

Gridlock in Washington

Is Congress too polarized to act?

Historic health-care legislation was enacted this spring, but the slow crawl of the law through the Senate suggests to many observers that Washington is in a state of gridlock — nearly unable to make new policy. Some political scientists blame the increasingly fierce competition for power between the ideologically rigid Democratic and Republican parties, which has risen to levels not seen since the Civil War. Other analysts blame the Senate's cloture rule, which requires a 60-vote supermajority to end a filibuster and proceed to voting. The rule gives undue, perhaps even unconstitutional, power to the minority, its critics argue. But other scholars maintain that the eventual passage of the health-care law is proof that Washington is not paralyzed. Indeed, they say a more serious problem is widespread voter misunderstanding of the importance the U.S. Constitution places on lengthy deliberation of issues before new laws are made.



President Obama signs the landmark health-care reform act with Democratic leaders on March 23, 2010. Some observers say that passage of the historic legislation, despite a grueling 14-month political battle and no Republican votes, indicates that Congress is not hopelessly paralyzed.

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Gridlock in Washington

BY MARCIA CLEMMITT

THE ISSUES

Letting his partisan frustration show, Sen. John McCain, R-Ariz., became the poster boy for political gridlock on Capitol Hill after Democrats pushed through landmark health-care reform legislation. Democrats have “poisoned the well,” McCain told a Phoenix radio station on March 29, vowing “there will be no cooperation for the rest of the year” from Republicans.

Although the former GOP presidential candidate quickly backed off on his threat, it reflected the widespread accusations from both Republicans and Democrats — and from the public at large — that extreme partisanship is stopping enactment of good legislation.¹

In April, fresh from their narrow health reform victory, the Democratic majority that holds the White House and both houses of Congress began pushing tough, new rules for the financial industry. Although there is general agreement that lax regulation led to the past two years of worldwide recession, Republicans and Democrats immediately began complaining that extreme partisanship from their opposition would make it impossible for Washington to enact a good law.

“We are united in our opposition to the partisan [Democratic] legislation reported by the Senate Banking Committee,” wrote the Senate’s Republican caucus to Majority Leader Harry Reid, D-Nev. Contending that Democrats intend to push the legislation to a vote rather than seek further Republican input to develop a better, bipartisan bill, the 41 caucus members pledged to vote to-



Tea Party activists hold a People’s Tax Revolt rally on April 15, 2010, in Washington, D.C. Closely allied with the Republican Party, the Tea Party movement reflects citizens’ anger over the multibillion-dollar economic stimulus and the Obama administration’s health-care plan. Republicans say they are angry with the federal government at three times the rate of Democrats.

Getty Images/Win McNamee

gether to stop the bill, which Republicans call harmful to business.²

But Reid’s spokesman, Jim Manley, said the Republican senators’ threat to stall movement of the bill only shows that they are “not serious” about regulating the finance industry. “If they are at all serious, they will simply . . . let the amendment process begin.”³

Of course, whether Washington is gridlocked — unable to create new policy that the country needs — depends on whom you ask.

In a Congress that just passed historic health-care overhaul legislation — after a century of trying — “there ain’t

no gridlock, and it’s annoying to hear that people think there is,” grumbles Bryan D. Jones, a professor of congressional studies at the University of Texas, Austin.

But other analysts point out that the health-care bill took far longer than necessary mainly because the Senate’s Republican minority continually resisted the Democratic majority’s call for a vote on the measure. As a result of the repeated filibustering, the Democratic majority had to muster a supermajority of 60 votes — known as invoking cloture — five times to end debate and move to a vote on actual legislative provisions, says Barbara Sinclair, a professor of political science at the University of California, Los Angeles (UCLA).

Furthermore, the slowdown of the health legislation has made it impossible for the Democrats, despite their dominance in Congress, to move most of the rest of their legislative agenda, says Sinclair.

Over the past two decades, both Democratic and Republican minorities in the Senate have turned the 100-member body into a substantial roadblock to legislation, Sinclair says.

In the 1960s, about 8 percent of “major” bills faced filibusters or filibuster threats, while in the 2000s 70 percent of major bills did, she said.⁴

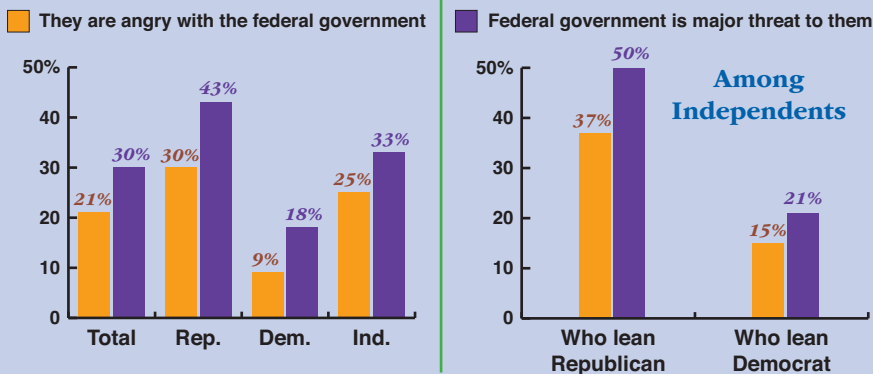
In the 2007-2008 Congress alone, Republicans forced a record 112 votes to break filibusters, and in 2009-2010 they have so far forced 49 cloture votes.⁵

But political scientists point out that the U.S. Constitution and its framers intentionally created a government that would make change only with slow deliberation.

Republicans Angrier at Federal Government

Nearly a third of the Republicans surveyed — three times the percentage of Democrats — said they are angry with the federal government. And 43 percent of Republicans said the government is a major threat, or more than twice the percentage of Democrats.

Percentage of Americans who say . . .



Source: “The People and Their Government: Distrust, Discontent, Anger and Partisan Rancor,” *The Pew Research Center for the People and the Press*, April 2010

“Is it easy to get things done in the U.S. Congress? No.” But the institution was set up for that to be the case, says Jones.

“In this Congress, the Republicans decided early on that it’s in their electoral interest to oppose and obstruct, but they also believe that what Democrats want to do is bad public policy,” and thus they have true philosophical objections to allowing Democrats to substantially change national policies, says Sinclair.

“Historically, when you have this kind of gridlock, there’ll be two factors,” says Ivan Kenneally, an assistant professor of political science at New York’s Rochester Institute of Technology. One involves “strategy between the parties, one in power and one aiming at obstruction,” while the other is ideological division “reflecting a country that is divided,” he says. “There are extraordinary differences in philosophy between the two parties” at this time, Kenneally says.

Some political scientists say the public in general is not especially polarized, or divided into extreme, adamantly opposed ideological groups.

For example, says Stanford University professor of political science Morris P. Fiorina, “There is almost no difference in views on abortion between red states and blue states. And in every poll, between 35 percent and 40 percent identify as independent.”

Most agree that the polarization of America’s political class — including politicians, party organizers and activists, and some media figures — is very high by historical standards, however.

“Since 1990, more than half of all congressional votes . . . featured a majority of one party opposing a majority of the other party,” a level of polarization that “represents a steady increase over the 47 percent” of votes that were polarized in the 1980s and 30 percent in the ’70s, wrote David R. Jones, a professor of political science at the City University of New York’s Baruch College.⁶

During George H. W. Bush’s administration — 1989-1993 — the White House routinely had a list of between 25 and 40 Democrat legislators they thought it worthwhile to lobby as po-

tential bipartisan “yea” votes for Republican proposals, and in the Reagan administration of the 1980s the number of possible Democratic sign-ons was even higher, said an aide to President George W. Bush. Party polarization increased over the years, however, and by 2005 the Republican White House counted itself lucky if it could come up with the names of 10 or 15 Democrats who would consider a “yea” vote on a White House proposal, the staffer said.⁷

Today’s media climate helps fuel polarization of vocal minorities among the electorate, says Seth Masket, an assistant professor of political science at the University of Denver. For example, “you don’t just have conservative senators. You also have media figures like [radio commentator] Rush Limbaugh who repeatedly tell the public that the Democratic majority is utterly un-American,” he says. “When that’s a repeated message out there, as the conservative minority you have to show people that you’re doing more” than just offering improving amendments to bills, he says.⁸

While the public may not, on average, hold polarized views, “the party structures, primaries and major donors are getting very polarized,” and since all party candidates must depend on these apparatuses to get elected, it’s no surprise that candidates are becoming more polarized, too, Masket says.

One key principle that extreme polarization may be obscuring is that “part of being in a democracy is losing — knowing that if you get involved, you can’t always get your own way, but that you must stay involved” after a loss, says John R. Hibbing, a professor of political science at the University of Nebraska, Lincoln.

“The kind of disgruntlement with government that says, ‘I’m upset with what they did and now I’ll help fix it,’ is good,” Hibbing says. “The dangerous disgruntlement is the kind that thinks politics is so hopeless that you have to go beyond the usual channels to fix

things,” such as contemplating an extra-constitutional overthrow of some kind, he says. “Democracy is supposed to give you hope that, though you lost today, tomorrow you could win, and win through democratic channels.”

