Three characteristics make the U.S. Senate unusual among upper chambers: it shares legislative power equally with the House of Representatives; it operates under a set of rules that vests enormous power in each senator; and when majorities rule in the Senate it is only by leave of minorities. In this chapter, I examine the development and contemporary functioning of the Senate, with special emphasis on these characteristics and on their effects on public policy and governance in the United States.

The Senate of the late twentieth century consists of one hundred senators, two popularly elected from each of the fifty American states for six-year terms. It contrasts with the House of Representatives, in which
representation is based on population and terms last two years. Like House members, almost all senators are members of one of the two major American political parties. But, because political parties are relatively weak in the United States, senators do not owe their elections primarily to their party organizations. Party leaders in the states and in Washington, D.C., have only limited influence over the behavior of senators and certainly cannot control them. As one chamber of the legislature in a division-of-powers system, the Senate exercises policy-making power independent of the executive, as does the House of Representatives.

Constitutional Origins and Contours

Political theory and practical politics produced the U.S. Senate. Bicameralism was an essential component of the separation of powers in the Framers' view. As James Madison wrote in Federalist no. 51, "In republican government the legislative power necessarily predominates. The remedy for this inconvenience is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit" (Hamilton et al. 1961 [1788], 322). The Virginia Plan that formed the basis for the Constitutional Convention's deliberations called for two legislative chambers, and a unicameral legislature was never considered.

If bicameralism was a broadly accepted principle and thus the creation of a second chamber was not controversial, the basis of representation in that second chamber proved to be the most highly contentious issue the Framers faced. Their solution—two senators per state to be chosen by the state's legislature—was a political deal that the small states extracted from the large states by their adamant unwillingness to settle for less. As added insurance, the small states secured a provision making their equal representation in the Senate effectively impossible to change; the provision for amending the Constitution states that "no State, without its Consent, shall be deprived of its equal Suffrage in the Senate" (Article V). In Federalist no. 62, Madison does not even try to justify the equal representation in the Senate of states of highly unequal population as anything other than a political deal (Hamilton et al. 1961 [1788], 377).
In the Framers' view, bicameralism would provide a safeguard against "schemes of usurpation and perfidy" by "requiring the concurrence of two distinct bodies" (*Federalist* no. 62, Hamilton et al. 1961 [1788], 379). A well-constructed second chamber would, in addition, provide experience, stability, and a guard against the "propensity of all single and numerous assemblies to yield to the impulse of sudden and violent passions" (Hamilton et al. 1961 [1788], 379). The length of the Senate term and the qualifications for senators were aimed at accomplishing these ends; the special powers vested in the Senate were predicated on the Senate actually displaying these characteristics. Thus, Senate terms were set at six years and were staggered; senators were required to be thirty years old and nine years a citizen.

In a bow to the widespread belief that control over the power to tax was at the heart of popular government, the Framers gave the House of Representatives, the popular chamber, the power to initiate all tax legislation. Despite some discussion of the possibility, they did not limit the Senate's power to amend such legislation. The power of impeaching federal officials was vested in the House; the Senate was charged with trying impeachments. The Senate was also charged with approving treaties and federal appointments.

**Constitutional, Institutional, and Electoral Development**

The small states expected the Senate to give them a direct voice in the national government. In essence, they expected the Senate to be an assembly of ambassadors from the states. Yet state legislatures never had an effective means of controlling the senators they chose, and so senators were never really just agents of their state legislature. Some state legislatures attempted to direct their senators through the "doctrine of instructions" by which the legislature passed a resolution instructing their senators how to vote. However, since the Constitution unlike the Articles of Confederation that preceded it did not allow recall, state legislatures lacked means of enforcement (Riker 1955, 455–63). Given the lengthy term of senators compared with those of state legislators, even the state legislature's control over the senator's reelection provided little leverage. From the beginning, then, senators had considerable latitude to define their representational role as they chose; they were not required to be
mere agents of their states and certainly not of their state legislatures. Consequently, the Senate never served as a mechanism by which the states could control national decisions.

During the first years of the new government, the Senate was the less prestigious chamber (see Swift 1996). Its role was less clear than that of the House: was it to be the protector and voice of the states, the protector of the propertied elite as the discussions of the desired characteristics of senators and of the Senate’s insulation from popular opinion suggested, or an advisory council to the president, as some of its special powers seemed to imply? Unlike the House, the Senate met behind closed doors, which made it less visible. In addition, it lagged significantly behind the House in workload, originating legislation much less frequently (Risjord 1994, 99–100).

Like the House, the Senate initially relied on select committees to draft legislation and was slower than the House to develop standing committees. In some cases supposedly select committees did take on much of the character of standing committees as they were repeatedly reestablished, sometimes with the same chairman (Risjord 1994, 100). In 1916, the Senate voted to establish eleven standing committees, and the committee system continued to grow.

The Senate opened its sessions to the public in 1794, and by the 11th Congress (1809) its share of the legislative workload had grown enough to prompt changes in its committee system. The Senate’s growing prestige, however, resulted from its role in the great national debates preceding the Civil War. The Senate provided the forum to debate and sometimes to patch together compromises on the salient and divisive issues of slavery and free soil.

New states were admitted to the union, but the Senate remained small: sixty-four members in the 35th Congress (1857–59). As a result, the Senate did not experience the pressure that the much larger House did to curtail debate. Although the House adopted rules restricting debate as early as 1811, the nineteenth-century Senate did not. “Elaborate rules were believed unnecessary, deference and courtesy were expected to prevail” (Bogue 1994, 113; see also Binder 1997). By the time the filibuster became a significant problem in the late nineteenth century, the permissive debate rules had acquired an almost sacred aura; defenders argued that they embodied the will of the Framers of the Constitution. Certainly the usefulness of those rules to individual senators—and the fact that they made
changing Senate rules so difficult—acted as a formidable barrier against change (Binder and Smith 1997).

