominees. Given these circumstances, we are reluctant to see anything in strategic party recruitment patterns that is likely to mute the level of party polarization in the House in the foreseeable future, thereby favoring the continuance of current House dynamics.

We are aware that demographic change could alter the balance in the House and change the current partisan dynamics. That has played out in some states in recent decades, especially with growing Hispanic populations in California and some states of the Southwest. Yet unlike the effect of the Voting Rights Act of 1965, there is not going to be a sudden increase in registration and voting among Hispanic citizens as there was among southern blacks. Plus Republican control of districting in states such as Texas has so far been able to pack Hispanic voters in such a way as to minimize the election of Democrats to House seats (although court decisions are likely to require that the districts be redrawn for 2014). More recently, efforts largely in Republican-controlled state legislatures to purge voter rolls and to require photo identification cards in order to vote that they have justified in terms of eliminating voter fraud may reduce participation among Hispanic citizens among others.

If the largest economic downturn since the Great Depression did not produce a significant change in the partisan attachments in the electorate and in the partisan and ideological composition of the House of Representatives, it may be that a forty year run of significant institutional change has slowed considerably,
perhaps even come to a halt at least temporarily. Alternatively, it is possible that our time of crisis is not yet firmly behind us. After all, the fiscal cliff is still looming ahead, economic deterioration proceeds in Europe, and signs of economic downturn are mounting at home. A dramatic jolt to the system thus may yet unlock the electorate from its current loyalties, producing a decisive shift toward one party and its governing agenda, at least for a time, thereby continuing the sustained pattern of change and upheaval in the House that commenced in the 1970s.

Notes

37. Ibid.
41. In 2006, the Democrats actually won a higher percentage of the national vote for the House, 54.1 percent, than the Republicans won in 2010 (53.4 percent), but due to other factors the Democrats won only 233 seats in 2006 to the Republicans 242 in 2010. In part, this reflects the fact that there are more districts that have a Republican partisan advantage than have a Democratic partisan advantage.

43. Four of the five Democratic incumbents defeated were ones who won seats Republicans had held prior to the 2006 election and the other involved an incumbent involved in a scandal.

44. The Supreme Court rejected a challenge to the gerrymandering in Pennsylvania in 2004 in Vieth v. Jubelier. Despite the fact that Pennsylvania has voted for the Democratic presidential candidate in every election from 1992-2008 and is thought of as a swing state, Republicans hold 12 of its 19 U.S. House seats in the 112th Congress.


46. After winning full control of state government in the 2002 election, Texas Republicans redrew congressional district lines for 2004 and gained six seats in that election.


56. Ibid.


72. Ibid.
74. In any given election it may be even fewer because the short term forces may assist a segment of the members holding marginal seats.