

Obstruction in the Antebellum Senate: Revisiting the Bank Bill of 1841

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In February 2003, Senate Democrats began obstructing several of President George W. Bush’s appellate court nominees. Under the leadership of Majority Leader Bill Frist (R-TN), frustrated Republicans threatened to utilize an unorthodox procedural change to bar these filibusters (VandeHei and Babington 2003; Kane 2005). This proposal, which differed from formal rules changes because it could be enacted by a simple majority, became known as the “nuclear option.” For nearly two years senators debated the merits of unlimited debate and the Frist proposal.¹ During this time Democrats, seeming unfazed by the threat, blocked several additional nominees from votes. While a last minute compromise spared the Senate from voting on the rules change, it did not prevent political and legal scholars from evaluating the episode’s implications for procedural choice in the chamber.

This literature has yielded two competing theories on why the filibuster persists in the modern Senate. On one side are scholars who stress the constraining influence inherited chamber rules have on procedural choice (Binder 1997; Binder and Smith 1997; 1998; Binder, Madonna and Smith 2007). They argue that there have been times when Senate majorities have been blocked from altering the chamber’s debate rules by minorities. An alternative account suggests that the Senate’s rules reflect the preferences of majorities (Koger 2004; Gold and Gupta 2005; Wawro and Schickler 2004; 2006). These scholars emphasize the importance of reciprocity norms, as well as the applicability of nuclear option-type procedures.

This nuclear option also touched on the broader issue of how rules of procedure impact legislative outcomes. When asked whether he supported the Democratic filibusters, Senator Barack Obama (D-IL) was quoted as saying, “I’m not a huge fan of the filibuster. Historically, what was it used for? Keeping me (an African American) out of polling places” (Sawyer and

¹The proposed procedure was to operate accordingly: A senator favoring the confirmation of the judicial nominee would raise a point of order that the Senate must reach a vote on nominations in order to execute its constitutional “advise and consent” power. The chair would then sustain the point of order, thus establishing a new precedent for limiting consideration of those matters. An opponent of the ruling could appeal the chair’s decision and the appeal would be subject to a filibuster. However, supporters would be able to offer a motion to lay the appeal on the table. As discussed in the introduction, the motion to table is not debatable, requires only simple majority approval, and if accepted, would uphold the chair’s ruling and force all senators to cast up or down votes on the nominations (Beth 2005; Gold and Gupta 2005).

Shesgreen 2005). The two scholarly camps reach competing conclusions on this normative debate as well. Those articulating the view that inherited rules have left the filibuster largely immune to chamber majorities argue further that this has had a substantial limiting effect on the lawmaking process. Binder and Smith (1997, 203) put this succinctly, claiming that the filibuster has led to “the killing or delaying the enactment of a considerable body of legislation otherwise headed for enactment or law”. The authors conclude their book by stressing the need for procedural reform. Scholars arguing that the modern Senate reflects the will of chamber majorities reach a different conclusion. Wawro and Schickler (2006) argue that the filibuster fosters compromise among senators and blocks the passage of ‘inefficient policies’. They conclude by suggesting that, “this need to compromise may, in practice, enhance the extent to which Senate outcomes reflect the public’s views” (Wawro and Schickler 2006, 280).

The evidence presented by both camps relies strongly on individual case studies of episodes where obstruction occurred. Many of the same cases are cited by both theories, and often, the amount of detail given is brief. In this paper, I reevaluate one of the most prominent of these cases. By providing more detail and placing the episode in the context of the entire Congress, I am able to better analyze the factors that influenced the final legislative outcome. The next section reviews the two theories in greater detail.

Inherited Rules and Procedural Choice

In their 1997 book, Sarah Binder and Steven S. Smith put forth the claim that the rules of the modern Senate existed in spite of occasional opposition from chamber majorities. The theory argued that senators weigh the costs and benefits of any procedural choice before committing to an action. The authors claimed this cost-benefit analysis is largely influenced by the presence of inherited chamber rules.

The literature has suggested that there are three primary inherited rules that have served to constrain member decision-making. The first of these was a decision to eliminate the previous question motion from the Senate’s standing rules. This rule allowed a simple majority

of senators to bring debate to an end. In 1806, members voted to drop the previous question motion (Binder and Smith 1997; Binder 1997). However, this decision was not made in a conscious effort to promote unlimited debate. At the time the rule had seen limited usage and the decision to drop it amounted to little more than parliamentary house-keeping. Since that decision no formal method of ending debate by a simple majority has existed in the body and any attempt to institute one has been subjected to obstruction.

Second, the Constitution specifies staggered terms for senators. This decision was made to provide stability within the chamber and ultimately, the entire government (Story 1833). Theoretically, the Senate would be able to continue to provide leadership during periods of electoral turnover. The clause also created a system where older senators would be able to mentor incoming members (Amar 1988). Accordingly, the Senate never officially ends, rather it operates as a “continuing body.” One consequence of this decision is that - unlike the House - the chamber does not adopt new rules at the start of each Congress (Binder 1997, 167-168). Instead, the new Senate must operate under the rules of its’ predecessor. Thus, once the only formal method for ending debate by a simple majority was dropped, it could not apply in any future Senates.

Finally, Gamm and Smith (2000) suggest that the constitutional designation of the Vice President as the president of the Senate has further served to constrain majorities from ending the filibuster. Debate records from the Constitutional Convention indicate this provision received minimal discussion. Ultimately, this power was granted to the Vice President for two reasons. First, without the power the officer would essentially have nothing to do. Second, supporters of the provision argued that it would constitute the fairest way to break a tie vote in the Senate (Hatfield 1997). Unlike the House of Representatives, this decision has ensured that the chamber will be led by a member not elected by that body. As such, Senate majorities have been hesitant to centralize chamber power. Gamm and Smith (2000) demonstrate that allocating power to the Vice President was done in the past, and in that

instance, the Vice President's political preferences were not in line with the majority.² This contrasts sharply with the House of Representatives. Binder (1997) demonstrates that House members had far less trouble delegating power to the Speaker of the House who was proscribed by the constitution as a member elected by that body.

²The Vice President - John C. Calhoun - then used his newfound abilities to promote his own interests. The Senate majority quickly rescinded the power.

Source	Rule	Consequence
1806 Rules Codification	Elimination of the Previous Question Motion	The Senate no longer had a formal method of ending debate by a simple majority.
United States Constitution	Staggered Senate Terms	The Senate is a “Continuing Body” and does not adopt new rules at the start of each Congress.
United States Constitution	The Vice President’s Status as the President of the Senate	Centralized chamber power could be wielded by a member that does not share the interests of the Senate majority.

Sources: Binder, Sarah A. *Minority Rights, Majority Rule* (Cambridge University Press, 1997); Sarah A. Binder and Steven S. Smith, *Politics or Principle? Filibustering in the United States Senate* (Brookings Institution Press, 1997); Gerald Gamm and Steven S. Smith, “Last Among Equals: The Presiding Officer of the Senate,” in B. Loomis, ed., *Esteemed Colleagues: Civility and Deliberation in the United States Senate* (Brookings Institution Press, 2000).

The theory argues that these inherited rules served to insulate the filibuster from reform by altering each member’s cost-benefit calculus. The remaining factors that influence this calculus can be classified into two groups: environmental and political. In order to prevent a final vote, senators must be prepared to hold the floor for hours on end by speaking. Because of this, environmental factors have historically played a major role in limiting the success of obstruction. These include the number of other senators that will support a filibuster on the floor, the quality of the air conditions within the chamber, and total time spent in Washington.³ When environmental factors are considerable, there should be less obstruction.

Additionally, members must also consider the underlying political context. The most primal of these variables is the member’s attitude to the underlying piece of legislation. However, electoral factors are also important, as is the potential impact obstruction may

³See Maltzman et al. (1996) for more information regarding the effect the new ventilation system had in Congress.

have on the future legislative agenda.⁴ As the legislative agenda is typically set by the majority party, obstructionists typically (but not always) have less to sacrifice by a manifest filibuster.⁵ For example, in the 87th and 88th Congresses, Majority Leader Mike Mansfield (D-MT) persuaded Senate Democrats supporting civil rights legislation to back off of an effort to decrease the cloture threshold. Unwilling to sacrifice incoming President John F. Kennedy’s legislative agenda, he argued “we ought to face up to the realities of the situation and recognize that the Democratic President will have a program he will want to put through” (“Mansfield Urges...”, New York Times 1960). Because of this, scholars in the inherited rules camp argue that “the threat of minority retaliation is sufficient to derail majority efforts to significantly curtail the filibuster” (Binder et al. 2007).

