the rule has prevented the passage of legislation. That it certainly has. Of course, it is their view that all of this legislation was bad and deserved its fate. But this really is beside the point. The significant fact is that this concession admits that rule XXII is a rule of substance which preserves in a minority of the Senate the power to kill legislation. This is a power—which I insist, contrary to their view—the Constitution does not allow the Senate to vest in any minority of its Members.

The final event from which I derived some comfort on Saturday was the response of the Vice President to some of my parliamentary inquiries. The Vice President did not exactly suggest that he agreed with my interpretation either of the Constitution or rule XXII—I would not claim that—but he did not state a contrary view, either.

He chose instead to exercise his prerogative not to give the Senate the benefit of his views until it was absolutely necessary for him to rule on a point of order which would be subject to an appeal to the Senate. Prior to taking this position, however, the Vice President did answer several parliamentary inquiries with respect to the vote on the motion to take up Senate Resolution 4. His answers established two highly significant points: one, that only a majority vote of Senators present and voting, a quorum being present, is necessary to take up Senate Resolution 4; and, secondly, that this has been the consistent practice of the Senate despite the fact that there is no explicit provision in the Constitution or the rules on what vote is required for such a motion. Of course I agree entirely with these particular statements by the Vice President since they tend to show that the Vice President accepts the position abundantly supported by other evidence, that except when otherwise explicitly provided in the Constitution a majority of the Senate must determine its action.

While these were all encouraging events, I do not want to give them more significance than they deserve. My argument would be the same even if the majority leader had not filed his cloture motion before the debate, and even if our distinguished colleagues had not admitted that rule XXII is used to kill legislation, and even if the Vice President had not answered any parliamentary inquiries. My argument does not rest upon anything so recent and temporal as Saturday's events. It rests rather on the fundamental law of the Nation—the greatest document of government ever devised by man—and the surest basis for measuring the soundness of any judgment affecting the body politic which I know—the Constitution of the United States.

It was the Constitution which Vice President Nixon relied upon in his classic opinion in 1957 when a similar situation confronted the Senate. He said at that time, quoting from article I, section 5, clause 2, of the Constitution, the following:

> The Constitution provides that "Each House may determine the rules of its proceedings." This constitutional right is lodged in the membership of the Senate and it may be exercised by a majority of the Senate at any time.

It is true that Vice President Nixon was addressing himself to the situation at the convening of a new Congress. But the point I make is that there is nothing in his reasoning which should apply only at the beginning of a session. As we all know, the Constitution requires a two-thirds vote to ratify treaties. Could the Senate anymore at the beginning of a session than at any other time adopt a rule requiring a unanimous vote to ratify a treaty? By the same token I say—as did Vice President Nixon—that the Constitution requires a majority vote to determine rules of proceedings—and any rule adopted at the beginning of the session or any other time altering this requirement is wholly inconsistent with the Constitution.

Actually, the situation is much clearer this session than it might be otherwise since the Senate at the beginning of this session expressly voted to refer the consideration of rule XXII to committee when proposals with respect to the rule were offered at the beginning of this session. It cannot therefore be said by anyone that this Senate has ever acquiesced in the rule. There was no occasion at any time prior to Saturday on which section 2 of rule XXII was utilized in any of the proceedings of the Senate during this session. Only if a majority of the Senate should determine to proceed in accordance with the provisions of this section tomorrow could it reasonably be argued that this Senate has acquiesced in this rule by any of its actions.

Vice President Nixon's opinion also pointed out that "any provision of Senate rules adopted in a previous Congress which has the expressed or practical effect of denying the majority of the Senate in a new Congress the right to adopt the rules under which it desires to proceed is, in the opinion of the Chair, unconstitutional.

He went on to state specifically that the then section 3 of rule XXII "in practice has such an effect." Section 3 at that time expressly provided that there could be no debate limitation whatever on proposals to amend the Standing Rules of the Senate. There is no doubt from the reasoning of the Vice President in 1957, and his later comments in 1959 and 1961, however, that he held the same opinion with regard to the amended version of rule XXII which was adopted in 1959. This is most clear from Vice President Nixon's explanation of his previous opinion when he was presiding in the Senate on January 3 of this year, at which time he stated:

> What the Chair held as, in his opinion, unconstitutional was the attempt of the Senate in a previous Congress to inhibit the right of the Senate in a practical sense to get to the point where it could adopt rules by majority vote.

