



Influence of Procedure on Legislation in the House of Representatives

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Introduction

The object of this paper is to define the role that procedure has played in the legislative output of the United States House of Representatives. The approach is that of historical observation with particular attention to the development of those factors which can be isolated as procedure. The period under consideration stretches from the birth of colonial America to the first part of the twentieth century. Since this period, procedure in the House has changed little.

In order to organize the topic so that significance can be rationally attributed to this area of legislative history, only three of the most important factors will be discussed. They are the committee system, the rules committee, and the Speaker of the House of Representatives. Historically, these seem to incorporate most aspects of procedure and its determination, while establishing a meaningful relation of legislation to procedure. The two main sources of the paper are the historical development of these elements of procedure and their present relationship. Involved with this will be a discussion of the authority inherent in these elements of procedure and of how they literally and practically influence the type and content of legislation drawn by the House. Concerning the historical development of the topic, especially in respect to the formative years of the legislative machinery, a helpful amplification is an examination of the initial influence of the English House of Commons on the young House of Representatives. This influence is valid for both structure and procedure. It is also clear

that the influence of procedure on the legislative output of the House of Representatives, in comparison to speeches, lobbyists, politics, and the history of the United States, takes on a previously unrealized importance under the revealing light of a comprehensive evaluation of the record. Since the problems discussed in this paper have been either overlooked or avoided in major studies of House of Representatives, misconceptions in this area are common.

The Speaker

A strong case can be built for the historical derivation of the position of Speaker of the House of Representatives from that of Prime Minister in Commons. For this reason, a short review of the latter office is useful. The first Speaker in Commons was Thomas de Hungerford (1377). The role of the officeholder became more clearly defined by 1378 under the next Speaker, Peter de la Mare. He was the mouthpiece of Commons in all communications with the King. His duties included; composing all speeches to the King, framing all petitions and memorials to the throne and putting such questions to vote as suited his purpose. In doing this, he framed questions more according to his interpretation of the trend of argument and debate than the original language of the considered proposition. It was also his duty to declare the substance of a bill to the House. The Speaker was much more an instrument of the King than Commons. For example, the Tudors controlled the House of Commons partly by nominating the Speaker before Commons convened. It seems ironic that Commons gave the Speaker the title "Defender of the Liberties of the House" in consideration of his true relationship to Commons and the King. As a result of the Revolution of 1689, the Speaker of the House was finally recognized as free from all external influence. The English Speaker in Commons is important to a study of the American Speakership because it is from that model of the 16th and 17th centuries that ours is derived.

Upon receipt of an order from the Crown, Commons chose a Speaker; then the Speaker-elect submitted himself to the House of Lords

for approval by the Crown. It can be inferred that the Speakers did not have firm ties with political parties because several Speakers remained in office after their party was out of power. Indeed their position still depended upon the patronage of the King. By the latter part of the 17th century the Speaker became more important politically. He began to assume the duties which led to the new title of Prime Minister. In just proportion, his tenure in office became dependent upon his representation of the majority in Commons. A Prime Minister came to be head of his party.

A similar pattern to that noted in the preceding paragraph was followed in the colonial legislatures. The Governor, considered a direct representative of the King, told the colonies when to choose Speakers for their assemblies. After this was done, the Speaker-elect presented himself to the Governor to request approval of his election. It is important to emphasize that the King's representative had veto power over the choice of Speaker. The Speaker of these colonial legislatures did not have any particular political functions. His parliamentary duties were only of a secondary nature. He was to "control debate, preserve order, and enforce rules."¹ He was a sort of liaison between the people, their representatives, and the government of the King. The center of government remained with the Crown. In many of the colonial legislatures, committees were nominated by the Speaker (subject to the approval of the House.) As parties began to develop, the Speaker assumed the role of party head. Contrary to English tradition, the Speaker did not lose power upon assuming his role as a privileged member of the House. He voted on all questions, put motions from the chair, and served on committees.

