[69](...continued)
propriations process would be forced to bear a disproportionate burden of deficit reduction.

On the other hand, reconciliation is one of the few exceptions to the general rule in the Senate of unlimited debate. It is extremely difficult to amend the reconciliation bill. The Senate should be somewhat circumspect about what it allows itself to consider under these kinds of restrictions.

This tension between the good purposes of the reconciliation bill and the strict procedures governing it has led to efforts to prohibit what has been come to be known as "extraneous" matter on the bill.

Origins of the Byrd Rule

For example, as early as June 22, 1981, the bipartisan leadership offered an amendment to strike extraneous matter from the bill. On that day, during consideration of S. 1377, the Omnibus Reconciliation Act of 1981, Majority Leader Baker offered the amendment for himself and Democratic Leader Robert C. Byrd, Budget Committee Chairman Domenici, and the Ranking Minority Member of that committee, Senator Hollings. The debate that day included the following:

> Mr. BAKER. . . .
>
> Aside from its salutary impact on the budget, reconciliation also has implications for the Senate as an institution. So long as a preponderance of its subject matter has a budgetary impact, a reconciliation bill could contain non-budgetary amendments to substantive law, and still be protected under the Budget Act. That notwithstanding, I believe that including such extraneous provisions in a reconciliation bill would be harmful to the character of the U.S. Senate. It would cause such material to be considered under time and germaneness provisions that impede the full exercise of minority rights. It would evade the letter and spirit of rule XXII [regarding precedence of motions, including the procedures for cloture]. It would create an unacceptable degree of tension between the Budget Act and the remainder of Senate procedures and practice. Reconciliation was never meant to be a vehicle for an omnibus authorization bill. To permit it to be treated as such is to break faith with the Senate's historical uniqueness as a forum for the exercise of minority and individual rights. For principally these reasons, I have labored with distinguished minority leader, with the chairmen and ranking minority member of the Budget Committee, and with other committee chairmen to develop a bipartisan leadership amendment. This amendment will strike from the bill subject matter which all these parties can agree is extraneous to the reconciliation instructions set forth last month in House Concurrent Resolution 115. What will remain in the bill is directly responsive to these instructions, has a budgetary savings impact, and plainly belongs in a reconciliation measure.
>
> . . . .
>
> Mr. ROBERT C. BYRD. Mr. President, if the reconciliation bill is adopted in its present form, it will do violence to the budget reform process. The reconciliation measure contains many items which are unrelated to budget savings. This development must be viewed in the most critical light, to preserve the principle of free and unfettered debate that is the hallmark of the U.S. Senate.
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> The ironclad parliamentary procedures governing the debate of the reconciliation measure should by no means be used to shield controversial or extraneous legislation from free debate. However, language is included in the reconciliation measure that would enact routine authorizations that have no budget impact whatsoever. In other cases, legislation is included that makes drastic alterations in current policy, yet, has no budgetary impact.
>
> . . . .
>
> The reconciliation bill, if it includes such extraneous matters, would diminish the value of rule XXII. The Senate is unique in the way that it protects a minority, even a minority of one, with regard to debate and amendment. The procedures that drive the reconciliation bill set limits on the normally unfettered process of debate and amendment, because policy matters that do not have clear and direct budgetary consequences are supposed to remain outside its scope.
>
> . . . .
>
> The amendment offered by the majority leader and me omits several non budget related authorizations which should also be stricken from this bill. The fact that they were not included in this amendment should not be construed as accepting their inclusion in the bill.
>
> . . . .
>
> We have gone as far as we can go in this amendment, but we have not gone as far as we should go.

127 CONG. REC. S6664-66 (1981); Senate Precedent PRL19810622-001 (June 22, 1981) (LEGIS, Rules database). That day, the Senate agreed to the amendment by a voice vote. *See id.*

Adoption of the Byrd Rule

On October 24, 1985, the Senate debated and adopted the Byrd Rule as an amendment to the Consolidated Omnibus Budget Reconciliation Act of 1985. Excerpts from the debate that day follow:

> Mr. BYRD. Mr. President, I send to the desk an amendment sponsored by myself, Mr. Dole, Mr. Chiles, Mr. Stevens, and Mr. Domenici.
>
> The PRESIDING OFFICER. The clerk will report.
>
> The bill clerk read as follows:
>
> The Senator from West Virginia [Mr. Byrd], for himself, Mr. Dole, Mr. Chiles, Mr. Stevens, and Mr. Domenici, proposes an amendment numbered 878:
>
> > At the appropriate place add the following: When the Senate is considering a reconciliation bill upon a point of order being made and sustained by any Senator, any part of the bill not in the jurisdiction of the reporting committee or extraneous to the instructions given that committee shall be deemed stricken from the bill and may not be offered as

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> a floor amendment. No motion to waive germaneness on reconciliation bills shall be agreed to unless supported by three-fifths of the Senators duly chosen and sworn, which super majority shall be required to successfully appeal the ruling of the Chair on these matters.

