

chapter one

*Civility and Deliberation:
A Linked Pair?*

burdett a. loomis

We are, after all, a representative democracy—a mirror held up to America. . . . In a democracy differences are not only unavoidable—if pursued with civility as well as conviction, they are downright healthy.

—Former Majority Leader Bob Dole, July 16, 1999

however much we may want to romanticize the “world’s greatest deliberative body,” the cold fact remains that the 1980s and 1990s have witnessed a consistent growth in partisan behavior and position-taking in the U.S. Senate. Although eclipsed by the harsh rhetoric, strident partisanship, and occasional physical contact common to the House of Representatives, the Senate has become a less collegial body. The 1999 death of Rhode Island’s moderate Republican John Chafee brought home how the chamber has changed. As Democratic centrist Senator John Breaux (D-La.) noted, “He was one who really put the country ahead of the party. I hoped the numbers [of such senators] would be increasing, but it looks like they are decreasing.”¹ Indeed, with the retirement of fourteen veteran legislators in 1996, the Senate lost many important bridge-builders.

At the same time, the Senate remains a body that can encourage the fruitful exchange of ideas and the possibility for deliberation. Cross-party working relationships can flourish. As Ross Baker notes (chapter 2), the best such relationships may evolve between same-state senators from different parties, who need not compete for similar constituencies. More-

over, with just 100 members the Senate still encourages the forging of cross-party personal relationships inside the chamber, ties that are especially useful in overcoming the frequent filibusters that threaten the viability of the legislative process.

This volume brings together a group of distinguished congressional scholars to consider the linkage between civility and deliberation in the U.S. Senate. Although the writings are certainly scholarly, the issues of civility and deliberation are anything but academic. Not only do many citizens view the Congress with skepticism, if not outright hostility, but members of both chambers often behave with “minimum high regard” for the institution and their peers. This focus on the Senate is valuable, for several reasons. First, in comparison with the House, the Senate remains an understudied institution. Redressing the balance is worthwhile in and of itself. Equally important, the Senate occupies a unique role in American politics. In a system that requires majorities to overcome many obstacles to work their will, the Senate is indisputably the least majoritarian legislative body among our ninety-nine state and two federal chambers. All the others are based on the principle of “one person, one vote.” But the Constitution dictates that each state—whether Wyoming or California—is entitled to two senators, a condition that can profoundly affect the chamber’s character, as Bruce Oppenheimer illustrates in chapter 7.²

In an era of divided government and ostensible gridlock,³ understanding the Senate helps policymakers address broad issues of representation, responsiveness, and capacity within governmental institutions. Finally, with the retirement of many centrist senators and the growth of partisan voting in the chamber, the question arises whether deliberation remains a reasonable expectation for the body. Perhaps pure position-taking and compromise under pressure have overwhelmed the institution’s capacity to generate coherent, productive dialogues on major issues.

Civility, Deliberation, and Representation

At first blush, the connection between civility and deliberation seems straightforward. Comity would seem a necessary, if not sufficient, condition for deliberation on the major issues of the day. And certainly a minimum level of civility is required, a level that could not be maintained back in the 1850s, when slavery came to dominate the chamber’s attention.⁴ More generally, the nineteenth century witnessed a “decline of restraint” in the Senate that encouraged its members to employ more aggressively

procedural tools (such as the filibuster) that could hinder the free exchange of ideas.⁵ Still, in 1885 Woodrow Wilson could conclude that, in contrast to the House, “the Senate is a deliberative assembly. [It is,] *par excellence*, the chamber of debate.”⁶

The linkage between civility and deliberation remains open to question, in that extended debates—which become a strain on comity—have historically played a major role in the institution. Civility, in itself, it is argued here, is not the central issue. Rather, it is the relationships between levels of civility and two core elements of the legislative process: deliberation and representation. Hence the chapters are organized around four topics: the idea of civility in the Senate, the Senate as a deliberative institution, civility’s ties to deliberation, and the practice of deliberation in the contemporary Senate and its linkage to representative government.