Indeed, the Senator from Georgia [Mr. RUSSELL] on that occasion asked specifically of the Vice President:

> So the rule which the Chair thinks unconstitutional in the body of the Senate rules is the one to be found in rule XXII?

To which Vice President Nixon replied:

> The Senator from Georgia is correct.

Mr. President, I have attempted in these remarks to make abundantly clear my views as to the procedure which the Senate must follow tomorrow if it is to act consistently with its authority under article I, section 5, clause 2, of the Constitution to determine the rules of its proceedings. It is my desire at this time to propound a series of parliamentary inquiries to the Chair so that the Senate may have the guidance of the Chair as to the appropriate procedure by which this issue may be raised tomorrow.

My first inquiry is this: If a majority vote of Senators present and voting but not a two-thirds vote is obtained for cloture tomorrow, will the Chair rule that the motion for cloture has been approved?

The PRESIDING OFFICER (Mr. SMITH of Massachusetts in the chair). The present occupant of the chair could not so rule. Rule XXII specifically provides that a two-thirds vote is required, and Vice President Nixon, as late as January 3, 1961, in response to a parliamentary inquiry, stated:

> If the Chair may further spell out the opinion: Once the Senate proceeds to conduct substantive business without acting upon its rules or after declining to act, as the Senate did at the beginning of the last Congress, then after that point the rules cannot be changed except under the rules previously adopted by the Senate, whenever they may have been adopted.

Mr. KEATING. I failed to hear the very first part of the Chair's response to my inquiry.

The PRESIDING OFFICER. The present occupant of the chair could not so rule, in answer to the Senator's question.

Mr. KEATING. In other words, the present occupant of the chair declines to state what the ruling tomorrow will be. Is that the position of the Chair?

The PRESIDING OFFICER. The Chair could not rule that a majority vote would invoke cloture.

Mr. KEATING. In other words, if I understand correctly, the Chair will rule that if a majority of Senators present and voting votes for cloture, but two-thirds do not vote for cloture, the Chair will rule that the motion for cloture has not prevailed?

The PRESIDING OFFICER. That is correct.

Mr. KEATING. The second inquiry is:

Would the ruling of the Chair be subject to an appeal to the Senate?

The PRESIDING OFFICER. The Chair will read rule XX. That is the applicable rule.

Mr. SMATHERS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. Does the Senator from New York yield for that purpose?

Mr. KEATING. Not until I have completed my parliamentary inquiries.

The PRESIDING OFFICER. The Senator declines to yield.

Rule XX reads:

RULE XX. QUESTIONS OF ORDER

1. A question of order may be raised at any stage of the proceedings, except when the Senate is dividing, and, unless submitted to the Senate, shall be decided by the Presiding Officer without debate, subject to an appeal to the Senate. When an appeal is taken, any subsequent question of order which may arise before the decision of such appeal shall be decided by the Presiding Officer without debate; and every appeal therefrom shall be decided at once, and without debate; and any appeal may be laid on the table without prejudice to the pending proposition, and thereupon shall be held as affirming the decision of the Presiding Officer. (Jefferson's Manual, sec. XXXIII.)

2. The Presiding Officer may submit any question of order for the decision of the Senate. (Jefferson's Manual, sec. XXXIII.)

Mr. KEATING. I gather from that statement that the answer to the question, "Would the ruling of the Chair be subject to an appeal to the Senate?" would be in the affirmative.

The PRESIDING OFFICER. On the basis of rule XX; that is correct.

Mr. KEATING. At what point in the proceedings must such an appeal be taken and in what manner?

The PRESIDING OFFICER. Appeals must be taken at the time any such action occurs against which the point of order is made, and before any other business is transacted.

Mr. KEATING. Would the appeal from the ruling of the Chair be determined by a vote of a majority of the Senators present and voting?

The PRESIDING OFFICER. Under all practices of the Senate, appeals from the decision of the Chair are determined by a majority of those present, a quorum being present.