Mr. BYRD. Mr. President, the amendment speaks for itself. I would just say that we are in the process now of seeing, if we have not seen earlier, the Pandora's box which has been opened to the abuse of the reconciliation process. That process was never meant to be used as it is being used. There are 122 items in the reconciliation bill that are extraneous. Henceforth, if the majority on a committee should wish to include in reconciliation recommendations to the Budget Committee any measure, no matter how controversial, it can be brought to the Senate under an ironclad built-in time agreement that limits debate, plus time on amendments and motions, to no more than 20 hours.

It was never foreseen that the [Congressional Budget] Act would be used in that way.

So if the budget reform process is going to be preserved, and more importantly if we are going to preserve the deliberative process in this U.S. Senate — which is the outstanding, unique element with respect to the U.S. Senate, action must be taken now to stop this abuse of the budget process.

. . . .

Mr. President, the Senate is a deliberative body, and the reconciliation process is not a deliberative process. It [is] not a deliberative process. Such an extraordinary process, if abused, could destroy the Senate's deliberative nature. Senate committees are creatures of the Senate, and, as such, should not be in the position of dictating to the Senate as is being done here. By including mater[i]al not in their jurisdiction or matter which they choose not to report as separate legislation to avail themselves of the nondeliberative reconciliation process, Senate committees violate the compact which created both them and the reconciliation process.

. . . .

The Senate must protect itself from this attack by its own committees, and, if necessary, the reconciliation bill will be amended to the extent necessary to achieve a preponderance of nonreconciliation matters and thus return this bill to a nonprivileged status.

Under the [Congressional Budget] Act, other committees are mandated to make recommendations to the Budget Committee — those committees make their recommendations to the Budget Committee, and the Budget Committee cannot add to or subtract from those instructions. It cannot amend the instructions. It cannot take from those instructions. It cannot add its own. It merely is to perform an administrative function — and that is, to put all such recommendations into a single package which, when sent to the floor and taken up, is covered by an overall 20-hour time limit.

Normal cloture is but an infinite speck on the horizon as compared to this kind of cloture. Under normal cloture, we have 100 hours. Each Senator has 1 hour, theoretically. But under the restrictions of the Budget Act, 20 hours is all there is on a reconciliation bill.

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> We saw a moment ago how much time can be taken by one amendment. First there is the waiver. That is an hour. Then there is the amendment. That is 2 hours. Then there is an amendment to the amendment. That is another hour.
>
> So, when all is boiled down, we have not only an abuse of the budget process by way of which other committees recommend to the Budget Committee any controversial bill they want — repeal of the Hobbs Act, acid rain, you name it — but also, when reconciliation comes to the floor, one or two Senators can offer an amendment, and consume at least 4 hours out of the 20 hours, if they want to take all the time that is available with regard to the waiver, the amendment, the amendment to the amendment, quorum calls, and so on.
>
> So, Mr. President, I have offered this amendment, which is being cosponsored by the other Senators whose names have been stated, in order to correct this abuse in the future.
>
> This provides that if a point of order is raised and upheld against extraneous matter in the reconciliation bill or matter that has been recommended by a committee wh[i]ch does not have jurisdiction over the subject matter, then all such matter that is in the bill will fall and is not subject to being offered as a further amendment thereto.
>
> . . . .
>
> Mr. DOMENICI. . . .
>
> As I read the amendment, I say to the distinguished minority leader, the second part of this amendment — "No motion to waive germaneness on reconciliation bills shall be agreed to unless," — I understand that this applies to an amendment offered on the floor by a Senator. Is the Senator from New Mexico correct?
>
> Mr. BYRD. The Senator is correct and I was incorrect.
>
> . . . .
>
> Mr. DOMENICI. Mr. President, I wish to ask one further question of the principal sponsor and drafter of the amendment, the distinguished minority leader. I wonder if he intended to include in the second part of the amendment, "no motion to waive germaneness." I wonder if he wanted that to be just germaneness, whereas before, when we were speaking of striking what a committee sent us, the Senator used two descriptions: He used germaneness and he used extraneous. It appears to me he might want, in the second part, "no motion to waive germaneness or extraneousness," and then provide for the supermajority. Otherwise, you make extraneous material subject to a point of order, but the point of order could be waived by a simple majority.
>
> Mr. BYRD. Mr. President, the distinguished Senator from New Mexico makes an excellent point. I agree with him and think it should be so strengthened and I modify my amendment so to accomplish that purpose.
>
> . . . .

