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From the Office of UNITED STATES SENATOR ROBERT C. BYRD  
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The Senate --  
THE FORUM OF FREEDOM

An Address by

HON. ROBERT C. BYRD  
of West Virginia

~~before the~~

~~27TH ANNUAL CONFERENCE OF THE WEST VIRGINIA  
JUDICIAL ASSOCIATION~~

~~Bluefield, West Virginia~~

~~October 10, 1963~~

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The Constitution of the United States came from the Federal Convention as an instrument of compromise. Its ratification, in the words of John Adams, was "extorted from a reluctant people by grinding necessity." The delegates' individual ideals and theories had had to give way; for at times the task of reaching an agreement upon a draft Constitution that could stand some chance of being accepted by nine states had seemed hopeless. Once ratified, it became the typical example of a rigid constitution.

In almost every phrase relating to the Senate there is reflected the delegates' anxious compromising. The result was a legislative body unique in its basis of representation, unique in its relation to the Executive and to the other branch of Congress, unique in its procedure, and unique in its weighty non-legislative powers. It was designed to be a small body; associated with the President somewhat as an executive council; acting as judge in the trial of all impeachments; constituting a check upon "the changeableness, precipitation, and excesses of the first branch," and serving especially as the guardian of the small states against aggression on the part of the large states, and as the protector of all the states against encroachment by the new centralized power. And it was to be the people's defender against the turbulency of democracy.

MORE. . .MORE

BYRD -- ~~ADD I~~

For more than a century not a word of the Constitution relating to the Senate was altered. Nevertheless, long before the end of that period the Senate had outstripped the House in power and prestige, had become the only "Upper Chamber" dominant in a national legislature, if not the most powerful single legislative body in the world.

Of course, there was never a time when the Senate was not the target of severe criticism. The very nature of its most distinctive functions inevitably arouses irritation. It was designed for the express purpose of applying restraints: no House bill was to become law till it had run the gauntlet of Senate revision and amendment; without its advice and consent the President was to make no treaty, appoint no ambassador or consul, and name no department head or judge; except by the verdict of the Senate in an impeachment trial, neither the President nor any federal judge was to be removed from office. Every one of these tasks assigned to the Senate implies the exercise of deliberate and independent judgment, which may at any time set at naught, the cherished purposes of the President or of the House. In fact, before the end of the Senate's very first session the House had become restive at the Senate's delays and dissents; President Washington had caustically reproached the Senate for its failure to confirm what he deemed a most fitting and desirable nomination, and had shown great irritation at its unwillingness to give immediate and unqualified consent to the ratifying of a treaty. In the first great impeachment trial, the Senate's verdict for the defendant, though approved by the historian, infuriated President Jefferson.

~~The period which most enhanced the prestige of the Senate at home and abroad was that during which Webster, Calhoun, and Clay were the leaders in the great debates over states' rights, slavery, and the relative power of President and Senate. But in the opinion of Senator Hoar, writing from a retrospect of twenty-five years, the Senate was more powerful in the late seventies than ever before or since, not because of the pre-eminence of leaders of the rank of the "Great Triumvirate" of the decade before 1850, but because the average~~

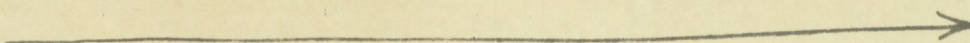
The period which most enhanced the prestige of the Senate at home and abroad was that during which Daniel Webster, John C. Calhoun, and Henry Clay were the leaders of the great debates over states' rights, slavery, and the relative power of President and Senate -- debates not unlike some which have occurred in more recent years, the debate over the President's power with respect to the war in Vietnam, for example.

It may have been because of this unique function <sup>in the formulation of national policy</sup> that England's great 19th Century statesman William Gladstone once referred to the U. S. Senate as "that remarkable body, the most remarkable of all the inventions of modern politics."