In summary, Figure 1 outlines how inherited rules impact procedural choice. Environmental and political factors combine to influence the decision to obstruct. When these variables suppress obstruction, reform efforts are unlikely to be entertained because of the perceived lack of necessity. When they facilitate more filibusters, reform should be more desirable. However, in order to alter inherited chamber rules, members must either fight lengthy battles on the chamber floor.⁶ This forces senators seeking political reform to sacrifice their short-term legislative goals for an increase in long-term chamber efficiency. As each individual member makes this decision independently, creating and maintaining a coalition in favor of amending the rules becomes extremely difficult. Thus, while changes in environmental factors may facilitate more obstruction, increasing the desire for procedural change, this effect is mitigated by the depressing influence inherited institutions have on the political benefits for reformers. According to scholars in the inherited rules camp, this has essentially insulated the Senate’s debate rules from any meaningful alterations.

⁴Since being subjected to direct elections by the 17th Amendment, research has demonstrated that senators have become more responsive to their constituents (Crook and Hibbing 1997).

⁵Bills can not be considered in the Senate without majority approval. Generally this is done by unanimous consent. But if consent is not given, a motion to proceed to consideration is in order and subject to simple majority approval.

⁶Or be prepared to centralize power under a Vice President that is not chosen by the party.

Remote Majoritarianism in the Senate

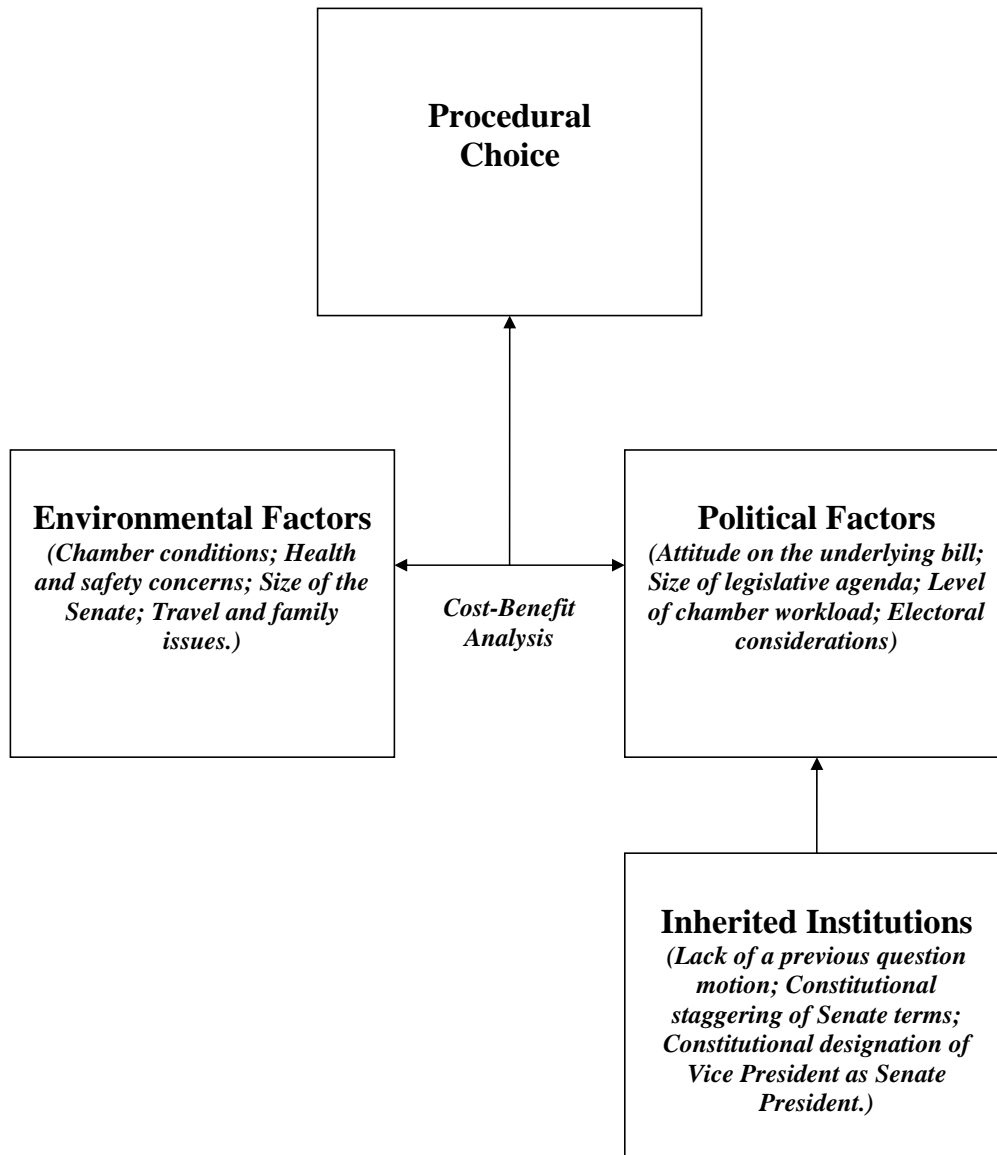
As discussed in the introduction, recent scholarship has posited a new theoretical account of procedural choice in the Senate. This account argues that inherited institutions have not left the chamber's rules immune to reform efforts. Instead, the Senate's procedures have always been subjected to majority approval due to the presence of unorthodox rules changes - like that of the 'nuclear option.'

While Senate observers had long acknowledged the technical feasibility of unorthodox rules changes, Greg Wawro and Eric Schickler (2006) were the first to claim that the procedure has had a substantial effect on chamber development.⁷ The authors argue that contrary to Binder and Smith's argument, majorities have not been thwarted from changing chamber rules by threats of minority obstruction. Rather, majority threats of "going nuclear" - as well as norms of restraint -has reigned in the minority's usage of obstruction. The argument suggests that because majorities could always change the rules, the Senate has operated under a form of 'remote majoritarianism' (Krehbiel 1991, Wawro and Schickler 2006).

Like the inherited institutions theory presented in Figure 1, Wawro and Schickler's thesis emphasizes a strong connection between procedural choice and a cost-benefit analysis. The factors that go into an individual's cost-benefit calculus under the remote majoritarianism theory are fairly similar to those discussed by scholars in the inherited institutions camp. Again, these factors can be best thought of as being either political or environmental. The authors discuss many of the same concepts, such as time spent away from families, the physical costs obstructionist senators need to pay by speaking at length on the Senate floor, electoral concerns and the sacrifice of future legislative goals. However, Wawro and Schickler's cost-benefit analysis does depart in two notable ways from the process detailed

⁷In his overview of congressional procedure, Tiefer (1989, 694) argued that, "...the ambiguities in the rules, the threat of rules changes and occasional arbitrary actions, also served as restraints." Additionally, the threat that a group of senators would set aside the chamber's rules completely was always theoretically feasible. Burdette details such an anecdote where this was done in the Texas State Senate by force. In his 2002 dissertation, Koger considers how unorthodox rules changes may effect the decision to obstruct. Finally, Binder (1997, 199-200) lists unorthodox procedures as a caveat to the claim that majorities will continue to be stymied in their efforts to crack down on minority rights.

Figure 1: Inherited Institutions and Procedural Reform



by Binder and Smith.

First, Wawro and Schickler strongly emphasize the connection between procedural choice and levels of ‘resolve.’ As they define it, “the resolve level of bill supporters (opponents) depends primarily on how much more (less) they prefer the proposed bill to the status quo” (Wawro and Schickler 2006, 35). Once the other environmental and political factors are controlled for, the success of obstruction is determined by the amount of resolve the minority has relative to the majority. The authors analogize this concept to a game-theoretic ‘war of attrition.’

