

auspices, to write a new law of the sea. Essentially, the underdeveloped majority seeks a regime which would place all deep-sea resources under the control of the UN General Assembly. Such an arrangement, or anything like it, will have major consequences for Japan—for its food supplies, for its access to seabed mineral resources. But whatever economic effects such proposals may produce, they originate in an antithesis to liberal political and economic thought; and they will spawn international organizations, established in the name of "equity," but functioning to the detriment of all free-enterprise democracies.

How fragile is the liberal order? France and Italy, parts of the western world, are thought vulnerable to "Eurocommunism" or "Finlandization." In West Germany, measures taken to combat

terrorism trigger speculation about the durability of democracy in the country of Goethe and Mann. If there is any basis for such concerns in Europe, should not those concerns be extended to Asia? There we find a Japan that has no real historical, cultural, or psychological stake in the western system. Japan's stake is *material* and, as such, ultimately practical. Much as we must discuss the American commitment to Japan, we must also develop a better understanding of *Japan's* commitment to the world system, to "our" system of collective security and liberal economic cooperation. This is an important question. To ignore it is to reveal both a failure of cultural imagination and a gap in strategic analysis. For world order is much dependent on a continued will to pragmatism by this brilliant and formidable people. □

Elliott Abrams

The Senate Since Yesterday

Though the Senate today is quite unlike what the founders envisioned—absent so many of its original tasks and so much larger than when it first met—it maintains a distinct utility to our system. In fact, that the "Golden Age" of the Senate is over may well be cause for satisfaction, rather than regret.

On entering the House of Representatives at Washington, one is struck by the vulgar demeanor of that great assembly. Often there is not a distinguished man in the whole number. Its members are almost all obscure individuals.... At a few yards distance is the door of the Senate, which contains within a small space a large proportion of the celebrated men of America. Scarcely an individual is to be seen in it who has not had an active and illustrious career....

So wrote de Tocqueville in *Democracy in America*, and his view of the Senate was not idiosyncratic. Bryce called the Senate the "masterpiece of the constitution makers"; Gladstone spoke of it as "that remarkable body, the most remarkable of all the inventions of modern politics."

Such views are those of an earlier century, and are seldom, if ever, heard today. The "Golden Age" of the Senate is now more than a century behind us. Can it be that, like the House of Lords, the Senate has outlived its usefulness? Or, sadder yet, can it be that, *unlike* the House of Lords, the Senate has in its much shorter lifetime lost its distinctiveness and much of its value?

It is clear that the Senate of today is a very different institution from that which its founders envisioned. It is an enormous body, with 100 members, scores of committees and subcommittees, and thousands of employees; it is directly elected; its role as a check on the follies of democracy is ended, and in any case would today be considered illegitimate. One can plausibly argue that today the main differences between the House and the Senate are the Senate's smaller number of rules and greater number of presidential aspirants. Yet this would be overstating the case, for the Senate retains a good measure of distinctiveness and, thereby, of special value.

It is worthwhile tracing the development—"progress" might be an inappropriate term—of the Senate towards its present condition. At its inception, it was decidedly the weaker house, as had been planned. Madison stated at one point that, as he was young and ambitious, he could not afford to accept a seat in the Senate. And the weakness of the Senate lasted for some years: The great debates over the War of 1812, for example, were held in the House.

Elliott Abrams is Administrative Assistant to Senator Daniel P. Moynihan of New York.

Yet quickly the Senate began to gain power. The new century brought with it the fundamental moral and constitutional clashes which culminated in the Civil War. For these, the Senate was the locus of national debate. Its small, acoustically fine chamber was populated with the likes of Clay, Calhoun, and Webster, as well as many others well trained for discussion of legal and moral principles. Its rules permitted unlimited debate, and its small membership made it possible for individual senators to be heard at length, and to be heard throughout the nation. The Senate reached the zenith of its prestige during the years between the Missouri Compromise in 1820 and the Civil War.