Many of these precedures were followed by the first House of Representatives of the United States in 1789. There were, however, a few fundamental differences. According to the Federal Constitution, the House of Representatives picks its own Speaker. The approval by another arm of government was eliminated. As stated by Judge Story:

"The free election by the Representatives secure a more independent and unlimited choice on the part of the house, according to the merits of the individual, and their own sense of duty. It avoids those inconsistencies and collisions which might arise from the interposition of a negative in times of high party excitement. It extinguishes a constant source of jealousy and heart burning; and a disposition on one side to exert an undue influence, and on the other, to assume a hostile opposition. It relieves the executive department of all the embarrassments of opposing the popular will; and the House from all the irritation of not consulting the Cabinets wishes."²

Simply stated, it is another application of the principle of separation maintained throughout the constitution. The first Speakers acted like English Prime Ministers, for upon the loss of a majority they resigned. In an independent United States the Speaker naturally gained new power as governmental authority was transferred from the King to the people. The Speaker was the highest functionary of the new, independent Provincial Congress. In him, during the Continental Congress, were embodied the roles of Secretary of State and Secretary of War. He was at once a moderator and political leader. His administrative function was still the dominating factor. He was "the first to insure unhampered debate and freest expression of legislative desire."³ By January 1790, the Speaker chose committees. The committees were still unimportant, so this function was more administrative than political. The Speaker of this new House of Representatives was not the executive head of the nation, as in

the Continental Congress, for the President now assumed this role. He was not as much a moderator as in the English system, although he was not yet a powerful political entity. For example, Frederick A. Muhlenberg, the first Speaker was chosen primarily because he was from the large state of Pennsylvania and because he was well respected. This was not a result of a particular set of political opinions. He was essentially presiding officer. As time went by, the choice of the Speaker began to be based on his leadership of the majority party, his parliamentary skill, sectional claims (to pass the Speakership around), and political aims.

The Speakership of Henry Clay marked a fundamental change in the office, especially in terms of its affect on legislation. Clay the young, able Republican was elected in 1811. "The young warhawks and Indian fighters with only a skirmish were able to seize the Speakership for Representative Clay on his first day of service."⁴ Clay, in the role of Speaker, became a leader of the nation in a position he saw as one of the first political offices of the government. Under Clay, the Speaker became a leader instead of a moderator. "The Speakers parliamentary power increased, his personal influence was strengthened, and his position became that of legislative leader."⁵ Clay was outspoken on most measures. He was the first Speaker to cast his vote when it was not functionally necessary. Sometimes, and even when his vote was not the deciding factor, he would comment on his personal stand. Clay had abundant confidence in himself. His successes should not be simply attributed to the fact that he realized the parliamentary power of his office but more to his quickness to use this influence in setting the mind of the House.

He was especially talented in stating the question out of the confusion of debate. "He was no painstaking student of parliamentary law, but more frequently found the rules of his governance in his own instinctive sense of what was practicable and proper than in 'Hatsell's Precedents', or 'Jefferson's Manual'." ⁶

Mr. Clay did not let his position as Speaker keep him from exercising the rights of his membership. He was involved in almost every debate of consequence, and many times the House resolved itself into Committee of the Whole explicitly so his voice could be heard in debate. This is shown in the records. "Mr. Sherffey said it was his wish to speak to the subject before the Committee rose, and in order to afford the Speaker (to whose speech he meant to direct his observations) an opportunity of defending himself, which he could not do if he were in the Chair, he therefore moved that the Chair do rise, report progress, and have leave to sit again." ⁷ Mr. Clay, combined the functions of moderator, member, and leader.

To summarize the aspects of the Clay Speakership that pertain to this subject; he increased the influence and power of the Speaker on congressional action, not by introducing new spheres of influence but by fully utilizing those already present. ⁸ A last example of this observation can be drawn from the controversy over the United States Bank. The President was determined to launch an investigation of the Bank in the form of a committee in the House. "It was a Jackson house by a small majority but the Bank's influence was potent." ⁹ Mr. Clayton of Georgia made the motion for a select committee. ¹⁰ A product of the determined resistance by the supporters of the Bank was an attempted amendment to

the resolution stating that the committee would be chosen by ballot. This would have had the effect of eliminating the Speaker's power to appoint the committee "who, following the parliamentary rule," as Mr. Benton says, "would select a majority of members favorable to inquiry, and in the vote by ballot, the Bank, having a majority in the House, could reverse the parliamentary rule, and give to the institution a committee to shield instead of to probe it."¹¹ The amendment did not pass, as a result of a tied vote, so the awesome power of the Speaker was utilized in destroying the Bank by appropriate appointments to the committee for investigation.

