Chapter 9

Doing It on the Floor: The Organization of Deliberation and What We Can Learn from It

ver. 1.0

The traditional way of discussing lawmaking in Congress is through the device of How a Bill Becomes a Law, in which the labyrinthine character of the legislative process is described in loving detail. Having made it this far in this book, you know that the organizing principle for the study of Congress should be, in my view, something else: political ambition. All the same, one defining characteristic of legislative decisionmaking is that it is formally sequenced. To a politician trying to attain political advantage in a legislative setting, this sequencing can become an important tool to advance or retard the development of policy. For example, because Senate committees must first conduct hearings to investigate the qualifications of presidential appointees, before they are voted on by the Senate, the chairs of Senate committees can gain a strategic advantage by threatening to delay a nominee’s hearing.

Therefore, there is no way for us to avoid examining the sequencing of legislation, both at a broad scope, as in the tradition of How a Bill Becomes a Law, and at a narrow scope, such as in examining how bills might be amended. Moreover, there is no way to avoid discussing how legislation is handled once (if) it gets out of committee and onto the floor. Consequently, the purpose of this chapter is two-fold. First, I take a sequential look at legislating in Congress, starting with bill introduction and ending with bill passage. Second, I pay particular attention to what happens on the floor, explicating the strategic importance of debate, amendment, and roll call voting.
The remainder of this chapter is organized as follows. In Section I, I take a macro view of the overall sequencing of the legislative process. How does a bill become a law? How are bills bottled up? Where are the important strategic bottlenecks in the process? In Section II I discuss in more detail the floor consideration of legislation, paying particular attention to scheduling, debating, and amending. Finally, in Section III I take a slight excursion, exploring how the record left by roll call votes can be used to inform us of the preferences of MCs—both individually and collectively.

I. Why a Bill Doesn’t Become a Law

Regardless of where we turn—to academics, to courts, or to journalists—the principal function that is ascribed to Congress in the American political system is lawmaking. The most important artifact that Congress leaves for the American political system to digest is laws. Therefore, there’s no mystery why the most hoary approach to the study of Congress is the exploration of How a Bill Becomes a Law. If you are interested in understanding why particular a law has particular provisions, or why a particular bill even passed in the first place, it is absolutely critical to understand the tortured path the bill took through the legislative process.

Yet, the How a Bill Becomes a Law approach to studying Congress overlooks one important fact: almost no bills become law. This is illustrated in Figure IX-1, which reports the number of bills introduced into and passed by both chambers since 1947, and Figure IX-2, which reports the total number of public and private bills passed by Congress in the same period. Immediately after World War II, the Senate passed about half the bills there were introduced in that chamber, and the House passed about a quarter. Over time those fractions have fluctuated,
but the general trend has been downward. Most recently, only a little more than a tenth of the bills introduced in the House and a quarter of the bills introduced in the Senate have even gotten out of their respective chambers.

Why most bills die quiet deaths is a major subtext of this chapter. Some of the answer to this question is relatively trivial and can be dealt with simply. For instance, the rules in both chambers have varied over time in whether they allow multiple members to *co-sponsor* legislation. Before 1979, the House limited the number of cosponsors on any bill to 25. If more than 25 members wanted to cosponsor a bill, a duplicate would have to be filed with the additional cosponsors (and likewise if more than 50, 75, 100, etc. members wanted to join in the fun). Since 1979, an unlimited number of House members may cosponsor any given bill.

Another important answer to the question of why most bills die is a little trickier, and requires us to understand the motives of members of Congress. It could be that many members of Congress introduce bills that they know will never see the light of day. This could either be because the member wished to be seen as a policy innovator in an active area of policymaking or that the member wished to use a relatively low-cost method of showing his constituents that he was on top of an issue that was popular with the folks back home.

Some insight into the high death rate of congressional bills can be gleaned by examining the legislation submitted by a random House member in the 105th Congress (1997–98)—Patrick Kennedy (Dem., R.I.). In the 105th Congress, Kennedy submitted twenty different pieces of legislation—one concurrent resolution, one joint resolution, and 18 bills. Kennedy represented a working class constituency in a working class state, and much of his legislation represented his constituents’s interests. Some were directly related to special needs of his constituents as they
dealt with the Federal government, such as the deductibility of student loans (H.R. 724) and pharmacy coverage for persons without health insurance (H.R. 2681). Others sought to assist constituents more broadly, by helping out local communities, governments, and institutions, such as the removal of tire dumps near drinking water supplies (H.R. 1041), assisting the Narragansett Tribe in a dispute against the United States (H.R. 1983), and the continued operation of the Blackstone River Valley National Heritage Corridor (H.R. 3522). A few dealt with larger policy issues with no obvious constituency ties, such as military assistance to the government of Indonesia (H.R. 1132). Finally, a few pieces of proposed legislation were clearly attempts at striking a popular pose, such as a resolution recognizing the importance of rivers to the United States (H.Con. Res. 261).

One of these bills found its provisions materially included in another piece of legislation (H.R. 1294), requiring the Secretary of Defense to inform service members of the side effects of experimental drugs they are given, and another actually made it out of committee onto the House floor (H.R. 1983, Indian claims settlement legislation). H.R. 1294, the bill affecting members of the armed forces who received experimental drugs got passed as part of the overall Defense Department appropriations bills. The Indian claims legislation never made it to a floor vote. Thus, of the 20 bills Kennedy introduced, 18 died in committee, one died on its way to the floor, and one made it into law.

Kennedy was a member of two committees in the 105th Congress: the Committee on Resources and the Committee on National Security. Kennedy’s two “successes” came from bills that were referred to these committees—the bill affecting drugs received by service personnel was referred to the National Security Committee and the bill affecting Narragansett Tribe claims was
referred to the Resources Committee. Although Kennedy was not a member of the House Appropriations Committee, he was appointed a conferee of the Defense Department Appropriations bill, and so his expertise and interest in the drug matter could be pursued in that setting.

Almost none of the other bills that Kennedy introduced were similarly referred to committees on which he served. For instance, a bill to provide for the tax deductibility of student loan interest payments (H.R. 724) was referred to Ways and Means; a bill providing pharmacy assistance to people without health insurance (H.R. 2417) was referred to Commerce; and a bill concerning the treatment of veterans with tobacco-related illnesses (H.R. 4374) was referred to the committee on Veterans Affairs.

Given Kennedy’s limited time and his committee assignments, it was unlikely that any of these eighteen bills that were referred to committees on which Kennedy did not serve would ever get beyond the introduction and referral stage. The cynic looking at Kennedy’s bill introduction behavior might conclude that he was simply taking positions on a host of issues that would play well with his constituents—and, indeed, virtually none of the bills he introduced would have caused him electoral trouble in Rhode Island, nor in most of the rest of the country for that matter. A wizened observer, looking beyond the cynical evaluation of Kennedy’s behavior, might note that Kennedy was in many cases signaling his support for legislation that others supported, too, and thus his bill served as a marker in larger policy debates. For instance, 48 other bills were introduced in the 105th Congress concerning student loans, in addition to Kennedy’s. While these bills all addressed various aspects of the federal student loan program, none of them made recommendations concerning the tax deductibility of these payments. By introducing this bill,
Kennedy, along with his three co-sponsors, was signaling that if any of these other bills moved forward, he would be prepared to add the tax implications of student loans to the policy mix.

Let’s now return to the original question: Why do so many bills die in Congress? As the example of Patrick Kennedy’s bills suggest, most often bills die because they are introduced by members who are not in a position to see them through to passage.¹ When this happens, it is usually because MCs are taking positions, sometimes cynically, sometimes strategically. In other cases, bills die because ideas embodied in them are picked up by other bills which do pass. In still other cases, bills actually lumber through the legislative process, but die due to indifference or the press of more important business.

In spelling out the legislative process, therefore, it is more useful to think of the steps along the way as a series of hurdles, rather than a series of steps intended to facilitate lawmaking. Eighteen of Kennedy’s bills failed the first hurdle (committee), one failed the second hurdle (getting considered on the floor), and one actually cleared all the hurdles, though not in a conventional fashion.

Tab. IX-1 In Table IX-1 I summarize the hurdles that all legislation must jump over in the two chambers. Each chamber possesses the same generic set of hurdles—introduction and referral, the committee process, scheduling, and floor consideration. These hurdles are listed in the first column, with important House and Senate details reported in the other two columns. Needless to ¹Kennedy also labored under an obvious handicap in the 105th Congress—he was a Democrat in a chamber controlled by Republicans. However, typical rank-and-file Republicans did not have better batting averages in getting their bills passed into law in the 105th Congress, either.
say, bicameralism means that each of these generic types of hurdles must be jumped twice, and there is no guarantee that passage of a bill in one chamber (and therefore clearing all of one chamber’s hurdles) will lead to successful navigation of the other chamber’s legislative obstacles.

Finally, as if the parallel legislative processes in the two chamber weren’t enough, even if a bill passes both chambers, it must pass both chambers in \textit{identical} form, meaning that many bills must also be subjected to the hurdle of the conference process.

In the remainder of this chapter I address many of the details attending these legislative process hurdles. For the moment simply note that although the House and Senate have identical generic legislative structures, both chambers differ in significant ways at virtually every stage of the process. (The only stage where consideration isn’t materially different is in the committees.) The House’s process is more formal generally than the Senate’s. Senatorial informality is important substantively because it means that it is easier for stray ideas to wander into legislation in the upper chamber than in the lower.

\textit{Introduction and referral of bills to committee}

A bill starts its treacherous journey through the legislative process by being introduced and then referred to committee. Bill introduction isn’t really a hurdle—with 535 legislators in the House and Senate, you can count on someone, somewhere being willing to introduce virtually any idea into Congress, for a wide variety of reasons. Unlike some state legislatures, only members of Congress may introduce bills into the U.S. Congress, which means that presidents and executive branch officials—who are quite frequently the “real” sources of major bills—must find a sympathetic MC to throw these bills into the hopper. This isn’t such a major hurdle, however, for
many of the reasons already mentioned. In addition, by tradition (or shrewd political maneuvering), important administration legislation is typically introduced by senior members of the committees of jurisdiction. The annual appropriations bills are typically introduced by the chair of the House Appropriations Committee subcommittee that oversees the bill. In the first Congress of the Clinton administration (103rd, 1993–94), administration legislation to implement the North American Free Trade Agreement (NAFTA) was introduced by Rep. Dan Rostenkowski (D-Ill.), chair of the Ways and Means Committee, and President Clinton’s economic stimulus bill was introduced by Rep. William Natcher (D-Ky.), the chair of the Appropriation Committee.

Tab. IX-2 Once introduced, the bill is assigned a number and referred to committee. The number assignment process is a trivial clerical task, but it is useful to understand the legislative nomenclature associated with bill numbers. Table IX-2 summarizes the nomenclature. 

Bills are assigned a number beginning with H.R. or S. in the House and Senate, respectively. As with the different types of legislation, numbers are assigned sequentially, with leaders allowed to assign “special” numbers to important legislation—sort of like vanity license plates for cars. A bill, if

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2In the 106th Congress (1999–2000), the first five House bills were the following:

H.R. 1: To provide for Social Security reform.

H.R.2: To send more dollars to the classroom.

H.R.3: To amend the Internal Revenue Code of 1986 to reduce individual income tax rates by 10 percent.

H.R.4: To declare it to be the policy of the United States to deploy a national missile defense.

H.R.5: To amend title II of the Social Security Act to eliminate the earnings test for
passed, would be signed by the president and would bear the force of law. In most Congresses 80-90% of measures that are introduced in both chambers are bills.³

A resolution involves only one chamber and does not have the force of law. Resolutions range across the map in terms of their importance. For instance, all the significant housekeeping individuals who have attained retirement age.

The first five Senate bills were these:

S.1: Unassigned
S.2: To extend programs and activities under the Elementary and Secondary Education Act of 1965.
S.3: To amend the Internal Revenue Code of 1986 to reduce individual income tax rates by 10 percent.
S.4: To improve pay and retirement equity for members of the Armed Forces, and for other purposes.
S.5: To reduce the transportation and distribution of illegal drugs and to strengthen domestic demand reduction

³The breakdown for the 105th Congress (1997–98) was the following:

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<tr>
<th></th>
<th>House</th>
<th>Senate</th>
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<tbody>
<tr>
<td>Bill</td>
<td>4874</td>
<td>2655</td>
</tr>
<tr>
<td>Concurrent resolution</td>
<td>354</td>
<td>130</td>
</tr>
<tr>
<td>Resolution</td>
<td>614</td>
<td>314</td>
</tr>
<tr>
<td>Joint resolution</td>
<td>140</td>
<td>60</td>
</tr>
</tbody>
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measures are handled through resolutions—such as appointing committees, providing for the consideration of legislation in the House, and providing for appropriations for specific committees. On the other hand, purely position-taking measures also reside among resolutions, such as S.Res. 51 in the 105th Congress, to “express the sense of the Senate regarding the outstanding achievements of NetDay,” introduced by Sen. Diane Feinstein (D-Calif.).

Two other types of resolutions require the concurrence of both chambers, but they differ in importance, much as bills and simple resolutions differ. **Joint resolutions** are reserved for the very few actions that Congress can take without presidential concurrence, namely, proposing constitutional amendments and declaring war. **Concurrent resolutions** are reserved for matters that are internal to Congress itself, but which pertain to both bodies. These matters range from relatively minor housekeeping matters, such as providing for the adjournment of Congress, to the significant, such as the budget resolutions that guide congressional fiscal deliberations each year.

Referral of legislation to committees is usually routine. While the formal power to refer legislation rests with the presiding officers of both chambers—the Speaker of the House and the President of the Senate—in practice referral is almost always done by the parliamentarians. The parliamentarians are further guided by the rules of the two chambers, which define the committees’ jurisdictions, plus the precedents which the chambers have followed whenever the rules are unclear or allow latitude.

