

Explaining Restraint from Filibustering in the US Senate

DAVID R. JONES

While much has been written about the increase in filibustering over the past two decades, there has been very little discussion of the fact that, even today, opponents of legislation that could be filibustered often do not exercise this institutional right – even when doing so means the difference between defeat and passage of the measure. This study seeks to explain why legislation opposed by a cloture-preventing minority is not always filibustered. Based on a broader look at the strategic environment facing senators, this study lays out six specific hypotheses. Analysis of data from 1947–98 provides substantial empirical support for most of these hypotheses, demonstrating that the strategic calculations behind the decision to filibuster are complex and multifaceted. In particular, this study finds that for legislation on which opponents have a clear incentive to filibuster, restraint is more likely to occur when the workload is light, when parties are *not* polarised, when the president favours the measure, when opponents' cloture-preventing margin is slim, and on minor legislation.

Whenever legislators behave in a manner that is inconsistent with their policy preferences, we want to know whether there is a logical explanation for this seeming contradiction. One type of this contradictory behaviour can be found in today's US Senate. Opponents of legislation that could be filibustered often do not filibuster – even when doing so means the difference between defeat and passage of the measure. In these situations, why would opponents of a measure refrain from fully exploiting their parliamentary rights to obstruct?

While much has been written recently about the prevalence of filibustering, very little has been said about continuing examples of its non-use. Several works have discussed the apparent increase in filibustering from the Senate of the 1950s to the Senate of today.¹ However, as scholars Sarah Binder and Steven Smith acknowledge, 'even in recent years not

David R. Jones is Assistant Professor of Political Science at Baruch College, CUNY.

The author would like to thank Monika McDermott and two anonymous reviewers for helpful comments. Thanks are also due to the Eugene M. Lang Foundation for financial assistance.

The Journal of Legislative Studies, Vol.6, No.1, Winter 2000, pp.53–68
PUBLISHED BY FRANK CASS, LONDON

every bill ... opposed by a cloture-preventing minority [has provoked a filibuster]'.² Despite this fact, there has been little discussion, and virtually no empirical tests, of why such restraint occurs, even today, in situations where a filibuster would ordinarily be expected.

The goal of this study is to explain why senators would forgo their parliamentary right to filibuster in cases where there is a clear, immediate policy incentive to do just the opposite. The study begins by describing the incentives to filibuster, and the situations in which restraint should be surprising. It then discusses countervailing considerations for senators who are deciding whether or not to filibuster. Based on these observations, six hypotheses are put forward about when these incentives to restrain might outweigh the incentives to filibuster. Using data from 1947 to 1998, the study presents a multivariate analysis of these hypotheses. The results not only serve to explain restraint from filibustering, but also help paint a clearer picture of the complex strategic environment of the Senate. In addition, the findings address the broader theoretical question of why political actors sometimes behave in ways that are not to their advantage, given their immediate policy preferences.

BASIC CONSIDERATIONS

Senate rules help ensure that legislation is fully debated before the chamber votes on whether or not to pass it. But extended debate can also be used to prevent a final vote from ever occurring, thus killing the legislation. Engaging in extended debate and other dilatory tactics for the purpose of preventing the passage of legislation is commonly referred to as filibustering. The Senate's Rule XXII allows debate to be limited if three-fifths of senators (60) vote for cloture (a two-thirds vote was required prior to 1975). Once cloture is imposed, further time spent on the measure is limited to a maximum of 30 hours.³

Achieving immediate policy objectives is certainly not the only reason to filibuster (for example, see Sinclair⁴ on publicity for filibusterers). However, when it is not clear that a filibuster can accomplish the immediate policy objective, or when that objective can be achieved through other means, the absence of filibustering is not surprising. For example, if opponents of a measure comprise a majority in the Senate they could filibuster the bill, but if they do not, we could easily understand why they saw no need to do so, given that they can defeat the bill on a floor vote. Alternatively, if opponents of a measure are not numerous enough to withstand cloture they still might decide to filibuster the bill, but if they do not, we could easily understand that they saw the odds stacked against their success.

