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# The United States Congress and Internal Reform

Robert F. Sittig\*

*In this article Professor Sittig examines the methods by which the United States Congress has attempted to modernize and democratize its procedures. The article traces the steps of internal reform from the early attempts to improve the committee system, through the modern day efforts to control the filibuster. He concludes that additional reform measures are needed in order that the Congress remain a flexible and responsive body.*

## I. INTRODUCTION

It has now been twenty years since the United States altered its internal machinery in a comprehensive attempt at modernization. Its willingness, in 1946, to adopt most of the changes suggested by a congressional study committee indicated the timeliness of that reorganization. The basic areas changed were: standing committees (size, jurisdiction, membership and operating procedures); regulation of lobby groups; coordination and supervision of fiscal affairs; and the bringing of professional research staffs to Congress. Most of these modifications were quickly implemented after passage of the act.<sup>1</sup> Of those given a trial, many met the test of time and have become a part of the permanent body of rules and practices of Congress.<sup>2</sup> Since that time, additional piecemeal reform of certain controversial practices in the Congress has produced a desirable effect on the responsiveness of that body. What follows will be a review of the developments which led to the adoption of some of the more effective and enduring changes.

## II. THE JOHNSON RULE

The importance of standing committees in the operation of the United States Congress is nowhere under-emphasized by students of government.<sup>3</sup> The committee stage in the life of a bill is crucial and the influence of legislators largely centers around their committee activities. In recognition of this factor, the 1946 act opened up additional leadership positions on some committees by limiting membership to a single committee assignment in the House and to two in the

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1. Pub. L. No. 601, 79th Cong., 2d Sess. (Aug. 2, 1946). Some provisions (e.g., preparation of a legislative budget) proved unworkable and have been quietly forgotten.

2. For a comprehensive review on the results of this act see Galloway, *The Operation of the Legislative Reorganization Act of 1946*, 45 AM. POL. SCI. REV. 41-68 (1951).

3. Political scientists often refer to them as "miniature legislatures," implying they actually serve as free agents for the parent body.

Senate. The intended effect was to reduce the number of important posts held by a handful of leaders in each party.<sup>4</sup> Those legislators holding multiple assignments had to make difficult choices as to which committee(s) they preferred. This, in turn, made advancement possible for others who were lower on the seniority ladder. Such modification has had a desirable effect on the democratization of leadership posts in congressional committees.

In 1953, Lyndon Johnson, fresh in his job as Senate Democratic Leader, was instrumental in establishing an additional standard for the initial assignment of newly-elected Democratic Senators.<sup>5</sup> In essence this innovation guaranteed each new Democratic Senator a top committee assignment before any other Democrat would receive a second important assignment.<sup>6</sup> This practice has now hardened into precedent and is referred to as the Johnson Rule. Evidently, it has been of sufficient importance to withstand the transfer of the party's leadership from Senator Johnson to Senator Mansfield since it is still in effect.

The stimulus behind this innovation is clouded and one might guess it was a condition or pledge to which Senator Johnson agreed upon his assumption of the party helm.<sup>7</sup> Regardless, one can recognize the practical effect it has had on eliminating the so-called "silent" first term for newly elected Democratic Senators.<sup>8</sup> Formerly freshman Senators were permitted to vacate their less important committee posts only as they accumulated seniority. This process still prevails to some extent in the Republican party in the Senate and to a greater extent in both parties in the House. The Johnson Rule, however, changed this for Senate Democrats and Table I provides a comparative analysis of its effect on initial assignments of all freshman Senators in each Congress from 1953-1965 (83d-89th).

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4. The most sought after position on a committee is, of course, that of chairman. The ranking minority spot and those directly beneath these two seats are also recognized to be of influence.

5. The actual assignment (and transfer) of legislators to committees is a highly secretive and intriguing process. For the best recent treatment of this practice see Masters, *Committee Assignments in the House of Representatives*, 55 AM. POL. SCI. REV. 345-57 (1961).

6. There is no formal ranking of standing committees into major and minor categories. However, custom has elevated certain ones (*e.g.*, finance, appropriations, foreign relations and military affairs) to commanding heights in terms of prestige, covetousness and permanence of membership. In the same way, other committees are considered to be of slight importance (*e.g.*, District of Columbia, civil service, post office and administration).

