

DEMOCRATIC RESPONSIVENESS, THE SENATE FILIBUSTER, AND DISTRIBUTIVE
EQUITY IN THE UNITED STATES

By

J. Tucker Shealy
Bachelor of Arts, University of South Carolina- Columbia, 2020
jtshealy@email.sc.edu

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1. Introduction

The United States has been internationally seen as the “beacon of democracy” since its founding over two centuries ago. Since initiating the great democratic experiment, the ideals of equal political representation and self-governance have become baked into the nation’s culture, historical consciousness, and public policy. Undoubtedly, the second half of the twentieth century’s international conflicts, within which the United States was involved, were dominated by intentions to promote democratic institutions abroad. However, in recent decades, the foundations of democracy in America have begun to show vulnerabilities, particularly when it comes to the democratic responsiveness of the government. For a myriad of complex and historically contingent reasons, the twenty-first century has ushered in an era of American politics in which the capacity for congressional governance has been significantly limited. Certainly, social phenomena such as historically high levels of political polarization, and the subsequent widening of the ideological gap between the two major parties, has something to do with this. But as this analysis shows, these social phenomena with real political implications are actually symptoms of a larger problem; namely, the numerous institutional flaws in our democratic system that reliably generate political inequity and threaten the viability of our nation’s political structure. The Senate filibuster is perhaps one of the most pervasive and problematic institutional design flaws in the entirety of the United States government, and will be the focus of the present essay.

The filibuster has a long and complicated history, and like the Senate itself, has come to be understood differently overtime. In the contemporary context, it refers to the supermajority (60-vote) requirement to enact virtually any piece of legislation in the United States Senate- a stark contrast to the simple majority needed to pass legislation in the House of Representatives. For

decades, the filibuster was not a relevant part of the Senate’s functioning, though in recent years, it has become an obstructive tool for leveraging political power at the expense of American electorate. It was created by accident when the Senate, with the advice of then Vice-President Aaron Burr, eliminated the “previous question” motion, which was thrown out because it was rarely used. “The previous question is a nondebatable motion that, if favored by a majority, closes debate and forces an immediate vote on the matter.”¹ Without this rule in place, the majority party in the Senate was left no real mechanism to call a vote to move off of any given topic, though this was not a pressing problem for many decades after. It was not until the Civil Rights Movement that it was fully realized that this provided a loophole in Senate rules through which legislation could be vigorously obstructed. “From the late 1920s through the 1960s, the filibuster was primarily used by Southern senators to block legislation that would have protected civil rights — anti-lynching bills; bills prohibiting poll taxes; and bills prohibiting discrimination in employment, housing, and voting. These anti-civil rights filibusters were often justified with ‘inflated rhetoric about an alleged Senate tradition of respecting minority rights and the value of extended debate on issues of great importance.’”² Indeed, the historical use of the filibuster for blocking legislative action is intimately connected to efforts to deny distributive equity to the American public, and its legacy continues to manifest within the same context, though in often more covert ways. The present essay will attempt to persuade the reader that the political reform of removing the Filibuster, a centuries-old obscure rule of Senate procedures, would increase distributive political equity and economic efficiency in the United States. Through compelling theoretical arguments backed by empirical data, this analysis will show how the institutional

¹ Catherine Fisk and Erwin Chemerinsky. “The Filibuster.” *Stanford Law Review*, Vol. 49, No. 2 (1997), 188.

² Alex Tausanovitch & Sam Berger. “The Impact of the Filibuster on Federal Policymaking.” New York: A Data For Progress Report (2019), 4.

design of the Senate is incredibly problematic to the democratic foundations upon which the nation is built and how urgent its removal is to the future sustainment of said institutions. The first section will discuss how removing the filibuster would increase economic efficiency and distributive equity by *constituting a partial rebalancing of distribution of power within the Senate*. The second will focus on how removing the filibuster could *Increase congressional efficiency*, which is essential to the vitality of a democracy. The final section will analyze the various channels through which policy initiatives flow in order to bypass the filibuster and the consequences they present; arguing that the removal of the filibuster would open up channels through which legislation can be passed, allowing for more creative (and equitable) policy solutions to come into fruition.

2. The Filibuster and the Malapportioned Senate

Indeed, the United States Senate is one of the most powerful governing bodies in the world- its place in securing the policy direction(s) taken by the nation is nearly unparalleled, even when considering their neighbors over in the House of Representatives. What is far less commonly known about this governing body, though, is that the way it distributes power is imbalanced by multiple institutional flaws. The method through which it grants power is incredibly problematic and counterintuitive to the very ideals of democracy. The senate distributes equal representation to each state in the Union, regardless of their relative population sizes. This means that the 40 million residents of California have the same amount of representation as the 600,000 residents of Wyoming, giving the average voter in Wyoming 68 times the voting power as the average California voter.³ Furthermore, given that it takes just 41

³ Alex Tausanovitch & Sam Berger. "The Impact of the Filibuster on Federal Policymaking." New York: A Data For Progress Report (2019), 6.

senators to threaten (and execute) a filibuster, the senators from the 21 least populated states in the union (representing just 11% of the total population) have the hypothetical power to block any piece of legislation they choose, even when backed by the vast majority of the electorate and legislators, if they can manage to act collectively. Sure, this situation is purely *hypothetical*, and assumes that these senators can (and would) work collectively in this case, but it illustrates the point quite clearly: our political system, particularly the Senate, has a minoritarian bias.