The most interesting puzzle, and the one this article seeks to explain, occurs when there is a clear, immediate policy incentive to filibuster, and yet senators display restraint. This immediate policy incentive is most clear when opponents of a bill comprise a cloture-preventing minority of senators.⁵

For opponents who comprise a cloture-preventing minority, the decision whether to refrain from filibustering can be thought of as a rational choice made by weighing the relative costs and benefits of each of these two possible options. It is useful to think of these costs and benefits in terms of the main goals of legislators: re-election, influence in the chamber, and good public policy.⁶ Below is a brief review of the basic costs and benefits that senators must consider. The following section discusses how specific variables may increase or decrease the weight of these considerations on the decision of whether to refrain from filibustering.

For opponents of a measure, filibustering would seem to be consistent with their view of good public policy: the proposal runs counter to their policy preference, so they should use any available legislative means to prevent passage, at least in its current form. If opponents do not want the bill to pass at all, filibustering can help them defeat it. If opponents merely do not like the bill in its present form, filibustering can be used as a strategy to force the bill's sponsors to amend the proposal to the opponents' liking. However, the immediate policy benefits that filibustering can accomplish are not the only consideration for a measure's opponents. Key counterbalancing considerations weighing against filibustering include the *desire to minimise opportunity costs, to obtain political favours unrelated to the issue at hand, and to avoid retaliatory sanctions.* These considerations can be thought of as benefits of restraint or, alternatively, costs of filibustering.

Forgoing a filibuster can spare a senator various opportunity costs associated with such behaviour. Binder and Smith note that filibustering 'takes senators and their staffs away from other valuable activities'.⁷ That is, while a member is busy strategising, speaking on the floor, or voting down cloture motions, that member is not pursuing other policy goals and is not raising campaign funds and meeting with constituents – activities that would help with re-election. Even if a senator were able to do two things at once, filibustering could still diminish the opportunity for that senator to achieve other legislative goals by taking up institutional time. The legislative clock in Congress is limited to two years. Therefore, time spent by the Senate on a filibustered issue is time that cannot be spent on a senator's other policy interests.

Potential filibusterers who refrain from exercising this institutional prerogative can also gain favours from supporters of the legislation. In his

early study of Senate behaviour, Donald Matthews notes that senators who help other members to achieve their policy goals can expect to be repaid in kind, and uses the term 'reciprocity' to describe such behaviour.⁸ While the level of this type of bargaining has varied over time, it remains an important factor for potential filibusterers to consider. A senator who opposes a measure but nonetheless refrains from filibustering would be performing a favour for members who support the measure. Depending on the particular circumstances, this senator may be able to obtain some form of repayment in return for this favour. Examples of possible forms of repayment include, but are not limited to, votes on other policy matters, language in appropriations bills that is favourable to one's district, authority to hold field hearings in one's state, and additional committee staff positions.

By refraining from filibustering, a senator may also avoid potential retaliatory acts. Senators who are not willing to 'go along' can produce resentment among their colleagues. In some cases, resentment towards a member who filibusters can lead to outright retaliation. Retaliation may involve votes or filibusters directed against the legislative goals of the maverick senator, or even denial of prestige committee assignments by the leadership. However, as Barbara Sinclair points out, the sanctions available to Senate leaders are somewhat limited.⁹

It is important to note that senators who decide to exercise restraint need not abandon their declared opposition to the measure in question. By casting a minority vote against a measure on final passage, members are able publicly to declare their opposition to a measure while simultaneously allowing it to pass – and in doing so they can avoid the opportunity costs of filibustering and also garner potential favours.

HYPOTHESES

Given the cross-pressures facing senators deciding whether to refrain from filibustering, which variables might lead a senator to feel that the benefits of restraint outweigh the primary cost of restraint (forgoing the desired outcome on the policy at hand)? In general, restraint should be more likely when the opportunity costs of filibustering are higher, when the rewards for restraint are more likely, and when retaliation for non-restraint is more likely. Below, specific variables that can affect the likelihood of these situations are identified. These variables include heightened time constraints, partisanship, presidential support, opponents' cloture-proof margin and the relative importance of the legislation in question.¹⁰

Time Constraints

A major opportunity cost of filibustering is loss of time. Whenever a filibuster is threatened, there is always a possibility that filibusterers may have to expend time and effort to help hold control of the Senate floor. However, opponents of a measure do not always need to spend time holding the floor in order to get what they want. A measure's supporters may quickly decide to give in to the opponents in order to spare themselves the time and effort that could be needed to 'wait out' a potential filibuster. Whenever a measure's supporters are likely to give in to opponents quickly, this reduces the expected opportunity cost of filibustering. With fewer opportunity costs to worry about, opponents will be less likely to refrain from filibustering.