The second point of departure is closely related to the game theory analogy. The remote majoritarianism theory predicts that manifest filibusters should only occur if there is incomplete information about the cost-benefit calculi. Otherwise, one side would recognize the futility of acting on their procedural preferences and abandon their position. Such an action would save them from having to bear the physical and political costs associated with obstructing, forcing the obstruction or reforming. When obstructionists do take their fight to the Senate floor it is because these forced filibusters provide key informational benefits to both sides.

Wawro and Schickler argue that this informational component is beneficial to the chamber for two reasons. First, it increases Senate effectiveness by blocking inefficient policies. Citing Buchanan and Tullock (1962), the authors define an inefficient policy as one favored by a less intense majority over a more intense minority. Second, when a member observes an opponent displaying a high level of resolve, it serves as a cue to the attitudes of their home state constituencies. The authors conclude by warning that this informational component is only useful if environmental factors force obstructionists to bear high physical costs. If not, the filibuster is costless for the minority and the majority gains nothing while being forced to pay higher political costs by sacrificing items from their future legislative agenda. This can lead to an increased desire for reform.

Under this theory, the informational benefits for the majority are dependent on obstruc-

tionists bearing high physical costs. However, those physical costs are negatively related to the time left before the mandatory adjournment date. Without another credible constraint upon the minority's procedural choice, end-of-the-session filibusters would be innumerable. The existence of Senate norms against obstruction serve as that additional theoretical constraint. Wawro and Schickler (2006, 18) argue that "...this system involving obstruction was sustainable so long as the Senate was characterized by a set of norms that coordinated expectations about the role of obstruction".

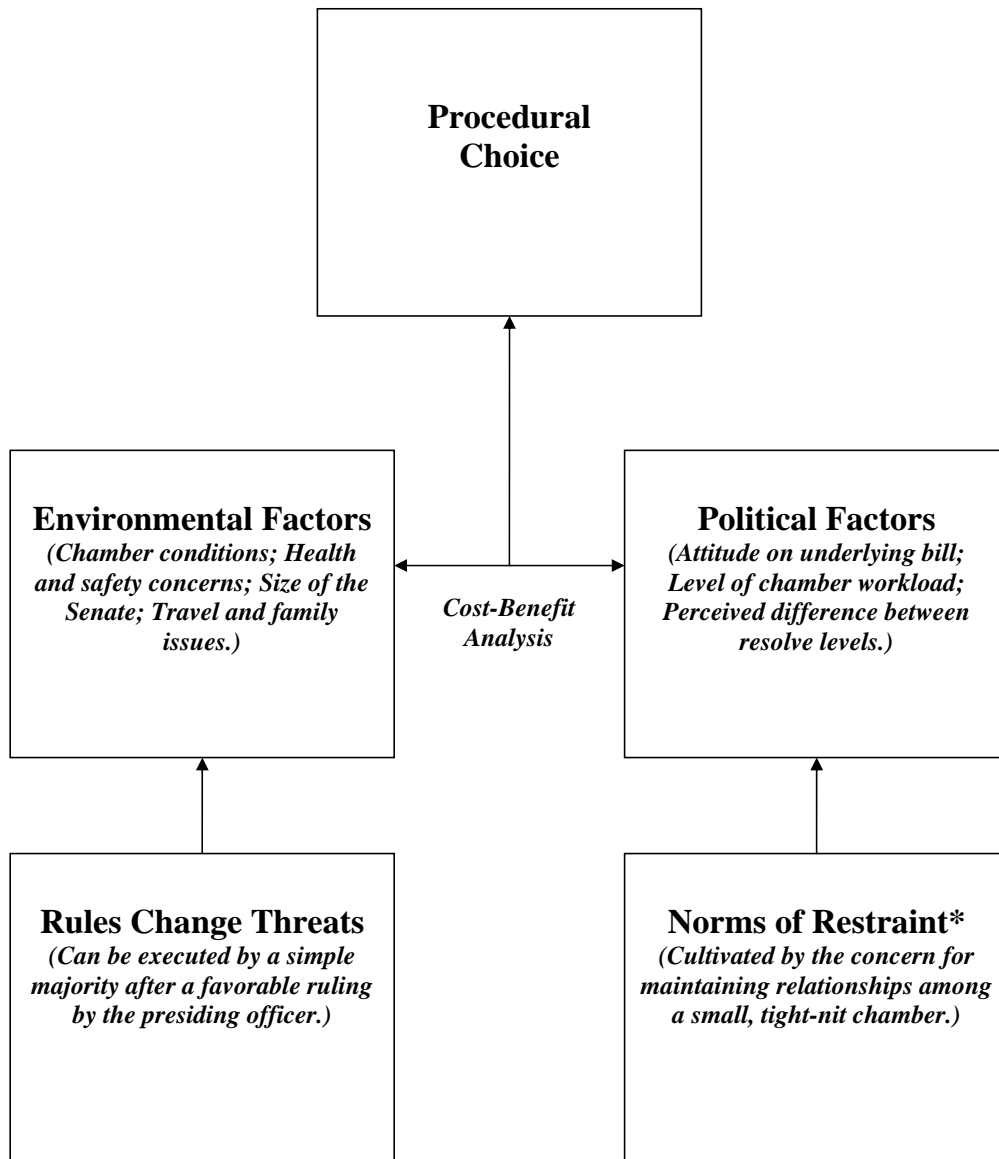
The evolution and maintenance of these norms was closely tied to the size of the chamber. In the early era, the small size of the Senate allowed senators to develop close relationships with colleagues. The concern for keeping these good relationships operated as a major constraint on obstruction, thus decreasing the overall political benefit majorities would have received by enacting reforms.

When the Senate's membership expanded in the late 19th century, the relationships weakened and the norms broke down. This was evident with the defeat of several significant pieces of legislation considered close to the mandatory adjournment deadline. Ultimately, it was this breakdown of chamber norms that led the Senate to formally codify a method for ending debate. Adopted in 1917, cloture (or Rule 22) allowed a supermajority (two-thirds) to set a date for a final passage vote. This meant that large majorities could cut down on uncertainty late in a congressional session. However, the adoption of the rule signaled to minorities that obstruction was acceptable. This ultimately served to "institutionalize" the filibuster.

Threats of unorthodox rules changes, like those made by the Republicans in 2003, supplement relations-based norms and also served to constrain minority obstruction. This procedure necessitates a favorable ruling from the chamber's presiding officer upon a question of order. Once the ruling is made, it sets a precedent that binds future rulings. An appeal of the presiding officer's decision can be taken, but it is subjected to a tabling motion, which must be decided without debate.

When the viability of an unorthodox rules change threat has been established through some sort of ruling, the minority immediately learns that the majority has a particularly high level of resolve on this issue. Accordingly, under the war of attrition framework, they should drop the obstruction. Maintaining it would result in the futile expenditure of valuable political and physical costs. Because minorities were aware of the feasibility of nuclear option-type procedures, they have historically restrained their usage of obstruction.

Figure 2: Remote Majoritarianism and Procedural Reform



*: Norms of restraint do not factor into the political benefits of reforming the filibuster once a formal cloture rule was codified in 1917.

Figure 2 outlines how procedural choice is made under the theory of remote majoritarianism. Like the inherited institutions theory, environmental and political factors are weighed in a cost-benefit analysis. However, in that account, existing chamber rules force majorities into lengthy floor battles. This results in substantial legislative costs for the majority. Un-

der remote majoritarianism, unorthodox rules changes free potential reformers from having to engage in that long floor battle, and thus, they no longer have to sacrifice their future agenda. Additionally, even when environmental factors facilitate obstruction, senators are still conditioned by relations-based norms. This results in few instances of manifest obstruction.

Testing Theories of Procedural Choice

While these two camps specify largely distinct accounts of procedural choice in the United States Senate, testing these theories has proven difficult for several reasons. First, both theories yield similar predictions for the usage of obstruction in the early Senate. Environmental factors featured high physical costs for senators looking to hold the Senate floor while political factors like chamber workload and electoral incentives were fairly low. Because of this, Binder and Smith predict limited success for obstructionists in this 19th century Senate. Similarly, Wawro and Schickler note that norms against obstruction were robust and the threat of unorthodox rules changes were consistently high. Due to this, they also predict limited success for obstructionists in the era.

