Breaking the Long Deadlock

BY PAUL STARR

How you think about many immediate issues facing the country should hinge on your expectations about the future. Consider the battle shaping up this fall over the confirmation of President Barack Obama's judicial nominees, particularly the three he has nominated to the U.S. Court of Appeals for the D.C. Circuit—Patricia Millett, Cornelia Pillard, and Robert Wilkins. Control of the D.C. Court is important in itself, but the bigger issue is the willingness of Senate Democrats to restrict use of the filibuster and revamp the ground rules in an institution that has often obstructed liberal reform.

The D.C. Court is particularly significant for national policy because it rules on federal regulations affecting labor, environmental protection, financial reform, and other key matters. Refusing to consider any of the president's three nominees on their merits, Senate Republicans want to reduce the number of judges on the court to eliminate the three current vacancies and preserve conservative control. If Obama's nominees are going to get a vote, Majority Leader Harry Reid will need to threaten, as he has before, to "go nuclear"—that is, to change Senate rules ending the minority's ability to filibuster presidential nominations.

In this struggle, it's crucial that Senate Democrats provide Reid the support he needs. Some liberal senators, however, are worried that eliminating the filibuster might give a future Republican president the ability to confirm far-right conservative nominees. Here's where your view of the future—and the past—comes in.

Liberals, it seems to me, should be short-term pessimists and long-term optimists about the future of American politics. It's hard to be anything but pessimistic about addressing the nation's problems as long as right-wing Republicans are in control of the House, tying up the government in repeated crises, limiting the president's ambitions, and blocking even initiatives such as the immigration bill that have significant bipartisan support. But the long term looks a lot more promising as a result of generational turnover and demographic changes that are eroding the Republican base, shifting the partisan and ideological balance, and eventually likely to force Republicans to move back toward the center.

If that's right, it should sway Senate Democrats in favor of institutional reforms that will enable a future president and Congress to act more effectively and decisively. Among all the major democracies, the United States has the most sclerotic, anti-majoritarian political institutions. The filibuster is not the only source of that institutional status quo bias, but the other obstacles lie in constitutional arrangements and are nearly impossible to alter. (Of the world's major democracies, the United States has the constitution that is the most difficult to amend.) If liberals are going to make the most of a future majority, they should want to see the filibuster restricted and ultimately eliminated.

The filibuster has been far more of an obstacle to Democratic presidents and Senate majorities than to their Republican counterparts. The Democrats have for some time been the more ideologically diverse party. As a result, Republican presidents have often been able to obtain enough support from conservatives and centrists in the Democratic caucus to reach the 60-vote threshold in the Senate, whereas Democratic presidents have found it far more difficult to obtain votes they need from the dwindling number of Republicans willing to work with them. These differences then affect the ideological character of each party's choices for the bench. In recent decades, Republican presidents have had stalwart conservative nominees confirmed, but Democratic presidents have not even tried to nominate equally stalwart liberals, and the judicial center has moved to the right.

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Breaking the filibuster on judicial nominations alone is therefore crucial for unlocking the long-term political potential that liberals have, thanks to demographic and generational change. But that should just be the first step in doing away with the filibuster. If Democrats had been willing to eliminate it at the beginning of 2009, Obama's election might have ushered in an era of historic reform; instead, legislation was deeply compromised in the effort to obtain 60 votes, and the Senate became the graveyard for important measures such as climate legislation.

Unblocking the Senate on the grounds that long-term trends favor liberals is a calculated risk. The long term may be a long time in coming. In 2014, Republicans may well win a majority in the Senate as well as the House; and two years later, they have at least a 50-50 chance of electing a president, which could give them control of all branches of the federal government. With that possibility in mind, some Democrats may want to preserve the filibuster, which would be their only remaining point of leverage at the federal level.

But that would be shortsighted; historically, the filibuster has hurt Democrats far more than it has helped them. Instead of perpetuating the minority's ability to obstruct, the Senate's Democrats should think mainly about laying the groundwork for a new era of reform. The cards are likely to come their way; the big question is how they are going to play their hand. ■