Yet even in those years the Senate had begun to change and to become more like the House and less a collection of distinguished individuals waiting to curb the occasional excesses of the other, more powerful body. In 1816 the press of legislative business forced the Senate to give up electing an ad hoc committee to study each bill as it was introduced. Instead, permanent committees with set jurisdictions were established. A more significant change came in 1846, when the Senate began to endorse party slates, rather than elect individuals, for committee membership. As George Haynes wrote in *The Senate of the United States*, "In the history of Senate organization few periods have been of more interest and significance than the ten days at the opening of the second session of the twenty-ninth Congress, December 7-17, 1846," when party became the organizing principle in committees.

From that time on the importance of party grew. In 1911 the Democrats, and in 1913 the Republicans, first formally elected a leader. More and more, issues were settled not by floor debate, but in party councils. Carter Glass, who served in Congress for a total of 44 years, could state in mid-career that, "In the twenty-eight years that I have been a member of one or the other branches of Congress, I have never known a speech to change a vote." And with each successive move to a larger chamber, the Senate has adopted a location less conducive to debate.

Yet the changes within the Senate are only part of the story. Equally important was the transformation of the issues the nation addressed after the Civil War. Fundamental moral and constitutional issues, which the background of most senators well suited them to debate, were replaced by economic questions such as the regulation of industry. The prestige of the Senate declined as its

special contribution to a national debate disappeared. Moreover, as senators came more and more to be seen as representatives of particular economic interests, the body grew unpopular. It was in this period that the Senate was accused of being a "Millionaire's Club."

The Progressive Era saw an enormous change in the Senate: In 1913 the 17th Amendment was ratified and senators began to be elected directly. Woodrow Wilson had written in *Congressional Government* that

The Senate is fitted to do deliberately and well the revising which is its properest function, because its position as a representative of State sovereignty is one of eminent dignity, securing for it ready and sincere respect, and because popular demands, ere they reach it with definite and authoritative suggestion, are diluted by passage through the feelings and conclusions of the State legislatures, which are the Senate's only immediate constituents.

Ah, the good old days. There is no question that the ratification of the 17th Amendment made the selection of senators more democratic, but it also brought a transformation in the nature of the body. As the Senate was organized more and more around party and less around "celebrated" individuals, and as its distinct role as a check on the House was eliminated, the Senate became more and more like the two other elected branches in the government, the House and the Presidency. Thus it began to grow even faster. The Legislative Reorganization Act of 1946 marks perhaps the most significant turning point since 1913, for it began an extraordinary enlargement and bureaucratization of the Senate. If one dates the great increase in the size of the Executive from 1933, one may say that Congress took 13 years to make up its mind to react. But react it did. Here, there is no substitute for data. In 1877 the Senate had 106 employees, and in 1947 it had 1,080. Today it has roughly 6,700. Senate expenditures have grown from \$15 million in 1955 to \$120 million in 1976. In the 85th Congress (1957-58) there were 2,748 Senate Committee meetings, and in the 93rd Congress (1973-74) there were 4,067. In the 85th Congress there were 313 roll-call votes in the Senate, and in the 93rd there were 1,138. Nor can the increase in the size of Senate operations be attributed to a like increase in all federal government activity: From about 1880 to today, federal civilian employment grew 30 times over, but Senate employment grew more than twice as fast.

An additional effect of the 17th Amendment was to reduce the Senate's role as a link between state and federal governments. One may question whether, by 1913, this role was of very great importance, but it did mark yet another shift from the plan which the founders of the Senate had in mind for it.

The Senate no longer serves, then, as a formal link between state and federal governments, or as an intimate chamber of celebrated men insulated from the winds of popular opinion.

Perhaps all of this was inevitable. As the country developed a two-party system, it was to be expected the Senate would do so as well. As economic issues replaced constitutional issues, stirring debate became less frequent. As the size and role of the federal government grew, so the Senate responded by hiring the staff it needed to keep up with the press, and complexity, of business. So the Senate grew less unique, and more like the House. And today, like the House, the Senate suffers from a condition it was, in the original plan, supposed to escape, and which constitutes perhaps the most important deviation from its original role.

