

**Repairing the “Broken Branch”:
Prospects for Reform in the 110th Congress**

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Public regard for Congress is once again falling to depths that are low even by historical standards. Public opinion polls reveal sinking approval ratings that are comparable to those of the mid-1970s and early 1990s, two other periods of widespread dissatisfaction with the legislative branch. Beyond the mass electorate, veteran Washington observers express dismay at the policy gridlock, partisan warfare, demise of regular order, and perceived abdication of institutional responsibilities on the Hill. If Congress is now a “broken branch,” as Thomas E. Mann and Norman J. Ornstein (2006) have recently argued, what are the prospects for meaningful reform that will remedy its failings?

At one level, the conditions appear ripe for major institutional reforms. Numerous critics have highlighted the problems plaguing today’s Congress: policy stalemate over major issues such as immigration and budgeting; declining influence with respect to the executive branch, particularly manifested in lax oversight; a weakened committee system that is failing to live up to its role of providing expert bill-drafting for the entire chamber; the utter disappearance of comity in a House of Representatives in which the majority aggressively restricts opportunities for the minority to influence outcomes and the minority fights back with a focus on scandal and corruption. While Democrats are most likely to recite this litany of charges, many of these problems have their roots in developments during the 1980s, when Democrats still enjoyed control of the House and Newt Gingrich and his GOP allies were the ones focusing on Congress’s institutional failings.

The incoming 110th Congress offers a window of opportunity to address some of these problems. Writing one week before the 2006 midterm election, it is expected that Democrats will take control of the House of Representatives and that Republicans’ Senate majority will be narrowed substantially and quite possibly eliminated. As such, in writing this essay, I will assume that Democrats narrowly take control of the House, but most of my argument concerning both the potential for reform and the likely obstacles to it would apply should Republicans retain a very slim majority.

I focus on the House rather than the Senate. Minority party senators continue to enjoy considerable prerogatives in the Senate – most importantly, the filibuster – which

creates a much different context for proposed reforms in the upper chamber. While the analysis of committee politics presented below applies at least in part to the Senate, an entirely distinct analysis of floor procedure (incorporating the role of holds, cloture etc) is necessary for the Senate.

An examination of congressional history suggests that a new majority party that has been out of power for a long period is particularly likely to engage in sweeping reforms. One reason is that the entrenched committee leaders who otherwise can be counted upon to oppose reforms that undercut existing power bases are less of a force. Thus, when House Republicans came into power for the first time in forty years in 1994, resistance to institutional change was relatively low and Speaker Newt Gingrich and his lieutenants were able to adopt a series of reforms, including several that empowered party leaders at the expense of committee and subcommittee leaders. Similarly, most congressional Democrats have entered the House during an era of GOP majorities, and therefore are less invested in existing ways of doing business. An important caveat is that several “Old Bulls” from the pre-1994 era have been holding on to their seats in the hope of eventually gaining (or regaining) committee leadership positions.

Earlier reform waves in Congress have also tended to follow periods of mass and elite dissatisfaction with congressional operations. In the late 1880s, the press was full of stories attacking the House for its inability to get anything done amid rampant minority obstruction. Speaker Thomas Reed (R-ME) and his Republican forces capitalized on this discontent in 1890, crushing minority obstruction in the House and firmly establishing majority rule in the chamber. Similarly, the revolt against Speaker Joe Cannon (R-IL) in 1910, which shifted power from the allegedly autocratic speakership to a more decentralized committee system, followed a concerted public relations campaign by Democrats and insurgent Republicans that made “Czar Cannon” a household name. The modernization of legislative organization undertaken in the mid-1940s and the landmark reforms of the 1970s also gathered strength from the widespread critiques of congressional operations that appeared in both the press and scholarly outlets. The possibility that at least a segment of the public will reward reform (or perhaps more to the point, punish the failure to reform) has repeatedly proven an important source of support for efforts to transform Congress.

