NOT MERE hypocrisy. "Rank hypocrisy" and "sanctimonious hypocrisy." During this week's filibuster against President George W. Bush's judicial nominees, U.S. Sen. Tom Harkin of Iowa repeated the word "hypocrisy" time and again, like a mantra, with varying adjectives attached, while referring to his Republican adversaries.

Sen. Harkin supports the filibuster, and he opposes a bipartisan proposal to change Senate rules to weaken filibusters so that, after some delay, nominees could finally receive a straight, fair, up-or-down vote.

But in 1995, the Senate considered the exact same rules change, not just for judicial nominations, but for all Senate matters. And who were the two authors, in 1995, of that proposed rules change that now, in 2003, Sen. Harkin so fiercely denounces?

One was Sen. Joe Lieberman of Connecticut, the Democratic nominee for vice president in 2000. The other lead author was Tom Harkin.

Hypocrisy, indeed.

In 1995, supporters of that rules change included current Democratic Sens. Russ Feingold, John Kerry and Barbara Boxer. All now are using the filibuster against Republican judicial nominees, and all are using the filibuster itself to oppose the filibuster rules change they once supported.

In 1995, Sen. Lieberman said: "There is no constitutional basis for the filibuster rule ... it is, in its way, inconsistent with the Constitution, one might almost say an amendment of the Constitution by rule of the U.S. Senate." Likewise, Sen. Ted Kennedy, D-Mass., said then that "the notion that a filibuster can be used to defeat or attempt to change the filibuster rule cannot withstand analysis. It would impose an unconstitutional prior restraint on the parliamentary procedure in the Senate."

"I really believe the filibuster rules are unconstitutional," agreed Sen. Harkin.

The New York Times, now a particularly fervid supporter of the Democratic filibusters, wrote then that a filibuster "frustrates democracy and serves no useful purpose."

A little more intellectual consistency would be welcome.

To understand what's really going on in the Senate, a brief review of the filibuster is in order. The very name comes from a Spanish word for piracy. It refers to a type of hijacking of ordinary majority rule.

Originally, though, filibusters served a reasonable purpose. The idea was to ensure that a minority at least had ample time to debate an issue, in hopes of making its case to the public and perhaps swaying some Senate colleagues.

A filibuster was a talk-a-thon, a tool for temporary obstruction, to keep a majority from steamrolling a proposal through the Senate without allowing opponents the chance to be heard.

In the past 30 years or so, though, filibusters have increasingly been abused. On ordinary legislation, they have become standard operating procedure not just to delay, but to kill bills outright.

But never in the history of the United States had filibusters been used to kill judicial nominations. It takes 60 votes to defeat a filibuster, rather than the usual majority of 51. The Constitution by clear implication and the
Federalist Papers explicitly indicate that a majority of the Senate should have the right to vote, up or down, on potential judges.

Just to reach consideration by the full Senate, nominees already run a difficult gantlet. They first must attract attention through their legal acumen. Their resumés must be sterling. They must undergo a thorough background check by the FBI.

All their tax records and finances are examined with a fine-tooth comb. A committee of the American Bar Association rates their fitness.

And then these nominees, many of whom are not accustomed to the brutality of politics, must listen to opposing senators distort their records.

These days, it's not enough for senators to explain why the nominees are wrong on legal interpretations. Instead, some senators imply that the nominees are racist, or mean to the point of viciousness, or personally unable or unwilling to sympathize with the disabled or victims of spousal abuse.

After all that, if a nominee receives a majority vote in the Senate Judiciary Committee, he or she finally gets a vote on the Senate floor. Or at least that's been the case until this year, when most of the Senate Democrats decided to reject 214 years of tradition and the clear intent of the Constitution -- subverting this nation's important separation of powers in the process.

Senate Democrats say that Republicans used other parliamentary tactics to block some nominees of former President Bill Clinton. The Democrats exaggerate the numbers, but in some instances that is true.

The difference is, every one of those "blocked" nominees could have been brought up for a floor vote with the insistence of a simple majority of the Senate. Yes, that's right: Even a nominee held up in committee can be brought to the floor upon the demand of a majority of senators.

Never, until this year, has a majority of the Senate been denied the opportunity to vote for a nominee. But now, by abusing the filibuster rule that they themselves previously opposed, Senate Democratic leaders effectively require a 60-vote supermajority to confirm a judge.

Hypocrisy is perhaps the mildest word that should be used in this case. And it should be wielded not by the Democrats, but at them.

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