

The Senate GREAT FORUM OF CONSTITUTIONAL LIBERTY

Let me close with some words by a United States Senator, John J. Crittenden, of Kentucky, in 1859. This was on the occasion when the Senate left the Old Chamber in which they had sat from 1810. Crittenden's words come back to us today: "Wherever we sit we shall be the Senate of the United States of America—a great, a powerful, a conservative body in the government of this country, and the body that will maintain, as I trust and believe, under all circumstances and in all times to come, the honor, the right, and the glory of this country."

May the Senate of the United States always enjoy in the hearts of our countrymen that spirit of service that was so eloquently expressed by that great Kentuckian, and may God Almighty always watch over and continue to preserve the Senate of the United States!

— U.S. Senator Robert C. Byrd



Robert C. Byrd represented the state of West Virginia in the United States Senate from 1959 until his death on June 28, 2010. He is both the longest serving member of Congress in American history and the longest serving Senator. He was elected to more leadership positions than any other member of the Senate and cast more votes than any member of that body (more than 18,000). Long regarded as the dean of the Senate, he was the author of a multi-volume history of that legislative body as well as *The Senate of the Roman Republic*.



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ROBERT C. BYRD

THE SENATE – GREAT FORUM OF CONSTITUTIONAL LIBERTY

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UNITED STATES SENATOR ROBERT C. BYRD



Foreword and Afterword by United States Senator Mitch McConnell
Introduction by Gary L. Gregg II

The Senate
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CONSTITUTIONAL LIBERTY



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Printed in Canada
ISBN 978-1-935497-35-6

Table of Contents

Acknowledgements	vii
Foreword <i>U. S. Sen. Mitch McConnell</i>	1
Introduction <i>Gary L. Gregg II</i>	5
The Senate—Great Forum of Constitutional Liberty <i>U.S. Sen. Robert C. Byrd</i>	13
Appendix <i>Federalist Papers #62 and #63</i>	35
Eulogy for Robert C. Byrd <i>U.S. Sen. Mitch McConnell</i>	59
About the Contributors	63
About the McConnell Center	65



Acknowledgments

The McConnell Center exists to educate the young people of Kentucky who will provide the leadership our Commonwealth and our country need to meet the challenges and opportunities of the 21st century. Through an integrated program of scholarships, seminars, guest speakers, conferences, publications and study abroad opportunities, the McConnell Center works from its home at the University of Louisville to touch the future by serving the students and teachers of today.

Though many people have contributed to the work of the Center and to the particular program that brought U.S. Sen. Robert C. Byrd (D-West Virginia) to Louisville, a few demand particular attention. U.S. Sen. Mitch McConnell (R-Kentucky) and University of Louisville President James Ramsey and Provost Shirley Willihnganz have tirelessly supported the work of the Center and have been key players in its achievements.

Sherry Allen, Wanda Adams-Taylor, Chris McCloskey, Trudy Ross, Malana Salyer and GlyptusAnn Grider all did considerable work to make Sen. Byrd's visit such a success and to make this monograph a reality. The McConnell Scholars, those outstanding young men and women who attended the University of Louisville on full-tuition scholarships from the McConnell Center, did a considerable amount of the work in preparing for Sen. Byrd's visit to Louisville. It is with a common hope for their future that we all labor.

Acknowledgments

Of course, no one deserves more credit than does Sen. Robert C. Byrd for taking time out of his very busy schedule to fly to Louisville and deliver the remarks reprinted here. That he would make such a sacrifice for our students and the young people of Kentucky says much about the priorities that guided his long career.

Leaders like Sen. Byrd come along only rarely in any one lifetime and it is our great privilege to make his remarks available to the people of Kentucky and the nation. The McConnell Center makes this publication available with the hope of contributing to the dialogue that is free government in America. The views represented here are not necessarily those of the McConnell Center, the University of Louisville or any of its affiliates.

Any mistakes remain solely the responsibility of the editor.

Gary L. Gregg II, Editor

Foreword

U. S. Senate Republican Leader Mitch McConnell

The recent passing of Sen. Robert C. Byrd prompted an outpouring of praise from the many, many admirers of America's longest serving senator. It also occasions the reissuance of the following lecture that Sen. Byrd delivered at the University of Louisville's McConnell Center on April 17, 2000. Sen. Byrd's theme that day was the history and significance of the United States Senate, a topic he was uniquely qualified to discuss: for not only did Sen. Byrd serve in the Senate longer than anyone else in history; he was also without question the most knowledgeable student of that institution who ever lived. He was, in other words, that rare figure who could teach history and make history at the same time.

The adopted son of a poor West Virginia coal miner, Sen. Byrd lived a uniquely American life. Unable to afford a college education, he worked whatever job he could find—from gas station attendant and meat cutter to a welder of ships during World War II. As he told the students at the McConnell Center, he would never have even been elected to the Senate under the original U.S. Constitution, with its indirect election of senators. Yet thanks to his sharp intellect, keen political skills, fierce determination, and

The Senate—Great Forum of Constitutional Liberty

the 17th Amendment, Sen. Byrd wound up spending more than half a century in the Upper Chamber, serving over the years as minority leader, majority leader, president pro tem, and, perhaps most memorably for West Virginians, as chairman of the Senate Appropriations Committee. In the end, Sen. Byrd could say he had held more leadership positions, had been elected to more terms (nine), and had cast more votes than anyone else in United States history. He served alongside 12 presidents and, in a case study in time management, even earned a law degree while serving in the Senate.

In explaining his longevity and success, Sen. Byrd always credited the values he learned at the feet of his foster parents, the support and love of his beloved wife Erma, the inspiration he drew from the U.S. Constitution, and faith in God. The rest, he said, was just a matter of hard work. As he once put it, “What is sometimes considered to be the result of genius is more the result of persistence, perseverance, and hard work.” To be a good senator, Sen. Byrd reminded us, one has to work at it. Longer than anyone else in history, he lived by those words.

One of Sen. Byrd’s greatest contributions are the magisterial histories he leaves behind. One is a multi-volume history of the U.S. Senate. The other, an account of the role of the Senate in the political life of ancient Rome, is a compilation of fourteen addresses he delivered in front of the Senate in 1993, all from memory and completely without the use of notes. Of this massive historical project, Sen. Byrd once wrote: “[My motive was] to help instill in the members of the Senate and the American public, now and in the future, a greater awareness of the importance of

Foreword

the Senate's role in our government and the Senate's contribution to our nation's history.”

It is with this same goal that I invited Sen. Byrd to Kentucky to speak with the students and faculty of the University of Louisville and that the McConnell Center now makes his speech that day, along with Gary Gregg's fine introduction, once again available to a wider audience; because no American can take for granted the crucial role that the U.S. Senate has played, and must continue to play, in our nation's history, and in the grand ongoing experiment of American constitutional government.

As a Republican, I was often on the other side of Sen. Byrd on the various issues of the day. As a United States Senator, however, I can tell you that I deeply admired his intellect, determination, and the profound reverence he had for the U.S. Constitution. I was honored to serve alongside this remarkable figure, and privileged to call him a colleague and a friend.



Introduction

Gary L. Gregg II

In framing the American Constitution, the Founding Fathers strove to develop a complex political system of divided powers and separated institutions. Such a system, it was believed, would best secure the liberties they had long enjoyed as Englishmen and had purchased anew as revolutionaries. They knew well that centralized power would not do. Power was first divided by delegating a limited amount from the states to a new and more centralized national government. Those limited powers were then divided among three institutions that would have little control over each other and as little as possible to do with the final power to remove or appoint one another. Of those three institutions—the presidency, the judiciary, and the legislature—the legislature demanded particularly careful attention by those 55 accomplished men who developed our Constitution over the very hot Philadelphia summer of 1787.

During the revolution, the colonists expressed considerable distrust of monarchy. The Declaration of Independence, for instance, is written in language directly attacking King George III for a list of transgressions against the colonies and the liberty of their inhabitants. This jealousy against monarchs was manifest

The Senate—Great Forum of Constitutional Liberty

in our first form of government—the Articles of Confederation (1781–1789)*—which provided for no centralized executive power at all. Americans preferred to place power where they thought it could be most safely lodged: in popularly elected legislatures.

In the decade between the Declaration of Independence and the development of the U.S. Constitution, many Americans had come to second-guess this preference in favor of strong and unified legislatures. The Articles of Confederation was largely taken to be a failure for its inability to provide adequate national leadership or authority on critical issues such as currency, trade, and national defense. Some type of executive would have to be devised that could provide leadership but that would not violate the needs of republican government or the American people's prejudice against monarchy.

During that decade, their experience with the state governments also convinced the Founding Fathers of the need to weaken the new national legislature. The state legislatures, which were largely comprised of a single assembly, proved too quick to act and a danger to the liberty of their citizens. Thomas Jefferson summarized much of this new thinking in his *Notes on the State of Virginia* where he observed that “One hundred and seventy-three despots would surely be as oppressive as one,” and went on to urge a system of checks and balances that would restrain both the executive and the legislative branches of government. In *Federalist*

* Though the Articles of Confederation were drafted by the Second Continental Congress in 1777, it did not take effect until 1781 when all the states had finally accepted it as the governing document of the new union.

