



Written by [Charles Scaliger](#) on February 4, 2022

Published in the February 28, 2022 issue of [the New American](#) magazine. Vol. 38, No. 04

The Case for the Filibuster

Tens of millions of Americans alarmed by the radical Left's ongoing assault on the American body politic heaved a collective sigh of relief on January 19 when the Senate narrowly voted to uphold the longstanding parliamentary practice known as the filibuster. Were it not for the principled intransigence of Democratic senators Joe Manchin of West Virginia and Kyrsten Sinema of Arizona, the Senate filibuster, one of legislative Washington's most cherished and long-held institutions, would have met an indecorous end at the hands of the demagogic mob disguised as Democratic legislators.



uschools/E+/GettyImagesPlus

The filibuster, be it noted, is not a constitutional requirement. It is instead an institutional tradition that emerged as a dual consequence of the constitutional provision allowing the Senate to establish its own procedures and rules of conduct, along with the understanding — once almost universal in Washington — that the Senate, as the “upper house” of the American legislature and its allegedly deliberative body, should seek scrupulously to uphold the principle of checks and balances, and to maximally enable the voice of every one of its members.

Unfortunately, as the ongoing campaign against the filibuster has shown, most of the hyper-radicalized Democratic faction no longer accepts any limits on majoritarian power in either house. This has become especially relevant at a time when the top priority for the entire Democratic Party is nothing less than a radical and thoroughgoing overhaul of the American system of government — an overhaul that, if successful, would be at least as deleterious and impactful as the New Deal, and would virtually guarantee a permanent lock on government power by the Schu-mer- and Pelosi-led radical leftist Democrats. Included in the Democrats' widely advertised program would be “stacking” the Supreme Court (something that FDR also attempted, in order to safeguard the New Deal); granting statehood to Puerto Rico and Washington, D.C. (thereby guaranteeing four new Democratic Senators); maintaining a permanent “open door” policy for illegal immigrants likely to vote Democratic in perpetuum (in order to effect a demographic shift in Texas, Florida, and other refractory “red” states); spending the country trillions of dollars further into receivership; and — perhaps most ominously of all — usurping federal control over all state election laws, a flagitious attack on a constitutionally protected state power if ever there was one. Given the ferocity of the building electoral backlash against the radical Left, Democrats understand only too well that the time is short and the stakes are high — hence the fevered drive to abolish the filibuster and seize control of state elections before November.



Written by [Charles Scaliger](#) on February 4, 2022

Published in the February 28, 2022 issue of [the New American](#) magazine. Vol. 38, No. 04



Principled minority: Democratic Senators Joe Manchin (D-W.V.) and Kyrsten Sinema (D-Ariz.) incurred the wrath of their party by voting to uphold the filibuster, thereby thwarting the Democrats' ongoing legislative power grab — at least for now. (*Photo credit: AP Images*)

We have seen a similar script before. In 2013, with the Democrats in control of the White House and the Senate, then-Senate Majority Leader Harry Reid pushed through the Senate a measure overturning the filibuster for presidential appointees (other than Supreme Court justices). At the time, Democrats were riding high, confident of a President Hillary Clinton in 2016 and beyond, which would allow them years to reshape the federal judiciary with a minority GOP in the Senate unable to stay a flood of radical judicial appointees. But following the surprise election of Donald Trump, it was the GOP that was able to nominate and confirm hundreds of new federal judges without resistance.

Although hoisted by their own legislative petard, the Democrats remain unchastened. They are gambling that, this time around, they can radically reshape government at the federal and state level before this fall's anticipated electoral rout, and guarantee for themselves a permanent majority. Such a state of affairs, they reason, would render the filibuster moot. But having fallen two votes short, thanks to the steadfastness of Manchin and Sinema, they are running out of time and options.

The Senate Is Not the House

The filibuster, or something similar, has been a de facto, if not de jure, feature of the U.S. Senate since its inception in 1789. Always regarded as America's most august deliberative body, the Senate gradually developed rules and traditions to guarantee that every senator could have unlimited say regarding any piece of legislation, regardless of party affiliation.

