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Clean Up the House: Restore Democracy in the Halls of Congress

The U.S. Congress – comprised of the House of Representatives and the Senate – is a democratically-elected bicameral legislature charged with making our nation’s laws. The House is considered the most democratic body of Congress, given that its members represent smaller popular districts and are subject to election every two years. Members of the Senate represent entire state populations and are subject to election every six years on a rotational basis (one-third of the Senate is elected every two years).

Democracy begins at the level of electing our representatives, but it does not end there. The rules and procedures by which Congress develops legislation also have a significant impact on how “representative” the legislation is of the general public. Are bills that go to a floor vote drafted in the open or in secret? Are members of the minority party in Congress allowed to fully debate the merits of bills and permitted to propose amendments to bills? What is the role of lobbyists in the mix of introducing, drafting and debating laws? All of these factors are procedural issues that the House and the Senate prescribe through rules.

Differences Between House and Senate Procedures

The legislature’s power over its internal rules is rooted in the Constitution, which provides that “each House may determine the Rules of its Proceedings.”¹ Although this clause generates little excitement among constitutional scholars, and even the Framers gave it scant attention, it grants the House and Senate considerable authority to flesh out the Constitution’s skeleton of a legislative process. The Constitution does not prescribe parliamentary procedures, create a committee system, or do any of the multitude of things necessary for Congress to function. Instead, each chamber has typically established these procedures and internal structures through unilateral resolutions – that is, resolutions passed by one chamber without the involvement of the other house or the president.²

Given the smaller size of the Senate, and the fact that the Senate is a continuing body as contrasted with the House, the Senate has less restrictive rules of procedure and tends to emphasize informal decorum in its proceedings. As a result, the rules adopted by the first Senate in 1789 have generally remained in force, with occasional alterations from time to time.

In the House of Representatives, on the other hand, procedural rules tend to be extensively detailed and modified with each new Congress. The House Committee on Rules publishes the *House Rules and Manual* during the first session of each Congress. This document contains each clause of the rules, a summary of recent changes in the House’s rules, annotated texts of the Constitution, excerpts from Thomas Jefferson’s *Manual of Parliamentary Practice*, and provisions of law that establish procedures for the House to act on congressional resolutions.

The Republicans' Contract with America

A majority party can easily throw a wrench into the internal democratic machinery of Congress by establishing procedures for the development and approval of legislation that deny the means for significant input by the minority party.

This was exactly what the Democrats did before they were ousted as the majority party in the House of Representatives in 1994. The House Rules Committee, which establishes the procedures for debate as well as alters language in bills that come out of legislative committees, was given a lopsided Democratic majority that far outweighed the partisan ratio in the chamber as a whole. This enabled Democrats to squelch debate on many important bills by attaching “restrictive rules” to legislation that limited or even prohibited floor amendments. The percentage of bills with restrictive rules of varying degrees attached by the Democratic House Rules Committees increased from 15 percent in the 95th Congress (1977-1978) to 76 percent in the 103rd Congress (1993-1994).³

Undemocratic procedures such as this became the subject of vitriolic attack by the Republican minority in the House, led by Rep. Newt Gingrich (R-Ga.). Gingrich oversaw the crafting of the “Contract with America,” a sweeping Republican platform that pledged everything from tax cuts to procedural reforms in Congress. In the contract, Republicans criticized Democratic rule and pledged to bring democracy back into the halls of Congress “to restore the trust between the people and their elected representatives.”⁴ The contract helped usher in Republican electoral success, giving Republicans control of the House since 1995.

“I AM the Federal Government!”

Republicans have not lived up to their promise of democratizing the House.

When Rep. Tom DeLay (R-Texas) was told by a security guard to extinguish his cigar inside a federal government building, DeLay revealed how he views himself by responding: “I AM the federal government!”⁵ With this attitude, DeLay, then the House Majority Whip, behind closed doors wrote radical and autocratic procedural rules in 2002 that continue to govern operations in the House of Representatives.

Some of the key mechanisms of DeLay’s concentration of power in the House include:

1. Drafting final legislation for a floor vote routinely is taken over by the House leadership.

In years past, legislation that finally got onto the floor for a final vote had usually worked its way through a series of committee hearings and negotiations. Today, however, the House Republican leadership of DeLay and House Speaker Dennis Hastert (R-Ill.) have drastically revised the text of bills coming out of other committees, often late in the evening and without peer review. Under House rules, at least 48 hours are supposed to lapse before final floor action on any bills that come out of committee, including those re-written by DeLay and Hastert. This time rule can be bypassed, however, if bills are declared “emergency” measures. In 2003, 57 percent of all bills were declared by the House Rules Committee as “emergency” measures, allowing them to be

considered with as little as 30 minutes prior notice.⁶ On many of these bills, most members of Congress had no idea what they were voting for or against.

