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## EFFORT, INTENSITY AND POSITION TAKING

### RECONSIDERING OBSTRUCTION IN THE PRE-CLOTURE SENATE

Kathleen Bawn and Gregory Koger

#### ABSTRACT

*Effort* is a crucial element of the legislative process – writing bills, forming coalitions, crafting strategies, and debating. We develop a model in which legislative decisions are the product of competitive effort by two teams, one trying to pass new legislation, and the other to block it. Teams choose effort levels based on preferences over the policy outcome, political rewards for effort, and opportunity costs, and the team that produces more effort wins. We apply this model to four cases of major legislation from the pre-cloture Senate: passage of the Federal Reserve Act in 1913, the Ship Purchase Act of 1915, the Ship Arming bill of 1917, and the adoption of the Senate cloture rule in 1917. These cases demonstrate the value of looking beyond legislative voting and the rules that structure it, and of including effort as a key element of the legislative game.

**KEY WORDS** • effort • preference intensity • obstruction • cloture • position-taking

### 1. Introduction

Because legislatures make decisions by voting, the institutional rules that structure voting are important. Particularly important are rules that govern the voting agenda (that is, what issues come up for a vote), and the rules that translate votes into decisions (e.g. majority versus supermajority requirements.) Our conceptual understanding of the US Congress owes much to research that has focused on who sets the agenda (committees, party leaders, the median voter) and

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Authors' names are arranged alphabetically. We thank Charles Stewart and participants at a seminar at Yale University for their comments.

1. Major works in this tradition include Shepsle (1979), Shepsle and Weingast (1981, 1987), Denzau and Mackay (1983), Ordeshook and Schwartz (1987), Krehbiel et al. (1987), Weingast and Marshall (1988), Gilligan and Krehbiel (1990), Krehbiel (1991, 1997), Cox and McCubbins (1993), Dion and Huber (1996). Interestingly, most of these papers build on Romer and Rosenthal's (1978) model of agenda setting in ballot initiatives. Ignoring the role of effort and intensity in voting on ballot initiatives strikes us as less problematic than ignoring it in Congress.

whose vote is pivotal.<sup>1</sup> Similarly, many empirical inferences about legislators' preferences are based on votes (e.g. Poole and Rosenthal, 1997; Groseclose and Snyder, 2000). The empirical study of Congress has been productively entwined with the theoretical study of majority rule voting, to the benefit of both areas of inquiry.

A key feature of majority rule voting, however, is its complete suppression of preference intensity. Legislator X's vote has the same weight as legislator Y's, even when X cares greatly about the issue and Y is close to indifferent. Whether a given proposal succeeds or fails depends on how many people in various institutional settings support it – a floor majority, a committee majority, a majority in the majority party.<sup>2</sup> Preference intensity does seem to not matter because, as conventionally modeled, legislative institutions do not offer legislators who care intensely about passing or blocking a bill any channel through which to direct that intensity toward their desired goal. By focusing on voting, our current models of legislative decision making ignore the role of preference intensity.

This article shifts the focus from voting to effort. Effort is required to develop proposals and counter-proposals, to build coalitions, to win the support of swing legislators. Effort is needed to creatively interpret the procedural rules and precedents that are neither as clear nor as exogenous as many models assume.<sup>3</sup> Most important for our purposes, effort is a continuous choice, a matter of degree, reflecting preference intensity in a way that dichotomous, year-or-nay vote choices do not. In this article, we develop a game-theoretic model of the legislative process that highlights the role of effort, drawing our attention to how institutional rules and the political environment affect the benefits and costs of effort. In particular, we distinguish between benefits that are contingent on the policy outcome (does the bill pass?) and those that derive from the effort itself – from taking the correct position, standing up for a principle, fighting a good fight, etc. We show that when these 'position-taking' benefits are present, they are often the decisive factor in whether a bill passes or not. We then use the model to explain a set of cases from the Progressive Era Senate that are anomalous when viewed from the more standard perspective that emphasizes vote pivots and agenda control.

Our model of intensity and effort builds on Hall's (1987, 1996) studies of participation in congressional committees. Hall's data on the effort levels of individual legislators provide support for the claim that effort is motivated

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2. Note these majorities are often characterized in terms of the median voter on the committee, on the floor, in the majority party.

3. The endogeneity of procedural rules is a nagging problem for the votes-and-agendas approach. Procedures are posited as the source of decisiveness in majority rule situations, the 'solution' to the problem of cycling (Shepsle, 1979; Shepsle and Weingast, 1981) yet many critical procedural choices are made by majority rule (Riker, 1980; Krehbiel, 1991; Koger, 2002). Unless we assume away the possibility of shifting coalitions (as Krehbiel does, for example, by assuming a unidimensional policy space), endogeneity procedures are a serious challenge to institutional models.

by preference intensity. Our goal is to advance the theoretical understanding of preference intensity by examining its strategic consequences. That is, our model explores how the level of effort by a bill's supporters depends on strategic anticipation of the opponents' effort level. Unlike models based on votes and agendas, our model predicts that an intense legislative minority will sometimes prevail over a lukewarm majority.

The second half of the article shows how the effort-based model explains anomalies in an especially puzzling institutional setting: the US Senate immediately before the adoption of its cloture rule in 1917. The 1917 cloture rule enabled a two-thirds supermajority of the Senate to limit debate, even if a minority was attempting to kill a bill by filibustering. Filibustering in this era has proven problematic for the standard vote-based approach to legislative interaction. Krehbiel (1998) argued that the combination of a right to filibuster and a supermajority cloture rule made the filibuster 'pivot' – the legislator whose support is necessary to form a coalition for cloture – the key actor in the Senate. Strictly speaking, the pivot prior to adoption of the cloture rule would have been the very last senator, that is, Senate decisions would have effectively required unanimity. Several scholars (Mayhew, 2003; Koger, 2004; Wawro and Schickler, 2004) have found, however, that slender majorities were often capable of winning both before and after the 1917 rule was adopted.

Our four cases, drawn from 1913 to 1917, illustrate how filibustering can be better understood as effort-based competition, competition in which players may be motivated by position taking as well as policy considerations. While these cases do not constitute a full test of the model, they do demonstrate how the model can explain what seem to be clear anomalies for any model based on vote pivots.

## 2. A Model of Effort in Legislative Decisions

Suppose there are two legislative players. 'Pro' would like to pass a bill, the nature of which is exogenous. 'Con' opposes it. Pro and Con each make a single choice, namely how much effort to invest on this bill. Specifically, Pro first chooses the level of promotional effort,  $\pi$ , and Con chooses the level of opposition effort,  $\omega$ . 'Opposition' includes any kind of activity that works against the bill. It includes the dilatory speech making conventionally associated with filibustering and obstruction, but also tactics like proposing amendments to weaken the bill, expose its flaws, or split the Pro coalition; and rallying outside groups and public opinion against the bill. Similarly 'promotion' is broadly construed to include the wide variety of effort needed to pass a bill.<sup>4</sup> If  $\pi$  exceeds  $\omega$ , the bill passes, otherwise it fails.

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4. Both promotion and opposition involve 'inside' and 'outside' strategies, to use Peabody's (1976) terms. On major legislation, both sides typically direct effort to drawing other legislators to their side (inside strategy) and toward swaying public opinion in their favor (outside strategy.)

