

MIQDASH BETHEL COVENANT INSTITUTION

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DOCUMENT 196

THE FILIBUSTER, THE CONSTITUTION, AND THE COVENANT

Is the Filibuster Constitutional? Is It Good for the American People? And How Should the Government Operate Under the Written Tanakh?

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REACHING JUDAISM, CHRISTIANITY, AND ISLAM

☆ JUDAISM	† CHRISTIANITY	C★ ISLAM
The <i>Sanhedrin</i> operated by majority rule, yet Torah law itself binds every ruler and judge alike (Shemot (Exodus) 23:2). Government under the covenant is never above the written Torah — it is answerable to it.	Romans 13 affirms civil authority as ordained for order, but the Tanakh's own kingship law (Devarim (Deuteronomy) 17:14–20) already places binding written limits on any human ruler, Israelite or otherwise.	<i>Shura</i> (شُورَى, consultation, Qur'an 42:38) mirrors the Tanakh's own pattern of distributed elders (Bemidbar (Numbers) 11:16–17) — governance shared among many counselors rather than concentrated in one man.

DOCTRINAL AUTHORITY — STANDING RULE OF MIQDASH BETHEL COVENANT INSTITUTION

The sole binding authority of Miqdash Bethel Covenant Institution is the *Tanakh* — the written covenant of **Yahweh**. No Talmudic tractate, Church council decree, papal encyclical, hadith collection, or extra-biblical tradition carries doctrinal weight equal to or greater than the written Torah. Where any tradition conflicts with the written covenant, the written covenant governs without exception. The Talmud, New Testament, and Qur'an are cited as historical reference and theological comparison only. The **Devarim (Deuteronomy) 19:15** two-or-three-witness evidentiary standard governs all textual claims in this document.

HOW TO READ THIS DOCUMENT

This document applies the sole authority of the written *Tanakh*. **Yahweh (יהוה)** and **Elohim (אלהים)** appear in bold throughout. Hebrew book names are given with English in parentheses, both bold. Hebrew transliterations appear in ***bold italic*** with English meaning in parentheses at every occurrence. Scripture references are bold. This study also engages United States constitutional law and civics as external, non-doctrinal subject matter — that portion is historical and legal analysis, not covenant doctrine, and is clearly separated from the covenant section that follows it. Three audiences are addressed simultaneously: Judaism, Christianity, and Islam. The Written Tanakh governs all covenant conclusions.

TANAKH BOOKS CITED IN THIS DOCUMENT

DIVISION	BOOKS CITED	PURPOSE IN THIS STUDY
Torah	Shemot (Exodus), Vayikra (Leviticus), Bemidbar (Numbers), Devarim (Deuteronomy)	Foundation text — the covenant’s own pattern for delegated, law-bound government
Nevi'im (Prophets)	Shmuel Aleph (1 Samuel)	Israel's demand for a king — the covenant’s own warning against concentrated human power
Ketuvim (Writings)	Mishlei (Proverbs)	Wisdom on deliberation, counsel, and the safety of a multitude of counselors

PART ONE — THE FILIBUSTER AND THE UNITED STATES CONSTITUTION

This first part is civics and constitutional-law analysis, not covenant doctrine. It is offered so the covenant section that follows — Part Two — can be applied to something concrete: the actual machinery of American government. Sources are drawn from the U.S. Senate's own historical office, the Congressional Research Service tradition, the Brennan Center, the Bipartisan Policy Center, the Brookings Institution, the National Constitution Center, and constitutional-law scholarship on both sides of the question.

I. What the Filibuster Is, and Where It Came From

A filibuster is any tactic — most classically an open-ended speech — used by a senator or group of senators to delay or block a vote on a pending matter. The term itself comes from a Dutch-Spanish root meaning 'freebooter' or 'pirate,' applied because a filibustering senator seizes control of the floor much as a pirate seizes a ship.