7. See Goodwin, *The Seniority System in Congress*, 53 AM. POL. SCI. REV. 416, 432 (1959).

8. The folklore of the United States Senate supposedly dictates that legislators are to be seen rather than heard during their first term. See Mathews, *The Folkways of the U.S. Senate: Conformity to Group Norms and Legislative Effectiveness*, 53 AM. POL. SCI. REV. 1065-89 (1959).

\*In the absence of any formal rankings of Senate committees the author has grouped them as follows:

High—Appropriations; Armed Services; Finance; Foreign Relations; and Judiciary.

Medium—Aeronautical and Space Sciences; Agriculture and Forestry; Banking and Currency; Interior and Insular Affairs; Interstate and Foreign Commerce; Labor and Public Welfare.

Low—District of Columbia; Government Operations; Post Office and Civil Service; Public Works; and Rules and Administration.

Ranking		1953		1955		1957		1959		1961		1963		1965		Totals	
		No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
High*	Dem.	2	14	5	24	1	5	10	26	2	11	4	21	2	12	26	17
	Rep.	1	4	1	8	0	—	1	14	0	—	0	—	0	—	3	4
Medium	Dem.	3	22	8	38	11	55	17	43	12	63	7	37	9	53	67	45
	Rep.	12	48	3	25	1	10	2	29	3	33	10	77	2	67	33	42
Low	Dem.	9	64	8	38	8	40	12	31	5	26	8	42	6	35	56	38
	Rep.	12	48	8	67	9	90	4	57	6	67	3	23	1	33	43	54
Totals	Dem.	14	100	21	100	20	100	39	100	19	100	19	100	17	100	149	100
	Rep.	25	100	12	100	10	100	7	100	9	100	13	100	3	100	79	100

During this period twenty-six freshmen Democrats were given a seat on a top committee for at least one of their first assignments. The comparable figure for the Republican freshmen is only three. Some caution is perhaps necessary since there were fewer openings for Republicans to fill due to their declining numbers in the Senate during this interim. The more meaningful percentages, however, verify the same basic finding, that Democratic freshmen could look forward to receiving more favorable committee assignments than could their colleagues in the Republican party. The same general pattern is evident in assignments made to medium and low level committees although the differences are less pronounced. This means that Democrats, generally, and some individual Democrats specifically, will have a much improved opportunity to assume future leadership positions

Table I<sup>9</sup>

INITIAL COMMITTEE ASSIGNMENTS OF FRESHMEN  
U.S. SENATORS, 1953-1965 .

9. For a slightly different ranking, see Goodwin, *supra* note 7, at 433.

than will their Republican counterparts; and they will probably achieve them in a much shorter period of time since they have a significant head start.

The beneficial effect which the Johnson Rule has brought to the Senate is partially the result of another separate but related development. In Congress, in recent years, there has been a rapid growth of subcommittees beneath the full standing committees.<sup>10</sup> More and more, these bodies are becoming miniature committees themselves. Their decisions are being accepted and ratified by the full committee in the same way recommendations formerly made by full committees were ratified by the entire Congress. The Johnson Rule now makes it possible for some of these additional posts to be filled by legislators with low seniority who nevertheless may possess talents which need not be stifled by the system.

At the same time this trend toward greater specialization through subcommittees has been taking place, it is also evident that committee chairmen, for the most part, have been willing to appoint some of these younger Democrats as chairmen of these groups. The seniority system in subcommittee affairs is not customarily as vital in determining protocol matters and this allows for consideration of other attributes such as experience, training and ability in their establishment and operation. In the years since 1952 a number of Democrats, all with *four* years or less seniority, have actually headed various subcommittees, and a few have been given these posts in their first year of service. For instance, in 1955 Senator Symington chaired a subcommittee of the Armed Services Committee on stockpiling of strategic resources. His interests and activities in this field of public policy remain vibrant today. Senator Scott of North Carolina chaired one of the commodity (Tobacco) subcommittees of the Agriculture Committee; Senator Proxmire was chairman of a Small Business subcommittee of the Banking Committee; and Senators Church, J. Kennedy and Mansfield all were given chairmanships on Foreign Relations subcommittees. Thus, an important corollary to the Johnson Rule has now developed, and both tend to blunt the full effects of the seniority system in making committee assignments. One can, without reservation, recommend that this improvement be given greater emphasis by Senate Republicans as well as by both parties in the House of Representatives.<sup>11</sup> The Johnson Rule is a logical updating of the provision on committee assignments in the 1946 Legislative Reorganization Act.