Nonetheless, there are also good reasons to be skeptical that substantial institutional reforms will be forthcoming. First, Democrats have not made internal congressional reform a major campaign theme in the 2006 election. This means that party leaders will face little pressure to follow-through with a reform agenda once they take power. While the congressional page program, congressional ethics, and lobbying reform have been Democratic targets during the 2006 campaign, they have not emphasized internal congressional rules and procedures or committee organization. Indeed, while Democratic leaders experimented with making an issue of the GOP's procedural abuses in previous years – most notably when Nancy Pelosi framed a minority “bill of rights” in 2004 – they shifted away from this line of attack in 2006 as it became evident that attacking Republicans on other issues resonated more with voters.¹ The contrast with 1994 is noteworthy: Republican leaders came into power highlighting the promise to make fundamental changes in how Congress did its business. Several of these changes were included in the Contract with America. The pressure to follow through on these promises generated both opportunities and constraints for GOP leaders. Such pressure is likely to be less salient in the incoming Congress.²

A second obstacle to reform is that Democratic leaders appear to have a limited and relatively clear agenda for the next two years, and they may well view efforts to change the committee system or procedural rules as a distraction that will not help promote that agenda. The top priority is sure to be investigating the executive branch. Assuming they gain a majority in at least one chamber, Democrats will be well positioned to pursue an aggressive investigative strategy. As noted below, securing Congress's oversight role in the long-term may well require changes in rules and procedures; but in the short-term, Democrats will not need to change the rules of the game in order to challenge the White House. Furthermore, the prevalent atmosphere of

¹ See Charles Babington, “Pelosi Seeks House Minority ‘Bill of Rights,’” *Washington Post*, June 24, 2004, p. A23.

² While Pelosi and other Democrats have continued to mention specific “fair play” reforms for the minority, they did not emphasize the issue in the run-up to the 2006 election. An encouraging sign is that Pelosi has supported a drive by a so-called “Gang of Four” – Democrats David Price of North Carolina, Tom Allen of Maine, Barney Frank of Massachusetts, and David Obey of Michigan – for a 20-point reform plan that includes more open debate, lobbying reforms, and limits on earmarks (Jackie Calmes and Greg Hitt, “Can the Class of 2006 Save the Democrats?” *Wall Street Journal*, November 4-5, 2006, p. A8). As argued below, involving some Republicans in the planning will be necessary for such reforms to have staying power.

partisan warfare is unlikely to lead Democrats to embrace rules of fair play and “regular order” in the legislative process. Given the daunting challenge of managing a tenuous majority and confronting an opposition party president, Speaker Nancy Pelosi will surely be reluctant to sacrifice any of the leadership tools used by Dennis Hastert and the Republicans.

Still, a large Democratic freshmen class comprised of many members narrowly elected to districts that lean Republican may be particularly motivated to support—and even promote—institutional changes. Since several of these members are likely to credit scandals for their victories, the motivation to run on a platform of reform in 2008 will be quite strong. The challenge for would-be reformers will be to find ways to harness the dissatisfaction with congressional institutions in ways that do not run afoul of the immediate interests of the Democratic majority. A close examination of the historical development of congressional institutions suggests some possible approaches to this task.

MULTIPLE INTERESTS, COMMON CARRIERS, AND LEGISLATIVE INSTITUTIONS

An examination of past efforts to change congressional institutions reveals several patterns that help to illuminate the prospects for reform in the coming years. At a most basic level, congressional institutions can serve a range of member collective interests. One can design a legislature that is tailored to maximizing the *reelection* chances of each individual incumbent, through such devices as extensive personal office staffs, plentiful platforms for posturing to constituents, and numerous individual credit-claiming opportunities (see Mayhew 1974). But the value of reelection is undermined if Congress itself ceases to be a powerful legislative body. Thus, members may also share a collective interest in bolstering the *capacity, power, and prestige* of their chamber or of Congress as a whole. By contrast, other potential collective interests are likely to divide members into competing groups. Most prominently in recent years, members’ *party-based interests* pit majority party members against members of the minority. Majority party members have an incentive to shape congressional institutions in ways that satisfy their shared interest in enacting their party’s program and defending their common brand name (Cox and McCubbins 1993, 2005). *Policy-based interests* can also motivate institutional design. Institutions may favor certain policies at the expense of others; as a

result, ideological, sectional, and sectoral divisions over policy may spill over into conflicts about institutional design. Finally, members' interest in access to *institutional power bases* can generate conflict between those who currently have disproportionate access and those who lack access. For example, junior members may have an interest in adopting institutional changes that spread influential positions to more members.

A striking feature of congressional development is that multiple collective interests typically shape each important change in congressional institutions. One way in which this occurs is for a single institutional change to serve as a "common carrier" for multiple, distinct member interests (Schickler 2001). For example, the subcommittee bill of rights adopted by Democrats in 1973 derived support from ambitious junior members seeking opportunities to exercise influence and from liberals with the policy goal of undermining conservative, southern committee chairmen. A proposed institutional change will more likely be adopted if it taps into multiple bases of support.

