SYMPOSIUM

What Might Bring Regular Order Back to the House?

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It is not hard to find critics of how the U.S. Congress operates today. Two of the most prominent, Thomas Mann and Norman Ornstein, have bemoaned in particular Congress's failure to follow "regular order," which in their 2006 book *The Broken Branch* they describe as a legislative process that incorporates "discussion, debate, negotiation, and compromise" (Mann and Ornstein 2006, 170).

Why is regular order important? In part because it is necessary for the full and fair deliberation of issues, a task that even John Stuart Mill, a skeptic of legislative assemblies, acknowledged was best suited to the legislature (Mill 1861). But more broadly, as Mann, Ornstein, and others have argued, ignoring regular order excludes many representatives from the legislative process, especially members of the minority party, and risks enacting substandard legislation (Eilperin 2006; Mann and Ornstein 2006, 175; Sinclair 2006).

In the three years since *The Broken Branch* first appeared, Democrats, who often complained bitterly about the lack of regular order in Congress as a minority party, gained control of the House and Senate. But since then Congress—and especially the House—has continued to ignore or bypass regular order on numerous occasions.

Several authors have detailed the ways in which the House has used unconventional legislative methods or otherwise circumvented regular order in the past few years (e.g., Mann and Ornstein 2009; Sinclair 2008). One trend in this regard is worth noting: the increasing dependence on special rules that limit amendments and debate time for bills considered on the House floor. This trend began in the Democratic-led House in the 1970s and has continued in the decades since, even as party control of the chamber switched to Republicans in 1995 and back to Democrats in 2007 (Bach and Smith 1988; Wolfensberger 2002).

For instance, between January 1 and the August recess of 2007, 36% of all special rules approved by the House Rules Committee and brought to the floor were so-called structured rules, which specify what amendments are allowed and under what conditions, the time available for debate, and/or the method for voting on amendments. Just two years later, the percentage of structured rules over the same time period had jumped to 53%. In addition, a number of these more recent rules limited or denied the right of individuals to offer privileged motions—for example, that the Committee of the Whole rise or that a bill's enacting clause be stricken—or they have prohibited re-voting on amendments adopted in the Committee of the Whole.[1]

One reason a greater percentage of special rules have been structured is that the House has recently abandoned a long-standing tradition of avoiding such rules for appropriations bills.[2] In 2008, the Rules Committee made a key decision—the "[camel's] nose under the tent," as it was described to one of us by a congressional staffer—to report that year's Military Construction and Veterans Affairs spending bill with a rule that required amendments to be printed in advance. The next year, when over 100 amendments to the Commerce, Justice, and Science appropriations bill were pre-printed, the Rules Committee adopted a second, structured rule that allowed only certain amendments to be offered to the measure. In the end, every major appropriations bill in 2009 was considered under a structured rule, an unprecedented number in the modern Congress.

These and other recent developments do not offer much promise that the House will follow regular order more closely anytime soon. At the very least, it is clear that a switch in party control of the House is not sufficient to bring about change. But is there anything that could?

Both congressional history and recent events in the House suggest that three developments may be necessary to alter how the House governs itself. The first is a *decline in party polarization*. More ideologically extreme lawmakers will tend to put strong pressure on their parties to pursue tactics designed to achieve partisan policy goals first and foremost, even if those tactics sacrifice procedural norms or curtail input from other legislators (see, e.g., Sinclair 2006). By contrast, moderate-minded legislators may be less wedded to partisan victory and more open to input from the opposite party and, by extension, the use of regular order to ensure such input can be offered.

Take, for instance, a letter sent by 68 Democrats to majority leader Steny Hoyer in February 2009, which urged a return to more bipartisanship and regular order in Congress (see figure 1). The letter was signed not by ideological liberals or by a diverse array of Democrats, but almost entirely by conservative members of the party. Some of the same Democrats subsequently advocated for a slower and more deliberative process in considering health-care legislation.[3] If such legislators believe that their policy interests depend on the ability to debate and amend legislation more freely—and, in particular, can credibly threaten to cast votes against their party if denied such opportunities—there is a strong incentive for majority-party leaders to comply.