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The PRESIDING OFFICER. The minority leader has a right to modify his amendment. If he will send it to the desk, the amendment will be so modified.

The amendment, No. 878, as modified, reads as follows:

At the appropriate place add the following:

> When the Senate is considering a reconciliation bill, upon a point of order being made by any Senator and sustained, any part of the bill not in the jurisdiction of the reporting committee or extraneous to the instructions given that committee shall be deemed stricken from the bill and may not be offered as a floor amendment. No motion to waive germaneness on reconciliation bills shall be agreed to unless supported by three-fifths of the Senators duly chosen and sworn, which supermajority shall be required to successfully appeal the ruling of the Chair on these matters which include the points of order on extraneous matters and matter not properly reported from a committee.

. . . .

Mr. JOHNSTON. . . .

My question is, Can you appeal the ruling of the Chair, make a point of order, that a matter is not extraneous, or is germane, have the Chair rule against you and then reverse that on a simple majority vote, and overruling the ruling of the Chair? Or do you mean for that also to be three-fifths?

Mr. BYRD. Would the Senator ask that question again?

Mr. JOHNSTON. The Parliamentarian strikes from the bill a matter which is extraneous or which is nongermane. I am interested in the matter, and I make a point of order that the matter is not extraneous or is germane to the bill. The Parliamentarian, the Chair, rules against me. I appeal the ruling of the Chair. Can we thereby overturn the Chair by simple minority vote?

Mr. BYRD. No.

Mr. JOHNSTON. Can you challenge the ruling of the Chair at all? If so, how?

Mr. BYRD. The Senator can appeal the ruling of the Chair.

Mr. JOHNSTON. Appeal the ruling of the Chair, but what vote would that require?

Mr. BYRD. Three-fifths.

Mr. JOHNSTON. I think in view of the earlier answer that this motion to waive germaneness applies only to amendments offered on the floor — it would apply to both — and committee action?

Mr. BYRD. Yes.

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Mr. JOHNSTON. The automatic ruling out as well as an amendment offered on the floor?

Mr. BYRD. That is correct.

Mr. DOMENICI. I think the distinguished sponsor had answered previously that the supermajority requirement for a waiver applied only to committee reported language, but when we exchanged views here, he clearly indicated that it applies to waivers of the germaneness requirement or the extraneous language point of order or appeals to rulings of the Chair.

Mr. JOHNSTON. I wonder if this language is specific enough to apply to an appeal from the ruling of the Chair. It speaks in terms of a motion to waive germaneness of reconciliation. I think it might be rewritten a bit to make that clear.

Mr. BYRD. Mr. President, that is the intent of the sponsor. If I need to modify it to make it clear, I will do so.

. . . .

Mr. McCLURE. I think the Senator from Louisiana has raised perhaps a good point because we have interchangeably talked here of the opportunity of a Member who does not like a ruling of the Chair being able to appeal the ruling of the Chair, and we have not clearly distinguished that from the opportunity to make a motion to suspend pursuant to the Budget Act. Maybe the answer to that question is to make certain that either an appeal from the ruling of the Chair or a motion with respect to germaneness should have to have a three-fifths vote.

I think that would make it clear because in our practice here earlier today it was not an appeal from the ruling of the Chair. As a matter of fact, it was not even a ruling of the Chair. But I think the Senator is very clear in his explanation that it is intended to cover both. Perhaps we ought to make a further statement in the amendment to make certain that it states that.

. . . .

Mr. DOMENICI. Mr. President, I want to compliment the distinguished minority leader for the amendment. I think we have a suggestion for a further modification. We will talk with the Senator from Louisiana. We are working on it. I think there are a couple of words we ought to add.

. . . .

Mr. DOMENICI. Mr. President, as I was saying, I commend the distinguished minority leader. Frankly, as the chairman of the Budget Committee, I am aware of how beneficial reconciliation can be to deficit reduction. But I am also totally aware of what can happen when we choose to use this kind of process to basically get around the Rules of the Senate as to limiting debate. Clearly, unlimited debate is a prerogative of the Senate that is greatly modified under this process.