Such common carrier changes do not simply occur spontaneously. Instead, entrepreneurial members build support for reform by framing proposals that appeal to groups motivated by different interests. One of the crucial roles played by entrepreneurs is to find ways to align distinct member interests on behalf of reform. A classic example is the drive to adopt the Legislative Reorganization Act of 1946. The Act was primarily a response to the widespread belief that Congress needed to modernize its committee system in order to regain its coequal role given the massive expansion of presidential power during the Depression and World War II years. Reform advocates Robert La Follette Jr. (Indep.-WI) and Mike Monroney (D-OK) included a pay raise and pension system in the Act to build support for a reorganization plan that primarily served broad institutional interests. Monroney liked to point out that the 1946 Act had been approved partly because of its "ice cream" provisions, which made its "spinach" more palatable (*Congressional Record*, July 25, 1946, p. 10045; see also Bibby and Davidson 1972: 253).

Indeed, entrepreneurs have played a particularly important role historically in facilitating the passage of reforms that are intended to promote congressional capacity and power (see Schickler 2001: 251). This makes sense: most members can perceive the immediate benefits of changes that promote policy, personal power, or partisan goals. But the benefits of Congress-centered changes are typically more distant. Entrepreneurs can

help craft reforms that will also appeal to other, more tangible member interests. Past experience suggests that Congress-centered interests have been more salient in the wake of major wars and crises that empower the President (Schickler 2001: 257; Schwartz 2006; Sundquist 1981). Given the widespread perception that Congress has lost power in recent years, a key question will be whether entrepreneurs can devise reforms that promise both to restore the institution's standing and to promote more immediate member goals.

With a Republican majority in Congress and a GOP president, entrepreneurs in Congress have not done much to respond to enhanced presidential power. Interestingly, unified party control has not always meant limited oversight. For example, the Democratic Congresses during World War II launched dozens of investigations of the executive branch, including damaging probes of the Roosevelt administration's price control and labor policies (see discussion below). But the combination of unified party control, strong party government, and war has meant a striking tendency for Congress to defer to the White House in recent years.

Parties in today's Congress are as strong as they have been in nearly a century. Majority party power is evident at each stage of the legislative process, particularly in the House. Committee leaders largely regard themselves as agents of their caucus, and often exclude the minority from meaningful deliberations. Majority party leaders use the Rules Committee aggressively to facilitate passage of the party's program and to create obstacles for minority-party favored alternatives. Even when one chamber passes legislation that is out of step with the majority party's priorities, the leadership has repeatedly used the conference committee stage to move policy back in the party's direction. These developments are rooted in long-term changes in the social bases of the parties: when the Democratic majority included both conservative southerners and liberal northerners, vigorous party government was simply not an option (Polsby 2003; Rohde 1991). As the realignment of the South made both parties more internally homogeneous in the 1970s-80s, Democrats began to centralize power and to shut the GOP minority off from influence. Jim Wright's (D-TX) brief but tempestuous tenure as Speaker from 1987-1989 represents the peak years for Democratic party government in the House. Since taking over the majority, the Republicans have pushed Wright's innovations even further.

The result has been perhaps the longest sustained period of strong party government in congressional history – the closest parallel being the period from 1895-1909, when Republican Speakers Thomas Reed (R-ME), David Henderson (R-IA), and Joseph Cannon (R-IL) led a relatively unified and strong majority in the House.³ The risks of such vigorous party government are evident in the revolt against Cannon in 1909-10: having been shut out of the process for so long, Democrats launched a massive public relations campaign that succeeded in turning Cannon into a symbol of tyranny and reaction. Cannon’s unpopularity fueled the bipartisan insurgency that culminated in taking the Speaker off of the Rules Committee and eliminating his control of committee assignments. The parallels to the downfall of Jim Wright in 1989 and to Republicans’ troubles today are striking. When the minority is shut out of influence within Congress, its members and leaders have a strong incentive to turn on the institution itself, highlighting scandals and avoiding any share of blame for the problems at hand.⁴ Nancy Pelosi’s calls to “drain the swamp” in Washington echo Newt Gingrich’s (R-GA) rhetoric from the early 1990s – and are only credible to the extent that the minority is able to use its lack of influence to argue that it is not part of the muck. Thus, while centralized party government offers the majority short-term advantages in enacting its programs, the long-term risks to the party’s reputation and that of the Congress as a whole are substantial. Still, it is not clear whether a new Democratic majority will take this lesson from the GOP’s downfall—after all, Republicans did not take that lesson from Democrats’ demise in 1994—or instead whether the upshot of the 2006 elections will be “pay back” and continued reinforcement of the partisan warfare in evidence since the late 1980s.