The tradition of Clay was carried on through the period of the Civil War. Mr. Speaker Orr defied President Buchanan on the question of Kansas statehood by appointing a committee which set down conditions unacceptable to the people of Kansas. The President wanted Kansas to be admitted to the Union under the pro-slavery LeCompton Constitution, but House amendments to the bill made this suggestion unacceptable.

Mr. Colfax came to the Speakership during the late years of the Civil War and for three terms was fully dedicated to the policies of President Lincoln. After the President's assassination, Mr. Colfax was one of the most influential men in reconstruction government. "The political advantages and power of the position were never used with greater effect or with more sagacity, nor were they ever directed to the accomplishment of nobler ends."¹² Mr. Colfax organized the committees of the House "to his own satisfaction, untrammelled by pledges to persons, but, of course, with necessary reference to considerations of locality and of the prior positions held by re-elected members."¹³ The power of the Speakership was by that time more fully recognized. As one of the biographers of

Lincoln states, "Mr. Lincoln rarely took any step affecting the interest of the nation without making known his intentions to and consulting with Mr. Colfax."¹⁴

Speaker Blaine increased the influence of the office of Speaker by his expanded use of parliamentary discretion. He used recognition as a favor. It has been said that Mr. Blaine would bargain with men for recognition: "If you will make your resolution so and so, I will see that you have the floor."¹⁵ This was true in other instances besides those for the reading of bills. One author speaks of an "adroit manouvre" to get a private telegram communicated to the House while Blaine was Speaker pro tempore: "someone asked to have a telegram from the governor of Illinois read, and Blaine decided that he could not tell whether it was in order until he had heard it."¹⁶

In 1876, after an interim of two terms, Mr. Randall was elected Speaker. He was the first Speaker to attempt an increase in the power of the chair through rule change. In doing this he set a regrettable precedent for Speaker Reed and "Big Joe" Cannon, who, at the turn of the century, used this method with great effectiveness to increase their power as Speaker. Although much of the rule change in the parliamentary review of 1879 was for the purpose of reform, Randall as head of the committee for revision exerted vast personal influence to make his office more powerful. Much of this added influence was in the questionable guise of filibuster. On one occasion Mr. Randall expressed his opinion of the Speakership in the House and it was set down in the Congressional Record. The text goes as follows; "I came to consider that that office (the Speakership).... was the highest office within reach of the American

citizen, that it was a grand official station, great in the honors which it conferred and still greater in the ability it gave to impress upon our history and legislation the stamp of truth, fairness, justice, and right.....When it fell to my fortune to occupy the Speaker's chair, I realized how true was my idea of the position."¹⁷ It might be noted that to Mr. Randall the "stamp of truth, fairness, justice, and right" was also the stamp of the Democratic Party.

Increases in the powers of Speaker after the Speakership of Randall came in small but real amounts. It was left to the complete party partisan, Speaker Reed, to accomplish the fulfillment of the Speaker's authority. Although precedent has since been located to more firmly ground many of Speaker Reed's controversial decisions and actions, it is doubtful that he gave these much consideration. He was the first Speaker to completely utilize the chair as an instrument of his party. His sometimes brazen conduct associated with a particular rule might be in direct opposition to a stand he had taken as leader of the minority. Most of the strength Reed added to the Speakership was a result of his attacks on three areas of minority procedural power. These are the refusal of a quorum, dilatory motions, and prolonged debate. He also unified power in the House, much like Speaker Carlisle before him. For example, the chairman of the Ways and Means and the chairman of Appropriations were appointed, with the Speaker, to the majority positions on the Rules Committee. Before becoming Speaker, Mr. Reed frequently resorted to the delaying tactic of refusing constitutional presence, though corporally present, as a method of frustrating the quorum. On

assuming the Speakership and then in the majority, Reed counted those who "appeared to be present."¹⁸

