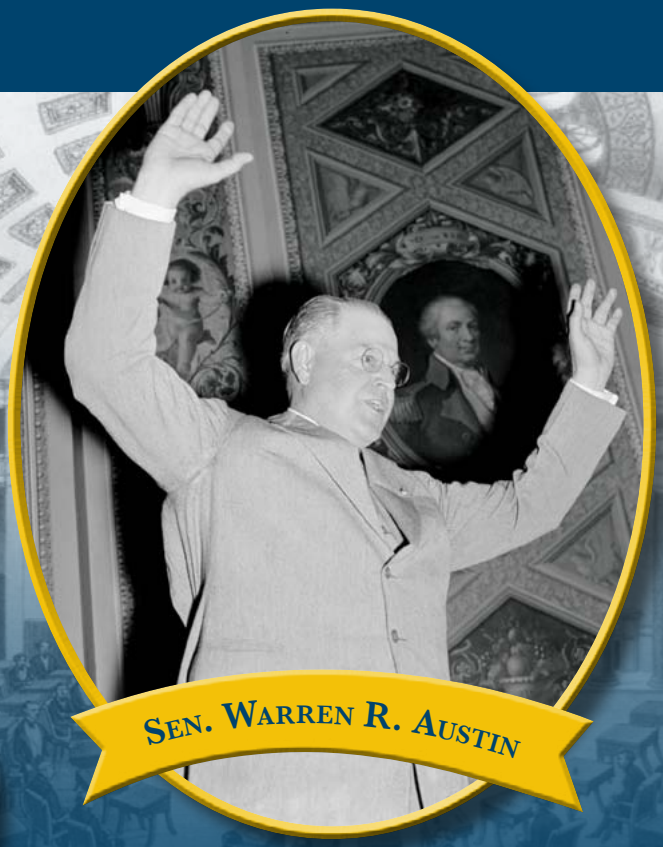
FILIBUSTER



SEN. WARREN R. AUSTIN

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Now rarely used outside the United States Senate, the filibuster has played a key role in the enactment of federal law since 1789. Amply protected by custom and the formal rules of Senate procedure, the practice is seen by some as the ultimate expression of free speech and by others as a capricious assault on democratic rule. We present here a review of filibusters in the American past.

Senator Warren R. Austin during a filibuster where the Senate met at noon and kept going until 1:53 the next morning, July 1, 1939.

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The filibuster is undoubtedly the clearest demonstration of raw political power in all of American government. The most formidable weapon in the legislative arsenal, it strikes directly at the concept of majority rule that lies near the heart of the democratic process. It permits a single legislator—or a determined minority acting in concert—literally to talk a bill to death and, through various parliamentary maneuvers, to extort concessions that effectively thwart the majority's will. Once invoked, it can bring lawmaking to a standstill in the United States Senate and, on occasion, in the House of Representatives as well.

Since 1789 filibusters have been used to delay, modify, or defeat entirely a broad range of legislation, much of which was backed by substantial majorities in Congress. Included in the list are such matters as the choice of the site of the nation's capital, various tariff reforms in the nineteenth century, regulatory laws directed against monopolies and trusts, and a number of New Deal social-welfare programs. For more than fifty years in this century the existence of the filibuster precluded the passage of any effective civil-rights legislation governing the franchise, schooling, housing, recreation, and employment.

In the last ten years alone there have been at least thirty-seven major filibusters in the Senate against such measures as campaign-spending reform, open housing, and the establishment of a consumer-protection agency of cabinet rank. Since January of this year the threat of minority delay has slowed or prevented the introduction of critical economic and social legislation and prolonged resolution of a disputed New Hampshire senatorial election.

At a time when the American public is increasingly restive at the inability of Congress to act in the face of seemingly overwhelming problems, the periodic delays resulting from the filibuster's use are taken as the primary example of the legislature's inordinate dependence on outmoded ways and as evidence of its failure to meet its constitutional responsibilities. Not unexpectedly, the charges are not new. For more than a hundred years now members of Congress, editorial writers, and scholars have regularly assailed the filibuster as an impediment to good government, but still it survives—virtually unhindered in the Senate and only narrowly contained in the House—a relic from a distant and perhaps less complicated past.

The filibuster probably originated with the first representative assembly and, like lobbying, existed in form long before a word had been coined to describe it. (In its original American usage the word filibuster was applied to American adventurers of the mid-nineteenth century who had gone into Mexico and other Latin-American states to foment insurrections; its current usage in politics dates from about 1853.) There are references in Greek and Roman literature, for example, to persistent obstructionists who troubled the Athenian assembly and the Roman senate with dilatory motions and lengthy speeches. The same tactics carried over to the modern legislative bodies that took shape in Europe during the late Middle Ages.

When the Founding Fathers gathered in Philadelphia in 1787 to draft the Constitution, they were well acquainted with obstructionism, but the prospect of filibustering in Congress was not a primary concern. The debate on the subject was extremely brief—perhaps no more than an hour—and centered on the two chief weapons of obstruction that had been most commonly employed in the colonial assemblies. The first was quorum breaking, where dissident members would simply leave the legislative chamber in sufficient numbers to prevent a lawful vote. The second was a maneuver inherited from the English Parliament and the Continental Congress and apparently in regular use in Massachusetts: persistent demands for a calling of the roll, often initiated by a single legislator and, though clearly aimed at delaying the assembly's business, disguised as a proper parliamentary request to establish the presence of a quorum or to move a seemingly endless list of amendments to the principal measure on the floor.

The drafters disposed of both tactics in Article i, Section 5 of the Constitution, placing a check on quorum breaking by authorizing each house to establish procedures "to compel the Attendance of absent Members" and restricting the mandatory call for "the Yeas and Nays" to a minimum of "one fifth of those Present" in

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each house. But this was as specific as they chose to be; all other parliamentary rules were to be determined separately by the House and Senate once the government got under way.