While bill referral is usually routine, it needn’t be, and in extraordinary circumstance it isn’t. The classic example of an extraordinary circumstance was the 1963 Civil Rights Act, which faced tough sledding in both chambers of Congress. It is natural to think of a bill guaranteeing civil rights for African Americans to be considered by the judiciary committees of both chambers.
However, in 1963 the chairman of the Senate Judiciary Committee was James Eastland (D-Miss.), a conservative opponent of civil rights legislation. To overcome Eastland’s opposition to the measure, the Civil Rights Bill was drafted so that it invoked the “commerce clause” of the U.S. Constitution. Therefore, the bill also fell under the jurisdiction of the Senate Commerce Committee whose chairman, Warren Magnuson (D-Wash.), was a strong, liberal supporter of civil rights. The House provided exactly the opposite situation: The chairman of the House Commerce Committee, Rep. Oren Harris (D-Ark.), was an opponent while the chairman of the House Judiciary Committee, Rep. Emanuel Cellar (D-N.Y.), was a supporter. Thus, the Civil Right Act was referred to the Commerce Committee in the Senate, but to the Judiciary Committee in the House.

A more common special wrinkle on the bill referral process has to do with multiple referrals of bills to committees. Prior to 1974, Speakers could refer bills to one, and only one, House committee. (Senate bills could always be referred to multiple committees. However, because the Senate rules allow more pathways for issues to get brought to a vote and added to bills, referral of legislation to multiple Senate committees has rarely been an issue.) There were many strains on this rule, but the practice came to the bursting point in the early 1970s as the House began working on complex legislation—energy regulation was the top example—that defied sorting into the House’s jurisdictional rules. This in 1974 the House rules were changed, allowing the Speaker to refer individual bills to multiple committees—either in whole or by splitting them up into parts. Furthermore, Speakers were allowed to set time limits on bills that were multiply referred, creating a process that was sometimes called Speaker discharge. 

As we will see later on, there is a provision in the rules of both chambers to discharge a
Speakers could presumably not only allow complex legislation to be considered by committees in complex ways, but they were also given a tool to ensure that this added complexity did not degenerate into yet another set of hurdles obstructing legislation.

The rules related to multiple referrals have changed over the past quarter of a century. The most important change came at the beginning of the 104th Congress (1995), when the new Republican majority took charge. The Speaker can no longer refer an entire bill multiply to various committees. However, he is still allowed to split up bills and refer the parts to different committees, and he is also allowed to refer bills to various committees sequentially—i.e., first to Committee A then to Committee B. As with the past, when the Speaker refers bills (or parts of bills) to various committees, he is still allowed to set deadlines for their consideration.

Political scientists and other observers of Congress are still assessing what effects multiple referral has had on legislating. While it is possible that multiple (or sequential) referral has produced “better” legislation, owing to the ability of bills to be scrutinized by different sets of legislators with a wider array of expertise, it is also clear that the added level of complexity has sometimes caused added delay. At the same time “Speaker discharge” has strengthened the hand of the Speaker, and thus of the majority party.

Allowing the multiple referral of bills to committees undermines the “structure induced equilibrium” effects of the committee system which I discussed in Chapter 8. The traditional, textbook view of the committee system is that it allows complex, multi-dimensional issues to be committee from the consideration of a bill. When a committee is discharged, the bill becomes the property of the full chamber again, and the chamber may do with it what it likes—vote on it or refer it to yet another committee.
reduced in complexity, thus reducing the likelihood that cycling and chaos will infect the legislative process. Allowing committees with different jurisdictions to consider the same legislation must, perforce, increase the dimensionality of the issue at hand and, therefore, increase the likelihood that chaos and delay will result.

While it is not clear whether multiple referral of bills have sped or improved legislation, Speaker discharge has moved legislation along. The best example of how Speaker discharge has expedited legislation was the consideration of the various pieces of the “Contract with America” in the early days of the 105th Congress. Elements of The Contract, which consisted of a wide variety of issues spread across the legislative landscape, were referred to various committees for consideration in early 1995. However, Speaker Gingrich also announced that he would adhere to his promise that all Contract items would be voted on within the first 100 days of Congress. This announcement clearly induced a few committees, where support for particular Contract items was lukewarm, to report out Contract-related legislation, rather than allow the leadership to move ahead without its input.
Scheduling

In Chapter 8 I discussed committee consideration of legislation. I have nothing to add to that discussion here, other than to note that committee consideration (including consideration in subcommittee) is the most common source of legislative death in Congress. This is a regularity that goes back to the earliest days of the Republic. The most pungent expression of this fact was given by Woodrow Wilson, in *Congressional Government*: 
The fate of bills committed [i.e., referred to committee] is generally not uncertain. As a rule, a bill committed is a bill doomed. When it goes from the clerk’s desk to a committee-room it crosses a parliamentary bridge of sighs to dim dungeons of silence whence it will never return. The means and time of its death are unknown, but its friends never see it again. (p. 63)

Tab. IX-3 For that small percentage of bills that are reported out of committee, the next hurdle is getting scheduled for floor consideration. Here is where the major differences between the House and Senate really start to kick in. I summarize the salient features of scheduling in the two chambers in Table IX-3.

Before attending to details, note that the House and Senate differ in non-surprising ways. The House is much more rule-bound and structured than the Senate. The House has developed a fine set of procedures to move different types of legislation through that body, including a specialized calendar system, special days for the consideration of particular types of legislation, and a specialized committee—the Rules Committee—to facilitate legislative consideration. The Senate has developed a much simpler formal structure overall, relying instead on consensus among its members to get bills onto the floor for consideration.

Tab. IX-4 The most basic queuing device for legislation is a calendar, which is nothing more than a list, in chronological order, of bills that have emerged from committee and are ready for floor action. The House has five such calendars, which are briefly summarized in Table IX-4. The two that see the most major legislation are the Union Calendar and the House Calendar. The Union Calendar is simply the list of all money legislation—appropriations and tax bills. The House Calendar generally includes all other public and private bills. The other calendars— Corrections,
Private, and Discharge—queue up special items under the House rules. The Corrections Calendar was established in the 104th Congress (1995) when the **Consent Calendar** was abolished. The Consent Calendar is for legislation that address “laws and regulations that are ambiguous, arbitrary, or ludicrous” and “should be noncontroversial and have broad bipartisan support.” The Private Calendar is for legislation that affects individuals, such as monetary claims against the government and special citizenship requests. Finally, the Discharge Calendar is for the few items that come before the House under a **discharge petition** (see below).

Each of these special calendars, in addition to business on the House calendar pertaining to the District of Columbia, can be called up by the Speaker on **special days**. (See Table IX-5.) For instance, the House Rules of the 106th Congress (1999–2000) allowed for items to be called off the Suspension Calendar every Monday and Tuesday, plus the last six days of the session. To pass, a bill brought up on suspension must be approved by 2/3 of the House voting. Similarly, items on the Correction Calender may be brought up two days each month, requiring a 3/5 vote of the House to pass. Items on the Private and District of Columbia calendars require simple majorities.

The **Calendar Wednesday** proceeding allows for the alphabetical “Call of Committees” each Wednesday, in which each committee is allowed to bring before the House a bill that is on the House calendar, but which has not yet been called up. Calendar Wednesday is almost always dispensed with via unanimous consent.

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The Consent Calendar was previously for non-controversial legislation slated to be passed under unanimous consent.
Of all these special procedures, suspension of the rules is by far the most common. Indeed, it is the most common procedure used to get all legislation passed through the House. This is not surprising, since suspension of the rules is reserved for non-controversial items and most items that pass Congress are noncontroversial (and often trivial). At the other end of the spectrum, however, comes major legislation. Here, knowing about calendars and special days is only the starting point for a discussion of scheduling.

To begin with, certain classes of legislation may be pulled off the House calendars and brought to the floor at any time. The Rules of the House give the following committees “leave to report” to the House floor at any time:

- Appropriations Committee: general appropriation bills and Continuing Resolutions.
- Budget Committee: budget resolutions
- House Administration Committee: enrolled bills, contested elections, printing for the use of Congress, expenditure of the House’s budget, and preservation of House records.
- Rules Committee: rules, joint rules, and the order of business
- Standards of Official Conduct Committee: conduct of House members and employees

In the 19th century, the privilege to report at any time was not only used frequently, but it was frequently used to the strategic advantage of the committee members with the privilege. For instance, Samuel Randall (D-Penn.), who chaired the House Appropriations Committee in the early 1880s, would often wander the House floor with appropriations bills in his pocket. If a bill
Randall found objectionable was about to be called up, he would pull an appropriations bill out of his pocket, assert the privileged right for the bill to be considered, and drive the unwanted piece of legislation into hiding.

While the right to bring up its legislation at any time would seem like an unalloyed advantage to these committees, especially Appropriations and Ways and Means, there are significant drawbacks to the committees’ use of this privilege. The most important drawback has to do with the fact that if a bill is brought to the floor under a committee’s privileged “leave to report,” that bill is subject to points of order. (A point of order is an assertion that the rules of the House are being violated. If a bill’s contents violate the rules of the House, it may not be considered.) As it turns out, most major legislation (including privileged bills) violates some House rules somehow. Some of these violations include the rule (actually a law) that prohibits the House or Senate from considering tax or spending legislation until a budget resolution has passed, the rule that prohibits writing substantive legislation into appropriations bills, and the rule that prohibits a bill from being brought to the floor until three days after its report has been filed.

Therefore, important legislation that might be brought to the House floor under a special privilege rarely is brought up that way. In addition, there are many problems with bringing up other non-privileged, yet important, legislation under the regular rules of the House. Therefore, the scheduling of the most important legislation in the House is channeled through the Rules Committee.

The House Rules Committee
Beginning in 1789, the House appointed a select committee on the rules at the start of each Congress, for the purpose of writing, or revising, the chamber’s rules of procedure. This practice continued until 1880, when the Rules Committee became a permanent fixture among the House’s standing committees. In very short order, the Rules Committee was transformed from a panel that simply reviewed the regular chamber rules to one that facilitated legislative action, by proposing *special rules* to govern the consideration of individual pieces of legislation.

In 1883 the role of the Rules Committee in the House was changed forever when it reported the first *special order* or *rule* concerning an individual piece of legislation. You will recall from the discussion in Chapter 3 that the 1880s was a time of intense partisan division in Congress, which led the leaders of both parties to innovate in the use of the rules to get legislation passed. The same set of factors led to this enhanced role for the Rules Committee that began in 1883.

Republicans held a majority in the 47th Congress (1881–83), but the Democrats were adept at using the tricks of the parliamentary trade, including the *disappearing quorum*, to delay the consideration of legislation that was supported by the Republican majority. To make matters worse for the Republicans, the elections of 1882 had been disastrous, meaning that when the new 48th Congress (1883–85) convened on March 3, 1883, the Democrats would have a nearly 2-1 advantage over the Republicans in the House. Therefore, the legislative efforts of the Republican leadership became more and more frantic during the *lame duck session* of the 47th Congress.\(^6\)

\(^6\) *Lame duck* is a term that applies to a politician who has been voted out of office, but whose term has yet to expire. Until 1933, Congress convened on March 3 of each odd-numbered year. Therefore, in the period between the fall elections and the following March, the House and
One important piece of legislation for the Republican leadership in the lame duck session of the 47th Congress was a tariff bill which had passed the Senate and was awaiting passage in the House. Knowing that the Democrats would use every parliamentary instrument at their disposal to kill this bill, the Republican leadership decided to use a new device to get this legislation on the floor for consideration and passage.

Under the parliamentary situation that had delivered the tariff bill to the House floor, it would have normally taken a 2/3 vote to suspend the rules so that a conference committee could be appointed to hammer out a final bill. The Republicans had far fewer than 2/3 of the House, and thus this route was closed to them. Instead, Thomas B. Reed (R-Maine) reported a privileged resolution from the Rules Committee which, if passed, would allow the House to suspend the rules with a majority vote and, simultaneously, request a conference with the Senate to resolve differences over the tariff bill. After two days of fighting over this tactic, the House passed the resolution and, in quick order, a majority voted to suspend the rules and request a

Senators had many members who knew they would not return in the following Congress—either because they had been defeated for reelection or had retired. During this time it was Congress’s practice to hold its second session after the fall elections, beginning in early December and running until the following March. This session was known as the lame duck session of Congress. Needless to say, lame duck sessions were often quite contentious, especially when the recent election had ejected the incumbent majority party, leading the current majority to try and hasten policy change and the current minority to delay matters until the next Congress.

Recall that in the late 19th century, the tariff was probably the most heated issue dividing the two majority parties.
conference with the Senate. In the end, Congress passed a tariff bill at the end of the 47th Congress, which was only possible because of this parliamentary innovation.

Over the past century, this sort of tactic has ceased to be controversial, and has in fact become the accepted practice in the House. The type of resolution which governs the consideration of a bill is variously called a rule, or a special order. The most common term applied to this resolution is “rule,” but it is easy to confuse a rule in this special sense with a general rule of the House—that is, its regular rules of order. To minimize the possibility of such confusion, for the remainder of this chapter, when I refer to a rule, in the sense of a special order, I will refer to it as a special rule.

Tab. IX-6 Nowadays, special rules govern when a bill will be brought up, the nature of debate on the bill, and the nature of amendments that may be offered. The major distinction among special rules is between open rules and closed rules. As the names imply, open rules are a class of special rules that grant very wide latitude to the amendment of bills. Closed rules restrict, in varying ways and to varying degrees, which amendments may be offered—if amendments may be offered at all. Over the past three decades the ingenuity of party leaders and Rules Committee members in writing special rules has been allowed to run free, leading to a variety of subspecies of open and closed rules, which are summarized in Table IX-6.

Figs. IX-3&4 This summary of rule types only begins to characterize the parameters that actually govern the consideration of each and every complicated bill that comes before the House. In Figures IX-3 and IX-4 I have reproduced the text of two open rules. Figure IX-3 shows the rule that accompanied the consideration of H.R. 3396 in the 100th Congress (1991–92), which would have allowed the rehiring of certain air traffic controllers who had been fired during the strike of 1981.
This is a simple open rule that essentially allows for any amendment to be offered and debated under the five-minute rule. Figure IX-4 is a modified open rule which waives a couple of points of order and privileges amendments that had been previously printed in the *Congressional Record*.