This fact has reverberating effects across the entire American political system, though perhaps the most impactful of these reverberations is the incentive structure it sets up for legislating. Given that a small number of states with relatively small population sizes are given the same voting power as those with larger populations, it's easy to see how a path to consistent power can be crafted through appealing to the *minority* of the electorate, rather than the majority. A recent Data for Progress report in 2019 found that the United States Senate has at least a 3-point lean toward the republican party, largely due to the exclusively geographical nature of the way the senate distributes power.⁴ Furthermore, this flaw in the design of the U.S. Senate has observable effects on political equity, particularly within the racial sphere. As aforementioned, the Senate grants equal Senatorial voting power to states with low populations as it does to those with considerably larger populations. States with lower populations, by and large, tend to have more rural, whiter constituencies than states with metropolitan areas (and by extension, larger population sizes), which tend to have more diverse populations.⁵ Consequently, the physical make-up of the Senate reflects the disproportionate representation of whites (over minorities,

⁴ Colin McAuliffe. "The Senate is an Irredeemable Institution." New York: A Data For Progress Report (2019), 9.

⁵ Barrett A. Lee, Michael J.R. Martin, Stephen A. Matthews and Chad R. Farrell. "State-level changes in US racial and ethnic diversity, 1980 to 2015: A universal trend?" *Demographic Research*, Vol. 37 (2017), 1035.

generally). David Leonhardt, a journalist for the New York Times recently conducted a study in which he “calculated how many senators each racial group gets per million people.”

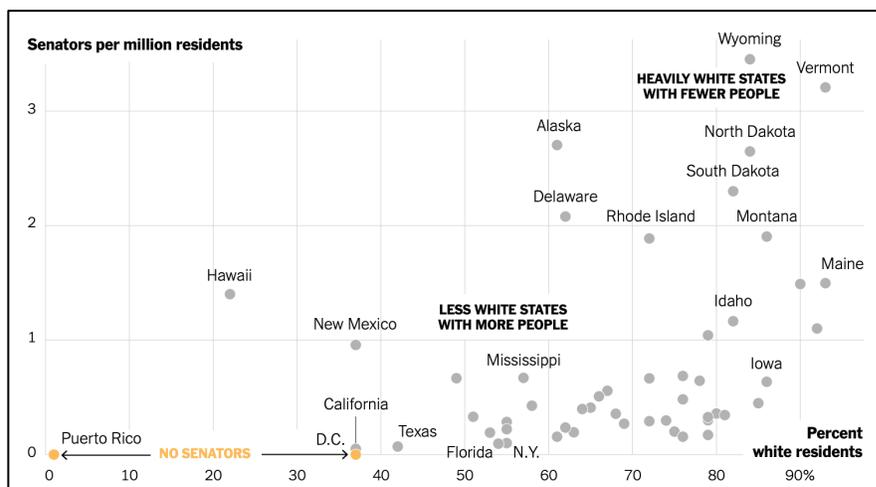


Figure 1: Source: The New York Times, David Leonhardt

Figure 1 (above) visualizes his findings: “White Americans — the racial majority — get 0.35 senators per million people; Black Americans have 0.26; Asian Americans are right alongside them, with 0.25; and Hispanics are last in senatorial power and representation, with 0.19.”⁶ These findings make it clear that the minoritarian lean of the senate has real, tangible effects on *who* receives proper representation in the United States and this reflects the paths to power established by the system itself. Who receives proper legislation, and who does not, dictates which policy preferences get legislative attention, which has statistically significant downstream effects on American civic life. “Unequal political voice matters because the advantaged convey very different messages to government officials than do average citizens or

⁶ David Leonhardt. “The Senate: Affirmative Action for White People.” *The New York Times* (October 14, 2018).

those who are the least well off” and these differing messages reflect different legislative needs.⁷ With Senators incentivized to tailor their rhetoric and policy proposals to fit the desires of smaller, whiter, often more affluent populations, the policy outcomes generated by the system are consistently aligned with the preferences of an dwindling *racial* majority, which is remarkably unrepresentative of the majority of the *electorate*. This can, and has had consequences on issues such as voting rights and political disenfranchisement, which are particularly relevant to these underrepresented populations. Given that white voters have considerably more senatorial representation than any other ethnic group, policy proposals aimed at expanding voting rights will likely continue to face up-hill battles to be passed, and that is only *if* they are not killed by the filibuster before even reaching a vote on the Senate floor.