Only when "a small group of willful men" blocked President Woodrow Wilson's proposal to arm American merchant ships in 1917 and Wilson managed to focus intense public attention on the Senate's debate rules did the body agree to a procedure for cutting off debate. Even so, the cloture procedure instituted was cumbersome. Sixteen senators had to file a petition requesting a vote to end debate on the matter at issue; two days after the filing, a vote would be taken, and if two-thirds of those present and voting supported the cloture motion, debate would be limited to one hour per senator.

The rule has been changed several times. Since 1975, three-fifths of the total membership (sixty) is required to cut off debate, although stopping debate on a proposal to change Senate rules still requires a two-thirds vote. Since 1986, all Senate activity following cloture has been limited to thirty hours. Thus, to cut off debate still requires a supermajority.

The Senate's small size and constitutional provisions about Senate leadership contributed to the late and incomplete development of a formal, vigorous party leadership in the chamber. The Constitution makes the vice president of the United States the president of the Senate and specifies that the Senate must also choose a president pro tempore to preside in the vice president's absence. Although it appears that before 1845 the vice president appointed congressional committees, the Senate was loath to vest much power in an outsider. After 1845, the party caucuses assumed the committee assignment function, and the chairman of the Senate Majority Caucus was usually—but not always—the most powerful single figure in the chamber (Bogue 1994, 117; Gamm and Smith 1997). Around the turn of the century, a clique of Republican senators led by Nelson Aldrich of Rhode Island exercised considerable centralized power in the chamber through their control of the Senate Republican Party. It was not until 1911-13 that the parties began electing majority and minority leaders for the entire Congress (Ripley 1969, 26). The formal establishment of these offices did not bring with it any significant new procedural powers; the Senate continued to be stingy in giving central leaders tools for doing their jobs.

The early years of the twentieth century saw a change in Senate elections. The 17th Amendment to the Constitution, passed by Congress and ratified by the states in 1913, provided for popular election of senators.
Actually, in many states senators were popularly elected in fact if not in form in the nineteenth century. The public canvass by which Senate candidates helped elect state legislative candidates pledged to vote for them originated in the 1830s, spread in the 1850s, and became quite common after the Civil War (Riker 1955, 463–69). The famous Lincoln-Douglas debates were part of such a campaign. This practice reduced the influence of state legislatures over their senators even further.

With the rise of the direct primary in the late nineteenth and early twentieth centuries, the parties’ candidates for Senate were chosen by the voters in a number of states, and state legislatures ignored the will of the people at their peril. Oregon carried this thrust one step further, providing for a test of popular sentiment between Senate candidates in the November general election and requiring the state legislature to vote for the winner. American political culture had changed since the Constitution was drafted and, in response, practice changed even before formal constitutional change. Senators had never really been agents of their state legislatures; now they were clearly expected to represent the people of their states directly.

Thus, by 1920, the major contours of the modern Senate had emerged. The Senate had long since established itself as an equal legislative partner with the House. It exercised its shared legislative powers fully and on occasion made assertive use of its special powers. In one of the most notorious cases, the Senate refused to ratify the Versailles Treaty containing the League of Nations Covenant that President Wilson had negotiated at the end of World War I. Furthermore, the Senate had outstripped the larger House in visibility and prestige. Moving from the House to the Senate was clearly considered a step up.

To get its legislative work done, the Senate relied on a system of standing committees. Senators obtained their committee assignments through their parties. However, once on a committee, a senator was considered entitled to remain, and committee rank was determined by seniority. Formal party leadership positions had been established, but leaders were not granted much procedural power. The Senate’s rules, especially unlimited debate and the loose germaneness rules, vested great power in individual senators should they choose to exploit them.

The formal shift to popular election enhanced senators’ legitimacy. It also made them more directly subject to the same currents of public opinion as House members were. However, because of the de facto changes in
the mode of election in many states prior to the formal change, this was an incremental rather than a revolutionary change.

The Contemporary Senate

The Senate's position as the more visible and more prestigious chamber was reinforced after World War II. As foreign affairs issues became more salient, the Senate's special powers in that area gave it added prominence. Even more important was the development of television and the increased prominence of the mass media in American politics. Journalists have always been partial to senators (Fenno 1982, 1995). Being fewer in number than House members, senators and the Senate are easier to cover; each senator is seen as more important, and personalities stand out. Furthermore, the six-year term makes the reporter's investment in cultivating senators as news sources more likely to pay off. Of course, as senators become more visible, they are deemed more worthy of coverage. Reporters' need for credible spokespeople, especially in opposition to the president, leads them to senators with their higher visibility and prestige. Senators are more likely to appear on the weekend interview shows and on the evening TV news. Inevitably, given the importance of visibility in a candidate-centered era, the Senate became an important source of presidential candidates, and this, of course, made senators even more interesting to the media.