Because formal structures are so important in determining the details of legislation, special rules are an enormously important part of the legislative process. This is seen whenever a major bill is brought out of committee, when the hearing by the Rules Committee on the nature of the special rule to be proposed takes on great importance and often elicits press attention. This is also seen in the committee transfer patterns, which we reviewed in Chapter 8. There, we saw that membership on the Rules Committee is just as durable and valuable as membership on Ways and Means and on Appropriations.

Fig. IX-5  

The theoretical importance of specifying whether a bill is considered under a closed or open rule is one of the easiest—and fundamental—ideas that can be communicated through basic formal models of legislation. I have worked through an example in Figure IX-5. Suppose the House Judiciary Committee was considering a comprehensive modification of the nation’s immigration laws. In this example, the status quo \((Q)\) indicates that the established law places relatively few restrictions on immigrating into the U.S. to seek employment and few restrictions on immigrating to be with one’s family that is already here. The irregular figure sketches out the win set against this status quo \((W(Q))\).\(^8\) I have indicated, using cross-hairs, where the median

\(^8\)In the example, \(W(Q)\) has been arbitrarily drawn, since the particular location of any one member of the House is immaterial to the example. The irregularity of the figure is not particularly important, either.
House member is located along the “work restrictions” and “family unification restrictions” dimensions.

The Committee reports a bill (B) that changes work restrictions much more dramatically than family unification restrictions. In fact, it provides for more work restrictions than the median wants and fewer family unification restrictions than the median on that dimension wants. B is clearly located within W(Q), therefore it would pass on an up-or-down vote. However, we know that generally speaking, B could be successfully amended via majority vote. Knowing whether and how it might be amended depends on the special rule.

It would help us if, for the rest of this example, we could assume that any amendments that are offered—if they are allowed to be offered—must be germane to the section of the bill being considered, and that the family unification and work restriction provisions are in separate sections of the bill. Therefore, an amendment may only move the bill “one dimension at a time.”

Under the theoretical open rule that we considered in Chapter 2, the bill would eventually gravitate to the “northwest,” until some of the work restrictions were loosened, some of the family restrictions tightened, and the bill lodged at the ideal point of the medians on the two dimensions. This is illustrated as point a. Under the theoretical closed rule we considered in Chapter 2, the bill would simply pass at the point where it was proposed—point B.

As the previous discussion in this section suggests, even the simplest versions of actual open and closed rules deviate somewhat from these stylized open and closed rules. For instance, open rules still provide for amendments to be considered under the “five minute rule” and other time restrictions. Therefore, practically speaking, bill opponents have only one or two
opportunities to amend a particular provision of a bill before the House has to go on to other business. Time is rarely allowed for the magic of the median voter theorem to work its will.

Suppose, therefore, that an open rule operates like this, in practice: Someone (anyone) is recognized to offer an amendment to the bill on one dimension, and then someone else (anyone else) is recognized to offer an amendment to the bill on the other dimension. If these amendments are restricted (for theoretical reasons) to be in the part of the issue space where a majority of the House would support the amendment, then the final bill could end up anywhere in the box that is drawn in the figure. These resulting amended bills could potentially be quite different from the bill originally reported by the committee. For instance, a bill located at point $c$ could pass, reversing the balance struck by the committee on the emphasis placed on family reunification and work restrictions.

Further, the House Rules require that all closed rules still allow the minority party to offer a motion to **recommit a bill with instructions**. The motion to recommit with instructions is effectively a comprehensive amendment to the bill, offered by the minority party, which states how the minority party would have drafted the bill. It is a motion to send the bill back to the originating committee, ordering it to report back a different bill that accomplishes what the instructions in the motion to recommit dictate. In this example, a motion to recommit the bill to the Judiciary Committee, with the instructions that it report back a bill with fewer work restrictions and more family restrictions—like at point $a$—would pass the House. In fact, the motion to recommit with instructions rarely passes, but that is most likely due to the fact that it’s the majority party, not the minority party, that tends to have the most members close to the
medians on the two dimensions, and the rules generally preclude majority members from making this motion.

Finally, a modified closed rule might provide for the consideration of an amendment along one dimension and not the other. For instance, the modified closed rule might say that an amendment along the work restriction dimension is allowed, but not an amendment on the family unification section. In that case, the resulting bill could end up to the left of $B$.

The nature of special rules passed by the House, therefore, is tremendously important for guiding the details of legislation. Is there any wonder that in times when the political parties in Congress have flexed their muscles, that they have relied on the Rules Committee to be the instrument of that muscle flexing.

While the Speaker has the right to call up legislation at his discretion under the provisions of most special rules, he would be foolish to bring legislation to the floor willy-nilly. For a bill to pass to the liking of the majority party leadership, they not only need to craft the special rule to their liking, but they also need to get their supporters onto the floor to support the rule and then to pass the bill itself. Although there are rare cases when the Speaker uses the element of surprise to his advantage, mostly he relies on his followers to be on the floor when he engages in legislative battle. And the way that he does that it through the majority party whip organization.

In Chapter 7 I discussed the basic functions of the whip organizations of both parties. In this chapter it is sufficient to note that the majority whip, especially, is given the practical task of communicating the likely schedule of business to his followers, in addition to information about how the leadership feels about the bills and any amendments that might come along.
Circumventing committees

Up to this point, we have been assuming that the legislation in question has been reported out of committee and placed on the appropriate House or Senate calendar. And, indeed, almost all legislation comes to the floor that way. However, sometimes popular legislation gets bottled up in committee and majorities in both chambers may want to act to retrieve it away from a hostile committee. Such moments are rare, but they do occur.

The House has developed the *discharge petition* as the primary vehicle for extracting legislation from hostile committees and bringing it to the floor. *Discharge* is the parliamentary term for ending the responsibility of a committee for a bill. Before 1910 the House did not have a workable procedure for discharging bills from committees. In that year, the House adopted a rule allowing a House majority to demand the discharge of a committee, via petition, and for the subsequent consideration of the legislation. The current form of the rule was adopted in 1931 (see Beth 1999).

The discharge petition currently works as follows: If a bill have been in committee for more than 30 days, it is possible for a majority to remove that bill from committee by starting a discharge petition, which must be signed by 218 House members—a majority. Once the petition has received 218 signatures, one of the signers may offer a motion to discharge the bill from the committee of jurisdiction. However, the motion may not be made until seven days have elapsed after the 218 signatures have been acquired *and only then* on the second and fourth Monday of the month. If the discharge motion passes, then the House may vote on whether to consider the bill immediately or put it on the House Calendar.⁹

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⁹The Rules Committee is subject to discharge of special rules to consideration substantive
The use of the discharge procedure is rare. From 1931 to 1998, 540 discharge petitions were filed—367 on bills and 173 on special rules. Of these, only 46 were put on the Discharge Calendar, having received the required number of signatures, 31 were actually called up for a vote. Discharge was successfully voted 26 times, with the bill passing the House 19 times. Only two times since 1931 has a discharged bill become law.\footnote{Those laws were the 1938 Federal Labor Standard Act (the first minimum wage law) and the 1960 Federal Pay Raise Act.}

The very low success rate of the discharge petition procedure suggests that discharge is a paper tiger—fairly useless for getting committees to report out legislation that the floor wants but the committee opposes. It would be unwise to jump to this conclusion, however. Just the threat of discharge itself may prompt a committee to action—even if the committee opposes a bill, it would rather be in control of the parliamentary situation when the bill is considered than lose control of the process altogether.

A dramatic case when the threat of discharge led to the eventual passage of a bill came in 1986 during the consideration of the Volkmer Gun Control Law. The National Rifle Association and its supporters had pushed for years to weaken a series of gun control laws that had been passed in the 1960s. Support for some form of weakening carried a narrow majority in the House, but the House Democratic leadership had worked hard for nearly a decade to keep bills that loosened-up gun control restrictions bottled-up in the Judiciary Committee. Finally, in 1986 supporters of a bill introduced by Harold L. Volkmer (D-Mo.) to loosen gun restrictions got 209
signatures on a discharge petition, and it became a matter of time before the petition would have 218. As the number of signatures approached 218, the Judiciary Committee sprang into action and passed a gun control measure that was a compromise between police groups (that had supported keeping the 1968 Gun Control Law unchanged) and the NRA. The bill made it to the floor and eventually was signed into law by President Reagan.

While it is impossible to know how representative the case of the Volkmer Gun Control Law is, there is no doubt that this episode encapsulates the most common way in which the discharge procedure is significant in the House—by prompting committees to preempt the discharge procedure in the first place. The discharge petition is therefore a “club behind the door,” available to be used by House majorities whenever committees are seen as abusing their prerogatives.

Discharge is less of a paper tiger if we view it in another light, as well. Making public policy is only one instrumental goal that members of Congress have, among several, that they pursue along the way toward seeking reelection. Other goals include taking positions on issues and taking credit for federal program benefits that flow back to the district. (See Mayhew 1974.) Discharge rarely results in policy being changed, but it does provide a useful vehicle for position taking—both at the point of attempting to get signatures on the petition and, if the petition is successful, getting a roll call vote on the underlying bill. Bills that must be extracted from committee via the discharge petition route already face tough sledding in Congress—committees rarely just ignore the strongly-held opinions of large majorities of their chambers. House
members who sign discharge petitions are well aware of this, and are under no illusions that the real point of discharge is actually changing policy in the short term.

It is considerably easier to circumvent committee bottlenecks in the Senate due to the simple fact that the Senate has lax germaneness rules. Thus, a senator whose wishes have been thwarted by committee inaction can simply move that the text of a bill be attached to virtually any other bill that makes it to the floor of the Senate. Furthermore, a senator whose bill is bottled up can simply re-introduce the bill and then object to the second reading of the bill, which places the bill directly on the Senate calendar for consideration.

_Scheduling in the Senate_

I have just spent considerable time on the scheduling and general consideration of legislation in the House. That is for two reasons. First, and most importantly, scheduling legislation in the House is very rule-bound. Second, some of the elements of legislative scheduling in the House are generic, and therefore apply to the Senate, as well. For instance, although both chambers manage the flow of amendments in different ways, restrictions on amendments—or the lack thereof—have the same effects in the Senate as in the House. Because the rules affecting the scheduling of legislation in the Senate are fewer and because we have already covered some generic features of scheduling while discussing the House, this section on the Senate will be appreciably shorter.

There are three major ways to bring up legislation before the Senate. Non-controversial bills tend to be brought up and passed under _unanimous consent_. This is in contrast with the House, which tends to handle non-controversial legislation through suspension of the rules. For
controversial legislation, there are two ways in which legislation is brought up and considered. The most direct is for a senator to make a *motion to proceed* with a bill, and then for the Senate to proceed with it.

Practically speaking, reliance on the motion to proceed almost always signals a breakdown in the legislative process or a defeat for the minority. For instance, in 1999 President Clinton discovered that his judicial nominees were languishing—sometimes in the Senate Judiciary Committee, but even when the nominees were cleared by the committee, the Republican leadership in the Senate refused to bring the nominations up for a vote. This became an issue among the minority Democrats, especially when it came to delays in the consideration of minority (referring now to race, not political party) judicial nominees. Unable to get the leadership to call up nominations voluntarily, the Democrats decided to force the issue, and move to proceed with the nominations. On September 21, 1999, Sen. Thomas Daschle (D-S.D.) moved that the Senate go into executive session to consider, in turn, Marsha Berzon and then Richard Paez, to be circuit judges. Both motions failed by party-line votes, 45–54. Thus, they were not considered.

One of the reasons that the motion to consider is not frequently used in the Senate is that the motion itself is subject to the *filibuster*. Below, I will discuss in detail the use of the filibuster in Senate proceedings. For now it is sufficient to know that the filibuster is a legislative tactic in which proceedings can grind to a halt by a senator talking and not stopping. Because a motion to proceed is subject to the filibuster, opponents of bills have two opportunities to kill legislation through the filibuster—when the motion is made to consider the bill *and* when the bill itself is considered.
Because it is so easy for a small number of senators to bollix-up the consideration of legislation, the Senate has developed the practice of settling on the consideration of major legislation through *complex unanimous consent agreements*,\(^{11}\) which are sometimes called *time agreements*. Complex unanimous consent agreements may be complex in name only, or may be complex in fact.

A good example of a “simple” complex unanimous consent agreement is associated with the Senate consideration of the National Missile Defense Act in March 1999. On the evening of March 11 the Senate Majority Leader, Trent Lott (R-Miss.) simply asked “unanimous consent [that] the Senate now turn to S. 257, the Missile Defense Act.”\(^{12}\) He further announced Mr. President, for the information of all Senators, then, the Senate will be able to have the initial statement by Senator Cochran, the manager, tonight. We will resume the missile defense bill on Monday, and it is our hope that an agreement can be reached on a time agreement and that amendments will be offered during Monday’s session.

I urge that Members be present on Monday to make their statements on this legislation and to offer amendments, if they have them. This is a very important defense initiative. I am pleased that we are going to be able to go

\(^{11}\)A *simple unanimous consent agreement* is typically used to expedite routine business on the Senate floor, such as dispensing with a quorum call once it has begun.

\(^{12}\)The March 11, 1999 proceeding on S. 257 can be found in the *Congressional Record* daily edition on page S2573. Other citations to proceedings on S. 257 can likewise be found in the *Record*. 
straight to the bill, and I hope that within short order next week we will be able to
get to the conclusion of this very important national defense issue.

At the end of the evening, Sen. Slade Gorton (R-Wash.) asked unanimous consent that on
the morning of March 15, “following morning business, the Senate resume consideration of
S.257, the missile defense bill.”