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10. For an extensive study of this trend see Goodwin, *Subcommittees: The Miniature Legislatures of Congress*, 56 AM. POL. SCI. REV. 596-604 (1962). Goodwin also notes that a few committee chairmen have resisted this trend since they oppose greater dispersion of their authority.

11. For example, no freshman Democrat in the House of Representatives has been assigned to the Ways and Means Committee in the last half-century.

It is, in addition, a partially corrective device for dealing with the difficult problem of the proper use of seniority in a democratic and deliberative assembly.<sup>12</sup>

### III. THE HOUSE RULES COMMITTEE

Over the years the United States House of Representatives has, at times, been faced with controversial rules and practices which have not always been fully amenable to majority control. In recent sessions, this has been the case with the House Rules Committee. The formal function assigned to this committee has supposedly been procedural rather than substantive. Other committees consider legislation dealing with a particular functional area (agriculture, taxation, public works, etc.), but the House Rules Committee has been assigned the role of clearing the agenda. Operating in accordance with this role, it is supposedly similar to a traffic policeman, directing vehicles through a busy intersection. The long and precarious step from theory to practice is rarely better illustrated than in the case of the House Rules Committee. At the busy intersection, the assumption is that all traffic ultimately is given the "go" signal and proceeds. This same notion is implied in the operation of this Committee. As bills clear the other standing committees, this body channels them to the floor and recommends the conditions (time limit for debate, amendments, etc.) under which they will be considered. In a growing number of recent instances, however, the Rules Committee became a dead end for many important measures. This was possible because a "technical" majority of its members often were opposed to the substance of certain bills and thus prevented adoption of a rule to cover floor debate.<sup>13</sup>

These deviations of the Rules Committee became so pronounced that opposition finally developed which was sufficient to reduce its power.<sup>14</sup> The most enduring criticism regarding the group concerned its sporadic thwarting of the will of the majority (in this sense the majority of some other standing committee). In a series of corrective moves, the Rules Committee has been relegated to a position more in keeping with its intended role. The first recent step in this direction came in 1959 when a number of middle-ranking House Democrats openly attempted to curtail the power of the Committee. It took the

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12. Stuart Udall discusses the question of seniority in *A Defense of the Seniority System*, N.Y. Times, Jan. 13, 1957, § 6 (Magazine), p. 11. Udall was then a member of Congress.

13. The influence this group had come to wield in the House of Representatives is discussed at length in Robinson, *THE HOUSE RULES COMMITTEE* (1963).

14. This commentary picks up the record of the Rules Committee in recent times and passes over earlier modifications. In 1910, the Speaker of the House was removed from this body, and subsequent watering down of its power occurred in a single Congress (1949-1950).

commanding influence of Speaker Rayburn to calm the waters. In seeking to avert a rupture in his party, he made a personal pledge to ensure against further apostasy by Rules Committee Democrats. This promise satisfied those pushing for a showdown and they adopted a "wait and see" attitude during the 86th Congress.<sup>15</sup> In one of those rare instances when statesmen miscalculate, Rayburn's influence was evidently not sufficient to keep the democratic process fully open in this body.<sup>16</sup> This development set the stage for the opening session of the 87th Congress.

In 1961, spurred on by the victory of a Democratic President, those House Democrats anxious for change began their efforts anew. After strategy consultations, they decided a temporary increase in the size of the Rules Committee would result in a partial solution. In an extremely close vote (217-212)—which came after a great deal of intrigue, including a twenty-four-hour postponement of the vote—the committee was increased from twelve to fifteen seats. The Democrats were to receive two of these additional seats.<sup>17</sup> Leakage on both sides of the aisle occurred, but twenty-two Republican bolters were sufficient to compensate for the sixty-four Democrats who deserted their leaders.<sup>18</sup> Passage meant that a different informal working majority could be coalesced within the committee since it was assumed the Republicans would add another "regular" to increase their potential to seven votes. But with the two Democratic seats going to "administration" supporters their total strength would be eight votes.

