

## Roger R. Trask Award Lecture, 2010

*The Roger R. Trask Award and Fund was established by the SHFG to honor the memory and distinguished career of the late SHFG President and longtime federal history pioneer and mentor Roger R. Trask. The award is presented to persons whose careers and achievements reflect a commitment to, and an understanding of, the unique importance of federal history work and the SHFG's mission. Richard A. Baker, Historian Emeritus, U.S. Senate, delivered the inaugural Trask Lecture at the Society's annual conference at the National Archives at College Park, Maryland, March 25, 2010.*

### Is the Senate Obsolete—Again?

Richard A. Baker

#### Introduction

What a great honor it is for me to stand in the shadow of our friend Roger Trask! I am equally honored to follow the previous recipient of this award, Roger Launius.

So, today, we once again celebrate the Society's 30th anniversary. Historians love anniversaries, so it is understandable that we might want to do this one twice.

I'd like to be credited as one of this organization's founders.

Alas, if the decision to create the Society had been up to me, we'd all be doing something else this morning. As Phil Cantelon likes to remind me, I was among those in 1979 who saw no particular purpose for such a new organization. Existing historical and archival trade groups seemed to have had the waterfront pretty well covered. "Why further dilute the collective impact of our professional voices?" said I along with a few other curmudgeonly history office directors. However, none of our openly expressed skepticism dissuaded the Society's founders. Organizational meetings went on without us. Curious about the progress of those sessions, I sent a Historical Office colleague to observe and to participate. I soon realized that I had been quite wrong. As my penance, after the Society got up and running, I was sentenced to three years on the executive council and then two years as president. I must say, I enjoyed both experiences.



#### The Senate at High Tide

I should have known better than to be skeptical about the Society's creation. Five years earlier, in 1974, the Senate's chief administrative officer asked the Senate art curator to find out if there

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Richard A. Baker, is the Historian Emeritus of the U.S. Senate. This article is based on his presentation of the Trask Lecture at the annual meeting of the Society for History in the Federal Government at the National Archives at College Park, Maryland, on March 25, 2010.

was any such thing as an organization of federal historians. Failing in that mission, the curator compiled a list of major government history programs. He then interviewed some of their representatives to learn about ongoing projects and objectives.

A letter from historian Arthur Schlesinger to Senate Majority Leader Mike Mansfield had sparked that inquiry. Motivated by the Watergate-inspired concerns for preservation of and timely access to federal records, Schlesinger urged Mansfield to push for creation of a Senate historical program. It would be, in his view, similar in objectives to those operating within the State and Defense departments. Schlesinger gently chided Mansfield that “Congress would be in a much stronger position when it complains about executive secrecy if it at least kept pace with the executive in opening its own files.”

Actually, Mansfield and his Republican counterpart, Senator Hugh Scott, needed little prodding. Both had graduate-level training in history and both tended to see their leadership roles from a historical perspective.

Coincidentally, two forces intersected at that moment to guarantee creation of the Senate Historical Office. One was the approaching bicentennial of American independence. By 1975, congressional leaders had grown frustrated with the last-minute nature of that singular anniversary’s planning. They quietly noted the lack of professional preparation among the temporary staffs tasked with that work.

The second force, inspiring curiosity about Senate history and traditions, was the then recent experience of Watergate. It was Mike Mansfield who arranged for the appointment of North Carolina’s Sam Ervin to chair the special Senate committee that investigated Richard Nixon’s “improper” activities during the 1972 presidential campaign. It was on Mansfield’s watch as floor leader, at a time when Nixon’s approval rating stood at an anemic 24 percent, that the Senate joined the House in enacting two landmark statutes. Both aimed at realigning the power balance between the executive and legislative branches. The War Powers Resolution and the Congressional Budget and Impoundment Control Act delivered a blunt message to the disgraced Nixon, and his unelected successor Gerald Ford, that a resurgent Congress intended to restore its long-eroded constitutional prerogatives. This was the Senate at high tide. Many observers of the mid-1970s Senate understood that the institution’s operations needed a dose of reform, but no one seriously suggested that it was “obsolete,” or dysfunctional.