Introduction

Paper #48, James Madison would write of a similar tendency of the legislatures “everywhere extending the sphere of its activity and drawing all power into its impetuous vortex.”

Guided by the lamp of experience, the men who wrote the Constitution devised a new political system for the federal government, which would be centered in a bicameral legislature. Congress would be made the first branch of government but its being split in two would check its power and efficiency of action. The two houses that resulted—the House of Representatives and the Senate—would act to restrain one another and to slow the process of legislation, thereby contributing to good government.

Most of the Framers believed that the House of Representatives, whose members would be chosen from districts for two-year terms of office, would be closer to the people than the members of the Senate or the president. The House was thought to add the most democratic element to the political system, as its members would be in the most direct and regular contact with the population.

The Senate added another set of ingenious elements to the mix of free government. With just two representatives from each state, the Senate would be a smaller body than the House (today it stands at less than a quarter the size.). This smaller size was thought to contribute several important elements to the Senate and thereby the process of government. Being smaller, the Senate was seen as the more elite and senior branch of Congress and would thereby attract the most wise and virtuous statesmen from each state. The smaller number of men would also be more conducive to calm, patient, and mature deliberations on the common good. As James Madison explained in *Federalist Paper #58*, the Founders had

The Senate—Great Forum of Constitutional Liberty

grown distrustful of large assemblies who had proved susceptible to being moved by dangerous demagogues out to promote their own narrow interests rather than the common good.

Being selected for six year terms and those terms being staggered so only one-third of the Senate would stand for reelection every two years, the Senate would be more insulated from the temporary swales of public opinion than would the House. The longer terms would also work to attract the most accomplished men to that body and, somewhat counterintuitively, would actually serve the interest of keeping those men responsible for their votes—there being a longer time within which to judge the consequences of the acts of U.S. Senators than members of the House.

Representation in the Senate, being based as it is on the states' existence as sovereign and equal political bodies, the Senate was also to stand in defense of those states against nationalizing forces.

During the first few decades under the Constitution, Senators were actually chosen not by the people at-large but by the legislatures of the states, making them more select and wedding them more closely still to the interests of their states as equal participants in the national government. John Jay would argue in *Federalist Paper #64* that this method of selection would result in the election of “men only who have become the most distinguished by their abilities and virtue, and in whom the people perceive just grounds of confidence.” He would add that the result would be the election of men who “will always be of the number of those who best understand our national interests, whether considered in relation to the several states or to foreign nations, who are best able to promote those interests, and whose reputations for

Introduction

integrity inspires and merits confidence.” Though it may be found wanting by contemporary standards of democracy, it is the system of election that chose the likes of the John C. Calhoun, Henry Clay, and Daniel Webster to be United States Senators in the first part of the nineteenth century.

The Senate was also given special responsibilities and powers consummate with its design and the mode of selection of its members. Because of the Senate’s more select membership and its structure that was to encourage slow and deliberate action, it was given a special role to play in foreign policy, the choice of judges, the selection of high executive branch officers, and the trial and potential removal of impeached officials.

Its powers and its structure have, from time to time, come under hostile challenge from the other branches of government. This would have been no surprise to the men who established the system of checks and balances more than two centuries ago. Occasionally even senators themselves have seemed bent on giving up the prerogatives and powers of the institution in the name of furthering some policy objective or making the legislative process more efficient.

One such great conflict occurred following President Andrew Jackson’s veto of the bank bill in 1832, his subsequent dismissal of the Secretary of the Treasury, and his removal of public funds from the Bank of the United States without congressional approval. That public tussle pitted Senators Clay, Calhoun, Webster, and Preston against Jackson who they took to be undermining the legitimacy of the Senate and assuming powers not granted to him under the Constitution. Webster, for instance, said the contest

The Senate—Great Forum of Constitutional Liberty

was one battle in a continuing struggle “to rescue liberty from the grasp of Executive Power.” From then until the present day, the Senate has relied upon men and women of courage and dedication to the constitutional order to defend its traditional position within the framework of American government. In recent decades perhaps no Senator has been a more important leader on this front than has West Virginia’s Robert C. Byrd.

As he demonstrates in his essay that follows, the Senate has grown, developed, and changed since the men who drafted the Constitution and the early senators who made their vision a reality laid its foundations. Nonetheless, it continues to play a very important role in the drama of American government—a role far too important to lightly dismiss or to be set aside for any temporary policy victory. Though it is often lost in the headlines of court decisions and what Harvard’s Mary Ann Glendon has called our culture’s preoccupation with “rights talk,” it is men like West Virginia’s Byrd and Kentucky’s Henry Clay who have done so much to serve liberty by defending the Senate’s place in the constitutional order of America.

In his essay, Sen. Byrd takes up three primary topics—the origins and idea of the Senate, how it has developed and changed over time, and what the founding fathers might think of the institution we know today in Washington. To each question he brings a scholarly eye and the understanding of a man who has actually lived the history of which he writes. Sen. Byrd’s essay is followed by an appendix containing *Federalist Papers* #62 and #63 where can be found much of the founding understanding of the United States Senate.



Introduction

As it takes up the challenges of its own times, the health of the political system requires each generation to revisit the ideals and sacrifices of those who have come before. It is with that understanding that Sen. Byrd labored, and with the hope of inspiring new and innovative thinking on the part of the rising generation of young Americans that the McConnell Center offers this small contribution to the dialogue of free government in America.



*The Senate—Great Forum of Constitutional Liberty**

U.S. Sen. Robert C. Byrd

Ladies and gentlemen, I am very honored to have been invited to visit with you today by your esteemed, very capable Sen. Mitch McConnell. He is a valued friend of mine.

To me, friendship is far more significant than political party, and some of my best friends in the Senate are on the other side of the aisle. I've always been a Democrat, of course, and I shall remain one. But, I am highly privileged to have been invited to come here, and I appreciate more than I can tell you, Mitch, that overly charitable introduction. I shall never forget it. Mr. President, let me compliment you on the fine University that you have here. Dr. Gregg, I commend you on the good job you're doing here for the McConnell Center. It is a most important job—that of developing young minds. You can forget about the sports. No ball game ever changed the course of history. None. And it's the development of the intellect that put men on the moon and that will conquer cancer. Develop these young minds. There is only one higher

* As prepared for delivery for the University of Louisville's McConnell Center, April 17, 2000.

The Senate—Great Forum of Constitutional Liberty

calling, and that is the development of the human spirit. God created the Universe, created man in His own image out of the dust of the ground and breathed into his nostrils the breath of life. Those two things we must always keep uppermost. The development of the spiritual side of life and the development of the human mind. Solon, one of the seven wise men of Greece, said, “I grow old in the pursuit of learning.” We should all adopt that precept.

Congressman Mazzoli, ladies and gentlemen, I have been asked by Mitch to speak on the subject of the United States Senate. William Ewart Gladstone, who served four times as the British Prime Minister, referred to the United States Senate as “that remarkable body, the most remarkable of all the inventions of modern politics.” Gladstone expressed it well. The United States Senate is, indeed, a remarkable body.

The Senate—From Idea to Institution

The creation of the Senate was one of the great sparks of genius that came from the anvil of debate at the Constitutional Convention. The United States Senate is unique among the 61 upper chambers of the world in many respects. Most of the countries of the world have a unicameral legislature, but about one-third—61 to be exact—have bicameral legislative bodies. The larger countries tend to have bicameral legislatures, and only the United States Senate and the Italian Senate are not subordinate to the Lower House. The principal responsibilities of most Upper Chambers is to reject, reconsider, or revise the work of the Lower House, if the revision is approved by that body.

The Senate—Great Forum of Constitutional Liberty

The members of the U.S. Senate were to be elected by the state legislatures, according to our Constitutional Framers, unlike members of the House who would be selected by the people at the polls. And any law would have to pass both houses.

Many of the Framers feared “democracy.” We speak glibly today about our form of government as being a “democracy.” It is not a democracy. It’s a republic. And if one will read *The Federalist* essays #10 and #14 one will understand the difference between a democracy and a republic.* The Framers believed that the Senate should be made up of property owners who could be counted upon to oppose legislation that might have too great a leveling effect and which the House would be more disposed to favor.

Edmund Randolph, the Governor of Virginia, for example, after presenting the Virginia plan, which served as the basis of discussion when the Convention opened, bluntly explained that

* In *Federalist Paper* #10 James Madison contrasts a “pure democracy” with a republic “by which I mean a government in which the scheme of representation takes place.” He goes on to explain that entrusting the government to representatives of the people rather than to large assemblies of the people themselves provides an answer to the ages-long problem of protecting the rights of the minorities and having good government when simple democratic majorities often have been found to be tyrannous or led by dangerous men with designs alien to the common good. In a classic expression of the ideal of representation, Madison writes that it can serve to “refine and enlarge the public views by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for that purpose.”

The Senate—Great Forum of Constitutional Liberty

the purpose of the upper body would be to check the “turbulence and follies of democracy.” Roger Sherman said that the people “should have as little to do as may be about the government. They lack information and are constantly liable to be misled.” Elbridge Gerry echoed Sherman’s views. Gerry said, “The evils we experience flow from an excess of democracy. The people do not lack virtue but are the dupes of pretended patriots.”

