



## “No filibuster, no Senate”

By Martin B. Gold | Thursday, February 9, 2023

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The reputation of the legislative filibuster has taken a beating in recent years. In an attempt to strip the Senate of its historical role as the cooling saucer to the hot impulses of the House, the filibuster’s critics have maligned it as an unnecessary hindrance to democracy. Even though the filibuster has served the nation well for nearly two centuries, it is no longer necessary and is, in fact, counterproductive to the business of government – or so the critics argue.

Of course, the critics could not be more wrong.

In their frustration with the filibuster, they fail to grasp its true purpose. The filibuster is not an enemy to good governance but what makes it possible in the first place. It is a [bulwark against polarization](#), a tool for bipartisanship and the defining characteristic of the U.S. Senate as an institution.

No one understood this better than the late statesman and legislative legend Orrin G. Hatch. Hatch was an ardent defender of the filibuster and its virtues, boldly making the case for its preservation both as a [senator](#) and as a [private citizen](#). He was the perfect spokesman for the filibuster and the traditions that make the Senate the Senate.

Why? Because he understood the Senate as well as anyone who ever served there. Hatch knew what it took to operate within a body whose rules necessarily require negotiation and consensus building. As his record of legislative achievements demonstrates, he was an exceedingly effective member.

Over the course of his tenure, Hatch became especially well acquainted with the filibuster. He was on the winning and losing side of many of them. Early in his career, Hatch led a filibuster that stopped highly controversial labor law legislation. It was his first important legislative success. A quarter of a century later, as chairman of the Senate Judiciary Committee, he was frustrated as Democrats successfully filibustered 10 George W. Bush nominees to U.S. appellate courts. The success of those filibusters was perhaps his greatest disappointment in office.

In those and other cases, he knew that filibusters could block causes that did not generate a sufficient measure of bipartisan accord. Yet he also grasped something more subtle but at least as consequential: the power of the filibuster is essential to secure that accord.

In the House, major legislation can be written without regard to minority views. In the Senate, with rare exceptions, that is not possible. Cross-party consensus building occurs because the rule requiring 60 votes to end debate commands it. That is a significant and extremely important hedge against the polarization that is far too dominant in our politics.

Now consider what would happen if neither party needed 60 votes to pass legislation: Neutralizing filibusters would diminish minorities and turn the Senate into a legislative juggernaut like the House, rife with unchecked partisan agendas.

That's why, since its inception, the [Orrin G. Hatch Foundation](#) has been warning about the polarization and hyper-partisanship that would result if the filibuster were eliminated. In a recently published [report](#) from the Hatch Foundation, I argue that the filibuster is key to preserving the [hallmarks of the Senate](#) – namely, compromise, bipartisanship and prudent deliberation. It's the same argument that Hatch would make if he were still with us today.

Longtime Democratic Sen. Robert Byrd of West Virginia was another guardian of the Senate. And he too recognized the importance of the filibuster. In his own words: "The occasional abuse of (the filibuster) has been at times a painful side effect, but it never has been and never will be fatal to the overall public good in the long run. Without the right of unlimited debate, of course, there would be no filibusters. But there would also be no Senate as we know it. The good outweighs the bad."

Byrd was correct. While control of the Senate has shifted eight times in the past 42 years, the 60-vote threshold for ending debate has remained constant. Under Republican majorities, this protected Democrats. Under Democratic majorities, it protected Republicans. Pent-up agendas, whether from the left or right, are moderated in the Senate because minority rights are respected.

It is up to sitting senators and their successors, as stewards of the Senate, to safeguard these traditions. It is up to them to stand against the critics of the filibuster and stand up for the Senate as an institution. For decades, the filibuster has checked the passions of the majority, encouraging bipartisan collaboration and better policy outcomes. May it continue to do so for many years to come.

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