Mr. KEATING. The last clause of rule XXII provides that "appeals from the decision of the Presiding Officer shall be decided without debate." In the opinion of the Chair, would an appeal from a ruling of the Chair that a two-thirds vote was required for cloture after a majority vote had been obtained for cloture be decided without debate?

The PRESIDING OFFICER. Rule XXII specifies that such questions are decided without debate only after cloture has been invoked under rule XXII; prior thereto this provision is not applicable.

Mr. KEATING. So under rule XXII as now worded a decision to the effect that a two-thirds vote was required for cloture, and that it could not be invoked by majority vote, would be decided without debate. Is that correct?

The PRESIDING OFFICER. It would be decided without debate until cloture had been invoked.

Mr. KEATING. My question is—and I may not have made myself clear—if a point of order is made against the decision of the Chair that the motion for cloture has not carried, and the Chair overrules the point of order, is an appeal from such a ruling decided without debate?

The PRESIDING OFFICER. No; in that case it would be debatable.

Mr. KEATING. It would be debatable?

The PRESIDING OFFICER. It would be debatable.

Mr. KEATING. If it is the opinion of the Chair, as apparently it is, that such an appeal would be subject to debate, could such debate be terminated by a majority vote in favor of a motion for the previous question?

The PRESIDING OFFICER. If rule XXII should be held invalid, nothing would be left in the Senate rules to curtail general debate. General debate would then be unlimited. This, of course, is the case as opposed to motions to table, and the like.

Mr. KEATING. I have discussed on two occasions now, since the filing of the cloture petition, the basis for my view that section 2 of the rule XXII is an unconstitutional abridgment of the right of the majority of the Senate to determine the rules of its proceedings. It is my intention, if a majority of the Senators present and voting vote for cloture, to make the point of order that, under article I, section 5, clause 2, of the Constitution, the cloture motion has been adopted. Since the point would be academic if less than a majority or more than two-thirds of the Senate should vote for cloture, obviously I will not make a point of order under either of those circumstances.

It is my understanding that under the practice of the Senate a point of order raising a question involving the constitutionality of a Senate rule is submitted to the Senate for decision. Will the Chair advise whether that is a correct understanding?

The PRESIDING OFFICER. That is correct.

Mr. KEATING. It is also my understanding that such a point of order cannot be raised until the Chair announces the result of the vote on the motion for cloture. Will the Chair advise the Senator from New York if that is a correct understanding?

The PRESIDING OFFICER. A point of order cannot be made against a transaction until it has occurred.

Mr. KEATING. Let us say specifically that more than 50 Senators vote for cloture, but less than two-thirds, and the Chair announces that the motion for cloture has failed. Must the point of order be made at that point?

The PRESIDING OFFICER. The point of order would have to be made at that point.

Mr. KEATING. It cannot be made before that?

The PRESIDING OFFICER. It cannot. It is a moot question prior thereto.

Mr. KEATING. I thank the Chair. I ask the indulgence and the patience of the Chair just a little further.

Finally, it is my understanding that the point of order cannot be raised if business is transacted between the time the Chair announces the vote on the motion for cloture and the time the point of order is made. Will the Chair advise whether that understanding is correct?

The PRESIDING OFFICER. That is correct. Business may not be transacted between the two events.

Mr. KEATING. I desire to advise the Chair that I intend to raise a point of order if the conditions I have outlined should develop tomorrow, and I shall be on my feet for that purpose when the vote is announced. I am confident, therefore, that the Chair will recognize me to make the point of order after the vote has been announced, so that that opportunity will be afforded before the Senate transacts any other business.

Mr. President, in conclusion, there is only one point I wish to emphasize. My object in this debate is not to curb the right to full debate in the Senate. I would be the first to defend the right of full debate in the Senate. On the contrary, the amendment which is offered by my cosponsors and myself would provide far more debate on far more equitable terms than does the present rule XXII. Thus, instead of 2 days before a vote on cloture, our amendment provides 15 days before the vote, and, instead of 1 hour of time for each Senator after cloture, our amendment gives the minority a full 50 hours of debate—the same as for the majority—no matter how small in number the minority may be. The only objective of our amendment is to restore the right of a majority of the Senate to act after full debate—a right which I believe derives directly from the Constitution and which I regard as essential to every principle of republican government and democratic procedure.

