

FILIBUSTERING

A Political History of Obstruction in the House and Senate



GREGORY KOGER

FILIBUSTERING

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Preface

I beg every member of this body who wants to throw himself into the arms of Morpheus to go home at once. I mean by the "arms of Morpheus" that whoever wants to go to sleep should go to sleep. . . . I will be here 24 hours from now getting through with this conversation on this bill. Do not fool yourselves. I will be here a long time.

Huey Long (D-LA), speaking in Congress in June 1935

In some pursuits, we measure our passion with time. This book is made of the stuff it describes: midnight hours stolen from slumber, effort made easier with teamwork, and the creative use of available options.

Six years ago, I set out to write a comprehensive book about filibustering that provides a general overview of how legislators obstruct (and respond to obstruction!), measures filibustering in both chambers of Congress over time, and explains patterns of filibustering in both chambers. Such a book would, I hoped, provide the basis for more comparative studies of obstruction and a deeper understanding of how filibustering influences congressional lawmaking, parties, committees, and representation. I have enjoyed my time with this project and the characters who fill its pages.

This book originated with research I did for Barbara Sinclair and Scott James. For Barbara, I coded the progress of major legislation over the last fifty years and learned about the subtle and significant effects of modern filibustering. For Scott, I began reading the classic institutional works on Congress, which described the tactics of historic filibustering and told tales of dramatic filibusters and reforms in the U.S. House. After writing a dissertation about the evolution of congressional rules, I began to write this book as a *prequel* to my work on institutional choice. In the early stages, I benefited immeasurably from collaboration with Kathleen Bawn, who worked with me to develop general models of intensity and filibustering.

Along the way, I have learned from the suggestions of colleagues. Charles Stewart, Douglas Dion, Jason Roberts, Justin Fox, Sarah Binder, and Gerald Gamm discussed conference papers that went into this book. Seminar audiences at Texas Tech, Syracuse, South Carolina, and Georgetown provided

helpful suggestions; I am especially grateful to the Foley Center at Washington State for inviting me for an early presentation of this work and to my colleagues at the University of Miami for comments at a departmental colloquium. Live elegantly, my friends.

In the final stages, Barbara Sinclair, Fang-yi Chiou, and two anonymous reviewers read full-length drafts and provided excellent suggestions. Hans Noel, Larry Evans, Charles Gregory, Ben Bishin, Jamie Carson, Jennifer Victor, Seth Masket, Emily Orchard Wanless, and Michael Lynch also read portions of the manuscript, and I thank them. I also thank Ben Page, John Tryneski, and Rodney Powell, who have been supportive and patient with this first-time author.

This project has been sustained by research grants from the University of Montana and an American Political Science Association Small Research Grant. I thank Tim Sweeten, Emily Orchard Wanless, Charles Gregory, and especially Tessa Zolnikov for research assistance, and I thank the staff of the K. Ross Toole Archives at the University of Montana for their assistance with the papers of Mike Mansfield.

Of course, none of this would be possible without the parents who invested time and treasure in me. Mom and Dad, thanks for showing me the world and welcoming me back home. Nor would it be possible without the ladies whose time means everything to me. Brooke, Chase, and Camryn, from Los Angeles to Missoula to Miami, home has been wherever you are. This book is for you.

I

Foundations

Introduction

Over the last fifty years, there has been a quiet revolution in American politics. A major hurdle has been added to the legislative process: the ability of senators to block bills and nominations unless 60 percent of the Senate votes to override a “filibuster.” Unlike the president’s legislative veto, which is written into the Constitution, the “right” to filibuster in the Senate is based on tenuous precedents and informal practices. At no point did senators consciously choose to remake their chamber or transform American politics. It just happened, and it happened so quietly we barely noticed.

