

This whole question of a constitutional privilege being superior to the rules of the House is a subject which the Chair has for many years considered and thought unreasonable. It seems to the Chair that where the Constitution orders the House to do a thing, the Constitution still gives the House the right to make its own rules and do it at such time and in such manner as it may choose. And it is a strained construction, it seems to the Chair, to say that because the Constitution gives a mandate that a thing shall be done, it therefore follows that any Member can insist that it shall be brought up at some particular time and in the particular way which he chooses.

If there is a constitutional mandate, the House ought by its rules to provide for the proper enforcement of that mandate, but it is still a question for the House how and when and under what procedure it shall be done. And a constitutional question, like any other, ought to be decided according to the rules that the House has adopted. But there have been a few constitutional questions, very few, which have been held by a series of decisions to be of themselves questions of privilege above the rules of the House. There is the question of the President's veto.

Another subject which has been given constitutional privilege is impeachment. It has been held that when a Member rises in his place and impeaches an officer of the government, he can claim a constitutional privilege which allows him at any time to push aside the other privileged business of the House.

"Later in the same rule, Speaker Gillett made this observation, again I quote:

But this Rule IX was obviously adopted for the purpose of hindering the extension of constitutional or other privilege. If the question of the census and the question of apportionment were new questions, the Chair would rule that they were not questions of constitutional privilege, because, while of course it is necessary to obey the mandate of the Constitution and take a census every ten years and then make an apportionment, yet there is no reason why it should be done today instead of tomorrow. It seems to the Chair that no one Member ought to have the right to determine when it should come in in preference to the regular rules of the House but that the rules of the House or the majority of the House should decide it. But these questions have been decided to be privileged by a series of decisions, and the Chair recognizes the importance of following precedence in obeying a well-established rule, even if it is unreasonable, that this may be a government of laws and not of men.

"The House Rules and Manual notes that under an earlier practice of the House, certain measures responding to mandatory provisions of the Constitution were held privileged and allowed to supersede the rules establishing the order of business. Examples included the census and apportionment measures mentioned by Speaker Gillett. But under later decisions, exemplified by Speaker Gillett's in 1921, matters that have no other basis in the Constitution or in the rules on which to qualify as questions of the privileges of the House have been held not to constitute the same. The effect of those decisions has been to require that all questions of privilege qualify within the meaning of Rule IX.

"The ordinary rights and functions of the House under the Constitution are exercised in accordance with the rules of the House, without necessarily being

accorded precedence as questions of the privileges of the House.

"Consistent with the principles enunciated by Speaker Gillett, the House considered in 1941 the joint resolutions to declare war on Japan, Germany and Italy by way of motions to suspend the rules. On July 10, 1991, again in consonance with these principles, the House adopted a special order of business reported from the Committee on Rules to enable its consideration of a concurrent resolution on the need for congressional authorization for military action, a concurrent resolution on a proposed policy to reverse Iraq's occupation of Kuwait, and a joint resolution authorizing military action against Iraq pursuant to a United Nations Security Council Resolution.

"Finally, the Chair observes that in 1973, the House and the Senate, again consistent with Speaker Gillett's rationale, chose to exercise their respective constitutional powers to make their own rules by including in the War Powers Resolution provisions according privilege to specified legislative measures relating to the commitment of U.S. Armed Forces to hostilities. It must be noted the procedures exist under the rules of the House that enable the House to request or compel the executive branch to furnish such information as it may require.

"The Chair will continue today to adhere to the same principles enunciated by Speaker Gillett. The Chair holds that neither the enumeration in the fifth clause of section 8 of article I of the Constitution of Congressional Powers 'to coin money, regulate the value thereof, and of foreign coins,' nor the prohibition in the seventh original clause of section 9 of that article of any withdrawal from the Treasury except by enactment of an appropriation, renders a measure purporting to exercise or limit the exercise of those powers a question of the privileges of the House.

"The resolution offered by the gentleman from Mississippi recites the enumerated powers of Congress relating to the regulation of currency and the general legislative 'power of the purse,' and resolves that the Comptroller General conduct a multifaceted evaluation of recent actions taken by the President to use the Economic Stabilization Fund in support of the currency of Mexico and to report thereon to the House.

"It bears repeating that questions of privileges of the House are governed by rule IX and that rule IX is not concerned with the privileges of the Congress, as a legislative branch, but only with the privileges of the House, as a House.

"The Chair holds that the resolution offered by the gentleman from Mississippi does not affect 'the rights of the House collectively, its safety, dignity, or the integrity of its proceedings' within the meaning of clause 1 of rule IX. Although it may address the aspect of legislative power under the Constitution, it does not involve a

constitutional privilege of the House. Were the Chair to rule otherwise, then any alleged infringement by the executive branch, even, for example, through the regulatory process, on a legislative power conferred on Congress by the Constitution would give rise to a question of the privileges of the House. In the words of Speaker Gillett, 'no one Member ought to have the right to determine when it should come in in preference to the regular rules of the House.'"

The chair has ruled that this is not a privileged resolution.

Mr. TAYLOR of Mississippi appealed the ruling of the Chair.