Senate Elections

The Senate's prestige, long terms, small size, and rules that empower individuals make a Senate seat a valuable prize. Furthermore, most states are now sufficiently competitive that a candidate of either party has a shot at winning statewide. As a result, Senate contests tend to attract quality candidates. Many House members seek to move up to the Senate. Most nonincumbent Senate candidates have either held elective office or have become prominent in some other sphere—as an astronaut or a basketball player, for example. In recent elections, about two-thirds of Senate challengers have had previous experience in elective office (Jacobson 1992, 99).
Within the American weak party system, candidates are frequently "self-recruited." In recent years, the parties' senatorial campaign committees have actively recruited candidates. In 1990, such national Republican efforts were instrumental in persuading three well-regarded women House members to run against presumably vulnerable Democratic incumbents. In 1996, Bob Kerrey, chair of the Democratic Senatorial Campaign Committee, induced Ben Nelson, governor of Nebraska, to run for an open Senate seat. Such recruitment efforts, which have had mixed success, are aimed at persuading strong candidates to run for seats perceived as winnable. What neither the national nor the state party can do, or seldom attempts, is to persuade potential candidates who want to run to step aside for someone perceived to be stronger. Political parties have little ability to prevent well-financed candidates from waging divisive primary battles.

Senate elections are expensive, and access to funding is essential to success. The size of all but the smallest states dictates that Senate candidates rely heavily on electronic media, especially television, to convey their message to the voters. A serious Senate campaign will cost millions; in 1992, the average spent by all general election candidates was $2.9 million; incumbents averaged $3.85 million, and winning challengers averaged a bit over $4 million (Ornstein et al. 1994, 79, 89). Races in the larger states are much more expensive; the 1994 California Senate race saw the challenger spend $28 million, much of it his own money, and the incumbent $11 million. Although the political parties contribute significant amounts to their general election candidates, candidates must be able to raise the bulk of their own money. Campaign finance law and the parties' limited funds prohibit them from being the primary funders of their candidates.

The reliance on the mass media that the size of most states dictates not only increases the cost of Senate campaigns but also accentuates their candidate-centered character. Candidates sell themselves as individuals, not as members of a party; they tout their own experience and character and their own issue agendas, and voters judge them on that basis (Hinckley and Muir 1994).

Senate general election candidates are likely to be able to raise significant amounts of money, if not necessarily as much as they would like and believe they need. A contest between two strong candidates attracts
money as it does in House races as well; contributors, whatever their motives, prefer to give to candidates with a good chance of winning. Furthermore, since a senator is 1 of 100 rather than 1 of 435, contributions to Senate races may be seen as more cost-effective.

Senate races, then, are more likely than House races to be competitive. A significant number of House districts are safe for one or the other party; no state falls into that category any longer. The media's interest in senators translates in turn into an interest in Senate candidates, and that translates into the likelihood that Senate challengers will receive some free media coverage. Still, in every election year, often about half of all Senate races are low-key affairs in which one candidate never gets his or her campaign off the ground. Such races are overwhelmingly ones in which a strong incumbent has managed to scare off a significant challenge.

In recent elections, the reelection rate for incumbent senators has varied widely, due in part to the small size of the group up for reelection every two years. In the elections from 1970 to 1994, on average 82 percent of incumbent senators who sought reelection successfully attained it; the low was 55 percent in 1980; the high was 97 percent in 1990 (Ornstein et al. 1994, 59). Senate incumbents who do win reelection usually do so by considerably narrower margins than House incumbents. In the elections from 1980 through 1992, 45 percent of Senate incumbents received less than 60 percent of the vote (Ornstein et al. 1994, 62).

The competitiveness of most states, staggered Senate terms, and the candidate-centered focus of Senate elections leads to states frequently being represented by senators of different parties. During the 103rd Congress, twenty of fifty Senate delegations consisted of one Democrat and one Republican; in the 104th and 105th Congresses, nineteen Senate delegations were split between the parties.

The character of Senate elections has also made the body more subject to shifts in partisan control than the House. After a long period of Democratic majorities stretching from 1955 to 1980, Republicans took control and held a majority until the 1986 elections; Democrats remained in the majority until the 1994 elections returned control to the Republicans. The frequency of close races for the Senate combined with the varying size and composition of the states with Senate contests in any given year means that a shift in a relatively few votes can produce a switch in partisan control.
The Senate's Membership

The Framers expected the Senate to be made up of substantial citizens, of the "better elements" of society. In descriptive terms at least, they would not be disappointed. Most senators have been white, male, middle-aged, well educated, and well off. Although the body has become a bit more diverse in recent years, the change is marginal. In the 105th Congress (1997–98), Senate membership included nine women, one African American (who is also female), two Asian Americans, and one Native American. All these figures equal or exceed previous highs.

The average age of senators in the 104th Congress was fifty-eight, a bit higher than the mid-fifties average typical of the last several decades (Freedman 1997, 30). Fifty-three senators identified their prior occupation as law, and thirty-three as business or banking. Law has always been a common profession of senators, and the number of lawyers in the 105th is actually somewhat lower than in the previous several decades (Ornstein et al. 1994, 28–29).

Most senators have held prior elective office. A study of senators who served between 1972 and 1988 found that 32 percent had previously served in the House of Representatives and 14 percent as governor of their state; only 9 percent had held no political office (Hinckley and Muir 1994, 471). Eight of the thirteen freshmen in the 105th Congress were previous members of the House; only two had held no elective office, but as is often the case of winning Senate candidates, both had previous political experience.

Clearly the Senate is not representative of the American people demographically; the Framers never intended it to be. The Senate is also not representative in the now broadly accepted "one person, one vote" sense. In 1990, the 18 percent of the nation's population living in the twenty-six smallest states elected over half the Senate membership; the majority living in the nine largest states elected only 18 percent of the chamber's members (Fenno 1995, 1785). This is, of course, the consequence of the political deal that the Framers were forced to make.