How reasonable is it to treat each side as a unitary actor? By doing so, we avoid directly addressing the question of how similarly minded legislators manage to cooperate and coordinate. Nor do we directly address the important problem of shifting coalitions. In one sense, both of these issues are implicitly addressed by broadly defining effort to include any activity aimed at passing or blocking a bill. For example, Cox and McCubbins (1993) point out that much leadership effort is aimed at solving cooperation and coordination problems. While they have the official party leaders in mind, the same argument can be made for informal leadership on particular bills. This kind of effort would of course be an example of our key choice variables,  $\pi$  or  $\omega$ . Nonetheless, more explicit attention to precisely how effort can bring about coordination and cooperation (through, e.g. the creation of common knowledge) within a legislative coalition could help us understand how the pay offs to effort change depending on the nature of the policy and the political environment.<sup>5</sup>

The game tree is depicted in Figure 1. If the policy change is enacted, Pro gets an increment to her utility of  $b_P$ , and Con gets a decrement,  $-b_C$ . Both  $b_P$  and  $b_C$  are positive, and represent each side's intensity of preference regarding the bill's policy change. We treat the degree of policy change as exogenous in order to keep the model simple. A disadvantage of this simplification is that we thus ignore the possibility of compromise.

In addition to payoffs associated with the policy outcome, both Pro and Con get intrinsic benefits from their effort, *whether or not the bill passes*. We will refer to these intrinsic benefits as 'position-taking benefits'. The phrase 'position taking' comes from Mayhew's (1974) taxonomy of activities legislators engage in order to increase re-election chances. Here we are using the term somewhat more broadly. Our intention is to capture not only the benefits that a legislator derives from being identified with a particular position, but also the benefits from being perceived as willing to work hard for that position.<sup>6</sup> The logic here is that legislators want to demonstrate to their support groups that they are good agents, working hard on issues that the groups care about.

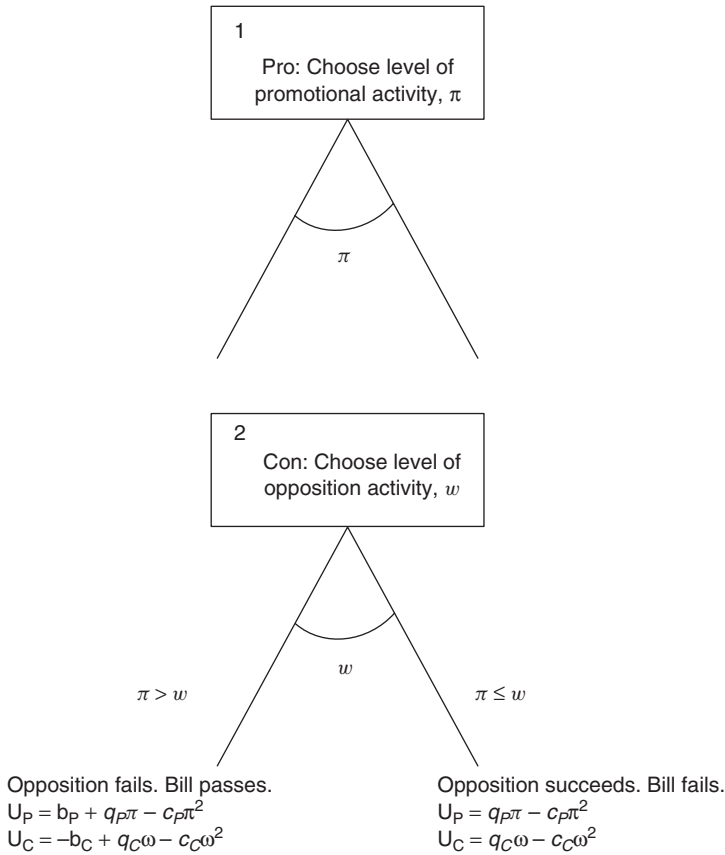
One might wonder why support groups would reward legislators for taking the correct stand and fighting a good fight, even when losing on the outcome. There are at least two reasons. First, the support groups themselves may be more

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Although this model uses a single parameter to capture the benefits one gets from strategies that are designed to recruit the indifferent (part of promotional and obstructive effort) and the benefits one gets from behind-the-scenes procedural machinations, the differences could be unpacked in future extensions.

5. The problem of shifting coalitions is even trickier, and we acknowledge that our model with two unitary actors is ill-equipped to address the strategic implications of shifting coalitions. This weakness is, of course, shared by any model that assumes a single-dimensional policy space.

6. The role of position taking has received short shrift in most formal legislative models, which generally focus on the payoffs from outcomes. But see Denzau et al. (1985), Bianco (1994) and Groseclose and Milyo (n.d.) for important exceptions.



**Figure 1.** Policy Plus Rewarded Effort Game

ideological than outcome-oriented, and may react more to positions than to outcomes. Many bills draw the attention of ‘issue publics’ (Converse, 1964) on either the pro-side or the con-side or both. Krosnick (1990) has shown that a voter will often evaluate candidates on the basis of their perceived position on the typically small number of issues that the voter cares about. Effort on a relevant bill can help to communicate an electorally valuable position. Moreover, even a support group that cares only about outcomes is likely to pay attention to legislators’ effort as a signal of commitment to a cause, level of energy, and other hard-to-observe characteristics of a good agent.

We model position taking benefits as follows. For each unit of effort,  $\pi$ , spent to promote the bill, Pro benefits by  $q_P \pi$ . Parameter  $q_P$  can be thought of as the ‘wage’ of effort. Its magnitude varies from bill to bill. We would expect, for example, that  $q_P$  increases as the importance of the policy beneficiaries to Pro’s

re-election chances increases; as the beneficiaries become more politically organized; and to the extent the benefits of the legislation are ‘traceable’ to legislative action (Arnold, 1990). A similar parameter  $q_C$  denotes the intrinsic value of effort for the Con side.

We assume that effort has opportunity costs which increase at the margin. That is, as more effort is devoted to promotion or opposition, time is taken from increasingly more important alternative issues. Specifically, we assume costs are quadratic, so that the cost to Pro of activity level  $\pi$  is  $c_P\pi^2$ , and the cost to Con of activity level  $\omega$  is  $c_C\omega^2$ . The assumption of increasing marginal costs ensures that each side chooses a finite level of effort.

Some bills take more effort than others, and the same bill may require more effort at one point in time than another. This fact is captured in the  $c_P$  parameter, which is presumed to vary across bills. For example, we would expect  $c_P$  to be lower early in the legislative session, lower when Pro is well informed about the policy area, lower when Pro controls the floor agenda. Similarly, Con’s cost parameter  $c_C$  captures all features of the bill and political environment that make effective opposition relatively hard or easy. In legislative environments in which minority party members have little influence on legislation, for example, the opportunity costs of opposition will be lower, reflected in lower value of  $c_C$ .<sup>7</sup>

The cost parameters allow us to capture in a continuous way aspects of the environment that are dichotomized by the votes-and-agendas approach. To take a familiar example, committee power theories (Shepsle and Weingast, 1981; Denzau and Mackay, 1983) emphasize committee gatekeeping and imply that a policy change opposed by a committee majority would be vetoed, even when a floor majority favored it. A more majoritarian theory (e.g. Krehbiel, 1991; Groseclose and King, 2001) might highlight discharge petitions, implying that committees do not, in fact, have vetoes. In terms of our parameters, the committee power theory implies that  $c_P$  approaches infinity when a committee majority is opposed to a policy change – that is, *no* amount of promotional activity can succeed in the face of committee opposition. The majoritarian theory similarly implies that  $c_P$  approaches infinity when a floor majority is opposed.