As lawmakers, political scientists and the voting public debate whether Washington is crippled by polarization or merely the scene of impassioned debates that are vital to a functioning democracy, here are some of the questions that are being asked:

Is Washington paralyzed?

The word “gridlock” to describe a paralyzed government — one that moves legislation slower than some would like, or not at all — became common usage around 1980, according to Sarah A. Binder, a senior fellow in governance studies at the Brookings Institution, a centrist think tank. The concept is far older, however. “Alexander Hamilton was complaining more than two centuries ago about the deadlock rooted in the design of the Continental Congress,” the body of delegates who governed the colonies during the American Revolution, Binder said.⁹

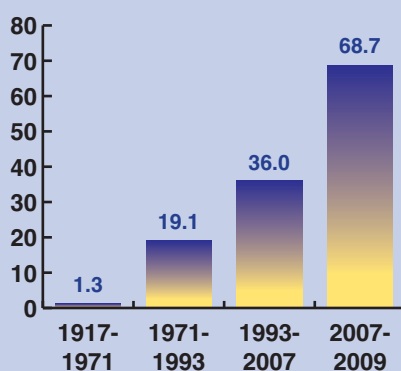
More recently, political scientists have defined gridlock as “the propensity of existing policies to be impervious to change in spite of preferences of a popularly elected majority to enact new policies,” explained Stanford University political science professor Keith Krehbiel.¹⁰ And, in many ways, such “gridlock is endemic to our national politics, the natural consequence” of a Constitution that set up two separate legislative bodies, the House and Senate, plus a separately elected presidency, with each entity having the power to stop the other two from enacting new policies, Binder said.¹¹

In some time periods, accusations of gridlock fly thick and fast, and the past few years has been one of those. However, analysts strongly disagree about whether we are experiencing gridlock and, if we are, whether it is a bad thing.

Use of Filibuster Skyrocketed

During most of the 20th century, roughly one vote in each session of Congress was held to end a filibuster, but by 2007-2009, the number had risen to an average of 69 cloture votes per year.

Average Number of Cloture Motions to End Filibusters Per Year in the Senate



Source: “From Deliberation to Dysfunction,” Center for American Progress, March 2010

“The Senate is almost dysfunctional now,” said Sen. Tom Harkin, D-Iowa.¹²

“Congress just got a lot more done in the 1950s, 1960s, and 1970s than in the 1980s, 1990s, and 2000s,” wrote political analyst and former President George W. Bush speechwriter David Frum.¹³

“Bitter partisanship and ideological extremism rule the day,” says Stanford’s Fiorina. “A president many voters thought to be a pragmatic centrist chose to defer to the liberal agenda” of some congressional Democratic leaders “while the [Republican] ‘party of no’ digs in its heels and opposes them at every step. Politics increasingly looks like a collective ‘celebrity death match.’ Washington is gridlocked, paralyzed, stalemated. And one could write much the same story about California and some other state capitals.”

As of mid-March, the Senate “was backed up with 88 unconfirmed nominees” whose names President Obama has forwarded for approval to executive branch positions, wrote Ryan Grim, senior congressional correspondent for the *Huffington Post* blog. Demonstrating the increase in congressional foot-dragging just over the past decade, that total is “83 more than the Bush administration faced at this point in its tenure,” Grim said.¹⁴

“I think you get the picture that” the held-up nominations constitute a “systematic” effort “to undermine the ability of the executive branch to do its job,” said Sen. Jeff Merkley, D-Ore.¹⁵

Further evidence of the roadblocks to changing national policy is the fact that, while a major health-care reform bill has been enacted, it “was done by the narrowest of margins” even though one party holds the White House and both houses of Congress, including one of the largest Senate majorities in decades, says Jeremy Mayer, an associate professor of public policy at George Mason University in Fairfax, Va.

“It’s hard to gauge gridlock because Congress doesn’t always have to do much” in a given year except pass some spending and budget bills and move other routine legislation, says Frances E. Lee, an associate professor of political science at the University of Maryland in College Park. Nevertheless, Lee and others say that this Congress has changed more policies than many predecessor congresses.

“It’s tough to make a case for being in gridlock when Congress has passed the largest social reform in decades” in the form of the new health-care reform law, says Mayer.

In fact, a good case can be made for saying that “this is a truly historical Congress,” based on that accomplishment alone, says C. Lawrence Evans, a professor of government at the College of William and Mary in Williamsburg, Va.

“Since Obama’s been president, there’s been a major stimulus bill, major higher-education provisions,” and more,

besides the health-care reform legislation, says Jones at the University of Texas. “I get so frustrated with people who talk about gridlock.”

Many political scientists point out that Congress’ slow march to most legislation is the result not of dysfunction but of institutional procedures put in place by the Constitution mainly to ensure that federal laws reflect the long-term will of the people and are enacted only after significant deliberation.

“Congress does the will of the people at a given time,” but not the will of each fleeting “50-percent-plus-one majority,” says Jones at the City University of New York. If Congress were constructed to immediately change laws “to flip to what the will of the one deciding voter wanted, the result would be constant change” and instability, since the preferences of a bare majority “flip all the time,” Jones says. Instead, Congress acts only in response “to views that a sizable chunk of the public has held for a length of time.”

“It takes a lot of time to build a consensus” on how to solve major problems, says Donald Wolfensberger, director of the Congress Project, a nonpartisan study project at the Woodrow Wilson International Center for Scholars. “Without there being a solid national consensus on solutions” to a given problem, it’s right that Congress not rush to legislate, he says.

The public often “has too high expectations for government” to create instant solutions, Wolfensberger says. For example, “the government has been

proceeding with work on the economy, but given the fact that about three-quarters of the people” in one recent poll said they believe that “Washington is broken, I don’t think people see how much is actually being done,” he says. “The government doesn’t

Clinton administration. “If we were passing laws as quickly as we were changing parties, we would have an incredibly unstable system,” says Brown.

Our stable system of laws “has created prosperity,” in part because “high predictability allows business to flourish,” says Brown.



Getty Images/Ethan Miller

Radio commentator Rush Limbaugh is among the media commentators seen as stoking the polarization of vocal minorities among the electorate. According to Seth Masket, an assistant professor of political science at the University of Denver, Limbaugh “repeatedly tells the public that the Democratic majority is utterly un-American.”

specifically replace jobs. It’s not like there’s some button you can push.”

“Many people don’t see that, by Congress talking, they’re doing exactly what we want them to do” — which is deliberate over important issues, says Sean F. Evans, an associate professor of political science at Union University in Jackson, Tenn.

Speed in legislating is overrated, says Lara Brown, an assistant professor of political science at Villanova University in Villanova, Pa., who served as a Department of Education official during the

Is party polarization threatening our democracy?

Few question whether Washington is politically polarized — coalesced into two ideologically opposite parties that are reluctant to discuss compromise. But while some political scientists point out that polarization has benefits and that, by itself, it does not create legislative gridlock, others argue that it damages government in numerous ways.

Among politicians and local party activists, “the polarization today is as high as or higher than” during Reconstruction — the post-Civil War era when a nation still bitterly divided over states’ rights and slavery struggled to reintegrate, says Nolan McCarty, a professor of politics and public policy at Princeton University.

“The probability of a bipartisan coalition is about zero now, and it’s notable that the health-care reform legislation, a moderate bill, was passed without a single Republican vote,” McCarty says. By contrast, “there are very few other social changes in the 20th century that got done without bipartisan support. Not the New Deal, not civil rights, or Medicare, or the Medicare Part D drug benefit.”¹⁶

If intense party infighting in Washington stops “the staffing of the executive branch” because presidential nominations are backed up for months

awaiting Senate approval, “that’s really problematic,” says Lee at the University of Maryland.

Such an appointment backup does exist today, and has “the potential to drive otherwise qualified individuals from public life” and “[impair] the effectiveness” of courts and the executive branch, said McCarty.¹⁷

Republican objections to President Obama’s nominations have greatly slowed staffing of the executive branch, said Scott Lilly, a senior fellow at the progressive think tank Center for American Progress. For example, the General Services Administration oversees government contracting and procurement, which Obama pledged in his campaign to reform, but while his nominee to head the agency eventually won “yes” votes from 96 senators, the vote was stalled until nearly 10 months after the nomination.¹⁸

Equally troubling is the fact that, in polarized times, congressional investigations often become vendettas against individuals rather than fact-finding examinations, says Union University’s Evans. “Look at the Monica Lewinsky incident” of the 1990s — in which President Bill Clinton was investigated and impeached over a sexual relationship with a White House intern, Evans says. “Look at how long that investigation lasted, how much effort was spent” when problems of much greater public importance languished on Washington’s back burner.

Similarly, during President George W. Bush’s presidency, many congressional Democrats seemed more interested in “trying to prove that Bush lied” than in uncovering the full facts about how the government responded to the 2001 terror attacks and launched the Iraq War, Evans says.

“Polarization doesn’t necessarily produce legislative gridlock, but it does give the public the sense that Congress doesn’t represent the average voter,” a development that can increase voter cynicism, says Anthony McGann, an as-

sistant professor of political science at the University of California, Irvine.¹⁹

The degree of polarization in Washington today is “insane, not nuanced at all,” says Alan Rubin, director of federal government affairs for the government relations firm Buchanan Ingersoll & Rooney. “The rancor is very very different today,” even from the strife-ridden 1960s civil rights era, he says. “It’s impossible to have a bipartisan bill in the House, and the Senate is getting more that way.”