Internal Organization

The Senate confronts an enormous workload that it must process with its small membership. It continues to rely on a well-developed committee
system to provide the division of labor that makes doing so possible. The Senate's twenty-one committees vary widely in power and prestige; Appropriations, Finance, Foreign Affairs, and Armed Services have traditionally been considered the Senate's top committees and are so recognized in Senate rules, but the two money committees far outstrip the others in desirability.

Party committees assign members to the Senate's substantive committees. The Democratic Steering Committee, which consists of over half the Democratic membership, makes its decisions through a bargaining and balloting process. The Republican Party bases its decisions strictly on seniority. Party leaders can still influence decisions but only at the margins. For example, at the beginning of the 104th Congress, Majority Leader Bob Dole prevented his rival, Phil Gramm, from assuming a Finance Committee seat by persuading more senior senators to assert their claim. However, when another Finance seat became vacant after Bob Packwood's forced resignation from the Senate, Dole could not induce any senator senior to Gramm to take the seat and Gramm got it.

Traditionally, the member of the majority party with the most seniority on the committee automatically became committee chair; the most senior minority party member became ranking minority member. Seniority seems to have become established as a practice in the Senate by 1840, and during the first half of the twentieth century it was considered inviolate. Both parties now have rules requiring party approval of committee leaders, but in the Senate, unlike the House, seniority has been consistently followed. Few challenges to the most senior member have been mounted, and those that have been mounted have failed. In the past, respect for seniority and the clout that senior members exercised served to maintain the seniority system; now senators' dedication to individualism and independence undergird the seeming deference to seniority. Discretion in the choice of committee leaders is perceived as a possible threat to a senator's independence.

The majority leader and the minority leader, elected by the members of their respective parties, are the only real central leaders in the Senate. Although he is president of the Senate, the vice president's only real power is to break the occasional tie vote. President pro tempore has become an honorary title bestowed automatically on the most senior member of the majority party.
Formal party organization was slow to develop in the Senate but has become relatively elaborate. In addition to their leaders, the party caucuses elect whips and several other leaders—on the Republican side, Conference chairman and secretary and Policy Committee chairman. Both parties have established whip systems and have a number of party committees charged with internal party maintenance and external public relations and outreach tasks (Smith 1993).

The majority leader is the leader of the Senate. He is charged with scheduling the Senate's floor business, with coordination more broadly, and with coalition building. Yet his powers and resources for carrying out these tasks are meager. Neither party gives its leader resources sufficient to provide him with major leverage over his members' behavior. The majority leader is not the Senate's presiding officer, nor does the chamber's presiding officer exercise much power. The only procedural power that Senate precedents give the majority leader is the right of first recognition: when several senators seek recognition simultaneously, the majority leader is recognized first.

The most formidable constraint on the majority leader, or any other potential central leader, is the Senate's unique rules, which bestow enormous power on each senator. Extended debate allows any senator to hold the floor as long as he wishes unless cloture is invoked, a cumbersome procedure that requires sixty votes. The Senate's permissive amending rules enable any senator to offer as many amendments as he or she pleases to almost any bill, and those amendments need not even be germane. To the extent that senators exploit the prerogatives inherent in Senate rules, they rob the majority leader of control over the flow of issues to and on the floor; he loses his ability to manage the legislative schedule or to define the agenda more broadly (Patterson 1989).

The Individualist Senate

In the Senate of the 1950s and before, norms of restraint prevented senators from fully exploiting their great powers (Matthews 1960). The Senate of that era was a clubby, inward-looking body governed by constraining norms. Influence was unequally distributed and centered in strong committees and their senior leaders, who were most often conservatives, frequently southern Democrats. The typical senator of the 1950s was a
specialist who concentrated on the issues that came before his committees. His legislative activities were largely confined to the committee room; he was seldom active on the Senate floor. He was highly restrained in his use of the prerogatives that the Senate rules gave him, and he made little use of the media.

The Senate's institutional structure and the political environment rewarded such behavior (Huitt 1965; Sinclair 1989). The lack of staff, for example, made it harder for new senators to participate intelligently right away, so serving an apprenticeship prevented a new member from making a fool of himself early in his career. It also made specialization the only really feasible course for attaining influence. Restraint in exploiting extended debate was encouraged by the lack of the sort of time pressures that would later make extended debate such a formidable weapon; when floor time is plentiful, the leverage that senators derive from extended debate is much less (Oppenheimer 1985). Furthermore, the dominant southern Democrats had an enormous constituency-based interest in restricting and thus protecting the filibuster for their one big issue—opposition to civil rights. The Senate of the 1950s was an institution well designed for its generally conservative members to further their goals.

Membership turnover and a transformation of the political environment altered the costs and benefits of such behavior and induced members to change the institution. Norms, practices, and, to a lesser extent, rules gradually changed (Sinclair 1989; also see Foley 1980; Rohde et al. 1985). The 1958 elections brought a big, new class of senators with different policy goals and reelection needs. Mostly northern Democrats, they were activist liberals, and most had been elected in highly competitive contests, in many cases having defeated incumbents. Both their policy goals and their reelection needs dictated a more activist style; these senators simply could not afford to wait to make their mark. Subsequent elections brought in more and more such members, and in the 1960s the political environment began a transformation. A host of new issues rose to prominence, politics became more highly charged, the interest group community exploded in size and diversity, and the media—especially television—played a much bigger role in politics.

This new environment offered tempting new opportunities to senators. Countless interest groups needed champions and spokesmen, and the media needed credible sources to represent issue positions and provide commentary. Because of the small size and prestige of the Senate, senators
fit the bill. To take on those roles, however, senators would have to change their behavior and their institution.