By making  $c_P$  and  $c_C$  finite parameters, our model allows a more nuanced interpretation of these institutional rules. Other things equal, committee opposition does indeed increase  $c_P$  for a given bill, but does not necessarily make passage impossible. Our model’s position is that floor majorities can circumvent committee gatekeeping using procedures like a discharge petition or appropriations rider if someone is willing to invest sufficient effort.

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7. See, for example, Oppenheimer (1985) on the role of cost and effort in filibustering in the post-Rule XXII era.

Solving the game by backward induction gives us

RESULT 1: (a) Opposition occurs in equilibrium whenever  $q_C > 0$  and  $q_P > 0$ .

(b) Opposition succeeds in blocking the bill when  $\frac{q_P}{2c_P} + \sqrt{\frac{b_P}{c_P}} < \frac{q_C}{2c_C} + \sqrt{\frac{b_C}{c_C}}$ .

*Reasoning:* Beginning at node 2, we can define Con’s ‘position-taking’ optimum,  $\omega'$ , as the level of activity Con would choose based *only* on position taking benefits, that is, without regard to the impact on the final policy outcome. The position-taking optimum is the level of effort that maximizes Con’s net payoff without consideration of the  $-b_C$  utility decrement that occurs if the bill passes. That is,  $\omega'$  is the solution to

$$\omega' = \arg \max q_C \omega - c_C \omega^2 = \frac{q_C}{2c_C}$$

or

$$\omega' = \frac{q_C}{2c_C}. \tag{1}$$

At the position taking optimum, the level of utility from position taking alone (ignoring policy utility), net of the opportunity cost, is  $\frac{q_C^2}{4c_C}$ .

If  $\omega' \geq \pi$ , then the level of activity Con would choose based on position taking alone is sufficient to defeat the bill, and this level,  $\frac{q_C}{2c_C}$ , is Con’s optimal choice at node 2.

When  $\omega' < \pi$ , however, Con must decide whether to ‘go the extra mile’ and increase activity up to  $\pi$ , the effort needed to affect the outcome, or to stick with  $\omega'$  knowing that this will not be sufficient to block the bill. Con chooses a level of opposition beyond the position taking optimum if

$$U_C(\omega = \pi, \text{no bill}) > U_C\left(\omega = \frac{q_C}{2c_C}, \text{bill passes}\right)$$

or

$$q_C \pi - c_C \pi^2 > \frac{q_C^2}{4c_C} - b_C. \tag{2}$$

Inequality 2 is quadratic in  $\pi$ , and thus has 2 roots,  $\pi = \frac{q_C}{2c_C} \pm \sqrt{\frac{b_C}{c_C}}$ . Recall that we are only interested here in cases where  $\frac{q_C}{2c_C}$  ( $= \omega'$ ) is less than  $\pi$  (otherwise we are in the previous paragraph’s case.)

Thus when  $\omega' < \pi$ , inequality (2) holds (and Con chooses to go the extra mile) when

$$\pi < \frac{q_C}{2c_C} + \sqrt{\frac{b_C}{c_C}}. \tag{3}$$

Inequality (3) defines  $\underline{\pi} = \frac{q_C}{2c_C} + \sqrt{\frac{b_C}{c_C}}$  as the minimum level of promotional activity needed to deter *sincere* opposition, i.e. opposition that is genuinely aimed at stopping the bill, not undertaken merely to claim political credit.

Now consider Pro's choice at node 1. As was the case with Con, we can define Pro's position taking optimum,  $\pi'$ , as the level of promotion Pro would choose for credit claiming purposes, without consideration of the policy outcome. Parallel to Con's case,  $\pi' = \frac{q_P}{2c_P}$ , and Pro's net utility from position taking (ignoring policy benefits) is  $\frac{q_P^2}{4c_P}$ .

Again, there are two cases. If Pro's position-taking optimum is above the level needed to deter effective opposition, that is if

$$\frac{q_P}{2c_P} > \frac{q_C}{2c_C} + \sqrt{\frac{b_C}{c_C}}, \quad (4)$$

then Pro chooses  $\pi = \frac{q_P}{2c_P}$ , Con chooses  $\omega = \frac{q_C}{2c_C}$ , and the bill succeeds.

If inequality (4) does not hold, it is now Pro who must choose whether to go to the extra effort needed to overcome opposition. Opposition will succeed when Pro decides that the extra policy utility is not worth the opportunity cost of extra effort, that is, when

$$U_P\left(\pi = \frac{q_P}{2c_P}, \text{ no bill}\right) > U_P\left(\pi = \frac{q_C}{2c_C} + \sqrt{\frac{b_C}{c_C}}, \text{ bill passes}\right)$$

or

$$\frac{q_P^2}{4c_P} > b_P - c_P\left(\frac{q_C}{2c_C} + \sqrt{\frac{b_C}{c_C}}\right)^2 + q_P\left(\frac{q_C}{2c_C} + \sqrt{\frac{b_C}{c_C}}\right). \quad (5)$$

Inequality (5) implies the condition given in Result 1(b).

### 3. Predicting Opposition Levels and Outcomes

One way to interpret Result 1's condition for successful opposition,

$$\frac{q_P}{2c_P} + \sqrt{\frac{b_P}{c_P}} < \frac{q_C}{2c_C} + \sqrt{\frac{b_C}{c_C}}$$

is to note that the expression on the right-hand side of the inequality is the maximum effort Con would undertake to expend to block the bill. Similarly, the left-hand side is the maximum effort Pro would undertake to pass the bill. We label this quantity,  $\frac{q_i}{2c_i} + \sqrt{\frac{b_i}{c_i}}$ , the 'net political will' for each actor  $i$ . It is 'net' in the sense that it incorporates opportunity costs as well as both position-taking and policy benefits. Overall, Result 1 says that the bill succeeds when and only when Pro's net political will exceeds Con's.

Result 1 offers three implications. First, opposition always occurs if there are position-taking benefits. Note that in the absence of position-taking benefits, opposition would never occur in equilibrium. If Con was not willing to invest enough effort to kill the bill, it would not oppose the bill at all. And when Con is willing to go to the effort necessary to kill the bill, Pro anticipates this and never promotes it in the first place.<sup>8</sup>

The second implication is about when we expect opposition to succeed. *Ceteris paribus*, successful opposition is more likely when (i) intrinsic political rewards for opposition ( $q_C$ ) are high and the intrinsic rewards for promoting the bill ( $q_P$ ) are low; (ii) when Con's intensity of preference for retaining the status quo ( $b_C$ ) is high and Pro's intensity of preference for the bill ( $b_P$ ) is low; and (iii) when the costs to Con of effective opposition ( $c_C$ ) are low and the opportunity costs to Pro of effective promotion ( $c_P$ ) are high. The political and policy benefit parameters ( $b_i$  and  $q_i$ ) are generally determined by the nature of the bill itself (who in society benefits from it, who is hurt by the bill, how organized these groups are). The cost parameters, however, are shaped to a large extent by the institutional environment: how much physical effort, staff time, and legislative output on other issues must be forgone in order to direct effort toward the bill in question.

Third, the model predicts each side's activity level on a bill. Although policy preferences (as a component of net political will) are critical in determining the outcome, observed activity levels will sometimes reflect position-taking considerations alone. To see this, consider how each of the two conditions defined by Result 1 (the conditions under bill succeeds or those under which it fails) divides into subconditions defined by the relative magnitudes of each side's net political will  $\frac{q_i}{2c_i} + \sqrt{\frac{b_i}{c_i}}$  and position-taking optimum  $\frac{q_i}{2c_i}$ .