The parties have clear philosophical differences, which is as it should be, but lawmakers so tightly wedded to party principles that they can’t acknowledge gray areas or the value of compromise imperil the country’s ability to solve its largest problems, says George Mason’s Mayer. For example, polarized Democrats “are unrealistic in saying that we can solve” future federal budget crunches “without reducing entitlements in any way, and Republicans are delusional in saying that the problems can and must be solved only by reducing entitlement programs” — like Social Security and Medicare — “and not by raising taxes,” he says.

“Issues that aren’t necessarily partisan are becoming partisan because of the climate,” says Evans of the College of William and Mary. For example, the health-care reform bill had enough moderate provisions “to have gotten it five to 10 votes in the House, at least, in the past,” but it received none, Evans says.

While increasingly polarized parties take hard stances on virtually every issue, issues of public importance also include cultural, economic and international matters, “among which there really is no logical connection” to justify such across-the-board, multi-issue polarization, says Gregory Koger, an assistant professor of political science at the University of Miami.

Party polarization “makes it harder to build legislative coalitions, leading to policy gridlock” in the legislature, with substantially fewer major laws enacted, according to McCarty. Further-

more, such gridlock may encourage the executive branch and judges “to act unilaterally without legislative consent,” an undesirable outcome that the Constitution sought to guard against. “A politically polarized Congress will have difficulty in responding to economic shocks” because of its difficulty moving legislation, McCarty said.²⁰

“I see us putting off a lot of decisions that previous congresses may well have tackled for the common good,” because of polarization, Mayer says.

A sensation-hungry media that provide a smorgasbord of information sources that are themselves highly polarized exacerbates problems, says Stanford’s Fiorina.

“People rant and rave and make ad hominem attacks” — arguments that call out opponents on personal issues rather than addressing substantive issues, he says. “We teach our kids not to behave this way,” but polarized legislators, citizen activists and media figures do it routinely, says Fiorina. “The voice of sweet reason just doesn’t make good news.”

Tight ideological coherence within a political party has benefits, however.

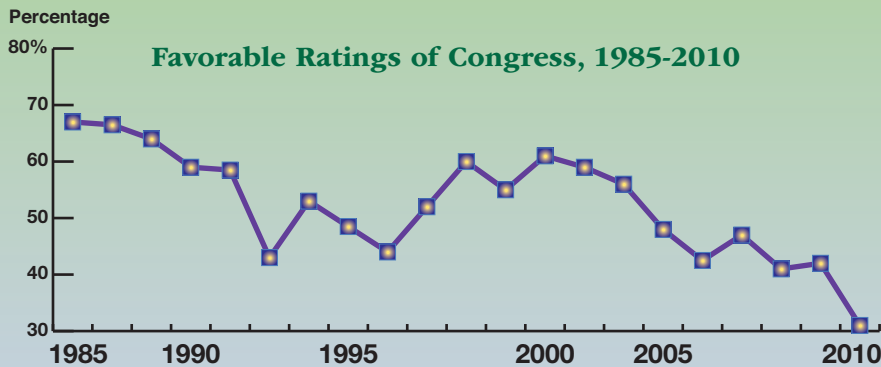
For one thing, “what divides the parties is not just strategy but genuine substantive differences on principles” that it’s important for the nation to understand and hear expressed, says Kenneally of the Rochester Institute of Technology.

“To a certain extent, many people actively avoid conflict,” and this distaste for argument may too easily lead some citizens to condemn any and all strident and uncompromising debate as unduly partisan, says Samuel J. Abrams, a fellow at the Hamilton Center for Political Economy at New York University. In fact, intense political debate often is required for society to move through differences toward solutions, he says.

Extreme polarization can be a problem, but the widespread public sentiment that intense disagreement is not a legitimate part of public life is also damaging to democracy, says Nebraska’s Hibbing. “The public reacts badly

Favorable Views of Congress Hit New Low

Although Americans' favorable ratings of Congress have varied throughout history, this year they reached the lowest level in a quarter of a century. Favorable ratings are less than half of what they were 25 years ago.



Source: "The People and Their Government: Distrust, Discontent, Anger and Partisan Rancor," *The Pew Research Center for the People and the Press*, April 2010

to Congress when there's disagreement there," and it would be helpful to "teach people that lawmakers' disagreements are often mainly a reflection of the public, which disagrees among itself. I do think we need to be patient" as Congress works through what are, in many cases, true national disagreements.

"While voters may not know much about individual candidates, or even individual issues, they can know something about what parties stand for," so, to a degree at least, party polarization can help voters make better-informed decisions, says the University of Denver's Masket.

"If people are going to be working all day and taking care of their families, they need structures that help them make intelligent choices about who they want to vote for," and "reasonably differentiated parties provide a good shortcut," says UCLA's Sinclair.

Should Senate filibuster rules be reformed?

The Constitution famously provides "checks and balances" to ensure that laws are made more deliberately than hastily. Senate rules, however, have created an

additional substantial check on quick legislative action: a requirement that three-fifths of the Senate — 60 senators — must approve a call by majority leaders to end debate — known as invoking cloture — and move to a vote on legislation. Critics of this "supermajority" requirement argue that it gives the minority party undue power to prevent the majority from governing.

For the country's founders, "part of the function of the Senate was to put a brake on the House. That was by design," so Senate rules that cause the Senate to balk a little harder at majority-favored legislation aren't necessarily a bad thing, says the Rochester Institute of Technology's Kenneally.

There's often value in making it harder for the majority party to end debate, said Koger at the University of Miami. "Just because one side's got more votes, that doesn't make its position true. . . . Ending slavery, enfranchising women and adopting a federal minimum wage were all once minority positions." ²¹

In the 1990s, Nevada's senators repeatedly filibustered proposals to speed up construction of nuclear-waste fa-

cilities in their state, Koger said. ²² "Obviously, these bills affected Nevada intensely, so I considered it fair that Nevada's senators were able to make their case and slow (but not defeat) legislation" to make their state "the nation's nuclear dump." ²³

Also in the '90s, Sen. McCain and Senate Democrats repeatedly filibustered to force the then-Republican-led Senate to vote on campaign finance reform. ²⁴ "Their efforts drew attention to the issue and forced senators to go on the record so their constituents could hold them responsible," Koger said. ²⁵

In 2005 and 2006, Sens. Patty Murray, D-Wash., and Hillary Rodham Clinton, D-N.Y., held up executive branch nominations to pressure the Bush administration's Food and Drug Administration to make a long-delayed ruling over whether "Plan B" emergency contraceptives could be sold without a prescription. (In August 2006, the agency made Plan B available without prescription to women over age 18.) ²⁶ "Filibustering enabled two intense senators to force a stubborn agency to do its job," said Koger. ²⁷

"It is easy to forget that legislators are more than voting machines with 'D' or 'R' stamped on their foreheads," said Koger. In a healthy legislature, "members talk and propose alternatives and acknowledge each other's views. In doing so they can improve legislation, represent their constituents and explain their behavior to each other and to the nation." ²⁸

In the Constitution, the nation's founders carefully created means of keeping both majorities and minorities from exercising undue influence, but the Senate's addition of the supermajority requirement upsets that delicate balance, says Thomas DeLuca, a professor of political science at Fordham University in New York City.

Constitution architect and fourth U.S. president James Madison thought that "to keep minorities under control, you needed majority votes," not super-

California's Annual Budget Battle

How polarization creates a budget impasse.

At budget time every year, California lawmakers, like members of Congress, must contend with polarized parties and the need for supermajority approval of legislation.

Most laws in the state can be passed fairly easily because only simple majorities are required, but “getting a budget is a huge struggle” because it requires a two-thirds vote, says Seth Masket, an assistant professor of political science at the University of Denver.

And political polarization makes getting the two-thirds vote difficult. “Party structures, primaries and major donors are getting very polarized,” says Masket. And since all party candidates depend on party-activist-run mechanisms, such as primaries and party caucuses, to be elected and get campaign funds, it’s no surprise that candidates are becoming more polarized, too, he says.

Party activists are probably always more ideologically polarized than the general public, but today’s media environment is increasing the polarization as well, he says.

As a result of the strong polarization of the citizen-activists who make up party infrastructures and put candidates on the ballot, the state’s politicians today are required to remain ideologically pure, Masket says. “No Republican can vote to raise any taxes, and no Democrat can vote to cut any services,” he explains.

The combination of polarization and the requirement for a two-thirds majority to pass a budget explains the protracted yearly battles over the state’s budget, he says.

“To me, this is an argument for avoiding supermajority requirements” for most legislative actions, Masket says.

The process “has led to gridlock, huge deficits from lack of revenue, and cuts [in services] so massive as to threaten the

viability of the state,” complained George Lakoff, a professor of cognitive science and linguistics at the University of California, Berkeley, and a Democratic activist.¹

The supermajority requirement makes California “the only state with a legislature run by minority rule,” wrote Lakoff, who last year proposed a ballot initiative to switch the state constitution’s supermajority requirement for budgeting and new taxes to a requirement that a simple majority of lawmakers approve such measures. “Because it takes a two-thirds vote of both houses to either pass a budget or raise revenue via taxation, 33.4 percent of either house can block the entire legislative process until it gets what it wants. . . . At present 63 percent of both houses are Democrats and 37 percent are far-right Republicans” who do not support any taxes and, thanks to the supermajority requirement, are able to “run the legislature by saying no,” said Lakoff.²

Other Californians see value in the supermajority rule.