For some unknown reason the Founding Fathers took no notice of long-windedness as a filibustering device, and they seemed to have little fear that a minority might one day attempt to bend the majority to its will. If anything, their apprehensions lay in the other direction. The central question of constitution making as they saw it was how to control the excesses or tyranny of the majority. For days on end they heatedly argued the point and strove to find adequate checks to protect minority rights.

The establishment of the Senate was one such check, and it is in the very nature of that institution that the possibilities for obstructionism arise. To begin with, the Senate was conceived as the chamber where the smaller states would be placed on an equal footing with the large; each state, regardless of population, was to have two senators. As a result the balance of power is tipped directly to the minority. In the current Senate, for example, twenty-six states representing a mere 17 per cent of the population have a total of fifty-two senators; twenty-four states representing 83 per cent of the population have forty-eight.

Moreover, because of its smaller size the Senate is a more intimate and less formal chamber than the sprawling House of Representatives. As a consequence its rules are far more flexible, and it is possible to conduct business in deference to the wishes of a single member. In contrast to the House, where bills are generally introduced and acted on one by one, the Senate may have before it as many as five separate measures at any one time, moving back and forth among them as the membership desires.

For some unknown reason the Founding Fathers took no notice of long-windedness as a filibustering device . . .

What governs in the Senate are two key elements, the first of which is the rule of comity, or senatorial courtesy. Any member is free to request unanimous consent to almost any act, including a violation of the rules, with the virtual certainty that his request will be honored. The objection of a single senator to an executive appointment in his home state, for example, is customarily sufficient to doom the appointment.

Second, the Senate from the first has permitted unlimited debate on any measure. It is a hallowed right, and in a chamber where the fine points of custom are more respected than the points of parliamentary rule (though the two are often inseparable), any effort to interfere with a member's desire to speak is viewed with deep suspicion. There is a "germaneness" rule requiring that for three hours each day all senators must speak to the point in debate, and no senator may speak more than twice in a legislative day (which may through recess continue for several calendar weeks); but both of these rules are weakly enforced at best and more often than not are dispensed with entirely on a motion of mutual consent. There are, in fact, only two ways in which debate in the Senate can be involuntarily closed: by unanimous consent agreements —which fail if a single member objects—and by a cloture petition approved by sixty senators, a figure devilishly difficult to achieve in normal circumstances.

The House of Representatives, by contrast, is not a chamber of debate like the Senate. Since the last half of the nineteenth century, when its swollen membership forced the change, the House has done 90 per cent of its business in committee. Again because of its size, the House ordinarily relies heavily on the leadership for direction and follows a strict agenda in its transactions, usually considering only one bill at a time on the floor. More than a day of debate on any bill is rare because House rules limit formal speeches from all parties to a maximum of two hours. Strict rules also limit the opportunity for filibustering in other ways, so most obstructionism occurs behind the scenes, in committee rather than on the House floor.

Since about 1880 the filibuster has been the mark of senatorial proceedings, and it effectively stops the business of lawmaking in Congress as a whole because the Senate must consent to House legislation—and vice versa—before any bill can become a law.

No one knows for certain how many filibusters have been conducted in Congress, although the number undoubtedly runs into the high hundreds. Any effort to count is frustrated by several difficulties. The debates in the Senate, for example, were kept secret until 1794; thereafter they, like the proceedings in the House, were only scantily reported by the several commercial printers who regularly offered compilations of congressional business between 1789 and 1873. Only with the appearance of the official Congressional Record in 1874 did full verbatim accounts of the debates in both houses become available, and even here the reporting is not always reliable, because many of the printed speeches have been edited for publication after delivery, and some have never been delivered at all.

More important, there is often a fine line between a skillful use of parliamentary rules with the intent to persuade wavering members to shift their votes on crucial issues and the parliamentary maneuvering that is simply a tactic to delay. The length of time expended on such moves is by itself no indication that a filibuster is in progress; some of the most effective filibustering may take place in a matter of a few hours if a measure is introduced on, say, the last day of a session when the House or Senate is approaching adjournment.

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Debate over Compromise of 1850 in the Old Senate Chamber. Henry Clay addressing the U.S. Senate, Daniel Webster is seated to the left of Clay, John C. Calhoun is to the left of the Speaker's chair.

Finally, few members of Congress are ready to announce that they intend to engage in filibustering unless the support they can draw from other members is readily visible and there is some certainty that the tactic will be welcomed by the members' constituents.

Despite the lore that surrounds the maneuver, few filibusters are exciting displays of rhetorical pyrotechnics or colorful encounters designed to dazzle the congressional membership and the press who witness them. The intent, after all, is to secure delay and to wear the opposition down. As a result most filibustering is quite prosaic, marked by a heavy reliance on obscure parliamentary points, and, in the end, stultifyingly dull. There have been exceptions, however; here are some examples.

1790

What is probably the first congressional filibuster took place in the first session of the House of Representatives, then sitting in New York, in early June. The issue that touched it off had been brewing since the start of the session, and it pitted large state against small state, section against section, and the Senate against the House. Hours of debate on the floor and days of behind-the-scenes negotiation were expended in the search for a permanent site for the government. Pennsylvanians pressed for Philadelphia; Virginians hoped for a location on the Potomac; the New England delegations wanted New York.

There was, however, another complication; the Hamiltonian funding program to establish the national credit and to pay the revolutionary debt had become inextricably combined with the legislation establishing the nation's capital. The Pennsylvanians, for example, had agreed to work against a part of Hamilton's plan in return for votes favoring their choice of site. Within a matter of weeks "this despicable grog-shop contest," as Fisher Ames of Massachusetts called it, had become hopelessly clouded.

After an initial defeat in May the Pennsylvania delegation in the House mustered enough votes in June to pass a resolution in favor of Philadelphia. The Senate, however, refused to go along with the proposal, the deciding vote being supplied at the last minute by the ailing Senator William Johnson of Connecticut, who was carried into the chamber on a litter.