The Senate was a body in which legislative, executive, and judicial powers would be combined. The Senate would share in the powers of a president in making treaties and would have to approve by a two-thirds vote before any treaty could be ratified.

Presidential nominations would have to be confirmed by the Senate. The Senate’s judicial powers would be brought to bear in the trials of impeached officers of the government, as in the impeachment of President Andrew Johnson and the impeachment of President William Clinton.

For the first seven years, until December 1795—except for one brief occasion—the Senate’s doors remained closed to the public, while House debates were open to the public. The Senate came under intense criticism because of this closed-door policy. Yet, while this policy was bitterly attacked for its aristocratic connotations, it was not adopted in a deliberately anti-Republican spirit. The Senate was merely following the precedent of its predecessor, the Congress of the Confederation, and the precedent of the Constitutional Convention.

Factionalism and party spirit, so dreaded by George Washington and the Framers of the Constitution, stalked the halls in Philadelphia, and could no longer be ignored. For the first

The Senate—Great Forum of Constitutional Liberty

six Congresses, the Federalists were continually in the majority in the Senate, and only during the third Congress, 1793–1794, did the Jeffersonians hold a majority in the House of Representatives. As for the presidency, both the Federalists and the Republicans nominated their candidates in congressional caucuses. They didn't have Conventions—a system that lasted until 1824.

There were no minority and majority leaders in the Senate until the early- to mid-1920s. Prior to the arrival of elected floor leaders on the scene, various Senators, from time to time, assumed leading roles in determining what the Senate would or would not do. As late as the 1920s, the chairmen of the standing committees were generally the ones to move that the Senate consider the legislation reported by their respective committees.

It was in 1920 that the Democratic Conference, for the first time, chose a party leader, Oscar Underwood of Alabama. The story of the Republican Conference was much the same. In 1925, Sen. Charles Curtis of Kansas was named to be floor leader. So, we didn't have party floor leaders prior to the 20th century.

The Senate did not create its standing, or permanent, committee system until 1816, more than 27 years after the Senate had first begun to function. A few standing committees were appointed prior to 1816 for “housekeeping” and legislative purposes. For the most part, the Senate relied on Select Committees. A great number of ad hoc committees were appointed during each session, and, consequently, the position of a committee chairman was not as influential as it would become later with the establishment of standing committees.

Having once called the Senate “the most powerful and efficient

The Senate—Great Forum of Constitutional Liberty

second chamber that exists,” Woodrow Wilson, in his treatise on Congressional Government, wrote, “It is not far from the truth to say that Congress in session is Congress on public exhibition, whilst Congress in its committee rooms is Congress at work.” Wilson identified the committees as the chief centers of power, and I think that Wilson’s observations would still hold true today.

The Framers and the Senate Today

Now I asked Sen. McConnell, when he invited me to speak, “What do you want me to say to the students?” Well, he said, “Address the question, would the Framers be surprised today at the changes that have occurred in the Senate over the years since the Constitutional Convention framed that document? That’s one of the things you should address. Would the Framers be surprised?”

I think the Framers would, indeed, be surprised. In fact, I think it would be a fascinating experience if we could send a time machine back to those long-ago days and bring forward in time someone like James Madison, or Elbridge Gerry, or Benjamin Franklin, or Alexander Hamilton. I can only imagine how they might view the opening of the Senate doors to the public after seven years of having those doors closed; how they might view the birth of political parties, which Washington inveighed against; or the evolution of the committee system.

I think that they would be amazed by our televised debates, both in committees and in the Senate Chamber itself.

Can you picture Daniel Webster before that television camera? Can you picture Henry Clay before that camera? Well, I can

The Senate—Great Forum of Constitutional Liberty

almost picture Franklin standing in front of a television camera and moving to-and-fro, while sneaking a peek at himself on a television monitor out of the corner of this eye. Can't you?

Well, any of our guests from the past would probably suffer from apoplexy concerning the astronomical costs of winning a Senate seat. Now, when I ran for the U.S. Senate in 1958, I ran against an incumbent. That's not very easy to do. I ran with Jennings Randolph because there was a vacancy created by the death of the late Sen. M.M. Neely. So there were two Senators running. I ran for the six-year term; Jennings Randolph ran for the two-year term, and we ran on a combined war chest of \$50,000. Today, it will cost an average of \$4 million or more per Senate seat, and you know how it is in California or in some of the other larger states of the union—\$20 million, \$25 million, \$30 million. The Framers would be shocked, I should think.

They might also find it rather novel to see women Senators on the Senate floor. There have been 27 women Senators in the history of the United States Senate. The U.S. Senator who served the shortest length of time was Rebecca Felton of Georgia in 1922. She served for only one day. She was the first woman ever in the United States Senate.

The use of microphones in the delivery of Senate floor speeches would undoubtedly give the Framers some pause. Just imagine Sen. Daniel Webster speaking on a microphone in his debate with Robert Hayne.

In a more humorous vein, perhaps the Framers would be amused at the absence of spittoons today—there used to be one at every desk—and at the absence of snuffboxes.

The Senate—Great Forum of Constitutional Liberty

There are still two snuffboxes in the Senate—one on each side of the Presiding Officer’s chair. Recently, I thought I would see if those snuffboxes had snuff in them. They were empty. I said, “We had better put some snuff in them.” I don’t know of anybody today who would use snuff in the Senate. When I was a small grocery man years ago, I sold snuff—“Copenhagen,” “Scotch,” “Apple” tobacco, “Brown’s Mule” tobacco, and “Mail Pouch” tobacco. But the Framers would be amused, I think, and would wonder why the snuff had gone.

They would gaze with wonder at the greatly increased size of the Senate, necessitated by the expansion of the country into 50 states. They had thought that this would always be an eastern seaboard-hugging nation, 13 states, and, they didn’t dream that there would someday be 50 states.

The 17th amendment, ratified in 1913, providing for the election of Senators by the people rather than by state legislatures, would undoubtedly elicit the surprise, or even shock, of the Framers. The Framers envisioned the Upper House, as I say, as being made up mostly of property-owning men of more than modest means, who would protect the property interests of the citizens and thus constitute a body that would oppose any tendency toward runaway democracy. Think of it. The Framers were fearful about the “democracy” of the lower House.

On a personal note, I wouldn’t be standing here today if the 17th amendment had not been adopted. Certainly, no state legislature would consider, even for a passing moment, selecting someone of my background for the United States Senate. Can you imagine that? As a young man, I scarcely could claim little more than

The Senate—Great Forum of Constitutional Liberty

the clothes on my back, and my household furniture. My wife's father was a coal miner. Loretta Lynn sings, "I am a coal miner's daughter." Well, I've got the real thing. My wife is a coal miner's daughter. I have been married to that coal miner's daughter sixty-three years. I was an unknown gas station attendant, shipyard welder, produce salesman, and meat cutter, with only a high school education and a fiddle. I scarcely had two nickels that I could rub against one other. As a matter of fact, the West Virginia Legislature—to say nothing of the Framers themselves—would probably have gagged at the thought of electing me to represent the people of West Virginia in the highest legislative body in the land. Who knew Robert Byrd when he ran for the House of Delegates in 1946? I didn't know anyone in politics. My foster father was a coal miner, not a judge or a banker or a county politico to help me and pull me along. I would never have been a United States Senator but for the 17th amendment.

***Has the Senate Lived up to
the Expectations of the Framers?***

Well, so much for the question: Would the Framers be surprised at the changes that have occurred? Now, Sen. McConnell said, there is another question. It might be: "Has the Senate lived up to the expectations of the Framers?"

The answer to this question is a mixed bag. But, on the whole, I believe that the Senate should be given high marks. Take, for example, the Senate's treaty-making power. At the beginning of its existence, the Senate demonstrated courage when it sent the

The Senate—Great Forum of Constitutional Liberty

treaty with the southern Indians—the very first treaty submitted to it by President George Washington—to a select committee, rather than perfunctorily giving its approval. In twice rejecting the Treaty of Versailles, the Senate demonstrated its independence of the chief executive, Woodrow Wilson, and whether or not history will judge its decision in that instance to be right or wrong, the Senate took its responsibilities under the Constitution seriously.

In my own time and during my own tenure as Majority Leader of the Senate, the Senate laboriously debated and amended the Panama Canal Treaties and reached a courageous decision in approving those treaties. In doing so, it went against the polls, it went against popular opinion, it swam upstream, but the Framers would have been pleased by this manifestation of courage, determination, and dedication, and the placement of the national interest ahead of partisan political considerations. In this regard, several new profiles in political courage were emblazoned on the Senate escutcheon, and some of the treaty supporters very probably lost the next election because of their votes for those Panama Canal Treaties. But for the high degree of statesmanship demonstrated on that occasion by the then Minority Leader, Sen. Howard Baker, Republican of Tennessee, the Panama Canal Treaties would not have received the two-thirds vote needed for approval by the Senate. That was the Senate at its best.

