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## Take Back the Senate, Senators

By IRA SHAPIRO

The current condition of the Senate constitutes a national emergency. Not long ago, Americans looked to the Senate to be, in Walter Mondale's words, the "national mediator," reconciling regional and ideological differences through thoughtful legislating, serious debate, hard bargaining and principled compromise. Today, however, after a 20-year downward spiral, the once great Senate is polarized, paralyzed and dysfunctional. Last month, as she announced her decision to retire, Olympia Snowe, Republican of Maine, described a Senate that "routinely jettisons regular order," "serially legislates by political brinksmanship" and "habitually eschews full debate and an open amendment process in favor of competing, up-or-down, take it or leave it proposals." In *The New Yorker*, George Packer described the Senate as "the empty chamber."

Senator Snowe expressed doubt that the situation would improve any time soon, and there is evidence to support her pessimistic assessment. In response to President Obama's strengthened political position, George Will used his column in the *Washington Post* to advise conservatives to focus on keeping the House and capturing the Senate, where 23 of the 33 seats being contested are held by Democrats, in order to thwart Obama's second term agenda. Senate Republican leader Mitch McConnell has described how he would run the Senate if Republicans gain the majority, and he has already shown that a determined, unified Republican

caucus can paralyze the Senate even without having a majority. In other words, if the Republicans lose the presidential election, they are gearing up for four more years of political obstruction.

This prospect raises profound questions about our political system. In a parliamentary system, the party that is elected gets the opportunity to put its program in place, and to be judged accordingly. We have a different system, based on the separation and sharing of power between the Congress and the president. Our minority party is not supposed to form a shadow government; some cooperation by the minority party is essential to making our system work. The right amount of cooperation between the president and the opposition party is difficult to quantify, but it should be considerably more than zero. Governing in our system is always bone-crushingly difficult; it should not be impossible. The Republican rejection of the concepts of minority cooperation and “loyal opposition” is anathema to the way our political system is supposed to work, and did work.

The great Senate of the 1960s and 70s, which enacted the Civil Rights Act and the Voting Rights Act, challenged the Vietnam War and held Richard Nixon accountable for Watergate, was almost a demilitarized zone where partisan politics was concerned. The Senate changed dramatically in the 1990s as the Republican party moved further to the right (from Ronald Reagan to Newt Gingrich), and adopted a strategy — implemented first by Republican leader Trent Lott — of making the Senate a much more partisan institution. Since that time, the Senate’s capacity for serious debate and bipartisan compromise crucial to effective legislation has eroded, with grave consequences. Restoring the Senate, if not to greatness, then at least to respectable effectiveness, is crucial.

As far back as 1979, Robert Byrd, who revered the Senate, predicted that it would be paralyzed unless fundamental changes in its governing rules were made to limit filibusters. Experience has proven Senator Byrd quite prescient. Two basic, related concepts of Senate operation — “unlimited debate” and “unanimous consent” — need to be reconsidered. Common sense tells us that no political body can function if “unlimited debate” and “unanimous consent” are taken literally. Historically, the Senate had been able to work — often only just barely — because

senators who trusted and respected each other were willing, after substantial debate, to reach principled compromises and vote up or down. That trust and respect has withered, leaving the Senate vulnerable to exploitation of the rules by the minority party and even by individual members for the purpose of obstruction.

I have spent several years studying and writing about what I call the “great Senate” of the 60s and 70s, and I have recently spoken to a number of senators, Democratic and Republican, about the current Senate. I can report that most of the senators are as angry and frustrated about the Senate’s dysfunction as the public is. They feel trapped in the hyper-partisan model that has evolved over the past 20 years. But they are not helpless. They have the power to improve the situation by changing the Senate rules, its leaders and the prevailing attitude.

We need a Senate that engages in substantial, thoughtful debate in which no senator is deprived of an opportunity to make his or her case, but no one can subjugate the Senate to his or her views. “Holds,” by which individual senators can block action on legislation or nominations, should be abolished, other than as brief courtesies extended to senators who might be out of town for good reason. The president — any president — should have the assurance that nominations of executive branch officials and judges will be considered and approved or rejected within a reasonable period of time. While the filibuster is likely to continue as a part of Senate life because both parties fear being in the minority, there should be no right to filibuster legislation before it is even brought up for consideration. The current concept of “non-germane” amendments should be rethought; a legislative body should be able to debate transportation legislation without suddenly veering off to discuss contraception.

Senate leaders set the tone for the institution. In the 1950s, Lyndon Johnson dragged a reactionary Senate into the 20th century through his incomparable energy and force of personality. Mike Mansfield, Johnson’s successor, whose personality and style were completely the opposite of Johnson’s, was instrumental in creating a bipartisan Senate based on mutual respect and trust. Harry Reid and Mitch McConnell have stated their intention to remain as Senate leaders, despite the fact that they have demonstrably failed to reverse the Senate’s decline into polarization and paralysis. Reid deserves respect and sympathy; he has worked

tirelessly to produce legislative results while McConnell has elevated the obstruction practiced by his recent Republican predecessors to an art form. For example, several Republican senators devoted hundreds of hours in 2009 and 2010 to working in good faith on health care and financial regulation legislation, only to find out that they had completely wasted their time. Their leader had determined that total opposition was to be the only Republican position.

Reid and McConnell have been in a partisan knife fight for far too long. Senators' loyalty to the current leaders is natural, but it does not compare in importance to restoring the Senate as an effective institution. What we need is for two senators, one a Democrat, the other a Republican, or even a bipartisan group of senators, to suggest themselves as a team to lead the next Senate before the elections decide which party will hold the majority. The Senate would be a far different institution if led by Dick Durbin of Illinois and Lamar Alexander of Tennessee, or Ben Cardin of Maryland and Rob Portman of Ohio, or Ron Wyden of Oregon and Susan Collins of Maine, or any leaders unmistakably committed to working together across party lines. It would be a major break from tradition, but the Senate needs a radical change.

The decision last September by Senator Alexander to leave the Republican leadership was a shaft of bright light in an otherwise dark political picture. Alexander chose to act on what many senators feel. He said, in essence, that he was not functioning the way a senator should, and the Senate was not functioning the way it should. He left the leadership to free himself to make the bipartisan compromises that were the hallmark of the Senate where Alexander started his career working for Howard Baker, universally recognized as one of the greatest Senate leaders.

When senators choose to act like senators — exercising independent judgment to discern the national interest — change can come rapidly. In the lame duck session of 2010, eight Republicans broke with their leader to support the repeal of “don't ask, don't tell.” The legislation became law because of them. Thirteen Republicans broke with their leader to support the START arms control treaty with Russia. Their action made the treaty's ratification possible. If a significant

number of senators followed Alexander's example, rejecting their assigned roles as partisan operatives, the impact would be profound.

Skeptics will say that it is naïve to expect senators to rise above our vitriolic political culture and return to reconciling our differences through principled compromise. But that strikes me as a far better bet than waiting around for changes in our campaign finance system or a return to civility from the shrill 24 hour media, and a political debate conducted on Facebook and Twitter. The Senate includes many men and women who want their legacy to be a stronger country, not a degraded Senate that fails the American people. We sent them to Washington to overcome our differences, not to reflect or inflame them, and we should ask for nothing less.

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