### Today’s Senate

How things have changed over 30 years. Of course, those changes reflect larger developments in American society and government. The bitter costs of today’s Great Recession, the nation’s dangerous habit of chronically spending more money than it takes in, and the polarization of what passes for political discourse have become especially apparent within the precincts of the United States Senate. The past three decades have given us, in the words of *New York Times* writer Richard Berke, “a Congress [in which] old-fashioned legislative victory has given way to the insatiable appetite for annihilation.”

### Is the Senate Obsolete?

Is the Senate obsolete? On this very day, March 25, 2010, two organizations have scheduled meetings to explore that question. One is the Robert J. Dole Institute of Politics at the University of Kansas. Its two-day scholarly conference is titled, “Changing the Slow Institution: The U.S. Senate, 1960–2010.” The second inquiry takes the form of a hearing by the Senate Committee on Rules and Administration. The committee plans to devote the first of three sessions to the history of the Senate filibuster.

No historian can study the Senate through the generations without regularly encountering the words “obsolete” or “dysfunctional.” The Senate has inspired more full-throated scorn over the past 221 years than any other institution of the federal government—with the possible exception of the Internal Revenue Service. The inscrutable, slow-moving, and tradition-bound Senate lives up to James Madison’s explanation at the Constitutional Convention that its purpose “is to consist in its proceeding with more coolness, with more system, and with more wisdom” than the House of Representatives. Designed to protect the interests of the less populous states against pressures from larger states for precipitous, majority-driven action, it has developed rules and procedures that allow one or more determined members to bring proceedings to a dead stop. The current Senate official parliamentarian, whose thankless job it is to maintain procedural order, likens the Senate to “100 semi-autonomous nations, each one armed to the teeth. The culture of the Senate,” he explains, “demands that they do not fire.”

It requires the broad perspective of an institutional historian to appreciate the Senate. For my part, I prefer to emphasize the cyclical pattern within the Senate’s operations. In the late 1970s, the Senate—at least from today’s perspective—appeared to be at high tide. Today, the tide has ebbed, but it will surely flow again after the elections of 2010 and 2012. Of course, historians have no business making predications. So I’ll simply put that down as an educated guess! In the long run, the voice of the people will influence the shape of congressional operations.

### Obsolete Senates That Have Responded to Popular Will

My plan here is to share with you three historical movements that have rescued a Senate teetering on the brink of obsolescence. There are, of course, others. My examples occurred in the years surrounding 1794, 1913, and 1964. These changes took a very long time to happen. All three succeeded only because of intense and sustained public pressure.

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**1794:** The Senate had been in business for only five years when the first calls for serious reform surfaced. The Constitution of 1787 provided for senators to be chosen by their individual state legislatures. The Constitution also permitted both houses of Congress to set their own operational rules. The Senate decided to follow the practice of the recently defunct Congress under the Articles of Confederation of conducting all business behind closed doors. By contrast, the House of Representatives, styling itself as the “people’s body,” built a large gallery and opened its doors to all visitors.

In electing U.S. senators, the state legislatures typically considered them to be their ambassadors to the central government. Consequently, some legislatures routinely issued instructions to their senators. But how could they tell if those instructions were being followed if the sessions were conducted in secret? The only clue would come from sporadic publication of roll-call votes. This infuriated state legislators who began to refer to the Senate as a lurking den of unfathomable conspiracies. "Open the doors!" "Let the sunlight disinfect your shady proceedings!" Senators who could not follow their state's instructions were invited to resign, and some did.

Others in the early 1790s tried to ignore the clamor. One was Kentucky's Humphrey Marshall. In supporting the locally unpopular Jay's Treaty with Great Britain, Marshall explained he was less interested in winning popularity contests than in doing his duty to the nation—"according to my own judgment." Responding to this sentiment, a howling mob visited Marshall and dragged him from his house. Only by seconds did this skilled orator talk the crowd out of throwing him into the Kentucky River. After angry citizens subsequently stoned him in the state capital, Marshall kept a low profile for the remainder of his term.