Additionally, a 2007 study by Professors Neil Malhotra and Connor Raso analyzed the effects of Senate malapportionment on racial minorities, and found that “Controlling for state need, overrepresented states receive greater per-capita federal fund allocations for nondiscretionary distributive programs in which Congress sets the formula... if racial minorities tend to live in larger states on average, they they may not be receiving their fair share of pork.”⁸ This is a fundamental problem for the vitality of our democracy. White Americans have policy proposals and campaign strategies crafted with them in mind, while communities of color are covertly excluded from the political incentive structure that drives American politics in the current era. The party that benefits from the ethnonationalist short-cut to democratic power presented by the institutional bias of the Senate will surely make use of that avenue until it can no longer be used to leverage influence.

⁷ Lawrence Jacobs, et al. “American Democracy in an Age of Rising Inequality.” *Task Force on Inequality and American Democracy* American Political Science Association (2004), 11.

⁸ Neil Malhotra and Connor Raso, “Racial Representation and U.S. Senate Apportionment.” *Social Science Quarterly*, Vol. 88, No. 4 (2007), 1039.

One of the leading ideas of how to fix this institutional bias within the Senate is to offer Puerto Rico and Washington D.C. (both of which have considerably diverse populations) statehood. This would grant them representation in the Senate, which they currently do not have, leaving nearly 4 million American Citizens (collectively) without adequate representation in congress. Doing so would shrink the institutional lean of the senate, though it is difficult to estimate by how much, and it is unlikely that this action would eliminate the bias entirely. However, it is a start, and seemingly unconstitutional to leave such large populations of American citizens out of the legislature. But congressional session after congressional session, bills to offer these territories statehood have been shot down, often without debate, by the filibuster. And unfortunately, given recent trends of Senate majority margins, it does not seem likely that an invitation to join the Senate, for either territory, will be coming out of Washington any time soon.

3. The Filibuster and Congressional Efficiency

Indeed, one of the most popular arguments for keeping the filibuster (from both sides of the aisle) hails back to an old analogy, from the days of the nation's founding, that assumes the Senate to be the more deliberative body of the two. The analogy identifies the Senate as the "cooling saucer" where the "hot," passionate legislation from the House is supposed to be mulled over and deliberated to the fullest extent, ostensibly leading to compromise. The United States senate has been affectionally called "the world's greatest deliberative body" for ages, though this phrase, in practice, could not be further from the truth and that's (at least in part) because of the filibuster. To truly understand how the filibuster functions as a mechanism that works counter to this age-old perception of the Senate's deliberative qualities, the distinction between

“compromise” and “deliberation” must be made clear. In theory, deliberation is a means to an end that is namely, compromise. For the Senate must first deliberate the “hot” legislation from the House in order to find common ground, eventually constituting a compromise. Within the American political system, however, the filibuster stands in the way of deliberation, and therefore, compromise. But that’s not to say that the filibuster is the only factor contributing to this dynamic of paralysis- after all, the filibuster has been around over a century-and-a-half. Rather, it is the combination of both the Senatorial institutional flaw (that is the filibuster), alongside the rapidly increasing polarization of American politics that sets up the tension between these two terms.

The recent significant uptick in American political polarization is a complex phenomenon to adequately explain. Indeed, it is a product of a multitude of social, political, and economic factors that cannot possibly be thoroughly hashed out in the present analysis. What is not so hard to confidently assert, though, is the fact that American politics has become increasingly competitive over the last half-century, greatly contributing to the polarization of the American public. In her book *Insecure Majorities*, political scientist Dr. Francis Lee analyzes the trends of political competitiveness in congress since the civil war. Her analysis shows that since 1980, the United States government generally, but especially the Senate, has been in the most turbulent era of power exchanges in history.

