

**Mark L. Melcher** Publisher  
melcher@thepoliticalforum.com

**Stephen R. Soukup** Editor  
soukup@thepoliticalforum.com

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**THEY SAID IT**

“The Senate describes itself, without apparent irony or hint of self-awareness, as the world’s greatest deliberative body. Wherever they travel, senators are treated with a sort of scented deference that only a republic could confer on its leaders and not risk revolution. Fawning staffers strew petals in their path; highways are made straight for them; rivers are forded lest they get their feet wet. One observer noted that senators take themselves so seriously that ‘they’d wear togas if they thought they could get away with it.’...”

“When mortals appear before Senate panels, they are expected to show proper deference to these lawgivers of the American republic. But while senators may consider themselves Solons, Pericles they most assuredly are not. Going through life in an impregnable carapace of sycophancy is agreeable, no doubt, but as Marie Antoinette discovered, it does not tend to sharpen one’s skills in public argument.”

--Gerard Baker, *The Times* (London), May 20, 2005.

**THE WORLD’S GREATEST BODY OF POPINJAYS.**

It is ironic, in a way, that at a time when the United States is aggressively promoting democracy around the globe, the U.S. Senate, one of America’s great pillars of this noble form of government, is entering a new, more advanced stage of decay.

This circumstance has, of course, not come up during the on-going debate in the Senate over President Bush’s judicial nominees, although concerns about the long-term political importance of the Senate are evident in the recent statements by those members who are fighting desperately to reach a compromise with the White House that will preserve the Senate’s option to use a filibuster against judicial nominees.

While striking such a deal would not halt the institution’s decline, it would at least preserve for the time being some appearance of Senatorial significance. But certainly the take-home message from the on-going fight is that the need for a great “deliberative body” in the fast moving, highly complex politics of Washington today is rapidly diminishing.

A comprehensive look at the slow decline in the influence of the U.S. Senate is too long and complicated for this newsletter. But I thought that a brief outline would provide some insight into the controversy that is causing such a stir in Washington and some clues as to what might lie ahead.

Oddly enough, the seeds of the Senate's decline in importance began in the 1930s when the Great Depression prompted the federal government to take on a huge number of new responsibilities via the "New Deal." These involved the creation of many new regulatory agencies, new public jobs programs, a giant federal retirement plan, a reform of the banking system, and a series of relief measures and welfare agencies to look after the needs of the poor and the unemployed.

This increase in the direct interests of the federal establishment accelerated dramatically during World War II when, as David Brinkley pointed out in his wonderful book *Washington Goes To War*, this "sleepy, early-to-bed Southern town" grew into the capital of the free world. In addition, this war prompted a veritable explosion in technological innovation, producing, among other things, atomic energy, jet engines, television, electronic computers, and an amazing array of synthetic materials and "wonder drugs."

Naturally, all of this created a tremendous demand for huge numbers of bureaucratic "experts" to deal with both the expanding role of government and the complex problems that were growing out of this increasingly complex world. From global trade to global warming to the technological requirements of a modern army to the nuances of a modern economy to intricate regulations governing housing, welfare, farming, race relations, immigration, and environmental protection, the federal government today requires tens of thousands of trained specialists to help with the decision-making process on millions of government projects, large and small.

Not surprisingly, over the years these "experts" have become the *de facto* decision makers for the government, the ones that affect, on a daily basis, the health and economic welfare of the vast majority of Americans and their enterprises. The inevitability of this usurpation of power by civil servants was, as I have pointed out numerous times in these pages, forecast by Max Weber, who predicted shortly after the end of World War I that as the world became more complex, politicians would rely increasingly on "experts" to help them make important decisions. This, he said, would eventually result in the establishment of gigantic, omnipotent bureaucracies that would represent "a monolithic power structure as oppressive as that of ancient Egypt."

More recently, Cornell University political scientist, Theodore Lowi, in his classic book on the modern American manifestation of this phenomenon, *The End of Liberalism*, added a new wrinkle that was unforeseen by Weber. This was the merger between giant private interest groups and their bureaucratic counterparts in government, to form political power bases that would dominate the decision making process in all areas that concern them. Lowi used the phrase "interest group liberalism" to describe this system. Some American political scientists favor the term corporatism.