From the mid-1960s through the mid-1970s, senators did just that. The number of positions on good committees and the number of subcommittee leadership positions were expanded and distributed much more broadly. Staff was also greatly expanded and made available to junior as well as senior senators. Senators were now able to involve themselves in a broader range of issues, and they did so. They also became much more active on the Senate floor, offering more amendments to a wider range of bills. Senators exploited extended debate to a much greater extent, and the frequency of filibusters shot up. The number of filibusters averaged less than 1 per congress over the period 1955–1960; in the 1970s the average was 11.4 filibusters per congress (Sinclair 1989; 1997). The media became an increasingly important arena for participation and a significant resource for senators in the pursuit of their policy, power, and reelection goals.

The Legislative Process in the Individualist Senate

The contemporary Senate is an individualist body that allows its members to pursue the highly activist, outward-oriented style that most prefer. Its day-to-day functioning is shaped by the need to accommodate the individual that stems from senators' willingness to exploit fully their prerogatives under Senate rules. Those attempting to steer legislation through it must be constantly mindful of two home truths of the contemporary Senate: anyone can cause trouble, and everyone is likely to want to participate on those issues that interest them or affect their reelection, whether or not they hold a formal position relevant to that issue.

Senators hold multiple committee assignments and usually at least one subcommittee leadership position. In the 103d Congress, senators averaged 11.8 committee and subcommittee assignments; majority party members averaged 1.9 chairmanships (Ornstein et al. 1994, 116, 118). Thus senators are stretched very thin; they treat their committees not as work groups in which to participate on a continuous basis but as arenas in which they pick and choose whether to participate depending on their interest in the issues being considered. Senators rely heavily on staff for committee work. On many committees, decisions on many issues are made by the "interesteds," who usually make up considerably less than the full committee membership.
Because of senators' workloads and the large number of subcommittees, subcommittees are usually vehicles for their chairs. The chairs can use their subcommittees to publicize problems and policy solutions, to cater to allied interest groups, to promote themselves, or all three. Under most circumstances, other senators are too busy to interfere.

Markups, however, most frequently take place in full committee (Smith and Deering 1990, 139–43). Paradoxically, Senate committees remain more centralized than House committees in this respect. However, the reason most Senate committees actually write legislation in full committee rather than marking it up in subcommittee first is not deference to full committee leaders but again the enormous workload of senators and the desire of all committee members to have the opportunity to participate in decision making should they so desire. Those senators on the subcommittee do not have time to go through two markups, and they know that any interested committee member not on the subcommittee would insist on having a say at the full committee level.

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

In the Senate, floor scheduling and coalition building are of necessity exercises in broad and bipartisan accommodation (Davidson 1985; Sinclair 1989; Smith 1993). The Senate only runs smoothly when the majority leader and the minority leader cooperate—and not always then. Using his right of first recognition, the majority leader brings legislation to the floor by simply taking the bill to be considered off the calendar. He does so either by unanimous consent, which can of course be blocked by any senator's objection, or by a motion to proceed to consider the legislation, which is a debatable motion that can be filibustered. Because any senator could wreck his plans, the majority leader must check with all interested senators before he brings legislation to the floor. He always consults with leaders of the committee of origin and with the minority leader; effective Senate scheduling requires intensive consultation between the majority and minority leaders. Senators are expected to inform their party leadership if they have an interest. For every bill, the staffs of
the majority and minority leaders keep a record of senators who have asked to be informed before it is brought to the floor, and these senators must also be consulted.

Senate party leaders contend that their only responsibility is to inform those senators when they are ready to bring a bill to the floor, and that may well be all a senator expects. He or she may simply want to be sure the legislation comes up when the senator is in town. In other cases, however, a senator objects to the legislation's floor consideration either altogether or until the bill's supporters have altered it to his liking. Such a notification by a senator to his party leader is called a "hold"; what gives holds their bite is the implicit or explicit threat to filibuster the motion to proceed. The majority leader can and sometimes will go ahead with the legislation despite a hold, but he then may face a filibuster on the motion to proceed and, if that is overcome, a filibuster on the bill itself. Especially when floor time is short—before a recess or near the end of the session, only the most essential legislation is likely to be considered worth so much time. Supporters of legislation come under increasing pressure to make concessions that will remove the threat of a filibuster. As time becomes scarcer, a hold increasingly becomes a veto.

Once legislation is on the floor, the majority leader's control over its consideration remains tenuous. Senators are free to offer as many amendments as they wish, and amending marathons are frequent. Legislation that is controversial or broad in scope or "must-pass" is likely to provoke multitudes of amendments. Thus, the 1993 reconciliation bill that implemented Clinton's economic program—legislation which had all these characteristics—was subject to twenty-five amendments that were pushed to a recorded vote. Appropriations bills and tax legislation are frequent targets; almost fifty amendments were offered and pushed to a roll call vote on the big Reagan tax bill of 1981.

Since, in most cases, amendments need not be germane, senators can use the amending process to bring issues to the floor that the majority leader would rather avoid. In 1996, for example, Majority Leader Bob Dole and most Senate Republicans did not want to vote on a minimum wage increase that most opposed but that was popular with the public. Senate Democrats were prepared to offer the minimum wage increase as an amendment to every important piece of legislation brought to the floor. To avoid a vote, Dole was forced to put off votes, bringing the legislative process in the Senate to a standstill. Eventually, Trent Lott, Dole's successor,
capitulated, and the bill came to a vote and passed handily. Senate amending rules make it much more difficult for the majority party and the Senate leadership to control the agenda.

