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# From Deliberation to Dysfunction

It Is Time for Procedural Reform in the U.S. Senate

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# Introduction and summary

The U.S. Senate has a proud tradition of ensuring that important decisions are carefully weighed before they become law. This has served the nation well at times. But under current practices the latitude granted to individual senators to obstruct does not always contribute to more measured consideration of national policy. In recent years, the Senate has been less and less able to follow the regular order in the consideration of pending legislation, the confirmation of senior executive branch officials, and other work.

Increasingly, the Senate has been forced to rely on legislative shortcuts that severely undermine the philosophy of full and careful consideration of all matters before the body. Even so, the chamber fails to complete much of the work for which it is responsible and falls so far behind schedule in completing the work it does do as to seriously undermine the capacity of the entire federal government to respond in an effective and efficient way to the problems facing our country.

The root cause of these problems is the institution's inability to adopt rules that balance the responsibilities of Congress against the rights of individual senators. Rules that allow the Senate to limit debate and maintain a functional schedule have not been strengthened in more than four decades, but during that period the workload has increased significantly, and the willingness of senators to use all of the powers offered by the rules to obstruct legislative progress has increased exponentially.

While many Americans continue to think of the filibuster as it was portrayed in the 1939 film, "Mr. Smith Goes to Washington," it has evolved into a very different practice over the course of the past 71 years. It has been decades since a senator actually took to the floor and attempted to block legislation through extended speechmaking. Now a senator merely needs to serve notice that he or she will not concur in a procedural motion by the leadership that the prospects for making progress on the legislation proposed for consideration are so diminished that it is often pulled from the legislative schedule. This practice applies to not only new laws altering national policy in some significant way, but also to the annual spending bills that keep the government operating and even the appointment judges, senior, and even not-so-senior executive branch officials and military officers.

While it is unlikely the Senate will abandon the filibuster, it is clear that the rules governing the use of the filibuster must change if the body is to be prevented from becoming a

more serious impediment to competent governance. The chaotic, hit-or-miss process in which rather mundane matters are debated at great length while more important issues are slipped past the full Senate without significant debate or opportunity for amendment turns the concept of deliberation on its head.

The long delay in adopting spending measures diminishes the capacity of program managers in executive branch agencies to effectively manage public funds. And the hundreds of unfilled administrative positions across the executive branch created by Senate inaction on executive branch nominees further reduce the prospects that taxpayer dollars will be spent in a thoughtful and effective manner.

At a minimum, the Senate needs to adopt modest procedural changes to its rules curbing some of the filibuster's worst abuses and making the Senate not only more responsible in performing its work but at the same time more deliberative.

## Origins of the filibuster

The word filibuster is taken from Spanish and translates roughly to the English word “pirate,” as in stealing the legislative process. The framers of the Constitution did not envisage that individual senators would hold this powerful tool. The original [Senate Rules](#) provided for the termination of debate at any time by majority vote. A motion to ask for a vote on the business pending before the Senate, or in legislative-speak to move “the previous question,” was allowed until the rules were rewritten in the 9th Congress in 1806, but even then, prolonged debate for the purpose of obstruction was not practiced until [1841](#) as comity deteriorated in the decades leading up to the Civil War.

In the two decades preceding the Civil War, the filibuster became strongly established in Senate tradition. During that period, there was no legislative recourse to a decision by a small number of senators to kill legislation—even if they were the only ones in the entire country who opposed it. As a result, Congress ceased to be a forum for resolving the major issues of the day unless senators themselves recognized the need to limit their power to obstruct.

From the decade following the Civil War until the U.S. entry into World War I, there were repeated attempts to change Senate rules and allow limitations on debate—all of which failed. But when antiwar isolationists used the filibuster to block the arming of U.S. merchant ships against German submarines in 1917, President Woodrow Wilson recognized the

opportunity to force change. Calling a special session of Congress to complete the work that filibusters had blocked in the previous Congress, Wilson [demanded reform](#):

*“The Senate of the United States is the only legislative body in the world which cannot act when its majority is ready for action. [A little group of willful men, representing no opinion but their own, have rendered the great government of the United States helpless and contemptible.](#)”*

Days later, the Senate adopted Rule XXII, which allowed limits to be placed on debate if two-thirds of the senators present and voting concurred. Then (as is the case today) the rule still provided several days of debate and parliamentary maneuvering before the matter being subjected to filibuster could be resolved. In essence, the Senate moved somewhat in the direction advocated by President Wilson, but established a threshold for terminating debate that made reform more apparent than real.

Following the Watergate scandal a second wave of reform swept the Senate in 1975. Included in the changes adopted by the post-Watergate Senate was the requirement that committee meetings be open to the press and public and that the two-thirds requirement for ending a filibuster be lowered to three-fifths, or 60 percent of the membership.

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