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Floor Statement on Senate Rule 22 - Urges Change to Two-Thirds Rule

Edmund S. Muskie

Rule XXII

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Mr. MUSKIE. Mr. President, this is a time for change and a time of change in the U.S. Senate. I think it is clear that we must adapt our internal structures and procedures to the requirements of a highly industrialized, fast moving democracy. Congress cannot rigidly adhere to rules and practices that no longer serve any meaningful purpose and that hinder its work if it is to continue to be a responsible branch of Government and to enjoy the confidence of our people.

There have been cries for reform of Congress since our Nation was founded; but today I sense that there is a mood toward our Government—and Congress in particular—of cynicism, discouragement, and resignation borne of a conviction that reform will not come. There is a growing feeling that we cannot provide solutions to our common problems.

There is a growing feeling, Mr. President, that we cannot provide solutions to our common problems. Sometimes, it seems, our procedures are so outdated and encumbered that we respond neither to crisis nor to our constituents.

Many people have noted this widespread lack of confidence in Government. I believe it is the proper perspective in which to judge the efforts being made to revise rule XXII of the Senate in order to permit three-fifth rather than two-thirds of those present and voting to invoke cloture.

This is, Mr. President, a modest and reasonable reform of the Senate rules which has been repeatedly considered and should have been adopted long ago.

I urge the Senate to take this simple step forward.

Now, the debate over cloture, at the beginning of successive Congresses, has raised two central issues; namely, the need for allowing an adequate debate on any issue, and the protection of minority rights.

I feel that adequate debate and consideration of every measure would be fully protected by rule XXII even if it were amended. The two-thirds requirement for cloture, rather than three-fifths, is simply not needed for this purpose.

The issue of cloture, then, becomes the issue of a minority veto in the Senate. The question is: Should one-third of the Senate be granted an absolute veto over every piece of legislation that comes before this body? The answer, in my opinion, is "No."

DEBATE

Being realistic, we must recognize that on almost all measures, detailed discussion and drafting takes place in the committees. On almost every occasion when major legislation is considered, floor debate acquaints the Members of the Senate not involved in committee consideration with the provisions of a particular piece of legislation and arguments for its passage or rejection. Occasionally, legislation is actually written on the floor, and occasionally, extended debate is required because an issue is particularly complex or controversial. Normally, those who want to discuss any measure, even for hours on end, are granted that privilege without question. Indeed, experience suggests that the problem of debate in the Senate is usually one of germaneness, not inadequate time for discussion.

Of course, rule XXII is not written for the normal situation. But the proposed three-fifths modification of rule XXII would be more than sufficient to protect the rights of Senators to full debate. In the past decade, cloture was attempted 24 times; it succeeded on only four occasions. If the three-fifths modification had been in effect, cloture would have been invoked only eight times.

More significantly, the Senate moves toward cloture only after full debate, because many Senators, including myself, will not vote for it until an issue has been fully aired. In 1962, cloture was invoked after 2 months of debate on the Communications Satellite Act. Cloture on the Civil Rights Act of 1964 followed 57 days of formal debate; consideration of the Voting Rights Act of 1965 was ended after a month and a half of debate. Finally, the 1968 open housing law was voted upon after cloture stopped a full month of consideration. Certainly, modification of the two-thirds requirement to three-fifths will not alter the Senate tradition of full and adequate debate.

And it should be noted that even after cloture is obtained, rule XXII provides for 1 hour of floor time for each Senator. In 1968, 7 days of debate followed cloture on the civil rights bill. Theoretically, there could be debate for 6 hours every day lasting over 3 weeks after cloture under the provisions of the cloture rule.

There will always be enough Senators who believe deeply in full debate in principle and for their own protection, and they will not vote for cloture until after everyone has had his say. Thus rule XXII, as modified, to require three-fifths of those present and voting for cloture will remain as a firm protection for each Senator's "first amendment" rights on the floor.

The question before us then, is not so much one of the full debate, but one of minority veto.

MINORITY VETO

The question of minority rights in the Senate, as in the Nation, is necessarily complex. Let us recognize from the outset that our conception of democracy is much broader than just rule by a majority vote. At its core, the American conception of democracy has always contained many guarantees to real and potential minorities. Some guarantees concern democratic procedures, such as voting, free speech, and redress of Government; others involve substantive rights such as protection from Government harassment, intimidation, or injustice. But most important, our society of varying groups and diverse interests has evolved a system of government and tradition that permits each minority to have access to the decisionmaking when its own interests are at stake. We try—not always successfully—to consult every group that is affected by a decision. In order to maintain a democratic society and a government of consent, we must guarantee that every minority has substantial access to decisionmaking in areas that affect it.

These democratic principles and guarantees are imbedded in our traditions, our Constitution, and our institutions of Government. The Senate plays a key part in providing minorities—racial, geographic, and ideological—an access to power and a protection of their fundamental interests. Whether it has been State representation, committee structure, or Senate rules, this body is a fundamental piece of the structure of minority rights. No discussion of rule XXII, or any changes in the Senate should brush over this point lightly.

