

Twitter Thread by Will Stancil



Will Stancil

[@whstancil](#)



Listening to a [@jbouie](#) livechat about the filibuster right now and it's made it clear: the filibuster (and particularly reconciliation as a workaround) hasn't just bottled up progressive legislation, but it's warped the entire constitutional system in subtle-but-fundamental ways.

Reconciliation is the only way to get a law through Congress most of the time, and most of Congress's authorities, to regulate or pass social legislation, are inaccessible in reconciliation.

So the role of Congress has shifted. Instead of the broad national legislature envisioned by Article I - a body to rule over the whole country and direct its government - Congress has become, in most cases, an agency for management of the federal budget.

The existence of reconciliation as an exception to the filibuster is essential to this shift. If reconciliation didn't exist, Congress would be sidelined almost completely, paralyzed, and what would likely happen is that frustrated majorities would just end the practice entirely.

But because of reconciliation, there's actually a pathway to legislating - it's just bound by a strict set of rules that actually dramatically alter the scope of how Congress can act. Thus most of Congress's work gets channeled through those limits, narrowing its practical power.

From Congress's perspective, this almost reverts the body back to a pre-New Deal status quo, with a much weaker federal government - as if there was a congressional amendment restricting the body's enumerated powers to the federal budget and requiring a max of one law annually.

But we HAVEN'T reverted back to a pre-New Deal status quo. We still have a post-New Deal executive branch, with vast and powerful executive agencies managing huge sectors of government. And with Congress unable to act outside the budget, those agencies are hard to check.

So the filibuster/reconciliation chokepoint hugely shifts the locus of power towards the executive branch, which acts unilaterally after presidential elections, supported by aging-but-now-largely-inalterable pieces of legislation creating those agencies and their authorities.

I think this new de facto constitutional order has begun to creep into the minds of people in government, too. You saw it a lot in Trump's administration - the executive running rampant, doing whatever it pleased, while Congress mostly busied itself with budgets.

Non-budgetary, non-spending matters are often treated by congressional types as a kind of sideshow, and the "real" business of their job is shifting money around. I suspect that's in part because money stuff is the only legislation they have a realistic avenue to pass!