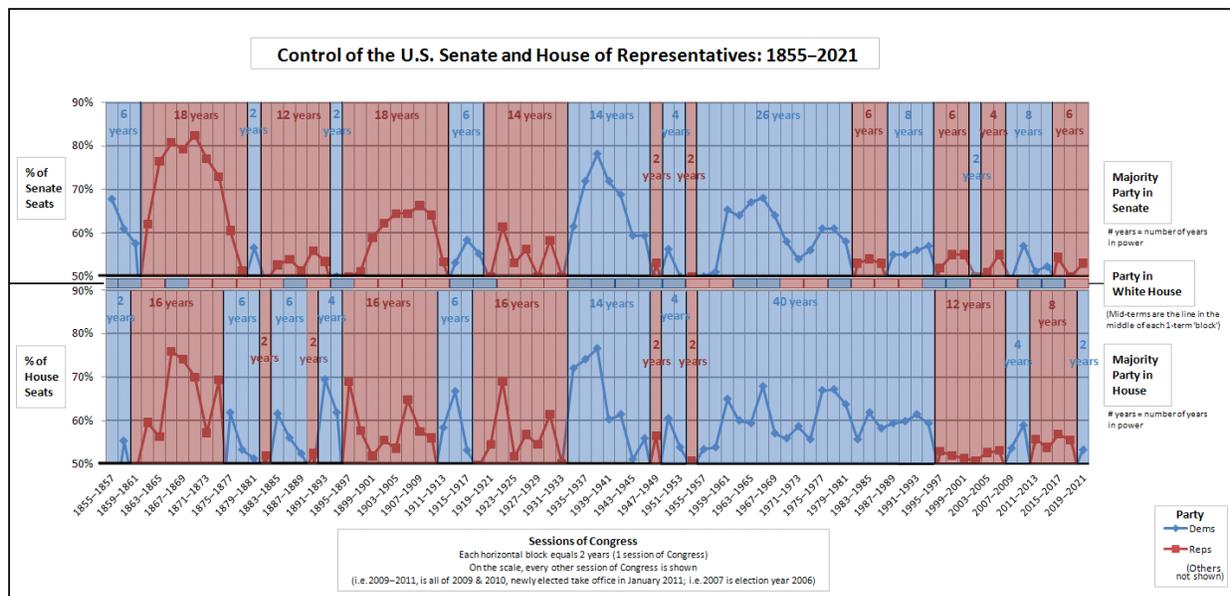


Figure 2: Political competitiveness in the U.S. Senate has increased significantly since the year 1980, as each party governs with slimming majorities and for shorter periods of time. Source: Chris Houston.

Figure 2 (above) illustrates Lee’s claim. Until the late twentieth century, control of congress (specifically, the Senate) was quite stable. Majorities held their position, with often insurmountable seat advantages, for significant periods of time. “For decades after 1932, Democrats were, by all appearances, the nation’s majority party. Democrats maintained majority control of both the House and the Senate for nearly a half century between 1933 and 1981, interrupted only by two brief Republican interludes (1947–48 and 1953–54)... Divided government was atypical.”⁹ However, this could not be further from the truth within the contemporary context. Control of the senate has flipped 7 times in the last 20 years; a striking contrast to the trends of the early-to-mid twentieth century that often featured consistent control of the Upper House for more than 10 years at a time. The problem here, says Lee, is the incentives this level of competitiveness sets up for legislators. In recent decades, the increasingly

⁹ Francis E. Lee. *Insecure Majorities* (Chicago: University of Chicago Press, 2016), 1.

slim margins secured by either party in the senate has exponentially raised the stakes of each election cycle. Unlike prior to 1980, it seems that control of the Senate is up for grabs every two years and this has fundamentally changed the way the Senate, and therefore policy making, actually functions. How high the stakes are in any election year matters- it has demonstrative effects on the way legislators behave (both on the campaign trail and the floor of the senate) and the way organizational resources are allocated. When control of the legislature is in play, the most effective way of crafting a path to power is through amplifying the differences between the two parties, both along ideological and non-ideological lines. Not only does this lead to the excessive use of rhetoric railing against the “extremist” and “radical” policy proposals of the opposition, but it also, perhaps more importantly, leads to accusations of corruption, failure to govern or outright incompetence. “The quest for party differences cuts against bipartisan collaboration on legislative issues. An out party does not win a competitive edge by participating in, voting for, and thereby legitimating the in party’s initiatives. Instead, an out party angling for partisan advantage will look for reasons to withhold support and oppose.”¹⁰ Luckily for them, the filibuster provides the perfect mechanism to do just that, without even having to defend themselves for favoring partisan advantage over legislating.

Returning to the “cooling saucer” analogy, the 60-vote threshold of the Senate filibuster is often cited as a mechanism that forces compromise, as its logically reasonable to assume that the majority would need to compromise with the minority in order to constitute a supermajority vote. Indeed, this was, by and large, the way the filibuster functioned prior to the 1980s when the minority party had little hope of gaining the majority in the immediate future, incentivizing senators in the minority to work with the majority in order to avoid going home to their

¹⁰ Lee, *Insecure Majorities*, 3.

constituents empty-handed. However, Dr. Lee's data shows that the historical trends in American political power can, in part, explain why the filibuster is so problematic in the present; in an age where seemingly *every* election presents the opportunity to take control of the Senate, it is irrational for the minority to accept compromise with the majority because it makes it harder to define distinct differences between their own party and that of the opposition. If the minority is unwilling to compromise, the 60-vote threshold of the filibuster suddenly becomes a weapon for killing legislation upon arrival, rather than a set of guardrails against tyranny.

Perhaps one of the most notable figures in recent history, as it relates to the use of the filibuster, is none other than the current Senate Majority Leader, Senator Mitch McConnell of Kentucky. McConnell's legacy will likely, in retrospect, be closely tied to the filibuster as he has fundamentally reimagined and retooled its functions over the last decade. He was the Senate minority leader for much of the Obama administration and his use of the filibuster from this position devastated the Democrat's efforts to enact their policy initiatives. Under McConnell, during the Obama years, the Senate held over 500 cloture votes (votes held to break a filibuster). Figure 3 (below) visually illustrates how this number compares to the historical trend of cloture votes held each year since 1917.