Whether or not George Washington truly likened Senate deliberation to cooling a cup of tea by pouring the hot tea into a saucer, as is popularly believed, the metaphor gained currency in Washington. The Senate itself was originally formed as a compromise between the large and small states, but, over time, the wisdom of having a second deliberative body became established as an unintended miracle arising from the Constitutional Convention. The Senate, in its capacity representing the states rather than the people, would serve not only as an effective external check against federal power in general, but also would serve as an internal check against the injudicious use of the greatest of the three government powers, the legislative power. Whereas the House — the people's House — was generally composed of



Written by [Charles Scaliger](#) on February 4, 2022

Published in the February 28, 2022 issue of [the New American](#) magazine. Vol. 38, No. 04

younger people elected for briefer terms in office, in order to make them more directly accountable to the citizenry, the Senate was to be composed of older, more experienced people who would serve longer terms, thereby representing not only the states, but also the republican virtues of prudence and temperance, a voice of reason countervailing the often raucous and precipitate impulses of the House.

As James Madison expressed in the *The Federalist*, No. 62:

The necessity of a senate is not less indicated by the propensity of all single and numerous assemblies to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders into intemperate and pernicious resolutions. Examples on this subject might be cited without number; and from proceedings within the United States, as well as from the history of other nations. But a position that will not be contradicted, need not be proved. All that need be remarked is, that a body which is to correct this infirmity ought itself to be free from it, and consequently ought to be less numerous. It ought, moreover, to possess great firmness, and consequently ought to hold its authority by a tenure of considerable duration.

Equipped with such a vision, the Senate was, until recently, impressed with its internal responsibility to maintain practices that limited its own ability to legislate at will or for frivolous and transient causes.

Filibuster in Practice

The first major use of filibuster-like activity was in the context of the debates surrounding the Bank of the United States in the 1830s. This bitter political fight — the most consequential of President Andrew Jackson’s tenure in office — guaranteed full and exhaustive debate over what was in Jackson’s day a divisive issue, and withal one that had divided the country since its founding: Should the federal government be empowered to run a national bank? Alexander Hamilton and many federalists believed such a bank — we would now call it a central bank — to be a necessity, but many of the Founders disagreed, and so did Andrew Jackson. Jackson’s long political war with Nicholas Biddle, the imperious head of the Bank of the United States, need not detain us; suffice it to say that, when the votes were finally cast, the bank’s charter was not renewed, and the United States was left without a central bank until 1913, when the Federal Reserve was legislated into existence. The filibustering tactics used during the debates served to increase the rancor, but also guaranteed that no stone would be left unturned. And as with many other instances of such tactics in American legislative history, the partisan heat they generated frequently produced light to guide the ship of state through uncertain waters.

By the mid-1800s, the term “filibuster,” originally a term for Caribbean freebooters that was also applied to private American citizens who attempted to wage war in foreign countries (especially in Latin America and Canada), had come to apply to the tactic of using drawn-out speeches and kindred parliamentary techniques to “talk a bill to death.” Although the propriety of unlimited debate on bills was the topic of endless controversy, filibusters became more and more frequent features of the Washington political landscape throughout the 19th century. Consecrated by tradition, the practice came to be viewed more and more as a vital check on the power of the partisan majority. In an era when the republican imperative of protecting the minority against the whims of the majority was still widely appreciated, the filibuster was transformed in the popular view into a cherished institution.



Written by [Charles Scaliger](#) on February 4, 2022

Published in the February 28, 2022 issue of [the New American](#) magazine. Vol. 38, No. 04



“Fighting Bob”: Senator Robert La Follette of Wisconsin was pilloried by the media and Congress alike for opposing America’s involvement in World War I and the stifling of dissent by the Wilson administration. He used a filibuster to defend the freedom of speech in wartime, and was ultimately exonerated, despite calls for his removal from office and even his arrest for treason. *(Photo credit: Library of Congress)*

Nevertheless, a check on the unlimited power of the filibuster was devised in 1917, at the urging of a President Wilson frustrated with senatorial hindering of his war ambitions — specifically, after 12 anti-war senators killed a bill that would have allowed Wilson to arm commercial vessels against German submarines months before war was actually declared. Senate Rule 22 allowed for the Senate to invoke “cloture” — that is, to limit debate on a given measure — if a two-thirds majority of the Senate voted to do so.