They also make the Senate floor a superb arena for publicizing issues and policy positions and speaking to and for constituencies of all sorts. Not only can a senator speak as long as he wishes but he can seem to be doing something about the problem at issue. And, often not incidentally, he can put his opponents on the spot, forcing them to take hard votes. Jesse Helms (R-N.C.) has always used nongermane amendments on hot button topics such as busing, homosexuality, pornography, and abortion to get his issues to the floor and force senators to vote on them. In the late 1980s, for example, he successfully attached an amendment outlawing dial-a-porn services (900 telephone services that provide explicit sexual messages for a fee) to a major education bill. But Helms is by no means alone; most senators use the tactic at least occasionally. Thus, in early 1993, Bob Dole attempted to attach an amendment on homosexuals in the military to family and medical leave legislation.

Obstructionism: Standard Operating Procedure

Because, with the exception of especially protected budget act legislation, a filibuster is always a possibility, a bill's supporters must think in terms of building a supermajority coalition of sixty votes; a simple majority is often not enough (see Binder and Smith 1997). Consequently, the bargaining power of minorities is much enhanced. The legislative process in the Senate is frequently characterized by bargaining to accommodate small groups and even individuals. Such negotiations take place at every stage of the process; the frequent lengthy quorum calls during Senate consideration of a bill often signal that the bill's supporters are engaged in negotiations with senators who have "a problem" with the legislation.

Even after a bill has passed the Senate, the opportunities for obstructionism are not foreclosed. Extended debate can occur not only on the motion to proceed to consider the measure, on specific amendments, and on the measure itself but also on various motions related to going to conference and on the conference report.

Table 2.1 shows just how frequent filibusters are (see Beth 1995 for some caveats concerning the data). By the mid-1990s, they were occurring at a rate of more than one a month. Attempts to invoke cloture have
Table 2.1. Filibusters and Cloture Votes in the U.S. Senate, 1951–1994

<table>
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<th>Cloture Votes per Congress</th>
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<tr>
<td>1971–80</td>
<td>92–96</td>
<td>11.2</td>
<td>22.4</td>
<td>8.6</td>
</tr>
<tr>
<td>1981–86</td>
<td>97–99</td>
<td>16.7</td>
<td>23.0</td>
<td>10.0</td>
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<tr>
<td>1987–92</td>
<td>100–102</td>
<td>26.7</td>
<td>39.0</td>
<td>15.3</td>
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<tr>
<td>1993–94</td>
<td>103</td>
<td>30.0</td>
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become a routine part of the legislative process in the Senate; often several attempts are made to cut off debate on a particular measure. Although cloture votes are frequently successful, a bill's supporters must often make significant concessions to get the sixty votes required. And, especially in the last two congresses, much major legislation has succumbed to proponents' inability to muster sixty votes.

The 103rd and 104th Congresses (1993–96) have seen the emergence of the filibuster-centered partisan strategy. In the past, filibusters have often been partisan in the sense that the obstructionists were predominantly of one party. In some cases, the obstructionists were directed by party leaders. Not until the 103rd Congress, however, did extended debate-based obstructionism emerge as a systematic partisan strategy. To be sure, Bob Dole, as minority leader in the 100th Congress (1987–88), did pursue a filibuster strategy for much of the first year; Republicans had just lost control of the Senate, Reagan was a lame duck without an agenda, and the congressional Democrats were aggressively pursuing their own agenda. However, Dole's run for the presidential nomination distracted him and led to the strategy's demise.

The 103rd Congress marked the return of united control of both houses of Congress for the first time since the late 1970s. The new Democratic president had a big and ambitious agenda in 1993, yet he had been elected with only 43 percent of the vote and in an era of popular distrust of
politicians and of government. Those circumstances, combined with the increased ideological polarization of the congressional parties, made it possible and profitable for Senate Republicans under Bob Dole's leadership to pursue a systematic filibuster strategy. In the 103d Congress, about half of all major legislation encountered some extended debate-related problem identifiable from the public record (Sinclair 1997).

A Republican filibuster killed Clinton's stimulus package; Republicans used the filibuster or a threat thereof to extract concessions on a number of bills, for example, voter registration legislation ("motor voter") and the national service program. Republican attempts to kill or water down legislation via a filibuster were not always successful, of course. For example, the Republican filibuster of the Brady bill imposing a seven-day waiting period for buying a gun collapsed when a number of Republican moderates began to fear the political price of their participation.

Time pressure makes extended debate-based obstructionism an especially effective weapon at the end of a congress, and Republicans were determined to deprive Clinton and congressional Democrats of legislative victories. At the end of the 103d Congress, Republican filibusters killed campaign finance and lobbying reform bills. Although unsuccessful in the end, Republicans filibustered and tried to prevent passage of a massive crime bill, the California Desert Protection Act, and a comprehensive education bill. In some cases, filibusters were waged to prevent legislation from being sent to conference or, more frequently, to deny approval of conference reports. Republican threats of obstructionist floor tactics were major contributors to the death of important bills revamping the superfund program, revising clean drinking water regulations, overhauling outdated telecommunications law, and applying federal labor laws to Congress.

In the 103d Congress, the filibuster was used as a partisan tool to an extent unprecedented in post–World War II American history. In the 104th Congress, Democrats, now in the minority, returned the favor; about half of major legislation encountered filibusters, and Democrats had managed to block much of the "Contract with America."