On the following Monday, March 15, Sen. Cochran (R-Miss.) moved that the Senate
began its full deliberation on the Missile Defense bill, including general debate on the bill and one
amendment that had been offered by Cochran himself. Toward the end of that day, after many
senators had spoken, Sen. Cochran took the floor and made the following statement:

Seeing no other Senators seeking recognition on the floor at this time, in [sic]
behalf of the majority leader, I ask unanimous consent that the Senate resume the
pending missile defense bill at 11:30 a.m. on Tuesday and at that time there be 1
hour for debate on the pending Cochran amendment, with a vote to occur on or in
relation to that amendment No. 69 at 2:15 p.m. on Tuesday and that no other
amendments be in order prior to that vote.

This agreement was reiterated at the very end of the day when, right before adjourning for the
night, Cochran asked “unanimous consent that at 11:30 a.m., the Senate resume consideration of
S. 257, the missile defense bill, under the provisions of the unanimous consent agreement reached
earlier today.”

On the following day the “Cochran amendment” was dealt with under the provisions of
this agreement and a second amendment, by Sen. Landrieu (D-La.), was offered. After debate
had proceeded on the Landrieu amendment, Cochran offered the following agreement:
I ask unanimous consent that there now be 20 minutes for debate on the pending amendment, with the debate divided as follows: 10 minutes for Senator Levin; 5 minutes for Senator Landrieu; 5 minutes for Senator Cochran. I further ask unanimous consent that following that debate, the Senate proceed to a vote on, or in relation to, the amendment, with no other amendments in order prior to the vote.

On the following day, the Senate again took up the bill, and considered both the Landrieu amendment and a few others, which were later withdrawn. As the day drew to a close, Sen. Cochran noted

Mr. President, I understand from both sides that those who are listed under the order to permit them to offer amendments do not intend to offer the amendments, and I know of no other Senators who are seeking recognition. I would suggest that we have come to the time when we could have third reading of the bill. (p. S2820)

With this observation, Cochran set in motion a series of steps that led to the expeditious passing of S.257.

The use of unanimous consent agreements in the Senate is obviously a different way of guiding the consideration of legislation than the use of special rules in the House. Note three things about the use of unanimous consent agreements in the consideration of the missile defense bill. First, consideration of the bill really got rolling when the Majority Leader, Trent Lott, was recognized and asked unanimous consent to proceed with S. 257. By tradition, the Majority Leader has the right of first recognition by the presiding officer, precisely so that he can make
these sorts of requests. Second, debate on the bill began before there was full agreement on how
to proceed with the bill—about how amendments would be considered or when the bill would
finally come up for a vote. Agreement over structuring debate evolved as the debate itself
evolved. Third, the senator managing the bill (Sen. Cochran) took the lead in developing the
unanimous consent agreements that kept the bill on track. In general, although the Majority
Leader takes an active interest in the development of unanimous consent agreements for all bills,
it often falls on the bill’s floor manager to work through the logistics of unanimous consent
agreements.

One thing that is not obvious in this accounting of unanimous consent agreements is the
role of the minority party, since all the major actors were in the majority. Needless to say,
because unanimous consent agreements are adopted *unanimously*, the minority party needs to be
involved in their development. The Minority Leader is responsible generally for protecting the
interests of the minority when such agreements are established, but practically speaking it is the
minority party members who are most interested in a piece of legislation who usually play more
active roles in developing these agreements.

In the case of the National Missile Defense bill, the minority Democrats believed it
important to make a statement in support of further negotiations with Russia over nuclear arms
reductions, at the same time the Senate was voting in favor of developing a highly controversial
missile defense system that the Russians strongly opposed. The Clinton Administration had
initially opposed the missile defense bill, and had threatened a veto of the measure. With the veto
threat looming over the Senate, and the ability of the Democrats to further slow down
consideration of a bill that the Republicans wanted to pass very badly, the minority party was able
to use the unanimous consent mechanism to get the Landrieu amendment considered, get it voted on (unanimously, as it turns out), and incorporated into the bill.

The reliance on unanimous consent in the Senate to move along legislation has created a bit of a theoretical puzzle for political scientists who study Congress. Because most bills that are brought up under the unanimous consent mechanism are subject to opposition, why do senators who oppose a bill not object to its consideration? Traditional scholars and observers of Congress have attributed the lack of objection to a “norm” of consent—in the oft-repeated words of former Speaker Sam Rayburn, you “go along to get along.” Under this understanding of legislative life, senators live in a world in which it is generally understood that everyone will, at some point, want a bill considered that others find objectionable. A senator who gains a reputation as an objector will face retaliation. Worst of all, if lots of senators are routinely objectors, there will be lots of retaliation, and business in the Senate will grind to a halt, even for non-controversial matters.

Modern students of Congress tend to explain the observed lack of objections to unanimous consent agreements through the lens of individual utility maximization. Under this view, a senator who objects to the policy direction of a bill weighs the short-term loss in utility if he fails to object to a bill and it passes versus the long-term loss in utility if another senator retaliates in the future when she wants to bring a bill he supports to the Senate floor.

Krehbiel’s (1988) exploration of the strategy of unanimous consent agreements not only lays out the full logic of this perspective, but provides a couple of examples in which strong opponents of bills were brought into a unanimous consent agreement due to their trading off the long- and short-term consequences of their actions. A straightforward example is that of Sen. Jesse Helms (R-N.C.), who had engaged in a filibuster to kill a bill in 1983 that would create a
national holiday honoring Martin Luther King. With support for the bill running very high in the Senate, and both senators and Representatives wanting to wrap up business for an upcoming holiday, Majority Leader Howard Baker (R-Tenn.) took to the floor to offer a unanimous consent agreement that the King Holiday Bill be voted on at a certain time, with an opportunity for Helms to offer a motion to recommit the bill to the Judiciary Committee.

In the midst of discussing the unanimous consent agreement on the floor, Sen. Gordon Humphrey (R-N.H.) appeared to be on the verge of objecting, over provisions in the agreement that would have precluded him offering some amendments he favored. In the midst of the colloquy over the details of the agreement, Sen. Helms himself urged Humphrey not to object to the agreement, and to allow the bill to come to a vote.

Why was Helms, who had just led a filibuster against the King Holiday Bill, now so eager to see the bill come to a vote? One will never know the answer of this question for sure, but it is interesting to note that immediately after the unanimous consent agreement was adopted allowing for a final vote on the King Holiday Bill, the Senate then considered a unanimous consent agreement allowing for the consideration of the Dairy and Tobacco Act, which Helms strongly supported. The overall package—King Holiday Bill plus the Dairy and Tobacco Act—was clearly preferable in Helms’s eyes to the King Holiday Bill only. In addition, the coupling together of the two bills in rapid succession created a mechanism for senators to retaliate against Helms should he object to the King Holiday Bill.

All-in-all, then, reliance on complex unanimous consent agreements in the Senate is not only a product of the egalitarian ethos and formal rules of that chamber, but it also provides a setting for complex strategic maneuvers. It is no wonder, then, that the Senate has revered those
senators who have mastered the rules and practices of the chamber, such as Robert Byrd (D-W.Va.), since the strategy is played out on the floor of the Senate, among the individual senators, rather than among a specialized group of senators, in a committee room, as it happens in the House.

Floor considerations—general issues

In both the House and the Senate, once legislation is scheduled, what many people regard as the “real” business of Congress lumbers into view—debating, amending, and passing bills on the floor. In this section, I review these steps.

Tab. IX-7 Before getting into the meat of legislating, it is important to know that both the House and Senate have established orders of business in their Standing Rules, which structure how each day proceeds. A summary of these orders of business is produced in Table IX-7. As we have come to expect, the House’s standard order of business is more detailed than the Senate’s. Yet even this comparison of the formal House and Senate order of business doesn’t reveal the most important difference between the two chambers, which involves the existential question of what a day is.

In the House, there is no ambiguity about what a day is. When the House adjourns for the evening, it then starts up the next day following the standard order of business, unless there is unanimous agreement to dispense with certain elements of it. The Senate, however, is able to finish its business for the day and return the next calendar day and to do work on a legislative day which is unchanged from the day before. In general, if a chamber recesses rather than adjourns, the legislative day remains unchanged the next time the chamber convenes, even if it is
on a different calendar day. Because it typically recesses rather than adjourns at the end of each calendar day, Senate legislative days are often out of sync with the real-world calendar.

The distinction between calendar and legislative days is important in the Senate because the standard order of business applies only to the beginning of a legislative day. Most importantly, at the beginning of a legislative day, the Senate must proceed with morning business, which is a hodgepodge of speeches, reports, and messages that must be dealt with. Dealing with morning business gives senators all sorts of opportunities to delay action, and therefore the Senate has adopted the practice of simply recessing from day-to-day, rather than adjourning every evening. Doing so speeds up business considerably.

Committee of the Whole in the House
The heavy lifting of legislative floor action in the House of Representatives is done using a parliamentary device called the Committee of the Whole. This device actually precedes the history of Congress, going back to the early history of the English Parliament. In Parliament, Committee of the Whole proceedings were developed so that members of Parliament could exclude the Speaker of Parliament, who was a representative of the King, from its proceedings. As Committee of the Whole, Parliament was not formally in session, but it did debate and provisionally alter laws, presided over by a regular member of Parliament.

Both chambers of the U.S. Congress adopted Committee of the Whole mechanisms in their earliest days, but only the House continues to rely on it currently. The advantage of the

13The House sometimes gets its calendar and legislative days out of whack, but this is much less common than in the Senate.
Committee of the Whole is primarily the fact that a majority of the full House need not be present in order for the Committee to do its business. As we saw in Chapter 3, in the 1880s the quorum of Committee of the Whole was changed to 100, where it has stayed ever since. The purpose behind lowering the size of the quorum in Committee of the Whole to something less than a constitutional quorum was to make it harder for the minority to obstruct and delay the consideration of legislation it opposed.

And as we saw in the discussion of special rules, most of the real work on legislation occurs in Committee of the Whole. Amendments may be offered and debate may be had on both amendments and the whole bill. Once amending and debating in Committee of the Whole are finished, the committee “rises” and reports what it did to the House, now in formal session. Of course, this is mostly a formality, but it does mark an important transition in the development of legislation.

The original committees of jurisdiction have an important advantage according to the rules under which legislation is considered in Committee of the Whole. Under the rules, any amendment that is defeated in Committee of the Whole generally may not be brought back up for a vote once the House reconvenes. However, any amendment that is adopted by Committee of the Whole must be re-approved by the House once the Committee of the Whole rises. Because a majority of the committee that reported the bill usually opposes floor amendments, this provides yet another small advantage that is given to committees as they try and protect their legislative product on the floor.

Over the past generation, the most important development in Committee of the Whole proceedings has been how votes on amendments are conducted. Until the early 1970s, there was
no provision for a recorded roll call vote in Committee of the Whole. The formal name for voting in Committee of the Whole is **teller voting**. In that time, it was common for a bare quorum to vote on amendments, and for House members to use the lack of a record to obfuscate on the positions they had taken on amendments. Because the defeat of an amendment in Committee of the Whole meant that the matter could not be revisited in the House—where roll calls on amendments *are* recorded—reformers charged that House members could take positions publicly, but then act contrary to those public positions with impunity when they voted in Committee of the Whole. Because the 1950s and 1960s—when the issue of the non-recorded teller vote arose—was a time when liberal reformers charged that the House committee system was biased in a conservative direction, even though the House was nominally controlled by Democrats, ending the practice of non-recorded teller votes in Committee of the Whole became a goal of House liberals.

Originally, teller voting in Committee of the Whole was quaint: All those supporting an amendment formed a line and marched by members of the House, who recorded the number of members who favored the amendment. Then, opponents of the amendment would form a line and march by the tellers, who would count them up. At the end of this process, the number voting yea and nay would be known—only the identities of those voting yea and nay would be unknown.

The demise of this form of teller voting involved a small amount of political theater. In the 1960s, the liberal Democratic Study Group (DSG) took the lead in trying to bring about the recording of teller votes. Staff from the offices of DSG members would sit in the House galleries during teller votes and make a note of who voted with the yeas and who voted with the nays. Because the House rules prohibit writing while in the House galleries, the form of note-taking was
Debate is generally not the best way to learn about the consequences of legislation. Committee reports are a better source of information, for instance, as is the research of one’s own mental. After the vote, these staff members would rush from the gallery and furiously write down the names of the yea and nay voters.

Needless to say, this mechanism was fraught with error, which is what brought it to an end, at the same time recorded teller voting was begun. In 1973 the House began the practice of recorded teller votes, in which House members vote using an electronic system that records how everyone voted and instantly tallies the result. As a consequence of recorded teller voting, participation in Committee of the Whole roll calls became nearly universal, and the number of roll calls in Committee of the Whole shot up several-fold.

Debate and Its Limitation

Debate serves many purposes in Congress. One of the purposes it usually does not serve is changing the minds of other legislators. By-and-large, senators and representatives come to Congress with a firmly-established set of beliefs about government action which have been articulated to their constituents. There is almost nothing that floor debate can do to change minds in a fundamental way.

This is not to say that debate does not convey new information, or that debate is a cynical charade. Debate on the floor of Congress is one setting among many, in which the details of legislation and their anticipated consequences are discussed. Even MCs with unswerving political principles need to understand how particular pieces of legislation map onto those principles, and thus all MCs rely on debate to help learn more about particular bills.¹⁴

¹⁴Debate is generally not the best way to learn about the consequences of legislation. Committee reports are a better source of information, for instance, as is the research of one’s own
Legislative debate also draws the attention of the media, prompting them to report on legislation, thus getting the legislation in question into the public domain. It was this function of debate that Woodrow Wilson thought most important when he wrote *Congressional Government*. Not only does debate periodically draw in the attention of the public, but even more often debate draws the attention of other government actors, who rely on congressional debates to clarify for them **legislative intent**. Because debate is recorded, *verbatim*, in the *Congressional Record*, it serves as a record of what members of Congress—and certainly the members of Congress who speak on an issue—anticipate will happen if a bill is passed.