CONDITION 1:  $\frac{q_P}{2c_P} + \sqrt{\frac{b_P}{c_P}} < \frac{q_C}{2c_C} + \sqrt{\frac{b_C}{c_C}}$ . Con has greater net political will, so the bill fails.

We will consider two relevant subconditions.

CONDITION 1A:  $\frac{q_P}{2c_P} + \sqrt{\frac{b_P}{c_P}} < \frac{q_C}{2c_C}$ . Con's position-taking optimum is greater than Pro's net political will.

When Condition 1a holds, position-taking considerations alone would lead Con to higher effective activity levels than Pro is willing to counter. Realizing this, Pro undertakes only the level of effort that position-taking considerations

8. See Alter and McGranahan (2000) and Bawn and Koger (2003) for formal models of obstruction in which the latter never occurs in equilibrium.

alone imply. Pro's policy preferences do affect the overall outcome, however, in the sense that Pro's relatively low intensity of policy preference ( $b_P$ ) factor in to whether Condition 1a holds or not. Nonetheless, *observed levels of effort by both sides are those implied by position-taking considerations alone*. Pro does not 'go the extra mile' because the extra effort needed to overcome opposition does not justify the opportunity costs. Con also chooses the effort level that maximizes position-taking benefits, and this is enough to bring about the desired outcome. Con can thus act like a 'show horse' and still get the benefits of being a 'work horse' (Matthews, 1959). Con's policy preferences end up irrelevant in this case, because its position-taking benefits are so high. Put differently, Con could be indifferent about the substance of the bill, but could be induced to block it based on position-taking concerns alone. Below, the 1917 filibuster against arming US merchant ships is presented as a case that matches this profile; the filibuster needed to defeat President Wilson's measure seemed disappointingly short to the filibusterers who would have happily continued to beat a dead horse.<sup>9</sup>

CONDITION 1B:  $\frac{q_C}{2c_C} < \frac{q_P}{2c_P} + \sqrt{\frac{b_P}{c_P}} < \frac{q_C}{2c_C} + \sqrt{\frac{b_C}{c_C}}$ . Con's position-taking optimum alone is not sufficient to block the bill, but Con's net political will to block the bill exceeds Pro's will to enact it.

When Condition 1b holds, the policy preferences of both Pro and Con matter for the outcome, although Pro's observed level of activity is determined by position-taking considerations alone. Realizing that effort beyond the position-taking optimum will be successfully defeated, Pro sticks with its position-taking optimum. Con undertakes precisely the level of effort needed to block the bill. This may be higher than Con's position-taking optimum, but (except in the limiting case) less than the maximum level implied by Con's policy preferences. In this case, both Pro's and Con's level of observed effort is determined by Pro's position-taking considerations.

As described later, the 1915 filibuster against a plan to buy German and British ships succeeded despite considerable pro-bill effort. We argue that the determining factor was the intensity of the opponents' conviction that, politics aside, the bill was a dangerous and misguided proposal.

CONDITION 2:  $\frac{q_C}{2c_C} + \sqrt{\frac{b_C}{c_C}} < \frac{q_P}{2c_P} + \sqrt{\frac{b_P}{c_P}}$ . Pro has greater net political will, so the bill succeeds.

9. In reality, if Pro's effort level is low, Con might not have the opportunity to expend as much effort as it would like to for position-taking purposes – for example if the Pro side satisfies its position-taking needs simply by drafting a bill, feeling no need to get the bill reported from committee, Con may not be able to take as strong a position against the bill as it would like.

Again, there are two relevant subconditions.

CONDITION 2A:  $\frac{q_C}{2c_C} + \sqrt{\frac{b_C}{c_C}} < \frac{q_P}{2c_P}$ . Pro's position-taking optimum is greater than Con's net political will. This condition resembles 1a, in that the outcome depends on the losing side's low preference intensity relative to the winning side's high position-taking benefits. In this case, Pro's desire to claim credit on this issue is so great that the bill will pass even if Pro doesn't care about the policy change at all ( $b_P = 0$ ). The level of observed activity by both sides is determined by position-taking considerations alone. Like Con under Condition 1a, Pro is able to reap the policy benefits of being a workhorse simply by acting like a showhorse. Pro has no reason to be more active than its position-taking optimum implies. Realizing that the effort needed to overcome Pro's position-taking optimum will not justify the opportunity costs, Con settles with the level of opposition activity that maximizes its own position-taking benefits.

The adoption of the Senate's first cloture rule in 1917 fits this profile. While the proponents of the rule change were lukewarm about the need for institutional reform, they nonetheless won easily because the position-taking benefits of changing Senate rules outweighed the opposition's net political will.

CONDITION 2B: Pro's position-taking optimum is not sufficient to deter successful opposition, but Pro's net political will to pass the bill exceeds Con's will to block it,  $\frac{q_P}{2c_P} < \frac{q_C}{2c_C} + \sqrt{\frac{b_C}{c_C}} < \frac{q_P}{2c_P} + \sqrt{\frac{b_P}{c_P}}$ . As under Condition 1b, both sides' policy preferences are relevant to the outcome, and the losing side's intensity of policy preference is reflected in the winning side's activity level. Specifically, in this case, Pro's level of activity is exactly that needed to offset Con's net political will. The passage of the 1913 Federal Reserve Act, described later, illustrates this scenario.

Table 1 summarizes the four possible conditions established by our model. It underscores the importance of position-taking effects. Under Conditions 1a and 2a, the 'tail wags the dog' in the sense that the outcome is determined completely by the winning side's position-taking benefits. As the table shows, we will analyze one actual legislative event corresponding to each theoretically derived condition. We turn now to that task.

#### 4. Obstruction in the Progressive Era Senate

In the sections that follow we discuss four actual legislative cases from the Progressive Era Senate, specifically from the crucial years 1913 to 1917, years during which much historic legislation was passed and the Senate adopted its

**Table 1.** Bill Outcomes and Observed Effort Levels as a Function of Relative Costs and Benefits

| Condition | Outcome       | Parameter Values   | Interpretation   |
|-----------|---------------|--|--|
| 1a        | Bill fails    | $\frac{q_P}{2c_P} + \sqrt{\frac{b_P}{c_P}} < \frac{q_C}{2c_C}$   | Position-taking effort alone is sufficient for Con to win.<br><i>Example: Ship Arming Bill 1917.</i>                 |
| 1b        | Bill fails    | $\frac{q_C}{2c_C} < \frac{q_P}{2c_P} + \sqrt{\frac{b_P}{c_P}} < \frac{q_C}{2c_C} + \sqrt{\frac{b_C}{c_C}}$ | Policy as well as position-taking concerns motivate Con's winning effort.<br><i>Example: Ship Purchase Act 1915.</i> |
| 2a        | Bill succeeds | $\frac{q_C}{2c_C} + \sqrt{\frac{b_C}{c_C}} < \frac{q_P}{2c_P}$   | Position-taking effort alone is sufficient for Pro to win.<br><i>Example: Rule XXII (Cloture) 1917.</i>              |
| 2b        | Bill succeeds | $\frac{q_P}{2c_P} < \frac{q_C}{2c_C} + \sqrt{\frac{b_C}{c_C}} < \frac{q_P}{2c_P} + \sqrt{\frac{b_P}{c_P}}$ | Policy as well as position-taking concerns motivate Pro's winning effort.<br><i>Example: Federal Reserve 1913.</i>   |

first formal cloture rule. The cases are the Federal Reserve Act (1913), the Ship Purchase Bill (1915), the Ship Arming Bill (1917) and the adoption of the Senate cloture rule (1917). They were selected with two criteria in mind. First, each corresponds to one of the four theoretically derived conditions just discussed. Second, each presents some major anomalous features that vote pivot models would find difficult to explain.