“For nearly 30 years, Republicans have been the minority in California, fighting tooth and nail to keep the liberals honest and preserve some form of democracy,” wrote John Ayers, managing editor of *The Hornet*, a student newspaper at Fullerton College. “By taking away the two-thirds rule, we are effectively silencing the voice of opposition.”³

— Marcia Clemmitt

¹ George Lakoff, “The Poll Democrats Need to Know About,” *Huffington Post* blog, April 15, 2010, www.huffingtonpost.com.

² *Ibid.*

³ John Ayers, “Should California Abolish the Two-thirds Supermajority Vote Needed for the State Budget,” *The Hornet*, Aug. 5, 2009, www.fchornet.com.

majorities, which a disgruntled minority can too easily use to stymie the will of the majority of the people, DeLuca says.

“Some of the gridlock is definitely built in institutionally” to encourage full debate on all options, DeLuca says, “but this idea of filibustering every major piece of legislation” is not helpful. Sixty votes has recently become “the new normal” for Senate passage of anything, he says, and setting that as a threshold “calls democracy itself into question. I believe that this gridlock is unconstitutional.”

“You could have filibuster rules that would preserve the deliberate nature of the Senate” without making those rules so restrictive that they allow a minori-

ty party to slap down majority legislation at will, he says. For example, Senate rules could state that every bill that came up would get at least four weeks of debate, with a 60-vote majority required to deny it that, he says.

Madison strongly argued that “a minority can demand unreasonable things” if supermajorities are required, another good reason to limit their use, says McGann of UC Irvine. Furthermore, under current rules 41 senators can completely stymie action, but frequently those 41 senators do not even represent 41 percent of the public, since senators represent states rather than roughly equivalent numbers of individuals, as House members do, McGann points out. “In

California, the county I live in has a bigger population than the Dakotas,” which have four senators, he notes.

Furthermore, the supermajority requirement to end a filibuster “is socially unproductive” because it contributes very strongly to maintaining the status quo, McGann says.

When polarization is combined with supermajority requirements, a majority party’s ability to carry out its agenda is seriously damaged, said Sen. Sheldon Whitehouse, D-R.I. Currently, “Republicans are burning up floor time on anything and everything” — such as by threatening filibusters over Obama’s nominees — “because floor time is the one thing that’s irreplaceable,” Whitehouse said.²⁹



AP Photo (both)

Nonstop Talkers

Beginning in the late 1950s, filibusters were used to stop civil rights legislation. Sen. Strom Thurmond, S.C., then a Democrat, filibustered the Civil Rights Act of 1957 for a record-setting 24 hours and 18 minutes (top). In the 1930s Sen. Huey Long, D-La., (bottom) was infamous for using filibusters; in 1935 he read and analyzed the Constitution for 15-and-a-half hours to block a bill that might give government jobs to his political enemies. Today, senators can invoke “virtual” filibusters instead of actually speaking on the floor to stall a vote. In 1975, in a wave of government reforms that followed the Watergate scandal, the Senate lowered the proportion of Senate votes required to invoke cloture to stop a filibuster from two-thirds to three-fifths.

When a supermajority is needed to end filibusters “during short seasons of Congress, you run into time constraints,” and, even though the public does not realize this, it greatly curtails a majority party’s legislative agenda, says UCLA’s Sinclair. For example, the numerous filibuster threats that caused health-care reform to crawl through the Senate at a glacial pace in 2009 prevented the Democratic majority from moving on to debate other items on their agenda, including jobs, climate change and financial regulation.

Sinclair proposes tinkering with the Senate rules for ending debate to allow reasonable amounts of discussion while still allowing the majority to get votes on more issues. ■

BACKGROUND

Checks and Balances

The founders puzzled over creating a government nimble enough to respond to change but restrained enough to avoid ill-considered actions or tyranny, whether by a majority, an impassioned minority or an individual.

“In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself,” Madison wrote in *The Federalist* in 1787.³⁰

Writing under pseudonyms, Madison, first Secretary of the Treasury Alexander Hamilton and first Chief Justice John Jay published 85 *Federalist* essays in magazines in 1787 and 1788 to urge Americans to support ratification of the Constitution, which the September 1787 Constitutional Convention in Philadelphia had forwarded to states for approval.

“The founders hoped that they were creating a system where no one would

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Chronology

1840s-1910s

Bitter party opposition rises in the pre- and post-Civil War periods, then wanes until the end of the 19th century, when economic change and massive immigration split the nation.

1841

First Senate filibusters are used, on banking and government-printing legislation.

1915

A 33-day filibuster blocks World War I-related legislation sought by President Woodrow Wilson.

1917

When senators filibuster to block the arming of merchant ships against German submarines, Wilson rallies the Senate to pass the cloture rule, allowing a two-thirds majority vote to end filibusters.

1919

After a rare, successful cloture vote, Senate approves Versailles Treaty to end World War I.

1920s-1960s

Number of filibusters wanes then rises in the civil rights era. Most end when the majority withdraws its bill or the filibustering minority gives up in exhaustion.

1935

Sen. Huey Long, D-La., reads and analyzes the Constitution during a 15-and-a-half-hour filibuster of a bill that might give his political enemies government jobs.

1957

Sen. Strom Thurmond, D-S.C., fili-

busters voting-rights legislation for a record 24 hours, 18 minutes.

1960

President Lyndon B. Johnson pledges to wait out filibuster of the 1960 Civil Rights bill; senators nap on cots awaiting a vote. After a failed cloture vote, bill supporters give up the fight.

1962

Moderate Republican senators join Democrats to achieve a rare cloture vote on the Communications Satellite Act.

1964

Senate achieves a cloture vote on the 1964 Civil Rights Act and approves the bill.

1968

Cloture vote fails on the nomination of Associate Justice Abe Fortas to be chief justice, in the first filibuster of a Supreme Court nominee.

1970s-1980s

Party polarization is at an all-time low but rises in the 1980s.

1975

Senate lowers the cloture-vote threshold from two-thirds of senators to three-fifths.

1981

President Ronald Reagan takes office, pledging to build conservatives' confidence that Republicans can be the nation's ruling party.

1990s-2000s

Party polarization soars.

1995

Minority-party Sens. Tom Harkin, D-Iowa, and Joseph I. Lieberman, D-Conn., propose cloture-rule changes to make ending debate easier.

2000

President Bill Clinton's nomination of Judge Richard Paez to the 9th U.S. Circuit Court of Appeals is approved after a failed filibuster; Republicans had successfully blocked Paez's nomination for four years.

2005

Frustrated by filibusters of President George W. Bush's nominees, Senate-majority Republicans threaten a "nuclear option" — ending the 60-vote cloture requirement. "It is a perversion of the intent of the Constitution," said Sen. Christopher Bond, R-Mo.

2009

After five successful cloture votes, Senate approves health-care reform legislation. . . . Sen. Scott Brown, R-Mass., wins a special election to fill the seat of the late Sen. Edward M. Kennedy, D-Mass., cutting the Democratic majority to 59, too few to overcome filibusters. . . . Polls show Americans' trust of Congress is at a record low.

2010

Lacking votes for cloture, Senate Democrats pass the final health-care reform bill via "reconciliation" — a procedure that allows only limited debate on measures related to the federal budget. . . . Senate Republicans slow committee work by invoking a normally waived rule requiring unanimous consent for the Senate to work after 2 p.m. . . . Sens. Jim Bunning, R-Ky., and Tom Coburn, R-Okla., filibuster bills to extend unemployment benefits, arguing that other budget cuts must be made to pay for them.

Understanding the Politics of Health-Care Reform

Why Republicans still couldn't support a moderate proposal.

The enactment of health-care reform legislation earlier this year quieted some of the critics who say Washington is gridlocked. Nevertheless, some political scientists say the full year it took for the Democratic majority — which holds the White House and both houses of Congress — to push the bill through demonstrates that ideological polarization, at least, is slowing things down.

Health-care reform's slow passage helped turn many voters off to the legislation, says Robert Blendon, a professor of health policy and political analysis at the Harvard School of Public Health. In 2009, people named health care as a close second to jobs on their list of top worries, but by 2010 "employment was all that anyone cared about," he says. The quick shift in public priorities combined with the legislation's slow progress left many voters saying, "I wanted a health care bill, but not with a year of hearings," Blendon says.

Furthermore, the way Congress makes laws plays into the hands of opposition lawmakers anxious to turn voters against a majority party, says Blendon.

Like most legislation, health-care reform began as numerous separate bills drafted by different congressional committees, he explains. The large number of proposals enabled the minority Republicans to "pick out all the worst things they can find from all the different committees' bills and tell voters that they are in the legislation," he says. "It's not exactly a lie, be-

cause the provisions have been in some draft somewhere," and it's an effective tool for opposition, he says.

