

# Bipartisan Senate Majority Must Block Cheney's 'Nuclear Option'

by Edward Spannaus

On Tuesday, March 15, Senate Democratic Leader Sen. Harry Reid of Nevada, flanked by over three dozen Democratic Senators, declared war on the plan of the Republican leadership in the White House and the Senate to destroy the right of extended debate ("filibuster") in the United States Senate—a right unique to the Senate, and one which is an essential component of the system of checks and balances embodied in the United States Constitution.

The next day, Reid and other Democratic Senators appeared at a Capitol Hill rally, where Reid called on Democratic activists to "reach out to Republicans of good will to vote with us on this issue." Sen. Robert Byrd (D-WV), the Senate's most eloquent defender of its Constitutional role, told the rally: "An ill wind is blowing across this country. That wind sows the seeds of destruction. Our Constitution is under attack. We must speak out." Byrd warned that Republican leadership wants to gag the Senate, to suppress the rights of the minority, and warp the Senate's Constitutional purpose.

Former Presidential candidate Lyndon LaRouche expressed his support for what Senators Reid and Byrd are doing. Reid is doing his job and showing leadership, and doing this well, LaRouche said. LaRouche also emphasized the importance of engaging Republicans in a policy discussion, most importantly on the issue of the economic crisis, which, he said, is what is driving the push toward dictatorship, which is reflected in the desperate effort to change the Senate rules.

## Cheney Changing the Rules

At issue here, is what is being called the "nuclear option," to wipe out the 200-year Senate tradition of extended debate, with respect to Presidential nominees, especially judicial nominees. On the pretext that the Democratic minority has obstructed Bush's nominations, the presiding officer of the Senate, that is, Vice President Dick Cheney, would announce a change of rules, so that an end to debate ("cloture") would require only a simple majority of 51 votes, rather than the 60 it now requires.

Under the current rules, a substantial minority of 41 Senators can vote to continue debate (a "filibuster") and thereby block legislation, or a nominee, which they strongly oppose. The Senate is not, and was never intended to be, a simply majoritarian body, but was designed as the "cooling saucer," the more deliberative body, in contrast to the House of Repre-

sentives which the Framers of the Constitution saw as most subject to the passions of the moment.

Under the false assumption the Constitution requires that the Senate give the President an up-or-down vote on his nominees, the right wing, including the phony Christian "evangelicals," are mounting a campaign in support of having Cheney exercise the "nuclear option."

But many Republicans do not support this drastic move. Senator Arlen Specter (R-Pa), the head of the Senate Judiciary Committee, which has jurisdiction over judicial nominations, has been attempting to head off such a confrontation, as have a number of others. At a February 24 press conference, Specter stated that "I'm going to exercise every last ounce of my energy to solve this problem without the nuclear option. If we have a nuclear option, the Senate will be in turmoil, and the Judiciary Committee will be hell."

Two conservative Republican former Senators, Jim McClure of Idaho and Malcolm Wallop of Wyoming, wrote an op-ed for the March 15 *Wall Street Journal* called "Don't Go Nuclear," in which they strongly argued against a Senate rule change which would allow debate to be cut off by a simple majority. This would, they contended, be "in effect, turning the Senate into a high-end version of the House of Representatives." And, among other reasons they set forth, they pointed out that conservative Republicans have used the filibuster in the past to block what they consider undesirable legislation, and this is likely to also be the case in the future.

At his March 15 press conference, Sen. Reid began by quoting Benjamin Franklin's famous response to a question put to him at the conclusion of the Constitutional Convention in 1787: "Well, Dr. Franklin, what have we got, a republic or a monarchy?" To which Franklin responded, "A republic, if you can keep it."

"For more than two centuries," Reid continued, "we've kept our republic because Americans have understood that our liberty is protected by our laws and by a government of limited powers. Our Constitution provides for checks and balances so that no one person in power, so that no one political party, can hold total control over the course of our nation."

"But now," Reid said, "in order to break down the separation of powers and ram through their appointees to the judicial branch, President Bush and the Republican leadership want to eliminate a 200-year-old American rule saying that every

member of the Senate can rise to say their piece, and speak on behalf of the people who sent them here.”

Reid also exposed the fraud of the Administration’s claim that Democrats have obstructed confirmation of Bush’s judicial nominees, pointing out that “this President has a better record of having his judicial nominees approved than any President in the past 25 years,” and explaining: “Only 10 of 214 nominations have been turned down. So it is clear that this is an attempt to strip away those important checks and balances. It’s not about judges, it’s about the desire for absolute power.” (Others have pointed out that, during the Clinton Administration, Republicans used procedural devices to block 60 judicial nominees.)

Reid released a letter he had just sent to the Senate Majority Leader, Bill Frist, in which Reid stated: “Should the majority choose to break the rules, the majority should not expect to receive cooperation from the minority in the conduct of Senate business.” Democrats would exempt only national defense matters and spending needed to ensure ongoing Federal operations, Reid explained, but otherwise, “will be reluctant to enter any consent agreement that facilitates Senate activities,” thus jamming up Senate operations.