Can the Senate be so characterized today? Has it changed from what it was a generation or a century ago?

In some aspects it has changed, because manners and customs change. But the changes which have occurred are mostly superficial. As far as its basic functions are concerned, as far as its unique place in the governmental system of this Republic is concerned, the Senate has not changed. I assume, however, that Americans are most concerned, not with the vanity of preserving a unique Senate, but with the desirability of maintaining a useful one.

What, then, is there about the Senate that is especially useful and worthy of preservation?

Let me try to answer the question by discussing the two main areas in which the Senate has come under fire this year, both from its own liberal members and from outside critics as well: the use of the so-called 

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seniority rule for determining committee chairmen and the ranking minority members of committees; and the so-called rule of unlimited debate.

A stronger than usual attempt was made to change the seniority system <sup>this year.</sup> Opponents contended that the work of the Senate could better be carried on if chairmen of committees and ranking minority members were elected and re-elected every two years by ballot, instead of gaining and retaining their chairmanships through length of uninterrupted service.

The proposal was defeated on a roll call vote, and the seniority system will be retained, at least for the present, ~~in the Senate.~~ It offers a number of important advantages.

*In my judgment,*

Election by ballot, in party caucus, of committee chairmen and ranking minority members would be cumbersome, unwieldy, and time-consuming. Each two years, with the beginning of a new Congress, every chairman and every ranking minority member of the 17 standing committees of the Senate—as well as other committees—would have to be elected in party caucus by ballot.

Such a system would be an open invitation to log-rolling and politicking by outside pressure groups—which would attempt to influence the selection—and possibly even interference in the internal organization of the Senate by the White House.

When members of the Senate know who is in line for what, political maneuvering within the Senate for chair-

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manship positions is reduced virtually to zero.

Unnecessary friction, divisiveness, and ill-feeling could easily be caused by organizing committees through an election process based on popularity and vote getting prowess. The orderly conduct of business should not be subordinated to internal jockeying for power among politically ambitious members.

Every system, of course, has drawbacks, and this is not to say that the seniority system is perfect. But it has been tried; it works very well; and no alternative that has yet been suggested can be expected to work any better, if as well.

Few men can serve on committees of the Congress for the length of time necessary to reach chairmanships without gaining a vast amount of knowledge and know-how with regard to the pertinent agencies of the government, the statutes involved in their field, and the all-important background against which legislative proposals must be weighed.

The seniority system, more nearly than any other system, assures that committee chairmen will possess the necessary experience and expertise.

The seniority system is a highly impersonal method of selecting committee chairmen which promotes harmony, avoids needless conflict, and, in the end, expedites the Senate's work.

siderable percentage of the membership in that class.

In the membership of 100 Senators today, I would venture to guess that there are a few who could be called millionaires, while several might be considered in comfortable circumstances. There are others who would be considered of modest means in any community.

Now to return to Gladstone's reference to the Senate as the most remarkable invention of all modern politics, and to my question as to whether or not the Senate had changed from what it was a century ago. I maintain that its unique place in the government of this Republic has not changed. We are all concerned, I assume, however, not with the vanity of preserving a unique Senate, but with the desirability of maintaining a useful one.

~~What, then, is there about the Senate that is especially useful~~

Let me turn now to the question of unlimited debate and preface my remarks <sup>about</sup> ~~on~~ what I consider to be one of the Senate's

most valuable aspects by recalling a controversy that found its way into the press a few years ago. It concerned the definition of liberalism. Such labels as liberal and conservative have never interested me to a great extent inasmuch as I have never aspired to be called either. I have preferred to be a centrist and remain flexible. But, if I remember correctly, literally dozens of politicians, public men, and academics flooded the magazines of the country with wordy, detailed, and sometimes mystical descriptions of what a liberal is, what he is supposed to stand for, what programs he must favor in order to qualify for the title, and which causes are worthy or unworthy of support.