Under current Senate rules, the majority needs to rally 60 votes — a so-called supermajority — in favor of closing debate on legislation and moving it to a vote — the so-called cloture rule that ends filibusters. In the lead-up to final passage of health-care reform, Senate Majority Leader Harry Reid, D-Nev., had to muster supermajorities five times, which not only slowed the legislation's progress but also created a moderate final bill rather than the hard-line, left-wing Democratic bill that one might have expected to emerge when one party has such a strong hold on power.

Indeed, "if you had presented [the final bill] on the floor in 1994, people would have said, 'This is a Republican plan,'" says Jeremy Mayer, an associate professor of public policy at George Mason University in Fairfax, Va.

The 60-vote cloture rule drove "the incremental nature" of the legislation because it meant that all conservative Democrats had to be on board, says C. Lawrence Evans, a professor of government at The College of William and Mary in Williamsburg, Va. "If you value the incrementalism of the bill," the cloture rule is the cause, he says.

But while the supermajority requirement led to a more Republican-friendly bill, Washington's polarized political climate meant that no Republicans would actually vote for the measure.

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be able to impose their will by brute force," and, on the whole, "would be happy about the way their system has worked," says Union University's Evans.

Key to the system are "checks and balances" written into the Constitution, which keep the House, the Senate or the president from taking actions that aren't closely vetted by the others. The Constitution sets forth the following key checks to hasty legislative action:

- Bills must be approved by both the House and Senate before becoming law;
- The president may veto bills passed by Congress;
- Congress may overturn a veto if a two-thirds supermajority in each chamber votes to do so;
- The non-elected Supreme Court may declare a law unconstitutional;

- A two-thirds supermajority in each house may submit a constitutional amendment to the states for potential ratification;

- Three-quarters of the states — a particularly large supermajority — may amend the Constitution by ratifying a proposed amendment.

In a system designed for slow change, the Senate was intended to be particularly impervious to whims of the moment.³¹ While each House member must stand for reelection every two years, senators' six-year terms mean they're likely less susceptible to shifts in public opinion that turn out to be passing fads rather than long-term trends.

In keeping with the founders' wish that laws be made only after substantial debate, in Congress' earliest days individual lawmakers in both the House and the Senate could filibuster.

Derived from the Spanish word for "pi-rate," a legislator or group who filibusters effectively hijacks the legislative agenda to achieve a purpose of their own, different from that of the majority. "Filibuster" can be defined as any tactic that gums up the progress of legislation, including speaking about it endlessly in the congressional chamber, calling for roll call votes on trivial matters, demanding that lengthy bills be read out loud or any other means of stalling a vote in hopes that eventually enough members will leave the chamber so that no legitimate vote can be taken.

Another Supermajority

After its first few decades, the House established rules still in force today allowing the majority party to strictly curtail debate.

"Part of Obama's frustration over health care is that he thought that in the end some Republicans would approve the legislation, which is not as radical as the overhaul that [Republican President Richard] Nixon proposed" in the early 1970s, says Bryan D. Jones, a professor of congressional studies at the University of Texas, Austin.

The complete absence of Republican support for the legislation enabled the GOP to rally the public against the bill and its Democratic creators, even though it's the kind of middle-of-the-road proposal that Americans often strongly support, says Blendon.

The new law "has lots of Republican ideas in it, but the public doesn't necessarily believe that because they aren't reading the bill, and the sign that would tell them the bill has Republican provisions would be Republicans voting for it," which didn't happen, Blendon says.

"This is a moderate bill," says Gregory Koger, an assistant professor of political science at the University of Miami. "But it's hard for the lay citizen to gauge substantive moderation, so we may look for it in signs of bipartisanship. Instead, Republicans say it is a bad bill."

Increasing polarization in Washington is pushing lawmakers away from other middle-of-the-road proposals they once would have supported, says Nolan McCarty, a professor of politics and public policy at Princeton University. For example, "cap and trade" schemes for slowing climate change by controlling

greenhouse-gas emissions "were not considered tax-and-spend schemes back in the 1970s when the [conservative] American Enterprise Institute came up with them," but Republicans do label them that today, he says.

But other analysts say that it's Democrats who pushed through an ideologically polarizing law that Republicans couldn't support without abandoning their principles.

"There is a deep philosophical divide" on health care that's evident in the new law, says Ivan Kenneally, an assistant professor of political science at the Rochester Institute of Technology in New York. "Republicans see the problem as health care having become hyperinflationary, and from their perspective this has happened because there's been a disjunction between value and price." As a result, "they want only provisions that will restore more market pricing," such as requirements for consumers to be more actively involved in choosing the most cost-effective care for themselves, he suggests.

Democrats, on the other hand, "think the market won't succeed" in holding down prices and ensuring that patients get improved value for their health-care dollars, "so they want more bureaucracy, a strong central government."

Over time, this "philosophical divide has hardened" between the parties, Kenneally says.

— Marcia Clemmitt

Senate rulemaking went the opposite way. In 1806 senators abandoned a rule that had allowed a simple majority to call for ending debate and voting on legislation; it did not put in place a new filibuster-ending procedure — which included a supermajority requirement — until 1917.

While the Senate has always been hospitable to the power of a minority — even a minority of one — to debate at length, for most of history filibusters have occurred infrequently.

The best-known filibuster occurred not in real life but in the 1939 movie classic "Mr. Smith Goes to Washington," starring James Stewart as a naïve, idealistic senator who engages in a nearly 24-hour one-man talkathon to defeat a politically corrupt spending bill and prevent his expulsion from the Senate, based on false allegations.

"I'm gonna stay right here and fight for this lost cause even if this room gets filled with lies," he vows, forever establishing the filibuster as heroic in the eyes of moviegoers.³²

The first actual Senate filibusters occurred in 1841, and with increasing frequency as the nation polarized in the Civil War period, said Lilly of the Center for American Progress. With no rule allowing the majority to force votes on legislation, "there was no . . . recourse to a decision by a small number of senators to kill legislation — even if they were the only ones in the entire country who opposed it," Lilly said.³³

"Attrition" — waiting for filibustering lawmakers to exhaust themselves — was the only option until 1917, when "anti-war isolationists used the filibuster to block the arming of U.S. merchant ships against German submarines," said Lilly. President

Woodrow Wilson called a special session of Congress under the rallying cry that "a little group of willful men, representing no opinion but their own, have rendered the great government of the United States helpless and contemptible."³⁴

Within days, the Senate adopted Rule XXII, the cloture rule, which required two-thirds of the Senate to approve ending a filibuster and moving to a vote — a stringent supermajority requirement that maintained the Senate as a place in which minority lawmakers could delay majority action almost indefinitely. Still, cloture gave the majority party a procedural tool to end lengthy debate.

In 1919, senators successfully used cloture to end a filibuster against the Treaty of Versailles, one of the treaties that ended World War I.

"Over the next five decades," however, "the Senate occasionally tried to

Does Congress Need a Makeover?

Some experts suggest giving more power to the states.

Given the concern about political polarization, supermajority votes and other potential causes of gridlock, is it time to retool congressional procedures?

It's not outlandish to think that we could tweak the system, says Alan Rubin, director of federal government affairs for the lobbying firm Buchanan Ingersoll & Rooney. "How many cities examine and redo their charters every 25 years? Almost everyone does! They change their charters regularly" to enhance operations. "But we won't even look" at changing congressional rules.

Furthermore, many national governments also "have evolved" substantially over time, Rubin says. The health-care reform law's torturous movement through Congress could be a sign that a streamlining of some kind is needed, he says. (*See sidebar, p. 396.*) "If in December you've got a maybe and then in March you've still got a maybe," the government may be moving too slowly for citizens to be happy with, he says.

Some political scientists suggest that, since the country is highly polarized and gridlock prone at the national level, the United States would do well to make much more policy at the state level instead.

"If we're going to have such a yawning chasm in the country" between left and right, then "the federal government ought to devolve [legislating on more issues] down to the states," says Ivan Kenneally an assistant professor of political science at New York's Rochester Institute of Technology. "It's very hard to pass things when the country is deeply divided," but "the states tend to be self-selecting in who lives there," which could make policy development on contentious issues like health care much easier, he says.

"If you're hoping for legislative change that is in agreement with your own policy preferences, then a very good case can be made for working for that change at the state level" rather than the federal level, says Lara Brown, an assistant professor of political science at Pennsylvania's Villanova University. "Why do we assume Utah should agree with Arkansas?"

Many supporters of leaving the current 60-vote requirement for ending a Senate filibuster unchanged argue that the checks and balances built into the U.S. system have been key to keeping the nation stable and prosperous over the years. But some political scientists say it may be time to take a second look at that supposition.

Many countries, such as in South America, that have governments structured on the American model of many checks and balances "have produced gridlock, which tempts people to start doing things extra-constitutionally," a grave potential danger for a nation, says Anthony McGann, an assistant professor of political science at the University of California, Irvine.

For example, the so-called Weimar Constitution, which governed Germany from 1919 to 1933, had a large number of checks designed to slow the movement of legislation, and that "helped open the way to Hitler's rise to power" as people grew impatient with government's inability to develop effective policies, he says.