In the modern Senate, the theories should yield differing predictions. Binder and Smith argue that changes in environmental and political conditions have resulted in more incidents of obstruction. This has resulted in many bills and nominations being killed by minorities. The remote majoritarianism thesis suggests that this should only be true for issues where the majority has less resolve than the minority. This makes any evidence regarding the number of manifest filibusters difficult to interpret.⁸

⁸Such data would be problematic to interpret anyhow for several reasons. First, determining whether or not a filibuster has taken place is almost entirely arbitrary. While some scholars define a filibuster as an outright attempt to kill a bill, others will count attempts to delay the vote or extract concessions as filibustering. Both perspectives require some subjective judgment about what constitutes legitimate debate. Second, accurate accounts are far easier to come in the most modern Congresses, when sources like Congressional Quarterly give detailed summaries of legislation. For the 19th and much of the 20th centuries, scholars like Burdette had to rely on less reliable sources. Third, the threat of obstruction often keeps legislation off the floor, and there is no way to accurately account for this phenomenon. Finally, when a successful manifest filibuster occurs, it often kills not only the underlying bill, but other pieces of legislation

Since empirical evidence is particularly challenging to evaluate in this debate, scholars have focused on interpreting historical incidents involving obstruction. What was said or done during the episode? The inherited rules camp has pinpointed several cases they believe demonstrates that a majority supported a change in the Senate’s rules but was thwarted by minority obstruction. Scholars in the remote majoritarianism camp cite cases in support of their claims that a norm of restraint encouraged minorities to drop a filibuster, or episodes where they believe the minority relented for fear of an unorthodox rules change.

The problem is that these case studies are not presented with enough detail to adequately separate the effect of inherited rules, relations-based norms and threats of unorthodox rules changes from the other political and environmental factors that make up a senators’ cost-benefit analysis. In this paper I attempt to adjudicate between these theories by revisiting one popularly cited case study occurring during the antebellum Senate. In it, the evidence suggests the presence of inherited rules served as a credible constraint on a majority.

The Antebellum Senate

Discussions of the antebellum Senate frequently conjure up images of the famous members that spoke there: Senators like John C. Calhoun (D-SC), Henry Clay (W-KY), Daniel Webster (W-MA) and Thomas Hart Benton (D-MO). In Alexis de Tocqueville’s famous treatise on American government, he characterized these men as “eloquent advocates, distinguished generals, wise magistrates, and statesmen of note whose arguments would do honor to see the most remarkable parliamentary debates of Europe” (quoted in Baker 1988, 39). Characterizations like this one (as well as later works by Byrd 1988 and Caro 2002) have largely overstated the quality of discussion in the chamber (see Binder and Smith 1997; Wirls 2007).

According to many accounts, the antebellum Senate was a miserable place to debate. Senators of the era were frequently elderly and in poor health to begin with (Binder and Smith 1998). Health issues were exacerbated by a hot and poorly ventilated building which

that would have been considered later in the session. Accounting for this is also difficult.

made the air difficult to breathe. One way senators dealt with the poor conditions in the chamber was alcohol. Whiskey was sold in the capitol and intoxication was tolerated on the floor of the Senate during this period (Fuess 1930). Travel conditions were equally onerous and members were usually forced to abandon families for lengthy periods of time. This is reflected in the low turnout on roll call votes in the era. In earlier work I have shown that it was roughly thirty percent lower during this era than in the present day (Madonna 2007).

Combined with a low workload and a smaller chamber population, these environmental factors raised the physical costs of sustaining lengthy obstruction to a level that was largely untenable.⁹ Largely due to these daunting environmental factors scholars of Senate obstruction have had a limited number of case studies in the era to examine. One of the few episodes cited heavily by both camps involves the Bank Bill of 1841.

The Bank Bill of 1841

The case of the Bank Bill of 1841 represents the first occasion where obstruction prompted an attempted change in Senate rules. It is one of the few episodes heavily relied upon by both the inherited institutions and the remote majoritarianism camps. Due to its importance in this debate the episode gets an expanded treatment here. I argue that three important conclusions can be drawn from debate over the Bank Bill: First, it is a clear cut example of how Senate rules could be exploited to doom legislation without necessarily preventing a vote on it. In this episode I argue minority Democrats used their right to unlimited debate to thwart a fragile majority coalition. Second, when contrasted with the House, it demonstrates how inherited rules of procedure raised the cost of reform in the Senate. Finally, it is a fairly strong example of how inherited chamber rules affected public policy. I start by briefly outlining the facts of the case.

⁹Consistent with this argument, Wawro and Schickler (2006) have convincingly demonstrated that filibusters were generally more successful when the adjournment date loomed. From a comparative perspective, obstruction in the House could be stretched out longer, in a large part due to the fact that the physical costs of obstruction were dispersed among a larger number of members serving.

The Bank Bill debate occurred during the 27th Senate, the first controlled by the Whig party. The basic facts are as followed: On June 21, 1841, Whig leader Henry Clay reported the Bank Bill out of committee and on to the Senate floor. Clay was then frustrated by the lengthy debate over the bill. Three weeks later, on July 12th, Clay proposed a rules change to “give to the majority the control of the business of the United States Senate” (*Congressional Globe*, 27 Cong. 1, July 12, 1841, 184). Minority Democrats expressed outrage at the Clay proposal, prompting Senator William Rufus King (D-AL) to reply, “I will tell the Senator [Clay], then that he may make his arrangements at his boarding house for the winter” (*Congressional Globe*, 27 Cong. 1, July 12, 1841, 203). The inference from King’s statement, as well as other from other prominent Democrats is that they intended prevent a vote on the Clay resolution by excessive obstruction. Clay eventually retreated from his rules change proposal. Then, on July 28th, the Bank Bill passed the Senate on a largely party-line vote.

Interpretations of the Episode

To bolster their theoretical claims, both the inherited institutions and remote majoritarianism camps draw competing inferences from this episode. Binder and Smith (1997, 75) conclude that “a majority in favor of [Clay’s] reform was apparently forced to retreat in face of a determined filibustering minority.” This, they imply, is due primarily to the constraining influence of inherited institutions.

They reach this conclusion on the basis of three pieces of evidence. First, while Binder (1997, 180) acknowledges the impossibility of determining whether or not a majority favored reform, she details that “Whig senators reached nearly perfect cohesion in voting on the Bank Bill.” This suggests to her that voting on a rule that would presumably bring about the passage of the Bank Bill would also garner full majority support. Second, the authors cite to an account of the incident given by Senator Thomas Hart Benton (D-MO). In his autobiography, Benton argued that, “Several Whig senators had yielded assent to Mr. Clay’s

desire for the House rule under the belief that it would be resisted parliamentary by the minority; but when they saw its introduction was to produce ill blood, and disagreeable scenes in the chamber, they withdrew their assent; and left him without the votes to carry it ...” (Benton 1897, 257). The implication here is that Clay had a majority in support of his resolution. However, when faced with the prospect of a long fight of chamber procedure, the majority abandoned the rules change. Finally, to bolster her claim that the incident implies a substantial role for inherited institutions in explaining the persistence of the filibuster, Binder (1999) contrasts the proposed rules change in the 27th Senate, with the successful adoption of a rule limiting debate in the House, concluding that:

“Just as in the House, intense partisan differences clearly shaped policy debates on the Senate floor in 1841. But unlike the House Whigs, who had inherited the previous question motion to reign in obstructive minority parties, Senate Whigs held no such institutional advantage - making it impossible for them to obtain a vote on procedural proposals to secure favored Whig policies” (Binder 1997, 181).

This perspective contrasts sharply with scholars in the remote majoritarianism camp. Wawro and Schickler (2006), as well as Tiefer (1989), argue that Clay’s rules change proposal actually facilitated the passage of the Bank Bill. They support this conclusion with five points derived from the Bank Bill episode. First, they suggest that “One difficulty with this [the inherited institutions] interpretation of the Whigs’ troubles in 1841 is that Clay actually succeeded in passing his substantive agenda through the Senate” (Wawro and Schickler 2006, 75). The authors cite the eventual passage of the Bank bill, the repeal of the sub-treasury plan, the Loan Bill, an enacted tariff and the Land Distribution Bill as evidence. They argue that rather than kill the Whig agenda, the minority party allowed it to pass in its entirety. Thus, Clay did not *need* a change in chamber rules to enact his agenda.