The Senate in the American System

In contrast to the House, the Senate is often seen as free-flowing and informal.⁷ Debate is less well structured, and floor activity proceeds through continuing negotiations between the parties’ floor leaders, whereas House business is more structured and subject to time limits. Personal relationships become more important in the Senate, and committees are a bit less significant. Still, a few core constitutional requirements and internal rules/practices combine to shape the essence of Senate behavior and process.

The Senate as Institution

The Senate, both through its rules and its constitutional role, often requires *supermajorities* to conduct business. The constitutional mandates for two-thirds majorities to ratify treaties, approve constitutional amendments, and convict on impeachment charges frame the conflict on a small number of important issues. Indeed, the Clinton impeachment trial generated relatively civil Senate behavior in large part because all senators knew that mustering the sixty-seven votes required for conviction was a virtual impossibility.⁸

In terms of affecting day-to-day business, the constitutional requirements for supermajorities pale before the Senate’s own requirement of sixty votes to end extended debate by invoking cloture. Barbara Sinclair (chapter 4) observes that in recent Congresses (both Republican and Democratic) more than half of all major measures encountered a “filibuster problem” on the way to Senate approval.⁹ This contrasts with 10 percent

in the late 1960s and 20 percent or more in the 1970s. Routine filibusters have become a fact of Senate life. In untangling procedural knots, senators enter into detailed negotiation, but *this should not be confused with deliberation on the issues*. Rather, they are working out intricate compromises that protect any number of individual (and party) positions, so that the chamber's business can proceed.

In fact, as Sinclair and others have observed, the contemporary Senate combines both high levels of partisanship and individualism. Thus determined minorities of more than forty senators can block legislation, while an individual senator can exercise disproportionate influence in a chamber that depends on unanimous consent agreements (UCAs) to conduct its business. As Lawrence Evans and Walter Oleszek note (chapter 5), "For controversial legislation, getting 100 Senators to accept truly severe restrictions on their discretion requires broad consensus that a measure must not be filibustered, and a real sense of urgency about the timing of final passage." In short, obtaining unanimous consent is no mean feat in a chamber that continues to accord individual senators the capacity to slow, even stop on occasion, the legislative process.

Moreover, through the majority leader, the Senate allows its members to place "holds" on legislation and nominations. An informal courtesy that appears nowhere in the Senate rules, holds allow individual senators to slow down the process, to the point of grinding it to a halt, if the majority leader feels little pressure to work out the objections expressed by the given senator(s). In this instance, although individual senators may be inconvenienced by the "hold" practice, most do not want to remove this weapon from their arsenal, even if many of them rarely use it.¹⁰

All in all, partisanship and individualism within the Senate combine with the formal requirements of supermajorities and the informal practices of UCAs and holds to inhibit the ability of majorities to work their wills. No wonder that senators are often frustrated by their incapacity to move legislation in the face of determined majorities or, worse, a single senator who remains intransigent on a key (or pet) issue.

The Senate and the Executive

The Senate's role in a bicameral/separation-of-powers system also produces breaches in comity. Again, the Constitution sets the stage for many of the conflicts that play out both between the branches and within the Senate. Ratifying treaties, confirming a wide range of nominees, and try-

ing impeachment cases offer the opportunity for confrontation between opponents and defenders of presidential actions inside the Senate. Roger Davidson and Colton Campbell observe in chapter 9 that “nearly all presidents have faced confirmation fights with the Senate.”¹¹ Despite some high-profile, highly political disputes involving ambassadorial and judicial nominees, as well as the test-ban treaty ratification vote, Davidson and Campbell conclude, “it seems unlikely that Senate-executive relationships have deteriorated significantly over time.” Still, the willingness to move from specific cases (a single ambassadorial or judicial nominee) to wholesale disruption of Senate business (recall Justice Committee Chair Orrin Hatch’s threat to block all judicial nominations) is an ominous development. Even more dangerous has been the Senate’s practice of “hostage-taking.” A major nominee, such as Richard Holbrooke, Clinton’s choice for ambassador to the United Nations, was blocked from appointment by a single senator (Foreign Relations Chair Jesse Helms, backed by the Republican majority) with the strong desire to obtain a host of policy concessions from the administration.

