



Written by [Bruce Walker](#) on August 6, 2010

## Do We Need a Speedy Senate?

Senate Democrats are expressing great frustration with rules that make it difficult to proceed with legislation. Senator McCaskill of Missouri asks: "What in the world are we doing?" Senator Levin of Michigan comments: "It's unconscionable. The obstructionism has become mindless." These old Senate Rules sometimes require the unanimous consent of all members, for example, to hold Senate committee or subcommittee hearings after 2:00 in the afternoon.



Most of the Senate Rules troubling majority party members are 200 years old. These rules do, indeed, grant each senator an extraordinary power. Until the Senate adopted the Cloture Rule about one 100 years ago, a single senator could filibuster, alone, a bill as depicted by Jimmy Stewart in *Mr. Smith Goes to Washington*. It is a measure of how far our nation has drifted from limited, constitutional government that the freshmen senator in that Capra film would today be attacked as an obstructionist.

Of course, Stewart in the film was an obstructionist. The American government was constructed by the Founding Fathers to provide many ways to obstruct government action. The three branches of the federal government were intended to check each other. Our national legislature, Congress, was a bicameral legislature in which either house could obstruct the other (except the Senate could confirm appointments or approve treaties).

State governments were intended to check federal power. We have become so used to the "democratization" of government that we forget state legislature were empowered under our Constitution to: (1) elect the entire Senate, (2) choose all the presidential electors, effectively allowing state legislatures to choose the president, and (3) ratify all constitutional amendments.

Finally, the Constitution was constructed around the rights of the individual. Some of those rights, like the prohibition against ex post facto laws, were in the original Constitution; others were hardwired into the Bill of Rights. Many of these rights begin with this phrase: "Congress shall make no law...." The entire edifice of American government was intended to promote obstruction because the great fear was not that Congress would pass too few laws but that it would pass too many. In fact, the ratification of the Constitution itself did not require a majority of the states, but a supermajority: the Founding Fathers understood that big changes require a very strong consensus, not a bare majority.



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Now many American politicians seem to feel that the “will of the majority” ought to be the law of the land. They accept unthinkingly or adopt unscrupulously the principle that the democratic principle, rather than the principle of limited, counterbalanced republican government, should prevail in our political system. The will of the people, however, can be a very terrible thing.

Consider Nazism. Hitler gained power *democratically*. His Nazis won free elections in areas where the Gestapo had no power — the Saar plebiscite in 1935; the election of a National Socialist government in Danzig; the election of a Nazi government in Memel — and most historians agree that Hitler was quite genuinely popular for much of his ghastly reign.

So, should the will of the people have prevailed in Nazi Germany? Hitler might have been stopped, if the checks and balances in the Weimar Constitution had been robust. One of his first actions, for example, was to crush the federal system of state governments. Premier Held of Bavaria mobilized the equivalent of the Bavarian home guard and almost fought the unconstitutional usurpation of state power. Hindenburg could have dismissed Hitler as Chancellor and ruled by emergency decree. Nazism is an object lesson of what happens when educated, civilized people are in a hurry to “get things done” by government action. Too few Germans failed to obstruct Nazi rule. Why? There was a national emergency, something that Rahm Emmanuel said during the last U.S. presidential campaign should not be wasted (and Hitler did not waste it).

The greatness of America is that change comes through consensual and individual actions: market forces in the economy, religious persuasion of our myriad denominations, the citizen’s selection of which state he wishes to live in, and the inherent difficulty of the federal government acting quickly or without a very strong consensus of elected officials. When more Americans grasp that, our nation will move closer to that American greatness again.



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