We chose all four cases from the Progressive Era in part to keep the necessary background information to a minimum, but also because Senate decision-making in the pre-cloture era is generally not well explained by vote pivot models. The strictest application of the vote pivot model would imply that in the absence of a formal cloture procedure, no majority or supermajority of any size short of unanimity could limit debate. Filibuster pivots would be the most extreme legislators on either side. The implication would be that Senate rules implicitly required unanimity to pass legislation.

But unanimity rule clearly did not prevail, although examples of successful obstruction by very small groups have been documented (Burdette, 1940). During this period, filibusters were contests of wills. Unlike a modern filibuster,<sup>10</sup> a filibuster in the 1910s required a senator (more realistically, a team of senators) to be physically present in the Senate, actively occupying the time of the chamber. By 1913, the primary means of filibustering was to stand and speak

10. Bawn and Koger (2005) argue that the key difference between modern filibusters and those of the Progressive Era is due to the system of double tracking developed in the 1960s and 1970s, which lowered both the cost of filibustering and the cost of tolerating a filibuster. Binder et al. (2002) also emphasize the role of double tracking in lowering the costs of obstruction to both sides.

for hours, although senators also killed time by requesting unnecessary votes. The physical effort and coordination required to filibuster imposed a de facto constraint, even without a formal cloture rule.

Other writers (Binder and Smith, 1997; Koger, 2002) have argued that the physical effort required to filibuster effectively implied a pivot at  $2/3$  of the chamber or less even before the adoption of Rule 22. Similarly, Wawro and Schickler (2004) claim that decision making in the pre-cloture Senate was essentially majoritarian, except that as the end of the session approached, obstruction by smaller minorities becomes increasingly likely to succeed. Our model's implications are consistent with Wawro and Schickler's findings that there is no single pivot that applies to all Senate decisions, regardless of context. Moreover, the effect Wawro and Schickler focus on – the escalating opportunity costs of waiting out a filibuster – is a clear example of systematic variance in one of our model's basic parameters, the cost of promoting legislation ( $c_P$ ). Our model puts the end-of-session time crunch into a broader category of factors that interact to determine legislative success.

The four legislative events we describe later occurred during the tumultuous presidency of Woodrow Wilson. In 1913, the Democrats gained control of Congress and the White House for the first time since 1895. President Wilson was an aggressive policy leader who motivated legislators to approve his proposals through a combination of persuasion and patronage. Wilson was notably willing to 'go public' to the national media (Link, 1956; Tulis, 1987; Kernell, 1997). The Senate was often the decisive battleground for Wilson's policy agenda, the ambitious nature of which made senators'  $b_P$  and  $b_C$  terms high in some cases. Wilson's use of patronage and the media was a key source of rewards for activity ( $q_C$  and  $q_P$ ).

## 5. The 1913 Federal Reserve Act

On 23 June 1913, Woodrow Wilson addressed Congress asking for banking and currency reform to centralize a chaotic system. Wilson's original bill called for government control of the Federal Reserve Board and made federal reserve notes the obligation of the United States (Link, 1956). Wilson then worked throughout the summer with party leaders in both chambers to develop a bill. In July and August, Republicans filibustered a different bill to signal opposition to bringing the banking bill to the Senate floor that summer (*New York Times*, 1913a, 1913b, 1913c).

The Senate Banking Committee deadlocked over the degree of government control over the currency, finally reporting multiple banking bills on 1 December 1913. Despite the Banking Committee's ambivalence, the Democratic party organization developed and strongly supported a version of the bill. Beginning 26 November 1913, the Senate Democratic Caucus met 12 times to plan floor

strategy, develop a party-approved version of the bill, and commit all Democrats to the measure (Minutes of the US Senate Democratic Caucus, 1998 [hereafter 'Democratic Minutes']). The Democratic Caucus deliberated on the bill from 26 to 30 November, and again on 17 and 18 December. At the end of the 30 November discussion the Caucus declared the banking bill a party measure with a 'gentleman's agreement' that Democrats would support the bill on the Senate floor (*Washington Post*, 12/1/1913). Democrats also agreed to lengthen Senate workdays from five hours a day (noon to 5 p.m.) to eleven hours a day (10 a.m. to 11 p.m. with a two-hour dinner break). These hours would remain in effect until the bill passed. Furthermore, the Senate would not have a Christmas break (except Christmas day itself) or New Year's holiday unless the bill passed.<sup>11</sup>

Republicans acquiesced to the Democrats' aggressive strategy. To avoid the impression that they were filibustering, Republicans abandoned a plan to criticize the bill at length and offer numerous amendments (*Washington Post*, 12/6/1913, A2). The Senate debated for two weeks and then passed the currency reform bill on 19 December by a vote of 54–34. After a quick conference, the Senate approved a conference report 43–25 on 23 December. Wilson signed the bill into law the same day.

### *Analysis*

The Federal Reserve Act succeeded despite the fact that a large number of Senators opposed it. Whether we think of the pre-1917 pivot as 1/3 of the Senate or unanimity, the opposition clearly had sufficient votes to block the bill if any sort of vote pivot logic applied. The 34 votes against final passage were 38 per cent of all voting senators and 35 per cent of the entire Senate. Why then was there no filibuster?

Mapping this bill into our effort–intensity model, we note first that both sides cared intensely about the policy outcome; that is, policy stakes ( $b_P$  and  $b_C$ ) loomed large on both sides. The Pro team saw the Federal Reserve as a way to put the country on a sound financial footing after decades of instability and political crisis. For the Con side, the stakes were high as well; once adopted, any law would likely persist, permanently altering the structure of the financial system. Currency-related legislation had previously sparked two of the Senate's most famous filibusters: the Silver Purchase Act Repeal of 1893 and the Aldrich–Vreeland Act of 1908.

Neither the proponents nor the opponents of the bill faced high rewards for position taking, however;  $q_P$  and  $q_C$  were both low. Democrats, who made up most of the pro-bill majority, faced mixed incentives due to divided support groups. On one hand, President Wilson had made banking reform the second

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11. The Senate ratified this schedule on 6 December by a 41–13 vote.

item on his agenda and had publicized the issue by addressing Congress. On the other hand, many Democratic supporters had misgivings about the bill, particularly whether it gave too much power to private banks. These concerns had motivated the committee delay and party caucus meetings. For many on the Pro side, any anticipated rewards from Wilson for prompting the bill were tempered by the danger of alienating key supporters. On the Con side, Republicans, and their supporters in the world of banking, were concerned that outright filibustering could lead to a currency crisis (*Washington Post*, 11/25/1913). Neither side could have expected high rewards for publicly signaling a clear and intense position on this bill.

Looked at this way, the Federal Reserve Act fits into category 2b in Table 1, in which Pro's intense preference for the policy outcome (high  $b_P$ ) is the decisive factor. In this category, Pro's position-taking optimum would not be sufficient to overcome Con's opposition, but intense policy preference motivates Pro to 'go the extra mile'. Although Con's policy preferences also may be intense, Con realizes that its net political will falls short of Pro's. Realizing that it will not prevail on the outcome, Con chooses an effort level that reflects only its position-taking incentives, which are low. This prediction is consistent with the Democrats' aggressive push for the bill and the Republicans' anemic response.