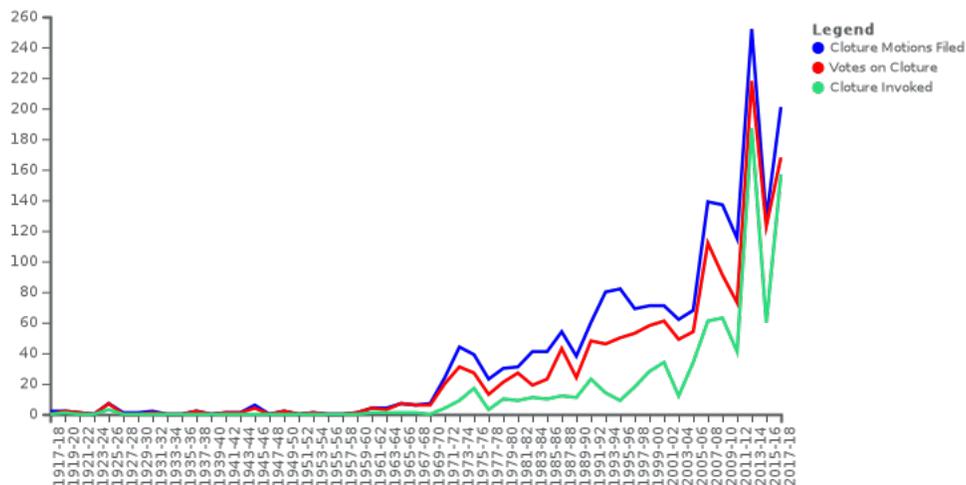


Figure 3: Source: "Senate Action on Cloture Motions". United States Senate. Retrieved March 23, 2019.

Between the years of 1917-1970, on average, the Senate held fewer than 1 cloture vote per year. In the last decade (roughly), on average, there have been about 85 cloture votes per year. This data reflects more than just shifting political incentives- it represents the way the functioning of the United States Senate has fundamentally changed in the last few decades. No political reform will ever make hyperpartisanship go away- it is the product of a myriad of exogenous variables that operate outside of the legislative scope. The behavior hyperpartisanship promotes, by extension, will linger the halls of congress indefinitely as it is *rational* to behave in such a partisan manner, given the political climate. Therefore, retooling the filibuster to prevent deliberation, rather than promote it (as Senator McConnell has effectively done, for example), simply constitutes a rational utilization of tools built into the institution which allow the most effective pursuit of party priorities, which are undoubtedly the leveraging of power. Under the present political conditions and institutional rules, regardless of who is in power, the filibuster will continue to be used as it has in recent years, ostensibly setting the United States on track to experience an indefinitely long period of legislative paralysis. In a time of such drastic political polarization, which has seemingly become the defining quality of American political discourse

over the last decade, compromise is discouraged by the threat it poses to the prospective power. As a result, the filibuster has become a strikingly effective mechanism, wielded by the minority, used to halt deliberation on policy reforms and consequently reinforces this problematic incentive structure.

The mere presence of the filibuster makes legislating, even with majority control of the Senate, nearly impossible. This level of difficulty, as it relates to governing, is exacerbated by the fact that of all the “advanced” democracies in the world, the United States supports a political system within which it is remarkably hard to get anything done, before even considering the filibuster. This is because of the unusually high number of electorally-generated “veto players” that are built into the system. A 2011 article in the journal *Perspectives on Politics* by professors Alfred Stepan and Juan J. Linz brings this point into light through a comparative analysis of 23 “advanced” democracies, particularly looking at their respective institutional features that have effects on the policy outcomes produced by their democratic systems.

The term “electorally-generated veto player,” refers to a baked-in component of the democratic institution that is allowed to strike down legislation being produced within the government. In the United States, there are four of these “veto players”- namely, (1) the House of Representatives, (2) the Senate, (3) the Executive, and (4) the States (needed to amend the constitution). Notably the Supreme Court is not included, given that they are not *technically* electorally generated, though it should be noted that the Court pragmatically holds an additional veto power, regardless of its inclusion in Stepan and Linz’s report. Nonetheless, the number of veto players in the United States (4) is unusually high, with no other “advanced democracy” on earth having as many. Of all 23 democracies considered in the study, about half had only 1 veto player (many of which are European unicameral systems) and only two nations have 3 veto

players. For a myriad of reasons, scholars of economics and political science alike have identified the institutional structure of a society to be a key determinant in the level of inequality (political, economic and social) found within said society.

“There is a positive correlation between an increasing number of (electorally generated) veto players and economic inequality. While correlation does not indicate causation, these veto players do present a mechanism through which political and economic reforms supported by the majority can be consistently blocked, generating inequality of various degrees.”¹¹ The study also shows that countries with 4 veto players, yet, can implement wide-spread social change that reduces inequality. For example, Brazil (not included in the study, as it did not fit the criteria of countries selected) has 4 veto players, yet has been able to reduce inequality in the country over the last few years through a strategy taken by presidents Fernando Henrique Ceardoso and Luíse Inácio Lula da Silva to shift public opinion on inequality. “They frame inequality as one of the greatest challenges to the country’s social, political, and economic progress, and over time, polarization on these issues reduced almost entirely.”¹² Though these success stories from Brazil can by no means be directly imposed upon the socio-political framework of the United States, they do show that political polarization is linked determining which reforms are blocked by veto players and which ones are not. When polarization is high, the stakes of each election become increasingly high and consequentially, the incentives to legislate (or to not) become increasingly effective at predicting the rate at which the legislature produces policy. The relationship between these two variables are strikingly negative. Given that party polarization, as mentioned before, cannot be cast away with the president’s pen, it seems to be that removing the filibuster is one of

¹¹ A. Stepan and J. Linz. “Comparative Perspectives on Inequality and the Quality of Democracy in the United States.” *Perspectives on Politics*, Vol. 9, No. 4 (2011), 845.