A POSSIBLE STRATEGY FOR REFORM

A drive to reform Congress could, in principle, encompass an array of objectives, including ethics and lobbying reforms designed to bolster Congress’s image in the wake of scandals, measures to improve institutional competence (e.g. strengthening committees as expert policy-framing bodies; budget process reforms), initiatives to restore Congress’s co-

³ While Henderson was considered to be a weaker Speaker than Reed and Cannon, the GOP continued to shut out the minority party for the most part during the Henderson years (1899-1903).

⁴ A poignant example of this may well be the Mark Foley scandal: had the full page board, instead of simply the Republican leader, been informed of Foley’s indiscretions, it would have been much more difficult for Democratic leaders to pin responsibility on the GOP leadership.

equal role with respect to the executive branch, and “fair play” rules to counter the drive-to-the-wall partisanship in evidence since the Wright years. Democrats have strongly protested Republicans’ weak attempts at lobbying reform and ethics changes, so it is reasonable to expect that they will adopt changes in those areas early in the 110th Congress.⁵ Failing to do so would likely be a source of public embarrassment for the party. Furthermore, such new rules would not directly affect the balance of power within the Congress itself and thus would present few short-term costs for the new majority.

The prospects for reforms intended to improve congressional performance in other areas are less promising. A new Democratic majority will provide increased oversight – at least so long as there is a Republican in the White House – but durable change to improve congressional capacity and power requires finding ways to align broad institutional interests with members’ narrower partisan or personal power motivations.

One possible strategy for reform would be to create a special reorganization committee, modeled along the lines of the Joint Committee on the Organization of Congress from the mid-1940s and its successor committee in the mid-1960s. These two committees included equal numbers of members from both parties and produced the Legislative Reorganization Acts of 1946 and 1970. The inclusion of equal numbers of Democrats and Republicans signaled that proposed changes would not be designed to favor one party at the expense of the other. One might argue that it is difficult to envision any changes that both parties would find in their interest given the current context of “tribal warfare” on the Hill (cf. Mann and Ornstein 2006). But it may be possible to leverage the uncertainty created by the current era of toss-up politics in which both parties can plausibly expect to control the White House and Congress after the 2008 elections. The absence of a permanent majority party in either chamber or in presidential elections means that both parties could plausibly benefit from changes that strengthen Congress’s long-term legislative and oversight capacity. While Republicans may find aggressive congressional oversight of the White House threatening in 2007, they may have a different perspective following the 2008 elections. The same uncertainty applies to the Democrats, transforming the current zero-sum dynamic into a potential positive-sum situation.

⁵ Pelosi has promised to change the rules regarding lobbying on the first day of the new Congress (David Espo, “Pelosi Says She Would Drain GOP ‘Swamp,’” *Associated Press*, October 6, 2006).

How could one structure such a committee to maximize the chances of a productive outcome? Earlier reform episodes suggest that relatively junior members who are looking for a chance to make a name for themselves are likely to be willing to invest the time and resources necessary to put together appealing reform proposals. The opportunity costs of such entrepreneurship are lower if one is not already a powerful committee chair. The potential payoff in terms of making a name for oneself are far greater for talented junior members who do not already have a valuable committee power base. New members from marginal seats where reform was actually a campaign issue may be particularly motivated. At the same time, it is important to include several more senior, “institution-minded” members—such as David Price (D-NC), Howard Berman (D-CA), Tom Allen (D-ME), Tom Davis (R-VA) and Mike Castle (R-DE)—who bring greater experience to the table. By designating co-chairs from each party, an ambitious member in each party will gain a personal stake in shepherding the process forward. Each party may fear that a single defector would allow the other party to write its own plan. This could be avoided by requiring a majority of *each* party’s contingent to approve any proposed changes before they are forwarded to the floor. The goal would be to create a context in which entrepreneurial members have the opportunity to devise proposals that serve broad institutional interests, while simultaneously offering potential personal power or other benefits to ambitious individual members and avoiding the imposition of clear-cut costs on either party.

One can envision several objections to this model for reform. First, why would the new Democratic majority have any interest in a reform process that involves a serious role for Republicans? This is where the uncertainty concerning future majority control comes into play. Any reforms unilaterally implemented by Democrats on taking over the House in January 2007 would be extremely vulnerable to being overturned by a new GOP majority in the future. By contrast, reforms adopted through a bipartisan process *might* have more sticking power (see below). Furthermore, if the reform process gives even a small number of ambitious minority Republicans the sense that they have a stake in the institution, it could benefit Democrats in somewhat limiting the reach of GOP attacks.⁶

⁶ In the 1940s-70s, ranking Republicans on standing committees tended to have good working relationships with the Democratic chairmen. Some of this was made possible by the shared center-right leanings of the

Another, related objection is that such a reform process would constitute a distraction for Democratic leaders eager to pursue more immediate goals. This would be the case if the leaders themselves were serving in key roles on the committee. But if the leadership allows loyal but ambitious junior and institution-minded members to take the lead on the committee, the distraction would likely be minimal, at least while the committee is developing its proposals.