One factor that can affect how likely a measure's supporters are to give in to opponents is the amount of time remaining in a Congress.¹¹ Early in a Congress, supporters of a measure have less incentive to give in to potential filibusterers since there is still plenty of time left to accomplish their other goals during that Congress. Late in a Congress, however, time becomes more scarce. When time is scarce, supporters of a measure will be less willing to tolerate the loss of time associated with a protracted filibuster, and thus more likely to capitulate. Knowing this, opponents should be less likely to refrain from filibustering at the end of a Congress.

Another factor that can affect how likely a measure's supporters are to give in to opponents is the size of the Senate workload.¹² When the workload is relatively small, supporters of a measure will be more willing to spend the chamber's time trying to break a filibuster on that measure. When there is more work that needs to be completed, they will be less eager to fight with filibusterers and more willing to throw in the towel. If supporters are more likely to give in when the Senate's workload is heavier, opponents should be less likely to refrain from filibustering.

Party Polarisation

Party polarisation may also affect the level of restraint through its impact on the likelihood that political favours will be exchanged.¹³ When parties are highly polarised on an issue, it is unlikely that opponents will be bought off with favours by a bill's supporters. The majority party is likely to be adamant in support of its proposal, and the minority party is likely to be just as adamant in its opposition. In such partisan-charged situations, it becomes extremely difficult to conduct the bargaining and favour trading that might otherwise lead to restraint from filibustering. Therefore, when the Senate is polarised along party lines, supporters should be less likely to offer rewards to opponents, and opponents should be less likely to do supporters the favour of forgoing a filibuster.

The relationship between parties and filibustering should not be thought of as continuous, however. While high party polarisation is always expected to foster filibustering, low party polarisation is not always expected to produce restraint. Even when party polarisation is low, there are other (non-partisan) types of polarisation that will lead to filibusters. For example, preferences in the Senate may be polarised along regional lines or other issue-based lines. In these cases, we would still expect filibusters when party polarisation is low.

Presidential Support

Senate supporters of a measure are not the only political actors that can be involved in bargaining with potential filibusterers. Presidents can also have a strong preference for a piece of legislation to be passed in the Senate, and may be willing to make some deals on the side or flex some muscle in order to obtain this desired outcome. When a president takes an active interest in the fate of a bill there are potentially more rewards available to opponents who agree not to filibuster, and more punishments for those who do filibuster. For example, in exchange for restraint a president may agree to help raise funds for a senator from his own party, or agree not to work to unseat a senator from the opposition party. Opponents who insist on obstruction may get just the opposite treatment from the White House. With more potential rewards for restraint and punishments for filibustering, restraint should be more likely when the president makes a point of publicly supporting a measure.

Cloture-Preventing Margin

Because Rule XXII allows debate to be limited with a successful cloture vote, when supporters of a bill are bargaining with opponents who might filibuster, they do not have to convince every single opponent to refrain from this tactic in order to have the bill prevail. Instead, supporters only need to buy off enough opponents so that the remaining opponents are not numerous enough to prevent cloture. Specifically, they need to make sure that the number of opponents willing to block cloture is less than 41: with 41 or more votes against cloture, supporters would have less than the 60 votes they need to end a potential filibuster in the 100-member Senate.¹⁴ For example, if there are 45 opponents, supporters need to convince at least five opponents (through side-payments) not to go along with any potential filibuster in order to have the possibility of 60 votes for cloture.

Since it is more 'expensive' to buy off many senators than it is to buy off a few, this type of bargaining is less likely to occur when the number of opponents is significantly larger than the number needed to prevent cloture. In other words, the larger the cloture-preventing margin, the less likely that

supporters will bother to offer political favours as rewards for restraint. In this case, rewards for restraint will weigh less heavily in the calculations of opponents, and their prospects for achieving their immediate policy goal will appear more certain. Therefore, the larger the cloture-preventing margin, the less likely that opponents will refrain from filibustering.