The filibuster was not part of the Senate's original design. In 1789 the House and Senate rulebooks were nearly identical, and both bodies had a motion — 'calling the previous question' — that let a simple majority cut off debate. In 1806, at Aaron Burr's suggestion that the motion was redundant, the Senate dropped it. No one at the time intended to create unlimited debate; the consequence was accidental, and it took decades before any senator exploited it. The first real filibuster is generally dated to 1837.

For over a century the Senate had no formal way to end a filibuster at all. Frustration — especially after eleven senators blocked a 1917 bill to arm merchant ships on the eve of American entry into World War I — led the Senate to adopt Rule XXII, the cloture rule, allowing two-thirds of senators present and voting to close debate. Cloture was rarely achieved; only a handful of cloture votes succeeded in the following forty years. In 1975 the threshold was lowered to three-fifths of senators duly chosen and sworn — 60 of 100 — which remains the practical bar today.

II. How the Modern Filibuster Actually Operates

Today's filibuster rarely involves an actual marathon speech. Since Senator Mike Mansfield's 1972 'two-track' reform, the Senate can set a filibustered matter aside and conduct other business simultaneously, which means a single senator's objection can quietly hold a 60-vote threshold over a bill without ever taking the floor — the so-called 'silent' or 'stealth' filibuster. More than 160 statutory exceptions have been carved out since 1969, most importantly the budget reconciliation process created by the Congressional Budget Act of 1974, which allows certain spending, revenue, and debt-limit bills to pass with a simple majority under the Byrd Rule. In 2013 and 2017, Senate majorities used the 'nuclear option' — a simple-majority procedural ruling — to eliminate the filibuster for executive and judicial nominations, including Supreme Court nominations. The legislative filibuster itself has survived every such change so far, and as of mid-2026 remains a live political flashpoint, with pressure from the executive branch on Senate leadership to eliminate it entirely in order to pass priority legislation over minority-party objection.

III. Is the Filibuster Constitutional? — The Case Against

Scholars who argue the modern filibuster is unconstitutional generally make a structural argument, not a textual one — the Constitution does not mention the filibuster at all, so the argument has to be built from surrounding principles.

James Madison, writing in **Federalist No. 58**, warned that requiring more than a simple majority to act would invert 'the fundamental principle of free government': it would no longer be the majority that ruled, but a minority. Critics argue the 60-vote cloture threshold does exactly what Madison warned against for ordinary legislation.

Professor Josh Chafetz has argued the strongest structural case: that the words "*passed*" in Article I's description of the legislative process, "*determine*" in the Rules of Proceedings Clause, and "*consent*" in the Appointments Clause all carry an implicit premise — that a focused legislative majority must be able to act

within a reasonable time. On this view the modern stealth filibuster, understood as a permanent 60-vote requirement rather than genuine debate, frustrates that constitutional design.

A related entrenchment argument holds that even if a single filibuster is tolerable, the Senate rule barring a newly elected majority from changing that rule except by a two-thirds vote is itself unconstitutional, because it lets a past Senate bind a future one — one legislative majority should never be able to bind a future legislative majority's basic procedural power.

IV. Is the Filibuster Constitutional? — The Case For

The Constitution's Rules of Proceedings Clause (**Article I, Section 5**) states plainly that 'each House may determine the rules of its proceedings.' Defenders of the filibuster, including Professor Michael Gerhardt, argue this clause gives the Senate broad and largely self-governing authority over its own procedure, and that a body free to require unlimited debate is doing nothing more than exercising that granted power.

Historical pedigree is also invoked: the filibuster has operated, in some form, for roughly two centuries, and courts have consistently treated internal chamber rules as a political question unsuited to judicial resolution. No federal court has ever struck down a Senate rule on this basis, and constitutional scholars on this side argue that if the filibuster is to be changed, the correct forum is the Senate itself, acting by whatever majority or supermajority its own rules currently require — not a court.

Both camps agree on one point: this is not a dispute any current federal court is likely to resolve. It remains, as one legal historian put it, a matter of constitutional conscience for senators rather than a live question of justiciable law.

