

Remembering Byrd's Rule

Legendary Senate Majority Leader Robert Byrd would be 100 years old today—and appalled by what his beloved Senate has become.

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Senator Robert Byrd

America celebrates this year the centennial of President John F. Kennedy, whose achievements, idealism, and charisma inspired generations of Americans. But at a time when our political system faces its most fundamental challenge since the Civil War, it is one of Kennedy's colleagues in the Senate and a fellow centenarian—Sen. Robert C. Byrd of West Virginia—whose legacy is equally, if not more, relevant today.

Byrd believed that our political system and our freedom rested on a strong Congress—and particularly a strong Senate—to balance the executive, check the tendency of presidents to overreach and, as he put it, “do battle over politics, policies and priorities.” The frequently-

mentioned “Byrd Rule,” for example, perhaps the senator’s most famous and enduring procedural legacy, ensures that budget measures are not misused for far-reaching legislative aims. Byrd would have been shocked by Donald Trump’s presidency and appalled when the Senate fails to fulfill its duty as the principal check on the president. If there is anyone that Congress needs now, it’s a leader in the mold of Byrd, whose respect for process, deliberation and the institution of the Senate would be a welcome counter to the freewheeling chaos of the current White House, and the radical, right-wing policies of the Republican House of Representatives.

Byrd’s record is by no means unblemished. Early in his political career, he belonged to the Ku Klux Klan, and in the first years of his Senate tenure, he waged a shameful fourteen-hour filibuster against the Civil Rights Act of 1964, the moral touchstone of the Democratic Party, and probably the greatest legislative achievement in our country’s history. Over the years, however, he earned a reputation as an ardent champion of progressive causes, ultimately joining such liberal lions as Sen. Philip Hart (D-MI), Edmund Muskie (D-ME), Eugene McCarthy (D-MN)—with whom he entered the Senate—and Ted Kennedy (D-MA).

In 1991, the Senate’s consideration of the nomination of Clarence Thomas to the Supreme Court exploded when law professor Anita Hill came forward to accuse Thomas of sexual harassment. The deeply polarized Senate was ultimately unmoved by Hill’s charges. Only one senator changed his position on the issue: Byrd, who had previously indicated that he intended to support Thomas’s nomination. On the Senate floor, Byrd said that he had found Anita Hill to be completely credible. He condemned Judge Thomas for injecting racism into the hearing: “A black woman was making a charge against a black American male. Where’s the racism?” Eleanor Holmes Norton, the representative of the District of Columbia, wrote to Byrd expressing appreciation:

Your extraordinary, analytical, powerful, moving remarks...were simply unmatched. All during the hearing I (and I’m sure, millions of other women) felt as abandoned as Prof. Hill had been. During the debate, you single-handedly retrieved what respect remains for the Democrats.

In his last years, Byrd became best known as an outspoken opponent to the invasion of Iraq. *Mother Jones* [called](#) Byrd “the octogenarian statesman from West Virginia [who rails] against the mendacity and militarism of the Bush administration, raising a bold if lonely voice in defense of our civil liberties and our national character.” MoveOn.org reprinted Byrd’s anti-war statements addresses on its website and paid for reprints in full-page *New York Times* ads.

The route to those heights was an extraordinary American story. Byrd was born in North Carolina in 1917 as Cornelius Calvin Sale, the fifth child of a woman who died in the great influenza epidemic within a year of his birth. After her death, Sale was adopted by his aunt, who renamed him Robert Carlyle Byrd, and took him to Bluefield, West Virginia.

Byrd’s father worked in the coal mines, moving from one mining community to another, and Byrd was educated in two-room schoolhouses without electricity. As a teenager, he worked in a

gas station, as a produce boy, and as a butcher; eventually he ran a grocery store. In his late 20's, he taught Sunday school, attended college part-time, and became active in politics. Hard-working and attentive to the community, Byrd was elected to West Virginia House of Delegates in 1946, to the U.S. House in 1952, and then to the Senate in the Democratic landslide of 1958.

Byrd seemed destined to be no more than a tireless advocate for the interests of his impoverished state. But his personal growth was astonishing: going to law school at night, endlessly reading history and politics, spending so much time on the Senate floor that he was mistaken for the Sergeant at Arms. By 1967, Byrd became the Secretary to the Democratic conference, the number three position in the Democratic leadership, and parleyed that minor position into real power, becoming, according to the *Washington Post*, “the man who runs the Senate during most of its nine to five hours.” In 1971, he defeated Ted Kennedy to become Democratic whip and then defeated Hubert Humphrey to become Senate majority leader in 1977.

Throughout his rise and leadership of the Senate, Byrd believed that senators owed it to their constituents to bring their wisdom, expertise and independent judgment to the challenges facing the nations; senators served “with presidents, not under them.” And he believed in “regular order”—that legislation that resulted from hearings, committee consideration, extended debate, and a robust amendment process would produce bipartisan legislative results that would receive broad public support. In Byrd’s view, “Congress’s primary purpose lies in its unique capacity to publicly, and under the hot lights of full media scrutiny, sort through competing interests. Congress alone can deliberate, reconcile, apportion public treasure, and forge laws, compromises, solutions and priorities which are compatible with our general national objectives and which promote the public good.”