The rules of the Senate allow senators to end a filibuster by invoking *cloture*. As currently written, this rule limits debate on a bill or nomination to thirty hours if—and this is the critical point—*three-fifths* of the Senate vote to impose the limit. Now more than ever, senators use this rule frequently as their only antidote against a rash of anyone against anything. During the 110th Congress (2007–8), the Senate voted 111 times (16.9 percent of all roll call votes) on the question of whether cloture should be imposed. Yet, the more senators use this rule and refine it to make it more effective, the more they filibuster. This book argues that this is no coincidence: filibustering has not increased *despite* senators’ increased use, and improvement, of the cloture rule; it has increased *because* of it. To unravel this paradox, we need a clear understanding of the “obstruction game”—the tactics and strategy of filibustering. We also need to trace the history of filibustering in Congress; the present is confusing because we do not really understand the past.

A TALE OF TWO SENATES . . . AND A HOUSE

One reason it was difficult to notice the transformation of the Senate is that filibustering has become an invisible act. The *American Heritage Dictionary* (4th ed., 2000) defines *filibuster* as “the use of obstructionist tactics, especially prolonged speechmaking, for the purpose of delaying legislative action.”¹ Modern senators, however, do not make long speeches to prevent

a vote. Nor do they use other typical forms of filibustering, like forcing dozens of unnecessary roll call votes or refusing to participate in floor votes. Instead, a typical “filibuster” occurs when a senator refuses to agree to a time to hold a vote on a measure and, implicitly, threatens to drag out the debate indefinitely.

This new veto empowers Senate minorities to frustrate majorities. Despite their 58–41 majority at the beginning of the 111th Congress (2009–10), Senate Democrats were compelled to trim their first major bill, a “stimulus” package of spending and tax cuts, from \$940 to about \$780 billion (\$787 billion in the final law) to gain the votes of a centrist bloc of moderate Democrats and three Republicans—Susan Collins and Olympia Snowe of Maine and Arlen Specter of Pennsylvania—a price of \$35 billion in cuts per Republican vote. Three weeks later, Democratic leaders had to stall an omnibus spending bill because they were one vote shy of the sixty votes they needed. Of course, Senate Democrats could have had that extra vote if Al Franken, the Democratic candidate in the 2008 Minnesota Senate race, had become a senator after he was certified as the winner of the election on January 5. However, they dared not do so because Republicans threatened to filibuster if an attempt was made to seat Franken before his opponent, Norm Coleman, exhausted his court challenges (see Schatz 2009; and Raju 2009).

Filibustering has not always been so easy, nor has the majority always been so passive. A century earlier, in the midst of a financial crisis, a small band of senators led by Robert La Follette (R-WI) struggled to block a banking bill they considered a gift to the financial elite. On May 29, 1908, La Follette prepared to occupy the floor of the Senate until dawn. He covered his desk with books to read aloud when imagination failed him. Whenever attendance was low, he requested that a majority of the Senate be rounded up to hear him speak. His filibuster lasted for eighteen hours; when he passed on the task of holding the floor to a coconspirator the next morning, his voice was still strong, but his feet were sore from standing. However, the bill passed hours later, hastened by some impromptu restrictions on filibustering and trickery by Senate majority leader Nelson Aldrich (R-RI).² While La Follette lost this legislative battle, he won a larger political victory. His ostentatious filibuster—the longest on record until the 1950s—lingered in public memory for decades and solidified his credentials as a Progressive rebel against the Republican establishment.

Over the last century, there has been a dramatic evolution in *how* legislators filibuster. Classic filibusters were contests of endurance, not votes. They were dramatic and unscripted marathons. *And they were exceedingly rare.* Modern filibusters are so common that the sixty-vote threshold for cloture is the *de facto* requirement to pass most major legislation and threats to filibuster permeate the day-to-day operations of the Senate. The

institutionalization of this “sixty-vote Senate” constitutes a historic development in the legislative process.

Why, when, and how did the classic Senate of La Follette’s day become the staid Senate of today? The central claim of this book is that classic filibustering was a *bargaining game* and that, consistent with theoretical analyses of bargaining, the team that was more patient tended to win (Bawn and Koger 2008; Rubinstein 1982). Obstructionists had to make effort to stall the Senate, while the majority had to be willing to wait for them to make a mistake or become exhausted. In the early twentieth century, majorities were generally pretty patient unless some deadline loomed, so filibusters were fairly rare. As the workload of the Senate increased and opportunities to travel expanded, senators became too impatient to wait out a filibuster. The turning point was the 1960s, when they began using a previously dormant cloture rule to quell obstruction on major bills. In doing so, they reduced the incentives against filibustering since anyone could threaten to filibuster any proposal without fearing that he or she would have to hold forth on the Senate floor for hours. The sixty-vote Senate is the product of impatience.