Therefore, while debate serves various functions, most of those functions aren’t unique to debate itself—information about bills can be conveyed in a wide variety of ways. Given the limited utility of debate at the end of the legislative process, the most important role of debate on legislative intent.

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15 Characterizing the *Congressional Record* as providing a *verbatim* transcript of congressional proceedings is a bit generous, since representatives are often given leave to *revise* and *extend their remarks*, which basically means editing them to leave a more pleasant impression upon the reader. In recent years congressional rules have been changed to help the reader figure out which material in the *Record* was actually delivered on the floor and which was inserted or altered.

16 The issue of legislative intent is one of the most interesting, and contentious, subjects related to congressional lawmaking. Congress only enacts laws, not debates or committee reports. There is nothing stopping a legislator from misrepresenting in debate what the majority “intended.”
the floor of the House and Senate isn’t informational, but strategic. The most important thing about the debate of a bill on the floor of the House or the Senate is this: while the chamber is debating the bill, it is not passing the bill. Furthermore, while it is debating bill A, it is not considering bills B, C, D, and so on. Debate is a significant way to delay action. Both chambers have different ways to deal with debate-induced delay.

The House has the most rule-bound and regularized devices for dealing with debate-induced delay. The House Rules limit debate to one hour on measures that are brought before it, and limit debate to five minutes on amendments considered in Committee of the Whole. The House has a rule allowing a majority vote to cut off debate on a bill—called the motion for the

*previous question*—and, of course, most major legislation is considered under the debate restrictions delineated in a special rule.

Under the Senate rules, senators usually enjoy the right of unlimited debate. Taking the floor in the Senate and talking endlessly for strategic reasons is termed the *filibuster*. Until 1917, the right of unlimited debate was absolute. That changed in 1917, when the Senate adopted *Rule XXII*, which provides a mechanism for *cloture*, the term used for cutting off debate in the Senate.

The moment that prompted the adoption of Rule XXII was a dramatic one in American history. President Woodrow Wilson had proposed arming American merchant ships, in response to the war that was waging in Europe, and a small minority of senators filibustered the bill—holding up all Senate business for twenty-three days in order to keep the body from acting on this proposal. The Senate’s failure to adopt his proposals on the eve of America’s entry into World War I prompted Wilson’s famous tirade against the Senate:
The Senate of the United States is the only legislative body in the world which cannot act when its majority is ready for action. *A little group of willful men,* representing no opinion but their own, have rendered the great government of the United States helpless and contemptible. (emphasis added)

In response to Wilson’s disgust, and to popular sentiment, the Senate adopted its cloture rule early in the following Congress. However, the rule as originally written did more to protect the tradition of unlimited debate than to encourage limiting debate. Rule XXII originally required a 2/3 vote to cut off debate, and then allowed each senator another full hour of debate before a vote could be taken. Over the next half century, the cloture procedure was rarely invoked, and when it was, it almost always failed.

Although the rule number has remained unchanged for nearly a century, Rules XXII has changed over that time, as has the practice of filibustering itself. The practice of unlimited debate re-entered the national limelight in the years following the Second World War, when the issue of civil rights was current. Although guaranteeing equal legal protection for African Americans was a proposition that most Americans supported, along with most members of Congress, Southern representatives were vehemently opposed to Civil Rights legislation, and they used every parliamentary mechanism at their disposal to halt its march.

During the Civil Rights era, wrangling over debate and the cloture rule was as common—if not more so—as actual wrangling over the substance of civil rights legislation. The most dramatic moment in this era came in the consideration of the 1964 Civil Right Act, when the motion to consider the bill was filibustered by opponents for 16 days. Once debate on the motion to proceed ended, civil rights opponents held the floor for 57 days in a filibuster against the bill
itself. In the end, 2/3 of the Senate agreed to invoke cloture, but getting to that point required great political theater, including calling the Senate into 24-hour session, which necessitated senators sleeping on Army cots that were set up in the Capitol hallways.

Fig. IX-6 Ever since the civil rights era, two important changes have overcome the filibuster. First, the practice of the filibuster has changed dramatically. No longer reserved for portentous legislation, opponents are often willing to threaten a filibuster over the most minor of bills.\textsuperscript{17} This, in turn, has led to a number of tactical changes regarding debate and filibustering. For instance, bill supporters now often try and preempt filibusters by filing cloture petitions \textit{before} a filibuster has even begun. In addition, in the 1970s the Senate has adopted a practice of allowing legislation to proceed on different tracks, in a sense allowing a filibuster to be turned off and on at will, so that it won’t affect unrelated Senate business. This latter development has significantly lowered the cost filibustering and thus increased the frequency of its occurrence. The recent rise in the frequency of filibusters is illustrated in Figure IX-6, which graphs the number of cloture attempts and successes from 1919 to the mid-1990s.

The second important change in the filibuster in more recent decades has been a series of alterations in the mechanics of the cloture process, including changes in the majority necessary to cut off debate. Cloture currently operates like this: Sixteen senators who wish to end debate on a bill must sign a petition and present it to the presiding officer. Two days after the petition has been presented, the question is then put as to whether a vote on the bill should be held. If 3/5 of

\textsuperscript{17}While it is usually considered bad form to threaten a filibuster outright in public, it is common for senators who oppose a bill to remark, “we will have plenty of time to explore the merits of the bill”—everyone knows what this means.
the Senate membership votes yes, cloture is invoked. When cloture is invoked, the Senate may still debate the matter for another 30 hours. At the end of that period, the Senate is then required to vote on the underlying matter.

The filibuster is such a potent parliamentary weapon that most senators desire to avoid it, if possible, by accommodating the preferences of senators who might filibuster. If accommodation is impossible, then the necessity to get a 3/5 vote to invoke cloture alters what type of legislation can pass the Senate. This is easily illustrated through the spatial model.

Consider the example in Figure IX-7. Here, the median senator is identified as \( M \) and the status quo is designated with \( Q \). If legislation had to pass through a simple majority, it would need to be located within the win set of the status quo, which is indicated on the figure as \( W(Q) \).

Now, suppose instead that the bill has to clear a cloture hurdle, and that senators will only vote to cut off debate if they favor the bill over the status quo. In this case, the median member is no longer pivotal. Rather, it’s the senator who lies 2/5 of the way from the extremes of the distribution that is in the direction of the status quo. This member is labeled \( C \) in the figure. The preferred-to set of member \( C \) is labeled \( P_c(Q) \). Now for a bill to pass, the bill must be located in the intersection of \( W(Q) \) and \( P_c(Q) \), which in this case corresponds exactly with \( P_c(Q) \).

In this example, the existence of the 3/5 cloture rule has constrained the amount of policy change that is possible compared to what a majority of the Senate would support without the 3/5

\[^{18}\text{Note that the majority required to invoke cloture is } 3/5 \text{ of the entire membership, not } 3/5 \text{ of the Senate present and voting.}\]

\[^{19}\text{As we have already seen, the primary consequence of having to accommodate in the face of a threatened filibuster is the complex unanimous consent agreement for scheduling legislation.}\]
rule. While there are times when the 3/5 cloture rule does not affect the type of bill that can pass the Senate, there is never a time when the 3/5 rule gives the Senate more latitude in writing legislation compared to a simple majority vote.

There is a more substantive interpretation that can be given to the example in Figure IX-7, as well. Assume for the moment that all Republican senators are ideologically to the right of all Democratic senators. If this is the case—and it was literally true in the 106th Congress—then the median senator will be a Republican whenever Republicans hold a majority of the chamber. What is the party identification of the pivotal senator for the cloture vote when Republicans hold a majority? If 60% or more of the senators are Republicans, then the pivotal cloture senator will be a Republican, otherwise it will be a Democrat. It is very unusual for the majority party in the Senate to have as many as 60% of the seats, and therefore in most cases the pivotal senator will be a Democrat (Republican) whenever Republicans (Democrats) control the chamber. Therefore most of the time, whenever the status quo favors the minority party, the filibuster is a tool that provides a small advantage to the minority. To pass controversial legislation these days, Republicans have to accommodate moderate Democrats. This suggests, finally, that senatorial decisionmaking should be slightly more bipartisan and “moderate” than in the House, holding everything else constant.

Amending legislation

Although debate, in an of itself, rarely changes things, amendments do. And, while many bills that are reported out of committee have broad support within the chamber, specific provisions may
not, and it is the amending process that allows opponents of specific legislative provisions to have their say.

Because amendments are often more controversial than the underlying bills they are attached to, amendments themselves are often more well-known than the underlying bills. For instance, the “Hatfield-McGovern amendments” are well-known for attempting to cut off funds for the Vietnam War. Few remembers that the amendment was proposed to a military procurement bill (1970) and to the bill proposing an extension of the military draft (1971).
Likewise, the “Hyde amendment” is a well-known mechanism that has been used to restrict abortions in the United States, when federal funds have been involved. The Hyde amendment is so well-known that it has entered the American political lexicon as a phrase referring to any abortion restriction attached to legislation, even if it hasn’t been offered by Henry Hyde (R-Ill.), its original champion.

Both the House and Senate have basic rules that structure the offering of amendments. While there are important ways to skirt these rules in both chambers, the basic structure is so important in both chambers that it is best to start there.

The rules of both chambers restrict how extensively legislation may be amended on the floor. It is often difficult to convey the structure of the amendment process verbally, and so the structure is often communicated graphically through a device called an amendment tree. The House rules specify one general amendment tree for that body, while the Senate actually specifies four, depending on the parliamentary situation.

Fig. IX-8 The House amendment tree is shown in Figure IX-8. The upper half of the figure is the traditional way of communicating the amendment tree, and by its form you can easily see why it’s
called a tree. The “trunk” of the amendment tree is the basic underlying bill. A House member may offer an amendment to the bill, and another House member may offer an amendment to that amendment. While the first amendment is pending, yet another House member may offer a substitute to the amendment. And, finally yet another House member may offer an amendment to the substitute. The original amendment and the substitute are referred to as amendments in the first degree while the amendments to the original amendment and to the substitute are referred to as amendments in the second degree.

A general principle of parliamentary law is that you deal with amendment by “paring back” the amendment tree from the outermost branches to the trunk. Technically, you deal with second degree amendments first, then the first degree amendments. Another principle is that one perfects competing amendments before having them face off against each other. These two principles are illustrated in the House amendment tree by the order in which amendments are disposed of.

Assuming an amendment tree is fully filled-out, voting on the amendments proceeds as follows: First, any pending amendment to the amendment is disposed of. If adopted, the amendment is incorporated into the original amendment, leaving one branch of the tree open. In theory, another member could then move another amendment to the amendment, and it, too, would need to be disposed of. Once all the amendments to the amendment have been disposed of in this sequential fashion, attention turns to the amendments to the substitute. Again, the pending

\[\text{20}^2\text{A substitute for an amendment differs from an amendment to an amendment in the following way: the amendment to the amendment modifies some narrowly-focused part of the original amendment, while the substitute is a more comprehensive alternative to the original amendment, which may differ from the original amendment on many different particulars.}\]
amendment to the substitute is voted on. If passed, it is incorporated into the original substitute and another amendment to the substitute could be offered.

Once both the amendment and the substitute have been perfected, the question comes down to whether the substitute should take the place of the original amendment. Regardless of whether the substitute passes, disposing of the substitute now leaves the substitute branch empty, and it would theoretically be possible to fill up that branch again. This is a rarity in practice.

Finally, the amendment is considered and voted up or down. Once disposed of, another amendment to the bill is then possible. While it is unusual for the full amendment tree to be filled out and voted on, it is not at all unusual for several first degree amendments to be offered to a bill, one after the other.

The amending process in the Senate is simultaneously more and less complex than in the House. On the one hand, there is not one, but four different amendment trees possible in the Senate, depending on the parliamentary situation. These different trees allow for a range of two to twelve different amendments to be pending at once, compared to the four amendments possible under the House amendment tree. On the other hand, the most common amendment tree in the Senate is the most simple one under its rules—more simple, in fact, than the House’s. This tree simply allows, in order (a) an amendment and (b) an amendment to the amendment.21

21The range in amendments allowed under the Senate rules is due to different rules, depending on whether the amendment proposes a straightforward change to the bill or whether the amendment proposes striking out some provision of the bill and inserting something else. The greatest number of amendments is allowed to be pending whenever the amendment proposes to strike out the entire bill and insert a whole other bill in its place.
The strategic possibilities with amendments are vast, as you can imagine. Filling out an amendment tree is just like filling out an amendment game tree of the sort we explored in Chapter 1. Indeed, it is quite possible to translate the traditional congressional amendment trees into such a game tree. In the lower half of Figure IX-7, I have done just that.

The strategic possibilities of filling out game trees periodically is used to the advantage of legislative leaders. A much-reported strategic amendment episode occurred in early 1998, when the Senate considered the McCain-Feingold campaign finance reform proposal. Trent Lott, the Senate majority leader, was an opponent of the McCain-Feingold proposal, and used his right of first recognition to get the floor and then make a series of amendments that boxed out other amendments that might have been offered by supporters of McCain-Feingold—who reportedly constituted a majority of the Senate. Here is how *Roll Call*, the “home town newspaper of Capitol Hill,” reported on Lott’s tactics:

All of the confusion [over Lott’s tactics] stems from when Lott began planting his tree Tuesday by calling up the underlying bill known as S.1633, the Paycheck Protection Act. The bill would require unions to seek prior approval from members and non-members alike before using their dues and fees for political purposes.

At that point, the McCain-Feingold bill, S.1646, was offered as a substitute. [Sen.] Snowe's [R-Maine] measure, S.1647, was offered as an amendment to the McCain-Feingold substitute.
Senate procedures allow only two amendments to any pending bill, so Lott offered S.1648, an amendment that would restrict the Federal Communications Commission from acting unilaterally to require free air-time for federal candidates.

Then Lott went on to block any changes to his own S.1633 by offering two amendments, S.1649 and S.1650, with the same content as S. 1648.

Finally, Lott offered a motion to recommit—i.e., send the bill back to committee with instructions—foreclosing on the ability of the reformers offering their own motion to commit. And he offered two amendments to that motion, ensuring it could not be further amended.