Second, Binder’s evidence about near-perfect party voting notwithstanding, Clay’s rules change would not have resulted in the passage of the Bank Bill. Indeed, the authors argue that the Whigs lacked a majority on the Bank Bill when the rules change resolution was

proposed. Only after offering a compromise amendment did the Bank Bill garner a majority necessary for passage. Third, Wawro and Schickler (2006) argue that there was precedent for a simple majority-enacted rules change just one month prior to Clay's July proposal. In June, Clay had successfully limited the minority's ability to obstruct over the objections of the Democratic minority. Fourth, they cite a Calhoun description of the chamber at the time that stresses the small, tight-knit nature of the Senate. This is consistent with their thesis about how close relationships within the body cultivated norms of restraint.

Finally, the authors reiterate their point about it being difficult to conceive why a minority that had the ability to defeat legislation like the Bank Bill would eventually relent to its passage. They supplement this with the observation that Tyler's veto of the Bank bill was in doubt when the bill passed. The authors conclude that "Obstruction might have delayed progress, but in the face of a determined majority willing to threaten changes in the rules, the minority relented" (Wawro and Schickler 2006, 74-75).

Before presenting a detailed discussion of the case, it is convenient to deal with the broader point about the success of the Whig agenda up front, and in doing so give a little more background detail about the 27th Congress. The argument that Clay and the Whigs were successful in passing their full agenda, and therefore, did not need to change the rules of the Senate is - at best - overly simplistic. Many historians arrive at a different conclusion. Holt (1999, 123) argues that, "Almost every one of their [The Whigs] bright expectations went aglimmering." Colton (1904, 375) argues that nearly all the Whig's great measures, "were defeated by the political defection and faithless conduct of the acting chief magistrate."

Specifically, Wawro and Schickler claim that the repeal of the sub-treasury plan, and the passage of the Loan, Tariff, and the Land Distribution bills demonstrate the Whigs' success. This has some validity but must be considered in a broader context. The sub-treasury repeal did pass both chambers quickly. However, because the Bank Bill - which both Whigs and Democrats agreed was the greater issue - failed, the sub-treasury was replaced with nothing (Holt 1999). This was certainly not a favorable outcome. The Loan Bill passed in mid-June

and was a moderate victory for the Whigs. The Land Distribution Bill also passed - but in a compromised form that rendered it impotent even before the end of the Congress. This was due to a provision that land sales would cease if tariff rates were over twenty percent. Consequently, when the Whigs finally passed a tariff in 1842 - after being thwarted twice - the party was forced to sacrifice distribution. The Land Distribution Bill's failure hurt the Whigs' attempts to appeal to Westerners. Of the five planks in their agenda for the 27th Congress, only the Tariff and Loan bills could be considered successes, and of those two, only the former had any lasting impact. Their legislative failures led to the Whigs losing roughly half of their seats in the House of Representatives during the 1842 election.

To arbitrate between the remaining claims from these two competing interpretations, I take a comprehensive look at the consideration of the Bank Bill in 1841. While it is doubtful that the minority was intent on killing the Bank Bill via filibuster, the evidence suggests that obstruction played an important role in the failure of the bill, and the Whig agenda more broadly. Obstructive Democrats strung out the session and exploited every opportunity to exacerbate internal tension within the Whig party. As Binder (1999) demonstrates, this contrasted sharply with the bill's consideration in the House of Representatives. My evaluation of the Bank Bill starts with a consideration of the election of 1840 and the cohesiveness of the Whig coalition.

The Election of 1840

The election of 1840 produced a resounding victory for the Whig party. Their candidate for President, retired Major General William Henry Harrison trounced incumbent Democratic President Martin Van Buren 234 to 60 in the electoral college.¹⁰ The House of Representatives swung from a Democratic majority of 125 - 109, to a 133 - 102 margin in favor of the Whigs. The Senate also changed hands, moving from 30 - 22, Democrats, to 29 - 22, Whigs. Many accounts of the Whig triumph in 1840 associate it with campaign slogans,

¹⁰The popular vote was much closer, registering 53 percent for Harrison, and 47 percent for Van Buren.

jingles and entertainment, rather than a commitment to established policy positions. The most notable catchphrase stemming from the election, “Tippecanoe and Tyler too,” sought to remind voters of Harrison’s military victory in 1811.

Notwithstanding the election revelry, the United States was in the midst of a substantial economic depression in 1840. Since the financial panic of 1837, a substantial number of chartered banks failed, stock prices dropped dramatically and investment growth plummeted (Rousseau 2002). Accordingly, some historians have argued that this contest was one of the first in American history that pitted two political parties with clear, contrasting viewpoints regarding the proper role of government in shaping public policy (Holt 1992). This is evidenced by the sharp increase in partisan voting during this era (Silbey 1985; Poole and Rosenthal 1997; Binder 1999). The Whigs criticized the Democrats for not being aggressive enough in combating the depression. They ran on a platform that called for an increase in government intervention. This included seeking an upward revision of the tariff, distribution of land revenues to the states, federal and state financed internal improvements, and an increased federal role in banking and currency. Additionally, the Whigs abhorred the ‘executive tyranny’ of the Jackson administration. To this end, Harrison pledged to defer to the legislative branch. The Democrats, following the positions taken during the Jackson presidency, rejected an active role for the government. The depression, they argued, stemmed from an increased supply of paper money and excessive credit (Holt 1992).

While the Whig victory was impressive, it came with a substantial amount of internal tensions. At the Whig’s first national nominating convention, Harrison, an Ohioan, was nominated on the fifth ballot. Clay, the Whig congressional leader, former speaker of the House, and favored candidate of the South, had led on the preceding four. Acrimony from Clay’s defeat led several of his more acclaimed supporters to pull their names from consideration for the vice presidency. The corresponding nomination went to former Senator, and assumed Clay supporter, John Tyler. Another problem stemming from the Harrison nomi-

nation was that he would be 68, the oldest president ever elected, when he was sworn in.¹¹ This led Harrison to pledge to not seek a second term, which, in turn, led to early friction between Clay and another candidate for the Whig nomination in 1844, Daniel Webster of Massachusetts. Webster would eventually become Harrison's Secretary of State, and a close advisor of the President.¹²

Harrison's election represented an opportunity for the Whig Party to strengthen its ideological association with the voters. Clay and other Whig legislators felt the party needed to act quickly to capitalize on their momentum. Holt illustrates this point with a quote from Clay's fellow Kentuckian, Attorney General John J. Crittenden, "[The Whigs] must act. The people expect it, and are entitled to expect it. . . . The real danger is in inaction, and falling behind, and disappointing the high hopes and feelings of the people" (quoted in Holt 1999, 123). To this end, Clay, Crittenden and other supporters urged President Harrison to convene an emergency session of Congress.

Not all Whigs supported the emergency session. Webster, for one, felt the party was still too divided. Further, it will be advantageous for his prospects in 1844 if Clay was off the national radar for awhile. He had Harrison's ear on this issue, and initially, Harrison was opposed to the special session. This issue served to further the growing tension between Clay and Harrison.¹³ The boiling point occurred when Harrison, responding to a particularly patronizing letter from Clay, responded to the Kentuckian aggressively, "You use the privilege of a friend to lecture me [and] I will take the same liberty with you[.] You are too impetuous" (Seager 1988, 514). Harrison then requested that Clay confine all further conversation with

¹¹This record would stand until the election of Ronald Reagan in 1980.

¹²The position was to be offered to Clay, but he declined it. The remainder of the cabinet was split between Webster and Clay allies. Clay's supporters included Secretary of War John Bell (W-TN), Secretary of the Treasury Thomas Ewing (W-OH), Attorney General John J. Crittenden (W-KY) and Secretary of the Navy George Edmund Badger (W-NC). Webster was represented by himself as Secretary of State, and Postmaster General Francis Granger (W-NY). He also successfully blocked Clay supporter John Clayton (W-DE) from the cabinet (Poage 1936, Holt 1999).

