

FAILED FILIBUSTER REFORM DOESN'T ONLY AFFECT PARTISAN RELATIONSHIPS

As you've no doubt heard, Harry Reid, with the support of a handful of Senators, has killed the effort to reform the filibuster.

DDay has come out of retirement to issue an excellent rant on what this means for democracy. [Update] Here's Kagro X on what the deal means in practice.

But I wanted to point to this exchange—between still-Senator John Kerry, who had been squeamish but open to reform, and Jim Risch, in the former's confirmation hearing to become part of the Executive Branch. (1:25 and following)

Risch: I know you have a deep appreciation for the Constitutional process regarding foreign relations matters. There are a lot of us who are becoming increasingly concerned about all this talk about Executive Agreements as opposed to treaties that are negotiated by the Executive Branch as contemplated by the Founding Fathers and ratified, if appropriate, by this committee and eventually by the full Senate. Can you give us your view on matters regarding Executive Agreements. How do you feel about that and the bypassing of the C—

Kerry: Well, every Administration in history,

Risch: Appreciate that.

Kerry: —Republican and Democratic alike, have entered into Executive Agreements.

Risch: You agree the better process would be to submit it to this committee

first?

Kerry: It would depend—I would say to you Senator that it would depend on what the subject matter is and what the sort of scope is and whether or not it falls under traditional treaty purview or it falls under Executive Agreement purview. I can't, I don't want to be commenting in some prophylactic way, one side or the other, without the specific situation in front of me. But I'm confident the President is committed to upholding the Constitution I don't think he's ... you know, I think, I'll say this to all of you. There's no better way to guarantee that whatever concerns you have about the President's desire to move on an Executive Agreement would be greatly nullified or mollified if we could find a way to cooperate on a treaty or on the broader issues that face the nation. But, you know, I think **there's a lot of frustration out there that some of the automatic ideological restraint here that prevents the majority from being able to express their voice** has restrained people and pushed people in a way that they have got to consider other ways of getting things done.

Risch: And that's exactly what concerns us, Senator Kerry, is the fact that it's okay to do this through the regular order if it gets done, but if it's not going to get done, the ends justify the means, it's okay to end run around the Congress. And I gotta tell you I feel strongly that that is not the appropriate way to do it. The Founding Fathers didn't say do this if it's convenient and it's okay not to do it if it's not convenient.

Kerry: Is that right. I would agree with you and I'm not suggesting that that is

the standard. But I am saying to you—and I think you know exactly what I'm talking about— that there are times around here, in recent days only, and I don't want to get deeply into it, where certain arguments that are not necessarily based either on fact or on science or anything except the point of view of some outside entity have prevented certain things from being able to be done. [my emphasis]

Basically Jim Risch was objecting to Obama's consideration of using Executive Agreements with other countries rather than treaties. In response, Kerry suggested that if the Republicans didn't obstruct so much using the filibuster—preventing the majority from being able to express its voice—then Obama would be more likely to use Executive Agreements.

Frankly, Risch is defending not just the right of some right wing Senators to hold up treaties, but also some backassward policies. Kerry's nod to science suggests one of the issues here is in climate negotiations (though that's not the only one—Obama is also avoiding Congress on some horrible IP negotiations). To the extent that national security is a reason to bypass Congress (it's not, but Republicans have argued it is), then climate change ought to qualify as well.

But Kerry—at almost precisely the moment Democrats chose not to pursue a way to bypass Republican obstruction and as part of the process to become part of the Executive Branch—used Republican obstruction as an excuse to bypass Congress.

And so the Democrat's refusal to make the Senate more democratic will, in turn, lead the Executive Branch to be even less democratic.