On the Patients' Bill of Rights, for example, the Rules Committee made a one-word change in the middle of the night that drastically limited the liability of HMOs that deny coverage to their patients. The measure was hustled through a floor vote just hours later, with few lawmakers, and almost none of the public, aware of the change.⁷

2. Amendments are now all-but prohibited.

Just like when Republicans complained that their rights to debate amendments had been curtailed by the Democratic majority, today's Republican majority has made use of the same strategy – even more so. DeLay has made extensive use of the House Rules Committee to attach not just restrictive rules to bills, but even outright prohibitions against alternative bills and amendments by members of either party – Democrat or Republican. While 56 percent of all bills had a prohibition on amendments in the 104th Congress (1995-1996), the first two years of the new Republican majority, last year 76 percent of all bills banned such floor actions.⁸

The controversial Medicare prescription drug bill is a prime example of how banning amendments undermines democracy in Congress. A majority of House members were sympathetic to the argument that the bill should not prohibit the importation of less expensive drugs from Canada, and that Medicare should be allowed to use its market share to force prices down. But by prohibiting floor amendments to the bill, DeLay ensured that the House could only vote on the extreme version of the bill written by the House leadership.⁹

3. Votes are held open for long periods in order to twist arms.

According to House rules, floor votes should typically occur within 15 minutes after being called. The floor vote on the Medicare prescription drug bill put a spotlight on how often the time limit rule is ignored and the dire consequences of extending voting periods. The vote, which was held open for nearly three hours, doubling the previous record for an extended vote, concluded shortly before 6 a.m.

In the course of these three hours, allegations of attempted bribery and threats have emerged as well as complaints from C-SPAN that its news coverage was censored. American Enterprise Institute political scientist Norm Ornstein called this vote “the ugliest and most outrageous breach of standards in the modern history of the House.”¹⁰

4. Democrats are frequently locked out of conference committee decisions.

In addition to legislation being re-written by House Republican leaders, and amendments generally banned, Democrats are also frequently excluded from conference committee negotiations. When House and Senate versions of legislation have differences, they must be worked out in conference committee. The House and Senate leaders select “conferees” to do the negotiations, and even then, the conferees have to be “allowed into” the conference committee meetings.

Democratic House and Senate conferees are increasingly locked out of the meetings, unless they are known supporters of the House leadership's positions. On the Medicare bill, for instance, liberal Democratic Senate conferees Tom Daschle (D-S.D.) and Jay Rockefeller (D-W.V.) were excluded, while the more malleable Democrats, John Breaux (D-La.) and Max Baucus (D-Mont.), were allowed in. All four Democratic House conferees were excluded.¹¹ With this rigged representation, the acceptable conferees crafted a major proposal out of two different bills and sent it to each body for a final vote.

5. Conference committees write legislation non-germane to the original bills.

The official summary of House procedures describes how conference committees are supposed to work. "The House conferees are strictly limited in their consideration to matters in disagreement between the two Houses. Consequently, they may not strike out or amend any portion of the bill that was not amended by the other House. Furthermore, they may not insert new matter that is not germane to or that is beyond the scope of the differences between the two Houses."¹²

Under DeLay's leadership, these limitations on re-writing legislation in conference committee have been commonly ignored. For example, one conference bill produced a weakened standard for the concentration of media under a single owner, despite the fact that both bodies had explicitly voted down such a provision. Though both the House and the Senate voted to block a Bush Administration measure watering down over-time pay protections for workers, the same provision was tacked onto a bill in conference committee.¹³

A similar pattern of adding non-germane items in conference committee has plagued budget appropriations bills. Conference conferees added a record 3,407 "pork barrel" projects to appropriations bills in the 2003 federal budget – items that were never debated or voted on beforehand in the House or Senate.¹⁴ The sponsors of many of these pork barrel items remained undisclosed, since the legislation was drafted in secret.