"The Netherlands and Sweden have majority rule" — rather than supermajority requirements such as the Senate's 60-vote requirement to end filibusters — "and ironically in those countries you often have much more cooperative legislators because you need possible allies" to band with you to pass legislation,

invoke cloture but usually failed to gain the necessary two-thirds vote," says the Senate website.³⁵

Polarizing issues, such as the position of African-Americans in society, led to the most filibusters. Beginning in the late 1950s, senators repeatedly failed to invoke cloture on numerous filibusters aimed at stopping civil rights legislation. Sen. Strom Thurmond, S.C., then a Democrat, filibustered the Civil Rights Act of 1957 for a record-setting 24 hours and 18 minutes.

Civil rights bills gradually attracted bipartisan support, however, including from Senate Minority Leader Everett M. Dirksen, R-Ill. On June 10, 1964, Sen. Robert C. Byrd, D-W.Va., conducted the final 14-hour, 13-minute speech in the 1964

civil rights filibuster after 71 senators pledged to vote for cloture. (After the law's enactment, with mostly Democratic support, Thurmond switched his party affiliation to Republican.)

In 1975, in a wave of government reforms that followed the Watergate scandal, the Senate lowered the proportion of Senate votes required to invoke cloture from two-thirds to three-fifths.

Party On

Supermajority requirements contribute to the normally slow and deliberate pace of American legislation. But sometimes coherent and strongly op-

posed — "polarized" — political parties also have played a role. The past three decades, in particular, have seen an upsurge in party polarization, especially among politicians, media commentators and local party organizers.

Parties have always been part of the political process — providing a philosophical framework to help politicians communicate issues to voters and help candidates campaign and raise funds. Only infrequently, however, have the leading American political parties been so polarized that bipartisan cooperation was nearly impossible.

Polarization was high just before and after the Civil War and "at the turn of the 20th century, when Congress was

says McGann. In contrast to the strong two-party system in the United States, countries with simple majority rule “tend to develop multiple parties, because everybody is a potential collaborator” to form a legislative majority, he says.

With the U.S. supermajority requirement, on the other hand, “the minority has only the power to block, never the power to actually enact” unless they simply agree with the ruling majority party’s views, McGann says. That provides incentives for the minority to be as obstructive and uncooperative as possible, he argues.

The United States, which has many built-in checks and balances to slow policy change, is actually an international exception as a stable nation with such a system, according to McGann. “When we try to impose this kind of government on other countries, it doesn’t work.” In fact, the United States no longer necessarily backs check-and-balance-heavy constitutions like our own abroad, McGann says. “The constitution we’re imposing on Iraq is much more like that of the Netherlands,” relying heavily on simple-majority decision-making, he says.

Many political analysts argue that U.S. supermajority requirements are vital for the protection of minority views, but



Bloomberg/Andrew Harrer

Supporters of the 60-vote requirement for ending a Senate filibuster say it’s part of the system of checks and balances that has helped keep the nation stable.

McGann says that actually depends on which minorities you’re talking about.

“Historically in the United States” our system “has protected some minorities extremely well,” says McGann. But the minorities who have usually benefited are those “who would benefit most from the status quo,” since our check-and-balance-heavy system makes change slow to accomplish. This means that, historical-

ly, slave owners, segregationists and wealthy landowners were among those whose minority rights were protected, while minorities who did not already hold a privileged social position — such as blacks and women, who waited a long time to get the vote, for example — “have not been so well-protected,” he says.

Meanwhile, the Internet could soon bring a substantial change to the U.S. political landscape — a viable third party candidate for the presidency, muses Stanford University professor of political science Morris P. Fiorina. With many Americans unhappy with Washington’s ability to legislate and with Democrats’ and Republicans’ warring ideologies, the time may be right for a third party candidate to gather a voter-support base of heretofore unimaginable size, Fiorina suggests. “The Internet makes it doable today.”

— Marcia Clemmitt

every bit as polarized as it is today,” mainly over economic issues and immigration, says Sean Theriault, an associate professor of government at the University of Texas, Austin.

But polarization declined “from roughly the beginning of the 20th century until World War II,” remaining “fairly stable until the late 1970s,” when it began steadily increasing, said Princeton’s McCarty.³⁶

Beginning in the late 1980s, “you began to see party leaders in Congress on both sides of the aisle use their resources to convince moderates to toe the party line” rather than permitting them to work on bipartisan bills, says Evans of Union University.

Scholars cite several causes for recent polarization.

“Republicans elected in the 1960s and ’70s for the most part thought that government could really solve some problems,” leading many to seek bipartisan bills alongside Democrats, says Theriault.

“But [President Ronald] Reagan convinced Republicans that government was the problem and also that one could be conservative and still popular with voters,” he says. Theriault adds that Reagan’s hand was strengthened by “some debacles” that plagued Democratic President Jimmy Carter’s administration, such as an oil crisis that left Americans fuming in “hours-long lines at gas stations.”

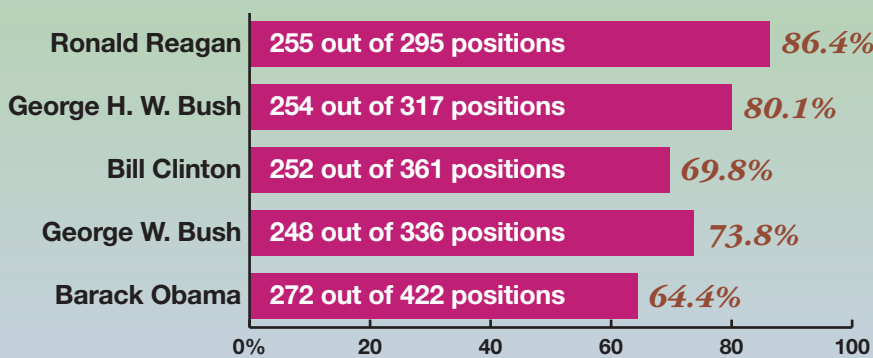
“What explains polarization through history is social and economic division” along with unease over immigration, says McCarty.

Before the 1990s, the last period of intense polarization was The Gilded Age — the closing decades of the 19th century when the country saw rapid economic growth, rapidly increasing wealth in the upper classes and massive immigration, he says. By contrast, in the mid-20th century, when polarization was near historic lows, “there was low economic inequality and strict anti-immigration laws,” McCarty notes. Roosevelt’s New Deal in the 1930s and ’40s, for example, wasn’t as polarizing as some other

Obama Lags in Appointment Confirmations

At the one-year mark in President Obama's tenure, his administration lagged behind all four previous administrations in the percentage of Senate-confirmed positions that had been filled. At the same point in the George W. Bush administration, nearly three-quarters of the appointments had been filled compared with less than two-thirds of Obama's.

Percentage of Senate-confirmed positions in Cabinet departments and executive agencies filled at the one-year mark:



Source: "The Policy Consequences of Senate Obstruction," Center for American Progress Action Fund, April 2010

social measures have been "because the middle class was solidly behind it, believing there was something in it for them," he says.

Regional realignment has also driven the current polarization, says the University of Maryland's Lee. Many Southern Democrats switched their party affiliation after the Democrat-led passage of the 1964 Civil Rights Act, while many Northeastern voters who once would have identified themselves as liberal Republicans became Democrats.

Gerrymandering — redrawing electoral districts to gain an advantage for one political party — is often blamed for polarization, but it's not a major culprit at all, says McCarty. The real issue is that "regions of the country have become more polarized" overall, with conservatives and liberals living separately and developing their political principles based on virtually no awareness of opposing views, McCarty and others suggest.

By the 1990s, for the first time in memory, Republicans realized that they were as likely to seize leadership control in Washington as Democrats, says Lee. (Democrats had reigned as the Senate's majority party from 1955 to 1981, when Reagan took office; they held uninterrupted majority status in the House from 1949 to 1995.)³⁷

When national leadership is seen as legitimately "up for grabs," lawmakers' incentives to battle to the death over legislation greatly increase, to avoid giving the other party a perceived win, Lee explains.

Furthermore, with Washington legitimately "up for grabs," party caucuses increased their staffing, and congressional leaders practiced more "party teamanship," encouraging defeat of the opposition rather than bipartisan initiatives and further driving polarization, says Lee.

Low election turnout may also play a role, says Abrams of NYU's Hamilton

Center for Political Economy. Traditionally, candidates have moved to the ideological center in order to win over the American electorate's vast middle, which tends not to be ideologically committed, he says. But in the past two decades, candidates have begun espousing more hard-line right or left ideologies "to eke out wins" in low-turnout elections, where most voters are the ideologically intense party faithful.

Operation Slowdown

By the 1990s, partisan warfare had reached the point "where you had a rule made for the congressional dining room that you wouldn't have a meal with a member of the opposite party," says lobbyist Rubin.

Procedures like the supermajority cloture rule for ending a filibuster have combined with growing polarization to slow Washington.

In 1951 through 1960, for example, an average of 3.2 filibusters per year occurred, but between 1981 and 2004 the number increased to 16.5, said the University of Miami's Koger.³⁸

Koger argues the cloture rule itself is partly to blame for the rise in filibusters. "Filibustering became an everyday event because senators began responding to obstruction by attempting cloture rather than attrition," he said. As a result, opposition senators found that they could delay legislation without wearing themselves out in round-the-clock speeches. "Once it was easy" to stall a vote, "more senators were willing to filibuster against a broader range of proposals," Koger said.³⁹

Some other congressional procedures have been all but wiped out by rising polarization. Historically, Congress has reconciled House and Senate versions of legislation in "conference committees," where members from both chambers and both parties would have one last chance to hash out

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At Issue:

Should Senate rules make it easier for the majority party to end filibusters?