Undaunted, the Pennsylvanians tried again to push their proposal the next day, moved in part to do so because it was raining and Johnson would be unable to attend the Senate. Outraged by the haste and by what they took to be political wiliness, Elbridge Gerry of Massachusetts and William Smith of South Carolina filibustered the House until adjournment late in the evening with a series of dilatory motions and lengthy speeches.

The whole affair drew to a close in late July as a result of a compromise. Dealing directly with James Madison and Thomas Jefferson, Alexander Hamilton secured their support for his funding program (and through them the support of Congress) in return for locating the capital at Philadelphia for a period of ten years, after which the seat of government would move permanently to a site on the banks of the Potomac.

1858

Throughout the first half-century of government and for some years beyond, filibustering was more often the hallmark of the House of Representatives than of the Senate, in part because the House was for a while considered the more prestigious body and, until the emergence of men like Daniel Webster, Henry Clay, and John C. Calhoun as senators, more likely to attract outstanding figures to its ranks. Moreover, for twenty years the membership was not unduly large, and extended debate was possible.

As the nineteenth century lengthened, however, the size of the House increased (to 243 in 1860; to 332 in 1880), and as a result the chamber's business was more commonly conducted in committee than on the floor. Nonetheless filibusters took place with great regularity, principally through parliamentary motions. The 34th Congress, for example, was unable to conduct any business for two months of its session in 1855 because 133 ballots were required before a Speaker was elected. Between ballots brutally long speeches and delaying motions were introduced by every faction in the House to prevent anyone from getting the upper hand. Four years later the 36th Congress experienced a similar two-month deadlock, although this time only 44 ballots were cast, because the presiding clerk submitted every point of order to floor debate among the members, many of whom daily entered the chamber conspicuously armed with bowie knives and revolvers—none of which, fortunately, were used.

The quintessential House filibuster, however, took place in the 35th Congress in 1858. The session had begun smoothly enough; the members had chosen a Speaker on one ballot for a change. But the issues that produced the Civil War had kept the floor debates at a boil.

Early in February the House took up the disputed Lecompton Constitution from Kansas, which was seeking admission as a state

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after four years of bloody war between free-soil and proslavery forces. The members of the House had to decide the validity of the document and were asked to choose between referring it to the committee on territories or a select committee of fifteen. Passions ran inordinately high as the chamber divided along party and sectional lines. Neither side was willing to give an inch, and each was determined to prolong the session by whatever means were needed.

On Friday, February 5, when it seemed unlikely that any serious business would be conducted, President fames Buchanan, the Speaker, and several others scheduled a round of dinners to enlist support for the administration's position in favor of the constitution, and by 3:30 P.M. the chamber began to empty. At that point an anti-Lecompton representative moved the previous question, which had been temporarily set aside the day before.

By 4 P.M. the few administration men remaining in the House were leading a desperate filibuster by invoking a running series of roll calls and quorum calls. The sergeant at arms was sent into the streets and unceremoniously led the absent members away from their dinner parties. At midnight the filibusterers were still in full cry. The exhausted representatives slept in their places, lounged along the back walls of the chamber, or, significantly, revived their flagging spirits with what one writer called "stimulants" in the cloakroom.

At about 1:30 A.M., when some of the members were quite visibly drunk, Galusha A. Grow, Republican of Pennsylvania, wandered aimlessly across the floor to the Democrats' side. Sober but testy as a result of the hour, Grow took exception to a motion offered by a Democratic rival. Immediately Laurence Keitt, a Democrat from South Carolina, who was half asleep at his desk, roused himself enough to order Grow back to his own side of the House, in the bargain calling him "a black Republican puppy."

Bitterly angry, Grow replied, "No negro-driver shall crack his whip over me." Struggling to his feet, Keitt shouted, "I'll choke you for that," and made for Grow's throat.

In moments the floor was a sea of writhing bodies, a dozen Southerners pummelling—or being pummelled by—a dozen Northerners. The Speaker shouted and rapped for order, and the sergeant at arms, thinking he could make a difference, rushed among the combatants showing the House mace. One representative picked up a heavy stoneware spittoon and rushed into the fray. Several Quakers urged calm and peace.

In about two minutes it was all over, brought to a risible conclusion when Cadwallader Washburne of Illinois grabbed William Barksdale of Mississippi by a forelock in order to punch him in the face, let go a roundhouse right, and missed—because Barksdale ducked, leaving Washburne with Barksdale's wig in his left hand. Since nobody in the chamber had known the Mississippian was bald and because the humiliated Barksdale restored the hair piece wrong end to, nearly everyone stopped fighting to gape and then roar with laughter. As the official record has it, "the good nature of the House" was instantly restored.

Five hours later, just before 6:30 A.M., the filibuster was brought to a close by mutual consent. On Monday, in circumstances of relative calm and harmony, a vote was taken, and the House turned to other business.

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1908

In contrast to the House proceedings, Senate filibusters in the half century or more preceding the Civil War were modest, even decorous, affairs. Until the appearance of the voluble John Randolph in 1825 no single senator attempted to dominate the debates, and even Randolph's abusive harangues were often borne with good humor.

There had been occasional moments of violence: Henry Clay challenged Randolph to a duel in 1825, and in 1863 William Saulsbury of Delaware, who had been ruled out of order for remarks against President Lincoln during an attempted filibuster, had drawn a pistol and threatened to shoot the sergeant at arms, sent by the Chair to remove him from the floor. But on the whole the majority waited patiently for the filibusterers to concede the hopelessness of their position, and after lengthy delays most obstructed legislation was eventually passed.

In the last half of the nineteenth century, however, as filibustering became less common in the House, the Senate was throttled by obstructionist maneuvers so often that in the 1880's a national concern developed that the chamber was no longer capable of functioning. Hardly a month went by that a filibuster did not take place.