Major Legislation

The relative prominence of a particular piece of legislation may also affect its chances of being filibustered. Based on her interviews with senators, Sinclair reports that 'even those who most frequently engage in filibusters agree it should only be used on important matters'.¹⁵ Many of the bills that Congress considers are of minor consequence. On this type of legislation, the average senator is unlikely to feel passionately about whether the measure fails or succeeds (nor are senators' constituents likely to be concerned or even aware). When opponents of a measure are not particularly intense in their opposition, they are less likely to feel that the policy benefit of filibustering is worth the opportunity costs it entails, and more likely to engage in reciprocal favour trading. By exercising restraint on an issue they care little about, they lose very little on the immediate policy issue, expend no additional effort, and potentially build up goodwill (in the form of future favours) among supporters. In contrast, tying the chamber in knots with a filibuster on an unimportant matter wastes the time of every senator, and may prompt retaliatory action. Along the same lines, supporters do not have to offer as much in side-payments to opponents in order to procure their restraint since they know that restraint comes at a relatively low cost for opponents. For these reasons, unimportant legislation should be more conducive to restraint.

On the other hand, legislation of major consequence tends to engender stronger passions among senators (and their constituents). When opponents feel more passionately about a measure, they are more likely to use all of the parliamentary tactics at their disposal to alter or defeat it. In addition, it will be much more expensive for supporters of a proposal to buy off intensely committed opponents than to buy off casual opponents. In general, therefore, restraint from filibustering should be less likely on major legislation.

DATA AND MEASUREMENT

In situations where we would ordinarily expect opponents to filibuster, do the hypotheses presented above help to explain observations of restraint? This study analyses this question empirically using data on Senate legislation from 1947 to 1998.

In line with the stated goals of this study, the analysis is focused on cases in which a filibuster would be expected on the basis of immediate policy preferences. As discussed previously, when it is not clear that a filibuster would be able to accomplish the immediate policy objective of a bill's opponents, or when the objective can be achieved through other means, we are not necessarily surprised if opponents opt not to filibuster. This observation leads to four basic data selection criteria.

First, opponents of the legislation should comprise less than a majority of voting members. If they did comprise a majority, they could achieve their policy goals by majority vote. Second, opponents should be numerous enough that they could potentially withstand cloture votes if they chose to filibuster. Otherwise, opponents could not be certain that a filibuster would be successful in achieving the policy goal. Specifically, declared opponents should be at least 41 per cent of the Senate membership for measures considered since 1975, and at least 34 per cent of the Senate membership for measures considered from 1947 to 1975. Third, cases where restraint could be attributed to anticipation of a subsequent defeat in the House or by presidential veto are excluded. Fourth, measures such as budget reconciliation legislation or fast-track legislation that, by rule, cannot be filibustered are also excluded. The resulting data set contains only cases in which restraint from filibustering would most clearly contradict conventional expectations.

The level of opposition to a piece of legislation is assessed using its final recorded roll call vote in the Senate. While roll call votes are not perfect measures of underlying policy preferences (due to the possibility of insincere voting), they are still useful for the purposes of this study. To begin with, the type of insincere voting in which a member votes against a preferred alternative at an early stage in the legislative process in order to obtain a better outcome at the final stage is largely precluded by the use of final votes. Another form of 'insincere' voting could occur on a final vote if senators choose to vote against a proposal not because they want to defeat it, but because they oppose some feature of the bill. In this case, however, their opposition is still valid for the purposes of this study. Filibusters are used not simply to defeat legislation, but also to alter its content. Therefore, even if the senators oppose a measure because they wish its content were altered, we still want to know what factors might make them more or less likely to filibuster to achieve this objective.