The Senate today is mired in detail. It is a body of "elected bureaucrats," as some have said, or a "gigantic regulatory commission." At the recent Senate-House conference on energy, hours were spent wrangling over matters such as whether to grant tax credits for replacement of furnace boilers or only furnace burners, or for purchase of clock thermostats or of all auto-

matic thermostatic devices. There are two things wrong with having the Senate make decisions such as these. First, they are not so much policy questions as technical ones, which data and expertise would answer once general policy were established. Senators lack this data and this expertise. Second, as the senators waste their time with such trivia, policy decisions are in fact not made—or, too often, they are made by senators who have not devoted to them the time and attention they deserve.

Senator Howard Baker, the Minority Leader, has remarked on the problem:

I look on these desks, these historic desks in the Senate Chamber, and almost every day I see another bill that is 10 pages, 100 pages, sometimes more than 1,000 pages long; and I realize that what we are doing...is trying defensively to write rules, regulations, and guidelines in an attempt to implement the law. We are trying to be bureaucrats....That is not our turf. Our turf is to write laws. Our turf should be setting the broad, general policies of the United States....I hope we would focus more attention on the business of the policy of the government and have a greater care for its execution by the executive department.

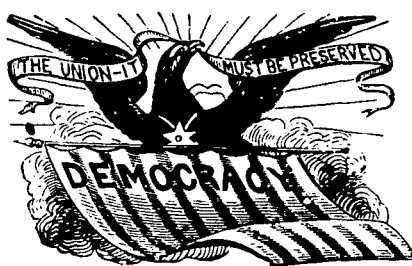
Baker's solution is simply to have the Senate meet only half the year, and resolve not to be tied up like Gulliver by a thousand little knots of detail. It won't work. Senators now consider every detail of life because the federal government now intrudes into every detail. So long as constituents are concerned about the precise limits of OSHA's power to regulate ladders, so will senators be. Senators write detailed instructions because they want to be sure the bureaucrats do what the Senate intends. And in addition to

their role as legislators, senators act as ombudsmen, the last, best resort of the citizen run afoul of the bureaucracy. One thing the Senate can do is spring loose Veterans Administration checks that have been mis-mailed. So long as it is thought that Senate inattention to detail will enlarge the *lebensraum* of the bureaucracy, and perhaps damage interests a senator represents, the Senate is most unlikely to abandon those 1,000-page bills. Every clause in them ties down an agency, or benefits some constituent, or both.

Nor can the Senate leave detail work to staffers while senators attend to matters of high policy. For detail is politics, and politics is one subject on which senators keep a very tight grip. The staff member may listen to all sides, boil down arguments, gather data, and recommend a course of action, but the ultimate choice is almost always political—who gets what—and that choice a politician carefully keeps to himself. No amount of reorganization of the Senate's committees or expansion of its staff, no amount of computerization, can ever lift the Senate from the slough of detail. Already Congress has given birth to the Congressional Budget Office, the Office of Technology Assessment, and several other minor bureaucracies in an effort to deal with the huge expansion in its responsibilities. All to no avail. The Senate's problems do not stem from mismanagement and cannot be cured by efficiency experts, for the Senate is not a bureaucracy and can never become one. Its political organization is more akin to that at Runnymede than that of the modern corporation, and this is a condition which not even McKinsey & Co. can ever remedy.

If Senator Baker wishes to reduce the Senate's concern for detail and enhance its concentration on high policy, he will simply have to eliminate the cause of this condition, which is the scope of the federal government's activities. The real point is not that the Senate should not be deciding about clock thermostats, but that no one in the federal government should be. Once the price of energy is established, homeowners will buy clock thermostats if they think it will save them money to do so.

It is ironic that in the debate over the proper role of government which has broken out in recent years, the Senate of 1850 would have played an invaluable role. Yet, as Woodrow Wilson wrote in 1885, "The truth is, the Senate is just what the mode, of its election and the conditions of public life in this country make it." We are no more likely to return to a



Senate like that of 1850 than we are to another Constitutional Convention like that of 1787.

