

Partisan Agenda Control in the Senate: A Preliminary Hearing*

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Abstract:

In this paper, we seek to answer the following question: is a theory of Senate decision making, based on an assumption that the majority party has some measure of agenda control, plausible? Conventional wisdom suggests that individual senators are empowered with enough parliamentary tools to make it impossible for the majority party to effectively dominate the minority. More specifically, rules such as the filibuster, unanimous consent agreements, and virtually unlimited amendment procedures imply that the assumption of majority party agenda control in the Senate is baseless and implausible. However, the majority is not without its own powers, such as the non-debatable motion to table and the ability of the majority leader to use his privilege of first recognition to “fill the amendment tree.” Through a combination of the current literature and our own arguments and data, we make the case that a partisan theory of the Senate is indeed plausible and worth testing scientifically, rather than dismissing on the basis of assumptions alone.

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I. Introduction

Partisan theories of legislative outcomes in the House of Representatives have flourished (Rohde 1991; Aldrich 1995; Aldrich and Rohde 1998, 2000, 2001; Cox and McCubbins 1993, 2002, 2004; Sinclair 1995, 2002).¹ The past two decades has seen a paradigm shift from a picture of Congress without parties to a portrait of a majority party dominated House.² Yet, the Senate we perceive today is not much changed from the one portrayed by congressional scholars two decades ago; a largely partyless institution dominated by individualism and minority obstructionism (Smith 1989, Sinclair 1989)

That is not to say, however, that there have been no systematic attempts to bring parties into theoretical treatments of Senate decision-making. Over the past five years in particular, congressional scholars have developed theories of Senate decision making that incorporate parties as central to the process (Campbell, Cox, and McCubbins 2002; Chiou and Rothenberg 2003, Bargan 2003, 2004, Koger 2003, Marshall, Prins and Rohde 1999). Further, when put to empirical tests, the hypotheses generated by these theories have been largely borne out (Campbell, Cox, and McCubbins 2002; Bargan 2003, Koger 2003). Yet, many congressional scholars remain unconvinced of these theories.

The focus of this skepticism is not on the tests or on the data, but on a core assumption of the theories. At the heart of theories of partisanship in the House is an assumption about the ability of the majority party to control the agenda. More specifically, tools such as committee chairmanships (Rohde 1991), domination of the rules committee (Sinclair 1994, 2002; Dion and Huber 1996), unity on procedural votes

¹ Indeed, this long list of cites is only tip of the iceberg. The literature on party effects in the House has become truly voluminous. For some recent examples, see McCarty, Poole, and Rosenthal 2001, Ansolabehere, Snyder, and Stewart 2001, Cox and Poole (2002), Snyder and Groseclose (2000), Groseclose and Snyder (2003).

² Of course, partisan theories are not without critics, see e.g. Krehbiel 1993, 1999, 2000.

(especially special rules votes) (Crespin, Rohde and Vander Wielen 2002, Rohde 1991), and the speaker's ability to determine the order of business (Oleszek 2004), provide the justification for assuming that the majority party can block any legislation it wishes (i.e. negative agenda control) and, under certain conditions, push favorable legislation through the chamber over the objections of the minority party (i.e. positive agenda control).

Because many of these majority party agenda control tools are absent in the Senate while other minority empowering tools – such as the filibuster (Binder and Smith 1997), unanimous consent agreements (Smith and Flathman 1989), and virtually unlimited amendment procedures (Smith and Gamm 2005) – exist, conventional wisdom implies that assuming majority party agenda control is baseless and implausible. Thus, regardless of the empirical support for partisan theories of Senate decision-making, the paradigm shift that characterizes scholarly thinking about the House has not taken place with respect to the Senate.

The intention of this paper is to investigate the plausibility of a key premise of these theories. We neither develop nor test a theory of partisanship in the Senate, nor do we have any particular theory in mind. We are focused on a single assumption, explicitly or implicitly advanced in several recent theories: *that the majority party in the Senate has advantages in controlling the agenda, over any other coalition or individual in the chamber*. One might think of this paper as a preliminary hearing; we are simply trying to ascertain whether there is enough evidence to put these theories on trial, or whether (as the conventional wisdom suggests) the case should be thrown out before we ever get to the testing phase.

The paper is divided into two parts. In the first part, we briefly examine the epistemological issues concerning critiques of theoretical assumptions. Specifically, we argue that scientific inquiry requires that even where there is some doubt about the real world accuracy of a theory's assumptions, the evaluation of the theory should be based on its economy and ability to make accurate predictions born out by empirical data relative to other theories covering the same phenomena.

The second part, which constitutes the bulk of the paper, begins by advancing a framework for evaluating the plausibility of the majority party agenda control assumption in the Senate. Specifically, we conceive of agenda control as the ability to control the flow of legislation that reaches a final passage vote in the Senate, and attempt to account for nearly all of these possible "pathways to the floor." We then offer a combination of arguments and preliminary evidence to suggest that, for at least some of these pathways, the majority party has distinct advantages in controlling the agenda, while they are not at a disadvantage on any pathway.

