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CAN REFORMS LEAD THE SENATE OUT OF THE TWILIGHT ZONE ?

"...We are really entering the twilight zone of the legislative process."

--Senator Dan Quayle¹

INTRODUCTION

Once heralded as "the world's greatest deliberative body," the United States Senate has drifted into disarray. A seemingly endless morass of procedure has swallowed substance. Says Senator Ted Stevens (R-AK), "we never finish anything."² Last year the Senate spent considerable time evaluating itself. Most senators agreed on the need for reform.

They then did almost nothing about it. This means that if past years are any indication, serious Senate action on the deficit and other weighty issues will languish until October. Then, after the fiscal year expires, the Senate will pass omnibus appropriations bills in a frenzy. Senator Dan Quayle (R-IN), a leading proponent of Senate reform, spoke of this chaos last September:

"During the last few days, we will witness the Senate at its absolute worst. This institution will pass nine appropriations in one bill. These appropriations represent over 80 percent of the amount in the Appropriations Committee's jurisdiction. If we can really pass 80 percent of the government in a few days, then, perhaps, we ought to just meet for a few days a year and call it quits. It would save the taxpayers a bundle and it would accomplish the same thing."³

¹ Congressional Record, September 28, 1984, p. S12271.

² Report of the Temporary Select Committee to Study the Senate Committee System, December 14, 1984, p. 3.

³ Congressional Record, September 28, 1984, p. S12271.

Last year Quayle led the bipartisan, reform-minded "Temporary Select Committee to Study the Senate Committee System." The twelve-member committee unanimously recommended a series of structural and procedural changes designed to increase the Senate's efficiency. The changes' critics argued that, under the recommended proposals, the Republican majorities on key committees would be cut too close. In the name of reform, the critics charged, Quayle's committee suggested overgenerous concessions to the Democrats. They also asserted that reforms aimed at limiting non-germane amendments, lengthy debates, and the invocation of cloture ran contrary to the goal of restoring the Senate to its former status as "the world's greatest deliberative body."

The majority of the reform proposals died quietly in a late-night session on February 21, 1985. Previously cleared by Republican and Democratic caucuses, the Senate adopted a resolution offered by Majority Leader Robert Dole (R-KS) and Minority Leader Robert Byrd (D-WV), that, in effect, cut the total number of "A" committee memberships from 231 to 214.⁴ Dole suggested that restoration of main force discipline could tame an unruly Senate. While acknowledging that, "In many respects, the Senate as an institution seems to be breaking down,"⁵ Dole threatened "I'm prepared to live by the rules and die by the rules" and hinted that the rules may not be the source of the Senate's problems. "The question may not be the rules, it may be the attitude of the senators."⁶ Dole speculated that several all-night sessions could produce satisfactory attitudinal change among senators.

Senator Jesse Helms (R-NC), skilled at applying current Senate rules for a variety of legislative concerns, warned reformers, "I can figure out three ways to get around any rule you make."⁷ Apparently, for now, the Senate will maintain its recent course. Senators will continue to spread their time and talents too thinly over a hopelessly eclectic montage of issues, dashing from committee to subcommittee to office to floor, sometimes voting on bills that have neither been analyzed nor read. But, while unable to correct current problems, they have, at least, resisted the temptation to reform the structural problem by adding to the procedural one. In a form of constitutional paralysis, the distinctions between the House and the Senate could deteriorate until, ultimately, the bodies are differentiated solely by their membership sizes, length of terms, and office building names.

⁴ "A" committees include: Agriculture, Appropriations, Armed Services, Banking, Commerce, Energy, Environment, Finance, Foreign Relations, Governmental Affairs, Judiciary and Labor. The Quayle committee recommended limiting "A" committee memberships to 200, two for each senator.

⁵ The New York Times, January 16, 1985.

⁶ The Washington Post, January 16, 1985.

⁷ The Christian Science Monitor, January 16, 1985.

BACKGROUND

Few agree that this was what the founding fathers had in mind. Writing in the Federalist papers, Alexander Hamilton "described the need for a body with stability and continuity that will not be swept constantly by the whims of change, a body that can dispassionately review the actions of the more numerous branch."⁸ The Senate was devised as a safeguard against the effects of "a mutable policy" that "poisons the blessings of liberty itself. It will be of little avail to 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 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 today can guess what it will be tomorrow." Hamilton's warnings have gone unheeded.