This cycle of decreasing costs and exploding obstruction has occurred before in congressional history. During the nineteenth century, members of the U.S. House of Representatives used a variety of parliamentary tactics to slow legislation and, eventually, completely paralyze the lawmaking process. Franklin Burdette writes in his classic book on filibustering: “Tactics patently obstructive . . . were characteristic of the House long before they became common in the Senate” (1940, 14). Unlike the modern Senate, however, the members of the House responded to this gridlock with drastic reforms to ensure that the majority can work its will (Binder 1997; Dion 1997; Schickler 2001), and these reforms dramatically increased the ability of House majorities to pass legislation (Cox and McCubbins 2005).

The U.S. House offers an interesting comparison with the Senate. The two chambers were born from the same Constitution and nurtured in the same political environment. By studying such similar cases, we can better understand how the institutional features of a legislature—such as chamber size—promote or discourage filibustering. No previous study of filibustering has covered the entire scope of congressional history. This bicameral approach provides a fuller view of filibustering in congressional history and helps us think in general terms about legislative obstruction wherever we see it. After all, the U.S. Congress is not the only legislature that tolerates filibustering; while searching for news articles on the U.S. Senate, I found references to obstruction in twenty state legislatures, nineteen foreign legislative bodies, and the United Nations. Hence, the broader purpose of this book is to develop a general framework for studying obstruction and apply that framework to the puzzling history of the U.S. Congress.

This project is vital to our understanding of the Senate, the lawmaking process, and legislative parties. Filibustering is the defining activity of the contemporary Senate, as a senior leadership aide explained: “Obstructionism is woven into the fabric of things. The [party] leadership deals with it on a day-to-day, even a minute-to-minute basis. . . . [Y]ou can’t underestimate the importance of it. There are offshoots of obstructionism every day” (quoted in Evans and Lipinski 2005, 228). Filibustering touches most major legislation in today’s Senate, and, historically, filibusters have been at the center of some of America’s most important decisions. Filibustering is also critical to the study of when Congress is more likely to pass important laws (e.g., Binder 2003; Chiou and Rothenberg 2003, 2006; Clinton and Lapinski 2006; Krehbiel 1998; Mayhew 1991), including research utilizing the pivotal politics model discussed below. For this body of research, the key findings are that there was ample filibustering in the historic House and, especially, that the influence of Senate filibustering is contingent on whether Senate majorities have enough time to outlast obstruction. In comparison, the existence of a formal cloture rule and the threshold for imposing cloture have relatively little effect.

Filibustering is an interesting counterweight to the polarization of congressional parties, another topic of popular and scholarly interest (e.g., Lebo, McGlynn, and Koger 2007; McCarty, Poole, and Rosenthal 2006; and Thériault 2008). Curiously, the rise in congressional partisanship since 1970 has coincided with a surge in Senate filibustering, with the result that our ever-stronger parties in Congress face ever-increasing hurdles to their legislative goals. Historical studies of congressional parties suggest that they have long possessed “negative agenda power,” that is, the ability to keep some proposals from reaching the chamber floor (Campbell, Cox, and McCubbins 2002; Cox and McCubbins 2005; Gailmard and Jenkins 2007). We shall see, however, that legislative minorities with the power to block legislation may use that power for “positive” ends by bargaining to push issues *onto* the chamber floor.³

RESEARCH ON FILIBUSTERING, PAST AND PRESENT

Despite the substantive and theoretical importance of filibustering, political scientists have generally avoided the topic. It is telling that a recent major work on filibustering, Sarah Binder and Steve Smith’s *Politics or Principle?* (1997)—the first book on obstruction since Burdette (1940)—was organized as a refutation of myths about filibustering because myths flourished in the absence of scholarly research.⁴ Binder and Smith point out that filibustering in the Senate was neither intended by the authors of the Constitution nor

common in the nineteenth-century Senate. Historically, they claim, legislators have obstructed for partisan and parochial ends as well as on important matters of principle, while voting on cloture and cloture reform is based on political and policy interests. Thus, filibustering is a form of ordinary politics and can be studied using the techniques of contemporary political science.

