

The Filibuster: Imperfect, But Better Than Nothing

In its current form, the US Senate delaying tactic called the “filibuster” hangs on a rule requiring 60 votes for “cloture.” Simply put, it takes 51 Senators to pass a bill, but before that it takes the consent of 60 Senators to end debate and actually get to a final majority vote.

Each time control of the US Senate changes hands, the new majority party publicly mulls doing away with the filibuster in the name of democracy, while the new minority party staunchly defends the filibuster in the name of minority rights to force due deliberation.

This year is no exception. The Democrats enjoy a 51-vote majority in the Senate (48 Democrats, two “independents” who caucus with them, and Vice President Kamala Harris as a tie-breaker). If they’re unanimous, they can pass anything they want ... but only if they can find ten Republicans to vote for cloture. No wonder they’re tempted to use a parliamentary tactic (called, by both sides, “the nuclear option”) to do away with the 60-vote requirement.

But there’s a fly in the ointment: President Joe Biden.

Until recently, Biden opposed ending the filibuster, and as not only president but also former 36-year Senator, his opinion carries weight on the matter with his party.

In a March 16 interview, Biden shifted gears and supported resurrecting the “talking filibuster” as a compromise. “You have to do it what it used to be when I first got to the Senate You had to stand up and command the floor, you had to keep talking.”

The “talking filibuster” is both more interesting and more demanding than just sitting on 41 votes to gum up the works. It takes effort, and it’s entertaining (I still remember the late West Virginia Democrat Robert Byrd rambling on about his “little dog named Billy” while filibustering something or other).

But whether it’s 60 votes for cloture or Senators yammering about recipes for green bean casseroles, I like the filibuster and want to see it continue regardless of which party is in power. And my reason for that isn’t complicated:

Political power, especially on the sheer size and scale wielded by the US federal government, is a very dangerous thing. Even if it really is the only lesser evil versus Hobbes’s “nature red of tooth and claw” (and I consider that a false dilemma), we should make it as difficult to wield as possible.

Letting 51 politicians do whatever they want, over the opposition of 50 other politicians, is

far too loose a standard for application of such power.

At a bare minimum, I'd prefer a 7/8ths vote requirement to pass legislation, with a far lower threshold to repeal it. And, perhaps, a rule mandating the public execution of one randomly selected Senator who votes for each bill that passes.

But in an imperfect world where compromise is valued, I'll settle for either a 60-vote cloture requirement or a "talking filibuster" scenario in which the minority can, with some application of effort, slow the pace of Leviathan from a sprint to a plod.