¹² Stepan & Linz, 848.

the only avenues available to increase congressional legislative efficiency without reforming the constitution and/or the number of institutional veto players built into the system. Congressional efficiency, as will be discussed in the following section, is linked to inequality, and therefore, to the pursuit of greater distributive equity.

Theoretically, American politics should operate on a specific *feed-back loop* that functions as the core driver of the democratic process. This feedback loop is quite simple: it starts with the political parties. These groups of legislators and public service representatives form policy platforms which are pitched to the electorate during elections. Then, the election is conducted, and the majority of Americans pick their preferred platform(s), with the results of said election placing representatives in office. Once in office, these politicians are responsible for delivering their promises made on the campaign trail by implementing large portions of their policy initiatives, which are either sustained or struck down in the following elections, based on if the party in power implemented policies that *actually* benefited them. However, of course, this is not how it works in practice. American political institutions are riddled with biases (the senate lean being one of them) and veto powers would still make legislating very hard, even without the filibuster. Still, the filibuster is the single largest obstacle standing in the way of these delivered promises as it prevents legislation from even coming to a vote in the senate if it fails to gain a “supermajority” of senator’s support, that is, 60 votes. Note, this is a much wider margin than the simple majority (50 votes) needed to pass a bill, or interestingly enough, to even strike down the filibuster itself. It’s hard to understate the magnitude this problem simply because it is pervasive on so many fronts; from the incentive structure for senators to actually legislate to the perceived legitimacy of our democratic institutions, the filibuster creates vulnerabilities in our system that produces political inequity at a rapid pace in ways that will be discussed here.

Democratic institutions can only function properly when the opportunity cost of participating in elections is low enough to make voting a *rational* decision. In a democracy in which it is infinitely unlikely that one's vote will be decisive in an election, scholars of political science and economics, such as Dr. Bryan Caplan, have suggested that the act of being politically engaged in the first place, must less the physical act of voting, is enough of a cost to make civic ignorance rational.¹³ Caplan presents this assertion within the context of the "democratic paradox," which refers to the notion that despite them being political systems in which the people are granted power and agency over the functioning of their government, democracies often produce objectively bad policy outcomes for the electorate.¹⁴ He posits two explanations for this paradox, with the first being that perhaps elections are not quite the potent system of accountability that they were once thought to be. Politicians campaign in their home districts with a myriad of policy promises, yet so often (almost always, even) fail to actually get anything done. Reinforcing this dynamic (Caplan's second explanation of the "democratic paradox") is the fact that voters are (generally) quite ignorant about politics- many Americans do not even know who their representatives are, much less what they do. Thus, the feedback loop is broken- a kink in the machine supported by the filibuster. Between gerrymandering, political geography, and the electoral college, the filibuster is just one (large) part of the problem with this feedback loop that fundamentally hinders our nation's ability to sustain democracy. The question now is, how would the removal of the filibuster help fix it?

In her book *How Policies Make Citizens: Senior Political Activism and the American Welfare State*, Dr. Andrea Louise Campbell discusses the various ways in which the establishment of the Social Security System incited long-term trends of relatively higher voter

¹³ Bryan Caplan, *The Myth of the Rational Voter*, (Princeton, NJ: Princeton University Press, 2007), 2.

¹⁴ Caplan, 1.

participation rates among Seniors. Quite relevantly, Campbell notes that citizens are more likely to participate in democratic processes, and by extension, be more civically engaged, when they have reason to believe that their policy preferences will be heard, and subsequently acted upon.¹⁵ Within this context, fixing the legislative feed-back loop is critical; for if higher democratic participation is our goal (which it should be) it appears that enabling the aggregate voice of the electorate to be heard will be fundamental to achieving that end. In order for voters to see value in voting, enough to make civic engagement rational, there needs to be a reasonable legislative response to the expression of the people. With the filibuster in play, it is oh so easy for politicians to simply point fingers at the other side of the aisle when policy promises are not kept. If as a consequence, the general public is unable to hold them electorally accountable based on their policies, why would representatives even bother keeping their constituents in mind when crafting said policy? In order to hold representatives accountable, the electorate *must* maintain political engagement- otherwise, voter ignorance in the aggregate will reinforce legislative negligence. If the rationality of being politically engaged depends on the opportunity cost(s) of informing one's self, the only way to increase the value of voting is to increase the rate of congressional efficiency which is dramatically hindered by the near impossibility of reliably overcoming the Senate filibuster. If elections actually produced policy outcomes, good or bad, the decisiveness of one's vote would matter significantly less to the opportunity cost of voting because governing works both ways; if the filibuster were to be removed, indeed, both sides of the aisle would certainly have a considerably larger capacity to carry out policy initiatives. An increased expectation that electoral decisions will produce policy outcomes could, in theory, motivate voters to more actively participate in the democracy, given that the stakes of each