II. Attacking Theoretical Assumptions

To what extent should the evaluation of a theory be based on the real world accuracy of its assumptions? In the second part of this paper, we will construct an argument intended to convince the reader that majority party agenda control in the Senate is a plausible assumption. Yet, let us assume in this brief section that we cannot convincingly demonstrate the absolute real world accuracy of the assumption. Should we then reject, out of hand, any theory based on this assumption?

From a scientific perspective, that answer is certainly no. Of course, it is neither useful nor possible to recount the extensive literature that engages the philosophy of science and questions related to the evaluation of theories.³ However, the main logic and basic conclusions can be stated quite concisely. It is precisely the disagreement over the accuracy and necessity of assumptions that leads us to use science as a means for evaluating competing theories. Disagreement over which set of assumptions most accurately and parsimoniously explains a phenomenon or set of related phenomena is the *key* motivator for scientific inquiry. Thus, to dismiss theories based on their assumptions without considering the empirical evaluation of their hypothesis is to forgo the scientific process all together.

To return from this abstract scientific discussion to more local frame of reference, consider the evaluation of assumptions in formal models. Dismissing a formal theory solely on the basis of false assumptions is regarded as highly problematic. As Morton (1999: 146) notes, “assumption evaluation is useful and necessary for building better theory (it is meaningful), but at the same time we should not discard or accept theories based on assumption evaluation alone.” Indeed, as Morton goes on to point out, we know with certainty that some assumptions of formal theories are false, and yet we do not automatically discard the models on that basis.

This point is particularly relevant given that many of the theories that employ the Senate agenda control assumption – and, indeed, many of the theories that seek to explain legislative outcomes in general – are expressed formally. Thus, we need look no further than the debate over congressional organization to find another theory that is vulnerable

³ In broad strokes, consider Lakatos (1970), Campbell (1984), Hoover and Donovan (1995), Morton (1999) on the question of evaluating theories.

to the critique of unrealistic assumptions. In defense of his “pivotal politics” model, Krehbiel (1998: 27-28) writes,

“...it bears emphasis that the nonpartisan modeling choice is, at this juncture, a theoretical postulate--not an empirical argument. As such, the proper perspective for neutral readers is the following. If the choice to model lawmaking as a nonpartisan game is flawed, then the data are less likely to corroborate the theory. Judgments regarding this assumption (or nonassumption, more precisely) ought therefore to be suspended.”

Certainly, *prima facie*, the assumption that parties have some measure of agenda control in the Senate is no more a departure from reality than assuming they play no part in the legislative process at all. Thus, here too, it seems that the neutral reader may wish to suspend judgment pending the results of hypothesis testing.

Nonetheless, all else being equal, there is a clear preference for theories whose assumptions are at least plausible abstractions from reality. Thus, in the next section, we turn to the task of building a case for the plausibility of the Senate agenda control assumption.

III. The Plausibility of Senate Agenda Control

Currently, students of American legislative institutions are faced with an interesting puzzle. The puzzle is this: why have notions of agenda control and broader theories in the *House* developed so fully, while this is not the case in the *Senate*? Most prominently, Cox and McCubbins (1993, 2004) have argued that controlling the agenda is the key to controlling outcomes in the House. Is this also the case in the Senate? It is clear that in the Senate there is an agenda. Further, it is clear that the Senate agenda is not based on pure chaos. Naked eye observation suggests that a senator, or group of

senators, have imposed some measure of order on the flow of legislation in the chamber. Yet beyond this observation, we have a surprisingly vague picture of who controls the agenda, and under what conditions they do so, in the Senate.

We contend that the answer to the above stated question, regarding the disparity between the two chambers, is illuminated by applying the following question to both the House and Senate: Who controls the legislative agenda? In the House, the answer is straightforward: the majority party. It is straightforward due to the relatively simple yet powerful set of tools that allows the majority party to exert agenda control in the House; namely, the Speaker's scheduling power, control over committee chairmanships, and control of special rules (with the Speaker playing a large part in controlling the second two). Thus, a parsimonious procedural environment, combined with a great deal of attention by top quality congressional scholars, has led to a clear picture of House agenda control. In the Senate, the picture is nowhere near as . There is no single procedural tool, such as a special rule, that does most of what needs to be done to secure agenda control in the Senate. Instead, there are a wide variety of pathways that a bill can take to reach a final passage vote, and thus the procedures that control the flow of legislation in each of these avenues must be accounted for.

One solution to this problem is to conceptualize all these various pathways as analogous to components of a special rule in the House, each slightly different than their counterparts in the other chamber. Certainly, this does not produce a perfect fit (Evans and Oleszek 2001). Yet, in adopting this strategy, and conceptualizing Senate agenda control with this common language, we hope to move towards a more complete understanding of agenda control in the Senate.