V. Is the Filibuster Good or Bad for the American People?

This is a contested political and empirical question, not a settled one, and fair-minded people weigh the historical record differently. Both sides of the argument are presented below.

The case that it is good for the country:

Supporters describe the Senate, in the phrase often attributed to the Founding era, as the 'saucer' that cools the House's hotter 'tea' — a chamber built to slow down transient majorities and force cross-party negotiation. A 60-vote threshold means major legislation typically requires some bipartisan buy-in, which can produce more durable, broadly accepted law and protect a geographically and politically diverse minority of the country from having national policy imposed on it by a bare majority. It also cuts both ways over time: whichever party is in the minority today benefits from the same rule when the Senate flips, which is part of why many senators in both parties have historically been reluctant to eliminate it even when it blocks their own agenda.

The case that it is bad for the country:

Critics point to a documented history of the filibuster being used to block anti-lynching bills in 1922 and 1935, the Civil Rights Act of 1957, and legislation against poll taxes and employment and housing discrimination — of thirty measures derailed by filibuster between 1917 and 1994, half involved civil rights, according to a widely cited study by political scientists Sarah Binder and Steven Smith. Critics also argue that a 60-vote requirement lets senators representing a minority of the country's population block legislation with

majority support nationwide, that it has produced chronic gridlock on issues with broad public backing, and that its 'stealth' modern form — a hold placed without ever taking the floor — bears little resemblance to the marathon speeches the term originally described.

A fair reading of the record is that the filibuster has functioned as both a shield for minority political interests and a weapon used historically against expansions of civil rights — and reasonable people, including senators in both parties, continue to disagree sharply about whether its net effect on the country is protective or obstructive.

PART TWO — THE COVENANT PATTERN: HOW YAHWEH INSTRUCTED GOVERNMENT TO OPERATE

Having set out the constitutional civics plainly, this closing part turns to covenant doctrine — the written Tanakh's own pattern for how government should be structured and restrained. The Tanakh was not written as a constitutional treatise, but it does not leave the question silent. Five witnesses, per the Devarim (Deuteronomy) 19:15 standard, establish a consistent covenant pattern.

VI-A. Witness One — Shemot (Exodus) 18:21–22: Delegated, Capable, Tiered Judges

Yitro (Jethro), Moshe's (Moses') father-in-law, gives the first recorded instruction on structuring covenant government: **"Look for able men from all the people, men who fear Elohim, men of truth, who hate covetousness, and place such men over them as rulers of thousands, of hundreds, of fifties, and of tens... so it will be easier for you, and they will bear the burden with you."** (Shemot [Exodus] 18:21–22) This is not autocracy and it is not a pure democracy — it is tiered delegation. Authority is distributed downward through capable, vetted men answerable both to the people and to Yahweh, and no single ruler carries the full weight of judgment alone.

VI-B. Witness Two — Devarim (Deuteronomy) 1:13–17: Chosen From Among the People

Moshe (Moses) restates the principle with an added element — the judges are drawn from, and in some sense answerable to, the tribes themselves: **"Choose for your tribes wise, understanding, and experienced men, and I will appoint them as your heads... You shall not be partial in judgment; hear the small and the great alike."** (Devarim [Deuteronomy] 1:13, 17) Impartiality is written directly into the qualification for office — the covenant does not permit a ruler to favor the powerful or the poor merely because of their standing.

VI-C. Witness Three — Devarim (Deuteronomy) 17:14–20: Written Limits on the King Himself

When Yisra'el (Israel) later requests a king, the covenant does not forbid the office — it binds it. The king **"shall not multiply horses for himself... nor shall he multiply wives for himself... nor shall he greatly multiply silver and gold for himself. And he shall write for himself a copy of this Torah... that his heart may not be lifted above his brothers."** (Devarim [Deuteronomy] 17:16–17, 18, 20) This is, functionally, a written constitutional restraint on executive power centuries before the term existed — the ruler is placed under the same written law as the people he governs, not above it.