I have grown to understand that this institution, while it has a lot of shortcomings, has some qualities that are rather exceptional. One of those is the fact it is an extremely free institution, that we are free to offer amendments,

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that we are free to take as much time as this U.S. Senate will let us to debate, and have those issues thoroughly understood both here and across this country.

I do not like to see committees put amendments on reconciliation that they have not been able to pass for years, or in the process of doing reconciliation just add untold numbers of amendments in order to be immune from unlimited debate.

. . . .

Mr. EVANS. Mr. President, I commend the majority and minority leaders, and the chairman and ranking member of the Budget Committee for what they are attempting to do. I think it represents a major step forward in correcting an evil we fell into today which is being well recognized. . . .

. . . . As I understand the language, and the minority leader . . . can correct me if I am in error, do I understand correctly that the proposal made, if it had been in the law prior to today, would have meant that the textile bill as proposed would have been ruled out of order from this proposal?

Mr. BYRD. If a point of order were made against that bill with respect to germaneness and if the point of order were upheld, then it would take a three-fifths vote to overrule the Chair, under my amendment.

. . . .

Mr. EVANS. I thank the minority leader.

Let me add briefly that this is a splendid move forward. If there had been any real progress made today, perhaps this is the best progress we have made for the long-term future of the Senate.

. . . .

Mr. BYRD. . . .

The amendment (No. 878), as further modified, is as follows:

> At the appropriate place add the following: "When the Senate is considering a reconciliation bill, upon a point of order being made by any Senator, and sustained, any part of the bill not in the jurisdiction of the reporting committee or extraneous to the instructions given that committee shall be deemed stricken from the bill and may not be offered as a floor amendment. This provision may be waived by three-fifths of the Senators duly chosen and sworn. No motion to waive germaneness on reconciliation bills shall be agreed to unless supported by three-fifths of the Senators duly chosen and sworn, which super majority shall be required to successfully appeal the ruling of the Chair on these matters which include the points of order on extraneous matters and matter not properly reported by a committee."

Mr. DOLE. Mr. President, I want to thank my colleague. I think the debate we have had on this amendment has been very helpful. As I look at the votes today, if it had been in effect now, this amendment would not be pending

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> and that would be an improvement on the reconciliation bill. It was never intended as the answer for every amendment whether it is the Hobbs Act, abortion, prayer in school, or anything else. Ordinarily, you just wait for the reconciliation bill to come up every year and put anything on reconciliation. Obviously, that was not the purpose of the Budget Act.

131 CONG. REC. S14,032-37 (daily ed. Oct. 24, 1985). The Senate went on to adopt the Byrd amendment by a unanimous vote of 96-0. *Id*. at S14,038. (Senators Eagleton, Hatfield, Simon, and Stennis were necessarily absent. *Id*.)

A Stringent Application

On October 13, 1989, the Senate exercised a stringent application of the Byrd Rule and the spirit of the rule. Majority Leader Mitchell, on behalf of himself and Senators Dole, Sasser, Domenici, Byrd, Bentsen, and Packwood, offered a leadership amendment to strike extraneous provisions from the reconciliation bill (S. 1750). The amendment went further than the text of the Byrd Rule in its definition of extraneousness. The debate proceeded as follows:

> Mr. MITCHELL. Mr. President, the purpose and effect of this amendment may be summed up in a single sentence. The purpose of the reconciliation process is to reduce the deficit. I repeat, the purpose of the reconciliation process is to reduce the deficit.
>
> The amendment is lengthy, consisting of many pages, words, and numbers, but it has that fundamental objective. As I said when I addressed the Senate a week ago Thursday, the reconciliation process has in recent years gone awry. The special procedures included in the Budget Act as a way of facilitating deficit reduction items became a magnet to other legislation which is unrelated to the objective of reducing the deficit.
>
> . . . .
>
> But it is time now to restore the reconciliation process to its original objective. That is what this amendment does. It asks sacrifice of every Senator. It asks discipline of every Senator. It asks that the regular legislative process be restored to the dignity it once had.
>
> . . . .
>
> Mr. DOLE. . . .
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> . . . .
>
> The bottom line, as I see it, is discipline. Do we have the will to be responsible, to really reduce the Federal deficit or do we undercut the process by piling on important programs, taxes, and other legislative goodies that cost the taxpayers millions in the name of deficit reduction? Many of these provisions have never even had a hearing, never had a hearing, and not one witness from anyplace came in to testify for or against most of the provisions.
>
> . . . .
>
> So [the Caucus] in [e]ffect directed the leader to have the staff put together something that went beyond the Byrd rule; something that extended — I guess you would call it an extension of the Byrd rule. . . .