The Senate, in 1984, had 137 different standing committees, standing subcommittees, select and special committees and their subcommittees, joint committees and joint subcommittees. The assignments per senator have burgeoned until a senator who only has to be three places at once on any given morning considers his schedule nearly clean. A senator may be a chairman of a major committee and serve on two additional "A" committees. He may also serve on two "B" committees (special and joint committees and the budget committee). Current rules permit him to sit on three subcommittees on each of his "A" committees, except Appropriations where the number is unlimited.

It is conceivable, therefore, that at 10 on any particular morning, a senator could be expected to be in thirteen different rooms. If the Senate is in session at that hour, unanimous consent probably has been granted for hearings to proceed concurrently. So the senator's presence may be required on the Senate floor as well. Add to this the relentless pressure to meet with constituents and interest groups, respond to mountains of mail, return phone calls, gather pertinent facts relevant to legislative duties, and run for reelection.

Few senators dare to reject a committee assignment, since increasingly complex and diverse constituencies expect representation on a growing number of committees across the entire spectrum of legislative purview. Political necessity also feeds a senator's absurd workload, as few are inclined to surrender a committee slot favored by the television cameras. So when a senator speaks of reform favorably, it is usually on the condition that he escape it unscathed.

⁸ Report of the Temporary Select Committee to Study the Senate Committee System, December 14, 1984, p. 2.

PAST ATTEMPTS AT REFORM

In 1974 the Senate passed the Budget Impoundment and Control Act. It was intended to bring order to the nation's accounting and provide a method to control spending. Senator Dale Bumpers (D-AS) explains what has happened since: "We passed the Budget Impoundment and Control Act in 1974. We said: 'We are going to discipline ourselves....We are going to pass a budget resolution, and any bill which comes up and appropriates more money than we have approved in the budget resolution will be subject to a point of order.' What has happened since then? Nothing; we go about our merry way doing whatever we want to do. We do not have a Budget Act right now. We are not operating under a Budget Act. We are just appropriating money, without limit."⁹

Process has eclipsed substance. The system proceeds backwards.

Congress is supposed to determine national policy in authorizing committees, stick a pricetag on it in appropriating committees, and submit both to the Executive Branch for enforcement. Today, Congress focuses on the final number, which is usually considered too large. Then begins a very narrow debate over "what to cut," because appropriations for entitlements are, in practice, largely exempt. Committees then recrunch the budget numbers. Authorization comes at the end, or in some cases, after the fiscal year. By then, the next year's numbers are already out and the process begins anew. Senator Warren Rudman (R-NH) calls the process "legislative gridlock."

Bipartisan committees attempted reform in 1976 and 1982. They tended to address so many issues that they became a microcosm of the problems they were to solve. This too plagued the Quayle Committee. By addressing the twin problems of committee structure and rules governing non-germane amendments, length of debate, and cloture, the Quayle committee exacerbated the problems inherent in each. This led to the defeat of most of the proposed reforms. While in clear need of committee structure and budget process reform, rule changes on items such as non-germane amendments would serve to mute the minority and consolidate opposition from all quarters. It would also further blur the significant differences between the Senate and the House, where the majority is absolute.

DANGERS OF LIMITING DEBATE

The Quayle committee introduced a number of procedural measures designed to expedite legislation on the Senate floor by limiting debate. Critics believe that, if adopted, these measures would have produced nominal improvements in Senate performance,

⁹ Congressional Record, September 28, 1984, p. S12270.

since the majority of the institution's problems stem from the committee system and the budget process, not from action on the floor. They also would have weakened the Senate in its historic role as a forum for great ideas and decisions. Proposals made by the Quayle committee in this area do not differ greatly from past suggestions.

1) Make the motion to proceed non-debatable.

Debating the motion to proceed gives the average senator a say in the schedule of the body. Ironically, it is usually those junior senators who dislike having no say in the schedule who are first to besmirch this protection, for their benefit, as an "obstruction." Historically, it is used infrequently and is useless unless a filibuster on the motion itself is guaranteed to follow. Many junior senators have complained that an ability to filibuster a motion to proceed guarantees the same filibuster twice. It does not. The first debate determines what the Senate schedule should be. The second, on the motion itself, addresses the merits of passage.

2) Reduction of post-cloture time.

This refers to allotted time remaining to amend a bill after the Senate has voted to end debate. Foreshortening the amendment process diminishes the opportunity to fashion a compromise acceptable to a majority of members. It increases the likelihood that the legislation will be reintroduced in future sessions, producing an inefficient repetition of committee hearings, markup sessions, and floor debates.