While we see the development of this framework as a (and possibly *the*) principal contribution of this paper, the more specific motivation for this enterprise is to investigate the plausibility of assuming that the majority party has a disproportionate share of agenda control in the Senate. There are a range of things we can mean by majority party agenda control. At one extreme, we could characterize agenda control as akin to the legislative process under a parliamentary system. This would imply that the majority party can simply dictate outcomes by costlessly placing some items on the agenda and seeing them pass while blocking votes on any undesirable policy changes. On the other extreme, we could think of agenda control as empowering the majority party in just a few cases under very specific conditions, where they can exercise either positive or negative agenda control. At this point, it is probably appropriate to reemphasize that we are not advancing a new theory, nor are we attempting to test any theory. Rather, we seek only to demonstrate the plausibility of an assumption. As such, at minimum, we aspire to convince the reader that the Senate majority party has agenda control that is somewhat more substantial than the latter extreme, while no other Senate coalition surpasses that threshold.

That is, in the following exercise, we simply seek to demonstrate that the majority party, more so than any other coalition that can possibly form, has a broad and systematic bias in terms of both its positive and its negative agenda control. Thus we do not seek to show, nor do we think that it is the case, that the majority party in the Senate is able to *dictate* outcomes through the manipulation of the agenda, even to the degree that the majority party is able to do in the House. We will argue, however, that the procedural

tools available to the Senate majority party – which are the cornerstones of their agenda control advantage – are fixtures in modern Senate organization.

In this section, we do not pretend to show the “smoking gun” that others have failed to point out in the Senate literature. On the contrary, the section below draws on scholars whose expertise on Senate procedure far exceeds our own. Our hope is to shed new light on Senate agenda control, building a broader framework by pulling together the implications of excellent previous research by Senate scholars. In this sense, our contribution is to construct a cohesive whole that will provide a clearer picture of Senate agenda control than that offered by the sum of the parts.

3.1 Pathways to the Senate Floor

In Figure 1, we characterize some of the ways bills can reach the floor in the Senate. Below, we briefly discuss each of the routes, drawing heavily on Oleszek (2004) as a guide, but also relying significantly on Ainsworth and Flathman (1995), Schiller (2000), Evans and Oleszek (2001), Campbell (2004).

3.1.1 Minor Pathways

First, we take up a brief discussion of two pathways that are rarely used, the discharge petition and suspension of the rules. Both pathways are means to circumvent the committee system and bring legislation to the floor. Like the House, the Senate also has a procedure for extracting bills from committee through a discharge petition under Rule XVII. Although only one senator is needed to initiate the discharge procedure, a majority is needed to successfully take the bill from committee. As the diagram shows,

an attempt to discharge a bill can also be filibustered. Consistent with the House, this path to the floor is rarely used as a method to move legislation.⁴

Though rarely used, it is also possible to suspend the rules in the Senate. In contrast, the House leadership frequently passes non-controversial legislation under suspension of the rules, a practice that increased dramatically after the 1994 Republican takeover (Crespin, Rohde and Vander Wielen 2001). It is unsurprising that this would not take the same form in the Senate, however, as consensual legislation that would normally pass under suspension of the rules in the House is usually passed with simple unanimous consent agreements in the Senate. While the rules do not say how many votes are needed for suspension in the Senate, precedent places the threshold at two-thirds of those present and voting. Similar to the discharge petition, it is possible to filibuster the motion to suspend the rules.

Given that these pathways are never used, why discuss them at all? We simply wish to point out that for both of these avenues to final passage, no other coalition can push a bill through more easily than the majority party nor can they push a bill through over the objections of the majority party. Thus, while neither of these pathways provides a means by which the majority party can exercise a disproportionate share of positive agenda control, they also do not constitute a means by which some other coalition can undermine the majority party's control over the agenda.⁵

⁴ In the history of the Senate, only 14 bills have been discharged from committee and none since 1964 (Oleszek 2004).

⁵ There is a similar discussion surrounding majority party agenda control in the House regarding the discharge petition and suspension of the rules in the House (Cox and McCubbins 1993, 2004) and indeed the same conclusion is reached in the House that neither of these pathways provides a reliable means of undermining the majority party's agenda control.

A third way to work around the committee system is through the use of Rule XIV, a tactic that has been on the rise in recent congresses (Evans and Oleszek 2001). In the 107th Congress, 41 measures were placed on the calendar in this way with 10 passing the Senate and 7 becoming law (Rundquist 2003). This rule allows a member to have a piece of legislation placed directly on the calendar by objecting to further consideration on a bill or joint resolution on the second reading. Once the objection is made, the measure is then put directly on the legislative calendar (Rundquist 2003). According to Oleszek (2004), this is actually a tool that the leadership can use if it fears a bill will get stuck in committee or if time is running out and the issue is important to the party. However, this is only a way to end-run the committee system since the measure must still be taken off the calendar for consideration either by unanimous consent or through a debatable motion. Further, while any senator can use this rule, he or she must first be recognized by the presiding officer. Hence, the majority leader's privilege of first recognition gives a slight advantage to the majority party.

3.1.2 Motion (to Proceed)

Beyond these minor pathways that circumvent the committee system, it is also possible for any senator to place a measure on the floor through a motion (motion to proceed). However, it is unlikely that the motion will be acted upon unless the leadership has previously discussed it and already come to an agreement on the bill. Thus a key component to the majority party's ability to control the agenda revolves around the ability to stop legislation from coming to the floor at this stage and control the number and nature of amendments that do make it to the floor under a motion to proceed.