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I believe the proposal such as the rural health care package and others are meritorious in their own right and can withstand the test of the normal legislative process, and they should. Reducing the deficit is a priority; the deficit keeps climbing, and we have not had much success in getting it down. I am not certain everybody in America understands all the inside baseball that goes on around here, whether they understand reconciliation and conference committees and motions to strike, but I do believe the American people recognize responsibility when they see it, and tonight they are seeing responsibility in action.

That is the whole purpose of this amendment. The authors will oppose any effort to add back individual provisions, and I certainly urge our colleagues to support those efforts. That does not mean that a provision that some Senator might have — and I will speak to this side of the aisle — will not be picked up in another revenue bill or in a separate piece of legislation. We are not here to pass judgment on what Senators may have in mind as far as legislation is concerned. On this package, it is going to be a reconciliation bill in the finest sense of the word.

. . . .

Mr. SASSER. Mr. President, with this amendment we are firing a shot, I believe, for fiscal responsibility, a shot that I think will be heard throughout the corridors of this Congress. . . . With this amendment, we are putting a deficit reduction bill back in the category of being a deficit reduction bill. It is an amendment that sets this body's priorities straight.

What we are seeking to do is to remove from this reconciliation vehicle, all extraneous matter, everything that does not either reduce Federal spending or raise Federal revenues will be stricken. That is the purpose of a reconciliation bill. Extraneous matters have been accumulating on these reconciliation bills now for a number of years, to the point that they are on the verge of sinking the reconciliation bill, and in so doing, defeating the budget process.

At some point in the not too distant future, if we continue down the path that we have been going, the Parliamentarian, on a point of order, will be forced to rule that a so-called reconcil[i]ation bill is not a reconcil[i]ation bill at all, that it is simply a vehicle for so much extraneous matter that deficit reduction has become a subordinate and wholly incident[a]l purpose for which a so-called reconciliation bill will be offered in the future. I do not say that to impugn the worth of many extraneous matters on this reconciliation bill.

. . . .

Mr. DOMENICI. . . .

. . . .

There are a few things about the U.S. Senate that people understand to be very, very significant. One is that you have the right, a rather broad right, the most significant right, among all the parliamentary bodies in the world to amend freely on the floor. The other is the right to debate and to filibuster.

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When the Budget Act was drafted, the reconciliation procedure was crafted very carefully. It was intended to be used rather carefully because, in essence, Mr. President, it vitiated those two significant characteristics of this place that many have grown to respect and admire. Some think it is a marvelous institution of democracy, and if you lose those two qualities, you just about turn this U.S. Senate into the U.S. House of Representatives or other parliamentary body.

. . . .

. . . . If the House Rules Committee clears a bill, it makes no difference to them whether it is on reconciliation or freestanding. They set the rules for debate in that institution then and there. We do not have that. The only Rules Committee we have is the floor of the U.S. Senate and a relatively new one called reconciliation.

Today we have met the enemy. As Pogo says "We met the enemy and he is us." We are going to use the process available under the Budget Act to strip from this bill not only those matters which the Parliamentarian would call extraneous but also those which were never intended because they are not pure deficit reduction matters. Thus, they are broader than the Byrd rule, irrelevant and extraneous, and we are going to strike them.

. . . .

Mr. GORTON. . . .

First, we are doing what we ought to do. As the distinguished majority leader said earlier during the course of this debate, the purpose of a reconciliation bill is to reduce the budget deficit. . . .

Second, and equally important, by this course of action this evening we are not doing what we ought not to do. The distinguished minority leader pointed out that many of the extraneous elements in this resolution before this amendment include good legislation. From a brief review of that legislation, I know this Senator agrees with well over half of those pieces of substantive legislation. But all of them, whether this Senator agrees with them or not, share one feature in common: They have not been debated on the floor of the Senate and cannot be effectively debated as a part of a reconciliation bill. They cannot effectively be amended as a part of a reconciliation bill.

Thus, their inclusion, whether they are good, bad, or indifferent, would utterly destroy the very purpose of the Senate of the United States, as so eloquently described by the President pro tempore last Sunday. It is absolutely essential that, even with this legislation, we have the right to debate and the right to amend.