A third objection is that such reform efforts are doomed to failure because inevitably they devolve into turf battles over committee jurisdiction. This was the outcome in 1973-74, when the Bolling Select Committee was charged with coming up with a plan to realign jurisdictions. The resulting plan included numerous changes that ran up against the power interests of entrenched chairmen and the policy goals of several Democratic-allied interest groups. These Democrats succeeded in greatly watering down the reforms on the House floor, so that the net impact was minimal. The Bolling Committee experience suggests that would-be reformers probably should steer clear of attempting to realign committee jurisdictions. While the current alignment is certainly full of overlap, fragmentation, and other flaws, these problems are not the main source of the decline in the committee system's operations. After all, committee jurisdictions have been messy throughout American history. Rather than focusing on the inevitably zero-sum dynamics of committee realignment, reformers are more likely to succeed if they focus on improving the operations of the existing committees.

Still another objection is that members of such a special committee might not want to invest their time in devising bipartisan reforms if they expect them to be taken apart on the floor or perhaps even shelved by party leaders prior to a floor vote. One possible solution would be to have the resolution creating the committee guarantee an up-or-down vote on any package of proposals that it devises so long as the package has the support of a majority of each party's contingent on the committee. A target date of January 2008 might also be set for the committee's report, with a guarantee of floor action a few weeks later. This sort of commitment from majority party leaders might not be irrational from the

chairmen and ranking members, but it was also fostered by the belief that the committee as a whole would be more influential if the two party's leaders could work together. While this frustrated some members of both parties, it suggests that offering some opportunities for minority influence can, under certain circumstances, offer long-term benefits to the majority (see Fenno 1966 and 1973 for examples).

leadership's perspective: while it would eliminate the chance of using the reforms to further stack the procedural deck in the party's favor, it would induce members of both parties on the committee to take the process seriously. Furthermore, the requirement that a majority of each party's contingent approve any proposed changes greatly reduces the chance that the committee would devise proposals that are contrary to Democrats' immediate interests.

A final important objection is that any reorganization plan adopted by Congress would have no staying power. For example, if the reform package included some fair play procedures protecting the House minority – which arguably would be in both party's interests when control after 2008 remains uncertain – what would stop the new majority elected in 2008 from repealing the fair play protections? The potential for reneging can completely undermine the logic of reforms rooted in uncertainty over future control. Thus, it is imperative to find ways to make it costly for a new majority to unilaterally repeal any reforms that resulted from this process.

Unfortunately, the option of putting the reforms into legislative form is not much of a solution. Since the Constitution grants each chamber the right to make its own rules, legislation does not trump the ability of a floor majority to determine how each chamber will be organized.⁷ In the 1940s-50s, when Democratic Speaker Sam Rayburn and GOP leader Joe Martin were close personal friends who played poker together regularly – and strong social networks linked together nearly all of the key GOP and Democratic leaders – one could count on some degree of normative constraint to limit the possibility of one party reneging on a deal.⁸ But in today's context of no-holds-barred partisan warfare, such mutual restraint certainly cannot be assumed. In the private sector, external enforcement is often resorted to when commitment problems otherwise block the possibility of mutually beneficial agreements being reached. But the Constitution and members' own strong interest in maintaining their autonomy make binding external enforcement impossible. However, there may be mechanisms that could be designed to make it more politically

⁷ Given that legislation is unlikely to help, it may make sense for each chamber to have its own special committee rather than having a single joint committee. Otherwise, there will be the added risk that disagreements between the chambers will bog down potential reforms.

⁸ One example of how far we have come is that when Rayburn was asked by Massachusetts Democrats to visit the state to campaign for Martin's opponent in his district, Rayburn not only refused but responded that if he lived in Martin's district, he would likely vote for the Republican as well. Such an exchange is beyond the powers of imagination in today's Congress.

costly for a future majority to renege on a package of reforms adopted through the proposed bipartisan process. For example, it might be possible to create a permanent, bipartisan body of former members of Congress and Washington observers who would be charged with “keeping score” – that is, grading the extent to which the current majority abides by the principles and practices adopted in the reform package. The two key requirements would be that the external body would need to be credible both to the public and to the membership, and it would need to have the ability to gain attention from the press. These are difficult hurdles, but perhaps not insurmountable.