Davidson and Campbell decry the practice of hostage-taking as poisoning interbranch relations. The question remains as to whether Senate-president conflicts carry over to affect relations within the Senate. The evidence here is sketchy, but many observers did paint the Senate’s 1999 rejection of a nuclear test-ban treaty as a continuation of impeachment politics.¹² The Senate could have offered the administration a way out of an awkward situation, but Majority Leader Trent Lott joined with most of his Republican peers to force a vote that was destined to stand as a major foreign policy embarrassment for the president. At the same time, the Republican Senate did—however grudgingly—work with the president to produce a budget agreement in late 1999, even as most of the incentives for such a deal were political and not policy driven. The facts of discord and disagreement should not lead to the immediate conclusion that the Senate cannot function in a broadly responsive way to its constituents.

The Special Case of Impeachment

On occasion, an exceptional event offers insights into the way an institution operates. The impeachment trial of President William Clinton (January–February, 1999) provides such an opportunity for the U.S. Senate. After an acrimonious, highly partisan struggle, the House surprised the Senate by voting to impeach the president. The Senate was thus con-

fronted with a highly public test of its capacity to act in a civil manner that would defend the credibility of the Congress. The Senate worked through its early confrontations with flying colors, as Senators Phil Gramm (R-Tex.) and Edward Kennedy (D-Mass.) backed basic principles that led to a bipartisan agreement on procedure. The *New York Times* reported, “Senators held to the idea that the impeachment trial was a historic moment for the Senate and that they had to rise to the occasion” (see chapter 10).

To be sure, the Senate did behave with far more dignity than did the House, but largely because there was virtually no chance that the chamber would convict President Clinton on either article of impeachment. Rather, the senators constructed a well-scripted, highly ordered exit strategy, one that gave them a date certain (February 12) for final votes on the articles.¹³ In this context, the need for a basic level of comity precluded any real possibility of deliberation; for example, only three witnesses were heard, all on videotape and with nothing new to offer beyond the information provided by the House managers (and indirectly, Independent Counsel Kenneth Starr). In the end, the Senate voted along partisan lines (with no Democratic defections on either article; five Republican defections on the obstruction article, ten on perjury) to find President Clinton not guilty.

As Norman Ornstein points out in chapter 10, the need for supermajorities in the Senate again defined its essence: “No conviction was possible without a significant number of members from the president’s party. . . . A strictly partisan vote in the Senate . . . would mean failure, added to the costs of divisiveness.” The Senate acted as a partisan institution as it failed to convict the president. Nor did it engage in anything that could remotely qualify as deliberation, although its members did work in concert to extricate the chamber from an uncomfortable, untenable position. On early procedural compromises all senators voted together.

In the end, the Senate’s actions on impeachment shed only modest light on its civility and capacity for deliberation. Given the foregone conclusion of Clinton’s acquittal, the chamber acted as well as it could in devising a way to get through the proceedings and put impeachment in the rearview mirror. But the overall congressional performance is scarcely hopeful. Ornstein concludes: “As long as the Senate is compared to the House, it will not be hard to look more civil and less corrosively partisan. But impeachment, a *high-water mark in the Senate’s approach to institutional integrity in recent years*, may be met with fewer examples in the future” (emphasis added).

The Senate in an Uncivil Society

According to congressional scholar Eric Uslaner, a less civil Congress has evolved precisely because it represents a society that has become less civil.¹⁴ Although the path of causality is not always clear, one would be hard-pressed to argue with Uslaner's basic premise in the wake of post-1994 congressional behavior. The House and Senate are representative bodies, and they have become more partisan in the past two decades.

At the same time, in the post-Watergate era, the press has become more and more adversarial in its coverage of the Congress, and citizens have viewed the Congress with great skepticism and distrust.¹⁵ This societal context scarcely encourages deliberation; rather, playing to one's base of activists becomes the order of the day.