The old rules of personal courtesy and individual restraint seemed to have been forgotten, and new tactics of delay were introduced. By 1879 dissident senators refused to answer roll-call votes requiring a quorum and thus, under existing rules, were counted absent. Spectacular parliamentary wars deadlocked the chamber for days and months on end. In 1881 a Republican minority halted business for forty-one days; a decade later southern Democrats stopped all business for thirty-one days in midwinter. In 1893 the outnumbered foes of a bill repealing the Sherman Silver Purchase Act filibustered for forty-six days.

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By the turn of the century almost any measure brought to the floor was likely to trigger extended minority opposition. Still the majority did nothing and persisted in up-holding the Senate tradition of unlimited debate. As a result most filibusters ended with the successful quashing of a disputed bill because the majority, unable to secure a vote, would withdraw the measure in order to get on to other pressing business.

On occasion a filibuster failed when the tenuous alliances of disparate factions dissolved because the personal endurance of its members had been tested to the limit.

In 1908 a brief filibuster became a Senate landmark and added a new wrinkle to the tactics of obstruction. In late May, Senator Robert La Follette of Wisconsin took the floor to obstruct the passage of the Aldrich-Vreeland currency bill, in this case speaking to the merits of a conference report. Under Senate rules such a report is unamendable; as a consequence La Follette could expect no help from his colleagues who, in other circumstances, might have added endlessly to the debate by attaching amendment upon amendment to the measure under discussion.

Aware that his only refuge was repeated quorum calls (eventually a total of thirty were granted him), La Follette set out to talk the majority in favor of the bill into submission. Sustaining himself with frequent drinks of eggnog (one glass of which he tasted and refused; later analysis showed it to be tainted with enough ptomaine bacteria to kill him), La Follette talked on continuously for eighteen hours and twenty-three minutes.

When at last he sat down, Senator Aldrich—as was permitted under the rules—immediately moved the yeas and nays on the report. Such a motion was not debatable, but it had a privileged status and would be voted on at the first opportunity. As long as the filibuster continued unbroken, no vote, of course, was possible. But should a lull develop because a designated speaker failed to take the floor, the filibuster would automatically end and the Aldrich motion would have instant priority as the next item of business before the Senate.

How soon such a lull would come was problematical, for the obstruction had been carefully arranged, and before the intervening motion La Follette had already indicated that William Stone of Missouri would continue to instruct the members on the monetary systems of the world's states. Stone, in turn, relinquished the floor to Thomas Gore, the totally blind senator from Oklahoma.

The plan was that Gore would speak for a time, to be relieved by Stone, in preparation for a second lengthy speech by La Follette, who under the rules could speak once more—though once only. And so Gore proceeded until a tug on his jacket signalled him that Stone had returned to the chamber and was now ready to speak a second time. Gore concluded his remarks and yielded.

Unfortunately for the filibusterers, at that moment Stone was called to the cloakroom, and Gore, unable to see, had no way of knowing he had left. The blind Oklahoman thus surrendered the floor, with no claimant to take it. Aldrich demanded a roll call, which carried despite La Toilette's desperate maneuvering in the next hour to set it aside. The conference report was passed; the filibuster was dead.

An attempt by Huey Long of Louisiana to break La Follette's record in 1935 failed after fifteen hours and thirty minutes when the majority in the chamber refused Long permission to break off speaking for a trip to the bathroom. Thus La Follette's speech stood as the personal record for a single senator until 1953, when Wayne Morse of Oregon spoke for twenty-two hours and twenty-six minutes on the tidelands oil bill. Morse's endurance was surpassed four years later when Strom Thurmond of South Carolina talked continuously for twenty-four hours and eighteen minutes in opposition to the Civil Rights Act of 1957.

1917

Despite the drawbacks of such lengthy speeches the Senate remained fully committed to unlimited debate until the eve of America's entrance into World War I, when it at last approved a change in the chamber's rules that made it possible for the majority to shut off discussion by invoking cloture.

What gave rise to the change was one of the most celebrated filibusters in Senate history. It was directed against Woodrow Wilson's efforts to protect the nation's merchant fleet from the depredations of German submarines on neutral shipping. Since 1914 Wilson had urged the nation to avoid war, but in February, 1917, the Germans announced they were returning to unrestricted submarine warfare, and the President immediately severed diplomatic relations. Late in the month, still hoping for peace, he proposed to arm American merchant vessels as a matter of self-defense, and a bill to that effect was introduced in the Senate.

As it happened, a major filibustering effort was already under way. In late February the Republicans had agreed to halt all business wherever possible in the face of the March 4th adjournment set by the Constitution. They hoped to force a special session of Congress as an embarrassment to the administration, and for five days they tied up the chamber with dilatory motions and long speeches. On one occasion they forced thirty-three consecutive roll calls, each of which consumed ten minutes or more.

Despite the delays Wilson's Armed Ship Bill was brought forward on March 3. The day before, the Zimmerman telegram had appeared in the press and excited national interest. The Germans,

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in the note, had openly suggested to the Mexican government that in the event of war between the Central Powers and the United States, Mexico might join Germany in return for the lands America had taken from Mexico in 1848.

The Senate was in an uproar. Seventy-five senators announced that they were prepared to support Wilson's bill—if they could get to a vote. But no vote was possible; eleven men, led by La Follette and George Norris of Nebraska, used every possible maneuver to hold the floor until noon on March 4, when the Senate automatically adjourned.

The bill was dead through a combination of filibuster and majority impotence. A furious Wilson told the nation that it was the fault of "a little group of willful men, representing no opinion but their own.…" They had, he said, "rendered the great Government of the United States helpless and contemptible." He demanded a change in the Senate rules.

That change was forthcoming in a special Senate session that opened March 5. Within three days seventy-six senators approved Rule 22, which provided for cloture. On the petition of any sixteen senators cloture could be invoked two days later if two thirds of those members present and voting agreed. Thereafter debate was limited to one hour for each senator on the provisions of the main bill and on all amendments and motions pertaining to it. No additional amendments could be attached without unanimous consent.