Uneasy Partners: House-Senate Relations

Its status as an equal partner, its different representational base, its non-majoritarian rules, and its greater prestige shape the Senate's relationship
with the House. Because they are equal, they must work together. Before a bill can become law, the Senate and the House must agree on identical language. The differences in the two chambers’ memberships and rules almost guarantee that important legislation will emerge from the two chambers in different forms. Either one chamber must accept the other’s version or the differences must be reconciled by bargaining. On major legislation, most often a conference committee including members from both chambers is charged with working out an agreement.

Although they must work with their Senate counterparts and many aspire to eventually join them, House members resent senators. For years, House members have derided senators as media-obsessed prima donnas, as showhorses rather than workhorses. They have complained that the senators they deal with in conference lack in-depth expertise, depend too much on staff, and often do not even show up and yet hog more than their share of the media attention and the credit.

In recent years, the tension has been exacerbated by the increase in minority obstructionism in the Senate. Even when the same party controls both chambers, relations are often hostile, especially at the rank-and-file level and especially on the House side. In the 103d Congress, House Democrats were angered by the parade of Senate Democrats who extracted concessions from President Clinton in return for their vote on his economic program, and they were furious when David Boren (D-Okla.) killed the gas tax in Clinton’s economic program for which many had voted. They were irate when told they had to accept compromises tilted toward the Senate position on a host of legislation because otherwise a Senate minority would kill the legislation, and they were outraged when Senate Republicans, in fact, killed a number of major bills for which there was clear majority support.

In the 104th Congress, House Republicans were at least equally frustrated by the Senate. Within the first hundred days as promised, they voted on all of the items in the “Contract with America” and passed all but term limits. Once the legislation got to the Senate, it was as if it had dropped into a black hole, they complained. Because of Senate rules, the Senate pace was painfully slow; to get movement, major concessions to minorities had to be made and, not infrequently, minorities blocked action altogether. To House Republicans who believed the 1994 elections carried a mandate for their agenda and that, to ensure their reelection, they had to deliver on their promises, the Senate was a major obstacle to
their achieving their goals. "The other party is just the adversary," members of the House say, not entirely in jest. "The Senate is the real enemy."

Although sometimes frustrated as well, House and Senate party leaders realize the importance of cooperation between the chambers. The party leaders of each chamber communicate with their partisan counterparts on a regular basis and attempt to coordinate the chambers' schedules when possible. If the same party controls both chambers, the majority leaderships have a common interest in establishing a positive legislative record. The Senate leader's more tenuous control over his chamber's schedule and greater difficulty in passing legislation does limit the extent to which coordination is possible.

Despite the differences between the chambers in rules and membership, most House-Senate conferences do reach agreement, and most of the resulting compromises are approved by both chambers. A considerable proportion of the legislation sent to conference is not highly controversial. Even when legislation is contentious and ideologically charged, the interest of members of both chambers in enacting some legislation may well make possible a compromise that both prefer to no legislation at all. After all, members of the two bodies are often subject to similar public pressures to address issues that concern voters and to get something done.

The President and the Senate

Since Franklin Roosevelt's time, Americans have expected their president to set the policy agenda and engineer the enactment of his program. Within the U.S. system of government with its division of powers, the president needs the cooperation of both houses of Congress to produce a record of legislative accomplishment. Yet the constitutional structure gives him few powers over Congress to induce cooperation. He can veto legislation, and a two-thirds vote of both chambers is required to override.

As the single executive and the only official elected nationwide, the president is by far the most visible officeholder. The weak party system that the constitutional structure fostered deprives the president of major election-based leverage over congressional members of his party. Members of Congress do not owe their election to the president. They win election, especially reelection, on their own and often run ahead of the president in popular votes. Candidate-centered elections in a decentralized party system are likely to produce an elected party membership that
is heterogeneous in terms of policy views and reelection needs. With the veto and the bully pulpit as his primary resources, the president confronts two very different legislative bodies. One—the Senate—has special powers of great importance to his success and rules that make positive action difficult.

Frequent divided control and increasing partisan polarization in recent years have led to high visibility confrontations between president and Congress. In the Senate, nominations have sometimes been at issue. Thus, Democratic Senates turned down Reagan's nomination of Robert Bork to the Supreme Court and Bush's nomination of former senator John Tower to be secretary of defense. In 1995, the Republican Senate refused to allow an up-or-down vote on Clinton's nomination of Henry Foster to be surgeon general. Although a majority of the Senate favored Foster, the proponents could not muster the sixty votes necessary to invoke cloture on the nomination.

The Senate's rules make a large and cohesive minority a potent force. Thus, in the 103d Congress, Senate Republicans repeatedly extracted concessions from Clinton on legislation supported by a majority and killed a number of major bills outright. In the 104th Congress, on the other hand, Senate Democrats used the rules to ameliorate or block many bills that Clinton disliked.

Even for members of the president's party and even under conditions of united control, the incentives toward individualism that the Senate rules provide often overwhelm those toward cooperation. Senators not infrequently pursue their own agendas, even when these conflict with those of a president of their own party, and they use their power to extract concessions from their president. Jesse Helms put "holds" on nominations he did not like during the Reagan, Bush, and Clinton administrations. Sam Nunn (D-Ga.) openly opposed Clinton on gays in the military during the early months of the new Democratic president's term and thereby gained considerable media attention at Clinton's expense. When the young administration, the first Democratic administration in over a decade, worked to put together winning coalitions on its crucial economic program, a number of Democratic senators publicly held out and extracted concessions for their votes. Senators lack a strong electoral tie to the president; they function in a political environment in which public opposition to a president of their own party is likely to pay off in favorable media attention; many believe they themselves should be president and
are sure they could do the job better. Under such conditions, the incentives to exploit the great powers that the Senate gives the individual, even at the expense of a president of one's own party, are considerable.