Since there must be clear evidence that the level of opposition falls in the range described above, legislation which did not receive any roll call votes is not included. While it is possible that some legitimate cases may be excluded by this method, in practice this does not pose a serious problem for this study. First, legislation that does not receive any roll call votes

whatsoever is probably either overwhelmingly favoured (passed with voice votes only), or overwhelmingly opposed (no votes). In the former case, this means that the number of opponents was most likely lower than the criterion allowed for inclusion anyway (less than 34 per cent). In the latter case, the number of opponents was most likely greater than that allowed for inclusion (more than 50 per cent). In contrast, for legislation on which the actual level of opposition was within the requisite range for inclusion, senators would have a great incentive to force at least one roll call vote. Without such a test vote, supporters could not be sure that the chances for passage were hopeless, and opponents could not be sure that a filibuster was useless. Finally, even if the outcome of a vote can be accurately predicted beforehand, legislators still have a strong incentive to insist that a roll-call vote be taken. As David Mayhew explains, members of Congress receive electoral benefits by 'position-taking' on roll-call votes, regardless of the ultimate policy outcome.¹⁶

Below, the measurement of the dependent and independent variables used in the analysis is set out. Table 1 displays the mean value of each variable both over time and overall. The analysis uses a dichotomous dependent variable measuring the presence (1) or absence (0) of restraint. Cases are coded as instances of restraint when opponents allowed the measure to pass the Senate as written, despite their declared opposition and ability to filibuster. The remaining cases are instances of non-restraint in which opponents carried out a successful filibuster. This means they were able to prevent the opposed version of the legislation from coming to a final vote.¹⁷ Overall, the data set includes 74 cases of restraint and 69 cases of non-restraint (filibusters). Table 1 shows that, just as many scholars have suggested, the average level of restraint has dropped dramatically during the postwar era.

In order to analyse each of the hypotheses presented above, this study uses several independent variables. The first of the two time-constraint

TABLE 1
MEAN VALUES OF DEPENDENT AND INDEPENDENT VARIABLES OVER TIME

Variable	1947-59	1960-69	1970-79	1980-89	1990-98	All cases
Restraint	.93	.68	.65	.61	.18	.52
Days remaining	376.00	281.04	241.10	266.43	256.33	271.52
Workload (in thousands)	13.92	21.26	22.73	10.61	8.41	14.69
Polarised Parties	.27	.00	.00	.13	.37	.17
Presidential support	.53	.45	.45	.52	.29	.45
Cloture-preventing margin	5.20	4.58	4.58	3.26	3.98	4.41
Major legislation	.33	.32	.32	.26	.29	.31
Number of cases	(15)	(25)	(31)	(23)	(49)	(143)

hypotheses suggests that legislation considered when there is ample time remaining in a Congress is less likely to produce restraint. To test this hypothesis, this study measures the number of days remaining in a Congress at the time that the final legislative action is being taken on a bill. Empirically, this variable ranges from a minimum of 0 days to a maximum of 715 days. Table 1 shows no clear pattern over time, though the average number of days is highest in the 1940s and 1950s.

The second time-constraint hypothesis suggests that a greater workload diminishes the likelihood of restraint. To test this hypothesis, this study measures the total number of bills and resolutions introduced during the Congress in which each item is considered (in thousands).¹⁸ This variable ranges from a low of 6,808 to a high of 26,460. In Table 1, workload reaches its peak in the activist period of the 1960s and 1970s, and then falls again.

The party polarisation hypothesis argues that restraint is less likely when parties are highly polarised on an issue. Since this relationship is not expected to be continuous, this hypothesis is tested using a dummy variable for legislation on which parties appeared to be highly polarised.¹⁹ Parties are defined to be highly polarised on a matter when 90 per cent of one party opposes 90 per cent of the other party on the measure's final Senate vote. This 90 per cent standard has often been used in historical studies of partisanship in Congress.²⁰ According to this definition, parties were polarised on 17 per cent of all cases in the data set. The proportion of cases subject to polarised votes was higher at the beginning and end of the period covered by this study, while hardly any cases of this type occurred during the 1960s and 1970s.

The presidential-support hypothesis suggests that when the president takes an active stand in favour of an item on the legislative agenda, restraint is more likely. *Congressional Quarterly Almanac* lists every vote on which the president took a position in advance of the actual vote. Using this source, a dummy variable is created, coded one when the president took a position in favour of the legislation, and zero otherwise. Forty-five per cent of cases in the data set were favoured by the president, though this proportion is considerably lower in the 1990s than in earlier periods.

The cloture-preventing-margin hypothesis argues that as the number of declared opponents rises higher and higher above the minimum needed to prevent cloture, the likelihood of restraint diminishes. To measure this concept, the minimum number of senators needed to ensure that cloture could not be imposed on each measure needs to be determined. If the number of opponents is equal to the minimum number, the margin variable equals one. For each additional opponent above that number, the margin variable increases by one unit. This variable ranges from one to 16 among

cases in the study. Table 1 suggests there has been some decrease over time in the average size of this margin, but the trend is not uniform.