Our model does not explicitly allow for strategic moves, such as the extension of the Senate day from five to eleven hours and the threat of no Christmas break. Within the model, these moves would simply be examples of how the majority party's control of procedures makes  $c_P$  quite low when (as in this case) the Pro side dominates the majority party.<sup>12</sup> That is, the decisions in the Democratic caucus allowed the Pro side to dramatically increase the bill's chance of passing at a relatively modest opportunity cost.

Nor does our model explicitly consider how each side chooses to allocate its effort among various strategies, for example, procedural machination, attempts to sway public opinion, logrolling to expand a coalition. The implicit assumption is that each side allocates its effort in the most cost-effective way, given the balance between position taking and policy concerns on any given bill. Nonetheless, the Pro side's choices about type of effort support our overall interpretation. The Democratic Pro side directed its effort toward forcing their opponents to back. Pro did this by signaling its willingness to work long hours and invest effort in developing a unified front. This choice is consistent with our overall interpretation of the Federal Reserve Act as a case driven by high policy stakes and low rewards for position taking.

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12. Cox and McCubbins (1993, 2005) document the importance of procedural control for majority party power. While much of their focus is on the impact of agenda setting in a vote-pivot context, the basic argument that procedural decisions are a key source of majority party power translates equally well in the effort-intensity model.

## 6. The 1915 Ship Purchase Act

After the November 1914 elections, the Wilson administration proposed legislation establishing a government corporation to purchase and operate merchant ships, alleviating the shortage of ocean transportation caused by the outbreak of World War I. Most Republicans and some Democrats denounced this plan as ‘socialistic’, because it established a government enterprise, and provocative, because it provided Germany with cash and facilitated shipment of non-military goods like cotton to Germany (*Congressional Record*, 8 June, 1918; Garraty, 1953).

Despite these concerns, the Senate voted 46–29 to consider the shipping bill on 4 January 1915 on a mostly party-line vote; Democrats voted 42–1 to bring up the bill. Republicans immediately announced their intent to filibuster. While trying to exhaust Republican opposition on the Senate floor, the Democrats caucused six times from 16 to 23 January. At the conclusion, the caucus voted to bind all Democrats to support the bill as a party measure.<sup>13</sup>

On 25 January, Duncan Fletcher (D-FL) introduced the caucus bill as a substitute amendment. Over the next seven days, Republicans used every filibustering tactic – dilatory motions, prolonged speaking, and disappearing quorums – to prevent a final vote on the Fletcher substitute. Of the 19 votes during this week, most Republicans were absent from 12; on 8 of these 12 votes a quorum was ‘broken’, that is, less than half the Senate participated in the vote. Six amendments to the underlying bill were tabled by mostly party-line votes, demonstrating to Republicans the futility of deliberation. Finally, on 1 February, several Democrats allied with the Republicans to recommit the bill to committee (Burdette, 1940). On the crucial vote to table the motion to recommit, seven Democrats opposed the party and the motion failed 42–44. Another five Democrats voted with Republicans on at least one of two preceding procedural votes, suggesting even broader discontent within the majority party.<sup>14</sup>

At this point, the Democrats, instead of conceding defeat, began filibustering while rounding up absent members from around the country and negotiating with dissident Democrats and progressive Republicans (Burdette, 1940; Democratic Minutes, 1998). A week later, three returning senators reinforced the Democrats and the roles reversed again – Republicans obstructing, Democrats pushing for a vote.

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13. This vote, however, became a source of controversy. Since there were 53 Democrats in the Senate, 36 votes were required for a two-thirds majority to bind a caucus. The initial vote was 35–3, other Democrats being absent, but Charles Thomas (CO) agreed to switch his vote so the caucus would be bound (Democratic Minutes, 1998). On this basis the caucus expected every Democrat to support the bill once the Republicans grew tired of talking.

14. ICPSR 0004, 63rd Senate, variables 528–530. On the motion to table, Democrats voted 41–7, Republicans 1–36, Progressive 0–1. For the Democratic dissidents’ varied motives, see *Congressional Record* (16/2/1915) and Link (1956).

After another four days of debate, on 12 February the Democrats switched to a new tactic: changing the rules of the Senate to impose cloture on the shipping bill. This proposal, supported by the ‘unanimous resolve’ of the Democratic caucus (*Washington Post*, 14/2/15), was similar in logic to a special rule in the House. It added a provision to the standing rules of the Senate calling for a final-passage vote on the Ship Purchase Act by February 19.<sup>15</sup> Interestingly, this proposal was defeated not by filibustering but by a clever amendment that reframed the issue. Senator Cummins (R-IA) offered an amendment invalidating the cloture rule on any issue on which a party caucus had bound its members’ votes. Not only would this amendment invalidate the cloture provision for the bill at hand, it also shifted the topic of procedural debate from filibustering to party discipline. Public opinion favored the Democrats on the first issue (obstruction was perceived as inappropriate behavior by ‘little group[s] of willful men,’) but favored Republicans (and insurgent Democrats) on the second: party discipline was perceived as a mechanism by which a minority of the Senate, backed by the President, dominated a majority.

An attempt to table this amendment failed 45–47, with Robert LaFollette (R-WI) defecting from the pro-shipping bill coalition to oppose caucus rule. Rather than take a direct vote on Cummins’s amendment, Democrats conceded defeat on both the proposed cloture rule and the shipping bill – not because the cloture rule was filibustered, but because the votes indicated that they would lose.<sup>16</sup>

Had the Democrats not conceded defeat, they had a majoritarian strategy prepared to force a vote on the shipping bill and, in the process, transform the Senate. Ollie James (D-KY) suggested during the Senate debate that any member could move the previous question on the bill. Once the chair ruled this motion out of order, any member could appeal the ruling and bring about a simple majority vote on adding a previous question motion to Senate procedure. James promised to force a vote on his ruling if he was the presiding officer (*Congressional Record*, 2/13/1915). Democrats seriously considered the strategy but abandoned it because they did not have the majority needed to win the procedural question (*Washington Post*, 2/17/1915; *Washington Post*, 2/18/1915, A5).

### Analysis

At first glance, it would seem that this case fits a supermajority pivot model quite well. The bill did not have supermajority support, the bill’s opponents

15. The *Washington Post* reported that ‘a careful canvass of [Democratic members] demonstrated that from twelve to fourteen Democratic senators will not support a general cloture rule’ but *would* support the bill-specific proposal (17/2/1915: A2).

16. The text describes the main contest. The Senate subsequently passed a watered-down version of the bill and requested a conference with the House on the condition that the conference not report until February 27. The *New York Times* (19/2/1915: A1) described this as ‘tantamount to dropping the Ship Purchase Bill’. The conference report was easily killed by a low-intensity filibuster in the last days of the 63rd Congress.

filibustered, the bill failed. But (even leaving aside ambiguity about the location of the filibuster pivot prior to Rule XXII), it is puzzling that so much effort was expended on a bill that never came close to supermajority support. Wasn't this a tremendous waste of time, especially given that all 13 appropriations had yet to be passed (*Washington Post*, 16/2 1915)?

Moreover, proponents' efforts (the binding vote in the Democratic caucus, efforts to bring traveling Senators back to Washington) were clearly aimed at building *majority* support. As Mayhew (2003) argued about the 1937 court-packing bill, this was a struggle for the median voter rather than an effort to build a supermajority. Delay tactics were used by both sides to influence the timing of the final decision, as both sides struggled to convert votes and manipulate attendance to ensure a majority.