3.1.3 Amendments

In all pathways except for UCAs (discussed below), the ability of any senator amending a measure exists according to Senate rules.⁶ This has consequences for both positive and negative agenda control. In the most extreme case the foremost challenge posed by the amendment is to undermine the gate-keeping ability of the committee chairs. It is possible to offer an amendment in the nature of a substitute that can effectively take a bill that is sitting in committee and move it out of committee for consideration by the floor. If this sort of substitute amendment procedure were able to take place without cost, then any piece of legislation would effectively be available for immediate consideration on the floor under an open rule. This is what we mean to characterize in the figure when we diagram “bill from anywhere” being able to make its way to the floor as an amendment. The implication of this for the majority party’s negative agenda control is significant. Consider that in both the House and Senate more than 90 percent of legislation dies in committee (Davidson and Oleszek 2004). Further, assuming that committee chairs are acting as agents of the majority party, any bill that the majority party would prefer to kill, but a majority of the floor would support for passage, would pass under an unrestrictive amendment system but fail under a system where committee chairs have real vetoes.

In order to shore up the veto power of committee chairs, the majority party leadership employs two tactics that deter any coalition from using the amendment process to end-run committee gate-keeping. The first tactic is known as “filling the amendment

⁶ Of course, it is possible for senators to propose amendments under a UCA, but only if it is part of the agreement.

tree” (see Schiller 2000, Campbell 2004, Sinclair 2000, Evans and Oleszek 2000) and the second is using the motion to table.

Filling the amendment tree is a strategy implemented by the majority leader using his right of first recognition and the combination of precedent and Senate rules that define the number and degree of amendments that can be offered at any one time on a given bill and the order that the various amendments come to a vote. Trent Lott used this procedure more than previous leaders, in part to keep his fellow Republicans from having to take public stances on controversial measures (Schiller 2000).

In order to “fill the tree,” a senator first offers an amendment to a measure (first degree) and then offers several other second degree amendments to the first amendment until it is no longer possible, under Senate rules, to offer any additional amendments to the initial amendment. Because the majority leader is recognized first, it is possible for him to fill the tree before any other senator has the ability to offer amendments that could move the legislation in an undesirable direction. Further, since the first proposed amendment is voted on last, the leader can make sure that his preferred amendment can beat the penultimate amendment and so on. By not allowing other senators to offer other amendments, we can see that the leader has negative agenda power over any other coalition of senators and can effectively put a closed rule on legislation once it leaves committee (Schiller 2000, see also Krehbiel 1991). This conjecture is supported by Campbell (2004) who has studied this procedure for the 105th Congress. She concludes that “... majority and minority amending in the 105th Congress suggests that the more liberal rules of the Senate may have less dire consequences for majority party agenda

control than previously thought,” (18) Thus, we argue that, in most cases, this tactic serves as an important component of partisan negative agenda control.⁷

A second way the majority party can exert negative agenda control is through the use of the motion to table. This motion provides the Senate with a way to take final action on a measure when it wishes for the measure to no longer receive consideration. Since the motion is *not* debatable, any coalition constituting a majority of the Senate can table a bill or an amendment. However, the senator offering the motion must first be recognized so, we argue, the advantage again goes to the majority leader. If the majority leader does not want an amendment to come to a vote, he can make the non-debatable motion to table the measure under consideration. Further, similar to the rationale behind party line votes on controversial special rule votes in the House, the motion to table also allows for members to vote in a partisan fashion on procedure, instead of substance. This makes it more difficult for the “people back home,” to decipher their Senators’ substantive voting record. On this point, Oleszek (2004:236) notes:

“Therefore, if a procedural vote can be arranged to kill or delay a controversial bill, it is likely to win the support of senators who may prefer to duck the substantive issue. Moreover, senators generally support the party leadership on procedural votes. As one senator has pointed out, on a procedural vote, members ‘traditionally stick with the leadership.’”

Marshall, Prins and Rohde (1999) argue in their study of the Senate appropriations process that table motions are a way to blunt attacks on legislation. They find that table motions are frequently proposed by the majority and are used to target amendments sponsored by the minority party. This gives some initial support to the idea that the

⁷ We should point out that this tactic is not always a successful one. See Sinclair 2000 for unsuccessful attempts and Schiller 2000 for more detailed use of this procedure.

majority party can (and indeed does) use procedure to exercise negative agenda control in the Senate.

In Table 1 we provide additional evidence regarding the use of the motion to table. We first demonstrate the frequency of table motions as compared to all other roll call votes.⁸ From the 101st to the 104th Congress, table motions made up roughly one third of all roll calls in the Senate. From these figures, it is evident that this motion is used quite frequently. But how is the motion being used?

In Table 2, we give some preliminary data to support the notion that the motion to table provides negative agenda power targeted against amendments. This table describes how the motion is being used in the Senate. It is clear from the table that the motion is most frequently used to table amendments. In each of the four congresses, the motion to table amendments ranged from a high of 96.2 percent of table motions in the 101st Congress to a low of 87.3 percent in the 104th. Quite clearly, table motions are being used to attack amendments. But are they being used as a tool of the majority party?