¹³This tension, building from the nominating convention, came quickly. The position of collector of claim in New York, an important patronage appointment went to Edward Curtis, a Webster ally. This rankled Clay, who had been lobbying hard against the appointment.

him to written correspondence. It was not until Secretary of the Treasury Thomas Ewing reported that the government needed to raise revenue quickly to cover an exorbitant national debt that Harrison acceded to the need of a special session of Congress.

William Henry Harrison summoned the emergency session on March 17, 1841. Eighteen days later, on April fourth, Harrison died on pneumonia, elevating John Tyler to the presidency. Initially, this was met with some optimism by Clay supporters. Tyler was young and perceived to be a Clay ally. This led observers to speculate the new president would defer to the senior statesman. Clay intimated as much in a letter to fellow Senator John Berrien (W-GA), “we are a good deal relieved by the address of Mr. Tyler to the people of the [United] States, the fair interpretation of which is, that he will concur in the leading measures of the Whigs” (Seager 1988, 521).¹⁴ Not all Whigs were as optimistic as Clay. In a journal entry dated April 20, 1841, former President and current Representative John Quincy Adams put it bluntly, “Of course this administration will be a failure, and a general bankruptcy is impending” (Adams 1876, 465).¹⁵

¹⁴This letter was dated April 20, 1841. Clay made similar remarks in letter dated April 13, 1841 to a New York Whig politician, John Lawrence, and on April 15, 1841 in a letter to Nathaniel Beverley Tucker (see Seager 1988, 519-520).

¹⁵Adams characterization of the transition from Harrison to Tyler reiterates this belief, albeit much more poetically. He writes:

“It makes the Vice-President of the United States, John Tyler, of Virginia, Acting President of the Union for four years less one month. Tyler is a political sectarian, of the slave-driving, Virginian, Jeffersonian school, principled against all improvement, with all the interests and passions and vices of slavery rooted in his moral and political constitution - with talents not above mediocrity, and a spirit incapable of expansion to the dimensions of the station upon which he has been cast by the healing hand of Providence, unseen through the apparent agency of chance. To that benign and healing hand of Providence I trust, in humble hope of the good which it always brings forth out of evil. In upwards of half a century, this is the first instance of a Vice President’s being called to act as President of the United States, and brings to the test that provision of the Constitution which places in the Executive chair a man never thought of for it by anybody. This day was in every sense gloomy - rain the whole day” (Adams 1876, 457).

The Whig Congressional Agenda

On May 31, 1841, the emergency session of the 27th Congress convened. After quickly electing John White (W-KY), a Clay ally, Speaker of the House, sectional cracks in the Whig party began to emerge. Henry A. Wise (W-VA) moved the party adopt the previous rules of the House, which included a previous question motion for ending debate. John Quincy Adams then offered an amendment rescinding the rule prohibiting the reception of abolition petitions. This sparked a prolonged debate in the chamber, which did not go unnoticed by Democrats. Writing to James K. Polk, Representative Aaron V. Brown (D-TN) noted that “The Southern Whigs now discover when I fear it is too late, that they are standing on a burning volcano, which every hour may destroy them” (Cutler 1979, 628).¹⁶ Adding to this was Tyler’s continued association with a group of states’ rights Virginians. Clay was acutely aware of this, writing in mid-June that there was a concern that Tyler would fall in with this crowd, and that it would jeopardize the Whig agenda (Coleman 1871, 157).

This appears to have reinforced Clay’s belief that the Whig agenda must be passed quickly. On June 7th, the Kentucky senator outlined the goals of the session. The Whigs sought a repeal of the subtreasury system, the distribution of land revenues to the states, a new loan to pay for governmental business until revenues were increased, an upward revision of the tariff, a national bankruptcy law to relieve debtors, and the incorporation of a new national bank (Holt 1999, 129). Further, they hoped to complete all this within the emergency session. Notably, it was the incorporation of a new national bank that was the centerpiece of this agenda. This seems to be the consensus of modern historians and contemporary legislators alike. Calhoun argues that defeating the bank would lead to the “. . . defeat all the other measures and terminate the session” (Jameson 1900, 481). In letters to Willie Mangum, Senate swing voter, William C. Preston (W-SC) describes the pressure

¹⁶The letters of Southern Whigs suggests that they believed it was a Democratic strategy to fuel this intra-party fissure. For example, North Carolina Senator James Graham (W-NC) writes to Priestly H. Mangum that, “Old Mr. Adams has been agitating abolition, [and] other person are quite willing to encourage him if he will only kill time” (Shanks 1953, 165).

being exerted on him by Calhoun and the Democrats on the bank bill as early as March of 1841 (Shanks 1953, 130; 157). Holt (1999, 129) puts it bluntly, “On that rock (the Bank Bill) the Whig program would flounder and the Whig party splinter.”

Further evidence of internal problems with the Whig party was given by President Tyler’s statement to Congress. Tyler indicated support for the repeal of the subtreasury system. However, his support for distribution and the loan were conditional on the upward revision of the tariff being less than twenty percent. This was not likely to be feasible. Furthermore, he indicated his opposition to the incorporation of a new national bank he deemed to be unconstitutional.¹⁷ In summary, as the emergency session began, the Whigs were set to implement an ambitious agenda with internal sectional tension and a president that shared their party name, but expressed tepid - at best - support for their legislative goals.

Unlimited Debate in the Senate

Clay’s decision to forge on with the entire Whig program, in spite of Tyler’s concerns, was likely based on four factors. First, the nation was still in the midst of a depression. Clay and Whig leaders believed their measures were likely to bring the country out of it. Second, their victories in the presidency, House, Senate and statehouses led them to believe that the public expected the quick enactment of their programs. Third, the Whigs abhorred the high-handed executive power wielded during the Jackson administration. While they felt that they could win Tyler over to support their measures, if not, the Whigs believed he would capitulate to the will of the legislative branch. Finally, for Henry Clay there was an electoral incentive if Tyler vetoed the Whig agenda. He could then distance himself from the president, and win the 1844 nomination.¹⁸

Again, Clay believed the key was to act quickly. On April 30, 1841, Clay wrote Treasury

¹⁷Poage (1936, 35) argues that this should not have been a surprise to Congressional Whigs. Tyler had a long and consistent record in opposing the bank, casting votes in 1819, 1832 and 1833 all against the institution.

¹⁸See Remini (1991), Holt (1992, 1999) and Poage (1936) for a more detailed synopsis of the factors influencing Congressional Whig decision-making.

Secretary Ewing and asked him to prepare a copy of an administration-approved Bank Bill before the opening of Congress (Seager 1988, 524). He reiterated this request in writing on June 2nd and then on the floor of the Senate on June 7th. Sometime during this period Ewing had taken ill and was unable to accomplish this in a timely fashion.¹⁹ This would prove to be fortuitous to the Democrats. The administration-backed bill was reported to the Senate on June 12, 1841, nearly a month and a half after Clay first requested it.

The Ewing bill infuriated Clay supporters. Primarily, this was because it allowed the states to tax the bank, and while it allowed the national bank to establish banks in the states, it made this contingent on the approval of state legislators. The view of many Whigs on this were adequately summarized in a letter by New York Whig Mordecai Noah to Mangum, “I believe when I say that of the Whig party in this city, that not one in a hundred approve of Mr. Ewing’s plan I am short of the truth” (Shanks 1953, 167).²⁰ Over the next five days, the Whig caucus convened to design a substitute.

Democrats, however, sought to seize on the apparent unrest within the Whig party. In mid-June, Silas Wright (D-NY) gave a three hour speech against the Bank bill, which was not under consideration. This led to Clay’s taking up his first rules change resolution.²¹ It provided that the chamber, after any adjournment of the Senate during consideration of a given subject, resume consideration of that subject during the next meeting of the Senate. Presumably, this would facilitate quicker passage for the caucus bill, which had not yet been reported. Clay’s resolution was strongly objected to by the Democrats. Thomas Hart Benton declared “It showed a determination to dictate to the Senate its order of business and the

¹⁹See Mangum’s letter to Duncan Cameron, dated June 26, 1841 (Shanks 1953, 182).