The skillful strategy of the proponents was largely reflected in the record of the Rules Committee in the 87th Congress. Measures incorporating programs which had earlier experienced great difficulty now cleared the group with regularity. However, certain issues were sufficiently disruptive to cause a breakdown in the precarious voting majority, resulting in the stalling of some major proposals.<sup>19</sup> For the most part, the committee was clearly reduced in power and its capacity to delay and perhaps kill proposals was limited accordingly. An indi-

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15. 17 CONG. Q. WEEKLY REP. 45 (Jan. 9, 1959).

16. Some of the important measures which were blocked, delayed or revised during the 86th Congress by the Rules Committee were: school construction; civil rights; and aid to depressed areas.

17. The most frequent vote on stalled measures in the Rules Committee usually came after two of the eight Democrats joined with the four Republicans to form a deadlocking tie vote group. In legislative proceedings tie votes result in neither victory nor defeat. In these cases it left the measures hanging in midair as adjournment moved ever nearer.

18. Speaker Rayburn is said to have remarked that this dispute was the "worst fight of my life."

19. Certain "administration" Democrats did not vote to clear bills involving federal-state-local powers and separation of church and state. This stopped proposals dealing with city mass transit systems; aid to education; creation of an Urban Affairs Department; and establishment of youth employment camps (Job Corps).

cation of the general satisfaction with this temporary reform is evident in the 1963 vote to make permanent the increased size of the Rules Committee. The slender margin of the earlier vote disappeared and the measure passed comfortably (235-196). A few more Republicans voted for this proposal than had previously been the case. The most obvious shift came in the Democratic ranks where the bolters were reduced by nearly twenty votes.<sup>20</sup>

During the organizational proceedings in 1965, a further limitation on the jurisdiction of the Rules Committee was approved.<sup>21</sup> For those who might not have anticipated this alteration, in light of the improved condition between 1960 and 1964, an even greater surprise ensued during the session. One of the approved changes revived and extended a device which makes more effective the discharge rule, whereby any committee, if it fails to act on a bill, can be relieved of its jurisdiction over the measure. The House members voted to lodge more directly the responsibility for activating the discharge rule with those leaders (floor and committee) who originally sponsored any bill which becomes stalled. The result was that on six occasions during the session the Rules Committee was summarily excused from its task of clearing these measures for floor consideration.<sup>22</sup> The most enduring aspects of these developments are first, the fact that with one exception all these bills were subsequently passed on the floor; and second, that four of the six discharges came during a single legislative day.<sup>23</sup> There remained at the end of the session some measures still languishing in the House Rules Committee but they were of minor importance. The immediate struggle had been resolved, for the most part, in favor of the Democratic party leaders.

Internal reform has thus lowered another hurdle in the Congress. In this case reform occurred in the House of Representatives.

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20. Perhaps the most interesting shift took place in the Democratic delegation from Georgia. In 1961 this group voted eight to two against the increase. In 1963 all ten voted for the permanent increase. It has been suggested that the switch resulted from an agreement by the leaders to look favorably upon committee assignment requests. See Robert Peabody, *The Enlarged Rules Committee*, in *NEW PERSPECTIVES ON THE HOUSE OF REPRESENTATIVES 160* (Peabody & Polsby eds. 1963).

21. See 23 CONG. Q. WEEKLY REP. 31 (Jan 8, 1966) for an account of the passage and provisions of this rules change. A provision regarding the acceptance of House-Senate conference committee reports went unused during the first session of the 89th Congress. These changes were largely the result of the continuing reform efforts of the House Democratic Study Group, a recently established rival party body which claims the support of from 75-100 House Democrats from the liberal wing of the party.

22. The measures were in their approximate order of importance: Equal Employment Opportunity Act; repeal of Taft-Hartley "right-to-work" provision; government employees pay raise; school construction aid for disaster areas; establishment of a National Humanities Foundation; and a Banking Act amendment dealing with mergers.

23. This stormy session was one of the longest legislative days (12½ hours) on record in the House. The ramifications from the struggle will undoubtedly not be lightly dismissed or easily forgotten. See 111 CONG. REC. 22749-64 (Sept. 13, 1965).