Yet the Senate is not a vestigial organ of the Constitution, or a smaller version of the House, even given this catalog of transformations and criticisms.

Some of the distinctions between the House and Senate are, it must be said, of greater interest to senators than to those who elect them. There is, first, the matter of rules. As George Haynes wrote:

The greatest cause of differentiation between the Senate and the House is to be found in the rules and procedures under which the members of the one and the other carry on their work. The membership of the House is so great and the volume of bills and resolutions so enormous that of necessity its whole procedure is strictly regimented....

It remains true that Senate rules permit unlimited debate, and are much more liberal than those of the House regarding floor amendments.

Moreover, senators have greater stature in their home states, they have larger staffs and more office space, and, perhaps the most important difference of all, they have six-year terms. It is, overall, much more pleasant to be a senator than to be a representative, and this fact alone would attract able—though as well unable—men to seek the Senate. Add that the Senate, unlike the House, is a staging area for those with national political ambitions, and it may be seen that those in politics will never confound the two bodies, and think the Senate a carbon copy of the House.

But, as noted, these are differences of interest more to politicians than to their constituents. The Senate serves the populace in other ways.

By its very existence, it greatly strengthens the federal system. Of course, after 200 years of union and constant population shifts, rivalries between the states are much reduced, and sectional rivalries such as the current Sunbelt-Frostbelt contest are as much in evidence in the House as in the Senate. Moreover, the Senate's role as protector of small states has evolved in a manner which the Founding Fathers may not have had in mind. In close votes, small-state senators can sometimes hold out for formulae which, instead of distributing federal funds according to need, set minimum amounts which even the smallest state will receive. This is not so much protection of the small states as extortion by them, since there is little to be said for it as a matter of public policy.

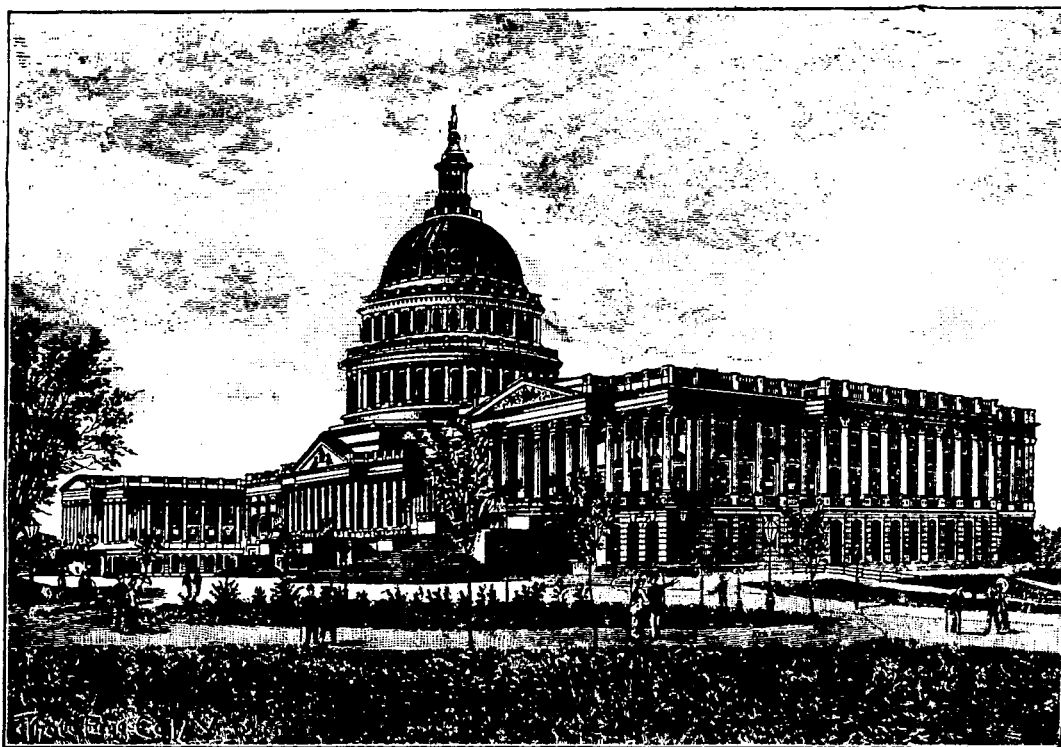
Nonetheless, the Senate gives life to the notion that, despite the growth of the central government, we remain a federal system. It consists, unlike the House, not of representatives of groups of