²⁰Clay described the Ewing bill accordingly, “It is understood that he (Tyler) wants a bank located in the District, having no power to branch without the consent of the State where the branch is located. What a bank would that be!” (Coleman 1871 157).

²¹In addition to Wright’s speech, Clay also dealt with significant obstruction during a special session of Congress in early March that was to be confined to executive business. The outgoing Democratic majority decided to continue the Senate’s association with Congressional Globe printers Francis Preston Blair and John Cook Rives. This angered the Whigs, who believed the printers distorted the debates. In the special session, the Whigs went ahead with a resolution removing them. This was met with fierce Democratic resistance, which did not back down for six days (Burdette 1940).

duration of the session” (*Congressional Globe*, 27 Cong. 1, June 12, 1841, 45). Calhoun declared that this “attempt thus to cut off debate was a thing unprecedented in the Senate” (*Congressional Globe*, 27 Cong. 1, June 12, 1841, 46).

In spite of the Democrats objections, a united Whig party then rejected a Calhoun proposal to table the resolution 27 to 19. During the debate, Clay chided the minority by asking, “Did the gentlemen really imagine, that because as a minority they possessed certain rights, they had the right of controlling the business of Congress” (*Congressional Globe*, 27 Cong. 1, June 12, 1841, 47)? However, the debate continued, and although Clay had united party support to reject Calhoun’s motion to table, he placated the minority by offering a modification to the rule, allowing for one hour of discussion of other subjects. The rule then passed via voice vote. Notably, the rule was not a mere compromise for the minority, but a complete capitulation by Clay. Ambrose Sevier (D-AR) asked Clay, “is this resolution was not nearly word for word with the long standing rules of the Senate” (*Congressional Globe*, 27 Cong. 1, June 12, 1841, 48)? Clay, to his credit, acknowledged that it was.

Unable to secure a favorable rules change, Clay and the Whig leadership went ahead with the caucus-backed Bank Bill. They kept the pressure on the Democrats by keeping the chamber in session eight hours a day, six days a week. Calhoun described the situation, “Our sittings are exceedingly laborious, averaging about six hours in the day and thirty six in the week. This, at this warm season, combined with a heavy correspondence, reading of documents and preparation for discussion is heavy and exhausting work” (Jameson 1900, 481). The Whigs appeared to be united behind the caucus bill. Consistent with Binder’s (1999) observation of near perfect party voting on the bill, the party had agreed to vote down all Democratic amendments during the caucus (Shanks 1953, 182).

On June 21, 1841, Clay reported the Bank Bill out of committee. The chamber then debated a bill appropriating 25,000 dollars for the relief of President Harrison’s widow. Consideration of this bill consumed two legislative days, largely attributed to lengthy speeches

offered by Senate Democrats.²² The relief bill passed near the end of the day on the 25th, 28 to 16, with all Whigs and two Democrats voting in support. The Bank Bill was then taken up, and Whig amendments were considered.

During this period, Webster began lobbying Senate Whigs to oppose Clay's caucus bill and support the Ewing bill. His possible reasons for doing so were three-fold. First, he believed it would provoke an executive veto, resulting in the likely dissolution of the cabinet and eventual expulsion of Tyler from the party. Second, Webster believed that a bank bill was better than no bill at all. On the same lines, he argued that the provisions of the Ewing bill were strong enough and that the omission of the branching power is not a "surrender of a great principle" (Wiltse 1982, 135). Third, there was clearly an electoral benefit for Webster to be seen as the power broker between Tyler and Congressional Whigs. His lobbying, combined with Democratic obstruction, facilitated the defection of at least four Southern swing votes: William C. Rives (W-VA), William S. Archer (W-VA), William C. Preston (W-SC) and John Henderson (W-MS). Later, the administration would allocate favorable patronage appointments to garner the support of William Merrick (D-MD) and Alexander Barrow (D-LA) (Holt 1999, 132; Shanks 1953, 182).

By late June it was clear that Clay caucus bill was in trouble. Calhoun, expressing confidence, noted that "We have, I think, gained on them since the beginning of the [s]ession. They are now dispirited and distracted" (Jameson 1900, 479). The minority continued to operate under a strategy of obstructing consideration of the caucus bill, while seeming supportive of Tyler's objectives.²³ In this respect, a Benton biographer notes that the Democratic objective was, "delay and an appeal to public opinion through the [Globe] and other Democratic organs" (Chambers 1956, 252). Holt (1999, 132) argues that "... minority

²²June 24th and 25th witnessed fifteen lengthy Senate speeches. This were given by Buchanan (D-PA), McRoberts (D-IL), Woodbury (D-NH), Walker (D-MS), Young (D-IL), Wright (D-NY), Pierce (D-NH) and two apiece by Calhoun (D-SC), Benton (D-MO) and King (D-AL). On the Whig side, Bayard (W-DE) and Miller (W-NJ) offered shorter speeches in support of the measure.

²³In a letter to James K. Polk, Representative Aaron Brown outlines this, "If Tyler's project shall be presented in such form as will enable to Democrats proper to fall into its support as against Clays, it will enable to minority to be sufficiently strong to encourage the President to venture a veto" (Cutler 1979, 693).

Democrats played a brilliant hand, offering little opposition to those measures Tyler agreed with but strenuously objecting to the measures that offended the president's constitutional sensibilities.”

Appearing amiable to Tyler did not, however, dwarf the minority's larger strategy of driving apart the majority party. When Rives (W-VA) offered a compromise amendment on July 1, 1841, restoring the Ewing bill, the Democrats joined with Clay's supporters to overwhelmingly defeat it. The minority, wrote Poage (1936, 57) was “delighted at the quandary of the Whigs, and, as was manifestly their policy, resolved to vote en masse against the Rives Amendment in order to increase the confusion of the Whigs.” Further, the nature of the debate between Clay and the Whigs backing the Ewing bill indicated to Senate Democrats that Tyler intended to veto the caucus bill. Democrats were eager to see this happen.

After defeating the Rives amendment, Clay himself began expressing doubts about his ability to pass the caucus bill. Adams chronicled in his journal dated July 7th, that in a meeting with Clay, “He (Clay) thinks the passage of the Bank bill in the Senate doubtful” (Adams 1876, 498). However, on July 12th and 13th the Whig leadership again held a caucus to work out a compromise to ensure the passage of the caucus bill (Remini 1991, 589). On those days, they voted down five straight Democratic amendments on party-line votes. It was also during this time of renewed Whig unity that Clay's second rules change threat was made. The proposal came at the heels of a speech by Calhoun, which lambasted Clay for accusing the minority of offering amendments and speeches for no other purpose than to “...embarrass the majority by frivolous and vexatious delay” (*Congressional Globe*, 27 Cong. 1, July 12, 1841, 184). Calhoun further asserted that the majority actually consumed the bulk of the debate. Clay's proposal called for the Senate to “adopt the same means which had proved so beneficial in the House” (*Congressional Globe*, 27 Cong. 1, July 12, 1841, 203). After a series of long, aggressive speeches by King (D-AL), Calhoun (D-SC), Linn (D-MO) and Benton (D-MO) the proposal was dropped, and the chamber went into

executive session.

On July 23, 1841, after again consulting with the Whig caucus, Clay offered a compromise amendment. The amendment allowed states to accept or reject branches. However, Congress could then override the states' decisions. The compromise amendment passed 25 to 24 after Preston (W-SC) voted in support and Henderson (W-MS) abstained. A motion by Thomas Hart Benton (D-MO) to postpone the bill indefinitely was then beaten back 28-21 on a party line vote. The compromised caucus bill passed the chamber 26-23 with all Whigs voting in favor, with the exception of the Virginians, Rives and Archer. The passage of the caucus bill had been in doubt at times, however it was not a mortal blow for Senate Democrats. Indeed, from their unified rejection of the Rives amendment, it was apparent the party preferred to pursue a strategy that would lead to a Tyler veto. Calhoun discussed this in a letter to Thomas Clemson, "I should much rather Clay's bill should pass and be vetoed (than Ewing's bill pass and be signed by the President)" (Jameson 1900, 480).