But minority protection and minority representation are not the equivalent of minority veto. Not at all. A minority veto is an extreme and powerful way to protect minorities, but it is not the only way by any means. This point is important, because minority rights must be balanced against majority rule. This may seem a trite phase, but it also represents the most difficult task of democratic government. The business of government must go on. In the long run, a substantial amount of what a majority wants must be granted, or democracy fails and government founders. Compromise is the key to accommodating the majority and minority. But obstruction is not compromise, and rule XXII too often is obstruction.

In striking the balance between the minority and the majority, we are working in the Senate with an ongoing legislative process. We are talking about the ability of minorities to influence the course of action, to make their weight felt, to demand a compromise. This is quite different from other kinds of minority rights—such as constitutional protection of democratic processes, which demand absolute protection.

In the Senate, we are concerned with relative power, with the shifting alliances and reappearing minorities. We must adjust the various rules, committee structures, and overall organization of the Senate to insure that minorities are not ignored and that they must be consulted, while allowing a majority to perform the tasks of Government.

When we examine candidly, the balance between the power of minorities and majorities in the Senate, I believe we can conclude only that rule XXII, as it is written and applied today, grants too much power to minorities. This results from two factors. First, the two-thirds requirement gives 34 or so Senators an absolute veto over any measure that comes before the Senate. This is not merely minority influence, it is absolute minority decision—in a negative way.

Second, the filibuster has been used more and more. In the past decade, cloture was attempted 24 times on major issues. It was successful only four times. It is impossible to count accurately the number of measures that were abandoned because a certain filibuster made the cause hopeless. Some of the most

pressing business of the Nation, some of its most needed reforms, and protection of some of its most precious values were delayed or destroyed by rule XXII.

What has developed is almost a replacement of the normal majority rule of the body with a two-thirds majority rule. I see no sanction for this procedure in the Constitution, nor justification for it in our practice.

Our Nation needs a Congress that can grapple with its great problems, and that produces reasoned, adequate responses to those problems. Experience of the past decade indicates that events move so swiftly, and matters are so complex, that we can survive only if we anticipate our gravest challenges. But all too often, we are struggling to cope with yesterday's challenges. No wonder our citizens are so critical of our performance.

The cost of delay is often staggering. For example, had we been able to meet the challenge of the civil rights movement more rapidly, if we had granted equal rights more quickly, I am convinced that much of today's violence and disillusion among black people would not have developed. A majority was ready to act, but it could not.

Our Nation demands greater responsiveness from Congress. Responsiveness requires more than good listening; it requires a positive feedback—a response. But we move too lowly, mired in outdated traditions.

Our procedures are imbalanced. We have, with the two-thirds requirement of rule XXII, created a veto that seriously obstructs the main business of the Senate. For this reason, I support Senate Resolution 9 which would lower the requirement for cloture to three-fifths of those voting. This would still give a substantial minority veto, while allowing legislation to pass which receives the backing of a very large majority.

Such a change does not by any means deprive a minority of its influence in this body. In fact, our procedures are still riddled with rules and practices that grant what in effect are numerous vetos to small numbers in this body. The whole fabric of our traditions in the Senate is one of delay and compromise. No one will be trampled and nothing will be stampeded if this change is made.

We should also be clear that matters of fundamental importance, constitutional changes, require a two-thirds majority in the Senate regardless of rule XXII. We are only discussing the power of the majority over ordinary legislation. Indeed, it is significant that the Constitution does not provide for any minority veto at all in the Senate. Minority protection rested on the principle of State representation. The Founding Fathers of the Continental Congress and the organizers of the first Senate used the "previous question" allowing a majority to cut off debate. There is nothing sacred or constitutional about rule XXII or the two-thirds number, both of which have been changed often in the history of the Republic.

The prospects of amassing a two-thirds majority to bring about a vote may rest in large measure this year upon the vote-gathering efforts of the White House. I hope the President will publicly and forcefully back the efforts of those who are attempting to modernize the Senate procedures.

In the past 2 years this administration has on occasion blamed Congress for a failure to respond to its legislative programs. And no doubt, if the President's program does not move forward, we shall hear more of this. It seems to me incumbent upon an administration which asks so much responsiveness from Congress to help reform procedures so that programs cannot be stopped by a small minority.

I was deeply disappointed by the Vice President's failure to join our effort in reforming outdated Senate procedures. His failure to issue even an advisory opinion on the appropriate procedures needed to revise rule XXII not only represents a rejection on the position of the then Vice President HUBERT HUMPHREY in 1969, but also is a retreat from the stance President Nixon took as Vice President in 1958.

In such a complicated parliamentary situation as the one in which we find ourselves today, the assistance of the President of the Senate could be absolutely critical to the success of reform. In the light of the President's suggestion of January 5 of this year that Congress revise its "'turn-of-the-century' work schedules and procedures" coupled with a bitter attack upon our legislative record, the Vice President has a heavy burden of responsibility which he has evaded. We need the help of the President and the Vice President. I hope they will offer it. I ask for it.

If the Congress is to remain a responsive and responsible body, we must reform our procedures. If we are to begin to grapple with our most basic difficulties, we must streamline those procedures and make them more democratic. For if we cannot do better, if we cannot govern more effectively, we will lose the confidence of our people.

Modification of rule XXII is the first substantial step in that direction. If we fail to take it, we cannot begin serious reform.