This is a critical issue, in my opinion, and the rulings of the Chair may be of decisive importance in determining whether the Senate is to have an opportunity at this session to work its will on this subject. It is for this reason I have taken the time of the Senate to discuss this issue again before tomorrow's crucial votes. It may not be possible to have a further opportunity to do so under the procedures tomorrow, so I am very grateful to the present occupant of the chair for the courtesy and patience with which he has indulged me.

Mr. JAVITS. Mr. President, will my colleague yield?

Mr. KEATING. I yield.

Mr. JAVITS. Will the Senator, within the context of his statement today, make the distinction which he made on Saturday, that is, with direct reference to the point of order and the procedure which the Senator has developed in his parliamentary inquiries, between the situation which will face us tomorrow on the vote on the cloture petition and the situation which faced us at the opening of this Congress, in January 1961, and the advisory views expressed then by the then Vice President? Will the Senator spell out for us, as he sees it, whether the situation presented under parliamentary law is the same or is different?

Mr. KEATING. As I said the other day—and I appreciate the Senator's bringing it up again, because the point should be made clear—the issue raised by the Vice President's ruling is quite separate and distinct from the point

which I am making here. The Vice President's ruling was limited solely to the situation at the beginning of the session. It needed only to be limited to that; otherwise it would have been what we lawyers call dictum. He did not, in any way, pass upon the issue which will be raised by the point of order against a ruling by the Chair that a two-thirds vote was necessary to impose cloture.

Mr. JAVITS. I thank the Senator for making that distinction, because I think it is extremely important that, whatever may be the result of tomorrow's proceedings, it should not be deemed to preclude a procedure similar to that which was undertaken at the opening of Congress—my colleague said "session"; I think he meant "Congress"—in 1963, when we shall again be presented with the same situation, and would not wish at a different time, and under different circumstances, to be precluded in any way from considering or having Senators argue that there is a precedent in whatever action may be taken by the Senate tomorrow.

Mr. KEATING. In my judgment, this would in no way preclude that and would have no bearing on such a proceeding then.

Mr. JAVITS. I appreciate the Senator's making that point clear. I know the Senator is as interested as I am or as any other Senator is in having that distinction widely understood. This is the time to do it.

I ask the Senator whether in his parliamentary inquiries he has asked whether the Chair would rule upon such a point of order, or whether in raising a constitutional question it would, under the precedents of the Senate, be directed to the Senate without a ruling by the Chair on it.

Mr. KEATING. I did ask that question. I am informed that, under the precedents of the Senate, a constitutional question would be submitted to the Senate, and the Chair would not rule on it.

Mr. JAVITS. I thank the Senator.

Mr. President, I had in mind earlier in the day speaking a word about the situation which faces us because of the tragic developments with respect to the decease of Dag Hammarskjold. I have made a statement to that effect for the RECORD. So, for the moment at least, I shall not deal with the subject further. However, as we near a conclusion of the debate as to whether rule XXII shall be amended at this time, I wish to make a very brief reference to that situation and to the situation which we shall face tomorrow.

First, I emphasize the point just made with my distinguished colleague from New York [Mr. KEATING], who is presenting us with a novel and challenging legal question for decision tomorrow. He has indicated that there is a very clear distinction between what we shall be doing tomorrow and the situation in which we find ourselves at the beginning of a Congress. I shall be prepared, because I have analyzed the precedents and the legal briefs which were available to the then Vice President in January, and are still available to all of us, to discuss that point further tomorrow in direct connection with the consideration by the Senate of the question and the point of order.

Second, Mr. President, the other day there was considerable debate about the declaration made by a number of Republican Senators and a number of Democratic Senators in regard to the timing of this particular operation, with a strong assertion that this timing is not of our choosing, and that it is unfortunate in terms of not affording the best opportunity to amend rule XXII. I wish to reiterate that as part of our case.

