

# Stop the Filibuster

When the Senate of the 85th Congress convenes this week, a number of us, Democrats and Republicans, will move to change Rule 22—the filibuster rule in the Senate.

Not since the Reconstruction Era at the end of the Civil War has civil-rights legislation been passed into law. Civil-rights bills in the Senate have been talked to death eight times since 1938. Numerous other civil-rights bills have died because of the threat of a filibuster. This happened only last summer when a civil-rights bill passed the House but was not even considered in the Senate.

## I

The filibuster, or the threat of a filibuster, has killed not only civil-rights legislation but other important bills as well. When progressive measures have not been killed they have, more often than not, been watered down to meet the demands of their opponents because of this Sword of Damocles which hangs over the Senate.

The villain of the piece is the present version of Rule 22, adopted in 1949. It provides that debate may be limited only by a vote of two-thirds of the Senators “chosen and sworn”—or by 64 positive votes. A motion to limit debate has passed the Senate only four times since 1917, when limitation of debate was first provided by the Senate Rules. No motion to limit debate has been successful since 1927. In only three of the 22 attempts have as many as 64 votes been cast to limit debate—and this has never been done on a civil-rights bill.

The reason is simple. Twenty-two Southern Senators with only eleven allies can now keep a filibuster alive. As 64 positive votes are needed, an absent Senator is in effect casting a vote to prolong debate. The crypto-allies of the South can fail to appear or can feign sickness, and their absence will count as votes to support a filibuster. Thus, this section of the rule locks the door to any meaningful civil-rights legislation.

But Section 3 of Rule 22 throws away the key. It provides that there can be no limit of any kind on debate when the Senate moves to consider a change in the rules. Even 90 Senators could not stop a filibuster on such a motion. If the Senate had said in 1949, when the present version of

Rule 22 was adopted, that no civil-rights legislation could be considered for 25 years, the situation would be exactly as it is now.

## II

In almost every way the Senate begins again when a new Congress convenes. All consideration of bills, resolutions, treaties and nominations begins anew. New committees are appointed. The slate is wiped clean: the proceedings start from the beginning.

In the past, however, the Senate, by acquiescing in them, has accepted the old rules passed on from Congress to Congress. If the Senate of the 85th Congress does this again, there is no chance to break a filibuster or to change Rule 22.

But Article I, Section 5 of the Constitution states that each House may “determine the rules of its proceedings.” Under this explicit constitutional provision the Senate need not acquiesce in the old rules, but can adopt new rules, just as it begins again on bills, resolutions, treaties and nominations. We shall, therefore, move to adopt new rules on January 3. The Senate of 1957 has this right, just as did the Senate of 1789. And new Senators and re-elected Senators must not be deprived of the right to determine the rules under which they shall be governed.

Our view is that until new rules are adopted the proceedings will take place under general parliamentary law. Under parliamentary law, Jefferson's Manual and the precedents of the Senate from 1789 to 1806, a majority of the Senate can limit debate. This is done by moving the previous question. This majority, if it has the courage to do so, can then adopt new rules and a new Rule 22. In this way, and in this way only, can the chains of the filibuster be thrown off.

## III

Unless this is done, the pledges made by both Republican and Democratic parties on civil rights are meaningless and hollow. What is at stake is the dignity of the Senate and its ability to function as a democratic legislative body. Only if this effort is bipartisan can it be successful. Equally so, if it is bipartisan, it will be successful. A small minority must not be allowed to prevent, forever, even the consideration of what the overwhelming majority of the Senate and the country desires.

• SENATOR PAUL H. DOUGLAS

SENATOR DOUGLAS of Illinois is a Democrat, long known for his efforts in behalf of the civil rights of Negroes.