Finally, in Table 3 we show the extent to which the majority and minority parties are successful on tabling motions.⁹ As a measure of success, we use roll rates, where a roll is defined as a majority of one party voting against a table motion that nonetheless passed.¹⁰ First, the average roll rate for the majority party is only 10.1 percent, ranging from a low of 5.5 percent (104th Congress) to a high of 19.5 percent (102nd Congress). Taken by themselves, these relatively low rates imply support for the notion that the

⁸ Data from <http://thomas.loc.gov/home/rollcallvotes.html> for Tables 1 and 2.

⁹ We should note that we currently do not take into account the size of the majority. See Krehbiel (2004) for a discussion on the limitation of the use of roll rates to uncover partisan advantage.

¹⁰ The data are from Andrea Campbell. Note that this table includes all table motions, not just motions to table amendments. The Campbell data do not distinguish between different types of table motions whereas it was possible to code this from the data available on THOMAS.

majority party is pushing these table motions. This contention is strongly reinforced when we look at minority roll rates. Here, we see that the average rate is 45.3 percent, ranging from 33.3 percent in both the 96th and 102nd Congresses to a high of 69.3 percent in the 104th. By comparing the two rates, majority and minority, the data strongly suggest that the majority is more successful in asserting negative agenda control when compared to the minority with regard to motions to table. In fact, in all but the 102nd Congress, the minority is rolled more than twice as often as the majority. In the 104th Congress, the majority is *twelve* times more successful in their table motions than is the minority.

This preliminary look at the data on table motions suggests a different picture than that offered by the conventional wisdom. Rather than an individualist free-for-all of amendment activity, the Senate floor would seem better characterized as an arena where the majority party can exercise a significant degree of negative agenda control through the use of tabling motions.

3.1.4 Unanimous Consent Agreements

Returning to the special rule analogy, one might think of the motion to proceed and succeeding suppression of amendments by the majority leadership as the Senate's version of a closed rule. In comparison, a UCA (or the UCA process) can be likened to a modified-open or modified-closed rule.¹¹ In our discussion of UCAs and the ability to

¹¹ We note that Evans and Oleszek 2000:97 suggest that a UCA cannot be likened to a special rule in the House since a "mega-UCA" that covers every aspect of a piece of legislation is unusual. While we agree, as a technical note we would point out that the UCA process, which may include several UCAs on the same bill, can still be loosely compared to a modified open rule. More importantly, it may be a useful starting place, as an analogy, for thinking through UCAs in terms of agenda control, even if the exercise ultimately highlights the differences between the two chambers.

gain partisan advantage, we focus largely on the bargaining advantage inherent in the majority party position.

Unanimous Consent Agreements give the Senate the ability to bypass formal rules and procedures and bring legislation to the floor only with the approval of each and every senator. For routine or noncontroversial legislation, simple UCAs are often used. For major or controversial legislation, UCAs become more complex. Frequently, UCAs cover only parts of bills (or resolutions, amendments, nominations etc), or several UCAs may be bargained for different sections of the legislation. UCAs may contain agreements about the number and type of amendments that can be offered, timing (and ordering) of votes for the measures and limits on the time for debate.

Ainsworth and Flathman (1995) argue that UCAs are actually a tool of the leadership and not just a way to echo the demands of individual senators (Sinclair 1989; Smith and Flathman 1989). They argue that senators and leaders are willing to make trade-offs between an efficient running chamber and their rights for unlimited debate. Their formal model suggests that the leader is able to gain advantage by simultaneously serving the needs of some members with real demands and nudging others into line. If the leader can effectively discriminate between the two types of members (high and low demanders), they can make sure that the trains do run, and run on time. For example, if the leader knows a member has a crucial piece of legislation that needs to be voted on later in the session, he can convince that senator to agree to the current UCA by threatening to not schedule the second measure.

Essentially, what we (and Ainsworth and Flathman 1995) argue is that UCAs can be a bargaining tool for the leadership. As in the House, but not to the same degree, the

majority leader in the Senate has some carrots and sticks to dole out. First and foremost, the leader can promise, or withhold a promise, to schedule a senator's more preferred piece of legislation at a later date. The scheduling prerogative (the ability to gate-keep) may be the key to the majority party's positive agenda control if members are willing to concede on one issue to give life to another.

More recently, the majority leader now has the ability to appoint half of the vacancies to the so called "A" committees in the Senate. According to reports, critics are wary of the new power since it now gives the majority party leadership a way to punish or reward senators in ways that it could not in the past.¹² In the House, power over committee assignments has been used to keep recalcitrant members in line (Rohde 1991).