. . . .

Mr. RUDMAN. . . .

I would say it was informally advanced beyond the Byrd rule by what we have now adopted. I guess I would call it an informal Dole-Mitchell-Sasser-Domenici-Packwood-Bentsen amendment which simply said: If it does not raise revenue or save money, we do not want it in here.

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I wish the distinguished President pro tempore might offer that as a formal amendment. It would save us a lot of grief in the coming years.

Mr. President, there ought to be a lesson in what happened here today and yesterday and last week. . . .

. . . .

The net result of that, Mr. President, is what the distinguished President pro tempore said on Sunday about this body, which has the ability to debate and amend and consider legislation. I will tell my colleagues, if there is a great disappointment to this Senator in my 8 years here, it is that some of the most important issues we can discuss we never have the chance to debate and amend on this floor because we are totally immersed in this budget process from January to December; maybe this year shorter.

. . . .

Mr. BYRD. Mr. President, John Stuart Mill said, "On all great subjects, much remains to be said." This is a great subject, the reconciliation bill, and much remains to be said. . . .

I have seen the Senate many times when it gave me reason to be concerned about its future. I have also seen it on some occasions when it gave me reason to be proud. . . .

Tonight I think that we should pause to reflect upon this institution to which Gladstone, that great English statesman who lived during the long reign of Queen Victoria and who was Prime Minister of England four times, referred when he spoke of the U.S. Senate as "that remarkable body, the most remarkable of all the inventions of modern politics." That is what this institution is. . . .

. . . .

The U.S. Senate is the centerpiece of the great compromise. It is the masterpiece of the men who wrote the Constitution. . . . They were wise men, and they saw the need for a system of checks and balances, and the Senate was the balance wheel of that system. The Senate was given extraordinary powers . . . . But the basic cement that was the very foundation of this balance wheel were two in number, the right to debate and the right to amend. The other body may amend, but the other body may also issue a rule which, if agreed to, will confine amendments to one in number or two in number or three or none and direct that a certain Member will be the only Member who will offer that one amendment or those two amendments.

The House has the previous question, but not the Senate. The Senate allows unrestricted debate. We now and then restrict ourselves through the cloture motion, which first was created in 1917. But the right to debate and to amend is why we should be proud of this institution, why we should revere it.

The Constitution, in section 7 of article I, says that measures that raise revenues shall begin in the House of Representatives, but it also says that the Senate may propose or concur with amendments as on other bills. So there is a constitutional right reposed in the Senate to amend eve[n] revenue bills.

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> The Senate and the House have their tensions between them, as do the executive and the legislative, all these with the built-in tensions that the forefathers took great care to fashion in order to make this a system of checks and balances.
>
> But in the reconciliation bill, we were about to inflict our own mortal wound, as Brutus did with the same dagger that he had plunged into Caesar's blood, bringing a bill of such magnitude here which contained scores of measures, on any one of which the Senate should have had the opportunity to debate at full length and to amend. What hidden pieces of legislation might come to the floor in a package of this size? What hidden legislation we might vote upon and come to regret at a later time?
>
> This is an institution for the protection of minorities, an institution in which the minority can put a bridle on the majority for at least a while until the country can be awakened to the mistakes that might otherwise be visited upon the people. We should not view this Senate lightly, and never should be party to weakening this institution, with which we have been blessed.
>
> Yes, there were limitations on debate in 1919 in the League of Nations debate, and in 1926 in the World Court debate, limitations through the cloture rule, but their price was substantial concessions by the majority.
>
> The Senate is . . . the only forum in which minorities are protected against the sudden waves of passion that might sweep over the Nation.
>
> A reconciliation bill is a super gag rule, the foremost ever created by this institution. Normal cloture is but an infinite speck on the distant horizon when compared with a reconciliation bill. Cloture may be invoked on any measure, motion, or matter. Sixteen Senators sign a cloture petition; parts of 3 days transpire before cloture is invoked; and when it is invoked, it is invoked on only one matter or one measure or one motion. Then there are 30 hours of debate. The provision is within that rule that that time may be extended by a three-fifths majority vote to whatever — 40 hours, 50, 75 or 100 hours. But not so with reconciliation. Reconciliation comes to the floor. There is no opportunity to debate a motion to proceed, whereas, under cloture, an attack can be made by the minority even on the motion to proceed. The minority ought to be zealous in protecting that right; the minority may be on this side of the aisle tomorrow, as it was yesterday.
>
> Under reconciliation there is no motion provided to extend that time beyond 20 hours, but there is a motion that is nondebatable and can be invoked by only a majority of Members to reduce the time, and it can be reduced to 10 hours or to 5 hours or to 2 hours or to 1 hour without debate. Only a majority vote is needed to reduce it to no time:
>
> Mr. President, I move that the time remaining on reconciliation be reduced to no time. What can you do about it? Weep. Reconciliation is one real beartrap.
>
> And so it has been with sorrow that some of us have seen what has been happening on reconciliation. It is a process which has gotten out of hand and, if continued, it will undermine the deliberative nature of the institution.
>
> It is a process by which committees of the Senate may dictate to the Senate. You take what we give you. There is not a thing you can do about it.