The Senate and the Media

As the collegial, textbook Senate of the 1950s gave way to the more individualistic, more partisan chamber of the 1980s–1990s, senators' relations with the press changed dramatically. The links between reporters and legislators did become more adversarial, especially with the adoption of Watergate-style reporting. As Timothy Cook (chapter 8) demonstrates, however, the changes have been far more profound and mixed than a simple movement from symbiotic relationships at midcentury to adversarial ones in the 1990s. Cook concludes, first, that "political agendas are increasingly reactive to news agendas, and policies have to be created with news values in mind," and second, that "political processes are sped up under the media spotlight." As legislators elbow each other (think of Phil Gramm and Robert Torricelli) for the media spotlight, these two trends can scarcely contribute to comity in the chamber. To the contrary, senators are more likely to take positions and hold to them, knowing that their constituents (geographical and financial) are watching, to say nothing of reporters who are waiting for a slip, a contradiction, a sign of weakness.

Legislators and journalists, Cook points out, continue to need each other. Relationships between reporters and their Senate sources produce "negotiated" news that reflects a continuing set of interactions between Washington elites.¹⁶ In a sense, each senator cuts his or her own deal, or, increasingly, follows the party's orchestrated message, which stands as an attempt to overcome the journalist's capacity to shape the direction of the story.¹⁷ Again, position-taking appears to trump the interpersonal communication that constitutes the basis for deliberation.

The Senate as a Representative Body

Writing in 1993, Eric Uslaner looked for a culprit to blame for “the decline of comity in Congress.” In the great tradition of Walt Kelley’s Pogo, Uslaner concluded that the enemy is us.¹⁸ If society has become less civil, should we be surprised that our representative institutions have followed suit? Although the conventional wisdom and most observers would label the House as less civil than the Senate, Uslaner warns us to be careful with our evaluations. Incivility may be less obvious, less pronounced in the Senate, but the chamber does represent the same citizens who have given us a closely divided and highly contentious House. As Uslaner reminds us, although the two chambers do differ, they are more alike than different.

More important, civility is not an end in itself. Highly contentious legislatures, such as the British House of Commons, can also be extraordinarily effective bodies. But the U.S. Senate, even with elevated levels of partisan voting, finds it most difficult to combine contentiousness with the capacity to deliberate. Given the replacement of deliberative centrists like John Chafee by deal-making centrists like John Breaux, the Senate in effect is sending the message that deliberation born of civility is less possible than compromise among position-takers, which requires only the bare minimum of civil discussion. Indeed, staff can do much of the heavy lifting, once the principals have agreed on the core elements of the deal. Ironically, deal making in an open, C-SPAN era may do little to build trust in Congress as a representative body.¹⁹

Uslaner (chapter 3) does find a couple of other contemporary culprits. First is the enhanced ideological extremism within both parties in both houses of Congress. Senate Majority Leader Trent Lott is no Newt Gingrich (House Speaker, 1995–99), but the legislators in the chambers act in relatively similar ways, especially in terms of high levels of party voting. Again, the strange combination of partisanship and individualism combines to make senators willing to take their own positions and yet vote in step with their parties.

Even more important than partisanship, says Uslaner, is a lack of trust, both within the society and within the Senate: “A less trusting citizenry leads to more incivility in Congress.” In a society that incarcerates more and more of its citizens, that encourages litigation for resolving disputes, that builds increasing numbers of gated communities, there is little sense that trust will grow much stronger in the short term.

The World's Greatest Deliberative Body

Congress is, by design, an institution which moves rather slowly in making law. This is especially true of the Senate, where the wishes of a cohesive minority hold considerable sway. This is so the passions of the moment are allowed to cool before laws are passed. Careful deliberation, analysis, and long-range thinking were important to the Founders, and these are usually necessary ingredients in legislating. If anything, the Congress . . . [does] not have enough of these ingredients. Few in their right mind will argue that it suffers from too much deliberation, analysis, or thought.