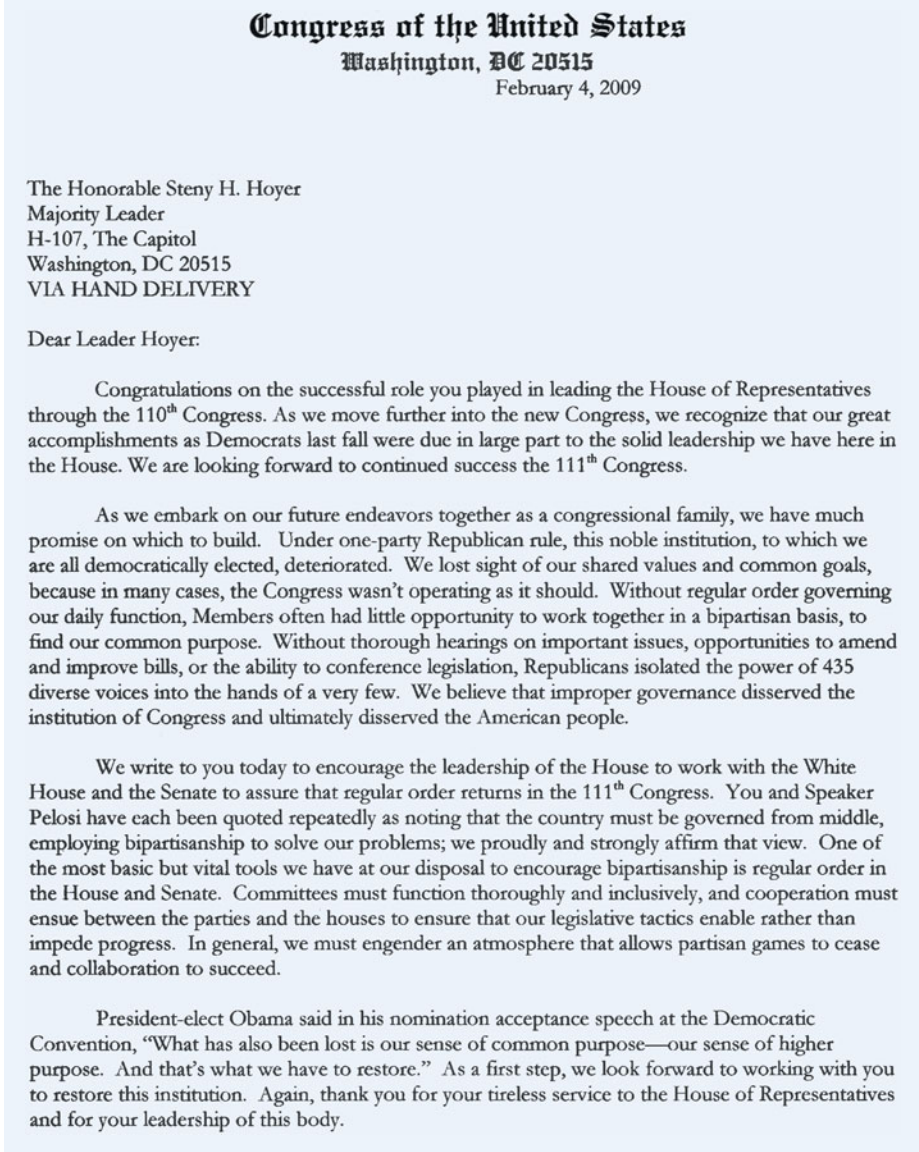
Many congressional scholars would stop here, but we believe the distribution of legislators' ideological preferences, by itself, is insufficient to dictate how Congress

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Figure 1

Letter Sent to Steny Hoyer Requesting Regular Order



Congress of the United States
Washington, DC 20515
February 4, 2009

The Honorable Steny H. Hoyer
Majority Leader
H-107, The Capitol
Washington, DC 20515
VIA HAND DELIVERY

Dear Leader Hoyer:

Congratulations on the successful role you played in leading the House of Representatives through the 110th Congress. As we move further into the new Congress, we recognize that our great accomplishments as Democrats last fall were due in large part to the solid leadership we have here in the House. We are looking forward to continued success the 111th Congress.

As we embark on our future endeavors together as a congressional family, we have much promise on which to build. Under one-party Republican rule, this noble institution, to which we are all democratically elected, deteriorated. We lost sight of our shared values and common goals, because in many cases, the Congress wasn't operating as it should. Without regular order governing our daily function, Members often had little opportunity to work together in a bipartisan basis, to find our common purpose. Without thorough hearings on important issues, opportunities to amend and improve bills, or the ability to conference legislation, Republicans isolated the power of 435 diverse voices into the hands of a very few. We believe that improper governance disserved the institution of Congress and ultimately disserved the American people.