6. The amount of time spent debating bills has fallen dramatically.

With legislation increasingly drafted in secret, lawmakers have decided to spend less and less time debating legislation. The amount of time allocated for open debate is a fraction of what it used to be. Simply put: there is very little to debate. The vast majority of bills are not subject to amendment, and the minority party generally is not permitted to introduce alternative legislation. Furthermore, lawmakers now operate under an abbreviated schedule. The House typically holds no votes until Tuesday evenings, and then adjourns for the week by Thursday afternoon. The Iraq war resolution was debated for just two days in 2002, as was this year's defense authorization bill.¹⁵

Clean Up the House

Two Democratic members of the House – House Democratic Leader Nancy Pelosi (D-Calif.) and Rep. Marty Meehan (D-Mass.) – have offered separate proposals for democratizing the House. Pelosi has proposed a two-page "Minority Bill of Rights" in the form of a pledge of principles that should guide the conduct of the House. The Minority Bill of Rights is designed to ensure meaningful participation by members of the minority party in the House of Representatives.

Essentially, Pelosi has called upon all members of the House to respect democratic rules of procedure. There should be regular consultations among the elected leaders of both parties to discuss scheduling, administration and operations of the House. The minority should control at least one-third of committee budgets and office space.

According to Pelosi, bills should generally come to the floor under a procedure that allows open, full, and fair debate consisting of a full amendment process that grants the minority the right to offer its alternatives, including a substitute. Legislation should be in print at least 24 hours prior to floor consideration. Floor votes should be completed within 15 minutes, with the customary 2-minute extension to accommodate Members' ability to get to the House Chamber to cast their vote. No vote should be held open in order to manipulate the outcome.

House-Senate conference committees should hold regular meetings (at least weekly) of all conference committee Members. All duly-appointed conferees shall be informed of the schedule of conference committee activities in a timely manner, and given ample opportunity for input and debate as decisions are made toward final bill language.¹⁶

Rep. Meehan has offered additional specifics for cleaning up congressional procedures in his "Democracy in Congress Act" (H.R. 5101). Briefly, the legislative proposal calls for the following changes in the operations of Congress:

- Guarantee the right to a full minority alternative and two minority amendments for each bill brought to the House floor.
- Ensure that final legislation negotiated between the House and the Senate is fully vented by requiring conference committees to hold regular formal meetings involving all conferees.
- Mandate that votes on bills are held during normal business hours instead of in the wee hours of the morning.
- Stop extending voting periods in order to twist arms for votes by imposing a maximum 30-minute period for final votes.
- Require the full text of each bill to be available to Congress and the public at least three days before a vote.

Besides improving Congress' procedural rules, Meehan's proposal also would amend the Lobbying Disclosure Act to promote much more transparency of the activities of lobbyists. Lobbyists serve as a shadow government in Washington, working behind the scenes with policy makers to craft legislation, draft amendments, build the lobbying and public relations campaigns to make things happen and raise the campaign cash that greases the legislative wheels.

Unfortunately, the lobbying disclosure system operated by the House is stuck in the dark ages – making it very difficult to closely monitor the influence peddling business. This disclosure system should operate much like those run by the Federal Election Commission that report on campaign finance contributions and expenditures by candidates.

Meehan's proposal takes a major step in that direction by:

- Requiring lobbyists to file electronic, quarterly financial reports into a searchable, sortable and publicly available Internet database, identifying the amount spent on lobbying which bills.
- Requiring all members of Congress and leading Executive Branch officials to publicly disclose their meetings with lobbyists and the legislation that was discussed in those meetings.

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Endnotes

¹ Art. I, §5, U.S. Constitution.

² Aaron-Andrew Bruh, "Using Statutes to Set Legislative Rules: Entrenchment, Separation of Powers and the Rules of Proceedings Clause," 19 JOURNAL OF LAW AND POLITICS 345 (Fall 2003).

³ Testimony of Rep. Stephen Horn (R-Cal.), U.S. House of Representatives, "The Need for Democracy in the House," *Congressional Record* (Feb. 2, 1994) at H186.

⁴ Republican Contract with America, available at: <http://www.house.gov/house/Contract/CONTRACT.html>

⁵ Lou Dubose and Jan Reid, "The Man with a Plan," *Texas Monthly* (August 2004).

⁶ Robert Kuttner, "America as a One-Party State," *American Prospect* (Feb. 1, 2004).

⁷ Susan Milligan, "Back-Room Dealing a Capitol Trend: GOP Flexing Its Majority Power," *Boston Globe* (Oct. 3, 2004).

⁸ Kuttner, op.cit.

⁹ Milligan, op.cit.

¹⁰ Rep. Martin Meehan, "Democracy in Congress Act," press release (undated).

¹¹ Kuttner, op.cit.

¹² House Rules Manual, §1088.

¹³ Kuttner, op.cit.

¹⁴ Milligan, op.cit.

¹⁵ Milligan, op.cit.

¹⁶ Rep. Nancy Pelosi, press release (June 24, 2004).