Reed presented many of his alterations of the rules through the Rules Committee which he chaired. The House of Representatives adopted the report of the committee on rules February 14, 1890, which became known as the Reed Rules. The five innovations in this new code of rules were: 1) All members must vote unless they have a pecuniary interest in the question at issue. 2) The dignity of the House and the rights of members are given precedence over every question but a motion to adjourn. 3) 100 shall constitute a quorum in the Committee of the Whole. 4) Members present but not voting may be counted as a part of the quorum in any ordinary session of Congress. 5) No dilatory motion shall be entertained by the Speaker. This set of rules instituted a one man rule, because the Speaker's individual judgement was the sole criterion in determining whether motions were obstructionary. Speaker Reed could not be refused a measure of justification in his support of such measures, for there was a need for some mechanism to render the House effective despite the hinderence of the slim Republican majority. It seems ironic, however, that in order to make the voice of the majority heard, as represented by the Republican contingent in Congress, the voice and effect of all legislation was concentrated in a single man.

Committee System

When the colonial settlements were small, the legislature, which was the political organ, was looked upon as a sort of borough corporation concerned with matters of secondary importance only. By the time of the Revolution, the financial power of the colonies had led to the assumption of political power. This change was not fully perceived by the English. When Commons is compared to the House of Representatives the most striking feature is the absence of standing committees in Commons. It is an ironic note that the conception of the standing committee came to the House from the precedent of Commons.¹⁹ The probable reason that this is not known more widely is that at the very time the use of the standing committee was becoming important in America, it was used less and less in Commons.

In the first written records of the House of Commons there is evidence of the appointment of committees. For example, "In 1340 there were joint committees of Lords and Commons to draw up the statutes."²⁰ Standing committees were first used in the House of Commons in 1571. There were three standing committees; one to decide election cases, one to receive grievances, and one to deal with religious questions. The committee on election grievances became, by 1592, a standing committee of the permanent American type. In its final form it dealt with privilege and election. In 1603 when the motion for its appointment

was made, the clerk said, "This is an usual Motion in the Beginning of every Parliament."²¹ The committees on grievances and religion met different fates. Instead of referring these matters to a committee with only a few members, the House began to set aside certain days when items pertaining to these subjects would be discussed in the 'Committee of the Whole'. It is important to note that this committee system was in active use in Parliament only during the 17th and 18th centuries. Most of the colonial legislatures were founded late in this period.

Many of the colonial legislatures (more accurately miniature parliaments) employed the committee system less and less following their English counterpart. Others, however, were tenacious in their support and maintenance of the committee system. Closely associated to this movement was the effort toward original parliamentary development in the colonies. This was especially evident in the three most advanced colonies; Virginia, Pennsylvania, and Massachusetts.²² It was in the hands of these most advanced colonies that the committee system became firmly entrenched as an American practice. For example, the Virginia House of Burgesses was the institution responsible for the Intercolonial Standing Committees of Correspondence which, structurally, led the way as much as anything else toward the Continental Congress, the Confederation, and, finally, the Union. Of Virginia, Harlow says, "By 1769, with the exception of the committee on claims, the list of standing committees in Virginia corresponded to that in the House of Commons."²³ In Parliament many of these were called Grand Committees or Committees of the Whole, while in Virginia they were more restrictive in membership.

The use of the committee system to effect party or individual leadership was an early characteristic of the colonial legislative bodies. As a result of this trend in the early American legislatures, the standing committees came to be replaced by the party clique, legislating through select committees. In a way, however, these unofficial party juntas were themselves a sort of standing committee. It should be noted that the committee system was badly misused even at this early stage in U.S. History. For example, there are records of committee appointments where unfamiliarity with the issue at hand was a criterion for appointment. This was done so that the Speaker could be absolutely sure of the forthcoming decision through his influence on these unknowing accomplices. In spite of these problems, the committee system began to prosper in the colonial legislatures.

Part of the growth of the committee system in the colonies can be attributed to the growing need for referents for petitions. In several legislatures it became common practice to "refer all petitions relating to a single subject to a single committee."²⁴ Efficiency seems to be the chief motive for this trend. A related development was prompted by the need to expedite comprehensive presentation of accounts. This also contributed to the growth of the committee system. As the functions of a state multiply in proportion to its progressive growth, so does the necessity for a method and system of efficient management. The logical sort of referent in this case is a committee system for the management of their state. Examples of this phenomenon can be found in the records of all the colonial settlements as the numbers of people multiplied and economic growth became prevalent.