We write to you today to encourage the leadership of the House to work with the White House and the Senate to assure that regular order returns in the 111th Congress. You and Speaker Pelosi have each been quoted repeatedly as noting that the country must be governed from middle, employing bipartisanship to solve our problems; we proudly and strongly affirm that view. One of the most basic but vital tools we have at our disposal to encourage bipartisanship is regular order in the House and Senate. Committees must function thoroughly and inclusively, and cooperation must ensue between the parties and the houses to ensure that our legislative tactics enable rather than impede progress. In general, we must engender an atmosphere that allows partisan games to cease and collaboration to succeed.

President-elect Obama said in his nomination acceptance speech at the Democratic Convention, "What has also been lost is our sense of common purpose—our sense of higher purpose. And that's what we have to restore." As a first step, we look forward to working with you to restore this institution. Again, thank you for your tireless service to the House of Representatives and for your leadership of this body.

operates internally. A second important development is *a shift in norms and expectations*: specifically, norms of individual conduct and expectations of party behavior. Expectations and norms matter because they establish common practices and can dictate and even enforce individual or group behavior.

In today's House, the most widespread individual norms appear to be based on party loyalty and success. Voting against the party on important votes, for example, can be met with severe scorn from fellow party members as well as party leaders (Eilperin 2006). As for expectations of party behavior, the majority is expected to pass desired legislation in a swift fashion—with only the votes of members of the party, if need be—while the minority party is expected to exploit chamber rules to obstruct legislation and score short-term "gotcha" symbolic political points (Mann and Ornstein 2006, 170–71; Mann and Ornstein 2009, 65).

The House was not always this way. Writing in 1965, Richard Fenno observed that the chamber followed several informal rules that encouraged regular order and kept "inter-party conflict at a minimum," including "no man is required to show complete party loyalty" and one should "disagree without being disagreeable" (Fenno 1965, 73–75). It is neither likely nor desirable to bring back the House's older norms and expectations by replicating the so-called textbook Congress of the 1950s and 1960s, with its fraternal and exclusionary culture that often hindered reform and change. But regular order is unlikely to be followed more often until legislators deemphasize partisan norms of behavior and come to see regular order as a value in itself, rather than as an obstacle (from the perspective of the majority party) or a means to embarrass or obstruct the governing party (from the perspective of the minority).

The third condition critical for a return to more regular order is *new initiative from within Congress* to alter existing rules and practices and enforce new ones. One possible source of such initiative is organized groups of lawmakers. For example, the large and well-organized Democratic freshman class of 1974 helped oust three Democratic chairmen, a move that shifted power from committee chairs to party leaders who, in turn, began using their power to restrict regular order in the House. Two years later, another group, the left-leaning and reform-minded Democratic Study Group (DSG), developed and proposed a series of rule changes that limited the rights of individual members on the House floor and inaugurated a new, more partisan approach to altering the chamber's rules (Rohde 1991; Schickler and Rich 1997; Southwick 1976).[4]

The February 2009 letter shown in figure 1 illustrates how groups of lawmakers can push for changes that expand, rather than restrict, the use of regular order. The conservative Democrats who signed the letter also happened to be organized: the document was initiated and circulated by the Blue Dog Caucus, a collection of conservative-minded party members, and signed by nearly every member of the group as well as

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almost half of the members of another group, the New Democrat Coalition (NDC), which represents economically conservative Democrats.[5] In fact, a logit regression analysis of which Democrats were most likely to add their signatures to the Hoyer letter shows significant and sizeable effects for membership in the Blue Dog Caucus and the NDC as well as for legislator ideology.[6]

Such initiative could also originate with party leaders.[7] Though not totally independent of what their parties want, leaders potentially have some leeway to influence the legislative process, establish and enforce norms of conduct, and temper (if not prevent entirely) the use of procedures to win narrow partisan battles (Mann and Ornstein 2009, 65).

Our sense is that in the past, leaders in the House were willing to enforce regular order and impose customs of behavior among new members; if so, leaders today could in theory do the same (e.g., Fenno 1965, 71). For example, when Wilbur Mills (D-AR) became chairman of the Ways and Means Committee in 1957, he imposed and enforced what political scientist John Manley called a "norm of restrained partisanship" in the committee, defending Republicans' procedural rights and allowing them more opportunities to influence legislation (Manley 1965). As another example, Speaker Sam Rayburn did not often tolerate the gratuitous use of House rules to obstruct legislative business: according to one representative who served at the time, lawmakers who needlessly demanded lots of quorum calls were brought before Rayburn "for a little discussion" (Madden 1976).