citizens, but of representatives of states—if not, after the 17th Amendment, of representatives of state governments. By its very existence the Senate reminds us that there are other levels of government besides the national, and that there are other levels of association possible among citizens besides common national citizenship. This is a greatly complex matter, to which I can do no more here than advert; but at the very least it can be said that the Senate remains a bulwark, as it was meant to be, against total centralization of governmental authority.

And it continues to enjoy certain perquisites not allowed the House, namely, the power to ratify treaties and to confirm presidential appointments. Here one may celebrate the theory while being less pleased with the Senate's use of its powers in practice. Indeed, here are two excellent examples of how the Senate could enhance its value by emphasizing its uniqueness.

As to presidential appointments, the Lance affair has recently demonstrated that confirmation hearings are all too often cursory. There is no excuse for this. The appointment of high-level bureaucrats in a country in which their power is enormous should be a matter of concern and close attention. So too with treaties: The Senate's role and its opportunity to serve the nation are unique. If this means that presidents must pay more attention to popular opinion and the representatives thereof, and less to foreign policy mandarins, it is likely that the nation will benefit. Such, for example, is the lesson of the SALT negotiations.

Few today, to return to Bryce and Gladstone, would call the Senate the "masterpiece of the constitution makers" or the "most remarkable of all the inventions of modern politics." A more persuasive argument would, in my view, address such words to the Supreme Court, if not to the Presidency itself. If these branches of the government are not quite what the "constitution makers" intended, it is because their contribution to the public weal is greater, not less, than had been envisioned. Yet it is not, in the end, remarkable that the Senate has changed and is so unlike the body its founders envisioned. On the contrary, it is but another example of their extraordinary foresight that the body, absent so many of its original tasks and so much larger than when it first met, maintains a distinct utility to our system. That the "Golden Age" of the mid-19th century is over may well be cause for satisfaction, rather than regret. The debates of those years were fierce because the struggle they embodied was the worst internal conflict the nation has ever suffered. If a greater consensus on most political issues reigns today, a duller and less powerful Senate is a price most Americans will think worth paying for it. □



Will the Senate Sober Up?

The demands of the postwar world have transformed the Senate from an "exclusive club" into something like a convocation of princes from a hundred private fiefdoms. Therein lies the dilemma of Majority Leader Robert Byrd.

In his masterwork, *The American Commonwealth*, Lord Bryce wrote a century ago what remains a fair description of senators today:

[R]eviewing the whole hundred years' history of the Senate, the true explanation of its capacity is to be found in the superior attraction which it has for the ablest and most ambitious men....[But] a sort of Olympic dwelling place of statesmen and sages...it never was; and nobody would now so describe it. It is a company of shrewd and vigorous men who have fought their way to the front by the ordinary methods of American politics, and on many of whom the battle has left its stains.

Robert Byrd has known battle. Born into rural poverty, he was a store clerk and butcher, before opening his own shop after World War II. He eyed and won elective office for the first time in 1946, when he took a seat in the West Virginia House of Delegates. To the State Senate in 1950, Congress in 1952, to one of the state's two then-vacant U.S. Senate seats in 1958—it was an awesome climb from shopkeeper. Almost equally remarkable was his dogged pursuit of education. Byrd won his law degree in 1963, at the age of 45, after more than two decades of night college and night law classes.