A not unsurprising consequence of all of this has been a major change in the role of the lawmaker in the grand scheme of government. This has been especially true in the case of U.S. Senators. In the simpler days, up to and including the debates over the New Deal, these elite members of the legislative community were quite often very important players in the significant issues of the day.

Time and again, their wisdom, knowledge, experience, and personal prejudices were brought directly to bear on national issues of great import, from slavery to trade to involvement in foreign wars to the size and scope of government. As anyone with knowledge of American history knows, men like John Calhoun, Henry Clay, Robert LaFollette, Robert Taft, Arthur

Vandenberg, Robert Wagner, and Daniel Webster exercised enormous influence on the direction of the nation by virtue of their dominant personalities and their membership in the U.S. Senate.

Today, it is not just rare but virtually unheard of for any individual Senator to make a difference in an issue of great national importance, or even to say anything on such an issue that goes beyond the mundane. West Virginia's Robert Byrd tries on occasion to move the nation with the kind of rhetorical flourishes that marked the days of the important Senator. But he has neither the intellectual heft nor the political influence to make these speeches more than a simple curiosity, like someone playing Ben Franklin in the tourist section of Philadelphia on a summer afternoon.

When it comes to issues of great importance to the nation, today's Senators generally act as spokespersons for large special interest groups, conveying information and arguments provided by a host of "experts" who favor their particular position. Rarely if ever is a U.S. Senator the most important advocate on any given issue. Sometimes their personal interests and expertise correspond with the issue at hand. But more often than not they are acting as a "hired gun" in exchange for much needed campaign contributions.

The most important function of a Senator today is not as a significant player in debates over national issues, but as a key decision maker in the process of allocating billions of dollars of federal funds via the budgeting process. This is, no doubt, a very significant function, and it allows a Senator considerable power within the government superstructure.

Over the years, however, the power vested in this role has been weakened considerably by a number of factors. One of these is the huge budget deficit, which restricts movement within and among various budget categories. Another factor has to do with the extensive deal making that goes on between and among the Senators themselves, as part of an effort each makes to assure that his or her home state will not suffer any large cuts in the distribution process.

This deal-making process is elaborate and complex, but the idea is simple, i.e., I'll vote to fund your program and you vote to fund mine.

Slowly but surely, this bargaining process has resulted in very little maneuverability in the distribution of federal spending. I described this in a satirical article I wrote in early 2000, which contained the following "fake but accurate" quote from then-Senate Majority Leader Trent Lott as he was said to be organizing a budget compromise among Senate Democrats and Republicans.

For starters, can we all agree that there will be no arguments over how to spend 95% of next year's budget, that we will give everyone who got anything last year at least as much as they got last year, plus an inflation factor? Can we all agree that no program, office, division, branch, bureau, project, or individual bureaucrat will be cut? If we can agree on something as simple as that, we can get out of here in a hurry? Okay? Can we have a show of hands?

The most common response among Senators to having little real impact on the complicated, highly important issues of the day has been to become highly visible popinjays, strutting and fretting upon the stage of Sunday morning television, filling the airwaves with sound and fury which in the end signifies nothing, or at least very little.

Another, related reaction, especially among Democrats, has been to fan the fires of social tension and then proclaim to the world that they are the superheroes who have come to right the wrong. This vocation is not as rewarding as it used to be, so those who would pursue this path to prominence generally have to settle for very small and isolated instances of wrong doing or, in many cases, simply make things up. One common example of this has been to pour over old speeches and court decisions given by nominees for federal judgeships in hopes of finding something that can be turned into a charge of racism or insensitivity to some group said to be suffering from oppression.

Hence, we are told by none other than a bloated old scion of privilege like Ted Kennedy that a black woman who was born into a family of sharecroppers in Alabama, worked her way through law school as a single mother, and eventually became a highly respected Supreme Court Justice in the State of California, is not fit to sit on the U.S. Court of Appeals because she has said things in speeches that indicate concern about the growth in the power and reach of the federal government. An example of the absurd levels to which this search for an “issue” has been taken was recently supplied by Senate Minority Leader Harry Reid, who said of this remarkable woman that she “wants to take America back to the 19th century and undo the New Deal, which includes Social Security and vital protections for working Americans – like the minimum wage.”