### **Making Illegality Legal**

As much as Reid’s announcement sent the lunatic right into ranting and raving, it was nothing compared to the response to Sen. Robert Byrd’s speech on the Senate floor on March 1. “The Framers of the Constitution envisioned the Senate as a kind of executive council; a small body of legislators, featuring longer terms, designed to insulate members from the passions of the day,” Byrd stated. “The Senate was to serve as a check on the Executive Branch, particularly in the areas of appointments and treaties, where, under the Constitution, the Senate passes judgment absent the House of Representatives. James Madison wanted to grant the Senate the power to select judicial appointees with the Executive relegated to the sidelines. But a compromise brought the present arrangement; appointees selected by the Executive, with the advice and consent of the Senate.”

Byrd stressed that the Senate “was never intended to be a majoritarian body,” but that this “was the role of the House of Representatives, with its membership based on the populations of states.”

“If we restrain debate on judges today,” Byrd asked, after reviewing the history of the filibuster in the Senate, “what will be next: the rights of the elderly to receive Social Security; the rights of the handicapped to be treated fairly; the rights of the poor to obtain a decent education? Will all debate soon fall before majority rule? . . . With no right of debate, what will forestall plain muscle and mob rule?”

Then came the portion of Byrd’s speech which drove Cheney & Co. crazy:

“Many times in our history we have taken up arms to protect a minority against the tyrannical majority in other



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lands. We, unlike Nazi Germany or Mussolini’s Italy, have never stopped being a nation of laws, not of men.

“But witness how men with motives and a majority can manipulate law to cruel and unjust ends. Historian Alan Bullock writes that Hitler’s dictatorship rested on the constitutional foundation of a single law, the Enabling Law. Hitler needed a two-thirds vote to pass that law, and he cajoled his opposition in the Reichstag to support it. Bullock writes that Hitler was prepared to promise anything to get his bill through, with the appearances of legality preserved intact. And he succeeded.

“Hitler’s originality lay in his realization that effective revolutions, in modern conditions, are carried out with, and not against, the power of the State: the correct order of events was first to secure access to that power and then begin his revolution. Hitler never abandoned the cloak of legality; he recognized the enormous psychological value of having the law on his side. Instead, he turned the law inside out and made illegality legal.

“And that is what the nuclear option seeks to do to Rule XXII of the Standing Rules of the Senate.”

After illustrating what such a rule change would do to the Senate, Byrd pointed to its effect on the nation: “The President can simply rule, almost by Executive Order if his party controls both houses of Congress, and Majority Rule reigns supreme. In such a world, the Minority is crushed; the power of dissenting views diminished; and freedom of speech attenuated. . . .”

“Yes, we believe in Majority rule, but we thrive because the minority can challenge, agitate, and question. We must never become a nation cowed by fear, sheeplike in our submission to the power of any majority demanding absolute control.

“If we start, here, in this Senate, to chip away at that essential mark of freedom—here of all places, in a body designed to guarantee the power of even a single individual

through the device of extended debate—we are on the road to refuting the Preamble to our own Constitution and the very principles upon which it rests.”

Interesting in light of Reid’s quoting of Franklin on the monarchy-versus-republic, and Byrd’s warnings of the danger to the Constitution, was a column in the March 16 *Washington Times* by Harlan Ullman, a former Navy officer and conservative commentator perhaps best known for being one of the authors of the “Shock & Awe” doctrine. Ullman warned of the risk, that if the Republican majority in the Senate were to exercise the “nuclear option,” this could set off “a massive chain reaction that will create a political nuclear winter for Congress and the conduct of the nation’s business.”

The greatest fear, Ullman wrote, is that this one-party rule would transform the U.S. into a “de facto parliamentary system.” Perhaps, in the short term, he said, “a parliamentary type of government based on strict majority rule” would make sense. But what would probably happen, is that the minority, having no other path, would use civil disobedience to close down the government by obstructing the work of Congress. “Should Congress shut down, then the President and the Executive branch will become the de facto government without any check or balance.”

“Nothing less than the political future of the nation could be at stake,” Ullman declared.

## Showdown Looms

The confrontation on Cheney’s “nuclear option” could come shortly after the Senate returns from the Easter recess. On March 17, the Senate Judiciary Committee voted out, on a party-line 10-8 vote, the nomination of William Myers to the 9th Circuit Court of Appeals. Committee chairman Arlen Specter had selected Myers’ nomination to go first, believing that this would be the easiest of Bush’s re-submitted nominations to get through, but at the March 1 hearing on the Myers nomination, Specter encountered much tougher opposition to the nomination than he was anticipating.

In covering the committee vote and the Democratic threat to again filibuster the Myers nomination, the *Washington Times* repeats the falsehood that “this is the first time that judicial nominees have been systematically denied a final vote by a minority.” This has been the GOP leadership’s line; for example, Senate Majority Leader Frist has been saying, “Never before has a minority blocked a judicial nominee that has majority support for an up-or-down vote on the Senate floor.”

But, as the March 18 *Washington Post* notes, Democrats have been pointing to the four-day 1968 filibuster by Republicans, which succeeded in blocking Lyndon Johnson’s nomination of then-Associate Justice Abe Fortas to become Chief Justice. In defending the filibuster at the time, then-Sen. Howard Baker of Tennessee stated: “On any given issue the majority at any time is not always right”—something which today’s GOP leadership would do well to remember.