With no one able to introduce any further amendments and with no votes to table pending measures having been taken, Lott's moves left the Senate in a virtual stalemate over campaign finance reform.22

Strategic Use of Amendments

Trent Lott’s deft use of the Senate amendment rules is a fitting transition from a discussion about the “regular order” of amending legislation to a discussion of an even broader set of issues affecting the actual use of amendments in the House and Senate. Again, the House and Senate operate under different rules, which has resulted in a slightly different set of amendment issues and strategies in the two chambers. In the House, most attention has been paid to various mechanisms aimed at guiding the amendment strategy in the Committee of the Whole. In the

22“Parliamentary Moves Thwart Reform, Burton 'Filling the Tree' Blocks McCain Bill,”

Senate, the greatest attention has been paid to “riders,” or non-germane amendments to legislation. I will discuss these two in turn.

In the 1960s and 1970s, as the House rank-and-file began demanding greater influence over the legislative agenda, members began demanding greater access to the amendment process. In the Democratic caucus, for instance, this eventually led to a rule that stated that the Democratic members of the Rules Committee could not support a closed rule if the Democratic caucus objected. As the rank-and-file demanded greater say over the amendment process, congressional leaders—including committee leaders—also began searching for amendment strategies to counteract the rank-and-file.

The most important consequence of this tension between the rank-and-file and leadership has been the growing complexity of rules. Where we could once simply talk about closed and open rules, the Rules Committee now classifies special rules into seven different categories. Most of these special rules affect which amendments are allowed to be considered in Committee of the Whole.

One important category of special amendment rules falls under the category of *king of the hill* procedures, which has recently been replaced by *queen of the hill* procedures. The king of the hill procedure was developed as a way of dealing with several House members who wanted to offer a similar first-order amendment to a bill. Under a king of the hill procedure, the House votes on a series of amendments to a bill, with the last amendment to receive a majority (if any) being adopted. This procedure allows members to conceivably vote to support several inconsistent amendments, knowing that the later votes count more than the earlier ones.
The newer queen of the hill procedure adopts a different rule for determining which amendment prevails. Under this procedure, the amendment receiving the most votes, if any, is adopted. The queen of the hill procedure makes the sequencing of the amendments less important to the final outcome, although ties among amendments are usually resolved in favor of the last amendment voted on.23

A queen of the hill procedure accompanied consideration of a proposed constitutional amendment providing for congressional term limits (H.J.Res. 2) in the 105th Congress, which was considered in early 1997. The special rule that allowed consideration of the constitutional amendment, H.Res. 47, allowed ten different amendments to be considered under the queen of the hill procedure. The first seven were variants of terms limits that had been passed by voters in the states of Arkansas, Colorado, Idaho, Missouri, Nebraska, Nevada, and South Dakota, and were amendments proposed by representatives from those states. The amendments were offered in alphabetical order by state. None of them received a majority of support.

In the Senate, the most important special topic attending legislative amendments is the practice of allowing non-germane amendments to be attached to legislation, which are sometimes called riders.24 Unlike the House, the Senate has very few rules requiring debate or

23In general, the Queen of the Hill procedure favors the median in the chamber, since the proposal most favored by the median (assuming symmetrical utility curves) will get the most votes.

24Do not confuse a rider with a “proviso,” which is legislation attached, usually to an appropriations bill, restricting how the funds may be spent. The Hyde Amendment is a type of proviso.
amendments to be germane to the topic at hand.\textsuperscript{25} This allows any senator to bypass the committee process altogether and get a bill considered directly on the floor. The use of riders is common. For instance, in the summer of 1999 at one point Senate Democrats attempted to attach a bill called the “Patients’ Bill of Rights”—which regulated Health Maintenance Organizations—to the Agriculture Appropriations Bill.

\textit{Reconciling differences}

If a bill has survived the parallel tracks in both chambers, it is one step away from actually passing and being signed into law. A bill must be passed in identical form in both chambers before it can be forwarded to the president for his or her signature. The reconciliation of differences between the two chambers thus become the last topic, sequentially, to attend to.

How differences are reconciled mostly depends on the complexity of the law and the controversy attending its passage. At one end of the continuum, we have simple, non-controversial laws that often simply honor individuals in one way or the other. These bills—such as bills naming federal buildings after people or proclaiming National Eat More Cheese Day—often have no differences to be reconciled, and therefore the issue is moot. At the other extreme of the continuum the bill is so complex and controversial that a bill may be the “same bill”

\textsuperscript{25}This is not to say that non-germane amendments can’t become a strategic weapon in the House. For instance, the special rule that allowed for the consideration campaign finance reform legislation in the House in 1998 allowed the consideration of 258 non-germane amendments to the bill, in an effort to kill the popular “Shays-Meehan” amendment through delay.
simply because it has the same bill number—and nothing more. In the middle are bills that have been changed in one or two particulars as they have moved from one chamber to the other.

In the middle range of bills, the joint rules of Congress provide two simple procedures for reconciling these differences. First, a bill that has passed the House (say) and then passed the Senate in a slightly different form can be returned to the House, with a request that the House simply adopt the Senate bill. Second, and in a related fashion, the second chamber could return the bill to the first chamber. The first chamber could then, in turn, amend the bill and send it back to the second chambers. This legislative tennis match could continue until both chambers accepted the other’s amendments.

In practice, though complex bills are regularly taken to a conference of the two chambers immediately after passage in the second chamber. In Chapter 7 I briefly discussed the role and function of conference committees. Here I discuss their behavior in a little more detail.

Formally, both chambers must agree with a conference, but agreement is almost always given. Once a conference has been agreed to, the presiding officers in the two chambers immediately appoint a conference committee which negotiates away the differences between the two versions of the bill and reports a single version back to both chambers. For most of congressional history, the report of the conference managers on how the differences between the two bills were reconciled was opaque and uninformative. Nowadays, however, in addition to the conference report, which spells out in technical detail how provisions of the bill have been altered, compared to the two chambers’ versions, a joint explanatory statement discusses the House and Senate versions of inconsistent legislative provisions and then explains how those differences were reconciled.
As I mentioned in Chapter 7, the conference proceeding often sets up a tension between the original committees of jurisdiction in the two chambers and the floors. The conference committee is typically dominated by members of the original legislative committees that reported the bill to the floor. If the floor later on amended the bill, it is then often legislative committee members (who may have opposed the amendment) who are in a position to defend the amendment, or not. Once brought back to the floor, a conference report may not be amended. Instead, the chamber may choose to reject the conference report altogether or instruct the conferees to go back into conference and try again. Thus, while the floor does have some control over the final content of the conference report, its ability to act if a majority is dissatisfied with the report is limited to the blunt instruments of rejection or recommittal to conference.26

There are rules in place that attempt to protect the floors from rogue conference committees—committees that go off and write a report that is barely acceptable to the chambers, but is overwhelmingly acceptable to the original committees of jurisdiction. One such rule is the *scope of the differences* rule. Under this rule, any reconciliation of House and Senate provisions

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26 One further parliamentary detail strengthens the hand of the conference committee. When the *first* chamber considers the conference report, its options are to accept, reject, or recommit the report back to the conference committee. If the report is accepted, then the conference committee is dissolved. However, the report still needs to be considered by the second chamber. In the second chamber, there is no long a conference committee to which the report could be recommitted. Therefore, its only choices are rejection or acceptance. If a conference report is rejected, that places the bill back where it started, and the whole conference process must begin again.
must be within the space bounded by the original House and Senate provisions. The implementation of this rule is most readily seen in appropriations bills. Suppose the House approves $50b for a new fighter jet and the Senate approves $100b for the same program. Then, under the rules, the conference committee must report out a bill that allows for some amount between $50b and $100b.

Fig. IX-9 The difficulty in enforcing this rule should be obvious: The conferees would only violate it if the two chambers would prefer the conference report that violates the rule compared to the failure of the conference report altogether. This problem is shown in the example illustrated in Figure IX-9. For this example, suppose the bill provides money to localities for education. The assistance in the bill is allocated in two ways. Some is based on formulas, such as population, and other aid is based on grants that localities can apply for, after demonstrating they have a good idea about how to spend the money. The status quo ($Q$) is shown, along with the two hypothetical win sets for the two chambers. In order to pass, the bill must lie within the intersection of these two win sets $W_s(Q) \cap W_h(Q)$. Finally, the location of the bill as passed in the two chambers is indicated by $B_s$ and $B_h$.

Under the scope of the differences rule, the amount of money allocated based on formulas must lie somewhere in the region indicated on the $x$-axis, while the amount of money allocated based on grants must lie somewhere in the region indicated on the $y$-axis. All points in the policy space that satisfy this requirement are indicated by the box that is drawn in the figure. Suppose, however, the conference committee reported a bill located at $B$ in the figure. What are the two chambers to do?
In theory, a point of order could be brought against the bill, since the provision for educational aid lies outside the scope of the differences on both dimensions. However, the conference report does lie within $W_s(Q) \leq W_H(Q)$. Concurrent majorities in both chambers prefer this bill to doing nothing. If the report is rejected, or recommitted, there is no guarantee that the conference committee would not do the same thing again. It would be possible for one, or both, of the chambers to instruct their conferees on how to craft these two provisions of the bill, but the only enforcement mechanisms to guard this instruction would again be for the floor to threaten to reject a bill that is favored by majorities compared to the status quo, in the hopes of getting something even better. Thus, while it is theoretically possible for the floor to keep rejecting conference reports that fail to honor the rules about the scope of the differences, in practice bills that violate this rule rarely are rejected.

The view of conference committees I have just presented suggest that they hold a very strong strategic position in legislative consideration. Because conferees are typically drawn from the legislative committees of jurisdiction, this means that the committees themselves have a great deal of strategic influence due to the conference proceeding. This is not to say that committees regularly get congressional majorities to act against their will—quite the contrary. What it does say is that even to the end of legislating, committee influence cannot be discounted.

III. Roll Call Votes and What They Can Tell Us
The final stage in the consideration of legislation in both chambers is voting on it. Voting is significant for two reasons. First, votes determine outcomes. Second, votes provide evidence about how individual representatives stand on the issues. If we observe a senator making enough
roll call votes, we can get clues about the broad principles that the senator supports. If we observe the pattern of votes of one senator and compare it with patterns of others, we can develop evidence about how senators compare to one another and what sorts of coalitions are likely to emerge in future votes.

Interest groups have long been aware of this second feature of roll call voting, and have used the roll call votes of MCs to rate members according to how supportive they are of the group’s agenda. The granddaddy of interest group ratings is the one done by the Americans for Democratic Action (ADA), a liberal political organization, which has been using roll call votes to rate senators and House members since the 1940s. The ADA methodology is very simple, and is common among all organizations that followed in its footsteps to develop their own ratings. In 1999 the ADA chose 20 “key” roll call votes in the House and in the Senate. Key votes in the Senate included voting on whether to convict President Clinton on obstruction of justice charges in his impeachment trial (the ADA opposed conviction), vote on an amendment to require the Department of Health and Human Services to report on the ability of former welfare recipients to achieve self-sufficiency off welfare (supported), and passage of the fiscal year 2000 appropriations bill for the District of Columbia (supported).

The ADA support score—which the ADA itself calls its “Liberal Quotient,” or “LQ”—is calculated by adding up the number of times a senator or representative supported the ADA position on one of these issues and then dividing by the number of votes it was following that year.

The ADA issues a press release every year, once it has calculated the most recent Liberalism Quotient. In that press release, the ADA often trumpets its “Heroes”—those who
have a perfect ADA score of 100%—and castigates the “Zeroes”—those with an ADA score of 0%. For anyone conversant with American politics, the identity of the Heroes and Zeroes isn’t surprising. In 1998 the Heroes included half the Massachusetts House delegation, Sen. Paul Wellstone (D-Minn.), and Rep. Bernie Sanders (I-Vt.). (Liberal icon Edward Kennedy, D-Mass., received an LQ score of 95%. Zeroes included Rep. Henry Hyde (R-Ill.), Mary Bono (R-Calif.), Newt Gingrich (R-Ga.), and Sen. Jesse Helms (R-N.C.).

The ADA’s conservative counterpart, the American Conservative Union, also rates members of Congress, using the same methodology, but instead of rewarding liberal votes, it rewards conservative votes. Instead of Heroes and Zeroes, its annual announcement of scores trumpets the Best and the Brightest in the two chambers and shames the Worst and the Dimmest. The ACU’s Best and the Brightest in 1999 included Newt Gingrich (R-Ga.), Bob Barr (R-Ga.), and Jesse Helms (R-N.C.). The Worst and the Dimmest included Maxine Waters (D-Calif.), John Lewis (D-Ga.), and Edward Kennedy (D-Mass.).

There is a certain amount of political theater involved in the release of these scores every year, but there is a serious purpose behind them, as well. Members of Congress take positions on many issues, and it is difficult, if not impossible, for average voters to follow all those positions. The types of ideological ratings reported by groups like the ADA and ACU provide important information to voters about the general tendencies of their representatives.

One cautionary note to introduce about these ratings is this: It might be that the issues chosen by groups like the ADA and ACU are atypical of those considered by Congress more generally. If so, then the reports of “Heroes and Zeroes” could be fundamentally misleading and potentially dangerous. In fact, all the interest group ratings tend to produce support scores that
are highly correlated with each other—even when they choose different key votes to follow. And, ratings like the ADA’s LQ are highly correlated with more robust techniques, like the NOMINATE technique we will review below.

In addition to providing information about individual members of Congress, interest group ratings might be used to provide a general overview of the ideological status of the entire Congress. One such overview is show in Figure IX-9, which is a histogram of ADA and ACU scores for the House in 1998. The most obvious thing about these two graphs is that they both describe a legislative chamber full of extremists: most House members had ADA or ACU scores that either approached 0 or approached 100, with very little in-between. If we were to divide either of the graphs to show the two party contingents, we would also see that the view is one of extreme parties—the Democrats are virtually all extremely liberal and the Republicans are almost all extremely conservative. Figure IX-10 shows such a graph using the 1998 ADA scores.