The rule has remained substantially the same ever since. In 1949 the consent provision was raised to two thirds of the membership, but returned to two thirds of those present and voting in 1959. After a three-week filibuster in January, 1975, the rule was changed to three fifths of the membership, a total of sixty senators.

1970

Since 1917 there have been more than one hundred attempts to force cloture—seventy-three of them since 1965, fifty-six since 1970. Only twenty-five have been successful, sixteen of those in the last decade.

In recent years there have been two other changes in the filibuster, in addition to cloture. The first was the passage in 1933 of the Twentieth Amendment to the Constitution. This eliminated the so-called lame-duck session of Congress and the mandatory March 4th adjournment of the legislature. Under the old constitutional provision, newly elected members of Congress had to wait eighteen months after their election to take their seats—a sensible arrangement perhaps in the eighteenth century, when both communications and transportation facilities made it difficult for the new representatives to get to the capital in time for the January session following an election. But it made no sense at all in the twentieth century. Moreover, the bulk of filibusters were timed to take advantage of the date of adjournment, and supporters of Senate reform were convinced that eliminating that deadline might have a beneficial effect.

That hope was misplaced. Whatever benefits accrued from the amendment, modification of the filibuster was not one of them, and the practice has continued unabated to the present time.

Whatever benefits accrued from the amendment, modification of the filibuster was not one of them, and the practice has continued unabated to the present time.

Since 1970 another feature has been added to obstructionism in the Senate, for the last forty years filibusters have occasionally been the work of midwestern Republicans on economic and agricultural matters and, more commonly, of southern Democrats on civil rights. But in the last five years eight or more major filibusters have been conducted by a loose bipartisan coalition of moderates and liberals, the traditional enemies of the practice.

Beginning with an attack on the continued development of the supersonic transport (SST) favored by the Nixon administration, the liberal wing has systematically filibustered an extension of the military draft, further funding of the Vietnam war, the nomination of William Rehnquist to the Supreme Court, a loan to the Lockheed corporation, and a 1972 anti-busing bill.

Although not the first time liberals have filibustered—a similar coalition attempted to block the Taft-Hartley Act in 1948, and another delayed passage of a 1964 bill in opposition to a Supreme Court order reapportioning the state legislatures—the recent obstructionism represents, in its frequency alone, a significant departure from past liberal practices, and it raises some questions about the future of filibuster reform.

If, for example, the liberals find themselves increasingly in a minority position, they may wish to keep the weapon minorities have traditionally employed unencumbered. It is, of course, too soon to tell whether their reliance on this legislative tool is a temporary expedient or now a matter of policy.

In any case, experts are generally agreed that the recent change in Rule 22 to a three-fifths majority of the whole Senate has done little to impede the filibuster, and the tactics of delay are still available, as they always have been, to whatever minority chooses to use them to thwart the majority will. ❖

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Federalist No. 10

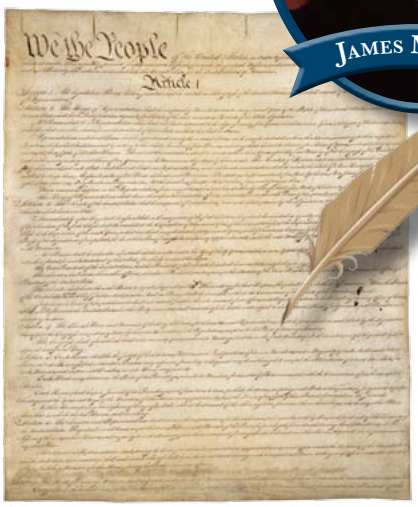
PUBLIUS (JAMES MADISON)

http://teachingamericanhistory.org/library/document/federalist-no-10/

THE SAME SUBJECT CONTINUED (THE UTILITY OF THE UNION AS A SAFEGUARD AGAINST DOMESTIC FACTION AND INSURRECTION)

November 22, 1787

Among the numerous advantages promised by a well constructed union, none deserves to be more accurately developed, than its tendency to break and control the violence of faction. The friend of popular governments, never finds himself so much alarmed for their character and fate, as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice, and confusion, introduced into the public councils, have, in truth, been the mortal diseases under which popular governments have every where perished; as they continue to be the favourite and fruitful topics from which the adversaries to liberty derive their most specious declamations. The valuable improvements made by the American constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality, to contend that they have as effectually obviated the danger on this side, as was wished and expected. Complaints are every where heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable; that the public good is disregarded in the conflicts of rival parties; and that measures are too often decided, not according to the rules of justice, and the rights of the minor party, but by the superior force of an interested and overbearing majority. However anxiously we may wish that these complaints had no foundation, the evidence of known facts will not permit us to deny that they are in some degree true. It will be found,



indeed, on a candid review of our situation, that some of the distresses under which we labour, have been erroneously charged on the operation of our governments; but it will be found, at the same time, that other causes will not alone account for many of our heaviest misfortunes; and, particularly, for that prevailing and increasing distrust of public engagements, and alarm for private rights, which are echoed from one end of the continent to the other. These must be chiefly, if not wholly, effects of the unsteadiness and injustice, with which a factious spirit has tainted our public administrations.

By a faction, I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

There are two methods of curing the mischiefs of faction: The one, by removing its causes; the other, by controling its effects.

There are again two methods of removing the causes of faction: The one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said, than of the first remedy, that it is worse than the disease. Liberty is to faction, what air is to fire, an aliment, without which it instantly expires. But it could not be a less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the

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Federalist No. 10

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annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

The second expedient is as impracticable, as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to an uniformity of interests. The protection of these faculties, is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties.