Still, the Senate approves most presidential nominations with little controversy, it ratifies most treaties that the president sends it, and it passes most essential legislation. The president and members of Congress, especially senators, do function in the same political environment and are subject to some of the same political pressures. Furthermore, when conflict between the president and Congress threatens to block legislation, the Senate is by no means always the culprit. When the House shut down the government in 1995, preemptive Senate action led to a resolution of the crisis (Sinclair 1997).

Clearly when the president's party controls both houses of Congress, the Senate is the more difficult chamber for the president to deal with. The minority-empowering rules give his partisan opponents much more clout than they have in the majority-rule House, and Senate individualism tempts his own partisans to reap political benefits at his expense. However, when the other party controls Congress, the power that Senate minorities wield can benefit the president if employed to that end by his partisans, as they were in the 104th Congress.

Furthermore, in the 1990s, the Senate has been more moderate than the House; moderates make up a larger proportion of the membership, and when partisan margins are relatively narrow as they have been, Senate rules especially empower those in the middle of the ideological spectrum. A president of the other party finds it easier to deal with a moderate chamber than one controlled by his ideological opponents. During the 104th Congress, the hard line, highly ideological House majority, not the more moderate Senate, was the primary barrier to agreement between the president and the Congress on a host of issues, most notably a comprehensive budget package.

Because of the Senate's rules and how they are employed by contemporary senators, winning coalitions are harder to put together in the Senate than in the House. When the president is the agenda setter and the coalition leader, the Senate poses a problem for him. When he is in a weaker political position and on the policy defensive, the Senate makes it harder for his opponents to construct coalitions for proposals that he strongly opposes.
The U.S. governmental system militates against nonincremental policy change. A president and two distinct legislative bodies, all separately elected by different sets of voters, must come to agreement. For better or worse, barring a crisis of major proportions, incremental change is the most that the system can usually produce. The way the contemporary Senate functions increases the system’s status quo bias.

The Senate and the American Political System

The Framers perceived bicameralism as one of a number of mechanisms for guarding against a dangerous concentration of power. For the Senate to check the House, it would have to possess substantially equal power, and the Framers so endowed it. The check would be most effective if the two chambers were separate and distinct. From our vantage point, we can conclude that the Framers were successful in constructing legislative chambers that, two hundred years later, remain significantly different. The smaller size of the Senate, senators’ longer terms, and the character of senators’ constituencies distinguish the Senate from the House and ensure that the two chambers do in fact differ in their “principles of action.” As a result of these distinguishing characteristics, especially its small size, the Senate has always been a more informal, less hierarchical body than the House. In interaction with characteristics of the American political system external to it, its small size, long terms, and statewide constituencies have made the Senate the more prestigious body, and senators have been more visible than House members and more oriented to national constituencies. As politics became more nationalized and more mediadominated after World War II, senators took on an increasingly important role in the national political debate. They publicize problems, they promote solutions, they speak for a wide variety of claimant groups, and they provide a visible and legitimate opposition view to the president. The contemporary Senate provides its members with an excellent forum for debate framing, agenda setting, and policy incubation (Polsby 1975).

However, the contemporary Senate is much less effective at legislating; its nonmajoritarian rules greatly exacerbate the problems of building coalitions that the weakness of the bond of party creates. Defenders of Senate rules argue that they reflect the Framers’ intent. The Framers did hope
and expect the Senate to be more temperate, more experienced, more stable in membership, and more insulated from the gusts of public opinion than the House. However, the Senate's smaller size and senators' longer terms, more advanced age, and different mode of election—not nonmajoritarian rules—were to produce the difference.

Whether the Senate, in fact, displays the character the Framers hoped for to a greater extent than the House is open to debate. With the development of congressional careers, the House membership is not the mass of inexperienced neophytes that the Framers expected, and callow youth is seldom a problem. Most House members would contend that they, more than senators, possess the expertise necessary for effective governance that Madison worried about (Federalist no. 62, Hamilton et al. 1961 [1788], 380). Both bodies show considerable stability in membership—too much, according to some critics. Whether the Senate is less subject to the winds of public opinion is also questionable. The six-year term provides some insulation, but the greater competitiveness of Senate than of House elections requires senators who desire reelection to remain sensitive to their constituents. By enacting the 17th Amendment, Americans indicated they did not want a too-insulated Senate.

The move to popular election of senators did not make House and Senate elections or the representational relationship for House members and senators identical. Indeed, the typical House and Senate constituencies differ sufficiently to make members of the two bodies subject to different pressures. Senators may be no less likely than House members to "yield to the impulse of sudden and violent passions," but it may well be different passions to which they respond. And, given the very different bases of representation in the two chambers, the bodies' legislative decisions are likely to be still more different.

Although time and usage have changed the Framers' scheme in many particulars, bicameralism continues to have the effect of rendering policy making difficult; two equal but significantly different bodies must come to agreement. The nonmajoritarian rules of the Senate as they have come to be employed by contemporary senators enormously exacerbate the difficulty and may threaten the entire system. If the political system cannot respond to the problems that concern the American people, it loses legitimacy. Americans' current deep cynicism about their government is the product of many factors and failings, but governmental gridlock is an important one, and the Senate's rules are a major contributor to gridlock.
Yet, because the individualist Senate is so attractive to its members as individuals and because Senate rules pose such a formidable barrier to rule changes, only intense public pressure is likely to force the Senate to change, and only a major crisis is likely to generate such pressure.

References