One function that the Senate has jealously guarded over the years has been the right of individual members to exercise a great deal of power to block certain actions from moving forward. While this isn't the same as doing something positive, it does provide a measure of power to an individual Senator that is not available to a House member, or to anyone else in Washington besides the President.

This prerogative can be maddeningly irritable at times to other Senators, but they all recognize that if this power is eroded for one, it is eroded for all. Hence, Senators have generally respected procedures such as the filibuster, viewing them as necessary to maintain their uniqueness and to give them individually and collectively a continued aura of power, even as this power diminishes in the face of the realities of a Weberian society.

Hence, we see a handful of the more thoughtful members of today's Senate almost begging their fellow senators not to force the Majority Leader, with backing of the White House, to destroy the power of the filibuster against judicial nominees, even if this means foregoing the use of that power. This is a morally callow position, since it would necessitate that certain Democratic Senators admit that their opposition to President Bush's nominees is based on nothing very

serious. But it is an understandable argument, in that it would help to preserve an illusion of power in the U.S. Senate, at a time when Senatorial power is rapidly going the way of the powdered wig.

As a practical matter, however, this power to obstruct is not maintainable over the long run if it is not ultimately backed up by raw political clout, so the fight over the judicial nominees was in fact over before it began. The executive branch, with its attendant giant bureaucracy, has become much more powerful over the years, and the Senate less. A showdown was bound to occur at some point, and the White House was bound eventually to win.

Nothing could be more foolish than for the GOP to pull back from its threat to “go nuclear” because of fears that the Democrats might someday be in the majority and thus in the position to use the same tactics against them. The simple fact is that if this were to happen, the Democrats would do to Republicans what Republicans are trying to do to them now, regardless of how today's Republicans ultimately proceed.

The bottom line is that while the U.S. Senate is not yet ready to go the way of the British House of Lords, it is in the process of taking another giant step toward becoming less meaningful in the grand scheme of American politics. In some ways this is too bad, like losing the Oak Room at the Plaza in New York. But that's what happens to popinjays in a Weberian world run by experts.

## ELECTION FRAUD AS A POLITICAL TOOL.

For nearly five years now, the Democratic Party has made it official policy to charge Republicans with electoral fraud and to suggest quite openly that the GOP has manipulated the nation's elections to consolidate its power. Obviously, this perennial allegation springs from the collective dissatisfaction among Democrats with Florida's very close and hotly contested results in 2000 and the court cases stemming from those results. Under the chairmanship of Terry McAuliffe, the party apparatus indulged conspiracy mongering and encouraged rage, ultimately joining with and legitimizing the chorus of erstwhile fringe elements who argued, and continue to argue, that Florida was stolen from them and their candidate and that George W. Bush was "selected" by the Supreme Court, not elected by the American people.

Needless to say, this indulgence on the part of the party did not work out quite as well as McAuliffe and his friends in the media echo chamber had expected. When, for example, McAuliffe designated Florida governor and presidential sibling Jeb Bush as the Democrats' top target in 2002, both because of his relationship to the "selected" President and because he was governor of Florida at the time of the infamous 2000 debacle, his plan backfired on him. Not only did Jeb Bush win re-election, but in so doing he became a national-level political player in his own right and a potential future presidential candidate. On top of that, Jeb's re-election, in combination with the Democrats' obsessive focus on the previous campaign, ensured that Florida would actually be less competitive in 2004 than it had been four years previous, with President Bush winning the state's electoral vote jackpot by a relatively comfortable margin.

And the story was much the same throughout the nation. Both in 2002 and last November, the Democratic Party's encouragement of blind rage bolstered by no corroborating evidence led to electoral disaster. McAuliffe and his party's elders appeared to believe that the electorate's revulsion with the "selection" of the president in 2000 would be enough to guarantee victory for their side, both in the

midterms and in the presidential contest, regardless of their strategies or candidates. Indeed, John Kerry became the party's presidential nominee not because he was particularly dynamic or exciting, but because he seemed innocuous enough and because innocuous was all that was deemed necessary in light of the rage that had been simmering since November 2000. The rest, as they say, is history, and a sad history at that for the Democratic Party.

The Republican Party, by contrast, has taken a more subtle approach to electoral fraud. When faced with actual, documented, verifiable cases of voter irregularities that may have swung the outcome of elections, the Republican Party, in general, has reacted with appropriate frustration but with restraint apparently unfamiliar in Democratic precincts.