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the Senate's supermajority cloture rule has become the foundation for pervasive obstructionism in recent decades. This is not the kind of obstructionism that arises only on the most important legislation and makes headlines. Rather, it is an obstructionism that has senators placing holds on dozens of routine measures, yields record numbers of objections to unanimous-consent requests to order the Senate's proceedings and forces deployment of the time-consuming cloture process on the least controversial nominations and bills. It obscures the identity of the party and senators responsible for ineffective government, contributes to public frustration with government and undermines accountability. Delay and blocked action on a wide range of legislation have harmed the nation.

The Senate should take four steps. First, it should expand the coverage of debate limits in the Budget Act to appropriations and tax bills. Major tax bills have been considered as reconciliation bills several times. The Senate should formally recognize this practice and extend coverage to spending bills. We cannot hold the majority party accountable for our spending mess without giving the Senate majority power to act on spending bills. This can be done in provisions of a reconciliation bill, which the Budget Act protects from filibusters.

Second, the Senate should amend its rules to limit debate to two hours on all but two types of motions — those to pass legislation and to approve a House amendment or conference report. By limiting the opportunities to filibuster to near-final action on legislation, the obstruct-at-every-turn tactics of recent Congresses would be undercut, but the minority's ability to engage in lengthy debate on the most substantive motions would be preserved.

Third, the Senate should limit debate to 100 hours — about two weeks — on major legislative action. There are other appealing approaches, such as the proposal by Sen. Tom Harkin, D-Iowa, to ratchet down the cloture threshold from three-fifths to a simple majority in several steps, but there is little reason not to simply guarantee a lengthy period of debate.

Fourth, as proposed by Sen. Jeff Merkley, D-Ore., the Senate should implement these new rules at the start of a future Congress in order to leave today's senators uncertain about which party is most likely to be advantaged by them.

Balancing majority rule and minority rights is a challenge for every democratic legislative institution. It is time to rebalance them in the Senate.



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the filibuster is not a constitutional right. It is grounded in Rule XIX of the Senate Standing Rules, which stipulates that every senator has the right to be recognized to speak on the Senate floor. From that right stems the right to object, and over time the Senate has developed the practice of acting on legislative matters only with unanimous consent. Therefore, in order to conduct business, the Senate majority leader must ask every one of his or her 99 colleagues for permission to consider a bill, amendment, treaty or executive nomination. Any senator who objects can delay or even stop the measure; it currently takes 60 votes to invoke cloture to end a filibuster.

The convoluted procedural motions that were necessary to circumvent a filibuster of health-care reform, and the possibility of blocking the nomination of a new Supreme Court justice to replace Justice John Paul Stevens, have prompted some Congress watchers to propose a decrease in the cloture threshold from 60 votes to 51 votes. This would be short-sighted. Although the filibuster is subject to misuse, it remains the single most important tool to protect minority views.

The framers of the Constitution split the legislative branch to provide two equally powerful chambers — the House of Representatives and the Senate — where elected members could represent citizens' views and interests. The House has evolved into a chamber where the majority party can control the legislative agenda, and the minority can do little more than voice its objections. By contrast, in the Senate, a minority-party senator can use the filibuster to stop legislation, or a nomination or elicit compromise.

In large part, the Senate's capacity to balance out the House rests on the existence of the 60-vote threshold to stop a filibuster. Reducing that threshold to a simple majority will make the Senate too similar to the House. The differences must be preserved so that minority views, even if they belong to only one senator, still may find expression.

Today, a filibuster is almost always hypothetical, in that a senator states his objection but does not have to follow through with extended speech. Therefore, a more productive reform would be to require every senator who objected to a bill or nomination to actually speak indefinitely against it on the Senate floor. Under such a provision, senators would confine filibusters to issues that truly incited the objections of their constituents.

Continued from p. 400

compromise bills, says William and Mary's Evans. "But in the 1990s and 2000s, that began to atrophy. As the place got more partisan, action has backed out of the formal committee rooms and into the leadership of the parties."

"Historically, the Senate didn't play the role of a hurdle" for legislation, but beginning in the 2000s it has, under both Democratic and Republican leadership, says the University of Maryland's Lee. "The two parties are so polarized that they can't work together, and an impassioned minority" can use Senate rules to block Washington from any and all policy change, she says. ■

CURRENT SITUATION

Long, Winding Road

Despite the passage of historic health-care legislation in March, many critics still see gridlock in Washington.

The bill "required five successful cloture votes," eating up a huge amount of time in the 2009 legislative session and for good or ill slowed Democrats' ability to move other measures, says UCLA's Sinclair.

Furthermore, the 60-vote requirement to overcome filibusters "gives the majority leader a big incentive to cut deals" with reluctant supporters, which the public tends to find objectionable, says Sinclair. For example, many conservatives slammed the so-called "Cornhusker kickback," in which Senate leaders offered Nebraska an added \$100 million in Medicaid funds in return for a 60th vote on cloture from health-care-reform skeptic Sen. Ben Nelson, D-Neb. (The money was removed in the run-up to passage of the final measure in March.)⁴⁰

In addition, "if the leader can't get a deal for cloture, the temptation is simply to go on to something else," even if it means abandoning important legislation, Sinclair says. "When that happens, it is difficult for the majority, who have an agenda they believe in, but very cheap for the minority," since they generally object to the majority's plans anyway. This year and in 2009, for example, "from the minority point of view, if the Democrats don't get to their jobs bill or a financial-sector reform bill, so what?" she says.

"Clearly both Democrats and Republicans have used" obstructionist tactics to slow or halt the opposition's agenda, "but Republican voters and activists are a more homogeneous party," making it easier for Republican lawmakers to do this without facing electoral consequences, Sinclair says.

The long slog to a health-care bill has not helped that bill's popularity with the public, some observers say.

At least some public opposition to the health-care bill has arisen "because the debate went on so long," says Kenneally of the Rochester Institute of Technology. "The public would rather see financial regulation" because it speaks to their most pressing current concerns, and voters "never want slowness. They don't want anything to go on for a year-and-a-half."

Nominations Stall

One of the most controversial — and effective — tactics senators use to slow action is the "hold" — a threat to filibuster the vote on a presidential appointee.

Nevertheless, when senators put a hold on an appointment to get the majority leader to consider their concerns before proceeding, they're perfectly legitimate, says Evans of William and Mary. Holds "have been a big part of the process since the 1970s," he says.

Periodically, critics of Senate procedures call for publishing the names of all senators who place holds, as a deterrent to making them lightly. But a hold "is a signal, primarily between a rank-and-file member and a leader, that 'you've got to talk to me,'" Evans says. That being the case, "the leader may not want to share with others" the objecting senator's name.

However, in the view of the University of Texas' Theriault, "very few holds actually have anything to do with the person" nominated, which can lead to abuses. For example, in February Sen. Richard Shelby, R-Ala., put a rare "blanket hold" on as many as 70 Obama nominees to pressure Democrats to fund two multibillion-dollar defense contracts that would provide jobs in his state, Theriault notes.⁴¹

The most common current complaint about holds is that there are simply too many of them and that they remain in place too long.

In March, Grim, at the *Huffington Post*, wrote that Republican holds have stalled Obama's progress in making the executive branch operational to an unprecedented degree. The list of unconfirmed presidential nominees backed up in the Senate by March had 83 more names on it than a similar list had at the same point in the Bush administration, according to Grim.⁴²

Presidential appointments stalled by holds include both executive branch positions and federal judgeships.

The Senate ended 2009 "having confirmed three nominees to federal circuit courts, half as many as were confirmed during President George W. Bush's first year, when more obstruction might have been expected, since the White House and Senate were controlled by opposing parties," *The American Lawyer* noted. "Among nominees for district court judgeships, the difference is even starker — nine won confirmation during 2009 compared with 22 during 2001."⁴³