This and related expressions of public unhappiness convinced the Senate that the time had come to open its doors. Late in 1795, carpenters completed work on the chamber's gallery and the doors swung open to legislative proceedings. But, I mentioned the Senate's natural inclinations to proceed on institutional reform at a glacial pace. The open-door policy applied only to routine legislative business. Under the rules, any two members could move to clear the gallery at any time for any reason. The Senate's inherently more contentious debates on so-called executive business, that is presidential nominations and treaties, would continue to be off-limits to the public for the next 134 years—until 1929. Some cynically minded commentators believed this change took so long because senators enjoyed the practice of emerging from closed sessions to reveal to favored journalists exactly what had taken place in secret.

And here are two modern-era postscripts to this 18th-century story. In the 1990s, the Senate Historical Office, in league with the Office of Senate Curator, embarked on a modest campaign to improve public access to the Senate and the Capitol Building. The image of visitors enduring temperature extremes as they waited in long lines, without easy access to interpretive information or restroom facilities stirred us to resurrect images of the long-ago Senate that denied public access to its proceedings. In Congress's 1999 decision to build a Capitol visitor center, our behind-the-scenes campaign, sustained through many changes in congressional leadership, made a difference. Members and staff come and go. Institutional historians, with long memories and infinite patience, thankfully endure.

The other postscript related to access played out over the eight years following the September 2001 terrorist attacks. Senate security officials unilaterally decreed that the Senate galleries would henceforth remain closed when the Senate was not in session. By contrast, House officials perceived no threat and simply kept their galleries open. This arbitrary decision on the Senate side resulted in a denial of gallery access for 40 percent of the time the Capitol was open to the public, including the popular touring month of August. As one visitor told me, "I just want to see where they spend my money!" At every opportunity, we historians noted the more-than-two-centuries'-old parallel to the early 1790s. Finally, last August, the Senate's majority and Repub-

lican leaders, as a farewell gift to a retiring Senate historian, reopened the galleries during all public hours. Persistence and patience prevail in the Senate.

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**1913:** Now I'll turn to the second of my three examples of on-the-brink-of-becoming-obsolete institutional change in the Senate.

Nearly a century ago, on a beautiful spring day in 1911, a member of the U.S. House of Representatives introduced a constitutional amendment to abolish the U.S. Senate. The preamble of his resolution charged that the Senate "has become an obstructive and useless body, a menace to the liberties of the people, and an obstacle to social growth; a body, many of the members of which are representatives neither of a State nor of its people, but solely of certain predatory combinations, and a body [that] by reason of the corruption often attending the election of its Members, has furnished the gravest public scandals in the history of the nation." That member was Wisconsin Socialist Victor Berger. His frustration grew out of the Senate's repeated refusal to follow the House in agreeing to a constitutional amendment that would change the way senators were elected.

The delegates to the 1787 Constitutional Convention, to reassure the states that would be called on to ratify their handiwork, gave them individually the power, through their legislatures, to elect their two U.S. senators. Think of it. To win a six-year term in the Senate, you would only have to convince a majority of your state legislators to vote for you. If you had been a revered senior member of a state legislature, the election would almost certainly be yours. If you encountered resistance, for example in a 12-member state senate, you would only have to bribe seven members. No problem! Over the decades, everyone around state capitols knew the going price of a Senate seat. By the 1820s, the system had produced numerous deadlocks within the those legislatures. Throughout the 19th century, and especially with the development of assertive political parties, the situation only grew worse. By 1900, the Delaware legislature became so deadlocked that it was unable to fill either of its Senate seats for two years.

By the start of the 20th century, a constitutional amendment for the direct popular election of senators became a major goal of the Progressive-Era reformers. Muckraking journalist David Graham Phillips, in a series of articles collectively entitled "The Treason of the Senate," fanned the flames for reform. He acknowledged that "treason" was a strong word, but "not too strong to characterize the situation in which the Senate is the eager, resourceful, and indefatigable agent of interests as hostile to the American people as any invading army could be."