Despite the action, the filibuster continued to see heightened use during the “war to end all wars.” Even after President Wilson succeeded in dragooning America into the European conflict, a number of senators, such as Wisconsin’s maverick Robert La Follette, remained resolutely opposed to American involvement. In October 1917, facing bitter accusations of treason in Congress and in the press — and even calls for his execution — La Follette arose and spoke for more than three hours in defense of his character, and also the hallowed principles attending just war and the need to preserve freedom of speech, even in wartime. Although La Follette paid for his defiance of Senate and popular opinion with a protracted investigatory witch hunt seeking to ruin him for alleged treason, the Wisconsin senator was ultimately vindicated. Two years later, the Senate not only dismissed resolutions calling for La Follette’s expulsion, they also voted to defray all of his legal bills stemming from the affair. Today he is revered for his principled anti-war stance under the most adverse of circumstances, but given the envenomed circumstances in the 1917 Senate, it is doubtful that La Follette’s speech, “Free Speech in Wartime,” would have been delivered absent provision for a filibuster.

By the mid-20th century, the filibuster had gained notoriety in a very different context. Beginning in the 1940s, filibusters were used by Senate Democrats to block all bills seeking to mandate equal civil rights for blacks, including anti-lynching bills. Only in 1964 was cloture finally invoked successfully, despite a Democratic filibuster of 75 hours, to allow Senate passage of what became the Civil Rights Act of 1964.



Written by [Charles Scaliger](#) on February 4, 2022

Published in the February 28, 2022 issue of [the New American](#) magazine. Vol. 38, No. 04

In 1975, the cloture threshold was lowered to a three-fifths majority, or 60 votes, a lower but still formidable bar for passage. The status of the filibuster remained unchanged until 2013, when Senate Democrats, led by Senator Reid and full of partisan confidence, exercised the so-called “nuclear option,” eliminating the filibuster for most confirmation votes of presidential appointees — only to be outraged a few years later when the new rules were applied ceaselessly by a Republican-controlled Senate eager to ram through as many Trump judicial appointees as possible. Undeterred, many of those same Democratic Senators are now trying to do what was once politically deemed impossible — eliminate one of the most storied Washington institutions — in the service of a raw power grab unrivalled in recent decades.

Lessons for Today

For those whose only measure of worth is strict constitutionality, elimination of the filibuster would not in itself amount to a constitutional infraction. But then, neither would stacking the Supreme Court (whose number has changed since the ratification of the Constitution), declaring war, convening a modern-day constitutional convention, or admitting new territories to statehood.

Given the stranglehold enjoyed by the radical Left on the federal government and many state legislatures, as well as the general impoverishment of constitutional fealty among our government officials at every level, changing the number of Supreme Court justices, convening a constitutional convention, or admitting new states guaranteed to vie with the likes of California and Massachusetts for radical Left supremacy would be the height of folly. Similarly, although the Constitution is silent on just-war principles, a declaration of war for an unjust cause, even if constitutionally valid, would be morally indefensible. Abolition of the filibuster belongs to the same category of actions that, although in and of themselves might not violate the letter of the Constitution, would certainly be corrosive to our Constitution and our Republic in the long (or possibly not-so-long) run.

America in 2022 is facing an unexampled convergence of crises. In addition to the ongoing collapse of the economy, the precipitous breakdown of social order, and the treasonous abolition of our southern border, we are also staring at the very real possibility of a calamitous international war with Russia or China in the very near future — and all of these amid a massive push by the radical Left to seize control of the levers of political power once and for all. Given the fragile political balance in both houses of Congress, abolition of the filibuster — despite the recent failed vote — remains the key to the Left’s entire repugnant legislative agenda. If the Republic is to be salvaged, the filibuster must remain, not only in 2022 but for the foreseeable future.

Charles Scaliger, a longtime contributor to The New American and former academic at an American university, now lives and works in East Asia.



Written by [Charles Scaliger](#) on February 4, 2022

Published in the February 28, 2022 issue of [the New American](#) magazine. Vol. 38, No. 04

Subscribe to the New American

Get exclusive digital access to the most informative, non-partisan truthful news source for patriotic Americans!

Discover a refreshing blend of time-honored values, principles and insightful perspectives within the pages of "The New American" magazine. Delve into a world where tradition is the foundation, and exploration knows no bounds.

From politics and finance to foreign affairs, environment, culture, and technology, we bring you an unparalleled array of topics that matter most.



[Subscribe](#)

What's Included?

- 24 Issues Per Year
- Optional Print Edition
- Digital Edition Access
- Exclusive Subscriber Content
- Audio provided for all articles
- Unlimited access to past issues
- Coming Soon! Ad FREE
- 60-Day money back guarantee!
- Cancel anytime.