In the matter of Senate confirmation of presidential appointments, here again, the Senate has often demonstrated a mind of its own and a streak of independence in rejecting some presidential nominees, albeit on the basis of purely partisan political motives in many instances.

The Senate—Great Forum of Constitutional Liberty

The Senate has been known to use its constitutional prerogative of confirmation of nominees as a weapon against an unlucky president with whom it might be at odds politically. One outstanding example occurred on March 3, 1843, when President John Tyler submitted the name of Caleb Cushing, Whig Congressman from Massachusetts, to be Secretary of the Treasury.

Cushing was a quick-tongued, sharp-minded individual who had been among the most outspoken defenders of President Tyler in the House of Representatives and among the most caustic critics of what Tyler called the “caucus dictatorship,” in the Senate, led by whom? Henry Clay of Kentucky, and it was not at all surprising, therefore, when the Senate rejected Cushing. What was surprising, however, was the return of the President’s private secretary during the same hour with the renomination of Cushing. While the first vote for Cushing had been 19 to 27, the second was only 9 in favor to 27 against. Now the secretary of the President returned yet a third time with a hastily written note from Tyler saying, “I nominate Cushing as Secretary of the Treasury.” For the third time within the same day, virtually within the same hour, the Senate rejected the nomination of Caleb Cushing, this time by a vote of two in favor to 29 against.

This event took place in a late-night session of the Senate on the last day of the Congress, March 3, 1843, and we may imagine the anger and the fervor on both sides of the debate as the President adamantly clung to another nomination, that of his close friend, Representative Henry Wise of Virginia, to be Minister to France. Twice, the Senate rejected him. Tyler then nominated Congressman George H. Proffit of Indiana to be Minister to

The Senate—Great Forum of Constitutional Liberty

Brazil; he was rejected. Tyler nominated David Henshaw to be Secretary of the Navy; he was rejected—he got only eight votes in the Senate. James Porter received only three votes to be Secretary of War. John Spence, nominated to the Supreme Court, was rejected by the Senate by a 21 to 26 vote.

“Mr. Tyler was a man without a party,” according to Sen. Thomas Hart Benton of Missouri. And so we hear some grumbling these days about the nominations process in our Senate. We should remember how it was in Tyler’s time.

In sharing with the Chief Executive the power of political appointments, the Senate has probably resorted to partisan political considerations more often than in any other area of presidential-senatorial relations. That is “the nature of the beast.”

I have had some very interesting things occur during my political career because of the nominations process. I once sent to the White House the name of a man, Judge Christie, a Circuit Judge in West Virginia who lived at Welch, in McDowell County. I wanted him to be a U.S. District Judge.

One day, President Lyndon Johnson called me on the phone. He always called me “Bob.”

The President said, “Bob, how about that judgeship? Does that mean very much to you?”

I said, “It certainly does.”

He said, “Well, send us another name.”

I said, “Why?”

“Because he isn’t qualified.”

“Why?”

“He’s too old.”

The Senate—Great Forum of Constitutional Liberty

“How old does he have to be?”

“We don’t like to nominate them when they are past 60.”

“Well, he wasn’t past 60 when I sent the nomination down there.”

The President said, “Well, send us another name.”

I said, “Mr. President, you remember when you ran for President at the Los Angeles Convention? My wife and I attended that Convention. I was a delegate from West Virginia. I led the race among 57 candidates for delegate to the Convention. I led the pack. I got more votes than anybody else, and I ran as an openly avowed Lyndon B. Johnson delegate. I didn’t look for any rock to hide under. I shouted it from the steeple tops. I wasn’t 80% for you, I wasn’t 90% for you, I was 100% for you. And when the *Charleston Gazette’s* political reporter came to me at the Convention and asked, ‘If when the roll is called and West Virginia’s votes will put Jack Kennedy over the top, will you vote for Kennedy?’ I said, ‘No. I ran as a candidate dedicated to Johnson and there are only three things that would cause me not to vote for Lyndon Johnson.’ I said, ‘One would be if he withdrew, the second would be if he had a heart attack, the third would be if I had a heart attack. So, I am not getting on that bandwagon.’

“Now, that was because I was for you Mr. President, 100%. That’s exactly the way I feel about Judge Christie. I am not 90%, I am not 80%, I am 100% for him.”

“Well, how are you going to vote on the Civil Rights Bill?” This was in 1964.

I said, “I’m going to vote against it. Many parts of it I can support, but there are some parts of it I am opposed to, and the

The Senate—Great Forum of Constitutional Liberty

only way we can deal with that and get any amendments in, is if we vote against cloture and continue the filibuster.”

That bill was before the Senate for a total of 103 days, from the day that it was motioned-up, to the day that the final vote occurred.

I said, “If somebody breaks into your house and all you have is a stick of stovewood you will use that stick of stovewood on him. The filibuster is all we have. That’s our stick of stovewood. And so I’ll vote with (Sen.) Dick Russell against cloture.”

Johnson said, “Well you love me as well as you love Dick Russell, don’t you?”

I said, “Yes. I do, but I can’t carry water on both shoulders. I can only vote once and I can’t be for both. I’m going to vote against shutting off this filibuster, if I have to be carried into the Senate Chamber on a stretcher.”

You see, I didn’t let the President have even a little crack in the door. I had to close it right from the beginning. No chance of opening that door. I said, “They can bring me in on a stretcher.”

“Well,” the President said, “Why couldn’t I send you off somewhere around the world, and you could be away during the cloture vote? Then you could come back and make a big report on your trip and make a big name down there in West Virginia.”

I said, “Mr. President, do you know why I supported you in Los Angeles? You put me on the Appropriations Committee when I first came to the Senate, and I can go anywhere in the world I want to go, anytime.”

The President saw it was useless to continue the effort, and he

The Senate—Great Forum of Constitutional Liberty

resignedly said, “Well, Bob, I still love you, and your judgeship nomination will be sent to the Senate next week.” That’s the way Lyndon Johnson operated.

In the recent instance of the appointment of Clarence Thomas to serve on the Supreme Court, the Senate did not meet its constitutional responsibility in a manner that would excite a feeling of pride in the hearts of the Framers, in my judgment. The Judiciary Committee’s confrontation with the nominee left some of the senatorial togas tinged with the stain of timidity. It seemed that when Clarence Thomas brazenly played the race card against Anita Hill, some of the Senators on the Committee were intimidated. As if that were not enough, the nominee not only vented his personal displeasure toward the Committee itself, but he also took a swipe at the whole Senate.

He was confirmed by the Senate on a 52 to 48 vote. I voted against Thomas. I believed Anita Hill. Now, I must say, in fairness to Mr. Thomas, and to his credit, his votes as a Justice of the Supreme Court have, overall, met with my approval. In fact, I commended him in a Floor speech for his vote to overturn the nefarious Line Item Veto Act of 1995.

This brings me now to the Line Item Veto Act, concerning which the Senate did not acquit itself in a manner that would entitle it to a crown of laurels. In passing the Line Item Veto Act in 1995, the Senate failed to protect its power—under Article I, Section 9, of the Constitution—of control over the purse. In this regard, let us step back for a moment and see the forest rather than just the trees.

The theory of a mixed Constitution—and that is what ours is,

The Senate—Great Forum of Constitutional Liberty

a mixed Constitution with checks and balances, and separation of powers—the theory of a mixed Constitution had had its great measure of success in the Roman Republic, established in 509 B.C. Our founding fathers were steeped in the classics and in ancient history, and it is not surprising that they should have been influenced by the checks and balances and separation of powers in the Roman constitutional system, a clear and central element of which was the control over the purse, vested solely in the Roman Senate in the heyday of the Republic.

When the Roman Senate gave away its control over the purse strings, it gave away its power to check the executive. From that point on, the Senate declined and it was only a matter of time. Once the mainstay was weakened, the structure crumbled and the Roman Republic fell.

We should learn from the pages of Roman history. The survival of the American constitutional system, the foundation upon which the superstructure of the Republic rests, finds its firmest support in the continued preservation of the delicate mechanism of checks and balances, separation of powers, and control over the purse, solemnly instituted by the Founding Fathers. But on March 27, 1996, the Senate stabbed itself in the back when it approved final passage by adopting the conference report on the Line Item Veto Act, and sent it to the President for his signature. Fortunately, the U.S. Supreme Court overturned that Act and saved us from ourselves.

Most recent Presidents have coveted the line item veto. Only President Taft has opposed it in recent years. President George Washington, however, saw the matter clearly. He said: “From the

The Senate—Great Forum of Constitutional Liberty

nature of the Constitution, I must approve all the parts of a bill, or reject it in toto.” He had it right.

Why have the Chief Executives of recent years coveted this device so much? It is not so much because it would give the executive branch the control over federal spending; it would not. Mandatory programs and entitlement programs—where the expenditure growth really is—cannot be touched by a line item veto. No, it is a greed for more power—the executive can never get enough power—power to intimidate members of Congress. This device would allow a President to threaten to veto items which benefit various congressional districts or states in exchange for a vote on a treaty, in exchange for a vote on a nomination, in exchange for the support of the President’s own funding priorities. With this insidious tool, the people’s elected Representatives in the House and Senate could be squeezed like putty in the hands of a President. Just imagine the line item veto in Lyndon Johnson’s hands. He was no amateur. I have watched other Presidents since his time. They are amateurs. Either that, or most Senators have grown rubber arms. When Johnson got up in your face and just kept probing, and pounding, and grilling, what he would do with the line item veto power you can just imagine.