And filibustering is a worthy topic for study. It has increased dramatically over the last fifty years (Beth 1994; Binder and Smith 1997; Oppenheimer 1985; Sinclair 1989) to the extent that we now have a sixty-vote Senate (Sinclair 2002) because cloture is often necessary for the passage of a major bill. Since the contemporary Senate is polarized along partisan lines (Therault 2008), modern filibustering is often a partisan contest, with a united minority party blocking majority party proposals for some sort of *political* gain as well as policy payoff (Binder and Smith 1997; Evans and Lipinski 2005; Evans and Oleszek 2001; Sinclair 2006). The emergence of this filibuster-saturated environment motivates research on how it works and why it developed.

The Pivotal Politics Model

In a major work, *Pivotal Politics* (1998), Keith Krehbiel incorporates the Senate filibuster into a simple model of the legislative process. In this model, the Senate filibuster is one of the fundamental “pivots” in American politics on par with the presidential veto: no policy change occurs unless a legislative coalition can override a filibuster and circumvent a veto. The pivot model highlights the importance of the cloture threshold for shutting off a filibuster, explains how filibustering reduces the significance of divided versus united party control of Congress and the presidency, and has inspired others to apply and amend the pivot approach (e.g., Alter and McGranahan 2000; Brady and Volden 2006; Chiou and Rothenberg 2003, 2006).⁵

Although the pivot model was developed to explain the lawmaking process of the 1990s (Krehbiel 1998, xiii), scholars have applied this framework to the post–World War II era (Chiou and Rothenberg 2003; Krehbiel 1998), the period 1921–94 (Krehbiel 1998, chap. 5), and the period 1881–2000 (Chiou and Rothenberg 2006). With the exception of Chiou and Rothenberg (2006), these analyses do not account for variation in the “price” of obstruction and, hence, the willingness of senators to take advantage of their right to filibuster. Indeed, Krehbiel (1998, 96) is “agnostic” about whether filibustering has increased over time.⁶

However, we cannot understand filibustering without a clear account of how the Senate became a sixty-vote chamber. Subsequent research finds that, before Rule 22 was enacted in 1917, simple majorities in the Senate were often able to pass legislation (Chiou and Rothenberg 2006; Wawro

and Schickler 2004, 2006), and even in the 1930s it seemed that senators expected the majority to win (Mayhew 2003). As a result, we need to look beyond the formal rules of the Senate to understand the true impact of filibustering and how that impact has changed over time.

The Emergence of the Sixty-Vote Senate

Political scientists have proposed several explanations for the proliferation of Senate filibustering. Bruce Oppenheimer (1985) began the conversation by attributing the increase in filibustering to the rising legislative workload. As the role of the federal government in American society increased over the course of the twentieth century, the workload of the Senate swelled, the time of the Senate became more valuable, and threats to waste the Senate's time by filibustering became more credible and frequent. Like subsequent scholars, Oppenheimer faced the challenge of measuring the crucial elements of this story: the value of time and the frequency of filibustering. He measures time constraints in the Senate with pages of the *Congressional Record* (1931–56) and the length of sessions (1950s–70s). He uses the number of cloture votes to measure filibustering but also notes that they are not an accurate indicator of obstruction since senators did not always apply the cloture process to filibusters.

Several subsequent sources endorse Oppenheimer's account (Binder and Smith 1997; Koger 2002; Sinclair 1989)—and for good reason. However, that account leaves two tasks for future researchers: developing a more precise measure of filibustering and devising a more specific measure of the value of legislators' time. The lack of such measures has made it difficult to integrate Oppenheimer's "time constraints" approach into subsequent research. Researchers whose work is based on the pivot model, for example, have generally ignored Oppenheimer and his work's implications for their theories and empirical analyses.