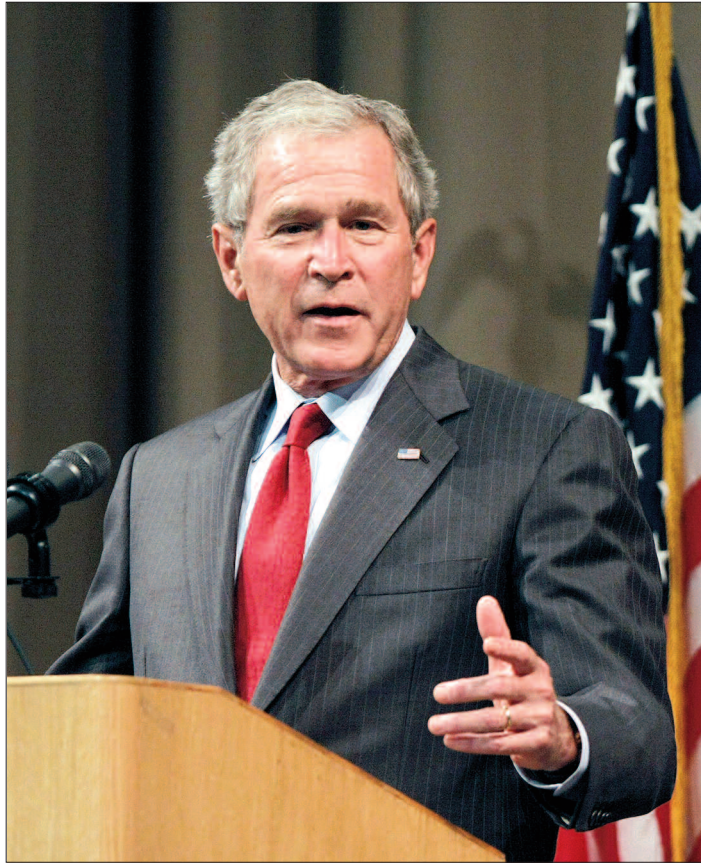
The magazine chalks up the backlog partly to the Democratic majority's having "chosen to spend their time on other issues, such as health care" and partly to Republicans using "the Senate's quirky rules . . . to delay . . . votes."⁴⁴

However, "Bush made considerably more nominations [to the courts] than has Obama," so it isn't necessarily surprising that more were confirmed, according to Russell Wheeler, a visiting fellow at the Brookings Institution. Wheeler also found, however, that, "despite the strong Democratic Senate majority, Obama's circuit nominees' confirmation have taken much longer than Bush's circuit nominees — an average of 202 days versus 154."⁴⁵

On Saturday, March 27, one day after the Senate left Washington for its spring recess, Obama bypassed the Senate approval process by installing 15 nominees via so-called "recess appointments." At the time, Obama had 217 nominees in all awaiting Senate action, *The New York Times* reported.⁴⁶

"At a time of economic emergency, two top appointees to the Department of Treasury have been held up for nearly six months," said Obama. "I simply cannot allow partisan politics to stand in the way of the basic functioning of the government."⁴⁷

Senate Minority Leader Mitch McConnell, R-Ky., condemned the recess appointments as "yet another episode of choosing a partisan path despite bipartisan opposition" to at least one of the appointees.⁴⁸



A comparison of the percentage of confirmed presidential nominees during the George W. Bush and Obama administrations reveals the rise in congressional foot-dragging. One year into his first term, Bush, above, had seen Senate approval of 74 percent of his nominees, compared to only 64 percent for Obama. In the 1980s, President Ronald Reagan won first-year Senate approval of 86 percent of his nominations.

It should be easy enough to reform Senate rules to allow significant debate but still make it easier for the majority party to move to a vote, political scientists say.

President George W. Bush actually proposed one such reasonable change — which would apply to votes on presidential appointees only — several years ago, when his judicial appointments weren't being voted on, says the University of Miami's Koger. "Because amendments can't be offered" by senators who opposed nominations, Bush proposed that the Senate simply set "a certain time frame within which nominations must be acted on," positively or negatively, Koger

says. No such rule is currently in place, however.

Last year Sen. Tom Harkin, D-Iowa, revived a call he made in 1995 — when Democrats were the minority party — to permit ending filibusters without a 60-vote supermajority vote. Under the plan, the first cloture motion would require 60 votes. If that vote failed, debate would continue for a set period, after which cloture could be achieved with 57 votes, and so on, until a simple majority vote could open the way for a vote.

"You could hold something up for maybe a month, but then, finally you'd come down to 51 votes and a majority would be able to" move the legislation, said Harkin.⁴⁹

Such a plan would "preserve some of the incentives to have a slower process that both allows people in the minority party to make their points and people in the country to get a sense of the situation," while still making it possible for a majority to enact legislation, says UCLA's Sinclair.

In March Sen. Frank Lautenberg, D-N.J., proposed that unless the senator who declares a filibuster remains present in the Senate chamber at all times, the majority leader may call for an immediate vote on the legislation rather than for a cloture vote. Under current rules, by simply threatening a filibuster — and without remaining on the Senate floor — a senator can require the majority to achieve a 60-vote supermajority to approve a cloture motion.⁵⁰

"Let's be honest," though, said Harkin. "We're not going to do anything this year. The filibuster reform will happen

Getty Images/Bill Pugliano

when we organize the . . . Senate” anew “next January.”⁵¹

While Harkin has supported easing the cloture rule as both a minority and majority senator, some political scientists wonder whether any majority party will actually make such a change. “The filibuster benefits the minority, and you’re going to be in the minority sometime in the future,” says the University of California’s McGann. ■

OUTLOOK

Vote Them Out?

Fairly or not, many in the public criticize Congress for bickering and failing to act, and Democrats will likely suffer for that in the November midterm elections.

“When the public disapproves of the job that Congress has been doing, elections put that disapproval into action and punish the majority party, no matter what it is” that voters disapprove of — even if it’s mainly obstructionism from the minority party, says Jones of Baruch College.

Over the long term, however, “elections are an effective checking mechanism,” says Evans of Union University. For example, it’s possible that in November 2010 Republicans “could get into office based on obstructionism.”

However, “if they actually did get into power with no solutions but only as the party that said ‘no,’ then they would be right back out again” in a subsequent election, he says.

Contributing to today’s polarization are Republican and Democratic party bases that strongly oppose each other not only on issues like the economy and increased government regulation but also on a whole range of social and cultural issues as well, says Stanford’s Fiorina. Republicans, in particular, “have a tiger by the tail,” since their firm opposition to birth control and gay marriage, for example, help to unify today’s conservative voters but will become a problem soon, since younger generations hold much less polarized and predictable views on these subjects, he says.

“I don’t lack hope” for moving past gridlock, says Mayer of George Mason University. “The American system is adaptable,” and the Senate may approve new rules to end filibusters quicker, for example. Around the turn of the 20th century, “the House was run almost as a dictatorship,” but that altered substantially in a short time, he says.

When Republicans held the congressional majority in the late 1990s and early 2000s, they closed some important meetings — such as conference committee discussions — to Democrats, says Villanova’s Brown. And when Democrats took over, beginning in 2006, they retaliated by holding closed meetings as well. “Somebody has to

make the decision that they’re going to be bigger than that” or “we’ll be headed for mutually assured destruction,” she says. ■

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About the Author



Staff writer **Marcia Clemmitt** is a veteran social-policy reporter who previously served as editor in chief of *Medicine & Health* and staff writer for *The Scientist*. She has also been a high school math and physics teacher. She holds a liberal arts and sciences degree from St. John’s College, Annapolis, and a master’s degree in English from Georgetown University. Her recent reports include “Preventing Cancer,” “Reproductive Ethics” and “Teen Pregnancy.”

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FOR MORE INFORMATION

American Enterprise Institute, 1150 17th St., N.W., Washington, DC 20036; (202) 862-5800; www.aei.org. A free-market-oriented think tank that analyzes political and governance issues.

Brookings Institution, 1775 Massachusetts Ave., N.W., Washington, DC 20036; (202) 797-6000; www.brookings.edu. A centrist think tank that studies the history and theory of legislative action, including the filibuster.

Center for American Progress, 1333 H St., N.W., 10th Floor, Washington DC 20005; (202) 682-1611; www.americanprogress.org. Progressive think tank providing analysis of congressional and political issues, including the Senate's cloture rule.

Center for Individual Freedom, 917-B King St., Alexandria, VA 22314; (703) 535-5836; <http://cif.org/v>. Policy-analysis and advocacy group studying the three branches of government based on concerns that judges and lawmakers increasingly encroach on individuals' constitutional freedoms.

Center on Congress, Indiana University, www.centeroncongress.org. Nonpartisan university-based center providing information about Congress.

The Congress Project, Woodrow Wilson International Center for Scholars, Ronald Reagan Building and International Trade Center, One Woodrow Wilson Plaza, 1300 Pennsylvania Ave., N.W., Washington, DC 20004-3027; (202) 691-4000; www.wilsoncenter.org. Promotes dialogue between political scientists and policy-makers, including congressional staff.

The Monkey Cage blog, www.themonkeycage.org. Political science professors from Columbia, George Washington, Georgetown and New York universities blog about political topics, including polarization and gridlock.

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The Senate is the site of partisan warfare and obstructionism today, but it's not the first time. Rules like the 60-vote cloture requirement to end filibusters have long brought accusations that the Senate is a roadblock to policy change. While some current senators would like to revise rules to ease passage of legislation, few attempts at streamlining procedures have succeeded in the past.

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The Next Step:

Additional Articles from Current Periodicals

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Secretary of State Hillary Rodham Clinton said that gridlock between the White House and Congress in appointing officials for critical foreign policy positions is hurting relations with foreign governments.

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Partisanship is essential to democracy, but when political rivals are not credited with acting out of principle, partisanship deteriorates into polarization.

CITING CQ RESEARCHER

Sample formats for citing these reports in a bibliography include the ones listed below. Preferred styles and formats vary, so please check with your instructor or professor.

MLA STYLE

Jost, Kenneth. "Rethinking the Death Penalty." *CQ Researcher* 16 Nov. 2001: 945-68.

APA STYLE

Jost, K. (2001, November 16). Rethinking the death penalty. *CQ Researcher*, 11, 945-968.

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