Also tested is whether major legislation produces less restraint than minor legislation. A measure is considered to be major legislation if it is listed in any of *Congressional Quarterly Weekly Report's* regular listings of 'Major Legislation'. The proportion of major legislative measures in the data set fluctuates between approximately one-quarter and one-third of all cases.

Finally, given the often-noted increase in filibustering during the period covered by this study, a simple time trend variable is included in the model as a control. Legislation completed during the first year of the data set is coded $t=1$, during the second year $t=2$, and so forth up to $t=52$. This variable is not included to represent any particular causal argument about the effects of time, but simply to increase confidence in the estimated effects of the other independent variables by controlling for any time trend.²¹

TABLE 2
EFFECT OF INDEPENDENT VARIABLES ON RESTRAINT FROM FILIBUSTERING

Independent Variable	Coefficient	Change in variable (from, to)	Change in probability ^a
Days remaining	.0015 (.0011)	(0, 715)	+26%
Workload	-.111* (.053)	(6.808, 26.460)	-50%
Polarised parties	-1.822* (.930)	(0, 1)	-41%
Presidential support	1.546** (.457)	(0, 1)	+36%
Cloture-preventing margin	-.139* (.073)	(1, 16)	-46%
Major legislation	-.823* (.478)	(0, 1)	-20%
Time	-.131** (.031)	(1, 52)	-90%
Constant	6.109** (1.915)		

Note: Entries are unstandardised logistic regression coefficients (standard errors in parentheses). -2 log likelihood = 128.980; model chi-squared = 69.085***; correctly predicted = 78%; pseudo-R² = 56%; N = 143.

^a The change in the probability of restraint is calculated as a variable changes from its minimum value to its maximum value, holding all other variables constant at their mean. See note 23.

*p<.05 **p<.001 (all tests one-tailed)

FINDINGS

To test the hypotheses presented in this study, logistic regression analysis is employed. Table 2 presents the results. The first data column in the table provides the coefficients and standard errors from the estimation. Most of the variables representing the key hypotheses of this study achieve conventional levels of statistical significance and all are in the expected direction.²² The variable for time is also significant, validating its inclusion as a control. The remaining data columns demonstrate the impact of each independent variable. Since the impact of a particular variable depends on the values of every other variable, this impact is measured as the change in probability of restraint as a variable goes from its minimum value to its maximum value, holding other variables constant at their means.²³ Below is a discussion of how the specific findings in the table compare to each of the study's hypotheses.

The results provide some support for the idea that increasing time pressures affect senators' decisions about whether or not to filibuster. While the variable representing the number of days remaining in Congress is not significant at the .05 level, it is significant at the less restrictive .10 level and is in the expected direction. Specifically, the positive coefficient suggests that when there are more days remaining in a Congress, restraint may be more likely to occur. If the coefficient is translated into specific probabilities, a bill considered on the last day of a session has a 26 per cent greater probability of being filibustered (lower probability of restraint) than a bill considered 716 days earlier in the Congress (the largest value in the data set).

The results of the workload hypothesis are somewhat stronger. Consistent with Bruce Oppenheimer's work, the negative coefficient on this variable indicates that time constraints produced by a heavier workload do diminish the likelihood of restraint.²⁴ Restraint is less likely because potential filibusterers know that when there is more work to be done, supporters are less likely to attempt to 'wait out' their filibuster, and more likely to give in so they can get on to other business. On average, an increase in workload from the minimum observed value to the maximum observed value reduces the probability of restraint by 50 per cent.

The results also support the party polarisation hypothesis. As the work of Binder and Smith and Dion suggests, polarised parties appear to change senators' strategic calculations about filibustering.²⁵ Specifically, the negative sign on the coefficient indicates that when parties are polarised on an issue, restraint from filibustering is less likely. On average, the probability of restraint is 41 per cent lower for a measure on which parties are polarised. Much of this effect may be due to the fact that the possibilities

for bargaining and reciprocity – which help to promote restraint – are severely compromised when supporters and opponents of a measure are largely divided along party lines.

