Why Woodrow Wilson hated the filibuster -- and why it still makes no sense today

What began as a courtesy to Senate speakers has morphed into a fundamental challenge to the principle of majority voting.

By Joyce Appleby

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Senators have long considered any change to filibuster rules to be "the nuclear option." But the recent action by Democrats to limit the use of filibusters in blocking most presidential nominations didn't go nearly far enough.

Now is the time to get rid of the Senate's archaic and abusive filibuster in all matters that come before it. And fortunately, Sens. Tom Udall (D-N.M.), Jeff Merkley (D-Ore.) and Tom Harkin (D-Iowa) are taking advantage of the momentum from the Senate vote to try to do just that.

Contrary to Sen. Mitch McConnell's claim that Thomas Jefferson wrote the filibuster rules, they have no such distinguished origins. Aaron Burr, who presided over the Senate as Jefferson's vice president from 1801 to 1805, introduced a rule requiring a two-thirds vote to cut off debate. By the time he left office, Burr recommended dropping the rule because it had been used only once in his term.

That would have been a good idea, especially because nothing in the Constitution supports the filibuster rule. The Founding Fathers were specific in requiring a supermajority vote of two-thirds in just three instances: to override a presidential veto, to approve treaties and to propose a constitutional amendment.

The Constitution did give both houses the power "to determine the rules of its proceedings," and from that permission evolved the doleful situation we have today in which 41% of the Senate members can, and increasingly do, block all Senate action.

The mischief began in the middle of the 19th century when some senators saw personal advantage in the high hurdle to cut off debate and began speaking at length and irrelevantly to block bills they didn't like. That's when the practice acquired the name "filibuster," which can be traced to a Dutch word for "piracy."

The efforts of senators from both parties to reintroduce sanity into Senate procedures date back to 1841, when Henry Clay proposed allowing the majority to close debate, as was the rule in the House of Representatives. But the appeal for both Democrats and Republicans of being able to block legislation even when they are in the minority has proved too compelling to give up.

By the early 20th century, the filibuster led President Woodrow Wilson to call the Senate "the only legislative body in the world which cannot act when its majority is ready for action." Instead, he continued, a "little group of willful men, representing no opinion but their own, have rendered the great government of the United States helpless and contemptible."

Use of the filibuster has only grown more frequent since his time, especially during the last decade.

Filibustering figured prominently in the war waged against civil rights legislation. Sen. Strom Thurmond spoke for 24 hours and 18 minutes in an attempt to halt passage of the Civil Rights Act of 1957.

Eighteen years later, senators revised its rules, dropping to 60% from two-thirds the votes necessary for cutting off debate. This Rule 22 did something more insidious: It introduced the "invisible filibuster," whereby senators needn't stand up and talk to filibuster a measure; they just had to indicate their intention to do so.
And thus our Constitution was silently amended under the guise of an accommodating rule change allowing 41 members of the 100-member Senate to prevent passage of bills favored by the majority. Even more distressing, Sen. Majority Leader Harry Reid now often declines to bring forward bills for deliberation if he is unsure of getting the needed 60 votes.

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The real losers have been the citizens of the United States, who deserve to have majorities prevail over minorities in both houses. Certainly that was the view of the founders, many of whom regretted the undemocratic compromise that gave each state, regardless of size, two seats in the Senate.

They certainly didn't want the Senate to deviate any further from majority rule. James Madison, the putative father of the Constitution, called the desire to have a supermajority to form a quorum a reversal of "the fundamental principle of free government," adding in his Federalist No. 58 essay that it "would be no longer the majority that would rule; the power would be transferred to the minority."

Clinging to arcane rules is what most well-established institutions do, but democratic governance demands something more: adherence to the essential democratic principle of majority will that gives citizens confidence that their votes matter.

For political parties, the filibuster is clearly an effective weapon; for the voters, it's an atavistic obstruction to legislative action. Wilson's "little group of willful men" is not what people go to the polls to elect. Partisan battles will continue, but disarming the protagonists will limit their damage to the good governing we so badly need.

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