Putting those beliefs into action, Byrd helped ensure that the Senate would serve both as a strong check on—and a vital ally of—the president. During the Watergate hearings, for instance, Byrd’s persistent questioning of FBI Director L. Patrick Gray caused Gray to admit that White House counsel John Dean had lied in denying White House involvement. “The toughest and most brilliant questioning came from Senator Byrd,” NPR’s Nina Totenberg observed. Senator William Proxmire praised him as “the unsung hero of Watergate.”

On the other hand, Byrd worked with President Jimmy Carter, Senate Minority Leader Howard Baker, and House Speaker Thomas “Tip” O’Neill, Byrd in a period of major legislative accomplishments in domestic and foreign policy. Byrd led the Senate through an agonizing and searching two-year debate over the principal pillars of Carter’s national energy policy—perhaps the most complex legislative undertaking until the Affordable Care Act—which ultimately passed the Senate in late 1978. He played a pivotal role in the financial rescue of New York City. Byrd also helped President Carter face up to an issue that five presidents had managed to avoid: the need for a new treaty to ensure access to the Panama Canal. Byrd, initially opposed to “giving back our canal,” studied the case for the treaty, and became its leading advocate, joining with Baker to win its narrow approval after an epic legislative battle. In its annual survey of America’s political institutions (before it moved on to ranking colleges), *U.S. News and World Report* moved the Senate’s ranking sharply upward that year, saying: “Never since this magazine began, the survey has the Senate ranked 3rd in national influence. Credit for that dramatic shift belongs to Byrd.”

Byrd's belief in process and procedure was also why he was a key player in producing and enacting the Budget Control and Impoundment Act of 1974. He recognized that if Congress could not produce an overall budget, it would inevitably cede power to the executive branch. He was willing to tolerate a Budget Act that established procedures that were an exception to the normal Senate rules. But when Byrd saw the reconciliation procedure being abused by the Reagan administration, he moved quickly to limit the use of reconciliation by ensuring that it could only be used for budget purposes and not for "extraneous" matters. The "Byrd rule," by which the parliamentarian would decide if legislative provisions were consistent with the Budget Act or extraneous to it, would complicate Majority Leader Mitch McConnell's life 32 years later as he tried to end run normal Senate procedures.

For Byrd, process was a safeguard against partisanship—among Democrats as well as Republicans.

During the Clinton presidency, for example, Byrd remained adamant that the administration's proposed health care legislation, spearheaded by First Lady Hillary Rodham Clinton, could not fit within the budget, no matter how liberally the rule that bore his name was interpreted. Neither partisan considerations nor vital importance of health care legislation could justify short-circuiting the process by ramming the legislation through the Senate.

In 2002, Byrd mounted his extraordinary opposition to what he believed to be the indefensible rush to invade Iraq. Once a hawkish patriot and strong supporter of the Vietnam War, Byrd's growing doubts about President Lyndon Johnson's credibility and failed policy led him to vow that he would never give a "blank check" to any president to wage war. Byrd believed that the open-ended authorization to President Bush to wage war against Iraq at a time in place of his choosing "amounted to a complete eviscerating of the congressional prerogative to declare war, and an outrageous abdication of responsibility."

While harshly criticizing Bush, Vice President Cheney, and Secretary of Defense Donald Rumsfeld, Byrd reserved some of his harshest words for "the supine Senate," which rushed to vote on the authorization weeks before the off-year elections. Byrd later wrote:

We had been swept away by campaign fever. Some high-priced pollster had apparently convinced the Senate Democratic leadership that we could 'get the war behind us' and change the subject to the flagging economy, where the election prospects would appear more favorable to the Democrats. What nonsense.

Byrd died in 2010, at the age of 92. He would have been saddened as the Senate further dissolved into partisan obstruction and dysfunction during the Obama presidency, and appalled when Majority Leader McConnell refused to even consider the nomination of Merrick Garland to replace the late Supreme Court Justice Antonin Scalia. Byrd would have understood Donald Trump's appeal to "Rust Belt" states like West Virginia, but shocked that Trump was elected president. Writing about the awesome responsibility of the presidency, Byrd opined: "Such a

burden cannot be borne with distinction and grace minus that particular amalgam of intellect, values, morals and ethics we call character.”

He would have noted that the Senate’s special responsibility would be to act as a check on an inexperienced, incompetent, potentially authoritarian president. Byrd would have been pleased that the Senate Intelligence and Judiciary Committees seem to be steadfastly moving ahead to investigate Russian interference in the 2016 election, including possible collusion between Russia and the Trump presidential campaign, and supporting the investigation of Special Counsel Robert Mueller. He would have admired the courage and independence of Senators Susan Collins, Lisa Murkowski and John McCain. He would have derived satisfaction that the “Byrd rule,” which he applied even-handedly to all administrations, played a part in thwarting the Republicans’ outrageous effort to remake the health care system and inflict harm on millions of Americans by circumventing the normal legislative process. And he would have hoped that future generations of Senate leaders and senators would choose to follow the example he set, ensuring that the Senate would be a bulwark against one-man (or woman) rule, and one-party rule.

Ira Shapiro

Ira Shapiro is the author of [The Last Great Senate: Courage and Statesmanship in Times of Crisis](#), a second edition of which will be released this month. His new book, [Broken: Can the Senate Save Itself and the Country?](#), will be published in January. He has also served in a variety of senior positions in the U.S. Senate, including as Chief of Staff to Sen. Jay Rockefeller (D-WV) and as counsel to former Majority Leader Sen. Robert Byrd (D-WV).