Are the parties really this extreme? As I discussed in Chapter 7, many observers of Congress have remarked on the greater partisanship and polarization in Congress over the past two decades. The Congress might actually be an institution populated by nothing but ideological extremists. Before drawing such conclusions, however, we need to explore a little more deeply how interest group rankings are developed. When we do that, we will see that the interest group exercise is very good for identifying the group’s friends and enemies, but it is very bad for providing a nuanced picture of the congressional ideological landscape.

I begin my exploration of how interest groups ratings work by going back to the standard spatial model. Using that model, let us suppose that all members of Congress can be arrayed from left to right, based on how liberal or conservative they are. We can not only line up all members
of Congress, but we can also place interest groups on this ideological scale. We can certainly do
so for groups like the ADA and ACU, which champion broad ideological stances. Where would
we place the ADA and ACU on this left-right scale? While we might argue about whether they
should go all the way to the right or left of the scale, we can be certain that the positions
espoused by these groups are pretty close to the left-right ideological anchors found in Congress.
To aid in clarity in this example, therefore, I will assume that we can place them precisely at the
ends of the ideological continuum. Finally, let us suppose that the House isn’t composed of
ideological extremists, but rather is composed of members who are drawn from a distribution that
is uniform across the ideological continuum.

Fig. IX-12 With this set-up, we can see how the interest group ratings are constructed. Basically, a
group observes Congress voting, and whenever it finds a vote that seems to pit a clearly liberal
and clearly conservative viewpoint against each other, it identifies that vote as a key vote. What
kind of votes are these? A vote that clearly offers a liberal and conservative alternative. Such
votes typically involve a status quo that is toward one end of the ideological continuum, with the
proposal being toward the other end. In such a circumstance, when a roll call vote is taken,
House members will vote for the alternative that is closer to them. As we discussed in Chapter 1,
this vote will create a cut line that divides the House ideologically, into those who vote yea and
those who vote nay. Figure IX-12 illustrates such a clear ideological vote, with the status quo
(Q), the proposal, and the cut line.

For this example, assume that the distribution of ideal points in the legislative chamber are
distributed uniformly along the full ideological dimension. The feature of Figure IX-12 to focus
on is the location of the cut line. Note that although the proposals are located at the extremes of
the ideological dimension, the cut line is close to the center of the ideological dimension. As a consequence, everyone to the left of the cut line, even moderates who are only slightly to the left of the median, are indistinguishably liberal while everyone to the right of the cut line, even moderates who are only slightly to the right of the median, are indistinguishably conservative.\(^{27}\)

If most of the roll calls that are included as key votes are of the type just described—ones that create cut lines toward the middle of the ideological space—then even moderate members will seem to take “liberal” or “conservative” positions at very high rates—much higher than their underlying ideology would lead us to expect. Is this in fact what interest groups do?

Fix. IX-13 Yes. The key votes that interest groups focus on are much more divisive than all roll call votes. This fact tends to produce artificial extremism among interest group ratings. The focus by interest groups on divisive votes, to the exclusion of frequent non-divisive votes, is demonstrated in Figure IX-13. In the first panel, I have graphed out the distribution of the voting margins in all roll call votes in 1998. Note that the vote margin distribution is bimodal, indicating that most votes in 1998 were structured in two ways—either very close (mostly along party lines) or hurrah votes. (A hurrah vote is one that passes unanimously, or nearly so.) Yet, with so many hurrah and close (less than 60%) votes, still about 1/3 of all roll call votes saw the prevailing side receive between 60% and 90% of the vote. These were roll call votes that necessarily had cut lines in the middle of the left or right of the ideological spectrum—votes that were capable of

\(^{27}\)Note also that in this example, even a few moderate conservatives get classified as liberals. Presumably, with a lot of votes with cut lines on both sides of the ideological spectrum, this problem would even itself out, but not necessarily.
distinguishing moderate liberals from extreme liberals and moderate conservatives from extreme conservatives.

The second panel of Figure IX-13 shows the distribution of voting margins for the twenty votes chosen by the ADA to construct their vote rating of House members. Almost all of these key votes were decided in the 50%-60% range, which is insufficient to distinguish moderates from extremists. Indeed, there was probably only one vote that was capable of distinguishing moderates from extremists—a vote on an amendment to a juvenile justice bill to assure that criminals couldn’t buy firearms at gun shows. This vote, in which the ADA position prevailed 305–117, helped to illuminate some distinction among conservatives. The ADA chose almost no roll call votes that similarly split liberals.

Research has indicated that while interest group ratings are useful for roughly classifying Congress into liberals and conservatives, they are useless for discovering finer ideological distinctions among members of Congress (see Snyder 1992). Therefore, political scientists have sought other methods to gauge the ideology of members of Congress, this time using a broader sample of roll call votes. This, in turn, has led to research on how to use all roll call votes to gauge the ideological positions of members of Congress.

The most commonly-used technique to uncover the ideological positions of members of Congress was developed by Keith Poole and Howard Rosenthal. They call their technique NOMINATE, which stands for NOMinal Three-stage Estimation procedure. The NOMINATE procedure starts with nothing but roll call votes, coded as 1’s (yea) and 0’s (nay), and an assumption that all members of Congress cast their votes based on the spatial model. If they do,
then it is possible to use numerical techniques, and powerful computing, to uncover the issue space that MCs were voting over and the positions that MCs took on the issues.

Consider this following example. Suppose there were eight members of Congress that were asked to vote on 10 roll call votes. Suppose also that these members’ ideal points could be represented in two-dimensional space. Every time a member votes yea, we record that as a 1, and every time a member votes nay, we record that as a 0. Now, suppose we observed the following 10 roll call votes:

<table>
<thead>
<tr>
<th>Member</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
<th>10</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>B</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>C</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>D</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>E</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>F</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>G</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>H</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

Fig. IX-14  Without any high-tech numerical techniques, we could examine this roll call record and notice certain things. For instance, some members vote together frequently, like members A and B (8 of 10 times) and G and H (9 of 10 times), while others almost vote against each other, like members A and H (9 of 10 times) and B and G (8 of 10 times). This observation might tempt us to hypothesize that A and B were extremists at one end of an ideological continuum, while G and H were extremists at the other end of the continuum. Further observing the pattern of votes, we note that the other members support either A and B or G and H at lower rates. For instance, C
supports A only 6 out of 10 times and H 4 times. Therefore, it looks like members C, D, E, and F lie somewhere in the middle of this preliminary ideological continuum. We could summarize this information classification as in the top panel of Figure IX-14.

In fact, the voting pattern was generated using the ideal points specified in the lower half of Figure IX-14, along with the designated cut lines for each vote. (Cut lines are numbered by the vote.) For instance vote number one had members D, E, G, and H voting yea and A, B, C and F voting nay. Notice that the cut line for vote number 1, which is oriented approximately at 1 o’clock on the figure, separates these two blocs of voters from each other spatially. Given the orientation of the cut line, we know that the “yea” alternative was in the northwest portion of the space, while the nay alternative was in the southeast portion of the space. However, also keep in mind that this cut line is consistent with an infinite number of locations of the yea and nay alternatives, and so we cannot say for sure where the proposals themselves where—just where the proposals divided the chamber into two blocs.

Note that the preliminary spatial locations that we developed by simply looking at the patterns of 1’s and 0’s (A and B at one end, G and H at the other, and the rest in the middle) is highly consistent with the actual data. Along the x-axis, that is precisely what we find. At the same time, the ambiguity of the 1’s and 0’s made it difficult to get a good sense about how the members were located along the second dimension, which is shown in the figure, as well. Yet, without taking the second dimension into account, it would be impossible to classify all the roll call votes properly.

The Poole-Rosenthal NOMINATE procedure is a numerical method designed for uncovering the issue space, such as the lower half of Figure IX-14, from a matrix of roll call votes
like we have just seen in the text. They assume that roll call votes are generated through the spatial model, with members voting for the closer alternative *probabilistically*. That is, they don’t (can’t) assume that the spatial model operates deterministically, since no set of data would ever be consistent with such an assumption. Proceeding iteratively, they estimate the most likely spatial location of members that would have generated the observed votes by members on the roll calls, then estimate where the cut lines were most likely located on each roll call, and then start again. They finish when the procedure can do no better by continuing the exercise.  

Fig. IX-15 Because the NOMINATE methodology uses virtually all roll call votes, it is less prone to the problem of artificial extremism than interest group ratings. With that in mind, the distribution of NOMINATE scores for 1998, shown in Figure IX-15, is instructive. That figure also shows a bipolar House of Representatives, though one that is not quite as polarized as the ADA and ACU scores suggested. Liberals (who are on the left of the figure) are much more dispersed using the NOMINATE scores than either of the interest group ratings we examined before.

As you do research about congressional decisionmaking, you will discover that there are several organizations that attempt to assign ideological ratings to members of Congress. These rankings fall between the interest group and NOMINATE methodologies in both sophistication and tendency toward inflating the degree of extremism in the chamber. The most prominent of these scores are associated with Congressional Quarterly (CQ), which is a publishing concern that covers congressional news very closely. CQ produces two others scores, the *Conservative* score, 

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28For the precise details about how the class of NOMINATE procedures work, see Poole and Rosenthal (1997) and the long list of journal articles that proceeded and followed the publication of their book.
Coalition Support Score and the Party Support Score. The Conservative Coalition Support Score got its beginnings in the 1950s, when Republicans and conservative southern Democrats regularly voted together on many issues of national importance. The Conservative Coalition score measures how often this “coalition” emerges and how often the individual MCs support it.

The Conservative Coalition Support Score measures the percentage of time a member of Congress votes with the Conservative Coalition whenever it “appears” on a roll call vote. The Conservative Coalition is said to appear whenever a majority of Republicans and a majority of southern Democrats votes against a majority of northern Democrats.

Fig. IX-16 Just as with interest group ratings, it is possible to understand the logic of the Conservative Coalition score using the spatial voting model. Figure IX-16 sketches out the spatial logic underlying the Conservative Coalition Support Score. During the heyday of the conservative coalition, Northern Democrats were mostly on the left, Republicans were mostly on the right, and Southern Democrats were in the middle. Figure IX-14 shows a stylized version of this reality, in which all Northern Democrats are to the left of all Southern Democrats, who are to the left of all Republicans. Therefore, for the Conservative Coalition to appear on a roll call vote, the cut line associated with that vote must exist in a region bounded by the median Northern Democrat and the median Southern Democrat.

Partisan support scores, likewise, are constructed by CQ using a similar logic. Formally, a party support vote occurs when a majority of Democrats votes against a majority of Republicans. An individual’s party support score is calculated by counting up the number of times a member

\[\text{29}^*\] The Conservative Coalition is not, nor has it ever been, a formal coalition, and therefore the term is a bit of a misnomer.
voted along with a majority of his party whenever majorities of the two parties voted in opposite
directions, dividing by the total number of party unity votes. Spatially, we can see in Figure IX-
14 that if all Democrats are to the left of all Republicans, then party support votes will only occur
when the cut line of the vote is within the region defined by the median Republican and the
median Democrat.

As with interest group ratings, both scores—Conservative Coalition and Party Support
scores—tend to produce a vision of Congress that is more polarized than reality. They are
superior to interest group ratings in many cases. Because of concern about artificial extremism in
interest group ratings, researchers have tended to gravitate to the use of NOMINATE scores over
the past decade, in addition to other similar techniques that use all roll call votes to rate members
of Congress. Interest group support scores and scores like the Conservative Coalition support
score still have their place in more popular and journalistic writing about Congress, since their
intuitions are easier to convey.

*      *      *

We have now drawn to the conclusion of my discussion of legislative sequencing and floor
consideration in Congress. As indicated by the length of this chapter, the issues that are raised are
considerable in number. Most importantly, however, I hope this discussion has demonstrated the
importance that the particular form of congressional organization has for the making of policy.
As I argued at the beginning of this book, preferences almost never are translated directly into

\[30\] Another technique includes that developed by Heckman and Snyder (1997), based on
principal components factor analysis.
policy outcomes when majority rule institutions are the instrument of decisionmaking. Knowing that a majority approved a policy change is only the starting point for understanding how the democratic institution worked in that case. A majority may approve a single policy change, but we also know that a majority would have approved a wide variety—perhaps an infinite number—of policy alternatives. The important questions to answer whenever we see a bill make its way all the way through the legislative labyrinth are which policy choices were allowed to come to a vote, and how was that decided?
Figure IX-1
Bills introduced and passed by Congress, 1947–1998

Figure IX-2

First year of Congress

Public bills
Private bills
Table: Annotated Version of a Simple Open Rule (H.Res. 360, 100th Cong.)