The Previous Question Motion in the House

As discussed earlier, early in the emergency session House Whigs appeared to be more divided than their Senate counterparts. On June 7, 1841, the House adopted a set of rules that included both the previous question motion, and Adams' amendment barring the 'gag rule' against abolitionist petitions. This was reversed nearly a week later. The new rule deferred consideration of the gag rule one full year. Binder (1999, 102) argues that this compromise was a partisan one, with Southern Whigs largely joining Northerners in support of the measure.

It is this parliamentary environment the chamber received the Senate Bank Bill. The presence of the previous question motion virtually ensured quick passage of the bill. Representative Cave Johnson (D-TN), writing to Polk, wrote on this, "it will pass the House, probably during the ensuing week. With their amended rules, they have the previous question... [and] use it upon all occasions" (Cutler 1979, 710). On August 3rd, the House voted

on the first amendment to Bank Bill, rejecting a minority proposal to liberalize the chamber's rules in regards to the bill by a vote of 107 to 84. The next day, the chamber passed a resolution setting a date to end debate on the Bank Bill. On August 6, 1841, the House passed the Bank Bill by a vote of 128 to 98. The bill was then vetoed by Tyler on August 16th.

Revisiting the Evidence

The history of the Bank Bill of 1841 demonstrates that there were many important factors that led to the bill's failure, not the least of which was the attitude of the executive branch. Also important were how Clay and the other Whig leaders in the Senate managed the entire chamber agenda, electoral considerations, the composition of the bill itself, and minority obstruction. So how does one interpret the role of unlimited debate played in the consideration of the Bank Bill of 1841? To answer this, I reconsider the claims made by both the inherited institutions and remote majoritarianism camps.

Wawro and Schickler (2006, 74-75) argue that "Obstruction might have delayed progress, but in the face of a determined majority willing to threaten changes in the rules, the minority relented" (Wawro and Schickler 2005, 74-75). To support this claim, they argue that when he proposed the rules change, Clay actually lacked a majority for the Bank Bill. The evidence suggests that this is likely the case. However, the evidence is also clear that Clay had a majority *in favor* of the Bank Bill at several different points during in the session. In his letter to Cameron describing the Whig caucus, Mangum makes it clear that a majority supported the caucus bill. This is consistent with Binder (1997)'s observation of near-perfect party unity. Further, the amendment Clay used to eventually get a majority sacrificed virtually nothing of the substance of the caucus bill.²⁴ The rule, if passed, would have allowed Clay and the Whig leadership to call for a caucus, line up support and then minimize the possibility of defections by cutting off debate and limiting the amount of time the opposition could

²⁴Remini (1991, 589) dismisses it as a "wretched compromise," that "hardly deserved the name."

influence moderate Whigs. It also would have allowed for earlier passage of the bill, which may have led to Tyler's support. Many congressional Whigs believed that Tyler's support waned over the course of the session. Mangum articulates this view in his letter to Cameron, "In the spring, soon after his accession, I feel very sure, the President would have signed any Bill." Just as the long debate afforded the minority time to pressure moderate Whig senators, it also allowed them to influence Tyler.

Wawro and Schickler also argue that there was a precedent earlier in the session where Clay passed a rules change resolution over the minority. The evidence suggests that just the opposite occurred. Clay's rules change resolution was met with determined Democratic resistance. Rather than face a prolonged battle over it, the Kentuckian proposed a face-saving compromise. The compromise resolution was allowed to pass as a voice vote - not because the minority feared the majority - but because it was a "word for word" reiteration of the Senate's current standing rules.

Consistent with their thesis on norms of restraint reigning in delay, the authors cite to a Calhoun description of the chamber at the time that stresses the small, tight-knit nature of the Senate. There are two incidents that seem to contradict this argument. Ironically, both involve senators cited by the authors as endorsing this norm. One of these, future President James Buchanan was humiliated during the debate when Clay repeatedly mocked his effeminate mannerisms. Additionally, William Rufus King, Buchanan's future Vice President and close friend, challenged Clay to a duel earlier in the session. Both men were then arrested and placed under a magistrates' peace bond (Binder et al. 2007). Further, this norm-based argument is particularly problematic given the authors also argue that Clay's rules change proposal scared the minority into abandoning their obstructionist tactics. If this was the case, then it was not the norm that restrained the minority. Ultimately, I think neither explanation is sufficient for explaining the Democrats actions during the Bank Bill episode.

It is true that the minority relented and let the majority vote on final passage. However, three factors likely influenced this decision. First, as Binder and Smith (1998) and Wawro

and Schickler (2006) recognize, the physical costs of delay were taking their toll. Calhoun articulates this point in a letter to Thomas Clemson, “Our sittings are exceedingly laborious, averaging about six hours in the day and thirty six in the week. This, at this warm season, combined with a heavy correspondence, reading of documents and preparation for discussion is heavy and exhausting work” (Jameson 1900, 481). Additionally, consistent with a costs-benefits framework, there would likely be some sort of electoral retribution for a manifest Democratic filibuster. The party suffered staggering defeats the previous year, largely due to inaction in the wake of the depression. By failing to allow a vote on the centerpiece of the Whig agenda, Clay and his supporters would have been able to reiterate this accusation. Perhaps most importantly, though, by this point the damage had largely been done. There was an open fissure between Clay’s supporters and the Whigs supporting President Tyler. This culminated in an admission by one of the Tyler Whigs that the president planned on vetoing the Clay bill. Contrary to Wawro and Schickler’s argument, by the time the bill passed, the veto was fairly evident. Calhoun had predicted it in several letters, and the Democrats went so far as to reject the more preferable administration bill so as to encourage the Tyler veto.

Three important conclusions can be reached from the Bank Bill episode. First, unlimited debate does not need to be exploited in a way that prevents a vote on a bill to be effective. Had the Bank Bill of been considered under the rules of the modern House, there is little doubt the majority would have been able to pass it - and pass it quickly. This would have minimized the strain placed upon the fragile Whig coalition and possibly preserved it throughout the session. It is possible that this may have led to vastly different policy outcomes. In this respect, while unlimited debate did not play the role of the murder weapon in the earlier analogy, it did serve as the dark alley that concealed the crime. Second, while the dispersed physical costs in the House better facilitated obstruction than the Senate, this episode reinforces the observation that when House majorities were forced to deal with dissident minorities, they could turn to the inherited previous question motion. As later

episodes will show, the Senate would be forced to turn to all night sessions. Finally, a point to consider is the relative cohesiveness of both coalitions during the debate. It is likely that this is in some way due to the repeated caucusing done by both sides.

Future Work

The Bank Bill of 1841 is just one of many case studies where greater detail is necessary to shed light on the evolution of obstruction in the United States Senate. Future work is needed to clarify the role of obstruction in numerous other incidents. Table 2 lists additional case studies that I have detailed in several projects.

Table 2: Episodes of Obstruction, 1791-1917

Year	Measure	Congress
1826	The Panama Mission	19
1841	The Bank Bill	27
1850	The Nebraska Act	32
1854	The Kansas-Nebraska Act	33
1856	Kansas Statehood Bill	34
1858	The Lecompton Bill	35
1859	Cuba Acquisition Bill	35
1863	Suspend Habeus Corpus	37
1875	Tariff	43
1883	Mongrel Tariff	47
1889	Tariff	50
1890	McKinley Tariff	51
1890	Federal Elections Bill	51
1908	Aldrich-Vreeland Currency Bill	60
1917	Armed Ship Filibuster	64

Sources: Franklin L. Burdette, *Filibustering in the Senate* (Princeton University Press, 1940); Sarah A. Binder and Steven S. Smith, *Politics or Principle? Filibustering in the United States Senate* (Brookings Institution Press, 1997); Gregory Wawro and Eric Schickler, *Filibuster : Obstruction and Lawmaking in the U.S. Senate* (Princeton University Press, 2006).

In conjunction with this case studies, empirical research linking these incidents of obstruction with the success of the majority party’s agenda could prove valuable. If in fact obstruction does result in the majority having to sacrifice some of its agenda, than this could be tested. Looking at issues reported by newspapers or stressed in party platforms should

serve as a sufficient proxy for a party agenda. Then evaluating the success rate on those issues and linking it to the case studies discussed could provide additional evidence for or against the leading theories of procedural choice in the Senate.

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