It has an especial responsibility to reflect the wishes of the majority since it is constitutionally apportioned on a basis of population. Despite this high ideal, instances have been recorded when majority rule has been slunted. The reduced power of the House Rules Committee lessens the likelihood that this condition may again develop in the House of Representatives.<sup>24</sup>

#### IV. THE SENATE FILIBUSTER

Another practice which has come to be regarded by many as a dilatory tactic bordering on being undemocratic is the Senate filibuster. This device can, at times, be effectively used to prevent or delay Senate action. Criticism of the filibuster is somewhat unwarranted since the Senate Rules specifically provide a means for limiting debate. Even so, this is rarely possible in practice, and thus the filibuster can be used as a vehicle by those seeking a delay.<sup>25</sup> Recognition of this dilemma tends to put the filibuster in a category with the House Rules Committee. That is, formal procedures provide that a majority of the House may decide what conditions ought to cover the final debate stage of a measure. The likelihood, however, of a majority of the House taking this course of action is remote and has the practical effect of deflating this possible remedy. In a similar fashion, Senate Rules permit the majority (an extraordinary one of two-thirds of those voting) to invoke cloture and limit debate. But the history of this Rule (XXII) indicates that formal efforts to halt debate have been largely ineffective.

The provision covering the limitation of debate is actually but a half-century old. It was adopted after a handful of Senators "talked to death" President Wilson's proposal to arm merchant ships in the period prior to United States entry into World War I. From that time until 1962, twenty-two attempts to halt debate failed, while only four similar efforts were successful.<sup>26</sup> This record indicates the degree of difficulty involved in halting a filibuster. In part, this is due to the fact that some Senators look upon unlimited debate as a hallmark of democracy, and are opposed to curbing it regardless of the issue

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24. This also makes less disturbing the implication behind the remark made by a Republican recently appointed to the House Rules Committee. He said he would not be an obstructionist but he did intend to vote against clearing legislation "which I am very much against."

25. In full operation the filibuster is conducted with snail-like progress since the legislative process affords many opportunities for dilatory tactics. With a premium on time, the leadership is then tempted to extend the legislative day (and perhaps convene around-the-clock sessions) to wear down those controlling the floor. Those leading the filibuster retaliate by asking for quorum counts at the most inopportune times.

26. The record was even more dismal in the field of civil rights. Not a single limitation had been agreed to in eleven attempts.

under consideration.<sup>27</sup> Others may be opposed to the particular measure being considered and vote against cloture motions so that the proponents will perhaps be forced to amend or withdraw the bill. In addition, many Senators from less populous states tend to look upon unlimited debate as a balancing device in the same sense that Senate representation is based upon the principle of equality of the states. The combined effect is that almost all cloture attempts find a fluctuating but significant portion of the Senate unsympathetic to restricting debate. And when the issue at hand takes on additional importance (*e.g.*, civil rights, federal-state powers) the prospect for limitation is very dim.

However, it appears that the potential power of the filibuster has undergone a distinct reduction in recent years. A standoff resulted from action taken in the 81st Congress (1949) which was subsequently revoked in the 86th Congress (1959). The 81st Congress had increased the majority necessary to halt debate from two-thirds of those voting to two-thirds of the entire membership.<sup>28</sup> In 1959, this majority was reduced to the earlier level—two-thirds of those voting. Those seeking a further reduction in the voting majority were not satisfied with this slight change, and have continued to press for a further relaxation in each subsequent Congress.

During organizational proceedings in the 87th Congress (1961), the debate on the adoption of the existing rules was intense. Those seeking a smaller majority vote (*i.e.*, three-fifths, or a simple majority) engaged in a "filibuster" type slowdown of their own. After a delay of seven days the proposed change—calling for a reduced majority of three-fifths to halt debate—was referred to the Senate Rules Committee by a narrow vote (50-46).<sup>29</sup> A measure incorporating this standard was ultimately reported back at the end of the session as Majority Leader Mansfield had originally promised. However, the hour was late, a brief filibuster ensued, cloture was voted down and the matter was postponed—a silent but nonetheless effective way of killing the proposal.

In 1963, at the opening of the 88th Congress, the proponents were more determined than ever. Again, a proposal to reduce the necessary margin to three-fifths failed, and the matter was finally disposed of

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27. A Southern Senator recently remarked he would not vote in favor of any cloture motion until the "shrimps start to whistling Dixie."

28. Invariably, at least a handful of Senators are absent due to campaign trips, overseas conferences, illness, etc., and this factor did not escape those behind this change in 1949.