None of these articles, I thought, managed to give any comprehensive or satisfactory answer. But one writer, whose name unfortunately I cannot recall, did pull me up short. His contention was that a liberal could not satisfactorily be defined by position, but only by frame of mind, by attitude. And that attitude, he asserted, was one which constantly kept in conscious view the dictum: "I may be mistaken."

I was caught up by this definition because it seemed to me that this writer was arrogating to liberalism not that which is truly *-- especially of the doctrinaire variety, or for that matter, the doctrinaire* characteristic of the modern liberal, so much as what is in fact the *conservative* basic premise of the democratic method.

"I may be mistaken." That one sentence sums up the democratic self-recognition of human frailty. It is the utilitarian key to tolerance.

It is because "I may be mistaken" that democracy insists upon the protection of the widest possible divergence of opinion. That is what moved Milton to write the Areopagitica and thus fix within our civilization the unanswerable argument for freedom of the press. That is what was behind Voltaire's defiant assertion--apocryphal or not--that while he disapproved of what his opponents said, he would defend to the death their right to say it. And it was also behind the same man's conviction that "it is better to risk saving a guilty person than to condemn an innocent one."

"I may be mistaken." There is the thought that is enemy to all dogma. It was the thought that destroyed the divine rights of kings. In that concept lies the opposition to fanaticism. It is society's shield in the search for truth and justice. It is one reason why, for example, Americans accept the results of the most bitterly fought and closely decided elections.

*protect a minority viewpoint.*  
 "I may be mistaken." That is why we cherish minorities. For if it is not possible for me to be in error, then I may, if I have the power, crush all who disagree with me. But precisely because I may be mistaken, I must see to it that what I regard as error has equal protection with my own views.

In my opinion the highest repository of this precious political principle is the Senate of the United States. Here that uniquely democratic frame of mind that is always ready to concede that it might be mistaken is formalized as nowhere else. Here *the* minority rights *of a minority* are protected as nowhere else.

Minority rights are protected because of the Senate rules and

procedures which preserve the Senate's status as the greatest deliberative body in the world. Today, these rules and procedures are under attack from special interest groups--groups which espouse legislation to effect changes in the American way of life; changes which, in many instances, would not preserve the fabric which has kept our Nation united and strong. *-- on one side or the other, left and right --* The extremists <sup>^</sup> who cannot have their way, and who cannot see their pet legislative schemes brought to realization, seek to undermine public confidence in the Congress, and the Senate is often the main target because of its rules and procedures which guarantee deliberation, which guarantee resistance to emotional pressures, and which assure calm and incisive reflection and study of great national issues. These elements, which constitute a very vocal anti-Congress bloc, criticize the Senate for its procedures, which they deem cumbersome and outmoded and in need of drastic reform. The fact is that the procedures safeguard the people against cataclysmic changes and radical measures which, without those Senate rules and procedures, would be rammed through the legislative mill. The Senate *-- as it has many times --* can act quickly <sup>^</sup> if the Nation is in peril or if the public welfare is at stake or if legislation has unquestioned merit. The performance of the Senate is not to be judged by the number of bills passed; it is rather to be judged by the quality of legislation enacted, and oftentimes by its resistance to the passage of bad legislation. *Sometimes Not to act is the wisest course.*

The danger to the preservation of constitutional liberty of a change in rules and procedures which would erode and destroy the function of the Senate as a deliberative body should be recognized by all thinking persons as outweighing temporary advantages which partisans would gain in obtaining prompt action on a few items of politically expedient legislation. And even those partisan advocates of change who might find themselves able to ride roughshod over the helpless minority today might themselves be on the losing side tomorrow and might then regret surrender of any part of the right to discuss questions of principle for as long as is necessary to make the people of the Nation realize fully what is involved.