The power of the purse is the only real, honest-to-goodness power in government. The Bible says, “The love of money is the root of all evil.” That’s so in politics too. James Madison put it most succinctly. Listen to what he said: “The power over the purse may, in fact, be the most complete and effectual weapon with which any Constitution can arm the immediate Representatives of the people, for obtaining a redress of every grievance and

The Senate—Great Forum of Constitutional Liberty

for carrying into effect every just and salutary measure.” That’s Madison, in the *Federalist* #58.

This power over the purse was vested by the Framers in the legislative branch, and, as the U.S. Supreme Court ruled recently, the Congress cannot, by legislation, transfer that power away from its own hands and give that power to the executive branch. Thank God for the Supreme Court of the United States! The Court saved us from ourselves. The Framers would have been aghast—aghast at the willingness of the U.S. Senate to cede this power over the purse to any President as the Roman Senate 2000 years ago supinely surrendered its control over the purse to the Caesars and to the subsequent emperors of the Roman Empire.

Now, among the most compelling of all of the devices which contribute to a precipitous enhancement of presidential authority is in the area of the war powers. The appellation “Commander in Chief” and the term “national security” can be used to cover many missions or goals—secret or otherwise. Like love, they can be made to cover a multitude of sins. I believe that the United States is in a period of increasing peril for its constitutional system of checks and balances, and that such buzzwords as “Commander in Chief” will be increasingly invoked by Presidents as various international situations arise. “We’ve got to do what the Commander in Chief says,” is the hue and cry. That’s not what the Constitution says. The involvement of the nation in military ventures always results in the expansion, at least temporarily, of presidential powers, especially in the area of justifying presidential use of military force without congressional authorization.

Consider our near debacle in Somalia. This began as an effort

The Senate—Great Forum of Constitutional Liberty

by our nation and others to provide food and humanitarian aid to war-torn Somalia. But after the deaths, and the dragging in the streets of an American soldier involved in that effort, the mission changed, and became an unwise attempt by UN forces to settle disputes between various African warlords. What an impossible task! Don Quixote had a better grip on reality when he went out to tilt at windmills! Incredibly, this unwise venture upon the part of the Clinton Administration was only finally stopped when I led an effort in Congress to shut off the money for the operation.

The Senate had never approved the transformed mission, which later evolved further into a shaky experiment in political and economic nation-building using American forces. It was an instance of a President's claiming authority for military action, and thereby quite effectively circumventing the Constitutional authority of the Congress as the sole entity which can declare war and commit American lives and treasure to such efforts.

The war powers area is a very murky area, especially in these modern times, when Presidents, acting under the title "Commander in Chief," send military contingents into foreign countries under the rubric of a "police action" or as "peace keepers," and without leveling with Congress as to the costs and duration of the enterprise. Once our military forces are sent into such situations, Congress is expected to provide the money, and, before we know it, the mission becomes an open-ended one, and it develops into "mission creep;" one step leads to another and then another, and, before we know it, we are in over our heads.

Well, I see that the sands in the hourglass are catching up with me, and I have about run out of time. There is another aspect that

The Senate—Great Forum of Constitutional Liberty

I would like to mention, and that's the expectations of the Framers that the Senate was to be a deliberative body. I don't think the Senate is as deliberative anymore as it was intended to be. There is less debate and there are fewer amendments.

In the revision of the Senate rules in 1806, the motion for the "previous question" was dropped. They still have the motion in the House of Representatives. But when it was dropped from the Senate rules, the way was opened for unlimited debate, and for more than a century, until 1917, the Senate operated without any limitations whatsoever upon debate. In 1917, the provision was made for the invocation of cloture upon debate. Over the next half century, cloture was the exception rather than the rule, and it was seldom invoked. It requires 60 votes, as you know, to invoke cloture.

The Senate is the one forum in the nation where a member can speak as long as his feet will hold him, or better still, as long as his lung power can hold forth. And this is critical to the well being of our Republic. For as long as there is a public forum in which legislators may enjoy absolute freedom of speech and unlimited debate, and may give full vent to their viewpoints on any issue, no matter how unpopular those viewpoints may be, the people's liberties will be secure.

Let me close with some words by a United States Senator, John J. Crittenden, of Kentucky, in 1859. This was on the occasion when the Senate left the Old Chamber in which they had sat from 1810. In 1859, Senators moved into the new Chamber where we now meet. Crittenden's words come back to us today: "Wherever we sit we shall be the Senate of the United States of America—a

The Senate—Great Forum of Constitutional Liberty

great, a powerful, a conservative body in the government of this country, and the body that will maintain, as I trust and believe, under all circumstances and in all times to come, the honor, the right, and the glory of this country.”

May the Senate of the United States always enjoy in the hearts of our countrymen that spirit of service that was so eloquently expressed by that great Kentuckian, and may God Almighty always watch over and continue to preserve the Senate of the United States!



Appendix

The Federalist Papers were written by James Madison, Alexander Hamilton, and John Jay during the fall and winter of 1787–1788. They were published as newspaper editorials written in support of the ratification of the new Constitution and published in New York newspapers. They are widely recognized as the single most important statement of the founding generation on the original meaning of the Constitution and may be the most important contribution of American civilization to the history of political ideas. Thomas Jefferson almost immediately recognized their significance and in 1788 called them “the best commentary on the principles of government, which ever was written.”

Reprinted in this appendix are papers #62 and #63 concerning the original understanding of the U.S. Senate. Though the papers were all published under the pseudonym “Publius,” we know that these both were likely written by James Madison. They are reprinted here from an edition published in Washington, DC in 1818 by Jacob Gideon, Jr.



No. 62

James Madison

Concerning the constitution of the senate, with regard to the qualifications of the members; the manner of appointing them; the equality of representation; the number of the senators, and the duration of their appointments.

Having examined the constitution of the house of representatives, and answered such of the objections against it as seemed to merit notice, I enter next on the examination of the Senate.

The heads under which this member of the government may be considered, are, I. The qualifications of senators: II. The appointment of them by the state legislatures: III. The equality of representation in the senate: IV. The number of senators, and the term for which they are to be elected: V. The powers vested in the senate.

I. The qualifications proposed for senators, as distinguished from those of representatives, consist in a more advanced age, and a longer period of citizenship. A senator must be thirty years of age at least; as a representative must be twenty-five. And the former must have been a citizen nine years; as seven years are required for

The Senate—Great Forum of Constitutional Liberty

the latter. The propriety of these distinctions is explained by the nature of the senatorial trust; which, requiring greater extent of information and stability of character, requires, at the same time, that the senator should have reached a period of life most likely to supply these advantages; and which, participating immediately in transactions with foreign nations, ought to be exercised by none who are not thoroughly weaned from the prepossessions and habits incident to foreign birth and education. The term of nine years appears to be a prudent mediocrity between a total exclusion of adopted citizens, whose merits and talents may claim a share in the public confidence, and an indiscriminate and hasty admission of them, which might create a channel for foreign influence on the national councils.

II. It is equally unnecessary to dilate on the appointment of senators by the state legislatures. Among the various modes which might have been devised for constituting this branch of the government, that which has been proposed by the convention is probably the most congenial with the public opinion. It is recommended by the double advantage of favoring a select appointment, and of giving to the state governments such an agency in the formation of the federal government as must secure the authority of the former, and may form a convenient link between the two systems.

III. The equality of representation in the senate is another point, which, being evidently the result of compromise between the opposite pretensions of the large and the small states, does not call for much discussion. If indeed it be right, that among a people thoroughly incorporated into one nation, every district

The Federalist Papers

ought to have a *proportional* share in the government; and that among independent and sovereign states, bound together by a simple league, the parties, however unequal in size, ought to have an *equal* share in the common councils, it does not appear to be without some reason that in a compound republic, partaking both of the national and federal character, the government ought to be founded on a mixture of the principles of proportional and equal representation. But it is superfluous to try, by the standard of theory, a part of the constitution which is allowed on all hands to be the result, not of theory, but “of a spirit of amity, and that mutual deference and concession which the peculiarity of our political situation rendered indispensable.” A common government, with powers equal to its objects, is called for by the voice, and still more loudly by the political situation, of America. A government founded on principles more consonant to the wishes of the larger states, is not likely to be obtained from the smaller states. The only option, then, for the former, lies between the proposed government and a government still more objectionable. Under this alternative, the advice of prudence must be to embrace the lesser evil; and, instead of indulging a fruitless anticipation of the possible mischiefs which may ensue, to contemplate rather the advantageous consequences which may qualify the sacrifice.

In this spirit it may be remarked, that the equal vote allowed to each state, is at once a constitutional recognition of the portion of sovereignty remaining in the individual states, and an instrument for preserving that residuary sovereignty. So far the equality ought to be no less acceptable to the large than to the small states: since they are not less solicitous to guard, by every possible expedient,

The Senate—Great Forum of Constitutional Liberty

against an improper consolidation of the states into one simple republic.