All three developments—reduced party polarization, a shift in norms and expectations, and new initiative within the House—are not only important but also interrelated: each one reinforces the other two, and none of them alone is likely to bring about much change. Nor are they likely to occur without other changes coming first. New party leaders or internal organizations might have to emerge: ones that value process as well as outcomes and can resist pressure from, if not convert, those in their party who disagree. Different issues and agendas can reduce the incentive for lawmakers to keep fighting existing battles over social and economic matters that divide the two parties, and can create opportunities for new cross-party coalitions that foster compromise between both parties. And a decline in the influence or aggressive tactics of interest groups and activist voters may reduce the pressure for parties to exploit or bypass regular order for partisan gain.

Perhaps most importantly, the House will need new members. Newly elected legislators—particularly when they make up a large incoming class—can shift the ideological distributions within one or both parties and bring fresh perspectives on, and styles of, legislating and party governance. In 1958, for instance, the large new class of Democrats in the House expanded the size and influence of a nascent group of liberals that would become the powerful DSG, while in the Senate they contributed to the decline of certain modes of behavior (Kofmehl 1964; Rohde, Ornstein, and Peabody 1985). And the 1974 freshmen Democrats elected to the House not only brought about the institutional changes mentioned above, but also moved the chamber's ideological median sharply leftward and brought a more ambitious and entrepreneurial spirit to the House (Loomis 1988; Schickler 2000).[8] These freshmen classes did more to reduce Congress's use of regular order than to expand it; but in theory, a sizeable new group of more ideologically moderate individuals with a less partisan perspective on lawmaking could have a reverse effect.

Will any of these changes come about soon? The 2006 elections promised this possibility, as did the elections of 2008. So far, neither has met this expectation. We may have to wait some time to see the next election that will. ■

NOTES

Our thanks to two congressional staff members for providing interviews and materials used for this paper.

1. See, for example, the 2009 rule for the Defense Appropriations bill (H. Res. 685). A fuller (albeit partisan) account can be found in "Opportunities Lost: The End of the Appropriations Process," a July 2009 report by House Rules Committee Republicans (http://rules-republicans.house.gov/media/PDF/OpportunitiesLost_fnl.pdf). Four years earlier, as a minority party, Rules Committee Democrats made similar complaints about the GOP in a report titled "Broken Promises: The Death of Deliberative Democracy."
2. For instance, in 2007 two bills were considered under open rules (Homeland Security and Energy and Water), and another nine were considered under open rules but gave precedence to pre-printed amendments. Only the Legislative Branch spending bill and (after a period of debate under an open rule) the Agriculture bill were considered under structured rules.
3. In July 2009, Democrat Mike Ross, the chair of the conservative Blue Dog Caucus, argued that the benefit of delaying House approval of health care until September was that it would guarantee legislators time "to read the bill and to visit with their constituents about it" (Romano 2009).
4. The DSG had also initiated or supported other institutional changes prior to the 1974 election that weakened committees and strengthened the party caucus (Rohde 1991).
5. Eighteen Democrats are members of both groups, and all of them signed the letter.
6. Ideology for non-freshmen was measured with DW-NOMINATE scores from the 110th Congress. Ideology for freshmen was estimated with the predictions resulting from a regression of DW-NOMINATE data on ideological scores from the Progressive Punch Web site (http://www.progressivepunch.org/), a technique borrowed from political blogger Nate Silver (see http://www.fivethirtyeight.com/2009/06/special-interest-money-means-longer.html). One signature on the letter could not be deciphered and was excluded.
7. Individual rank-and-file legislators have occasionally tried to initiate changes in regular order and/or the relations between both parties, but with limited success (e.g., Eilperin 2006, 44).
8. Mann and Ornstein suggest other institutional changes that could bring about more regular order in the House, including establishment of more competitive congressional districts, new campaign finance laws, and changes in the House's legislative schedule (Mann and Ornstein 2006, 229–32). They also recently wrote that "only a president can alter the political climate in a way sufficient to encourage cross-party deliberations" (Mann and Ornstein 2009, 67). So far, Obama's election to the White House has seemingly done little to change the internal operations of the House, his promises to reduce partisanship in Washington notwithstanding.

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