At the beginning of every new Congress many weeks are consumed in the effort, which fortunately has proved futile thus far, of those well-meaning members who seek to place restrictions on the rules governing unlimited debate. At the present time, debate can be forced to a close by the vote of two-thirds of those Senators present and voting. Prior to <sup>1959,</sup> 1960, cloture, or the forced closing of debate, could only be imposed by the vote of two-thirds of the Senate membership. Each new Congress witnesses a drive to make possible the invoking of cloture by a mere majority vote.

A material limitation on Senate debate--and permitting cloture by majority vote would impose a material limitation--would be contrary to the basic philosophy of our plan of government. It would violate the spirit of the compact which made our constitutional union possible. It would upset the carefully contrived balance among the branches of our government. It would reduce the effectiveness of the Senate as the guardian of states' rights and individual liberties.

Allowing a majority of one to cut off Senate debate would be a dangerous expedient because the weapon forged against one area of the country ~~which at the moment is the South and one viewpoint~~ <sup>and against</sup> ~~which at the moment is States Rights~~ <sup>on one viewpoint</sup> could readily be turned <sup>against</sup> against any other section of the country and any other viewpoint.

Thomas Jefferson, in his Manual of Parliamentary Procedures, wrote as follows:

The rules of the Senate which allow full freedom of debate are designed for protection of the minority and this design is a part of the warp and woof of our Constitution. You cannot remove it without damaging the whole fabric. Therefore, before tampering with this right, we should assure ourselves that what is lost will not be greater than what is gained.

The fact is so often overlooked that one of the mainstays in the protection of minorities is the right of unlimited debate, the right of the minority to argue at length, to delay, to persuade, to reason, to force the majority to reexamine its motives and to reconsider the possible dangers of the course it is plotting. It is the majority, after all, that needs restraining for, by definition, it has the

power to act. Senate Rule XXII, as presently written, in effect, protects the majority from its own fanaticism, and this is the Rule which, more than any other, the Reformists want to expunge from the Book of Rules.

This rule of unlimited debate, however, is one of the most outstanding and valuable features of the Senate. It is not a feature to be given up lightly. Only a defect of overwhelming proportions could justify its destruction. Let me comment on some of the defects charged to the practice of virtually unlimited debate.

It is undoubtedly true, as those who wish to change Rule XXII have contended, that when a minority is permitted to debate at length, the enactment of important legislation may be delayed. But it is also true, as Jefferson once wrote to Washington, that "delay is preferable to error."

No one will deny, I think, that the right protected by Rule XXII is a two-edged sword. Certainly it is susceptible to abuse. Without doubt, it has been abused. But surely abuse is not necessarily sufficient excuse for destruction. Every aspect of freedom is subject to abuse, to misuse, and to distortion. Do we abolish freedom on that account?

Consider, for example, the analogy with the Fifth Amendment to the Constitution. That Amendment in one of its clauses forbids the State from compelling any person to be a witness against himself. Why was that Amendment adopted? Because the people of this country knew from historical experience that a ruthless government does not hesitate to use torture to obtain confessions from persons it is determined to destroy. We, ourselves, have read of this very thing occurring in other countries in our own time.

Who would deny that thousands of innocent men and women have been saved from persecution because of the existence of the Fifth Amendment's protection? Nevertheless, we must honestly admit that the Amendment has been abused. The guilty as well as the innocent have been shielded. Communists and traitors have skulked behind it and,

on occasion, may have gone free because of it.

The hasty, the ill-informed, and those who are thoughtlessly or purposely eager to sacrifice freedom for the sake of an issue of the moment shower us with cries for abolition of the Fifth Amendment. Yet no thoughtful man, no man who is truly concerned with the protection of individual human rights would dream of <sup>materially</sup> repealing it.

Similarly, the privilege of unlimited debate in the Senate--or the filibuster, as it is frequently called--may be and has been used as a tool to frustrate the passage of legislation at times.