With the coming of independence for the united colonies, there was opportunity for conflict between persons as a result of differing previous loyalty. For this reason much of committee work depended upon knowing the facts of a situation so that for example, a petition could be justly dealt with. This led to the necessity of enforcing the presence of witnesses. This innovation has had a strong influence on the history of committee practice. After a witness had been summoned, he gained the privilege of full protection by the House. This protection varied. In New York, for instance, a prosecutor using testimony which was originally made in committee, against a person, was declared guilty of breach of privilege.

The House of Representatives for the First Congress was small enough that it could insure thoroughness and efficiency through deliberation. The important feature of procedure, which helped to make this possible, was the Committee of the Whole. The House sat in this form much of the time. Debate was unrestricted, which helped to insure that the means to legislation was as unrestricted as the results. This informal type of meeting was used when dealing with most important business. Details were finalized in select committees, which were appointed to draw up specific legislation according to precepts already determined by the Committee of the Whole.²⁵ For this type of loose organization to be effective it was necessary that harmony and cooperation prevail among all members. In practice, this is about the same as saying that there must be no political parties. Differences of opinion concerning theories of government, sectional strife, and other dissention among members led to party organization.

After the revolution, the executive and legislative branches of government were subject to the same authority; that delegated to the voters. This eliminated much of the need for a strong central control in the legislature and made the "juntos" of earlier years less important. In their place was introduced a wider system of select committees. As the number of these committees increased, so did their concrete law making authority. The appointment of these committees by the Speaker was a step in the direction of party politics. Policy movement in this direction was strengthened as a result of the prominent Virginian influence on the organization of the First Congress. It had been the practice in the colony of Virginia for the Speaker to select the chairman of committees as well as the various other members. The House adopted this practice. With growing friction over much of the legislation proposed in the House, groups of partisans formed parties, which led to a shift of policy formation away from the Committee of the Whole to the party caucus. The first to profit from this new practice were the Federalists. They were not only in the majority, but they had Alexander Hamilton as leader. Among his contemporaries he gained a reputation of extreme competence and perserverance. He guided and nurtured his pet legislation with his influence over committees. "Everything, even to the naming of a committee, is prearranged by Hamilton and his group of speculators...."²⁶ He certainly did not subscribe to the Jeffersonian ideal of complete separation of executive and legislative powers and duties. This was especially notable in the area of finance. His financial policies have since become famous but it was through an able manipulation of committees that they were originally effected.

As the century progressed, a greater number of select committees were converted to standing committees. By 1850 the House had 34 standing committees, but this number had increased to 58 by 1900. Up to 1911 the Speaker continued to appoint the members and choose the chairmen of both select and standing committees. Since then each party prepares a slate, which is either accepted or rejected by a vote of the House. In effect the majority leaders, the most powerful of which is the Speaker, maintain the system of Speaker dominance over committee appointment.

Until 1880 the member moving the formation of a select committee was named chairman. In the earliest Congresses there was a recognizable attempt to appoint members of committees according to geographical representation. Although this tendency is not now so important, with the membership representing a greater number of states, it remains an acknowledged consideration. In modern practice, the lists of committee nominees are prepared by the "committees on committees" within each party. Since the initial sessions of the House seniority has also played an important role in committee appointments and committee position. There are those instances when both of these considerations have been overridden, but only in few instances have they been completely ignored.

The power of committee chairmen has increased during the history of the House. This has served to strengthen party control. In the early Congresses, the practice was to follow Jefferson's Manual of Parliamentary Procedure which, in section IX, states that the committee chairman "presides over them, puts questions, and reports their proceedings to the House." As seniority became a more important consideration, and was accompanied by greatly increased responsibilities for many committees, the committee

