

## Majority Rules

“Majority rules.” How often as kids did we hear that? Most young people can remember their first lesson in democracy. A bunch of kids get into an argument over something on the playground or in the classroom, and the teacher decided to take a vote. 11 kids vote one way, and 10 another. The teacher shouts out, “majority rules.” That is the way most of us learned about government systemic operation.

The history does not matter much, but the United States Senate adopted a different approach to how decisions are made on the basic playground approach of “majority rules.” The minority was none too happy about majority rule, and hence entered the filibuster. The filibuster was a way to prevent anything from happening. It was widely used by southerners to try to defeat civil rights litigation at one time in our history. Finally, Senators got so fed up with the intractable impossibility of getting anything done in the Senate because of the filibusters engaged in by a loud minority that the cloture rule came into existence. This rule of the Senate, not dictated by anything in the United States Constitution, enabled the Senate to cut off debate and force a vote if 60 Senators were fed up enough with the filibuster. Enter the 60 majority rule, the so-called “new majority.”

Some people call the 60-vote rule a “super majority.” There are state legislators and other organizations that do impose such a super majority rule. It is not uncommon in many state and organizational constitutions and bylaws to require the passage of certain spending measures, for example, by a two-thirds vote. In fact, such a super majority rule can be found in many business arrangements. The president of many companies and organizations cannot be fired without a two-thirds vote. The CEO or directors of departments cannot be terminated without a super majority vote.

The Founders of this country were very explicit when they wanted more than a majority to rule. For example, in approving treaties a super majority is required. The Constitution mandates a two-thirds vote to approve treaties but not to approve federal judges. However, the United States Senate, now numbering 100 Senators thanks to 50 states and two Senators from each state, never required more than a majority as a constitutional matter other than for approval of treaties.

Now that the super majority rule has been eliminated for U.S. Supreme Court Justices, there are those who are crying foul and saying it is undemocratic. The argument is made by some that a super majority rule is more democratic than a majority rule. There are even those who are arguing that without a super majority, democracy will fail. How absurd! The exact opposite is in fact true. The super majority prevented business from getting done. In order to get 60 Senators, horse trading of all nefarious types had to occur. The super majority 60-Senator rule turned the United States Senate into a kind of parliamentary system where minorities had to be cobbled together to get the right number of votes. Supporters of this absurd bottleneck system claimed that a requirement of getting 60 Senators to agree on anything somehow would build consensus. That is not true. What the super majority rule

has done is slow government down, depart from our Founders' original intent, and create a log-rolling system that did not serve the interests of the American people.

Perhaps now the United States Senate will begin to operate by the normal and typical rules.

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