If a UCA is not possible, because of a hold placed on the legislation by an individual senator, then the majority party can circumvent the UCA with a certain amount of cost. For the majority party this implies the possibility of an uphill battle, as they have to overcome a likely filibuster (This is discussed in more detail below). However, overcoming a hold is not an impossible task. Recently, scholars (Evans and Lipinski 2005) were able to uncover hold data for the Republican Party for 1977-78 and 1981-82. They found that when the Republicans were in the minority, 73.8 percent of legislation that was "held" eventually passed the Senate in some form.¹³

For an individual or coalition of individuals from outside the majority party that wishes to pass a bill, the task is nearly impossible if the majority wants to kill the bill. They have to overcome the motion to table, on which party unity is extremely high, then they have to overcome a filibuster from the majority party side with fewer resources than

¹² *The Hill*, "Frist Gains New Powers," Nov. 18th 2004.

<http://www.thehill.com/thehill/export/TheHill/News/Frontpage/111804/frist.html>

¹³ In contrast, when the Republicans were in the majority, only 27.7 percent were eventually passed.

the majority party has to break a filibuster (carrots or sticks) and in the meantime, they have to dodge the barrage of poison pill amendments that are sure to fill the amendment tree by virtue of the majority leader's right of first recognition. This scenario alone conveys an enormous inequality of agenda control between the majority party and anyone else.

3.1.5 Filibuster and Cloture

The majority party virtually never needs to revert to a filibuster to delay or kill legislation. We have talked about the majority party's ability to push through legislation and ward off attacks through other tactics. But just as important, through each of these tactics - tabling motions, filling the amendment tree with poison pill amendments, refusing to go along with a UCA, or never letting a bill out of committee – the majority party has numerous less costly options for killing legislation than resorting to a filibuster.

The filibuster provides a significant hurdle, however, for the notion of positive agenda control by the majority party. Indeed, referring back to Figure 1, all pathways, with the exception of UCAs, must avoid or overcome a filibuster. Thus, in theory, one determined senator could hold up any piece of legislation. Yet, we would argue that the notion of a filibuster as an unmovable barrier is a misconception.

Koger (2004) has modeled filibusters as costly action by obstructionists. The key insight of his model is that there are sets of conditions under which the filibuster is more or less effective. Consider, for example, the difference between a filibuster at the end of a session as opposed to the beginning of the session. Filibusters are much less costly, and thus much more effective, at the end of the session (Schickler and Wawro 2005).

We would add to this observation of the cost of obstruction the disparity in filibuster-breaking resources held by the majority relative to those of any other individual or coalition. Specifically, we point out that the majority party has both the disproportionate ability to buy members' votes on cloture and the ability to propose and sustain legislation at whatever point it wishes. As a consequence, the majority party has a significant positive agenda control advantage, even if they are unable to break every filibuster.

To see how this advantage plays out, it may be useful to consider a simple one-dimensional spatial example. Figure 2 represents the policy space on the Senate floor under a Democratic majority.¹⁴ First, consider the pure-preferences outcome for a bill proposed to address Status Quo 1. Under unlimited amending, the bill would end up at the floor median's ideal point. Given that the cloture pivot is equidistant between the floor median and the status quo, and thus would vote for cloture, no filibuster is undertaken. Thus, the bill would pass at the floor median's ideal point, and the majority party median would be better off under the new policy.

Note, however, that the floor median's ideal point is still some distance from the majority party median's ideal point. Ideally for the majority party median and thus for a majority of the majority party, the proposal would be further to the left. Yet, under a pure-preferences model, this is impossible for two reasons. First, since there is no restriction on amendments, the floor median would always propose its ideal point, which would always pass and then be an unbeatable outcome. Second, even if a proposal were sustained without amendment to left of the floor median, the bill would be filibustered

¹⁴ The example works equally well for a Republican majority.

and would never reach a final passage vote, since the cloture pivot would prefer the status quo.

What we have argued earlier in this paper, however, is that the majority party has the resources, in at least some cases, to circumvent both of these problems. First, by using the right of first recognition and tabling motions, the majority party leadership could sustain a bill proposal anywhere to the left of the floor median (by warding off any amendments), which would optimally be in the interval between the floor and majority party median (denoted in Figure 2).¹⁵ Second, by using their ability to schedule other legislation and pass out other favors and benefits, the majority party has the option to buy the votes of members who, by their preferences alone, would vote against cloture. Note that this is why the proposal might not be at the majority party median's ideal point; because the further the proposal is to the left, the more expensive it will be to buy extra cloture votes. Again, the majority may not always be able to overcome filibusters and moderate outcomes in this way, nor will they always choose to do so when they have the option. But, we would argue, they have the resources to do so in many cases.

The key here, however, is not simply that the majority party has these options. It is that they are the *only* coalition that has these options. Consider the outcome given Status Quo 3. Under a pure preference model, the proposal at the floor median would be filibustered since the status quo is between the floor median and left cloture pivot (not pictured in Figure 2). Note that there is no coalition to the right of the status quo that has the resources to buy extra cloture votes. Further, consider the implications of introducing

¹⁵ Note that one instance where this is not true is judicial nominations. One cannot amend a judicial nomination, but can amend a bill. This is an instance where the Senate majority cannot control the appointments and we end up with filibusters where the majority has few options to overcome the delaying tactics.

the majority party into the model. Since the majority party would prefer the status quo, the process would never get as far as a filibuster. Through a combination of the majority party control of all committee chairs, the majority leaders right of first recognition, the table motion, and majority party holds (all discussed in detail above), the majority party would exercise its negative agenda control killing the legislation well before a filibuster was ever necessary. As evidence on this point, note the extreme rarity of a filibuster from the majority party side (Binder and Smith 1997).