chairmen began to assume more executive powers. He could act according to personal discretion in overruling discussion in favor of committee harmony. He could control the pace as well as the actual number of meetings and utilize research and secretarial help to his benefit. The failure of some committee chairmen to be responsive to their committees led to the adoption of the first rule on the subject. This was not done until December 8, 1931 (Cannon's Precedents, Vol. 8, Section 2208). The present rule which combines the first one and section 133 (a) of the Legislative Reorganization Act of 1946 still retains the heavy bias in favor of the committee chairman. It remains difficult and complicated to force a chairman to call a committee meeting, alter his report to the House, etc. The committee chairman also has control of the debate on all bills originating in his committee. Debate in the House is restricted in nature. The committee chairman recognizes whomever he pleases on the floor and can move the previous question at any time. He has complete control of debate when a bill originating in his committee is considered by the House. In 1885 Woodrow Wilson said, "The leaders of the House are the chairmen of the principal standing committees....in the consideration of every topic of business the House is guided by a special leader in the person of the Chairman of the Standing Committee, charged with the superintendence of measures of the particular class to which that topic belongs....I know not how better to describe our form of government in a single phrase than by calling it a government by the chairmen of the Standing Committees of Congress..."²⁷

The committee^s no longer have a rigid set of instructions handed them by the House. Committees were previously considered agents of the

House, not power structures in their own right and authority. Committees began to report more often in bill form as their authority increased. In 1822 a rule was adopted that recognized this practice; "the several standing committees of the House shall have the right to report by bill or otherwise."²⁸ Another specific change has been the tendency for bills to be introduced by the individual standing committees, rather than by the Committee of the Whole. By 1825 these transitions were complete in form and only their importance, through more effective use, increased thereafter. In 1896 Mary Follett said "Congress no longer exercises it's lawful function of lawmaking; that has gone to the committees as completely as in England it has passed to the cabinet."²⁹

There are several types of committees including standing committees, special committees appointed for a particular purpose, joint committees, and sub committees. Joint committees are those composed of members of both the Senate and the House. Sub committees serve the purpose of dividing the labor of the largest of standing committees. The standing committees have been emphasized in this discussion of procedure because of the important role they have come to bear on the legislative output of the House through it's particular form. The authority of standing committees includes powers to receive petitions and legislative proposals from the House, to take testimony and conduct authorized investigations in their area of authority, to report by bill or otherwise, to kill some measures previously approved by the whole House, to certify witnesses for contempt, and to adopt rules and appoint sub committees. Another related factor is that they usually report only those bills the

majority of the members favor. These powers, combined with the powers of committee chairmen, and the appointment of committees by the Speaker (in fact if not always in theory) do bias much of the legislative output of the House. It also emphasizes the tendency to make the House more unrepresentative than it's outward form would suggest.

Rules Committee

The current procedure and structure of the House has created the unique situation of providing a small committee, the Rules Committee, with almost unbelievable authority over legislation. This has not always been true of the committee on rules nor was it intended to be. The present arrangement is simply one answer to the problem of priority of consideration. It is not an unimprovable solution. There is no structural reason for the committee to react in a partisan manner, but this is usually the case. The rules committee is in some terms an arm of the majority.

The day the first House appointed its Speaker several distinguished parliamentarians were appointed to draft a code of rules. Among these were James Madison of Virginia, Elias Boudinot of New Jersey, and Roger Sherman of Connecticut. Five days later, April 7, 1789, a code of four rules was adopted. A few days after that date six more were added. Several dealt with general decorum dictating such items as the appropriate time for the Speaker to rise, and those times when it was permissible for the members to move about. No one could speak twice on the same question without special leave, and then only after everyone else who wished to speak had done so. Motions were restricted to previous questions, amendments, and adjournments. No others could be presented under the guise of amendment.

To a great extent these rules reflected Boudinot's ideas. He felt that only a specific motion put by the House should be discussed at that time. He did favor a thorough discussion of the motion at hand. Relying on the experience he gained while President of the Continental Congress, he attempted to insure that this was the case. The motion for the previous question was put negatively as in the British Commons; "Shall the main question be not now put?"³⁰ Boudinot later recommended the omission of "not" to simplify dealing with the heart of "main question" of a bill or motion. Under these rules each bill was carefully scrutinized by the entire House. Coincident with this spirit, the Committee of the Whole determined the order of consideration for bills before the House and permitted unlimited debate on each part. The only requirement was that a quorum be present. If not, the committee would be adjourned. Time was not an important factor.