A second explanation for the recent boom in Senate filibustering is that Congress is becoming more *polarized*. Binder, Lawrence, and Smith (2002) analyze the number of filibusters—as cataloged by Beth (1994) and extended by the authors—from 1917 to 1996 and find that, among other factors, majority party strength and institutional innovations—but not external workload—are correlated with patterns of obstruction. A nagging concern, however, is that Richard Beth (1995) stresses that the list he prepared for the Congressional Research Service is based on varying and inconsistent standards for identifying a filibuster; hence, it should not be used as a reliable measure of Senate obstruction. Finally, Mixon, Gibson, and Upadhyaya (2003) study the number of cloture votes from 1959 to 1998 and conclude that the 1986 decision to broadcast Senate proceedings on cable television

significantly increased the incentive for senators to filibuster for position-taking purposes. Of these studies, only Binder, Lawrence, and Smith (2002) test multiple explanations to determine which one provides the best fit to the pattern we observe. Furthermore, each uses data from a limited span of the twentieth-century Senate; a longer span and a comparison chamber would increase our ability to make general conclusions about the Senate and legislative obstruction.

Most recently, Wawro and Schickler (2006) focus on the causes and consequences of the adoption of the Senate cloture rule in 1917. They analyze final-passage margins on major legislation and the ability of the Senate to pass appropriations bills on time as indirect indicators of the influence of filibustering before and after the 1917 rule was adopted.⁷ They find that narrow majorities were often successful at passing legislation before 1917 but that bill passage coalition sizes during short sessions increased after 1917 while their variance decreased. Furthermore, the cloture rule may have made it easier for the Senate to pass appropriations bills. However, this analysis—which ends in the 1940s—does not answer our motivating question: Why did filibustering increase over the course of the twentieth century?

This book extends Wawro and Schickler's analysis of the 1917 rule in two ways. First, it measures the effects of the 1917 rule on obstruction *per se*. Second, it tests the influence of variables that Wawro and Schickler consider *theoretically* important but that were not included in their empirical analyses of coalition sizes: informal norms, threats of cloture reform, and the relative costs of obstruction. Once these factors are included as explanations for increasing obstruction and coalition size, we observe that the adoption of a formal cloture rule in 1917 had no immediate effect on lawmaking in the Senate.

In sum, we must explain why the Senate is increasingly gridlocked by obstruction. No previous study has measured and explained filibustering over the entire history of the U.S. Congress. Most recent pivot research on the Senate filibuster is ahistorical and neither explains the rise of Senate filibustering nor controls for historical variation in the effect of obstruction on the lawmaking system. Other studies offer contradictory explanations for the escalation of Senate filibustering, highlighting the challenge of systematically measuring filibustering and the price of time.

A THEORY OF OBSTRUCTION

While it has proved difficult to measure filibustering and determine why we observe increasing Senate obstruction, previous research provides the building blocks for a theory of obstruction (esp. Luce 1922; Oppenheimer 1985; and Wawro and Schickler 2006). At some point in the past, filibustering was a costly tactic, one that senators were reluctant to employ unless

they thought they could outlast the majority. The majority was more likely to concede as the Senate's workload increased or as deadlines (e.g., the end of a Congress) approached. This form of competition eventually gave way to the use of cloture as a response to obstruction; yet, even as the Senate modified its cloture rule to make it easier to shut off debate, the number of Senate filibusters increased steadily.

In chapter 2, I weave these claims into a general theory of obstruction that applies to the range of congressional history and, potentially, other legislatures as well. In this model, filibustering is a strategic game between teams of legislators in which legislators receive both policy and position-taking payoffs, incur penalties for wasting time, and pay special costs for active filibustering.

One insight from this theory is that the majority faction's choice of anti-filibuster tactics has a significant influence on whether minorities obstruct. If the minority expects that the majority will attempt to wait out a filibuster, the would-be obstructionists must calculate whether the expected rewards are worth the price. If, on the other hand, the minority expects the majority to concede or to attempt cloture, the price for obstruction is much lower, and filibustering is more likely.