In Wisconsin, for example, a state that John Kerry won by a scant 11,000 votes, voter "irregularities" were widespread and almost exclusively favored the Kerry camp. Among the most notable incidents, the son of a Democratic Congresswoman, Gwen Moore, and the son of Milwaukee's Democratic former acting mayor were among those charged with slashing the tires on 25 vans to be used in GOP Get-Out-the-Vote efforts. More importantly, vote totals in heavily Democratic Milwaukee County exceeded voter registration roles by more than 4,500. In addition, at least 200 felons voted illegally, and at least 100 Milwaukee residents voted twice. Yet most Americans remain unaware of these significant problems in Wisconsin, in large part because the Republican Party has not made an effort to exploit them for partisan political gain, and certainly the leaders of the party have refrained from alleging that their Democratic counterparts are trying to disenfranchise voters and undermine the Republic.

As might have been expected, this more decorous and prudent approach to the issue of voter fraud appears to have been better received by the voting public than the Democrats' strategy of affected hysteria. Indeed, if the pieces fall into place as many observers expect, Republican restraint on the issue may well help them maintain or even expand their majority in the Senate next year.

For example, a recent Washington state poll shows that Dino Rossi, the GOP candidate for governor last fall, would be a strong candidate against incumbent Democratic Senator Maria Cantwell in next year's midterm election. In fact, according to a Strategic Visions poll released last week, in a hypothetical match-up Rossi would beat Cantwell 49% to 41%, while all other prospective GOP challengers would be beaten badly by the incumbent.

Why are Rossi's numbers so much better than any other Republican's? And how could he possibly win in such a strongly Democratic state? Well, for starters, Rossi is the beneficiary of quite a bit of sympathy from Washington's voters. Moreover, he reminds them of the depths to which some Democrats in their home state will sink to maintain their grip on power. Recall that Rossi's campaign for governor last fall was one that he lost nearly two months *after* election day and then only after the "discovery" of some very suspect votes for his opponent, now-Governor Christine Gregoire. Most observers agree that Gregoire's victory was dubious at best and was made possible only because of several incidents of "sloppiness" on the part of election officials, most notably those in overwhelmingly Democratic King County (Seattle). Last month, the *Wall Street Journal's* John Fund detailed some of the latest developments in the Rossi-Gregoire contest thusly:

Three Washington counties just discovered 110 uncounted absentee ballots – including 93 from Seattle's King County – in a governor's race that occurred more than five months ago and was decided by only 129 votes. Officials in Seattle's King County admit they may find yet more ballots before a court hearing next month on whether a new election should be called. Last Friday, they reported finding a 111th ballot.

The infamous 2004 governor's race was finally decided seven weeks after the election, after King County officials found new unsecured ballots on nine separate occasions during two statewide recounts. After the new ballots were counted,

Democrat Christine Gregoire won a 129-vote victory out of some three million ballots cast. Even as she was sworn in last January, King County election supervisor Dean Logan admitted it had been "a messy process."

He wasn't kidding. During the two recounts, Mr. Logan's office discovered 566 "erroneously rejected" absentee ballots, plus another 150 uncounted ones that turned up in a warehouse. Evidence surfaced that dead people had "exercised their right to vote"; documentation was presented that 900 felons in King County alone had illegally voted and that military ballots were sent out too late to be counted. A total of 700 provisional ballots had been fed into voting machines before officials had determined their validity.

Though Rossi has contested the results, thus far, neither he nor the Republican Party have indulged in the type of histrionics that have characterized Democratic disputation of far less obvious cases of voter irregularities. The court case regarding Rossi's request to have the election results overturned and a new election scheduled for this November begins *today* in Chelan County Superior Court. If Rossi loses his case, which most observers believe he will (overturning an election would require pretty strong evidence of fraud), and if he is able, in the face of such a loss, to maintain a certain amount of decorum, then it is possible that he will be able to parlay the notoriety of the case into a shot at Cantwell's seat next year.

To date, Rossi has rebuffed efforts from national GOP leaders to entice him into the race against Cantwell, arguing that he is primarily concerned with helping his home state as governor and has no real interest in a "political career" in the other Washington. Thus, his candidacy is far from guaranteed.