Most important, however, and far above and beyond these procedural matters, I should like to state, further, what to me seems the critical element involved here; namely, that here we are dealing with a means by which civil rights legislation is frustrated by Senators who, as I developed the point on Saturday, consider any particular civil rights measure unacceptable, for whatever reason—whether because they think it includes too much, or because they think it not sufficiently inclusive, or for whatever other reason—and who therefore find the procedure for debate under rule XXII most congenial as a means to help defeat or curtail what clearly ought to be civil rights legislation, in view of the needs in connection with the situation presently existing in the country.

Mr. President, I should like to emphasize the implicit inhibition provided by the present rules for debate, which are so conducive to the type of filibuster which can at least inhibit and curtail, when it cannot prevent, the enactment of such urgently needed measures; and I also wish to call the attention of the Senate to the character or type of measure which often is at stake in connection with extended debate, as it is euphemistically called here, and which also suffers from the filibuster threat, which—as has been stated time and time again—is by no means confined to civil rights legislation, because until 1933 no civil rights legislation was involved in any of the measures against which the filibuster was used. From 1933 on, when it began to be used against some civil rights measures, it also was used against the British loan, against a bill relating to labor disputes, and against the Atomic Energy Act, as I have mentioned, in 1946 and in 1954. In addition, we know how very often bills are amended or amendments are accepted or other accommodations are made when it is known that unless that is done the filibuster weapon will be used.

Mr. President, this is an overhanging ogre of the Senate; and it is completely inconsistent with the demands of modern times and the need for a precise decision with which we are faced in connection with measure after measure.

So, Mr. President, if rule XXII is finally meaningfully amended, it will represent not only a reform of archaic rules of this body, but also will represent, as it were, the opening of this Chamber to the light of the modern day and to the influence of the modern day, in a constructive and a useful way which should be typical of a republic, rather than to enable mere rules of debate to frustrate what should be done in the interests of the country.

Finally, Mr. President, there has been so much talk about "gag" rule in regard to rule XXII and the allegation that Senators like myself are trying to inhibit or "gag" debate, that I should state that the proposal we shall put before the Senate involves, in the first place, 15 days of debate. As has been observed in connection with such debates time and time again, the Senate is always very reluctant to close debate until there has been very full debate which would satisfy anyone who was at all reasonable in his desire to have a full exposition of the subject at issue. Furthermore, even if cloture be invoked, there still will be 50 hours available to both the proponents and the opponents; and in view of the way the Senate usually proceeds with debate on a particular issue, with perhaps 5 to 6 or 7 hours a day, 50 hours will mean, in round numbers, approximately 1 week or 10 days of debate, plus the 15 days also provided by the rule for which we contend.

Furthermore, the other day we were told by the distinguished Senator from Georgia that this effort is but an opening wedge in an attempt to deprive Senators of the right of amendment. Mr. President, that argument is often made by the opponents of such measures here. But, of course, if the Senate does not like any proposed rule or any other proposed change, the Senate does not have to adopt it. We shall not be simply surrendering our prerogatives if we finally bring ourselves to act in accord with reality, under rule XXII, instead of vesting an unusual amount of power in a small minority of this body—which, for all practical purposes, is the present situation.

So, Mr. President, there is a rule of reason in connection with this effort at long last to unlock the door of this Chamber to the needs and the urgent demands of the national interest in modern times.

Perhaps the most conclusive proof of the fact that what we are proposing is not very drastic at all is to be found in the fact—as set forth in the report on the pending measure, Calendar 852—that, if our proposal should prevail, in other words, that debate may be closed, after 15 days, subject thereafter to a 100-hour-debate rule, by a constitutional majority of the Senate—history demonstrates that in only 9 times out of the 23 in which cloture has been sought would there have been success in the attempt to effect cloture.

Mr. President, under the existing rule, on only four occasions has there been a successful effort to invoke cloture; and there has been no success in connection with such an effort since 1927.

It seems to me that that fact alone—no cloture during the last 34 years—demonstrates, first, that the present rule is unduly oppressive and restrictive and operates against the best interests of a lawfully constituted constitutional body of this sort, and has the real capability of frustrating proposed legislation urgently needed in the public interest and the national interest; and, second,