This theory redirects our attention from the formal rules for limiting debate to factors that influence the value of time. When the price of waging a filibuster is extremely high, we expect to see few filibusters. When the majority cannot afford to wait out a filibuster (and, hence, the price of filibustering is low), the majority will shelve bills in anticipation of a filibuster or, if they do schedule such bills, use procedural solutions (e.g., the Senate's cloture process) rather than attrition. At the same time, the model suggests that partisanship and institutional changes are also important factors, and I test these as well.

A third unconventional feature of this theory is the role of position taking as an incentive to filibuster or to provoke a filibuster. While research on Congress has long noted legislators' incentives to posture for external audiences (Arnold 1990; Mayhew 1974), most contemporary legislative models (e.g., Krehbiel 1998) assume that legislators' sole functional goal is to achieve policy outcomes that correspond as much as possible to their notions of good policy. My theory helps explain why legislators might engage in filibusters they expect to lose and why legislative majorities bring bills to the chamber floor that they expect to fail; they are playing to voters, donors, and interest groups who reward the effort.

Fourth, one of the rules of the game is that the majority can change the rules of the game.⁸ This "nuclear" option may deter legislators from engaging in a filibuster that they would otherwise win. In 2005, the Republicans may have successfully used this strategy to convince the Democrats to back

down on filibusters against judicial nominees (see chapter 8), and there have been a few other cases of deterrence by reform, cases noted in chapter 8.

However, this book does *not* attempt to explain when and why legislators restrict obstruction (on this topic, see, e.g., Binder 1997; Dion 1997; and Schickler 2001). While the effects of these reforms are directly relevant, the politics of reform are too interesting and important to force into an already-thick book. Before we can understand the evolution of these rules, we should first understand what filibustering is, how it works, and why it varies.

MEASURING OBSTRUCTION AND TESTING THEORIES

One obstacle to research on congressional filibustering is the lack of accurate and consistent measures of obstruction. The best previous list—Beth (1994)—has, as we have seen, been severely criticized for its varying and erratic standards for identifying a filibuster (Beth 1995). Furthermore, recent research on filibustering stresses that overt filibustering is just the tip of the iceberg; covert threats to filibuster have a significant effect on legislative outcomes as well (Evans and Lipinski 2005; Krehbiel 1998; Oppenheimer 1985). Ideally, one would find some way to measure these threats—or at least their effects—as well. A good measure will also be sensitive to the varying tactics used to filibuster over the course of congressional history. For the first century of that history, members of the House and Senate often filibustered using *dilatory motions* and *disappearing quorums*, so our measures should reflect this variation.

I use two different methods to measure filibustering, each tailored to a specific time period. For the historic Congress (1789–1901), I scan the records of both the House and the Senate for votes apparently held simply to waste time and for votes on which it appears one party may be trying to “break” a quorum by refusing to vote. For the modern Senate (1901–2004), I switch to an approach based on secondary sources. I use a data set of over six thousand *New York Times* articles and over twelve hundred articles from *Time* magazine and *Congressional Quarterly* publications to identify both overt filibusters and threatened obstruction in the Senate. This switch in measurement strategy is motivated by the evolution of senators’ filibustering tactics and the availability of media accounts for the twentieth century. The use of dilatory motions and disappearing quorums to obstruct died off in the early twentieth century and was replaced by lengthy speeches as the dominant form of obstruction. Instead, I rely on reporters covering the Senate to help me identify filibustering. Together, these measurement schemes provide a rich and unprecedented analysis of filibustering across the span of congressional history. We learn who filibustered, when legislators filibustered, and how their obstruction affected the legislative process.

Once we know how much filibustering has occurred, we can understand why it happens, especially the emergence of the sixty-vote Senate. I compare plausible explanations using new measures of the demand for legislative output and the opportunity cost of congressional work, and I test for the influence of multiple rules changes, partisan polarization, Senate norms, and the threat of cloture reform. This approach enables me to evaluate the relative importance of each possible cause of filibustering.