The effort and intensity model reconciles these puzzles. On both sides, preferences were intense. The high stakes (US neutrality and 'socialist' intervention in the economy) implied high  $b_P$  and  $b_C$ . Rewards for individual effort ( $q_P$  and  $q_C$ ) on this salient issue were also high. As with the Federal Reserve Act,  $q_P$  was augmented by carrots from the Wilson administration. Republicans claimed that President used the caucus (backed by discretion over patronage) to pressure Senate Democrats, and thus the Senate, to adopt his legislation hastily and without change. Gilbert Hitchcock (D-NB) noted that 'There would have been no Democratic caucus [on the shipping bill] if it had not been for outside influences'. George Norris (R-NB) replied, 'That is the case nine times out of ten' (*Congressional Record*, 16/2/1915, 3849). Theodore Burton (R-OH) noted that the pressure – partisan and business – on Democrats was greater on the shipping bill than on any of the significant New Freedom bills – tariff reform, anti-trust bills, and the Federal Reserve Act (*Congressional Record*, 13/2/1915). On the other hand, some Democrats alleged that a 'shipping trust' opposed the bill out of fear of government competition (*Washington Post*, 16/2/1915), which would elevate the rewards for fighting the bill ( $q_C$ ).

In contrast to the Federal Reserve case,  $c_C$  was here much lower than  $c_P$  for two reasons. First, the Ship Purchase Act came up in the 'short' session' of the 63rd Congress. Waiting out a filibuster in the last six weeks of a session imposed a high opportunity cost for the Pro side in terms of other bills displaced from the Senate agenda. These included a rural credits bill, hydropower development, and Philippine independence; continuing the debate longer could have also defeated several pending appropriations bills.

Second, the number of senators on the Pro side was relatively small, so that the individual costs of promoting the bill were spread over fewer senators. Only 35 of 53 Democrats went to the Democratic caucus meeting and voted to make the bill a party measure; opponents of a bill typically avoid such votes. A Democratic bill opponent, Sen. Hitchcock (D-NB), stated in debate that 'not one half of the senators upon the Democratic side of the chamber believe in this bill as it is now before the Senate' (*Congressional Record*, 13/2/1915: 3707).

The high levels of  $q_P$ ,  $q_C$ ,  $b_P$  and  $b_C$  imply that we should see high levels of activity on both sides. On the Pro side, the Democrats' high  $\pi$  is evident in (1) their willingness to keep the ship purchase bill on the floor for almost a month in the face of high opportunity costs; (2) their decision to meet as a caucus, negotiate an intra-party compromise, and bind all Democratic senators to the bill; (3) their willingness to obstruct rather than allow the ship purchase bill to return to committee; (4) their attempt to adopt a cloture rule, albeit one that applied only to this bill; and (5) the willingness of some Democrats to adopt a radical change in Senate procedure. Similarly, the high level of  $\omega$  undertaken by the Con side is indicated by days of obstruction and the clever amendment strategy that derailed the proposed cloture rule.

The fact that both types of intensity were high on both sides, combined with a cost advantage for Con, imply that the Ship Purchase Act would fall under Condition 1b as in Table 1. When this condition holds, the model predicts that opponents will go beyond their politically optimal level of activity and obstruct to the point necessary to kill the bill. Of course, we cannot directly observe whether anti-bill effort was motivated by outcome goals as well as political rewards. It bears emphasis, however, that the effort level was extremely high. One senator calculated that during the first two weeks of Senate debate on the ship purchase bill, there were 96.5 hours of debate, two consumed by a Democrat and the rest by Republicans. Sustained effort by the Con side is what killed the Ship Purchase Act.

## 7. The 1917 Ship Arming Bill

On 1 February 1917, Germany resumed unrestricted submarine attacks on ships headed for Britain; Wilson broke relations with Germany on 3 February. On 26 February seven days before the mandated end of the session, Wilson addressed Congress to request legal authority to arm merchant ships. It was clear to most senators that the President already possessed the authority to arm ships; Wilson's real intent, they feared, was to obtain a broad grant of power to pursue a policy of 'armed neutrality' (Ryley, 1975: 74). To do so, Congress would have to write, debate, and pass a law during the most hectic, time-pressured week of the Congress.

On 1 March, the House approved 413–13 a ship-arming bill that omitted a key phrase granting Wilson discretion to defend merchant ships. In order for Wilson to obtain broad military discretion, the Senate had to include a provision granting these powers. The same day, the White House made public Germany's 'Zimmerman note' to Mexico, which proposed a Germany–Mexico alliance in the event that the USA entered the war against Germany.

The armed ship bill came up in the Senate on 2 March amidst the public firestorm over the Zimmerman note. A small, organized group of senators then

filibustered the bill with William Stone (D-MO), chairman of the Senate Foreign Relations Committee, giving the longest speech (four hours) against the bill (Burdette, 1940; Ryley, 1975). By the morning of 4 March, bill supporters gave up and placed a statement in the record that at least 75 senators wanted to vote for the bill but could not overcome the filibuster against it (*Congressional Record*, 4/3/1917; *New York Times*, 5/3/1917).<sup>17</sup>

### *Analysis*

The odd feature of this filibuster is that a group of 10 to 15 senators was able to block this bill – far fewer than the 1/3 pivot (33 senators) or a simple majority (49). How do we account for the obstructionists' success when it took almost a chamber majority to sustain a filibuster against the 1915 Ship Purchase Act?

The effort–intensity model, while not completely disregarding the role of numbers on each side, highlights two other aspects of the Ship Arming Bill. First, the timing of the Zimmerman incident drastically increased the already high salience of the issue, making  $q_P$  extremely high. On the other hand, anti-war constituents gave the bill's opponents a strong incentive to fight, making  $q_C$  also high. The fact that Wilson arguably already had the power to arm ships suggests that  $b_P$  was relatively small while  $b_C$  was ambiguous – anti-war senators had reason to oppose the bill fervently to the extent they believed it would deepen U.S. involvement in World War I.

Second, this bill came up even later in the session than the Ship Purchase Act had two years before. In this case, the filibuster only had to last for about two days. In our model, the relative scarcity of time increases the  $c_P$  term; as time becomes scarce, the opportunity cost of waiting out a filibuster increased. Since the Senate had to interrupt the armed ship bill to conduct other end-of-session business, the filibuster succeeded without requiring a high level of activity on the Con side.

High position-taking incentives, minimal policy impact and an imbalance in the costs of obstruction ( $c_P > c_C$ ) imply that this bill falls under Condition 1a, in which both sides choose their political optimum and the Con side wins. This interpretation is consistent with Ryley's (1975) claim that some of the obstructionists felt obliged to block this bill to demonstrate the sincerity of their public positions. In fact it appears that the Con side succeeded in blocking the bill before they reached their position-taking optimum. One of the obstructionists, progressive Robert LaFollette (R-WI), relished the opportunity to participate in the filibuster so much that, to spite him, bill supporters gave long speeches in the final hours of the 64th Congress to block his triumphant eulogy (*New York Times*, 5/3/1917). The bill supporters filibustered the filibusterer!

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17. Some of these 75 signators indicated that their support was contingent upon amending the bill. An earlier vote to consider the bill passed 64–15.