¹⁵ Andrea Louise Campbell, *How Policies Make Citizens: Senior Political Activism and the American Welfare State* (Princeton, NJ: Princeton University Press, 2003).

election would be ostensibly be higher for the people. Until then, our democratic system will continue to produce particularly bad policy outcomes, and increasingly so as the nation continues to politically polarize.

4. Bypassing the Filibuster: Budget Reconciliation and its Effects on Public Policy Outcomes

One of the (perhaps) unintended consequences of Senate Filibuster is that it not only restricts the ability for legislation to pass generally, but it additionally shapes the channels through which policy is crafted, having major implications on the *contents* of said legislation. Given that the filibuster requires a supermajority of votes to pass any major legislation, it should not be surprising that Senators, for decades, have sought avenues through which to avoid needing consent of 60 senators to pass their policies. Throughout history, additional provisions to Senate rules have created loopholes through which this can be done. Some of these loopholes are quite simple with straight-forward implications. For example, between 2013 and 2017, both Democrats and Republicans shielded nominations to the president's cabinet (2013) and judicial nominations to the Supreme Court (2017), among other basic procedures, from the filibuster. Other loopholes, however, are buried in the weeds of American politics and often lack the compelling nature of more salient political issues that defines public opinion. Most prominently, the filibuster forces the governing party to often utilize a tool called budget reconciliation to avoid having their policies killed in the Senate.

The process of budget reconciliation is widely seen as a special process that can be used as a tool to "fast-track" fiscal legislation through the senate by bringing into manifestation through the congressional budget resolution. "In its annual budget resolution, Congress sets total

spending, revenues, the surplus or deficit, and the public debt.”¹⁶ Importantly, the budget resolution process is exempt from the filibuster (meaning it can be passed with a simple majority) and does not need the signature of the president to be passed into law, making it an attractive alternative to pushing fiscal legislation through the legislature. When using reconciliation to alter fiscal spending within the budget resolution, the majority party directs certain committees to make changes to their spending schedules by specific amounts, allowing those funds to be redirected to better represent the desired policy outcomes.

However, the uses of the budget reconciliation process are limited. In 1985, the “Byrd Rule,” named after Senator Robert Byrd of West Virginia, was adopted in the Senate (Section 313 of the Congressional Budget Act) that imposes these restrictions. Ostensibly, the rule is aimed at preventing “extraneous provisions” from being included in budget reconciliation maneuvers, which are defined as those that hold the impact on spending and revenues to be secondary. Additionally, the rule does not allow spending packages to extend past the budget reconciliation window and disallows changes to the social security program.¹⁷ “Because of this, most of the policy changes made through budget reconciliation have involved non-defense spending... most often to reduce spending on government programs like Medicaid, Medicare, student loan programs, etc..”¹⁸ This rule has two distinct effects on distributive equity within the political process: first, it fundamentally shapes the kinds of policies that can actually be implemented within any given congressional session, even though this special loophole. Second, by consequence, the fiscal policies that *can* be implemented through budget reconciliation

¹⁶ United States House Committee on the Budget, “Budget Reconciliation: The Basics.” (2020). <https://budget.house.gov/publications/fact-sheet/budget-reconciliation-basics>

¹⁷ Ibid.

¹⁸ Alex Tausanovitch & Sam Berger: “The Impact of the Filibuster on Federal Policymaking” A Data For Progress Report, 2019.

process are often those that have concentrated benefits for the wealthiest Americans, while imposing diffuse costs on the American electorate at large, presenting real effects on economic efficiency.

With the Byrd rule in place, coupled with the obstructions to legislation presented by the filibuster, much of the recent senate majority's priorities center around budget cuts and the confirmation of judges- things that can *actually* get done within the senate with reasonable confidence. While fiscal policies are certainly central to any administration's (or majority party's) platform, they only constitute a small portion of the policies proposed by politicians on the campaign trail, and furthermore, only apply to a fraction of the issues that congress is responsible for addressing. These larger issues, riddled with complexity yet completely necessary, are often responded to through the crafting of bills within the House, or even the Senate, but seldom actually come before the Senate for a vote in fear that the filibuster would be used to block them by the minority party. Major policy areas such as climate change, health care, and gun control are consequentially often primarily discussed during election season(s) to spur voter turnout, with each of the respective parties having little-to-no expectation for these policy reforms to actually be signed into law. For instance, the American Clean Energy and Security Act, which would have created a Cap-and-Trade system for reducing carbon emissions among other things, passed the United States House of Representatives in June of 2009 but never saw the floor of the Senate, as then-Senate Majority Leader Harry Reid explained that, "It's easy to count to 60. I could do it by the time I was in eighth grade. My point is this, we know where we are. We know we don't have the votes [for a bill capping emissions]." ¹⁹ This is the reality of the Senate: even when you have the majority, the minority defines the legislation that can be passed