Mr. ARMEY moved to lay the appeal on the table.

The question being put, viva voce, Will the House lay on the table the appeal of the ruling of the Chair?

The SPEAKER announced that the yeas had it.

Mr. TAYLOR of Mississippi objected to the vote on the ground that a quorum was not present and not voting.

A quorum not being present,

The roll was called under clause 4, rule XV, and the call was taken by electronic device.

When there appeared { Yeas ..... 288  
Nays ..... 143

¶21.7

[Roll No. 96]

YEAS—288

Allard	Cox	Goodlatte
Archer	Crane	Goodling
Army	Crapo	Goss
Bachus	Creameans	Graham
Baker (CA)	Cubin	Green
Baker (LA)	Cunningham	Greenwood
Baldacci	Davis	Gunderson
Ballenger	de la Garza	Gutierrez
Barr	DeLauro	Gutknecht
Barrett (NE)	DeLay	Hamilton
Bartlett	Diaz-Balart	Hancock
Barton	Dickey	Hansen
Bass	Dicks	Hastert
Bateman	Dixon	Hastings (WA)
Becerra	Doggett	Hayworth
Beilenson	Dooley	Hefley
Bentsen	Doolittle	Heineman
Bereuter	Dreier	Hergert
Berman	Dunn	Hillery
Bilirakis	Edwards	Hobson
Bliley	Ehlers	Hoekstra
Blute	Ehrlich	Hoke
Boehlert	Emerson	Horn
Boehner	Ensign	Hostettler
Bonilla	Everett	Houghton
Bonior	Ewing	Hutchinson
Bono	Fawell	Hyde
Boucher	Fazio	Inglis
Brownback	Fields (TX)	Jackson-Lee
Bryant (TN)	Flake	Jefferson
Bunn	Flanagan	Johnson (CT)
Bunning	Foglietta	Johnson, Sam
Burr	Foley	Johnston
Burton	Forbes	Jones
Buyer	Ford	Kasich
Callahan	Fowler	Kelly
Calvert	Fox	Kennedy (MA)
Camp	Frank (MA)	Kennelly
Canady	Franks (CT)	Kim
Cardin	Franks (NJ)	King
Castle	Frelinghuysen	Kingston
Chabot	Frisa	Knollenberg
Chambliss	Funderburk	Kolbe
Chenoweth	Gallely	LaFalce
Christensen	Ganske	LaHood
Chrysler	Gejdenson	Latham
Clinger	Gekas	LaTourette
Coburn	Gephardt	Laughlin
Coleman	Geren	Lazio
Collins (GA)	Gilchrest	Leach
Combest	Gillmor	Levin
Cooley	Gilman	Lewis (CA)

Lewis (GA)	Packard	Skelton
Lewis (KY)	Pastor	Smith (MI)
Lightfoot	Paxon	Smith (NJ)
Linder	Payne (VA)	Smith (TX)
Livingston	Pelosi	Smith (WA)
LoBiondo	Petri	Solomon
Longley	Pickett	Souder
Lucas	Pombo	Spence
Maloney	Porter	Stenholm
Manton	Portman	Stockman
Manzullo	Pryce	Studds
Markey	Quillen	Stump
Martini	Quinn	Talent
Matsui	Radanovich	Tate
McCarthy	Ramstad	Tejeda
McColum	Regula	Thomas
McCrery	Reynolds	Thornberry
McDade	Richardson	Thornton
McHugh	Riggs	Tiahrt
McInnis	Roberts	Torkildsen
McIntosh	Rogers	Torres
McKeon	Ros-Lehtinen	Torricelli
Meehan	Roth	Upton
Metcalfe	Roukema	Vento
Meyers	Roybal-Allard	Volkmer
Mfume	Royce	Vucanovich
Mica	Rush	Waldholtz
Miller (FL)	Salmon	Walker
Mineta	Sanford	Walsh
Moakley	Sawyer	Wamp
Molinari	Saxton	Ward
Moorhead	Scarborough	Waters
Moran	Schaefer	Watts (OK)
Morella	Schiff	Waxman
Myrick	Schumer	Weldon (FL)
Neal	Seastrand	Weller
Nethercutt	Sensenbrenner	White
Neumann	Serrano	Wicker
Ney	Shadegg	Williams
Norwood	Shaw	Wolf
Nussle	Shays	Young (AK)
Olver	Shuster	Young (FL)
Ortiz	Skaggs	Zeliff
Oxley	Skeen	Zimmer