Another advantage accruing from this ingredient in the constitution of the senate is, the additional impediment it must prove against improper acts of legislation. No law or resolution can now be passed without the concurrence, first, of a majority of the people, and then, of a majority of the states. It must be acknowledged that this complicated check on legislation may, in some instances, be injurious as well as beneficial; and that the peculiar defense which it involves in favor of the smaller states, would be more rational, if any interests common to them, and distinct from those of the other states, would otherwise be exposed to peculiar danger. But as the larger states will always be able, by their power over the supplies, to defeat unreasonable exertions of this prerogative of the lesser states; and as the faculty and excess of law-making seem to be the diseases to which our governments are most liable, it is not impossible that this part of the constitution may be more convenient in practice than it appears to many in contemplation.

IV. The number of senators, and the duration of their appointment, come next to be considered. In order to form an accurate judgment on both of these points, it will be proper to inquire into the purposes which are to be answered by a senate; and in order to ascertain these, it will be necessary to review the inconveniences which a republic must suffer from the want of such an institution.

First. It is a misfortune incident to republican government, though in a less degree than to other governments, that those who

The Federalist Papers

administer it may forget their obligations to their constituents, and prove unfaithful to their important trust. In this point of view, a senate, as a second branch of the legislative assembly, distinct from, and dividing the power with, a first, must be in all cases a salutary check on the government. It doubles the security to the people, by requiring the concurrence of two distinct bodies in schemes of usurpation or perfidy, where the ambition or corruption of one would otherwise be sufficient. This is a precaution founded on such clear principles, and now so well understood in the United States, that it would be more than superfluous to enlarge on it. I will barely remark, that, as the improbability of sinister combinations will be in proportion to the dissimilarity in the genius of the two bodies, it must be politic to distinguish them from each other by every circumstance which will consist with a due harmony in all proper measures, and with the genuine principles of republican government.

Second. The necessity of a senate is not less indicated by the propensity of all single and numerous assemblies to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders into intemperate and pernicious resolutions. Examples on this subject might be cited without number; and from proceedings within the United States, as well as from the history of other nations. But a position that will not be contradicted, need not be proved. All that need be remarked is, that a body which is to correct this infirmity, ought itself to be free from it, and consequently ought to be less numerous. It ought moreover to possess great firmness, and consequently ought to hold its authority by a tenure of considerable duration.

The Senate—Great Forum of Constitutional Liberty

Third. Another defect to be supplied by a senate, lies in a want of due acquaintance with the objects and principles of legislation. It is not possible that an assembly of men, called, for the most part, from pursuits of a private nature, continued in appointment for a short time, and led by no permanent motive to devote the intervals of public occupation to a study of the laws, the affairs, and the comprehensive interests of their country, should, if left wholly to themselves, escape a variety of important errors in the exercise of their legislative trust. It may be affirmed, on the best grounds, that no small share of the present embarrassments of America is to be charged on the blunders of our governments; and that these have proceeded from the heads, rather than the hearts of most of the authors of them. What indeed are all the repealing, explaining, and amending laws, which fill and disgrace our voluminous codes, but so many monuments of deficient wisdom; so many impeachments exhibited by each succeeding, against each preceding, session; so many admonitions to the people, of the value of those aids which may be expected from a well-constituted senate?

A good government implies two things: first, fidelity to the object of government, which is the happiness of the people; secondly, a knowledge of the means by which that object can be best attained. Some governments are deficient in both these qualities: most governments are deficient in the first. I scruple not to assert, that, in American governments, too little attention has been paid to the last. The federal constitution avoids this error; and what merits particular notice, it provides for the last in a mode which increases the security for the first.

The Federalist Papers

Fourth. The mutability in the public councils, arising from a rapid succession of new members, however qualified they may be, points out, in the strongest manner, the necessity of some stable institution in the government. Every new election in the states is found to change one half of the representatives. From this change of men must proceed a change of opinions; and from a change of opinions, a change of measures. But a continual change even of good measures is inconsistent with every rule of prudence, and every prospect of success. The remark is verified in private life, and becomes more just, as well as more important, in national transactions.

To trace the mischievous effects of a mutable government would fill a volume. I will hint a few only, each of which will be perceived to be a source of innumerable others.

In the first place, it forfeits the respect and confidence of other nations, and all the advantages connected with national character. An individual who is observed to be inconstant to his plans, or perhaps to carry on his affairs without any plan at all, is marked at once, by all prudent people, as a speedy victim to his own unsteadiness and folly. His more friendly neighbors may pity him, but all will decline to connect their fortunes with his: and not a few will seize the opportunity of making their fortunes out of his. One nation is to another what one individual is to another; with this melancholy distinction perhaps, that the former, with fewer of the benevolent emotions than the latter, are under fewer restraints also from taking undue advantage from the indiscretions of each other. Every nation, consequently, whose affairs betray a want of wisdom and stability, may calculate on every loss which

The Senate—Great Forum of Constitutional Liberty

can be sustained from the more systematic policy of their wiser neighbors. But the best instruction on this subject is unhappily conveyed to America by the example of her own situation. She finds that she is held in no respect by her friends; that she is the derision of her enemies; and that she is a prey to every nation which has an interest in speculating on her fluctuating councils and embarrassed affairs.

The internal effects of a mutable policy are still more calamitous. It poisons the blessing of liberty itself. It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood: if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is to-day, can guess what it will be to-morrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed?

Another effect of public instability is the unreasonable advantage it gives to the sagacious, the enterprising, and the moneyed few over the industrious and uniformed mass of the people. Every new regulation concerning commerce or revenue, or in any way affecting the value of the different species of property, presents a new harvest to those who watch the change, and can trace its consequences; a harvest, reared not by themselves, but by the toils and cares of the great body of their fellow-citizens. This is a state of things in which it may be said, with some truth, that laws are made for the *few*, not for the *many*.

In another point of view, great injury results from an unstable government. The want of confidence in the public councils,

The Federalist Papers

damps every useful undertaking; the success and profit of which may depend on a continuance of existing arrangements. What prudent merchant will hazard his fortunes in any new branch of commerce, when he knows not but that his plans may be rendered unlawful before they can be executed? What farmer or manufacturer will lay himself out for the encouragement given to any particular cultivation or establishment, when he can have no assurance that his preparatory labors and advances will not render him a victim to an inconstant government? In a word, no great improvement or laudable enterprise can go forward, which requires the auspices of a steady system of national policy.

But the most deplorable effect of all, is that diminution of attachment and reverence, which steals into the hearts of the people, towards a political system which betrays so many marks of infirmity, and disappoints so many of their flattering hopes. No government, any more than an individual, will long be respected, without being truly respectable; nor be truly respectable, without possessing a certain portion of order and stability.

PUBLIUS



No. 63

James Madison

A further view of the constitution of the senate, in regard to the duration of the appointment of its members.

A *fifth* desideratum, illustrating the utility of a senate, is the want of a due sense of national character. Without a select and stable member of the government, the esteem of foreign powers will not only be forfeited by an unenlightened and variable policy, proceeding from the causes already mentioned; but the national councils will not possess that sensibility to the opinion of the world, which is perhaps not less necessary in order to merit, than it is to obtain, its respect and confidence.

An attention to the judgment of other nations is important to every government for two reasons: the one is, that, independently of the merits of any particular plan or measure, it is desirable, on various accounts, that it should appear to other nations as the offspring of a wise and honorable policy: the second is, that in doubtful cases, particularly where the national councils may be warped by some strong passion, or momentary interest, the presumed or known opinion of the impartial world may be the best guide that can be followed. What has not America lost by her

The Senate—Great Forum of Constitutional Liberty

want of character with foreign nations? And how many errors and follies would she not have avoided, if the justice and propriety of her measures had, in every instance, been previously tried by the light in which they would probably appear to the unbiased part of mankind?

Yet, however requisite a sense of national character may be, it is evident that it can never be sufficiently possessed by a numerous and changeable body. It can only be found in a number so small that a sensible degree of the praise and blame of public measures may be the portion of each individual; or in an assembly so durably invested with public trust, that the pride and consequence of its members may be sensibly incorporated with the reputation and prosperity of the community. The half-yearly representatives of Rhode Island would probably have been little affected in their deliberations on the iniquitous measures of that state, by arguments drawn from the light in which such measures would be viewed by foreign nations, or even by the sister states; whilst it can scarcely be doubted, that if the concurrence of a select and stable body had been necessary, a regard to national character alone would have prevented the calamities under which that misguided people is now laboring.

I add, as a *sixth* defect, the want, in some important cases, of a due responsibility in the government to the people, arising from that frequency of elections, which in other cases produces this responsibility. This remark will, perhaps, appear not only new, but paradoxical. It must nevertheless be acknowledged, when explained, to be as undeniable as it is important.

