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Mr. President:

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The present discussion is one which offers great scope for the talents of lawyers and parliamentarians. As the Senate knows, we have, in our midst, many brilliant lawyers. We have among us many outstanding parliamentarians.

Before we are done with this debate, I hope that we shall have heard from all of those able and distinguished colleagues. They may be expected to marshal all the relevant precedents. Through them, great voices out of the past which once thundered on the same issues may be expected to speak to us again. Some shall be made to speak on one side of the issues. Others on the other side. And still others on both sides.

That is the way with legal debate, with parliamentary skirmishing. And, the Senate is indeed fortunate in having so

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many brilliant lawyers and outstanding parliamentarians.

For those of us who are not lawyers, the experience of being exposed to a plethora of legal and parliamentary wisdom is indeed an exalted one. It is an illuminating experience. And, I regret to say, it can also be a confusing experience.

A debate on this plane eventually reaches, in turn, a point of diminishing return, a point of no return and, eventually, a point of positive loss. Legal hair-splitting, at some point, harms the heads. Aspiration becomes confusion. We know very well all the legal and parliamentary reasons for doing and not doing some particular thing. The only difficulty is that we have forgotten by that time what it was we had set out to do.

That is why, Mr. President, I ask the Senate to bear with me this morning. The Senator from Montana is not a brilliant lawyer; indeed, he is not a lawyer of any kind. Nor is he an

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outstanding parliamentarian, his experience in those matters being limited to years of trying to get bills in which his state is concerned through the labyrinth of Congressional procedures.

But the Senator from Montana has some experience with forests, with the great forests of his state. Penetrating them is something akin to penetrating the forest of words with which we are fast surrounding this issue. Before the growth becomes any more dense, he should like to see where it is that we are heading in this matter in order to open a path for a vote, as his conscience may prompt.

Mr. President, if I still see clearly through the thickening forest of words what is basically at issue in this discussion is not the continuity of the Senate. It is not even

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the majority will and how it is to be expressed in voting. The issue is far more profound and at the same time far more simple than the debate which has so far taken place would indicate.

What we are really concerned with is the place of the Senate in the pattern of political institutions which holds together this vast, complex, living and changing nation. We shall not come to that issue, however, if we continue to run down the side-paths, deeper and deeper into the forest.

Consider for a moment, Mr. President, how much of this debate has already centered on the question of whether the Senate is or is not a continuing body. We have had or we shall have before we are through references to Marbury v. Madison, McGrain v. Dougherty and to eminent writers and statesmen to prove that it is. And we have or we shall have reference to other court decisions and to other eminent writers and statesmen to prove that it is not.

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But we are here, Mr. President, This Senate, in due course, shall settle down to its labors, as have the Senates in 75 Congresses before us. I should like to assure our newer colleagues that the Senate is here and it is here to stay.

If we are not talking about the continuity of the Senate as an institution in this issue, we are talking about the continuity of its actions and power from one session of Congress to the next. More specifically, we are talking about the continuity of its rules from one session to the next. The facts are clear, Mr. President. Some of the actions and power of the Senate continue and some do not. As for its rules, Mr. President, let us say that the issue has never been clearly met and can never be clearly met. There are precedents that can be used to contend that the rules do carry over. There are precedents which can be used to

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prove that they do not. But what does reason tell us in this matter? Reason tells us that rules are made to serve those who must live with them. Reason tells us that the rules, continuous or not, of a living institution cannot be the master of that institution unless it is to become an historical relic. They must be amenable to change. A great Senator from Montana, Senator Wash, in another era past: "The theory of the perpetuity of the rules subserves no good purpose and is a convenient one for the promotion of the ends of fractional reactionaries."

To say that the dead hand of the past shall not govern the living, Mr. President, is a valid contention. It is not the same, however, as saying that we should live unmindful of the past. There is a line of wisdom which stretches from the beginnings of this nation to the present and by what logic would we break it at the beginning of each Congress?

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What this suggests, Mr. President, as far as the rules of the Senate are concerned, it is wise that they be carried over from Congress to Congress, provided that they are subject to rational change by those who must live and work with them in the light of the Senate's constitutional functions. That is what is at issue, here, not whether the Senate is continuous, discontinuous or both continuous and discontinuous at the same time. What we must seek is to solve that issue in a reasonably durable fashion so that we shall not have to meet it each time a new Senate convenes.

I trust that this Senate will be capable of meeting this problem in a rational fashion. It would indeed be a sad day in history of responsible representative government if we were to find ourselves so incapable of accommodation in this matter that we would have to turn to the courts for guidance.

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That, then, Mr. President, is one extraneous matter in this discussion. Let us leave the path of whether or not the Senate is a continuous body. It is a dead end. Let us see, instead, that the issue is whether or not we can devise a system of rules which while they embody the wisdom of the past permit assertions out of the wisdom of the present and future.

And let us see, too, Mr. President, that the issue before us is not the capacity of the Senate to legislate on civil rights. I can assure you, Mr. President, that I do not underestimate the importance of that issue to millions of Americans in all sections of the country. I am fully aware of its importance to particular states of the union. That is not at issue here even

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though civil rights may be profoundly affected by the outcome of this issue. I repeat, what is at issue in this debate is the place of the Senate in the pattern of political institutions which holds together the nation. The way we change that place will affect civil rights but it will also affect every other magnificent aspect of our society. The object of the change, if it is to be a sound change, must not be seen in the single light of civil rights but in the many lights of the many challenges which confront our society. Most of all it must be seen in the light of the Senate's place as one of the several parts of this government, in meeting those challenges.

I shall touch upon that basic question, Mr. President, in a moment. Let me, first, however, the Senate to return from still another dubious path into which this debate has strayed.

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I refer to the contention that, in some fashion, "majority rule" is at stake in this discussion. The concept of "majority rule" is one of the most sacred in the lexicon of freedom. It is also one of the most abused and distorted. Its use in this debate serves to befog not to clarify the fundamental issue: What, we may well ask ourselves, is its relevance here? We might well ask ourselves, in this discussion, as the distinguished journalist, Walter Lippman has asked: "A majority of what?"

What kind of a majority are we talking about?

Is a simple majority of those voting in the Senate to be construed as something sacred? If it is, we had better not stop at insisting upon this principle in the rules of the Senate. We had better proceed promptly to correct the inadvertence in the Constitution which requires a two-thirds vote of the Senate in