Thus far, I have focused on how a successful reform process might be organized. The key design feature is to give members of both parties an incentive to devise proposals that are in the long-term interests of Congress as a whole, regardless of which party happens to have a momentary majority. But this of course begs the question of what specific reforms might fit this bill. I briefly consider potential reforms in the oversight process, committee system, and floor procedures below. Still, I do not claim any special expertise into how any of these features ought to be designed; instead, the key claims are that today’s Congress is performing poorly and that the most promising avenue to fixing it is to give entrepreneurial members of both parties the opportunity and the incentive to devise specific reforms that align broad institutional interests with narrower member goals.

Executive Oversight

When Republicans took over Congress in 1947, after sixteen years in the minority, incoming Speaker Joseph Martin (R-MA) quipped that he would “start each day with a prayer and end it with an investigation” (as quoted in Goodwin 1970: 15). With Democrat Harry Truman in the White House, it should be little surprise that Republicans were eager to play the role of watchdog. Along the same lines, there is little doubt that Democrats will be eager to investigate the Bush White House over the next two years. Yet it is worth recalling that Martin’s 1947 promise did not reflect much of a departure from recent practice. The Democratic Congresses from 1939-46 also conducted a series of high-profile investigations of the executive branch. The most famous was Senator Truman’s own investigation of the defense program, which was widely praised for uncovering poor contracting practices and inefficiencies in the mobilization program. But Truman was far

from alone. The House voted to authorize 73 investigations from 1941-46, while the Senate authorized an additional 54 inquiries (see Schickler 2006). The investigative boom was driven by several member interests: individual entrepreneurs gained power and attention by spearheading investigations that gained favorable press coverage; the extensive oversight safeguarded congressional power in the face of its most severe challenge to date; and, at times, conservative Democrats policy goals and Republicans' policy and partisan goals were served by challenging the Roosevelt administration's programs. Several investigations – such as the Truman Committee and the House Military and Naval Affairs Committees' investigations of the war effort – focused on improving program implementation while downplaying partisan and ideological considerations. Others, such as Howard Smith's (D-VA) Committee to Investigate Acts of Executive Agencies Beyond the Scope of their Authority, also sought to undermine New Deal Democrats by targeting price controls and labor unions.

While there is little doubt that Democrats will be eager to conduct liberal equivalents of Smith's investigation in 2007-08, the challenge is to find ways to institutionalize serious oversight along the lines of the Truman Committee and House Military Affairs investigation during World War II. In today's era of the "permanent campaign," this does not mean avoiding politically charged investigations along the lines of the Smith model – such a goal would be entirely unrealistic and likely counterproductive. Instead, it means considering ways to ensure that presidential critics in Congress will have some resources to scrutinize executive branch actions, even if those critics are in the partisan minority. For example, Democrats on the House Education and Workforce Committee in the House proposed in 2005 that the committee minority be empowered to force oversight hearings concerning alleged ethics or legal violations by senior agency workers in their jurisdiction (Klein 2005). As one might expect, then-Committee Chair John Boehner rejected the effort. But in a context of uncertainty about which party will be in the majority after 2008, it may be possible to build coalitions on behalf of creating new oversight rules and procedures that give tools to the committee minority to force such hearings.⁹ In doing so, the focus should not simply be on ethical

⁹ An example of a decision-making body granting a minority a share of agenda power is the Supreme Court's requirement of four votes for certiorari.

and legal violations, but also on policy administration. In the 1940s, there were a sufficient number of conservative southern Democrats – and institution-minded northern liberal Democrats – to allow bipartisan oversight initiatives to thrive in spite of unified party government.¹⁰ The much sharper party lines today, however, likely require putting rules into place that give the minority some tools for forcing genuine oversight on an otherwise reluctant majority. The key, again, would be to find ways to make such rules stick.¹¹

Strengthening Committees

There is little question that standing committees have become less central to the policy-making process over the past three decades. Since committees are the main source of congressional expertise, finding ways to revive the committee process is critical for the long-term institutional standing of the legislative branch.