—Senator Howell Heflin (D-Ala.),
in his 1996 farewell address to the Senate

It may have been coincidence, or maybe not, that the fourteen senators who retired in 1996 were individuals who contributed mightily to the Senate as a deliberative body.²⁰ They did not all leave the chamber because of its contentiousness, but it is probably not a complete accident that their leave-taking occurred in the wake of the highly partisan, even raucous, 104th Congress. Even though these senators ranged from the acerbic Alan Simpson (R-Wyo.) to the southern moderate Sam Nunn (D-Ga.) to liberal Bill Bradley (D-N.J.) and conservative Hank Brown (R-Colo.), they were widely respected as individuals who could reach across party lines as they pursued their policy goals. As Senator Paul Simon (D-Ill.) once noted, the Senate was much more receptive than the House to the actions of a single legislator: “In the House, everything runs through the committees, and the parties. It’s hard to move anything. In the Senate, even if I’m in the minority, all I have to do is convince one fellow Democrat and a couple of Republicans on a subcommittee and I can move ahead.”²¹ Deliberation can occur in many venues, but, as Simon reminds us, legislators must be open to discussion and the possibility of being convinced.

Above all, in line with Uslaner’s findings, there must be trust. As James Thurber (chapter 11) concludes in his examination of the Budget Committee, increasing partisanship and declining levels of trust among committee members have led to a decline in the quality of budget policy deliberation.

There must be structures that allow for, even encourage, deliberation. Gerald Gamm and Steven Smith (chapter 6) examine the “struggle for order” in the nineteenth-century Senate, as the chamber sought to construct greater centralization of power in the office of the president pro tempore. Although the elevation of the majority-party floor leader to the position of Senate leader has addressed many of the order-based concerns, process and debate within the chamber (and on the floor, in particular) remain fluid, relatively informal, and susceptible to manipulation by a willful minority. As a condition for promoting deliberation, civility remains crucial, especially given the requirements for supermajorities and unanimous consent agreements (see chapter 5).

The Senate has long struggled with incivility. Such notable figures as Senate Historian Richard Baker and former Secretary of the Senate Sheila Burke responded to the sentiments expressed by some authors in this volume with cautionary warnings about historic comparisons and contemporary implications, respectively. In one direct comparison, however, the nineteenth-century Senate appears somewhat more civil than its contemporary counterpart. The rhetoric in the 1999 Senate impeachment trial of President Clinton proved “more nasty” than did the statements of senators in the wake of President Andrew Johnson’s 1868 trial.²² Even in such circumstances, the Senate did seem to act with civility in 1999, although it performed little actual deliberation that contained a thoughtful exchange of views.

As Howell Heflin notes, from time to time the Senate can carry out its deliberative role with great dignity and success. Still, declining trust, rising partisanship, and entrenched individualism are not the characteristics that ordinarily foster deliberation. Given the pervasiveness of information and the excellence of communication technologies, we must also face the question of whether deliberation can move beyond legislative chambers, save perhaps on the most important issues of a generation.²³

The analyses in this volume should give us both pause and hope. Deliberation must be fostered, through structures, norms, and interpersonal relations. Yet it depends so much on the nature of society and how the legislators view the world beyond Capitol Hill. Wrapped in partisanship and individualism, perhaps the best we can expect of the Senate is for it to limp along, resolving the worst conflicts and producing a continuing flow of legislation via the politics of compromise.²⁴ Whether the body can regain enough civility to engage in the give and take of discourse designed to contribute to the public good remains an open question.