29. 107 CONG. REC. 625 (Jan. 11, 1961). An earlier study in 1957-1958 by an *ad hoc* Rules subcommittee composed of Senators Talmadge (Dem., Ga.) and Javits (Rep., N.Y.) was unsuccessful since they were unable to agree on a possible solution. The Senate Rules Committee is not involved in determining the agenda of the Senate as is the case with the Rules Committee in the House.

after a one-month delay.<sup>30</sup> During this period the Senate had been so incapacitated that business had slowed to a trickle. In the current Congress (89th), final action regarding any formal change of the rule has not, as yet, been completed. Some prediction is possible since the Senate Rules Committee recommended (5-4) in 1965 the retention of the existing rule, after proposals identical to those considered in previous sessions were again referred for its study and possible action. Conceivably, these proposals could be revived at any time on the Senate floor during this session, but this is quite unlikely. If Rule XXII is to be changed it will probably come after the Senate receives the recommendations of its Rules Committee which is currently studying *all* Senate floor procedures for possible revision.<sup>31</sup>

Although formal changes have not occurred, a weakening effect is evident regarding the current importance of the filibuster. Perhaps the first step in this direction came in the second session of the 87th Congress. The proposal being considered authorized the development of a communications satellite system through a specially created private corporation. The prospect of such a strategic project being turned over to private enterprise (with limited governmental control and supervision) was unacceptable to some Senators. They launched a filibuster to slow the pace of the bill and perhaps even reverse its obvious direction.<sup>32</sup> The climax came quickly, however, when cloture was approved by a narrow three vote margin, a margin which failed to reflect truly the overwhelming support behind the communications satellite bill. This event marked but the fifth time, and the first time since 1927, that cloture had been invoked. Then in 1964, this time in the field of civil rights, cloture was again approved. Although limitation of debate on civil rights measures often had been attempted, it had never been successful. Adept handling of the bill by the majority leadership had been instrumental in even getting the measure to the floor.<sup>33</sup> After three months of tedious delay, history

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30. 110 CONG. REC. 2058 (Feb. 7, 1963).

31. The seeming inability of the proponents of change to achieve success is both surprising and somewhat disturbing as far as the principle of majority rule is concerned. In 1963, the then Senator Humphrey claimed he had the signatures of fifty-one (an absolute majority) Senators who favored lower cloture requirements. They are, however, evidently unable to agree upon a precise standard for any new rule.

32. Those conducting the slowdown were mildly ridiculed for their inconsistency since they were largely the same ones who were pressing for a watered-down cloture rule. However, in 1964, their strategy worked as they filibustered to death the attempts by some Senators to overturn the decisions of the Supreme Court requiring the apportionment of legislative bodies solely on the basis of population.

33. The bill was not referred to a standing committee after its introduction. This deviates from precedent long established. Majority Leader Mansfield managed to have the proposal placed directly on the floor calendar after House passage had been completed. This move avoided the graveyard which the Senate Judiciary Committee seemed to represent.

was dramatically made when the Senate voted to limit debate. Shortly thereafter, the civil rights bill passed by a 73-27 margin. Once this watershed had been cleared, the subsequent approval of cloture in 1965 (for the third time in four years), on another civil rights bill, was largely anti-climactic.<sup>34</sup>

The implication appears clear. Another barrier which has impeded the orderly consideration of legislative proposals has been largely eliminated. Thus, the democratization of the committee assignment process in the United States Senate; the lowering of the influence of the House Rules Committee; and the increased prospect of curbing Senate filibusters have all contributed to an improved image for the United States Congress. This new image is one which includes a greater responsiveness to majority rule in internal congressional proceedings. During this era of expanding executive power and prestige, those who watch over the democratic process would be remiss if they let these healthy developments pass unheralded.

#### V. RECENT REFORM ACTIVITIES

Although piecemeal reform has brought some beneficial changes to the Congress, there have been frequent suggestions in recent years for creation of another general study group similar to the earlier Joint Committee on the Organization of the Congress. Most, but not all, of these suggestions have come from outside the body. Among those within Congress who have been closely identified with legislative reform, the names of Senator Clark (Dem., Pa.) and Representative Bolling (Dem., Mo.) stand out. In 1963, a resolution sponsored by Senator Clark, with twenty-nine co-sponsors, proposed the establishment of a study committee. This resolution was amended by the Senate Rules Committee and reported favorably late in the session. The amendment, however, removed from the jurisdiction of the proposed committee any authority to recommend alteration of the internal rules, precedents, or floor procedures in either House. The revision was unacceptable to Senator Clark, and he attempted to have the proviso eliminated from the resolution. He was unable to coalesce sufficient support to do this, however, and the result was a standoff. This ended floor action on reform for the 88th Congress.