VI-D. Witness Four — Bemidbar (Numbers) 11:16–17: A Council, Not a Single Voice

Yahweh instructs Moshe (Moses) to gather **seventy elders** and share the governing burden among them: **"I will take some of the Spirit that is on you and put it on them, and they shall bear the burden of the people with you, that you may not bear it yourself alone."** (Bemidbar [Numbers] 11:16–17)

Concentrated, unshared authority is treated as a burden Yahweh Himself moves to relieve — the covenant pattern favors a deliberative council over a single unchecked voice, a principle echoed in Mishlei (Proverbs) 11:14: "Where there is no counsel, the people fall; but in the multitude of counselors there is safety."

VI-E. Witness Five — Shmuel Aleph (1 Samuel) 8: The Covenant's Own Warning Against Concentrated Power

When Yisra'el (Israel) demands a king 'like all the nations,' Yahweh instructs Shmuel (Samuel) to warn them plainly what concentrated, unchecked human power will cost them — conscription, taxation, seizure of property — concluding: **"And you will be his servants. And in that day you will cry out because of your king... but Yahweh will not answer you in that day."** (Shmuel Aleph [1 Samuel] 8:17–18) The covenant does not romanticize centralized human authority. It permits it, under the King Law's written limits, but it never pretends concentrated power is safe by default.

VI-F. Synthesis — The Covenant's Answer to How Government Should Operate

Taken together, these five witnesses do not map neatly onto either side of the modern filibuster debate — the covenant pattern is not a brief for unlimited minority obstruction, nor is it a brief for unchecked majority rule. It is a third thing: government by capable, impartial, tiered, and law-bound representatives, deliberating in council rather than through a single voice, operating under a written standard that binds the ruler as much as the ruled, and structured so that no single office — whether one king or one obstructing minority — can escape accountability to that written law.

Applied honestly to the American question: the Tanakh's pattern would commend structures that force deliberation and counsel (Bemidbar 11; Mishlei 11:14) and that guard against one unchecked voice seizing total control (Devarim 17); it would be far less comfortable with any mechanism, majoritarian or minoritarian, that is used to entrench injustice against 'the small' rather than to secure impartial hearing for them (Devarim 1:17; Vayikra [Leviticus] 19:15). Whether a 60-vote cloture rule serves that impartial-hearing purpose or defeats it in any given case is a matter of application the covenant leaves to human judgment and to the two-or-three-witness scrutiny of the facts on the ground — not to abstract loyalty to either 'majority rule' or 'minority protection' as a slogan.

VII. Seven Covenant Declarations on Government and the Rule of Law

#	COVENANT DECLARATION	BASIS
I	Governing authority is to be delegated among capable, tiered, Yahweh-fearing judges — never concentrated in one unaccountable office.	Shemot (Exodus) 18:21–22

II	Judges and rulers must be chosen from among the people, and impartiality toward small and great alike is a condition of office, not an option.	Devarim (Deuteronomy) 1:13, 17
II I	Even a properly instituted ruler is bound by the same written law that binds the people — no office is exempt from the covenant's own text.	Devarim (Deuteronomy) 17:14–20
I V	Multiplying counselors and sharing the burden of governance is Yahweh's own remedy against one man bearing, or seizing, total authority.	Bemidbar (Numbers) 11:16–17; Mishlei (Proverbs) 11:14
V	Concentrated human power, even when requested by the people themselves, carries a cost the covenant refuses to hide from its citizens in advance.	Shmuel Aleph (1 Samuel) 8:17–18
V I	No accusation or judgment against a person or a minority stands on one witness alone — every governing claim must be corroborated.	Devarim (Deuteronomy) 19:15
V II	The measure of any procedural rule, majoritarian or minoritarian, is whether it secures impartial justice for the small along with the great — not which faction it currently favors.	Vayikra (Leviticus) 19:15

"Choose for your tribes wise, understanding, and experienced men, and I will appoint them as your heads."

Devarim (Deuteronomy) 1:13 — The Written Covenant of Yahweh

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