By a combination of ability and diligence—and by attention to the mundane and tedious tasks of a shopkeeper—Byrd advanced from a leadership job of minor importance to a key role in national affairs. When Senate Democrats organized for the new session in January of 1967, Ted Kennedy's then-rising star was boosted by election to the Senate's number-two leadership post, Majority Whip. Byrd was elected to the comparatively insignificant number-three spot, Secretary of the Democratic Conference.

Majority Whip is a prestige job, but it is also something of a nuisance job—knowing which senators are in town, and when, holding off votes until this one's plane lands or that one returns from the White House. It was the burden of these trivial affairs, these daily nuisance-chores for colleagues, which Byrd offered to lift from Whip Kennedy's shoulders, an offer which Kennedy, mourning his last brother, accepted. And it was appreciation for these daily protections that provided the 31-24 margin by which Byrd, in a stunning victory in January 1972, stripped the Whip mantle from a post-Chappaquiddick Kennedy. A loss from which Kennedy's Senate career has never truly recovered, for Robert Byrd it was the big step up.

Byrd appeared by cast of mind and temperament the perfect Whip. He seemed well-suited to the daily chores of the Senate floor, and by exercising those responsibilities he freed the Majority Leader, Mike Mansfield, for other more interesting, and presumably more important, affairs. In fact, it was Byrd's attention to the practical duties of a Whip which served as the point of attack in the attempt by "liberal" senators to prevent his accession to the top post upon Mansfield's retirement. Byrd would be

unable to lead the Senate properly, they argued, because he was a handyman, not an "issue-man." He lacked, as it were, the moral authority which comes to one who has exhibited a consistent attachment to liberal-progressive ideals.

The alternative was Hubert Humphrey, whose health was beginning to decline but whose ideological attachment was unquestionable. Yet the Humphrey effort never quite got off the ground, in spite of Senator Kennedy's success at persuading other contenders to withdraw and some agreement within the "liberal" bloc to back Humphrey. Partial agreement was not enough: When influential "liberals" such as Abraham Ribicoff refused to back off their previous commitments to Byrd, the Humphrey candidacy was finished.

So Robert Byrd assumed the office of Majority Leader. An intelligent, hard-working, canny man, he views his role as one of expediting Senate business. He tells freshmen senators what has been told freshmen for decades: that they have two types of colleagues, "work horses and show horses." It has never been in doubt which kind Byrd is, or considers himself to be.

Criticized in the early weeks of the Senate debate on energy for not pushing harder for the Carter program, Byrd responded, "I always feel it best for the Majority Leader to stay in the background, unless it is necessary for him to move forward." He defends Senate prerogative's against executive pressure, often asking that the Senate be allowed to "work its will." But he will also fight for his own prerogatives as Majority Leader. He is capable of being a "tough cookie," more willing to reward and punish than was Mansfield, although he seems not as harsh with those who cross him as was Lyndon Johnson. He knows the ins-and-outs of Senate procedure as well as anyone, and much better than most.

The ideological criticism remains, of course, that Byrd is, as one of his disapproving colleagues put it, like a "plumber"—not caring what is in the pipes as long as things keep moving. Depending on your view, that may not be such a bad thing. What does seem worrisome has been Byrd's noticeable lack of success at keeping the pipes clear whenever important issues were before the Senate. Several times in the past year, and to an ever increasing degree over the past several years, legislation has been stuck on the floor for days and the Senate held hostage by a handful of intransigents. Best publicized of these incidents was the two-week delay of the natural-gas-price bill carried on by Senators Abourezk and Metzenbaum last September.

To understand the significance of these stalls, consider how they differ from the "talkathons" of old. Indeed, they are not talkathons at all. They are shrewd attacks upon the weakest links in the chain of present-day Senate procedure. That means that in large part they are attacks on the power of the Majority Leader.

In the most passionate Senate debate of our time, the opponents of the 1964 civil rights bill by and large accepted defeat once a cloture motion to end their filibuster had passed. But when cloture was "invoked" on the central amendment to the gas bill, the

Michael Andrew Scully is assistant managing editor of *The Public Interest*.