This set of rules, supplimented with Jefferson's Parliamentary Practice, resulted in a situation that left little for a committee on rules to do. It was quite a direct system in which necessary committees, useful when information was needed from outside the House, were appointed directly by the Speaker.³¹ As a result of the tightness of this system, there was no Rules Committee appointed for the 15th, 16th, 18th, 19th, or 21st Congresses. A single rule was simply added to those existing when necessary to facilitate a certain situation. This resulted in a complicated series of rules which overlapped, contradicted, and confused. The situation was brought to the floor of the House several times in the intervening years, but at the start of each new Congress, when there is a time set aside to draw up the rules for that session, the rules of the previous Congress were traditionally accepted. This situation was

partly caused by committee structure and power distribution in the House. It was to the advantage of the members with seniority to keep the old complicated system intact so that their power would not be questioned. The newly elected members of the House did not have a sufficient comprehension of the procedure to introduce constructive legislation. At the best they might discuss a few minor, unimportant points.

Finally, during the 35th Congress, in 1858 a select committee was drawn "to digest and revise the rules....and to suggest alterations and amendments."³² This committee was unique because the Speaker was the Chairman. This had not been true for previous committees. Many of the amendments, finally recognized in 1860, were of a technical nature, as some rules were combined, useless ones were eliminated, and so on. There were a few major changes. The most important of these was that consideration of an amendment did not necessarily preclude discussion on the main question. The committee was not entirely thorough on technical questions. As a result a similar committee was appointed in 1880. With a few exceptions it codified the rules in their present form. The purpose of the committee was to "secure accuracy in business, economy of time, order, uniformity, and impartiality." 125 old rules were condensed into 32. 12 of the old rules were retained intact and the rest were dropped. The committee on rules became a standing committee. Also, there was one fundamental change which permitted greater access to the floor for all committees. This is Calendar Wed. It provides a day on the legislative calendar when chairmen of standing committees can introduce topics for discussion by the entire House without the permission of the Rules Committee. The other most important change introduced via these reforms was that appropriation

bills were to have priority in the Committee of the Whole. Much of the affect of these changes was conservationist in nature and emphasized improved efficiency in the House. Several problems of a more basic nature were ignored such as the practice of attaching "riders" to appropriations bills and the "disappearing quorum" (members present but refusing to vote). The latter was dealt with by Speaker Reed as part of the series of rules changes which he instigated to limit the minority. Reed utilized the Rules Committee to control the business which could be brought before the House, by personally assuming the chair of that committee.

Under Speaker Cannon, elected after Reed, people began to realize that some powers of the American constitutional system were out of balance. The Speaker had gained disproportionate power in the legislative process. As a result of this new feeling and the alienation of a splinter of the majority party, a revision of the House rules was accomplished in 1910. The rebellious clique, which gained the support of the Democrats, "charged that the House had degenerated into an assembly serving no other purpose than to register the arbitrary edicts of a too powerful Committee on Rules."³³ A motion helping to remedy this situation passed when the "Insurgents" caught the Republicans without a majority present. The motion called for an enlarged Rules Committee of ten members and the exclusion of the Speaker as a member. Membership was now on an elective basis.

The committee on rules remains a powerful tool of the majority. Its powers include that of changing rules during a session, creating select and investigating committees, setting up minor special orders (other than for the consideration of bills), and reporting special rules. The committee is the only body in the House which has the authority to

change House rules. In this they are free to act completely at their own discession. Proof of this is the fact that in each session of Congress there are numerous resolutions requesting rule changes that die in committee. The reporting of special orders involves the most questionable powers. The Rules Committee resolution to introduce a bill to the House can be adopted by a simple majority vote. Many bills, no matter how important, would not reach the floor of the House without the intervention of the Rules Committee in the form of a special order. This is because of the large volume of bills introduced each session. The regulations by which the House must deal with specific legislation may be regulated by the special order. Clauses can be inserted which will prevent dilatory motions and filibustering. The length of debate and method of consideration can be specified. A special order may be presented to Congress at any time, and the committee has the unique privilege of sitting while the rest of the House is in session. The type of vote to be taken can be specified and the specific provisions of the bill open for debate can be restricted. Debate may be limited to certain sections of any bill, even on those which originate in the Senate. The individual Congressmen have no control over the topics open to discussion by them. It takes only a little imagination to see how special orders can be used for primarily partisan ends in favoring the discussion one bill over another. It is^a unique power of the Rules Committee which allows it to discriminate between factions supporting different legislation. The committee, originally set up for administrative purposes, has gained a healthy measure of legislative power.