One irony in recent years is that complex special rules, which had formerly been a device to strengthen standing committees, are now often used by party leaders to bypass the committee process. In the past, the promise of a restrictive amendment rule could induce committees to specialize because they knew their product would be at least partly protected on the floor (see Krehbiel 1991). In today's Congress, however, self-executing rules are often used to allow adoption of a substitute for a committee proposal without a direct vote on the initial committee product.¹² The substitute is often negotiated by the majority party leadership, along with perhaps the relevant committee chairman and White House. There is little incentive for committees as a whole or committee members in particular to invest time in carefully devising legislation if there is a high likelihood that the ultimate product will be written outside the committee process. While banning self-executing rules may not be realistic (or perhaps even desirable), finding ways to strengthen

¹⁰ With the House Rules Committee largely controlled by conservative Democrats and Republicans, proposed investigations were almost routinely forwarded to the floor (see Schickler and Pearson 2005).

¹¹ One potential motivation for majority Democrats to seek ways to develop some cross-partisan cooperation in the oversight process is that the resulting findings will have much greater public credibility than would be the case if Republicans were entirely shut out of the process. One promising sign is Henry Waxman's (D-CA) claim that he will seek a strong relationship with Tom Davis (R-VA), should he become chair of the Government Reform Committee ("Waxman Says He Would Lead Panel In Bipartisan Manner, *CongressDaily*, June 14, 2006).

¹² I thank Rob Van Houweling for noting this irony.

committees as corporate bodies that actually shape legislation should be a top priority. A lesson of the 1946 and 1970 reform efforts is that the “carrot” of improved staffing resources – if fairly distributed to both parties – can be used to build support for committee reforms that impose costs on some existing actors. Changes in scheduling practices might also be devised that increase participation at hearings and in the committee process more generally (see Mann and Ornstein 2006).

In the committee government era of the 1940s-60s, committee chairs enjoyed considerable leeway due to the strength of the seniority system and weakness of the majority Democratic Caucus. This leeway undergirded the close working relationships between many Democratic chairs and Republican ranking members. Starting in the 1970s, periodic seniority violations forced chairmen to be more responsive to the party caucus and undermined the incentives to work with ranking minority members. The question is whether the balance between committee chairs’ dual responsibilities of effective internal committee leadership and responsiveness to the party leadership has shifted too far toward the latter. In particular, if chairs are now selected as much based on their fundraising for the party and voting record as for their effectiveness as committee leaders, the committee system’s vitality is threatened, and along with it, the institutional standing of Congress suffers. Mann and Ornstein’s proposed ban on leadership PACs might be viewed as a way to direct committee leaders’ attention more toward their internal responsibilities. It may also be in the majority caucus’s own long-term interests to induce chairmen to attend more to legislative work: to the extent that the party’s reputation depends on effective legislating and oversight, a cadre of expert, effective committee leaders could yield important payoffs to the majority.¹³

Along similar lines, Mayhew (2006) proposes that scholars and journalists need to spend more time developing ratings that evaluate the quality of the work done by members and committees, and less time devising roll call voting scores. Washington observers generally have a good sense for which members are effective legislators, yet this information is not systematized and presented to the public. Such attention to

¹³ Thus, Democrats in the 1950s-60s likely benefited from having Wilbur Mills (D-AR) and Clarence Cannon (D-MO) running effective shops at Ways and Means and Appropriations, even as both Mills and Cannon on occasion resisted party leaders’ specific agenda items.

effectiveness – if made salient by the press and potential election opponents – might help induce greater attention to committee work.

Regular Order and Floor Procedure

House Democrats have made much of the lack of fair procedures and “regular order” in the House under Dennis Hastert, much as Republicans did so in the late 1980s and early 1990s. One might argue that these attacks will force Nancy Pelosi to be at least somewhat restrained in her use of hardball procedural tactics in 2007. In addition, the lack of agreement within the Democratic Caucus on a bold policy agenda – combined with the low probability of success for major liberal initiatives in the face of threatened presidential vetoes – mean that there may be less incentive for Pelosi to resort to such tactics extensively. In other words, attempting to build coalitions only from the “left-out,” and then attempting to use strict restrictive rules, party pressure, and long vote counts to force the resulting legislation through on the floor, is likely a recipe for election of a GOP majority in 2008. Still, it is worth noting that there is a difference between short-term calculations leading to a degree of restraint, and (re-)institutionalizing a sense of regular order and fair procedures. After all, the new Republican majority in 1995-96 actually adopted a fairer approach along several dimensions than had Democrats (e.g., the use of restrictive rules declined initially), but these improvements were reversed as leadership personnel and short-term political calculations changed. So the challenge for reformers is to find ways to protect the majority’s agenda-setting role while institutionalizing procedural legitimacy and fairness.

