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Majority Rule in the Senate

John B. Gilmour*

Now is the time for Senate Democrats to curb the filibuster and institute majority rule. In Clinton's first year six measures were delayed or killed by Republican filibusters: motor voter, economic stimulus, campaign finance, national service, grazing fees, and nominations to the State Department. At least the first four of these were important presidential priorities, and in each case the filibusterers were able to extract concessions as a price for letting the bill advance.

Although the filibuster is not new, its current use is. For the first time in modern history, the minority party seeks to block important elements of a President's program through filibuster. It is a sensible tactic for Republicans to deny the president legislative victories, and prevent the Democratic party from developing a record of achievements on which to run for reelection. It is not sensible for Democrats to let them get away with it.

A Tool of the Minority

Never before has the minority party used the filibuster against a president of the other party to block important initiatives. Indeed, for nearly all of its history use of the filibuster has been thoroughly bipartisan. An examination of cloture

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last year were conducted by the minority Republicans, and all oppostion to cloture came from Republicans. Democrats have made no use of the filibuster and have uniformly supported cloture.

In the current Senate, the filibuster has become a tool that benefits the minority party, and hurts the majority. This has never before been the case.

In the past most senators have supported the filibuster because they could imagine someday being in the minority on an issue of immense importance to them or their state, and they wanted to be able to use the filibuster when that issue arose. On the other hand, the filibuster left senators worse off when other bills that they wanted to pass were blocked. Whether or not an individual senator supports the filibuster depends on whether the benefits they are likely to derive from blocking offensive are greater or less than the harm they suffer from not being able to pass bills they like. Throughout the 1950s and 1960s, conservatives repeatedly used the filibuster to block liberal legislation, especially concerning civil rights, and so liberals in both the Democratic and Republican parties worked to amend Rule 22 and ease cloture. Conservatives in both parties fought to preserve the status quo. In this era the filibuster was not a party issue.

The more cohesive and unified the majority party, the less often its members will find themselves in the minority on an issue of great importance, and consequently the less use they will find for the filibuster. When, as is currently the case, a feature of legislative rules becomes exclusively a tool of minority obstruction, we can expect that a unified majority party will change the rules to keep their agenda from being blocked.

Preventing the majority party from governing makes it look inept, and so is good politics for the Republicans. The real question is why Democrats stand idly by, allowing Bob Dole and his party to sabotage Clinton's program when

Congress, or at any time its members so choose, they can by majority vote alter their rules. The constitution is absolutely clear about when extraordinary majorities are required in Congress, and adopting and changing rules is not one of them.

Over the course of the 1950s liberals devised a strategy for beating the filibuster. The presiding officer, preferably the vice president, must rule that adopting rules is a matter of constitutional privilege and a simple majority has the right to invoke cloture for the purpose of changing the rules. Naturally, the parliamentary ruling will be challenged. Such challenges are decided by majority vote. If the liberals are able to muster enough votes to sustain the parliamentary ruling, the Senate can vote on rules changes without hindrance from the filibuster. Vice Presidents Nixon and Humphrey both strongly supported this approach and indicated repeatedly that they would rule in favor of majority cloture. Should the strategy succeed, supporters of the filibuster will complain loudly that the majority broke Senate rules. They will trot out the lame argument that the filibuster protects democracy. But in the end they will be able to do nothing to stop the majority. The procedure outlined here is constitutional and fair. The Supreme Court has properly granted the Senate wide latitude in setting its rules, so the inevitable appeal to the courts will be unavailing. And the rules established to prevent majority cloture on rules changes are an invalid appempt by one Congress to bind another, and so should be disregarded.

Given the availability of this strategy, the fundamental problem in modifying Rule 22 has not been the filibuster, but the unwillingness of a majority of senators to support majority cloture for the purpose of changing rules. Senators have been reluctant to embrace the reformers' approach, fearful that majority cloture on rules changes would demolish the continuing body notion and lead irrevocably to majority rule. A senator who wanted to relax the cloture

watered down, and gridlock will persist. Democrats will be deprived of important achievements and have little to show for themselves in the next election.

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