One factor worthy of mention, from the rules change of 1910, is the addition of a unanimous consent calendar. Theoretically, this is important to the minority because it provides a time for the consideration

of bills of peculiar importance to a small number of Congressmen. As it stands it's effectiveness is questionable. There is another factor to be considered to complete a historical examination of the Rules Committee. It was brought about by the long standing practice of allowing the committee chairmen a degree of discretion in their reports to the House. This is because they have always been in charge of committee reports to the House. This practice plays a special role in the case of the Rules Committee. In effect, this power to report to the House as the chairman of a standing committee, gives the Rules Committee Chairman the authority of pocket veto. He may delay the reporting of a special order to the House and in doing so kill legislation before it is even read to the House. If the chairman for the committee on rules fails to convince his committee that he is right, obstruction of legislation is still possible.

In Summary

The purpose of this paper has been to reveal the coalition of power wielded through the procedural elements of the committee system, the rules committee, and the Speakership of the House. The theoretical authority of the Speaker has been limited in recent years. His real power has not been seriously impaired, however, because of his authority and influence in the Rules Committee and other standing committees.

The functions of the Rules Committee are more extensive than is administratively necessary. Its main power results from the fact that it alone has the authority to introduce bills not ordinarily coming to the floor through the legislative calendar. This proves important because the present priority calendar is not adequate to handle the volume of business which must be considered by such a large legislative body. A streamlined method of determining priority would probably involve a selective component. It should be possible to involve this aspect without a total sacrifice of efficiency to partisanship. Nonpartisan is not the word to describe the majority party type of Rules Committee that historically has been prevalent.

One of the leading advocates of committee reform, George B. Galloway, supports a system utilizing both majority and minority committees.³⁴ The committee system has proven effective in the distribution of work within the House. It seems logical that committees should maintain some authority by holding hearings on bills, disposal of bills assigned to them by the

Speaker, and originating legislation particular to their own area. If a minority committee could be represented in a meaningful way for the various standing committees, the business of the House would be carried out in a manner more representative of its composition.

The strict tradition of seniority seems to retard the most effective use of the committee system. The effect of seniority on committee member status makes committee output less representative of legislative demands. Those members who become proficient in parliamentary law find much opportunity for delay tactics within the present system. In some ways, then, the individuals who hold the power for committee reform would have to give up some personal prerogative to update the House. A secondary effect is that young Congressmen tend to avoid taking stands on important national issues, because their main object is re-election so that they can gain the seniority necessary for a strong committee position. There is ample opportunity for rule change as new rules must be adopted for each Congress. It is understandable that some powerful members do not wish to erode their own authority.

With its limited membership, the Rules Committee is the strongest body in the House. It is ironic that the committee involves unrepresentative powers and the means to reduce its own arbitrary legislative power. It is the only entity in the House which has the authority to introduce a rule change. There is little check to balance the most influential power structures in the House. Power is held by the Speaker, as head of the majority, and the chairmen of the various standing committees. Voter influence over the daily decisions that shape legislation is practically nonexistent. Committee chairmen are free to bargain among their number for favorable

consideration on the bills they think are important. Too many votes can be traded. This situation lends itself to unresponsiveness to the demands of the voters as well as testimony by experts. The problems presented in this paper reveal a need for a more representative legislative output from the House of Representatives.

Footnotes

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5. Mary P. Follett, The Speaker of the House of Representatives (New York, 1896), p. 71.
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8. M. P. Follett, Speaker, p. 74.
9. George R. Brown, The Leadership of Congress (Indianapolis, 1922), p. 41.
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30. The Journal of the Continental Congress (May 26, 1778 and July 8, 1784).
31. A. C. Hinds, Precedents, Vol. 4, pp. 8-11.
32. Congressional Globe (June 14, 1858), p. 3048.
33. De Alva Stanwood Alexander, History and Procedure of the House of Representatives (Boston, 1916), p. 211.
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