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Oh, yes, you can strike. But you take what we give you.

And within those committees that determination is made by a majority. There is a 17-member committee, and 9 members of the committee can determine that.

Send that to the Budget Committee, and the Budget Committee has no alternative but to send it to the Senate, and here we are faced with a super, super, colossally super, gag rule.

So we ought to take the utmost care in handling this legislative weapon.

Mr. President, I have had my faith renewed in this institution in these recent hours. . . .

. . . .

Yes, there were important measures wrapped into this reconciliation bill. But I hope that this is the beginning of the end of the abuse of the reconciliation process. I hope that it will be a lesson learned by all of us that we might in the future take heed, and remember not to put that measure that is so dear to our hearts into the reconciliation package. . . .

Mr. President, I close by saying, as I began, that human ingenuity can always find a way to circumvent a process. And reconciliation is a process. It has been abused terribly. But I have regained my faith. We are told in the Scriptures:

> Remove not the ancient landmark, which thy fathers have set.

The Constitution is the old landmark which they have set. And if we do not rise to the call of the moment and take a stand, take a strong stand against our own personal interests or against party interests, and stand for the Constitution, then how might we face our children and gran[d]children when they ask of us as Caesar did to the centurion,

> How do we fare today?

And the centurion replied,

> You will be victorious. As for myself, whether I live or die, tonight I shall have earned the praise of Caesar.

I not only compliment, but I also thank Members who have risen in this moment to do the responsible thing. We are going to look back on this day. So when you go with pride to meet the other body in conference, go with strong hearts, with confidence, and a determination that you are going to uphold the principles that our forefathers, men of this institution, stood for. Yours is an equal body — the Senate.

When Aaron Burr walked out of the Old Senate Chamber on March 4, 1805 after had sat in the Chair, and presided over the impeachment trial of Supreme Court Justice Samuel Chase — Burr had killed Alexander Hamilton in a duel at Weehawken, NJ. He sat in that chair as though nothing had ever

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> happened. Warrants had been issued in the State of New Jersey and New York for his arrest. But he presided over that trial with a degree of fairness that was commended by friend and foe alike.
>
> As Burr bade goodbye to the Senate over which he has presided for 4 years, this is what he said. And I close with his words because I think they may well have been written for a moment like this. He said:
>
> > This House is a sanctuary; a citadel of law, of order, and of liberty, and it is here —
> >
> > It is here —
> >
> > in this exalted refuge — here, if anywhere, will resistance be made to the storms of political phrensy and the silent arts of corruption; and if the Constitution be destined ever to perish by the sacrilegious hands of the demagogue or the usurper, which God averts, its expiring agonies will be witnessed on this floor.

135 CONG. REC. S13,349-56 (daily ed. Oct. 13, 1989). The Senate went on to adopt the leadership amendment by a voice vote. *See id.* at S13,557.

Preemptive Editing of the Conference Report

In 1993, at the direction of the Majority Leader, the Parliamentarian and Budget Committee staff examined all proposed language of the conference agreement on the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312 (1993), causing the removal of any language that might violate the Rule. The Budget Committee Chairman explained the process:

> Mr. President, first, with regard to the Byrd rule, we worked very hard and very faithfully over a period of well over a week in going over this bill to try to clarify and remove items that might be subject to the Byrd rule.
>
> As the distinguished ranking member indicated, I think over 150 items were removed from the reconciliation instrument here, because it was felt that they would be subject to the Byrd rule. And we furnished our friends on the other side of the aisle, the distinguished staff colleagues on the Senate Budget Committee, copies of the draft language so that we would each know where we were, and there would be no surprises as we worked together to try to expunge the Byrd rule problems from the reconciliation conference report.
>
> Our efforts here were not totally altruistic, because we knew that if there were items left in here that were subject to a valid challenge under the Byrd rule, that would simply, for all practical purposes, kill this reconciliation conference report; that we simply could not reconstitute a conference, come up with another conference report, and we could not send it back to the House of Representatives. So we were very careful and as true as we could be to the letter of the Byrd rule and to the intent of it.
>
> I want to express my profound gratitude and appreciation to the Senate Parliamentarian, Mr. Alan Frumin and his staff, Kevin Kayes, Jim Weber, and Beth Smerko who worked long and hard with us day and night — I might say, Saturday and Sunday included — to try to expunge what could have conceivably been called Byrd rule problems here.