Responsibility, in order to be reasonable, must be limited to

The Federalist Papers

objects within the power of the responsible party; and in order to be effectual, must relate to operations of that power, of which a ready and proper judgment can be formed by the constituents. The objects of government may be divided into two general classes: the one depending on measures, which have singly an immediate and sensible operation; the other depending on a succession of well-chosen and well-connected measures, which have a gradual and perhaps unobserved operation. The importance of the latter description to the collective and permanent welfare of every country, needs no explanation. And yet it is evident that an assembly elected for so short a term as to be unable to provide more than one or two links in a chain of measures, on which the general welfare may essentially depend, ought not to be answerable for the final result, any more than a steward or tenant, engaged for one year, could be justly made to answer for places or improvements which could not be accomplished in less than half a dozen years. Nor is it possible for the people to estimate the *share* of influence, which their annual assemblies may respectively have on events resulting from the mixed transactions of several years. It is sufficiently difficult to preserve a personal responsibility in the members of a *numerous* body, for such acts of the body as have an immediate, detached, and palpable operation on its constituents.

The proper remedy for this defect must be an additional body in the legislative department, which, having sufficient permanency to provide for such objects as require a continued attention, and a train of measures, may be justly and effectually answerable for the attainment of those objects.

Thus far I have considered the circumstances which point out

The Senate—Great Forum of Constitutional Liberty

the necessity of a well-constructed senate only as they relate to the representatives of the people. To a people as little blinded by prejudice or corrupted by flattery as those whom I address, I shall not scruple to add, that such an institution may be sometimes necessary as a defense to the people against their own temporary errors and delusions. As the cool and deliberate sense of the community ought, in all governments, and actually will, in all free governments, ultimately prevail over the views of its rulers: so there are particular moments in public affairs when the people, stimulated by some irregular passion, or some illicit advantage, or misled by the artful misrepresentations of interested men, may call for measures which they themselves will afterwards be the most ready to lament and condemn. In these critical moments, how salutary will be the interference of some temperate and respectable body of citizens, in order to check the misguided career, and to suspend the blow meditated by the people against themselves, until reason, justice, and truth, can regain their authority over the public mind? What bitter anguish would not the people of Athens have often escaped, if their government had contained so provident a safeguard against the tyranny of their own passions? Popular liberty might then have escaped the indelible reproach of decreeing to the same citizens, the hemlock on one day, and statues on the next.

It may be suggested, that a people spread over an extensive region cannot, like the crowded inhabitants of a small district, be subject to the infection of violent passions; or to the danger of combining in pursuit of unjust measures. I am far from denying that this is a distinction of peculiar importance. I have, on the

The Federalist Papers

contrary, endeavored in a former paper to show, that it is one of the principal recommendations of a confederated republic. At the same time, this advantage ought not to be considered as superseding the use of auxiliary precautions. It may even be remarked, that the same extended situation, which will exempt the people of America from some of the dangers incident to lesser republics, will expose them to the inconveniency of remaining, for a longer time, under the influence of those misrepresentations which the combined industry of interested men may succeed in distributing among them.

It adds no small weight to all these considerations, to recollect that history informs us of no long-lived republic which had not a senate. Sparta, Rome, and Carthage, are, in fact, the only states to whom that character can be applied. In each of the two first, there was a senate for life. The constitution of the senate in the last, is less known. Circumstantial evidence makes it probable, that it was not different in this particular from the two others. It is at least certain, that it had some quality or other which rendered it an anchor against popular fluctuations; and that a smaller council, drawn out of the senate, was appointed not only for life, but filled up vacancies itself. These examples, though as unfit for the imitation, as they are repugnant to the genius, of America, are, notwithstanding, when compared with the fugitive and turbulent existence of other ancient republics, very instructive proofs of the necessity of some institution that will blend stability with liberty. I am not unaware of the circumstances which distinguish the American from other popular governments, as well ancient as modern; and which render extreme circumspection necessary, in

The Senate—Great Forum of Constitutional Liberty

reasoning from the one case to the other. But after allowing due weight to this consideration, it may still be maintained, that there are many points of similitude which render these examples not unworthy of our attention. Many of the defects, as we have seen, which can only be supplied by a senatorial institution, are common to a numerous assembly frequently elected by the people, and to the people themselves. There are others peculiar to the former, which require the control of such an institution. The people can never wilfully betray their own interests: but they may possibly be betrayed by the representatives of the people; and the danger will be evidently greater where the whole legislative trust is lodged in the hands of one body of men, than where the concurrence of separate and dissimilar bodies is required in every public act.

The difference most relied on, between the American and other republics, consists in the principle of representation, which is the pivot on which the former move, and which is supposed to have been unknown to the latter, or at least to the ancient part of them. The use which has been made of this difference, in reasonings contained in former papers, will have shown that I am disposed neither to deny its existence, nor to undervalue its importance. I feel the less restraint, therefore, in observing, that the position concerning the ignorance of the ancient governments on the subject of representation, is by no means precisely true, in the latitude commonly given to it. Without entering into a disquisition which here would be misplaced, I will refer to a few known facts, in support of what I advance.

In the most pure democracies of Greece, many of the executive functions were performed, not by the people themselves, but

The Federalist Papers

by officers elected by the people, and *representing* them in their *executive* capacity.

Prior to the reform of Solon, Athens was governed by nine archons, annually *elected by the people at large*. The degree of power delegated to them, seems to be left in great obscurity. Subsequent to that period, we find an assembly, first of four, and afterwards of six hundred members, annually *elected by the people*; and *partially* representing them in their *legislative* capacity, since they were not only associated with the people in the function of making laws, but had the exclusive right of originating legislative propositions to the people. The senate of Carthage, also, whatever might be its power, or the duration of its appointment, appears to have been *elective* by the suffrages of the people. Similar instances might be traced in most, if not all the popular governments of antiquity.

Lastly, in Sparta we meet with the Ephori, and in Rome with the Tribunes; two bodies, small indeed in numbers, but annually *elected by the whole body of the people*, and considered as the *representatives* of the people, almost in their *plenipotentiary* capacity. The Cosmi of Crete were also annually *elected by the people*; and have been considered by some authors as an institution analogous to those of Sparta and Rome, with this difference only, that in the election of that representative body, the right of suffrage was communicated to a part only of the people.

From these facts, to which many others might be added, it is clear that the principle of representation was neither unknown to the ancients nor wholly overlooked in their political constitutions. The true distinction between these and the American governments, lies *in the total exclusion of the people, in their collective capacity*,

The Senate—Great Forum of Constitutional Liberty

from any share in the *latter*, and not in the *total exclusion of the representatives of the people* from the administration of the *former*. The distinction, however, thus qualified, must be admitted to leave a most advantageous superiority in favor of the United States. But to insure to this advantage its full effect, we must be careful not to separate it from the other advantage, of an extensive territory. For it cannot be believed, that any form of representative government could have succeeded within the narrow limits occupied by the democracies of Greece.

In answer to all these arguments, suggested by reason, illustrated by examples, and enforced by our own experience, the jealous adversary of the constitution will probably content himself with repeating, that a senate appointed not immediately by the people, and for the term of six years, must gradually acquire a dangerous pre-eminence in the government, and finally transform it into a tyrannical aristocracy.

To this general answer, the general reply ought to be sufficient; that liberty may be endangered by the abuses of liberty, as well as by the abuses of power; that there are numerous instances of the former, as well as of the latter; and that the former, rather than the latter, is apparently most to be apprehended by the United States. But a more particular reply may be given.

Before such a revolution can be effected, the senate, it is to be observed, must in the first place corrupt itself; must next corrupt the state legislatures; must then corrupt the house of representatives; and must finally corrupt the people at large. It is evident that the senate must be first corrupted before it can attempt an establishment of tyranny. Without corrupting the

The Federalist Papers

state legislatures, it cannot prosecute the attempt, because the periodical change of members would otherwise regenerate the whole body. Without exerting the means of corruption with equal success on the house of representatives, the opposition of that co-equal branch of the government would inevitably defeat the attempt; and without corrupting the people themselves, a succession of new representatives would speedily restore all things to their pristine order. Is there any man who can seriously persuade himself, that the proposed senate can, by any possible means within the compass of human address, arrive at the object of a lawless ambition, through all these obstructions?

If reason condemns the suspicion, the same sentence is pronounced by experience. The constitution of Maryland furnishes the most apposite example. The senate of that state is elected, as the federal senate will be, indirectly by the people; and for a term less by one year only, than the federal senate. It is distinguished, also, by the remarkable prerogative of filling up its own vacancies within the term of its appointment; and, at the same time, is not under the control of any such rotation as is provided for the federal senate. There are some other lesser distinctions, which would expose the former to colorable objections, that do not lie against the latter. If the federal senate, therefore, really contained the danger which has been so loudly proclaimed, some symptoms at least of a like danger ought by this time to have been betrayed by the senate of Maryland; but no such symptoms have appeared. On the contrary, the jealousies at first entertained by men of the same description with those who view with terror the correspondent part of the federal constitution, have been gradually extinguished

The Senate—Great Forum of Constitutional Liberty

by the progress of the experiment; and the Maryland constitution is daily deriving, from the salutary operation of this part of it, a reputation in which it will probably not be rivalled by that of any state in the union.