IV. Conclusion

Currently, conventional wisdom suggests that a partisan theory of the Senate is implausible. The picture often painted in the literature portrays the Senate as a group of individuals each wielding equal control over the agenda. In contrast to the House, where individuals' agendas are clearly at the mercy of the leadership, senators are equipped with parliamentary tools that allow them to participate at many stages of the legislative process in both positive and negative ways. By not consenting to UCAs or placing holds on legislation, individual senators are able to exercise negative agenda control. Members can try to attach their own policy preferences to any piece of legislation, achieving positive agenda control through unrestricted amendments. If members cannot get the leadership to schedule their preferred legislation, then they can simply attach it to an existing measure by making use of the non-germane amendment rule in the Senate.

In this paper, we question the extremity of this conventional portrayal. In particular, we argue that it is at least plausible to assume that the majority party in the Senate has a disproportionate share of agenda control, as compared to any other coalition

or individual. Certainly, the majority party in the Senate does not wield the same agenda authority as its counterpart in the House. Yet we have provided arguments and evidence – based both on original data and on the work of other Senate scholars – that the majority party can exercise a disproportionate share of agenda control in the Senate.

For example, we argue that the majority leader can use his privilege of first recognition and the voting rules on amendments to fill the amendment tree, thereby preventing others from moving legislation away from some ideal point or circumventing committee chairs' veto power. The majority party can also use the non-debatable motion to table to 1) kill amendments that may alter a bill in a non-preferable way or 2) avoid having to take a stance on a difficult issue. In either case, these are two examples of the majority party exercising negative agenda control over another possible coalition. Data presented in this paper and by others (Marshall, Prins and Rohde 1999) suggest that this is indeed the case. The motion to table is used to target minority proposals, and the majority is rolled substantially less often on these motions. This suggests that the ability of any member to use the amendment process to alter legislation may not be as great as once was thought.

In terms of UCAs, work by Ainsworth and Flathman (1995) suggests that they are really a leadership tool rather than a means to constrain the majority. The majority leader can use his ability to schedule (or not schedule) legislation as a carrot or stick to get members to agree to a current UCA in return for promises to get their preferred legislation to come to a vote. The majority leader also now has some ability to keep his own party in line through his newly won appointment powers to the “A” committees.

Others (Evans and Lipinski 2005) provide us with a glimpse into the previously secret process of holds and show that the minority party was not as successful in placing holds on legislation as textbook theories might suggest. Their data show that the minority party was successful less than 30 percent of the time in stopping legislation from passing. This demonstrates one weakness in the minority party's ability to exercise negative agenda control. Finally, we demonstrate the advantage that the majority has over the minority when it comes to filibusters.

In sum, we have attempted to demonstrate – using both logical arguments based on Senate procedure and large N data investigations – that the assumption of majority party agenda control in the Senate is not at all implausible. If we have been fully persuasive, then we hope this will pave the way for full consideration and investigation of partisan theories of Senate organization. If we have fallen short, then at minimum, we hope that we have structured the problem in such a way as to move the discussion in the right direction.

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Figure 1 – Pathways to the Floor in the Senate