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> So I hope there is no suggestion here that there was not a conscientious effort to try to adhere as rigidly as possible to the Byrd rule, or adhere to it as rigidly as required by the rules of the Senate to the Byrd rule, because we worked very, very hard to do that.
>
> I might say some of our House colleagues could not understand, and I do not blame them because there were a number of things that were pulled out of this budget reconciliation that had been voted on and passed by large majorities in both houses. But simply because they violated the Byrd rule, we had to go to the chairmen of the appropriate House committees and tell them they had to come out. They simply did not understand it. I think it made them perhaps have a little less high esteem for some of us here in the Senate, and we had to go to them and request they do it. In the final analysis, their leadership had to demand that some of these provisions subject to the Byrd rule come out.
>
> So I think we have all worked very hard and in good faith on both sides of the aisle really to try to be true to the Byrd rule.

139 CONG. REC. S10,662 (daily ed. Aug. 6, 1993). For press accounts of the process, see Mary Jacoby, *Senate Parliamentarian Purges Budget Bill of Measures that Could Violate Byrd Rule*, ROLL CALL, Aug. 5, 1993, at 9; Richard E. Cohen, *Running Up Against the "Byrd Rule,"* 25 NAT'L J. 2151 (1993).

In the wake of that experience, the Chairman of the House Budget Committee criticized the Rule, arguing that it impedes legislation necessary to reduce the deficit. Chairman Sabo has introduced legislation to repeal the Rule. *See* Mary Jacoby, *Sabo Bill Would Kill Byrd Rule for Good*, ROLL CALL, July 25, 1994, at 12.

Omnibus Point of Order Followed by Editing in Conference

In the 1995 reconciliation bill, Senator Exon raised an omnibus point of order during floor consideration of the bill.

In reaction to the raising of that point of order, Republican conferees on the reconciliation bill set about purging Byrd Rule violations, much as the Democrats had done in 1993. *See*, *e.g.*, Christopher Georges, *Byrd Procedural Rule Is Threatening to Derail Substantial Portions of the Republican Agenda*, WALL ST. J., Nov. 8, 1995, at A22. That process spawned the terminology described in the "Reliable Source" column in the *Washington Post* as follows:

> **Byrds of a Feather . . .**
>
> Today, class, as the House and Senate struggle to reconcile their budgets, let's learn about the Byrd Rule.
>
> Zany Republican House Budget Committee staffers — anticipating that Senate Dems will skirt the rule that bars anything but taxing, spending and savings measures from reconciliation bills — have penned a cheeky glossary to boost morale and keep Dems on the defensive about a law written, named after and adroitly used by Sen. Robert Byrd (D-W.Va.) when Dems ruled the Capitol Hill roost.
>
> Clearly the last thing the GOP wants during debate on the 2,000-page budget reconciliation bill (which may not pass till Christmas) is a Dem drive to save the Commerce Department or slow welfare overhaul. Thus the phrases: Big Byrd (an obvious rule violation), Byrd Brain (an expert in all rule nuances), Dodo Byrd (a gross rule misinterpretation) and Byrd Droppings

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(deleted bill provisions resulting from a violation).

> Actually, GOP senators already seem to know their stuff. Pete Domenici (R-N.M.) recently voiced "the greatest respect and some degree of sorrow" in nailing Byrd himself for breaking the rule. Byrd proposed an amendment to extend reconciliation debate from 20 hours to 50, a no-no because it dealt with procedure, not money.

Ann Gerhart & Annie Groer, *Byrds of a Feather*, WASH. POST, Nov. 8, 1995, at B3.

For further history and discussion of the Byrd Rule, see ROBERT KEITH, THE BUDGET RECONCILIATION PROCESS: THE SENATE'S "BYRD RULE" (Apr. 7, 2005) (Cong. Res. Serv. rep. no. RL30862).