<table>
<thead>
<tr>
<th>Text</th>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Resolved, That at any time after the adoption of this resolution</em></td>
<td><em>The Standing Rules of the House normally prohibit interrupting the flow of business once the legislative day has begun. Rule XVIII (which was Rules XXIII in the 100th Congress) addresses what happens in the event a special rule has been passed allowing the Speaker to decide, at his discretion, when to bring up a bill for consideration within the Committee of the Whole.</em></td>
</tr>
<tr>
<td><em>the Speaker may, pursuant to clause 1(b) of Rule XXIII,</em> declare the House resolved into the Committee of the Whole on the State of the Union for the consideration of the bill (H.R. 3396) to provide for the rehiring of certain former air traffic controllers, and the first reading of the bill share be dispensed with.*</td>
<td><em>See the text for information about how the Committee of the Whole operates and how it differs formally from a meeting of the full House.</em></td>
</tr>
<tr>
<td><em>a</em> After general debate, which shall be confined to the bill and which shall not exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Post Office and Civil Service, the bill shall be considered for amendment under the five-minute rule and each section shall be considered as having been read.*</td>
<td><em>The rules of the House require that the full text of each bill be read aloud, in its entirety, when it is first considered.</em></td>
</tr>
<tr>
<td><em>b</em> After general debate, which shall be confined to the bill and which shall not exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Post Office and Civil Service, the bill shall be considered for amendment under the five-minute rule and each section shall be considered as having been read.*</td>
<td><em>It is traditional to divide time equally between senior members of the committee reporting the legislation. These members will, in turn, allocate time to supporters and opponents of the bill, for general debate.</em></td>
</tr>
<tr>
<td><em>c</em> The five minute rule allows for a member to propose an amendment and then to speak on it for five minutes. An opponent then speaks for five minutes and a vote is taken on the amendment. At this point House members can extend debate on the bill by moving to “strike out the last word,” which is a pro forma motion made simply for the point of allowing further debate. Once the five-minute speech is finished, the member withdraws the motion.*</td>
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</tr>
<tr>
<td><em>d</em> It is traditional to divide time equally between senior members of the committee reporting the legislation. These members will, in turn, allocate time to supporters and opponents of the bill, for general debate.</td>
<td><em>The rules require that the full text of each bill be read aloud, in its entirety, when it is first considered.</em></td>
</tr>
<tr>
<td><em>e</em> The five minute rule allows for a member to propose an amendment and then to speak on it for five minutes. An opponent then speaks for five minutes and a vote is taken on the amendment. At this point House members can extend debate on the bill by moving to “strike out the last word,” which is a pro forma motion made simply for the point of allowing further debate. Once the five-minute speech is finished, the member withdraws the motion.*</td>
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</tr>
<tr>
<td><em>f</em> Under this rule, amendments are allowed one section at a time. Regular House rules require that the actual text of the bill be read aloud before amendments can be made. Here, that requirement is dispensed with.</td>
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</tr>
<tr>
<td><em>g</em> The Committee of the Whole is technically separate from the House. After the one hour allocated for debate and the amendments that follow, the Committee must formally report to the House what happened.</td>
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</tr>
<tr>
<td><em>h</em> Only amendments that pass in the Committee of the Whole are voted on again by the full House. Amendments that lose in committee of the Whole may not be considered again by the full House.</td>
<td><em>Only amendments that pass in the Committee of the Whole are voted on again by the full House. Amendments that lose in committee of the Whole may not be considered again by the full House.</em></td>
</tr>
<tr>
<td><em>i</em> The motion for the previous question cuts off debate and requires the House to vote on what is before it. This special rule requires that all amendments be voted on in rapid succession and then for the vote for final passage to follow immediately upon the disposition of the amendments. The minority party is additionally allowed to make a motion to recommit the bill to committee, which usually allows the minority party to take a position on how it would have crafted the bill at hand. In this case the minority party is allowed to make a motion to recommit, but no debate is allowed on it.</td>
<td><em>The motion for the previous question cuts off debate and requires the House to vote on what is before it. This special rule requires that all amendments be voted on in rapid succession and then for the vote for final passage to follow immediately upon the disposition of the amendments. The minority party is additionally allowed to make a motion to recommit the bill to committee, which usually allows the minority party to take a position on how it would have crafted the bill at hand. In this case the minority party is allowed to make a motion to recommit, but no debate is allowed on it.</em></td>
</tr>
</tbody>
</table>
**Resolved,** That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 668) to control crime by further streamlining deportation of criminal aliens. The first reading of the bill shall be dispensed with. Points of order against consideration of the bill for failure to comply with section 302(f) or section 303(a) of the Congressional Budget Act of 1974 are waived. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill, modified by the amendment printed in section 2 of this resolution. All points of order against the committee amendment in the nature of a substitute for failure to comply with clause 5(a) of rule XXI are waived. Each section of the committee amendment in the nature of a substitute, as modified, shall be considered as read. During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 6 of rule XXIII. Amendments so printed shall be considered as read. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute, as modified. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

SEC. 2. The amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill is modified by the following amendment: 'Strike section 11 and redesignate the succeeding sections accordingly.'
Figure IX-5
Example of the effects of Closed and Open Rules on Legislation

[Diagram showing a graph with axes labeled 'Work restrictions' and 'Family unification restrictions'. Points A, B, and C are marked on the graph. The area is shaded and labeled 'W(Q)'.]
Figure IX-6
Cloture Votes in the Senate, 1919–1996

Figure IX-7
Example of the Effect of the 3/5 Cloture Rule in the Senate

Q  C  M

--- W(Q) ---

--- P_c (Q) ---
Figure IX-8
Two views of the House amendment tree

First degree amendments

Second degree amendments

Main body of bill

Amendment (4)  
Amendment to pending amendment (1)

Substitute to pending amendment (3)

Amendment to substitute (2)

AA = amendment to the amendment  
A = amendment  
AS = amendment to the substitute  
S = substitute  
φ = status quo  
B = bill
Figure IX-9
Enforcing the Scope of the Differences Rule
Figure IX-10
Interest group ratings of the House, 1998

a. Americans for Democratic Action

b. American Conservative Union
Figure IX-11
ADA Ratings of the House, by Party, 1998

a. Democrats

b. Republicans
Figure IX-12
Cut Line for Interest Group Rating

Cut line

Q
Interest group ideal point

Median
Votes against the proposal support the interest group position

Proposal
Votes in favor of the proposal oppose the interest group position
Figure IX-13
Prevailing Margins in House Roll Call Votes, 1998

a. All roll call votes

b. Roll call votes used in ADA score
a. Preliminary ideological ordering

In the middle somewhere:

G and H

C, D, E, F

A and B

b. Ideological ordering giving rise to the observed roll call votes
Figure IX-15
NOMINATE Scores for the House, 1998
Figure IX-16
Spatial Analysis of Congressional Quarterly Conservative Coalition and Party Support Scores

Northern Democrats  S. Dem.  Republicans

Cut line region for Conservative Coalition votes

Cut line region for Party Support votes
## Table IX-1

### Legislative Hurdles

<table>
<thead>
<tr>
<th>Minor hurdle</th>
<th>House detail</th>
<th>Senate detail</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Introduction</strong></td>
<td>House originates tax bills</td>
<td>Senate exclusively considers executive matters</td>
</tr>
<tr>
<td><strong>Reference to committee</strong></td>
<td>Done by Speaker, with no right of appeal</td>
<td>Done by presiding officer, with right of appeal</td>
</tr>
</tbody>
</table>

**Committee consideration**
(subcommittee consideration may be nested within committee consideration)

- **Hearing**
- **Mark-up**
- **Report**

<table>
<thead>
<tr>
<th>Scheduling</th>
<th>House detail</th>
<th>Senate detail</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Getting on the calendar</strong></td>
<td>Multitude of calendars (Union, House, Correction, Private, D.C., Discharge)</td>
<td>Two calendars (General orders, executive)</td>
</tr>
<tr>
<td><strong>Getting off the calendar</strong></td>
<td>Simple matters: suspension Complex matters: rules</td>
<td>Simple matters: suspension Complex matters: Unanimous consent</td>
</tr>
<tr>
<td><strong>Settings the parameters of debate, amendment, and voting</strong></td>
<td>Rules</td>
<td>Unanimous consent under threat of filibuster</td>
</tr>
</tbody>
</table>

**Floor consideration**

- **Committee of the Whole**

<table>
<thead>
<tr>
<th>Floor consideration</th>
<th>House detail</th>
<th>Senate detail</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Debate</strong></td>
<td>Constrained</td>
<td>Cloture</td>
</tr>
<tr>
<td><strong>Amendment</strong></td>
<td>Germaneness rules strong</td>
<td>Germaneness rules weak</td>
</tr>
</tbody>
</table>

**Reconciling differences**
### Table IX-2
Decoding Bill Numbers

<table>
<thead>
<tr>
<th>Type</th>
<th>House designation</th>
<th>Senate designation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bill</td>
<td>H.R.</td>
<td>S.</td>
</tr>
<tr>
<td>Resolution</td>
<td>H.Res.</td>
<td>S.Res.</td>
</tr>
<tr>
<td>Joint resolution (force of law)</td>
<td>H.J.Res.</td>
<td>S.J.Res.</td>
</tr>
</tbody>
</table>
Table IX-3
Scheduling and bringing measures to the floor: House and Senate differences

<table>
<thead>
<tr>
<th></th>
<th>House</th>
<th>Senate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Calendars</td>
<td>Five</td>
<td>Two</td>
</tr>
<tr>
<td></td>
<td>• Union</td>
<td>• Legislative</td>
</tr>
<tr>
<td></td>
<td>• House</td>
<td>• Executive</td>
</tr>
<tr>
<td></td>
<td>• Corrections</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Private</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Discharge</td>
<td></td>
</tr>
<tr>
<td>Special days</td>
<td>Five</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td>• Suspension</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Calendar Wednesday</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Corrections</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Private</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• District of Columbia</td>
<td></td>
</tr>
<tr>
<td>Scheduling</td>
<td>Dominated by majority party leadership and few others</td>
<td>Led by majority party leadership, in close consultation with minority party leadership and interested senators</td>
</tr>
<tr>
<td>Holds</td>
<td>Not allowed</td>
<td>Individual senators can place “holds” on measures, within limits</td>
</tr>
<tr>
<td>Committee role</td>
<td>Powerful Rules Committee</td>
<td>No privileged committee</td>
</tr>
<tr>
<td>Consideration of complex legislation</td>
<td>Special rules (closed, modified closed), approved by majority vote, for major legislation</td>
<td>Complex unanimous consent agreements, approved by unanimous consent, for major legislation</td>
</tr>
<tr>
<td>Consideration of non-controversial legislation</td>
<td>Suspension of the rules</td>
<td>Unanimous consent</td>
</tr>
<tr>
<td>Ability to circumvent committee of jurisdiction</td>
<td>Relatively difficult</td>
<td>Relatively easy</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Union</td>
<td>Money matters</td>
</tr>
<tr>
<td>House</td>
<td>Regular legislation, no money matters</td>
</tr>
<tr>
<td>Correction</td>
<td>“Non-controversial” corrections to outrageous legislation or regulatory interpretations</td>
</tr>
<tr>
<td>Private</td>
<td>Private legislation and claims (e.g., immigration)</td>
</tr>
<tr>
<td>D.C.</td>
<td>Matters pertaining to the district of columbia</td>
</tr>
<tr>
<td>Discharge</td>
<td>Bills where a successful discharge petition has been filed.</td>
</tr>
</tbody>
</table>
Table IX-5  
Details of House special days, 106th Congress (1999–2000)

<table>
<thead>
<tr>
<th>Day</th>
<th>When</th>
<th>Vote necessary to approve</th>
</tr>
</thead>
<tbody>
<tr>
<td>Suspension</td>
<td>Every Monday and Tuesday; last 6 days of the session</td>
<td>2/3</td>
</tr>
<tr>
<td>Calendar Wednesday</td>
<td>Every Wednesday</td>
<td>majority</td>
</tr>
<tr>
<td>Corrections</td>
<td>2nd &amp; 4th Tuesday of each month</td>
<td>3/5</td>
</tr>
<tr>
<td>Private</td>
<td>1st Tuesday of each month</td>
<td>majority</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>2nd &amp; 4th Monday of each month</td>
<td>majority</td>
</tr>
</tbody>
</table>

Source:
Table IX-6
Special rules in the House

<table>
<thead>
<tr>
<th>Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Open Rule</td>
<td>Bill is considered for amendment under the five-minute rule, but no other special restrictions apply to its consideration beyond the Standing Rules of the House.</td>
</tr>
<tr>
<td>Open Plus</td>
<td>Like an Open Rule, except it protects certain named amendments from points of order.</td>
</tr>
<tr>
<td>Modified open</td>
<td>A time limit is placed on considering amendment, but no restriction is place on the contents of the amendments.</td>
</tr>
<tr>
<td>Modified open requiring</td>
<td>Does not restrict the content of amendments, but encourages members with amendments to notify the chamber ahead of time about the content of those amendments.</td>
</tr>
<tr>
<td>preprinting in the</td>
<td></td>
</tr>
<tr>
<td>Congressional Record</td>
<td></td>
</tr>
<tr>
<td>Closed Rule</td>
<td>No amendments are allowed to the bill, except those offered by the committee reporting the bill. Under the Standing Rules of the House, such a rule must still allow a member of the minority party to offer a motion to recommit the bill, with instructions, back to the committee.</td>
</tr>
<tr>
<td>Modified closed rule</td>
<td>Allows for the consideration of one or two amendments to a bill, which may be designated ahead of time. May prohibit amendments altogether to particular sections, or prohibit particular types of amendments.</td>
</tr>
<tr>
<td>Structured rule</td>
<td>Allows three or more amendments to a bill, which may be designated ahead of time. May prohibit amendments altogether to particular sections, or prohibit particular types of amendments.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>House (Rule XIV)</th>
<th>Senate (Rules IV–VIII)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Prayer by the Chaplain.</td>
<td>1. Prayer by the Chaplain</td>
</tr>
<tr>
<td>2. Reading and approval of the Journal (may be waived under the rules).</td>
<td>2. Reading and approval of the Journal (may be waived)</td>
</tr>
<tr>
<td>3. The Pledge of Allegiance to the Flag.</td>
<td>3. Morning business (Submission of various reports and messages, and the introduction of legislation)</td>
</tr>
<tr>
<td>4. Correction of reference of public bills.</td>
<td>4. Consideration of bills that are on the Calendar of Bills and Resolutions</td>
</tr>
<tr>
<td>5. Disposal of business on the Speaker’s table (mostly communications from the President, executive agencies, and the Senate).</td>
<td></td>
</tr>
<tr>
<td>6. Unfinished business from the day before</td>
<td></td>
</tr>
<tr>
<td>7. The morning hour for the consideration of bills called up by committees (usually dispensed with).</td>
<td></td>
</tr>
<tr>
<td>8. Motions that the House resolve into the Committee of the Whole House on the State of the Union</td>
<td></td>
</tr>
<tr>
<td>9. Orders of the day.</td>
<td></td>
</tr>
</tbody>
</table>