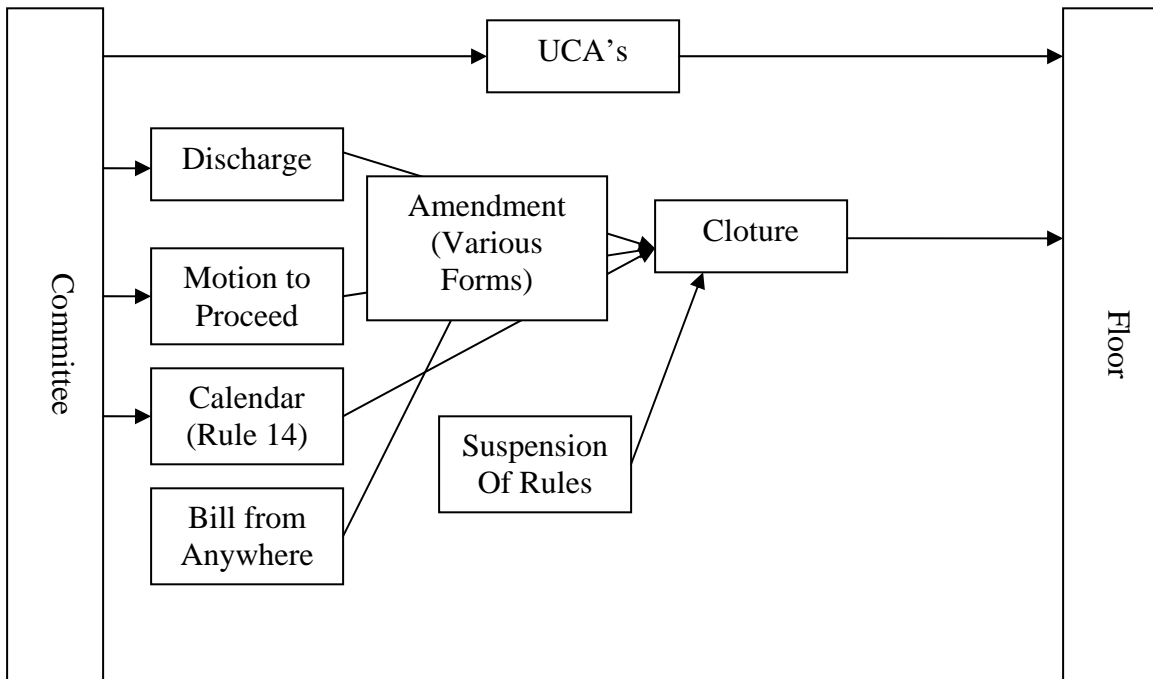


Figure 2

Bills Majority Can Get by
Buying Cloture Pivot for...

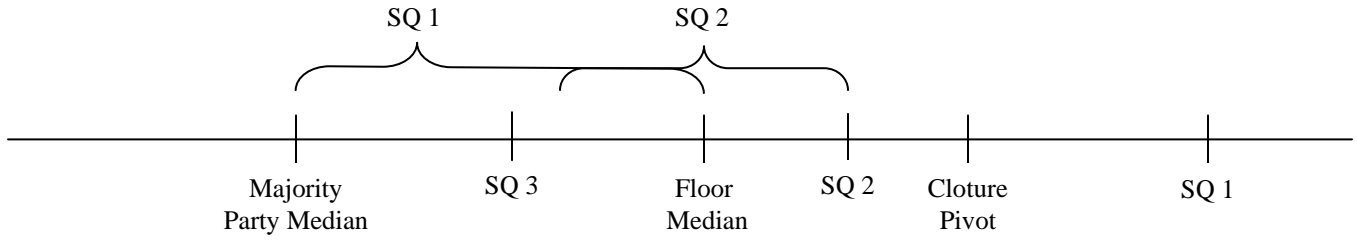


Table 1 – Frequency in use of the Motion to Table in the Senate, 101st-104th Congress

Congress	Table Motions		All other Roll Calls		Total
101	28.9%	(184)	71.1%	(453)	(637)
102	28.9	(159)	71.1	(391)	(550)
103	29.0	(210)	71.0	(515)	(725)
104	35.8	(314)	64.2	(563)	(877)
Total	31.09	(867)	68.91	(1,922)	(2,789)

N's in parentheses

Table 2 – Variation on the Motion to Table in the Senate 101-104th Congress

Congress	Motion to Table:								
	Amendments		Motion to Recommit		Motion to Reconsider		Miscellaneous		Total
101	96.2%	(177)	0.5%	(1)	0%	(0)	3.3%	(6)	(184)
102	98.7	(157)	0.6	(1)	0	(0)	0.6	(1)	(159)
103	95.7	(201)	1.4	(3)	0	(0)	2.9	(6)	(210)
104	87.3	(274)	3.5	(11)	1.3	(4)	8.0	(25)	(314)
Total	93.3	(809)	1.9	(16)	0.5	(4)	4.4	(38)	(867)

Table 3 - Majority and Minority Roll Rates on Table Motions in the Senate, 95th - 104th Congress

Congress	Majority	Minority
95	15.2%	34.6%
96	8.8	33.3
97	7.4	47.1
98	9.0	44.5
99	7.2	41.6
100	10.1	44.5
101	13.5	39.3
102	19.5	33.3
103	7.7	62.0
104	5.5	69.3
Total	10.1	45.3

The preliminary hearing is like a mini-trial. The prosecution will call witnesses and introduce evidence, and the defense can cross-examine witnesses. However, the defense cannot object to using certain evidence, and in fact, evidence is allowed to be presented at a preliminary hearing that could not be shown to a jury at trial. If the judge concludes there is probable cause to believe the crime was committed by the defendant, a trial will soon be scheduled. However, if the judge does not believe the evidence establishes probable cause that the defendant committed the offence, they will dismiss. Partisan agenda control in the US house: A theoretical exploration. JA Jenkins, NW Monroe. *Journal of Theoretical Politics* 24 (4), 555-570, 2012. 14. 2012. Party Agenda Control in the Senate: A Preliminary Hearing. MH Crespin, NW Monroe. Typescript. Michigan State University, 2005. 9*. 2005. The policy impact of unified government: evidence from 2000 to 2002. The preliminary hearing is not a trial, but it can seem like a mini-trial in ways. There is live witness testimony and attorneys will cross examine witnesses to test their credibility, like in a trial. The accused can also present his own witnesses, perhaps to establish an alibi or other defense. Torrance Superior Courthouse. After listening to the testimony and seeing evidence, the court is required to decide if there is enough probable cause to believe that a crime was committed. The court is also required to rule on whether there is enough probable cause to believe that defendant committed