This book utilizes a blend of methodological approaches. On the one hand, this is a conventional piece of modern social science research with an explicit theory, hypotheses, data, methods, and results. However, I also include historical case studies to convey the nuances of real filibusters and describe critical events in congressional history, and I utilize archival research that provides fresh insight into the emergence of the sixty-vote Senate.

OUTLINE OF THE BOOK

Chapter 2 provides an introduction to filibustering and the foundation for the rest of the book. It describes the tactics of an obstruction game and explains how filibustering is actually a series of choices: scheduling bills, deciding to obstruct, and the response of the majority. It then develops the claims that I test in the rest of the book and that can be tested in a variety of legislatures.

The three chapters in part II apply this theory to filibustering in the House and Senate from 1789 to 1901. In chapter 3, I illustrate the key patterns of this era: filibustering was more common in the House than in the Senate and increased in both chambers over time. Chapter 4 identifies the issues that provoked obstruction and describes the effects of filibusters on legislative outcomes; interestingly, budgetary legislation and civil rights legislation were common topics for filibusters, as were rules changes and organizational choices in the House. Chapter 5 explains why we observe these historical patterns: filibustering increases as chamber time became increasingly valuable and as minority party unity increases. Filibustering decreases in the House after the majority adopted an effective closure rule in 1894.

Part III explains the evolution of filibustering in the twentieth-century Senate. Chapter 6 identifies filibusters using articles from the *New York Times*, the *Congressional Quarterly*, and *Time* magazine and measures the effects of filibusters. As expected, I find a pattern of increasing filibustering over time; I also find a surge of filibustering *after* the adoption of the Senate's cloture rule in 1917, especially during the last three months of each Congress. Filibusters have often led to the defeat or revision of legislation, but many filibusters are waged to force other issues onto the chamber floor, while others seem to be waged to garner publicity and public acclaim. Chapter 6 also

finds a puzzling increase in the size of winning coalitions after 1960, just as senators begin strengthening their cloture rule.

Chapter 7 explains why we observe these phenomena—increasing obstruction, larger coalition sizes, and the emergence of cloture as the primary response to filibustering. I estimate the effects of time scarcity, partisanship, and institutional changes on Senate filibustering, and I find that the primary cause of the filibustering boom is that senators increasingly value their time too much to waste it on prolonged filibuster battles. Furthermore, I find a significant increase in filibustering during short sessions after the adoption of the 1917 cloture rule, a general increase in filibustering after the 1975 amendment to the Senate's cloture rule, and otherwise little relation between cloture reform and filibustering.

Chapter 8 traces the game of filibustering in the twentieth-century Senate. In particular, when and why did senators switch from waiting out filibusters to trying to invoke cloture? Using a combination of news articles, archival records, and quantitative measures, I find a clear shift in tactics during the 1960s. Senate majority leader Mike Mansfield (D-MT) persuaded other senators that attrition was no longer a viable strategy and that cloture was a collegial alternative to rolling in the cots. Behind the scenes, senators gradually institutionalized the unchallenged ability of every senator to filibuster. They developed standard routines for threatening obstruction, resolving policy disagreements, and negotiating the floor agenda. Chapter 8 concludes with an account of a recent challenge to the sixty-vote Senate: the threat by the Republicans to suppress filibustering against judicial nominees. This nuclear option contest neatly illustrates the continuing debate over congressional obstruction.

Finally, the afterword applies the insights of this text to future debates over Senate rules. After surveying arguments for and against obstruction, I give advice on reforming the Senate. Since the primary goal of this book is to inform rather than advocate, I do not recommend any specific institutional change. Using the theory and evidence presented in the text, however, I do help would-be reformers evaluate which reform options will best advance their goals. A key conclusion of this chapter is that senators who seek to reform but not eliminate obstruction should consider making it more difficult to wage a filibuster and easier to wait out a filibuster, thus restoring the classic balance of power in the Senate.

This book traverses congressional history with general measures and keen details. The central thesis connecting these pieces is that obstruction varies with the price legislators must pay to filibuster. Rules, issues, and political alignments are also part of the story, but the critical (and underrated) factor is the patience of the majority compared to the resolve of the obstructionists. This book pays attention to the *tactics* of filibustering so

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