Presidential support appears to affect restraint from filibustering as well. This study hypothesised that when a president takes a stance in favour of a measure, there may be more opportunities for side-payments to opponents who agree to forgo a filibuster, and so restraint will be more likely. Consistent with this argument, the positive coefficient for the presidential support variable indicates that restraint occurs more often on measures the president favours than on those he does not. On average, presidential support boosts the probability of restraint by 36 per cent.

This article has put forward the hypothesis that the greater the margin of opponents above the minimum number guaranteed to prevent cloture, the more expensive it is for supporters to buy off these opponents. When supporters find it more difficult to buy off enough opponents, restraint should be less likely. The results support this hypothesis. The negative coefficient for the margin variable suggests that the larger the cloture-preventing margin, the lower the occurrence of restraint. Specifically, a change from a margin of 1 to a margin of 16 (largest observed margin) produces a 46-point drop in the probability of restraint, when other variables are at their mean value.

The results also support the idea that a measure's relative importance affects senators' decisions about whether to filibuster. The negative coefficient for major legislation indicates that restraint is less likely to occur on important measures. On average, opponents have a 20 per cent lower probability of exercising restraint on a piece of major legislation than they would on a less significant measure.

Overall, the model provides a good fit to the data. The chi-square statistic is both substantively and statistically significant. The model is also able to predict correctly 78 per cent of the cases in the data set. Using the Hagle and Mitchell correction, the Aldrich-Nelson pseudo- R^2 is 56 per cent.²⁶

CONCLUSION

This study set out to explain why senators would forgo their parliamentary right to filibuster in cases where there is a clear, immediate policy incentive to do just the opposite. It began by identifying two general countervailing considerations for senators: opportunity costs of filibustering and side-payments from reciprocal bargaining. It then articulated six hypotheses about when these countervailing considerations might outweigh the incentives to filibuster. Analysis of data from the last

half century provides substantial empirical support for most of these hypotheses. In situations where opponents have a clear incentive to filibuster, restraint is more likely to occur when the workload is light, when parties are not polarised, when the president supports the measure, when opponents' cloture-preventing margin is slim, and on minor legislation. The amount of time remaining in a Congress may also increase restraint.

These findings also have a broader theoretical implication for the study of politics. They provide an example of how political behaviour that appears to be disadvantageous on the surface can often be understood as rational once one looks at the deeper context.²⁷ In this case, opponents of a measure who could successfully filibuster opt not to exercise this institutional right, even though doing so virtually guarantees that the measure they oppose will pass. On the surface, this non-action appears to be irrational since it conflicts with opponents' immediate policy preference on the legislation. However, this study finds that such behaviour may be rational once expectations regarding opportunity costs and side-payments are taken into account.

NOTES

1. S. Binder and S. Smith, *Politics Or Principle: Filibustering in the United States Senate* (Washington, DC: Brookings Institution Press, 1997); F. Harris, *Deadlock or Decision* (New York: Oxford University Press, 1993); B.I. Oppenheimer, 'Changing Time Constraints in Congress: Historical Perspectives on the Use of Cloture', in L. Dodd and B.I. Oppenheimer (eds.), *Congress Reconsidered* (Washington DC: Congressional Quarterly Press, 3rd edn. 1985), pp.393-413; B. Sinclair, *The Transformation of the U.S. Senate* (Baltimore, MD: The Johns Hopkins University Press, 1989); S. Smith, *Call to Order: Floor Politics in the House and Senate* (Washington, DC: Brookings Institution Press, 1989). But see R. Beth, 'What We Don't Know About Filibusters', paper delivered at the annual meeting of the Western Political Science Association, Portland, Oregon, 1995. On the Senate of the 1950s, see D. Matthews, *U.S. Senators and Their World* (New York: Vintage Books, 1960).
2. Binder and Smith, *Politics Or Principle*, p.111.
3. The two-thirds requirement still applies to proposed changes in Senate rules. Prior to 1986, time was limited to 100 hours after the imposition of cloture. Prior to 1979, it was possible to take up additional time beyond the 100 hours with various quorum calls, roll calls and other dilatory tactics. These 'post-cloture filibuster' techniques were used on some bills in the mid to late 1970s. For a detailed description of the cloture process and history, see W. Oleszek, *Congressional Procedures and the Policy Process* (Washington, DC: CQ Press, 1996), pp.253-62.
4. Sinclair, *The Transformation of the U.S. Senate*.