The current post-cloture procedure calls for 100 hours of debate and then a vote on final passage regardless of amendments outstanding. However, all 100 hours have never been used. By changing tactics, Senate leadership could alleviate any perceived post-cloture problem. It could run the post-cloture clock for 100 straight hours, keeping the senators in continuous session. It usually takes only one 3 a.m. quorum call before enthusiasm for dilatory post-cloture debate disappears.

3) Limiting non-germane amendments.

The Quayle committee proposed that, after two "full" days' consideration, the leadership or three-fifths of the reporting committees may require germaneness to amendments. A germane amendment involves far more than mere relevance to the subject matter contained in the bill. The right to offer non-germane amendments historically has protected the minority or those holding minority views. The proposal to limit non-germane amendments is unnecessary and dangerous.

It is unnecessary because germaneness is usually achieved through a unanimous consent agreement which contains a provision that all amendments must be germane. When consent is not possible,

the leadership usually invokes cloture, which makes germaneness automatic under Rule XXII.

It is dangerous because the non-germane amendment is the minority's sole access to legislation. Former Senator Jacob Javits advised a group of Republican senators, then in the minority, that there was one concession they must never make: relinquish the right to offer a non-germane amendment.

RESTORING THE SENATE'S CONSTITUTIONAL INTEGRITY

Several rule changes could, if adopted, restore efficiency and dignity to the Senate.

1) Require authorization as a condition of appropriation.

This would return policy responsibility where it belongs, to the authorizing committee. Under current practice, authorization habitually follows appropriations, diluting the legislative process and the wisdom of its decisions.

2) Place the budget process on a mandatory timetable.

Make the recommendations of one house mandatory if the other house had not acted by a set date. This would produce an unprecedented Washington spectacle: a race between the House and the Senate to the finish.

3) Rewrite the reconciliation section of the Budget Act.

So that future Congresses will not be able to cut off policy debate by early imposition of numerical formulae, as now has become common practice. Earnest and complete policy debate ensures adequate scrutiny of the budget.

4) Eliminate the use of continuing resolutions for appropriations.

During the last Congress, only five of thirteen appropriations bills were completed. Instead, the Congress staggered from one continuing resolution to the next, providing for further number tinkering and subjugating policy debate.

5) Require reports on all legislation.

Under current rules, Senate committees purposely fail to file reports on some of their most important and controversial bills to eliminate the three-day rule which provides time for members to study the bill. Last year, the Senate voted on many pieces of legislation without access to the exact language well into the debate or, in some cases, after final passage. Mandated ignorance is indefensible.

CONCLUSION

The Quayle committee's recommendations for reforming the size and scope of the Senate committee system are laudable and necessary to increasing the institution's efficiency. Increasing efficiency, however, must not be accomplished through limiting debate and subjugating minority views.

Predictably, the Senate chose to ignore many of the Quayle committee's structural reforms. Quayle wrote recently, "The Senate has not been able to fulfill [its role] because it tends to get bogged down in trivia rather than dealing with the great questions of the day."¹⁰

The Senate thus would be rewarded by taking another, more serious, look at the Quayle proposals.

Prepared for The Heritage Foundation
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¹⁰ Fort Wayne News-Sentinel, March 19, 1985.

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The first part of the report deals with the general situation of the country. It is noted that the population is increasing rapidly, and that the government is making every effort to improve the conditions of life. The report also mentions the progress of the various departments, and the success of the different projects.

The second part of the report deals with the financial situation. It is noted that the government has managed to keep the budget in balance, and that the public debt is being reduced. The report also mentions the success of the different projects, and the progress of the various departments.

The third part of the report deals with the social situation. It is noted that the government is making every effort to improve the conditions of life, and that the people are becoming more educated. The report also mentions the success of the different projects, and the progress of the various departments.

The fourth part of the report deals with the military situation. It is noted that the government is making every effort to strengthen the army, and that the people are becoming more patriotic. The report also mentions the success of the different projects, and the progress of the various departments.

The fifth part of the report deals with the foreign relations. It is noted that the government is making every effort to improve the relations with the other countries, and that the people are becoming more international. The report also mentions the success of the different projects, and the progress of the various departments.

The sixth part of the report deals with the internal affairs. It is noted that the government is making every effort to improve the administration, and that the people are becoming more active. The report also mentions the success of the different projects, and the progress of the various departments.

The seventh part of the report deals with the future. It is noted that the government is making every effort to improve the future, and that the people are becoming more optimistic. The report also mentions the success of the different projects, and the progress of the various departments.

The eighth part of the report deals with the conclusion. It is noted that the government is making every effort to improve the country, and that the people are becoming more united. The report also mentions the success of the different projects, and the progress of the various departments.