¹⁹ Carol Davenport and Darren Samuelsohn, "Dems pull plug on climate bill," *Politico* (July 22, 2010).

unless it can be crammed into the budget resolution. This has created fractures within both parties as crucial voting blocks of varying policy preferences and priorities have felt disregarded by the American political system when nothing is done to enact their desired policy reforms, even when their respective voting blocs have been especially crucial to securing power for one party over the other. This is especially true when it comes to social issues that, by definition, have less to do with spending than they do with social equity and therefore are exempted from being included in budget reconciliation maneuvers. For example, calls for a government-provided health insurance option have been prominent among left-leaning public servants and voters alike for over a decade. The advancement of the Affordable Care Act (Obamacare) has come the closest to providing this, though the original proposal was much more ambitious than the final version and included a government provided insurance option that could be purchased on the individual market. However, this aspect of the ACA was widely seen as impassible given the filibuster, and thus, a “watered down” version of the bill was eventually settled for and passed, but widely seen as flawed and insufficient to meet the needs of millions of Americans as it relates to the rising costs of healthcare. Likewise, there has long been frustration among evangelicals and Catholics when it comes to the social aspects of the conservative agenda (such as abortion) being constantly placed on the back-burner... they, too, suffer the consequences of the filibuster.

While budget reconciliation is an institutionally problematic tool that sets up legislative incentives inconsistent with expressed democratic preferences, it does present a significant pathway for explicitly fiscal legislation to be passed. As mentioned prior, these fiscal spending changes often effect government programs, typically reductions in the funds allocated to them. Even more often, reconciliation of the budget is used to slash tax rates, which largely provides

benefits to individuals who already have disproportionate amounts of political and financial capital. Not only does this contribute to the widening of the income gap in the United States, but it perhaps more importantly highlights the political inequities built into the American political system- it puts the wealthiest, most powerful individuals in the position to most often benefit from congressional maneuvers while leaving the bulk of the American electorate out to dry. Furthermore, these fiscal maneuvers that provide financial advantages to the most powerful in our society are often crafted to secure political power in the future and disregard their (often) negative effects on economic surplus. There are numerous examples of this, including the Bush Tax Cuts of 2001, which in retrospect reduced projected economic surplus (between fiscal years 2001 and 2011) by about 1.3 Trillion, according to a 2018 study conducted by the Congressional Research Service. Another relevant example can be found in the Tax Cuts and Jobs Act signed by President Donald J. Trump in 2017, which has been projected (by the Congressional Budget Office and the staff of the Joint Committee on Taxes) to reduce government revenue by about \$1.65 trillion, decrease outlays by about \$194 billion, and increase the federal deficit by about \$1.46 trillion by the fiscal year 2027.²⁰

The presence of the filibuster forces policy making to take these narrow paths to law that ultimately inhibit their ability to be adequately implemented as intended, leading to bad outcomes for the American people. This effects both sides of the aisle- for example, Having to go through budget reconciliation to get things done has warped the priorities of the two parties to only focus on platform components that can fit within the narrow criteria of budget reconciliation, leading to the neglect of others (often larger, more impactful) components that cannot. These (systematically necessary) maneuvers have not only put the policies sought by the

²⁰ Megan S. Lynch. "Budget Reconciliation Measures Enacted Into Law: 1980-2017," A Congressional Research Service Report (2018), 11.

electorate on the back-burner, but have also, by and large, led to the reduction of economic surplus. When policy makers do find a way to push their platform priorities through Budget reconciliation, the final product signed into law are usually beat-up, watered down, reduced versions of said priorities that ultimately dampens their effects on economic surplus and the well-being of the American people. The filibuster has fundamentally broken the American legislative system at every level. Realizing this, senators have gone out of their way, often breaking *other* senate rules, to create loopholes to get around another senate rule (the filibuster) rather than fixing the issue, in fear of the opposing party's platform(s)- that is, the so-called "tyranny of the majority." But does a governing party passing their proposed legislative reforms, given democratic permission by the electorate, *really* constitute *tyranny*? Economics is a game of trade-offs, and likewise, this discussion of removing the senate filibuster presents a significant trade-off that must be decided with urgency: Either the filibuster is worthy rule of upholding, or it is not. That is, either we choose to have a government enabled to enact legislative reform or we continue to have a government trapped in a state of paralysis. As journalist Ezra Klein most eloquently stated, "But the status quo [the Senate has] instead settled into, where senators don't have to make the hard decisions about the future of their institution and the American people pay the price through badly written legislation and a vast range of neglected problems, is indefensible."²¹

²¹ Ezra Klein, "The Definitive Case Against the Filibuster" *Vox Media* (October 1, 2020).

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