The latent causes of faction are thus sown in the nature of man; and we see them every where brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders, ambitiously contending for pre-eminence and power; or to persons of other descriptions, whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other, than to co-operate for their common good. So strong is this propensity of mankind, to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions, and excite their most violent conflicts. But the most common and durable source of factions, has been the various and unequal distribution of property. Those who hold, and those who are without property, have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a monied interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests, forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of government.

No man is allowed to be a judge in his own cause; because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay, with greater reason, a body of men are unfit to be both judges and parties, at the same time; yet, what are many of the most important acts of legislation, but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? and what are the different classes of legislators, but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side, and the debtors on the other. Justice ought to hold the balance between them. Yet the parties are, and must be, themselves the judges; and the most numerous party, or, in other words, the most powerful faction, must be expected to prevail. Shall domestic manufactures be encouraged, and in what degree, by restrictions on foreign manufactures? are questions which would be differently decided by the landed and the manufacturing classes; and probably by neither with a sole regard to justice and the public good. The apportionment of taxes, on the various descriptions of property, is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party, to trample on the rules of justice. Every shilling with which they over-burden the inferior number, is a shilling saved to their own pockets.

It is in vain to say, that enlightened statesmen will be able to adjust these clashing interests, and render them all subservient to the public good. Enlightened statesmen will not always be at the helm: nor, in many cases, can such an adjustment be made at all, without taking into view indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another, or the good of the whole.

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Federalist No. 10

– Continued –

The inference to which we are brought, is, that the causes of faction cannot be removed; and that relief is only to be sought in the means of controlling its effects.

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views, by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the constitution. When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest, both the public good and the rights of other citizens. To secure the public good, and private rights, against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed. Let me add, that it is the great desideratum, by which alone this form of government can be rescued from the opprobrium under which it has so long laboured, and be recommended to the esteem and adoption of mankind.

By what means is this object attainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority, at the same time, must be prevented; or the majority, having such co-existent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. If the impulse and the opportunity be suffered to coincide, we well know, that neither moral nor religious motives can be relied on as an adequate control. They are not found to be such on the injustice and violence of individuals, and lose their efficacy in proportion to the number combined together; that is, in proportion as their efficacy becomes needful.

From this view of the subject, it may be concluded, that a pure democracy, by which I mean, a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert, results from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party, or an obnoxious individual. Hence it is, that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security, or the rights of property; and have, in general, been as short in their lives, as they have been violent in their deaths. Theoretic politicians, who have patronised this species of government, have erroneously supposed, that, by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the union.

The two great points of difference, between a democracy and a republic, are, first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

The effect of the first difference is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice, will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen, that the public voice, pronounced by the representatives of the people, will be more consonant to the public good, than if pronounced by the people themselves, convened for the purpose. On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests of the people. The question resulting is, whether small or extensive republics are most favourable to the election of proper guardians of the public weal; and it is clearly decided in favour of the latter by two obvious considerations.

In the first place, it is to be remarked, that however small the republic may be, the representatives must be raised to a certain number, in order to guard

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Federalist No. 10

– Continued –

against the cabals of a few; and that, however large it may be, they must be limited to a certain number, in order to guard against the confusion of a multitude. Hence, the number of representatives in the two cases not being in proportion to that of the constituents, and being proportionally greatest in the small republic, it follows, that if the proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.

In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practise with success the vicious arts, by which elections are too often carried; and the suffrages of the people being more free, will be more likely to centre in men who possess the most attractive merit, and the most diffusive and established characters.

It must be confessed, that in this, as in most other cases, there is a mean, on both sides of which inconveniences will be found to lie. By enlarging too much the number of electors, you render the representative too little acquainted with all their local circumstances and lesser interests; as by reducing it too much, you render him unduly attached to these, and too little fit to comprehend and pursue great and national objects. The federal constitution forms a happy combination in this respect; the great and aggregate interests, being referred to the national, the local and particular to the state legislatures.

The other point of difference is, the greater number of citizens, and extent of territory, which may be brought within the compass of republican, than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former, than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. Besides other impediments, it may be remarked, that where there is a consciousness of unjust or dishonourable purposes, communication is always checked by distrust, in proportion to the number whose concurrence is necessary.

Hence it clearly appears, that the same advantage, which a republic has over a democracy, in controling the effects of faction, is enjoyed by a large over a small republic . . . is enjoyed by the union over the states composing it. Does this advantage consist in the substitution of representatives, whose enlightened views and virtuous sentiments render them superior to local prejudices, and to schemes of injustice? It will not be denied, that the representation of the union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties, comprised within the union, increase this security. Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here, again, the extent of the union gives it the most palpable advantage.

The influence of factious leaders may kindle a flame within their particular states, but will be unable to spread a general conflagration through the other states: a religious sect may degenerate into a political faction in a part of the confederacy; but the variety of sects dispersed over the entire face of it, must secure the national councils against any danger from that source: a rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the union, than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire state.

In the extent and proper structure of the union, therefore, we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride we feel in being republicans, ought to be our zeal in cherishing the spirit, and supporting the character of federalists. —*PUBLIUS* ❖

FILIBUSTER

Filibuster and Cloture

US SENATE

http://www.senate.gov/artandhistory/history/common/briefing/Filibuster_Cloture.htm

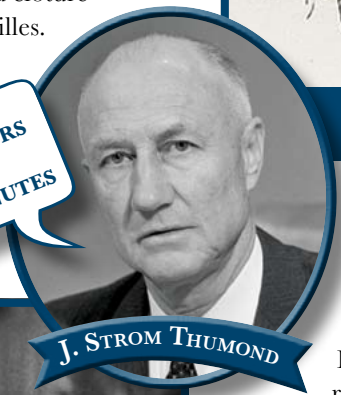
Using the filibuster to delay or block legislative action has a long history. The term filibuster—from a Dutch word meaning "pirate"—became popular in the 1850s, when it was applied to efforts to hold the Senate floor in order to prevent a vote on a bill.