But if anything could silence the jealousies on this subject, it ought to be the British example. The senate there, instead of being elected for a term of six years, and of being unconfined to particular families or fortunes, is an hereditary assembly of opulent nobles. The house of representatives, instead of being elected for two years, and by the whole body of the people, is elected for seven years; and, in very great proportion, by a very small proportion of the people. Here, unquestionably, ought to be seen in full display, the aristocratic usurpations and tyranny which are at some future period to be exemplified in the United States. Unfortunately, however, for the anti-federal argument, the British history informs us, that this hereditary assembly has not been able to defend itself against the continual encroachments of the house of representatives; and that it no sooner lost the support of the monarch, than it was actually crushed by the weight of the popular branch.

As far as antiquity can instruct us on this subject, its examples support the reasoning which we have employed. In Sparta, the Ephori, the annual representatives of the people, were found an overmatch for the senate for life; continually gained on its authority, and finally drew all power into their own hands. The tribunes of Rome, who were the representatives of the people, prevailed, it is well known, in almost every contest with the senate for life, and in the end gained the most complete triumph over it. The fact

The Federalist Papers

is the more remarkable, as unanimity was required in every act of the tribunes, even after their number was augmented to ten. It proves the irresistible force possessed by that branch of a free government, which has the people on its side. To these examples might be added that of Carthage, whose senate, according to the testimony of Polybius, instead of drawing all power into its vortex, had, at the commencement of the second punic war, lost almost the whole of its original portion.

Besides the conclusive evidence resulting from this assemblage of facts, that the federal senate will never be able to transform itself, by gradual usurpations, into an independent and aristocratic body; we are warranted in believing, that if such a revolution should ever happen from causes which the foresight of man cannot guard against, the house of representatives, with the people on their side, will at all times be able to bring back the constitution to its primitive form and principles. Against the force of the immediate representatives of the people, nothing will be able to maintain even the constitutional authority of the senate, but such a display of enlightened policy, and attachment to the public good, as will divide with that branch of the legislature the affections and support of the entire body of the people themselves.

PUBLIUS



Afterword—A Eulogy of Robert C. Byrd

*Remarks of Republican Leader Mitch McConnell**

Delivered on Friday, July 2, 2010

West Virginia State Capitol, Charleston, West Virginia

Ten years ago Sen. Byrd honored me and the students at the University of Louisville by making a trip to Kentucky to share some of his wisdom about the Senate. I regret to say it's taken me a decade to return the favor. But I do so with a deep sense of gratitude, not only for that particular kindness, but for many others he showed me over the years, and for the many valuable lessons I have learned and relearned from the life and example of Robert C. Byrd.

Others have talked about his encyclopedic knowledge of history and literature; his courtliness; his profound reverence for the U.S. Constitution, his oratory. It's all true. For about a quarter of the time our government has existed, Sen. Byrd stood like a sentry in a three-piece suit keeping watch over the Legislative Branch. But

* Others speaking at the service for Sen. Byrd included President Barack Obama, Vice President Joe Biden, former President William Jefferson Clinton, Speaker of the House Nancy Pelosi, and Majority Leader of the Senate Harry Reid.

The Senate—Great Forum of Constitutional Liberty

here in West Virginia, one can't help but be reminded first and foremost of the challenges he overcame to achieve all this.

It's one of the glories of our country that success isn't restricted to the connected or the well-born, that anyone with enough talent and drive can rise to the heights of power and prestige.

It's remarkable to think that the man who wrote the Gettysburg Address was raised by a couple who couldn't even sign their own names. And it's no less remarkable that the man we honor today, a man who held every one of us spellbound with his knowledge and his command of history, couldn't even afford a pair of socks to wear to Sunday school as a boy.

So here, in Charleston, we are reminded that the American promise reaches even into the remotest corners of Hardin County, Kentucky, and the winding hollows of Raleigh County, West Virginia. The glory of our nation is reaffirmed every time another man or woman overcomes what some call disadvantages to achieve great things. And Robert Byrd may well be their patron saint.

He was the ultimate self-made man, the high school valedictorian who couldn't afford to go to college but who could teach a room full of professors something new every day—a walking argument for home schooling. He was the orphan who grew up in a home without electricity or running water, but who spent his adult life giving back to his adopted state as much as his beloved adopted parents gave him.

Best of all, he was never embarrassed by the poverty of his youth. He wore it like a badge of honor—because he knew his dignity lay not in material possessions, but in being the child of a

A Eulogy of Robert C. Byrd

loving God, the husband of a devoted wife, a citizen of the United States of America, and a son of the Mountain State.

Some people get elected to the Senate with the hope of making it on the national stage. Not Robert Byrd. As he once put it: “When I am dead and am opened, they will find West Virginia written on my heart.”

He made it all look easy, but it didn’t come easy. I remember asking him once if he’d ever been to a football game. He said he hadn’t—and then he corrected himself. He actually had gone to a game once, but only to the halftime show, and even then he left halfway before it was over.

He was making better use of his time than we were, learning the lessons of history, expanding his views, always learning. Quoting one of the seven wise men of Greece, he would say, “I grow old in the pursuit of learning.” He was the only person I ever knew who had no interest in leisure whatsoever. No ball game ever changed the course of history, he said.

The fact is, he was engaged in a different contest—not for a perishable crown, but for an imperishable one. And in the end, he could say with Paul that he had run the race as if to win. We are consoled by the thought that this man who believed, even in the twilight of his life, that the prayers of his mother had always followed him, has reached his father’s house . . . and that Robert Carlyle Byrd has heard those words he always longed to hear: “Well done, good and faithful servant, come share your master’s joy.”



About the Contributors

Robert C. Byrd represented the state of West Virginia in the United States Senate from 1959 until his death on June 28, 2010. He is both the longest serving Senator in American history and the longest serving member of either house of Congress. He was elected to more leadership positions than any other member of the Senate and cast more votes than any member of that body (more than 18,000). Long regarded as the dean of the Senate, he was the author of a multi-volume history of that legislative body as well as *The Senate of the Roman Republic*.

Gary L. Gregg II holds the Mitch McConnell Chair in Leadership at the University of Louisville and is director of the university's McConnell Center. He is the author or editor of nine books including *Securing Democracy—Why We Have an Electoral College*, *The Presidential Republic*, and *Thinking about the Presidency*. He has won awards for his teaching and his service including the Richard and Helen DeVos Freedom Center Leadership Award and an honorary degree from Davis & Elkins College.

Mitch McConnell is the longest serving U.S. Senator in Kentucky history. He is the 15th Republican leader of the U.S. Senate and is only the second Kentuckian to lead his party in the Senate. He has led important committees and subcommittees



About the Contributors

since joining the Senate in 1985 including being Chairman of the National Republican Senatorial Committee during the 1998 and 2000 election cycles. He graduated with honors from the University of Louisville's College of Arts and Sciences, where he served as student body president, and has a law degree from the University of Kentucky, where he was elected president of the Student Bar Association.



20 years of educational excellence

The McConnell Center was established in 1991 by U.S. Senator Mitch McConnell and the University of Louisville. McConnell, a 1964 graduate of the university, founded the Center based on his belief that “Kentucky’s future depends on inspiring talented, motivated leaders.”

The McConnell Center is dedicated to providing a non-partisan, well-rounded education that encourages top undergraduates to become valued citizens and future leaders of the Commonwealth and the nation. The Center also facilitates public discussion on the major challenges of our time while encouraging an understanding of our shared past.

The McConnell Center hosts a public lecture series and coordinates the McConnell Scholars Program and Civic Education Program for Kentucky students and teachers. The Center is also proud to house the U.S. Senator Mitch McConnell and U.S. Secretary of Labor Elaine L. Chao Archives.

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The McConnell Center is home to one of the most competitive and prestigious scholarship programs in Kentucky. Each year, the program attracts outstanding high school seniors from around the Commonwealth. Finalists take part in a two-day interview process. Ten students are then selected as the McConnell Scholars and awarded a four-year scholarship to the University of Louisville.

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Graduates of the program have gone on to further study at institutions such as Harvard Law School, Johns Hopkins University, Oxford University and Cambridge University in England. Though McConnell Scholars have a diversity of professional interests from medicine to legal studies, former students have also taken top positions in politics from the Governor's Mansion to the White House.

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THE SENATOR MITCH **McCONNELL**
AND SECRETARY ELAINE L. **CHAO**
ARCHIVES

UNIVERSITY OF LOUISVILLE

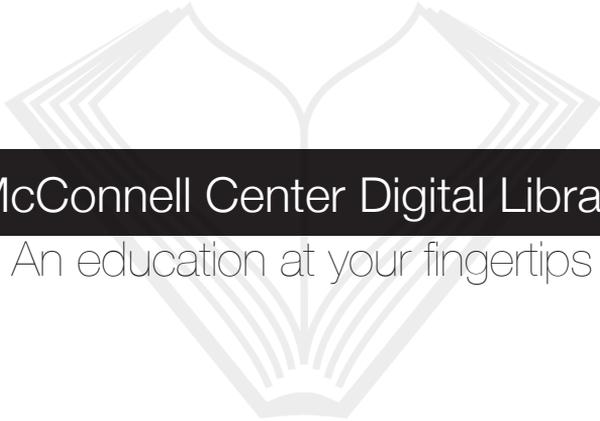
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