Many senators took a more optimistic view. One of them was a senior member from Massachusetts named George Frisbee Hoar. Before advancing to the Senate in 1877, he had served in his state's senate and in the U.S. House. By the time he reached the Senate, he bore a dead-on resemblance to Charles Dickens' "Mr. Pickwick." A student of Senate history and procedure, Hoar served on a committee that adjudicated numerous contests spawned by the flawed process of state legislative election. Following a 1902 fistfight in the Senate Chamber between two South Carolina senators, he proposed and gained adoption of today's Senate Rule 19. This rule prohibits

senators from suggesting that any other senator is engaging in conduct unbecoming of a member. If they do, they have to sit down and be quiet.

Senator Hoar believed he possessed unique credentials to discuss constitutional matters. His maternal grandfather was Roger Sherman. A framer of the Constitution, Sherman drafted the "Great Compromise" that provided all states would be equally represented in the Senate.

Responding to increasing public charges that the Senate had become obsolete, Hoar published a widely circulated article under the title, "Has the Senate Degenerated?" His answer was "No." He predicted that a constitutional amendment for direct popular election would invite electoral corruption, lower the quality of senators, and destroy the uniqueness of the Senate as a special legislative forum for "sober second thought." In 1893, he had given a Senate floor speech so powerful and persuasive that it postponed further Senate consideration of the matter for at least a decade.

Hoar's death in 1904 silenced a powerful opposition voice from the campaign just as it was gaining momentum. The David Graham Phillips' "Treason of the Senate" series two years later, along with an influx of reform-minded senators broke the Senate resistance. The chamber finally agreed to the direct election amendment in 1911. This came just weeks after Victor Berger had introduced his attention-getting proposal to abolish the Senate.

The 17th Amendment became part of the Constitution in 1913. Did it profoundly change the Senate? Not immediately. Viewed historically, change comes to the Senate slowly and subtly. And it comes from the people at large. In this case, some of the more progressive states circumvented the direct election system, beginning in the 1880s, by conducting primaries to express their preferences for senatorial candidates. The results of these primaries would then be presented to the state legislatures as they took up the formal election process. Woe be unto any legislator who voted against the expressed will of his constituents! About half the states had such arrangements by 1913. Did the 17th Amendment produce a new crop of publicly attuned senators in the election of 1914? Not a single incumbent seeking reelection suffered defeat.

Today, as we all know, the manner by which senators are elected is again more than ripe for further reform. The system is seriously flawed, despite many statutes enacted since the 1920s to regulate campaign spending practices. The average election contest in the past decade, depending on the media market, costs between \$10 and \$20 million. In the year 2000, Hillary Clinton spent \$30 million to gain her New York seat and the campaign of New Jersey's Jon Corzine shelled out a whopping \$63 million. Occasionally, reform-minded individuals call the Senate Historical Office as they seek remedies for the impact of such vast sums on the election process. You might guess one question that is regularly and seriously posed: "Why not return to the original system of election by state legislatures?"

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**1964:** Here is my third example of major institutional change in the Senate. The central year is 1964. Looking back 46 years, some political scientists and long-time journalists consider 1964

to have been a major turning point away from collegial bipartisanship to today's rigid party discipline.

My topic here is the Senate's tradition of virtually unlimited debate—in its extreme forms known as the filibuster. If one is challenged to cite a milestone in the slow-moving Senate's historical development, June 10, 1964, would be a good choice. On that day, for the first time in its history, the Senate voted to shut off debate—to invoke cloture—on a civil rights bill. This vote cleared the way for passage of the landmark Civil Rights Act of 1964. The Senate had finally cast off its sorry reputation as a graveyard for civil rights legislation, which had earlier led some to define the Senate as “the South's perpetual revenge for losing the Civil War.” But, in signing that statute, President Lyndon Johnson correctly prophesied problems for the Senate of the future: “We [Democrats],” he said, “have lost the South for a generation.”

The words “cloture” and “filibuster” were unknown to members of the early Senate. What they did know was that one of the benefits of the Senate's small size relative to the House of Representatives was the opportunity to speak at length on any issue. While the House established a cloture rule in 1811, the Senate waited for another 106 years before adopting its first debate-ending rule in 1917.