Potential rules changes to promote deliberation and restore regular order have been proposed by a group of House Democrats while in the minority and by Mann and Ornstein in their recent book. Proposals include requiring at least 72 hours between a committee reporting a bill and floor debate; requiring that no vote last more than 20 or 30 minutes unless both party leaders or floor managers consent; using “actual time” to determine how soon a rule can be brought to the floor; and barring conference committees from including provisions not considered in either chamber or from eliminating provisions that are put in identically by both chambers. Such requirements should only be waived when two-thirds of the membership agrees.

Numerous additional reforms could also be listed – ranging from changing when the House is in session to budget reforms restricting earmarks and policy riders – but the bigger question is how to ensure that such a set of procedural reforms will “stick” when they come into conflict with the short-term interests of a future House majority.¹⁴ As a result, the goal should be to create a set of institutions and procedures that make it costly for a future majority to renege. It is therefore key to involve both parties in shaping the initial fair-play reforms, as this will give them greater public legitimacy. The clearer the public commitment by the leaders of both parties to abide by a specific set of clear procedural requirements, the greater the potential political costs of reneging later. As noted above, a second step would be to create some sort of “score-keeping” body that is charged with keeping track of how well the majority is abiding by the practices adopted in the reform package. Figuring out ways to ensure that such a body would be credible and would be capable of gaining public attention should be a top priority.

CONCLUSION

The goal of this paper has been to suggest possible avenues that might lead to genuine reforms that improve the congressional committee system and help restore congressional capacity and power. One might object that committee decline and partisan warfare on the Hill stem from deep structural forces that are impossible to fix through internal reforms. There is a good deal of merit to this view. In particular, as the two parties have become more internally homogeneous and polarized from one another, the potential for strong majority party leadership increased. Perhaps more importantly, an era of narrow majorities and 24-hour news cycles heightens the incentive to focus on short-term political gains at the expense of longer-term institutional calculations. The potential gains to an incoming Democratic majority from procedural and committee reforms that foster a degree of comity and effective legislating may well pale in comparison to the drive to win each vote by whatever means necessary. The incentive to renege from “fair play” commitments is reinforced by doubts that a future GOP majority would behave any differently.

¹⁴ Budget process reforms should also be a priority, but require a more detailed treatment than I am qualified to provide.

Still, a majority party in the House may well benefit from time horizons that reach two years as opposed to 24 hours. That is, creating a set of institutions that maximize the chances for short-term gain – as Joe Cannon did in the early 1900s, Jim Wright attempted in the late 1980s, and the GOP leadership has sought to do over the past several years – poses important risks to the majority’s “brand name” (cf. Cox and McCubbins 1993). It gives the minority the incentives and the opportunity to turn the Congress into a salient public enemy, and to identify vulnerable majority party incumbents with that enemy. The 2006 midterm campaigns highlight this dynamic.

Greater attention to defending congressional capacity and power may even be in the majority party’s enlightened electoral interest under conditions of unified party government. The Truman Committee and Military Affairs Committee investigations of the mobilization and war effort in the early 1940s improved the quality of executive implementation, which in turn may have helped Democrats at the polls. More energetic congressional oversight of Iraq policy might have had a similar impact, leaving the GOP less vulnerable to Democratic attacks on the issue in the 2006 elections. In any case, Democratic leaders realized in the early 1940s that their party’s interests do not necessarily coincide with those of the Roosevelt administration.¹⁵ Even with parties more internally cohesive today, a lesson of the 2006 elections may well be that a congressional majority that embraces a president of its own party too tightly puts its members at considerable risk. While a president can hope that history will judge his policies a success, a congressional majority party cannot afford to wait quite that long, and thus may need to maintain its independence of the White House in order to survive.

¹⁵ In the late 1930s, there were similar concerns that congressional leaders had abdicated to the White House. Indeed, just as the Bush administration played a key role in selection of Bill Frist as majority leader, Roosevelt was credited with Alben Barkley’s selection as Senate majority leader (Barkley defeated Mississippi’s Pat Harrison by one vote, following FDR’s “Dear Alben” letter, which was taken as an endorsement of Barkley.) Just as Hastert has stated that his role is to pass the president’s program, Barkley and even Sam Rayburn expressed the view that they were, in part, presidential agents. But both were also mindful of the need to maintain Congress’s independence. In Barkley’s case, he was widely viewed as a weak leader until 1944, when he resigned in protest following FDR’s veto of a tax bill. Barkley argued that the veto was a direct affront to his leadership. After his colleagues unanimously voted to reelect Barkley, Senator Elbert Thomas (D-OK) claimed that ever since Barkley’s election by a one-vote margin in 1937, the impression had been that Barkley “spoke to us for the President. Now that he has been unanimously elected, he speaks for us to the President” (as quoted in Drury 1963).

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