In the early years of Congress, representatives as well as senators could filibuster. As the House of Representatives grew in numbers, however, revisions to the House rules limited debate. In the smaller Senate, unlimited debate continued on the grounds that any senator should have the right to speak as long as necessary on any issue.

In 1841, when the Democratic minority hoped to block a bank bill promoted by Kentucky Senator Henry Clay, he threatened to change Senate rules to allow the majority to close debate. Missouri Senator Thomas Hart Benton rebuked Clay for trying to stifle the Senate's right to unlimited debate.

Three quarters of a century later, in 1917, senators adopted a rule (Rule 22), at the urging of President Woodrow Wilson, that allowed the Senate to end a debate with a two-thirds majority vote, a device known as "cloture." The new Senate rule was first put to the test in 1919, when the Senate invoked cloture to end a filibuster against the Treaty of Versailles. Even with the new cloture rule, filibusters remained an effective means to block legislation, since a two-thirds vote is difficult to obtain. Over the next five decades, the Senate occasionally tried to invoke cloture, but usually failed to gain the necessary two-thirds vote. Filibusters were particularly useful to Southern senators who sought to block civil rights legislation, including anti-lynching legislation, until cloture was invoked after a 60 day filibuster against the Civil Right Act of 1964. In 1975, the Senate reduced the number of votes required for cloture from two-thirds to three-fifths, or 60 of the current one hundred senators.

19th Century Filibuster.



Actor Jimmy Stewart plays Senator Jefferson Smith conducting a filibuster in the 1939 film, Mr. Smith Goes to Washington.

Many Americans are familiar with the filibuster conducted by Jimmy Stewart, playing Senator Jefferson Smith in Frank Capra's film Mr. Smith Goes to Washington, but there have been some famous filibusters in the real-life Senate as well. During the 1930s, Senator Huey P. Long effectively used the filibuster against bills that he thought favored the rich over the poor. The Louisiana senator frustrated his colleagues while entertaining spectators with his recitations of Shakespeare and his reading of recipes for "pot-likkers." Long once held the Senate floor for 15 hours. The record for the longest individual speech goes to South Carolina's J. Strom Thurmond who filibustered for 24 hours and 18 minutes against the Civil Rights Act of 1957. ❖

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DOCUMENT

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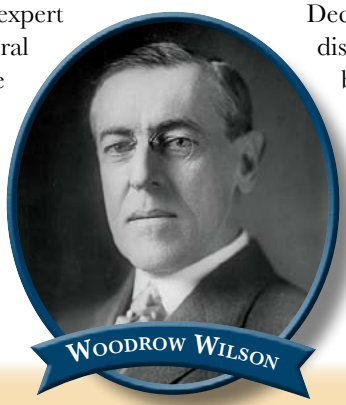
Cloture Rule

US SENATE | 1878-1920 | MARCH 8, 1917

http://www.senate.gov/artandhistory/history/minute/Cloture_Rule.htm

WOODROW WILSON

Woodrow Wilson considered himself an expert on Congress—the subject of his 1884 doctoral dissertation. When he became president in 1913, he announced his plans to be a legislator-in-chief and requested that the President's Room in the Capitol be made ready for his weekly consultations with committee chairmen. For a few months, Wilson kept to that plan. Soon, however, traditional legislative-executive branch antagonisms began to tarnish his optimism. After passing major tariff, trade, and banking legislation in the first two years of his administration, Congress slowed its pace.



> A little group of willful men, representing no opinion but their own, have rendered the great government of the United States helpless and contemptible.

By 1915, the Senate had become a breeding ground for filibusters. In the final weeks of the Congress that ended on March 4, one administration measure related to the war in Europe tied the Senate up for 33 days and blocked passage of three major appropriations bills. Two years later, as pressure increased for American entry into that war, a 23-day, end-of-session filibuster against the president's proposal to arm merchant ships also failed, taking with it much other essential legislation. For the previous 40 years, efforts in the Senate to pass a debate-limiting rule had come to nothing. Now, in the wartime crisis environment, President Wilson lost his patience.

Decades earlier, he had written in his doctoral dissertation, "It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees." On March 4, 1917, as the 64th Congress expired without completing its work, Wilson held a decidedly different view. Calling the situation unparalleled, he stormed that 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." The Senate, he demanded, must adopt a cloture rule.

On March 8, 1917, in a specially called session of the 65th Congress, the Senate agreed to a rule that essentially preserved its tradition of unlimited debate. The rule required a two-thirds majority to end debate and permitted each member to speak for an additional hour after that before voting on final passage. Over the next 46 years, the Senate managed to invoke cloture on only five occasions. ❖

—Reference Items: U.S. Congress. Senate. The Senate, 1789-1989, Vol. 2, by Robert C. Byrd. 100th Cong., 1st sess., 1991. S. Doc.100-20.

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The American Senate

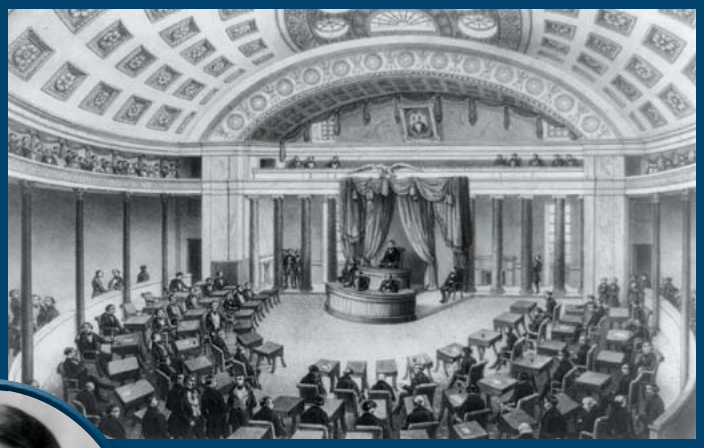
US SENATE | 1921-1940 | JUNE 1, 1926

http://www.senate.gov/artandhistory/history/minute/The_American_Senate_Published.htm