Notes

1. Quoted in Richard E. Cohen, "John H. Chaffee, 1922–99," *National Journal*, October 30, 1999, p. 1350.
2. For a more detailed analysis, see Frances Lee and Bruce I. Oppenheimer, *Sizing Up the Senate* (University of Chicago Press, 1999).
3. David Brady and Craig Volden, *Resolving Gridlock* (Boulder: Westview Press, 1997); Sarah Binder, "The Dynamics of Legislative Gridlock, 1947–96," *American Political Science Review*, vol. 93 (September 1999), pp. 519–34.
4. For a brief, lively summary, see Robert C. Byrd, *The United States Senate, 1789–1989*, chap. 12, "The Turbulent 1850's" (Washington, D.C.: GPO).
5. Sarah Binder and Steven S. Smith, *Politics or Principle: Filibustering in the United States Senate* (Brookings, 1997), pp. 69–70.
6. Quoted in Joseph Bessette, *The Mild Voice of Reason* (University of Chicago Press, 1994).
7. In general, see Ross Baker, *House and Senate*, 2d ed. (New York: W. W. Norton, 1995).
8. See Ross Baker, "Examining Individualism v. Folkways in the Aftermath of Impeachment," and Burdett Loomis, "The Senate and Impeachment: Explaining the Unique Responsibility of the Exceptional Institution," papers presented at the Norman Thomas Conference on Senate Exceptionalism, Vanderbilt University, Nashville, Tennessee, October 21–23, 1999.
9. This subject has been addressed at length elsewhere, most notably in Binder and Smith, *Politics or Principle*.
10. See Roger Davidson and Walter Oleszek, *Congress and Its Members*, 7th ed. (Washington, D.C.: CQ Press, 2000), pp. 316–17.
11. See chapter 9 in this volume. The authors also provide data on ambassadorial nominations to show that the Democratic Senate of 1991–92 was more likely to hold up nominees than was the Republican Senate of 1995–96.
12. Chuck McCutcheon, "Treaty Vote a 'Wake-Up Call,'" *CQ Weekly Report*, October 16, 1999, p. 2435 ff.
13. Baker, "Examining Individualism v. Folkways"; Loomis, "The Senate and Impeachment."
14. Eric Uslaner, *The Decline of Comity in Congress* (University of Michigan Press, 1993).
15. John Hibbing and Elizabeth Theiss-Morse, *Congress as Public Enemy* (Cambridge University Press, 1995).
16. Aside from chapter 8 in this volume, see Timothy Cook's *Governing with the News: The News Media as a Political Institution* (University of Chicago Press, 1998); and Stephen Hess, *The Washington Reporters* (Brookings, 1981).
17. See, for example, Patrick Sellers, "Promoting the Party Message in the U.S. Senate," paper presented at the Midwest Political Science Association meetings, Chicago, April 15–17, 1999.
18. Uslaner, *The Decline of Comity in Congress*. His argument is more nuanced, of course, and his empirical linkages may be questionable, but little in the years since he wrote this work has suggested that the Congress does not

represent the contentiousness of society, especially as expressed by extreme partisans.

19. See, more generally, Stephen Frantzich and John Sullivan, *The C-SPAN Revolution* (University of Oklahoma Press, 1996).

20. The retirees were Bill Bradley (D-N.J.), Hank Brown (R-Colo.), William Cohen (R-Maine), James Exon (R-Nebr.), Mark Hatfield (R-Oreg.), Howell Heflin (D-Ala.), J. Bennett Johnston (D-La.), Nancy Landon Kassebaum (R-Kans.), Sam Nunn (D-Ga.), Claiborne Pell (D-R.I.), David Pryor (D-Ark.), Paul Simon (D-Ill.), and Alan Simpson (R-Wyo.); their farewell speeches are collected in Norman J. Ornstein, ed., *Lessons and Legacies* (Reading, Mass.: Addison Wesley, 1997). In addition, Senator Bob Dole resigned his seat in June 1996, in order concentrate on his ultimately unsuccessful presidential bid.

21. Paul Simon, personal communication, June 10, 1984.

22. Lee Sigelman, Christopher Deering, and Burdett Loomis, "Words, Words, Words," paper presented at the Midwest Political Science Association meetings, Chicago, April 26–29, 2000.

23. For the most extensive recent analysis of this question, see Bessette, *The Mild Voice of Reason*.

24. See Barbara Sinclair, "The Senate Leadership Dilemma: Passing Bills and Pursuing Partisan Advantage in a Non-Majoritarian Chamber," paper presented at "The Myth of 'Cool Judgment,'" conference held at Florida International University, Miami, January 21, 2000.