In all fairness, however, we ought also to note that the use of unlimited debate has served many a liberal and democratic cause. In 1863, for example, it helped kill a bill that would have suspended the writ of habeas corpus. ~~In 1876, it dissipated an attempt to suspend existing election laws~~ There was the successful filibuster in 1890 against the Force Bill, which would have provided for Federal supervision of elections. In 1911, it helped Arizona get into the Union.

Because of the Senate rules which allow unlimited debate, it was possible to rally enough support to block the efforts of a powerful and popular President, <sup>Franklin Roosevelt,</sup> to pack the Supreme Court.

In 1946, the House passed in a matter of minutes a bill <sup>proposed by President Truman</sup> to draft striking railroad workers. That proposal, so violently objected to by organized labor, would have become law but for the opportunity of the Senate to analyze it in a deliberate manner.

The fact is that filibusters may delay but they seldom absolutely prevent the passage of vital legislation. In the long run, meritorious proposals are accepted.

But even if unlimited debate does, in some rare event, permanently hinder a worthy bill, is that sufficient justification for reducing the protection the Senate affords against majority tyranny? I think not. As in the case of the Fifth Amendment, abuse must be tolerated for the sake of larger and more important values. The overriding value of Rule XXII as presently written is that it provides a

minimum positive protection for minorities. That value is greater, in my opinion, than the merit of any single piece of legislation.

The right to unlimited debate protects us all, now and in the future. In the shimmering and shifting kaleidoscope of politics, who knows what tomorrow's majority will consist of? Who can guarantee that such a majority will not, even for the necessary moment, fall under the sway of a demagogue who would use gag rule to throttle democracy?

We are dealing here with a rule that reflects a basic feature of our society. It should not be tampered with merely to satisfy *pressure groups* ~~the circumstances of the day.~~ *a longing for so-called "reform".*

*is said to have*  
Washington described the Senate to Jefferson as a saucer in which legislation was poured to cool. That traditional function of the Senate can be exercised effectively only so long as the Senate remains a truly open forum in which each spokesman for a sovereign state can expound his views for as long as his conscience dictates when the rights of his state or the integrity of the Constitution which protects those rights is threatened. The Senate would become no more than a *second* ~~stower~~ House of Representatives in its net results if a simple majority could decide when discussion should be stopped and a vote taken.

It is not easy to stand against the well-organized forces which wish to subvert the will of the minority to the whims of a mere majority. But that which is right and best for our country is not always automatically guaranteed by a mere majority. The Founding Fathers were aware of this when they required a two-thirds vote for the ratification of treaties. Impeachment requires a two-thirds vote. It is not possible to override a Presidential veto without a two-thirds vote. When an amendment is proposed to the Constitution, a two-thirds vote is required in both houses of Congress, and the constitutional amendment can only be adopted by a vote of three-fourths of the states. So, we have that provision in a number of instances, and it is just as democratic as a majority vote, because it is all intended for the protection of the principle of liberty. Often, when

I was a member of the House of Representatives, I would say, "Thank God for the Senate!" I say today, "Thank God for the Senate!" May it ever hold its unique place in the government of this Republic.

*Daniel*

Webster once spoke of the Senate in this way:

This <sup>is</sup> a Senate of equals, of men of individual honor and personal character, and of absolute independence. We know no masters; we acknowledge no dictators.

May Webster's characterization of the Senate of his day be forever undimmed by the passage of time.

In closing, I recall <sup>other</sup> the words of Daniel Webster in his matchless eulogy on George Washington in 1832:

Who shall reconstruct the fabric of demolished Government? Who shall rear again the well-proportioned columns of constitutional liberty? Who shall frame together the skillful architecture which unites National sovereignty with State rights, individual security, and public prosperity? No; if these columns fall, they will be raised not again. Like the Coliseum and the Parthenon, they will be destined to a mournful, a melancholy immortality. Bitterer tears, however, will flow over them, than were ever shed over the monuments of Roman or Grecian art; for they will be the remnants of a more glorious edifice than Greece or Rome ever saw, the edifice of constitutional American liberty.