Once again, this institutional innovation came as the product of intensifying outside pressure. When a determined minority of senators refused to go along with President Woodrow Wilson's plans to lead the nation into World War I—talking to death vital appropriations bills, the president unleashed his fury. “The Senate of the United States is the only legislative body in the world which cannot act when its majority is ready for action. A little group of willful men, representing no opinion but their own, have rendered the great government of the United States helpless and contemptible.” Days later, under fierce pressure, the Senate adopted its first cloture rule. But, what they adopted actually preserved the body's sanctified tradition of unlimited debate. The rule required an always difficult-to-obtain two-thirds majority to end debate. It also permitted each senator to speak for an additional hour after that before voting on final passage. Over the next 46 years, until 1964, the Senate invoked cloture only five times.

In 1975, under growing pressures to “modernize” the Senate, members reduced the cloture threshold from two-thirds to three-fifths. Soon, the practice of classic around-the-clock filibusters gave way to simply conducting cloture votes to see if a 60-vote super-majority favored moving ahead. Woodrow Wilson's lament is playing out before the Senate Rules Committee this very morning. Will the Senate of the United States, he asked, continue to be “the only legislative body in the world which cannot act when its majority is ready for action.”

## Conclusion

So, is the Senate of 2010 obsolete? My conclusion won't surprise you. A good dose of historical perspective informs us that the Senate is not obsolete. There is much about today's Senate that would mystify 18th-century Constitution-framer Roger Sherman and his early 20th-century grandson, George Hoar. Weekly trips of senators back to their states, direct popular election, tel-

evised proceedings, women members, 7,000 staffers, endless cloture motions are but just the beginning of an extended list of innovations. These innovations occurred because public opinion determined that a Senate without them was a Senate verging on obsolescence.

Among those 7,000 Senate staff members are 9 who perhaps have a better view than most of the institution's broad historical cycles. Today we see the bitterly divided, virtually deadlocked Senate at a low arc in one of those cycles. But, historians have the luxury of knowing that this has happened before. As one senior senator told me recently, we appreciate the Senate's historians because they remind us that there were senators before us who also struggled with seemingly intractable issues. Another long-serving member said of a Senate historian, "I think I would be a better senator if I had one-fourth of his [institutional historical] knowledge."

Today's senators are exposed to the purveyors of that historical knowledge during each week the Senate is in session. Every Tuesday, at the closed-door Democratic and Republican party caucus luncheons, Senate Historians Don Ritchie (for the Democrats) and Betty Koed (for the Republicans) deliver four-minute anecdotes about some former senator or timely historical event. Their colorful stories seek to tie modern-day Senate operations to their historical antecedents. This popular series has been going on for 13 years. Imagine that: 100 senators listening carefully to the words of two

### **Roger Trask**

This is what we as government historians can offer our employers that no one else can. It takes years for all of us to develop the essential ingredients that make our services valued. Those ingredients, in addition to our subject expertise, are trust and continuity. No intermittent consultant, no deadline-bound journalist, and no short-term agency official can offer these assets with the reliability that we can.

For many years, my model for an effective agency historian has been Roger Trask. His experience in the field was wide, but as historian of the Government Accountability Office, it was also deep. His published history of that congressional support agency is, in itself, a model. But, I especially remember the advisory committee he assembled to guide the GAO history program. The advisory panel included former Archivist of the United States Bob Warner, former Army General Ed Simmons, and University of Virginia History Professor Norman Graebner, among others. The committee met over lunch with Comptroller General of the United States Charles Bowsher. Bowsher's 15-year term, which coincided with the GAO's 75th anniversary, is considered to have been a successful one. It was particularly notable for its attention to the agency's history as a guide to shaping policy and as a vehicle for educating staffers. Behind Charles Bowsher's dedication, of course, was Roger Trask.

Years later, the 78-year-old former Comptroller General Bowsher continues his active interest in the agency's historical programs. At a recent luncheon, he fondly raised a glass to the memory of Roger's distinctive achievements. And so today, I am especially delighted to have this opportunity to renew that memory.

Thank you.