## 8. Adoption of Senate Cloture Rule, 1917

Wilson and the general public did not see the failure of the ship arming bill as the predictable outcome of trying to pass a new, controversial bill in a work-clogged system within a week. In a famous phrase, Wilson blasted the 'little group of willful men' who had blocked his bill and called for reform of the Senate rules (*New York Times*, 3/5/1917: A1). Most major newspapers expressed similar outrage against the filibuster and those who had spoken against the bill (Ryley, 1975). Citizens held rallies criticizing the obstructionists. Senators were burned in effigy. Some senators' lives were threatened (Ryley, 1975). Public pressure to change the rules of the Senate was probably greater than at any other time in Senate history.

President Wilson reconvened the Senate in executive session on 5 March 1917, for the primary purpose of adopting a cloture rule. On 6 March, both party conferences appointed committees to negotiate and agree upon a cloture rule (Democratic Minutes, 1998; Minutes of the Republican Conference, 1999, [hereafter 'Republican Minutes']). A day later, the negotiators reported to their respective parties a rule much like a Rules Committee proposal from the previous year: a 16-signature petition triggered a vote and, if two-thirds of those voting supported cloture, each senator was limited to an hour of debate time. The Republicans adopted the proposal by a vote of 30–2; the Democrats adopted the report unanimously after rejecting a proposal to further limit post-cloture debate in the last two weeks of the session, and after referring a previous question (i.e. simple majority) proposal to the bipartisan negotiators (Democratic Minutes, 1998; Republican Minutes, 1999).

On 8 March, the proposed rule was adopted 76–3 after a few hours of debate. Interestingly, the rule proposal came up under unanimous consent, so no special effort was required to get the rule onto the Senate floor or to force a final passage vote. Of the 11 senators identified as opponents of the ship arming bill, six voted for the cloture rule, two opposed it, and three were no longer in the Senate.

### *Analysis*

As with the Federal Reserve Act, the central puzzle of this case is the absence of a filibuster, or even significant opposition, to the cloture rule. One would expect minority party senators to oppose a reduction in their prerogatives, but none did. Indeed, most of the senators who had just obstructed to defeat a major bill refused to defend the right to filibuster.

Obviously this outcome is inconsistent with the notion that the Senate had been operating under a de facto unanimity requirement which the new rule lowered to a two-thirds supermajority requirement. One would expect, in this model, the change from unanimity to two-thirds to be blocked by the 33 percent of Senators who would be losing the ability to obstruct. These expectations clash sharply with the rule's easy passage and wide margin of support.

The events leading to the adoption of cloture are consistent with the view that filibusters are contests of effort motivated by position taking as well as policy concerns. Prior to the adoption of the cloture rule, a sizable coalition was required to filibuster except during the final days of a Congress. Thus a two-thirds cloture rule represented a small change from the pre-existing balance of power.<sup>18</sup> In our account, the key factor in this non-filibuster was the stark difference in position-taking payoffs for Pro and Con. The still-fresh outrage over the ship-arming bill ensured the Pro side had the full support of the President, the press, and public opinion, making  $q_P$  extremely high. To fuel the fire, the media announced that cloture reform was a 'war measure', that is, essential to the protection of national security (*New York Times*, 8/3/1917). Members of the con side, on the other hand, faced threats upon their lives for their traitorous behavior. As Ryley (1975: 148) notes, 'The nature of public opinion was such that most people, who knew very little about the complexity of Senate rules, would accept virtually anything. They equated the filibuster with obstructionism and treason, and that was enough for them'. Individual rewards for effort in opposition to cloture reform,  $q_C$  was, at most, vanishingly small, and more likely negative. The parameter values clearly fit Condition 2a of our model, which predicts that Pro will win because its position-taking optimum defeats Con's net political will. The prediction is consistent with the outcome and the conventional understanding of this case.

Our analysis of the adoption of cloture is similar in spirit to that offered by Binder and Smith (1997) in their comprehensive study of filibustering. They also emphasize the public reaction against the Ship Arming Bill as key to this rule change, although they view these circumstances as extraordinary. We would not disagree that the vehemence of public opinion was extraordinarily high in this case, especially for a procedural issue. Our model implies, however, that effort motivated by the desire to get credit (or avoid blame) for a particular position is a general and systematic factor influencing legislative outcomes.

## 9. Conclusion: Where There's a Will, There's a Way

Legislative studies has gained much from vote-based models grounded in social choice theory. Social choice theory gives much weight to avoiding interpersonal

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18. There are alternative accounts of policy implications of the 1917 cloture rule. Koger (2007) argues that the effects were negligible since the rule simply codified the status quo; this would imply that both  $b_C$  and  $b_P$  were quite small. Wawro and Schickler (2004), on the other hand, argue that the cloture rule represented a collective decision to trade the possibility of passing simple-majority bills for the certainty of passing supermajority-favored bills; this would imply that  $b_P$  was positive and  $b_C$  was small. This account is agnostic on the magnitude of  $b_P$ ; it suffices to say that Pro's position-taking optimum was greater than Con's net political will.

comparisons of preference intensity, and this approach is appropriate for normative questions (Arrow, 1963). But there is no reason to ignore preference intensity in positive models of legislative decision making. Models that focus only on votes and ignore effort are missing an important systematic influence on policy decisions.

Our goal has been to explore the claim that legislative outcomes are critically affected by effort and preference intensity. Our position is that ‘how hard are legislators willing to fight?’ is at least as important as ‘how many legislators will vote yes?’ Legislative voting is virtually effortless, but forming an agenda, manipulating procedures and coordinating coalitions are not. Legislative contests are thus often won by the side willing to invest more in these effort-intensive activities.

There will, of course, be cases in which our model predicts the same outcome as those based on counting votes. But we offered four significant examples of cases leading up to the adoption of the 1917 cloture rule that were hard to explain in terms of a fixed vote pivot, but which our model predicted correctly. The effort-based model draws our attention to the institutional and environmental features that affect the marginal costs and benefits of effort, in addition to those that structure the voting agenda. Some of these features (end of session effects, issue salience, Presidential patronage) have been discussed by others who have studied this period in Senate history, but our claim is that these effects are pervasive and systematic, not simply epicycles to be tacked onto pivot-based logic. For example, our model supports Wawro and Schickler’s (2004) finding that as the end of the session approaches, filibustering by smaller and smaller minorities becomes more and more likely to succeed, but suggests that the magnitude of the end-session effect is conditional on preference intensities and position-taking benefits.

We focused here on opposition and obstruction at the floor stage, but effort matters throughout the legislative process. Legislative entrepreneurship, that is, formulating bills, building coalitions, and gaining access to committee and chamber agendas, critically depends on effort levels. So, too, does legislative agenda setting; a key part of setting the agenda is estimating how much opposition each bill will probably encounter and how much work will be required to overcome that opposition. Third, institutional changes that raise or lower the key terms in this model, especially the costs of effort, deserve more attention. How much does it matter that legislative staffs grew significantly in the late 20th century? How has the technological and media change influenced the legislative process? These questions matter little in a conventional votes-and-agendas model but they loom large as factors that shift the costs and benefits of effort.

This article’s effort-based model drew our attention to intrinsic rewards from effort, above and beyond its impact on policy outcomes, and we incorporated this possibility as position-taking benefits. We found that when we allow for the possibility of position-taking benefits, they can completely determine

observed effort levels. Groseclose and Milyo (n.d.) came to a similar conclusion in vote-based model. Incorporating position-taking incentives allows us to examine the logic behind concerns about the extent to which the ‘tail wags the dog’ in the legislative politics, that is the extent to which legislators’ desire to be associated with a popular position matters more than the actual policy outcome. Our model provides support for this concern.

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