5. The term 'minority' is used purely in the numerical sense of the word and is not meant to imply anything about opponents' party affiliation. While restraint from filibustering is also theoretically important for measures where opponents comprise less than a cloture-proof minority, or a majority, such cases are not the focus of the present analysis.
6. R. Fenno, *Congress in Committees* (Boston, MA: Little Brown, 1973).
7. Binder and Smith, *Politics or Principle*, p.112.
8. Matthews, *U.S. Senators and Their World*, pp.99–101.
9. Sinclair, *The Transformation of the U.S. Senate*, p.89.
10. Ideally, a researcher would like to be able to measure all of the rewards offered and punishments threatened in order to demonstrate their effect on restraint. However, given the tremendous difficulties posed by such a task, I have instead chosen to focus on variables that affect the likelihood that sufficient favours will be offered and the likelihood that sufficient threats will be made. These variables – party polarisation, presidential support, cloture-proof margin, and legislative importance – are not the only factors that affect distribution of favours and punishments, but they are factors that can be measured systematically in a way that other, more situation-specific factors cannot.
11. See Oppenheimer, 'Changing Time Constraints in Congress', p.395.
12. See Oppenheimer, 'Changing Time Constraints in Congress', pp.393–413.
13. See Binder and Smith, *Politics or Principle*, pp.15–17; D. Dion, *Turning the Legislative Thumbscrew: Minority Rights and Procedural Change in Legislative Politics* (Ann Arbor, MI: University of Michigan Press, 1997).
14. For Congresses in which cloture requires a 2/3 majority, the key number is 34 members for a 100-member Senate (1959–75) and 33 members for a 96-member Senate (1947–1959).
15. Sinclair, *The Transformation of the U.S. Senate*, p.96. But see Binder and Smith, *Politics or Principle*, Ch.4.
16. D. Mayhew, *Congress: The Electoral Connection* (New Haven, CT: Yale University Press, 1974).
17. Overall, then, the set of 'non-restraint' cases is comprised of all measures on which a recorded (cloture) vote revealed the level of support for the measure to be greater than a majority but less than the cloture requirement, and on which the measure subject to filibuster did not reach a vote on passage or final disposition.
18. Other measures of workload, such as the number of days spent in session, produce substantially similar results.
19. The Rice index of party difference – a continuous measure of partisanship – displays no significant effect on restraint (analysis not presented here).
20. See J. Aldrich, *Why Parties* (Chicago, IL: The University of Chicago Press, 1995), p.175.
21. Of the 21 possible bivariate correlations among the independent variables, most are less than 15 and only two are above .30: workload and time (-.62), and workload and party polarisation (-.40). Removing any one of these variables from the model does not have any substantive or significant effects on the estimates of the other variables.
22. A chow test indicates no significant difference estimating the model with data before the 1975 cloture change versus data since 1975. Tests of interactive variables representing every possible combination of the significant independent variables find no significant interactive effects (analyses not presented here).
23. The probability of restraint is calculated as $P(\text{restraint}) = 1/(1+e^z)$, where $z = b_0 + b_1(\text{days remaining}) + b_2(\text{workload}) + b_3(\text{polarised parties}) + b_4(\text{presidential support}) + b_5(\text{margin}) + b_6(\text{major legislation}) + b_7(\text{time})$.
24. Oppenheimer, 'Changing Time Constraints in Congress', pp.393–413.
25. Binder and Smith, *Politics or Principle*, pp.15–17; Dion, *Turning the Legislative Thumbscrew*.
26. T. Hagle and G. Mitchell II, 'Goodness-of-Fit Measures for Probit and Logit', *American*

Journal of Political Science, 36/3 (1992), pp.762-84. Analysis of residuals reveals only two outliers with studentised residuals greater than 2.0 (Fair Employment-1950, DC Home Rule-1966). Excluding these cases from the estimation does not significantly alter the results (analysis not presented here).

27. See G. Tsebelis, *Nested Games: Rational Choice in Comparative Politics* (Los Angeles, CA: University of California Press, 1990).