Additionally, the debate over whether the election was fraudulent has grown more rancorous as the trial has grown nearer, and there is a chance that either Rossi

or some other Republican may step over the line in their protest of the results, thereby squandering the good will he has accumulated among the voters of Washington. In any case, it is clear that the national Republican Party is unlikely to repeat the mistakes of the Democratic Party and use the fraud in this campaign to engage in a campaign of innuendo and indefensible character assassination that could alienate a considerable chunk of independent voters.

The only real question left is whether the leaders of the national Democratic Party will do the same. Since the party's last, wholly unsuccessful attempt to convince the American public that the GOP is adept in the fine arts of voter fraud, it has taken on an entirely new face, replacing its retired tin-eared chairman and its leaders in both houses of Congress. How these new leaders handle accusations of voter fraud may determine the party's ability to right itself and regain its competitiveness.

In the aftermath of last November's bitter loss, John Kerry set what appeared to be the new standard for his party, refusing to pretend that the insinuations of dastardly deeds in Ohio were anything more than mere insinuations. And while Kerry can occasionally be found moaning a bit about Ohio, by and large he has resisted the temptation to play the martyr, never insisting, as Al Gore did, that he was denied his rightful place by nefarious forces of Republican origin. This suggests that he, at least, understands the adverse effect that such grousing has had on his party's image and its ability to attract otherwise uncommitted voters.

But in this limited sense (and in this limited sense only), Democrats are unfortunate that Kerry does not speak on behalf of the entire party. There are, naturally, some within the party, including the usual suspects like Michigan Congressman John Conyers, who still insist that Ohio was stolen from the Democratic nominee and that George W. Bush was once again elected only with the help of skullduggery and perversion of the electoral system. Under normal circumstances, one would expect that these fringe elements would be summarily dismissed, particularly in light of the effect that similar rantings had on the

party over the last two election cycles. But since Howard Dean has replaced the aforementioned Terry McAuliffe as chairman of the party, these are not exactly normal circumstances.

As Dean has demonstrated time and time again over the last two years, he is liable to say or do anything, anywhere, at any time. And as he demonstrated once again yesterday in an interview with NBC's Tim Russert, he is still an exceptionally angry man with a political ear that is just as tinny, if not tinnier than McAuliffe's.

More to the point, while Dean may or may not understand that the strategy of focusing on electoral fraud hurt his party badly at the voting booths, he almost certainly knows that it helped tremendously in fundraising efforts. McAuliffe may have been a dreadful chairman in a great many ways, but he certainly knew how to raise money, better perhaps than anyone in the history of the party. And a crucial part of his fundraising strategy was tapping into the anger and conceit that fed off of the voter fraud pretense.

Thus far, Dean has refrained from following in McAuliffe's footsteps with respect to scurrilous charges of voter fraud, but he has also refrained from following in McAuliffe's footsteps with respect to fundraising. Whereas McAuliffe more than lived up to his pre-chairmanship billing as the Clintons' bag man, Dean has yet to fulfill his promise as a prodigious fundraiser, a fact first noted a couple of weeks ago by columnist Bob Novak, who put it thusly:

Dean's deficiencies as face and voice of the Democratic Party were supposed to be overcome by his legendary prowess, evident by his run for president, raising funds in small packages. That so far has proved a grievous disappointment. First-quarter figures show the DNC received only \$13 million from individuals, compared with \$32 million raised by the Republican National Committee. Overall figures were \$34.2 million by the RNC, \$16.7 million by the DNC.

One suspects that if Dean's DNC continues to lag the GOP in terms of receipts, party operatives will start to grow impatient, which, in turn, will compel the good doctor to reassess his fundraising strategy. Certainly Dean has shown no compunction about describing his political opponents in the vilest of terms, so the idea that he would reiterate the baseless charges that Republicans under the leadership of George W. Bush have taken to manipulating the election process is hardly far-fetched. If anything, the fact that he has yet to do so is what is surprising.

And if Dean does indeed return to the theme of Republican-spawned election fraud, then there will be one more reason to expect 2006 to be another tough year for the Democratic Party. The American people appear to have rejected the idea that the GOP is manipulating the election process fairly decisively, though that may not stop the Democrats from continuing to push the idea. But then again, when has the modern manifestation of the Democratic Party *ever* taken the American people's rejection of an idea as evidence that they should let it go?

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