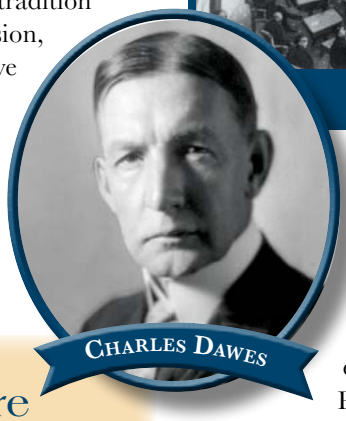
"THE AMERICAN SENATE"
(PUBLISHED)

Until the 1930s, newly elected vice presidents traditionally went to the Senate Chamber on inauguration day to deliver a brief speech. They generally took this occasion to ask the senators over whom they would preside for the next four years to forgive them for not knowing much about parliamentary procedure and to bear with them while they tried to learn. This polite tradition sustained a major jolt in 1925. On that occasion, Vice President Charles Dawes, a conservative Republican, unleashed a blistering attack on a small group of progressive Republican senators who had filibustered legislation at the end of the previous session.

Eight years earlier, the Senate had adopted its first cloture rule, which allowed two-thirds of the senators present and voting to take steps to end debate on a particular measure. Dawes thought the Senate should revise that rule, making it easier to apply by allowing a simple majority to close debate. The existing two-thirds rule, he thundered, "at times enables Senators to consume in oratory those last precious minutes of a session needed for momentous decisions," thereby placing great power in the hands of a few senators. Unless Rule 22 were liberalized, it would "lessen the effectiveness, prestige, and dignity of the United States Senate." Dawes' unexpected diatribe infuriated senators of all philosophical leanings, who believed that the chamber's rules were none of the vice president's business.



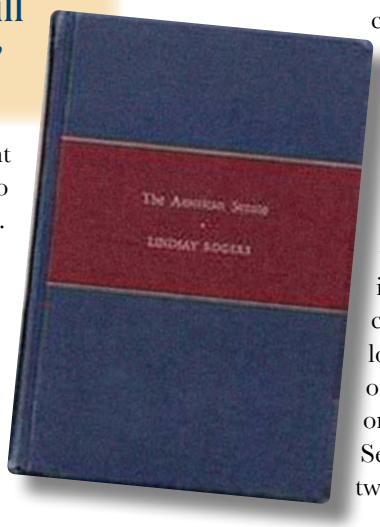
Drawing of the Senate Chamber.



CHARLES DAWES

> "Adopt [majority] cloture in the Senate," Rogers argued, "and the character of the American Government will be profoundly changed."

On June 1, 1926, Columbia University professor Lindsay Rogers published a book entitled *The American Senate*. His purpose was to defend the Senate tradition of virtually unlimited debate, except in times of dire national emergency. Professor Rogers fundamentally disagreed with Vice President Dawes. In his memorably stated view, the "undemocratic, usurping Senate is the indispensable check and balance in the American system, and only complete freedom of debate allows it to play this role." "Adopt [majority] cloture in the Senate," he argued, "and the character of the American Government will be profoundly changed."



Written in a breezy journalistic style, Rogers' *American Senate* encompassed issues beyond debate limitation. For example, he believed members spent too much time on trivial issues and that professional investigators—not members—should handle congressional investigations. Although now long forgotten, his work set the agenda for other outside scholarly observers and became one of the most influential books about the Senate to appear during the first half of the twentieth century. ❖

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—*Reference Items: Rogers, Lindsay. The American Senate. New York: A.A. Knopf, 1926.*

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Senate Action on Cloture Motions

www.senate.gov

http://www.senate.gov/pagelayout/reference/cloture_motions/clotureCounts.htm

SENATE ACTION ON CLOTURE MOTIONS

CONGRESS	YEARS	MOTIONS FILED	VOTES ON CLOTURE	CLOTURE INVOKED
113	2013-2014	21	17	11
112	2011-2012	115	73	41
111	2009-2010	137	91	63
110	2007-2008	139	112	61
109	2005-2006	68	54	34
108	2003-2004	62	49	12
107	2001-2002	71	61	34
106	1999-2000	71	58	28
105	1997-1998	69	53	18
104	1995-1996	82	50	9
103	1993-1994	80	46	14
102	1991-1992	60	48	23
101	1989-1990	38	24	11
100	1987-1988	54	43	12
99	1985-1986	41	23	10
98	1983-1984	41	19	11
97	1981-1982	31	27	10
96	1979-1980	30	21	11
95	1977-1978	23	13	3
94	1975-1976	39	27	17
93	1973-1974	44	31	9
92	1971-1972	24	20	4
91	1969-1970	7	6	0
90	1967-1968	6	6	1

Continued on next page.

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Senate Action on Cloture Motions – Continued –

SENATE ACTION ON CLOTURE MOTIONS (continued)

CONGRESS	YEARS	MOTIONS FILED	VOTES ON CLOTURE	CLOTURE INVOKED
89	1965-1966	7	7	1
88	1963-1964	4	3	1
87	1961-1962	4	4	1
86	1959-1960	1	1	0
85	1957-1958	0	0	0
84	1955-1956	0	0	0
83	1953-1954	1	1	0
82	1951-1952	0	0	0
81	1949-1950	2	2	0
80	1947-1948	0	0	0
79	1945-1946	6	4	0
78	1943-1944	1	1	0
77	1941-1942	1	1	0
76	1939-1940	0	0	0
75	1937-1938	2	2	0
74	1935-1936	0	0	0
73	1933-1934	0	0	0
72	1931-1932	2	1	0
71	1929-1930	1	0	0
70	1927-1928	1	0	0
69	1925-1926	7	7	3
68	1923-1924	0	0	0
67	1921-1922	1	1	0
66	1919-1920	2	2	1
65	1917-1918	2	0	0
TOTAL		**1398**	**1009**	**454**