## NAYS—143

Abercrombie	Gonzalez	Obey
Ackerman	Gordon	Orton
Andrews	Hall (OH)	Owens
Baessler	Hall (TX)	Pallone
Barcia	Harman	Parker
Barrett (WI)	Hastings (FL)	Payne (NJ)
Bevill	Hayes	Peterson (FL)
Billbray	Hefner	Peterson (MN)
Bishop	Hilliard	Pomeroy
Borski	Hinche	Poshard
Brewster	Holden	Rahall
Browder	Hoyer	Rangel
Brown (CA)	Hunter	Reed
Brown (FL)	Istook	Rivers
Brown (OH)	Jacobs	Roemer
Bryant (TX)	Johnson (SD)	Rohrabacher
Chapman	Johnson, E. B.	Rose
Clay	Kanjorski	Sabo
Clayton	Kaptur	Sanders
Clement	Kennedy (RI)	Schroeder
Clyburn	Kildee	Scott
Coble	Klecza	Sisisky
Collins (IL)	Klink	Slaughter
Collins (MI)	Klug	Spratt
Condit	Lantos	Stark
Conyers	Largent	Stearns
Costello	Lincoln	Stokes
Coyne	Lipinski	Stupak
Cramer	Lofgren	Tanner
Danner	Lowe	Tauzin
Deal	Luther	Taylor (MS)
DeFazio	Martinez	Taylor (NC)
Dellums	Mascara	Thompson
Deutsch	McDermott	Thurman
Dingell	McHale	Towns
Doyle	McKinney	Trafficant
Duncan	McNulty	Tucker
Durbin	Meeke	Velazquez
Engel	Menendez	Visclosky
English	Miller (CA)	Watt (NC)
Eshoo	Minge	Weldon (PA)
Evans	Mink	Whitfield
Farr	Mollohan	Wilson
Fattah	Montgomery	Wise
Fields (LA)	Murtha	Woolsey
Filner	Myers	Wyden
Furse	Nadler	Wynn
Gibbons	Oberstar	

## NOT VOTING—3

Dornan	Frost	Yates
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So the motion to lay the appeal on the table was agreed to.

A motion to reconsider the vote whereby said motion was agreed to was, by unanimous consent, laid on the table.

¶21.8 PROVIDING FOR THE  
CONSIDERATION OF H.R. 665

Ms. PRYCE, by direction of the Committee on Rules, called up the following resolution (H. Res. 60):

*Resolved*, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 665) to control crime by mandatory victim restitution. The first reading of the bill shall be dispensed with. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill. The committee amendment in the nature of a substitute shall be considered as read. During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 6 of rule XXIII. Amendments so printed shall be considered as read. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instruction.

When said resolution was considered. After debate,

On motion of Ms. PRYCE, the previous question was ordered on the resolution to its adoption or rejection and under the operation thereof, the resolution was agreed to.

A motion to reconsider the vote whereby said resolution was agreed to was, by unanimous consent, laid on the table.

¶21.9 VICTIM RESTITUTION

The SPEAKER pro tempore, Mr. HEFLEY, pursuant to House Resolution 60 and rule XXIII, declared the House resolved into the Committee of the Whole House on the state of the Union for the consideration of the bill (H.R. 665) to control crime by mandatory victim restitution.

The SPEAKER pro tempore, Mr. HEFLEY, by unanimous consent, designated Mr. RIGGS as Chairman of the Committee of the Whole; and after some time spent therein,

The SPEAKER pro tempore, Mrs. VUCANOVICH, assumed the Chair.

When Mr. RIGGS, Chairman, pursuant to House Resolution 60, reported

the bill back to the House with an amendment adopted by the Committee.

The previous question having been ordered by said resolution.

The following amendment, reported from the Committee of the Whole House on the state of the Union, was agreed to:

Strike out all after the enacting clause and insert:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Victim Restitution Act of 1995".

**SEC. 2. MANDATORY RESTITUTION AND OTHER PROVISIONS.**

(a) ORDER OF RESTITUTION.—Section 3663 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking "may order, in addition to or, in the case of a misdemeanor, in lieu of any other penalty authorized by law" and inserting "shall order"; and

(ii) by adding at the end the following: "The requirement of this paragraph does not affect the power of the court to impose any other penalty authorized by law. In the case of a misdemeanor, the court may impose restitution in lieu of any other penalty authorized by law.";

(B) by adding at the end the following:

"(4) In addition to ordering restitution to the victim of the offense of which a defendant is convicted, a court may order restitution to any person who, as shown by a preponderance of evidence, was harmed physically, emotionally, or pecuniarily, by unlawful conduct of the defendant during—

"(A) the criminal episode during which the offense occurred; or

"(B) the course of a scheme, conspiracy, or pattern of unlawful activity related to the offense.";

(2) in subsection (b)(1)(B) by striking "impractical" and inserting "impracticable";

(3) in subsection (b)(2) by inserting "emotional or" after "resulting in";

(4) in subsection (b)—

(A) by striking "and" at the end of paragraph (4);

(B) by redesignating paragraph (5) as paragraph (6); and

(C) by inserting after paragraph (4) the following new paragraph:

"(5) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense; and";

(5) in subsection (c) by striking "If the court decides to order restitution under this section, the" and inserting "The";

(6) by striking subsections (d), (e), (f), (g), and (h);

(7) by redesignating subsection (i) as subsection (m); and

(8) by inserting after subsection (c) the following:

"(d)(1) The court shall order restitution to a victim in the full amount of the victim's losses as determined by the court and without consideration of—

"(A) the economic circumstances of the offender; or

"(B) the fact that a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source.

"(2) Upon determination of the amount of restitution owed to each victim, the court shall specify in the restitution order the manner in which and the schedule according to which the restitution is to be paid, in consideration of—

"(A) the financial resources and other assets of the offender;