The effect of the election in 1964 strengthened the position of those seeking reform. Senator Monroney (Dem., Okla.), rather than Senator

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34. On the other side of the ledger, however, is the use of the filibuster to oppose the repeal of the "right-to-work" provision of the Taft-Hartley Act. On three occasions in the 89th Congress (once in 1965; twice in 1966) the strategy of delay by those opposed to repeal has proved effective and cloture measures have failed of adoption. Thus, the particular issue being debated will probably be of prime importance when any future attempts are made to halt debate and bring a measure to a final vote.

Clark, introduced a similar resolution in 1965, and was joined by fifty-four co-sponsors. Senator Monroney avoided any renewal of the earlier conflict by accepting the more limited scope for the proposed committee. By unanimous vote, the Senate later approved this resolution. The House of Representatives gave its approval and the Joint Committee on the Organization of the Congress was authorized.<sup>35</sup>

The Joint Committee consisted of twelve members equally divided between Senators and Representatives, as well as between Democrats and Republicans.<sup>36</sup> It was directed to "make a complete study of the organization and operation of the Congress of the United States . . . with a view toward strengthening the Congress . . ." The top positions on the Committee went to Senator Monroney and Representative Madden (Dem., Ind.). Both carried the designation of co-chairman, although in organizational sessions the members agreed Senator Monroney was to act as presiding officer.<sup>37</sup> The other members represented a delicate blending between young and old, liberal and conservative, east and west.<sup>38</sup>

In its initial operating sessions the Joint Committee had to decide on the precise limit of its jurisdiction and also had to retain a research staff. On the point of jurisdiction, they decided that the original limitation applied only to the actual *recommendation*, and not to the mere *study*, of proposals dealing with internal floor rules and practices.<sup>39</sup> The agreement reached on the hiring of a professional staff

35. S. Con. Res. 2, 89th Cong., 1st Sess. (1965).

36. Senator Case (Rep., N.J.) who also has been prominent in congressional reform activities was unsuccessful in having private citizens included on the study group. This would have had the effect of making the body more of a commission. Also, the equal distribution of seats between each House on joint committees avoids any invoking of claims of greater prestige by either chamber, while a degree of bipartisanship is enhanced through the elevation of the minority party to a level of equal representation.

37. Senator Monroney also served on the 1946 study group as head of the House contingent. He later was elected to the Senate and his earlier service no doubt proved valuable.

38. The other Democrats were: Senators Sparkman (Ala.) and Metcalf (Mont.); and Representatives Brooks (Tex.) and Hechler (W. Va.). The Republican members were: Senators Mundt (S.D.), Case (N.J.) and Boggs (Del.); and Representatives Curtis (Mo.), Griffin (Mich.) and Hall (Mo.). Representative Griffin later resigned his seat in the House to accept appointment to the Senate; he was replaced by Representative Cleveland (N.H.). Interestingly, those most closely identified with the reform movement (*e.g.*, Clark, Bolling) were not selected. The single trait most of the members seemed to possess was that of being allied with the party leadership in their respective chambers. See 23 CONG. Q. WEEKLY REP. 422 (March 19, 1965).

39. Perhaps this working interpretation is not as "liberal" as it might first appear. For instance, the Senate had earlier in the session instructed its regular Rules Committee to review all Senate procedures and to recommend appropriate revisions. Thus, any Joint Committee proposals in this area would be duplicative. In addition, study alone might be helpful to individual committee members who could then push for whatever changes they prefer. The distinction here is that proposals with but individual support are less likely to be considered on the floor than are those which have Joint Committee sponsorship.

demonstrates well the legislative propensity for balance and moderation. Each of the four contingents was allowed to fill a single staff position. The result was that a political scientist; a lawyer; a former House member (and previously a committee staff counsel); and a former staff member on a federal commission were retained. Since the committee members were not relieved of their usual legislative duties, the staff personnel carried a considerable portion of the committee's workload.

During the 89th Congress, the Joint Committee conducted its public hearings. First other Congressmen (17 Senators and 59 Representatives), then lobbyists from a number of the large interest groups, and finally the executive and legislative staff experts gave their views to the study committee. Proposals were heard which ranged from a few which stood little chance of consideration, let alone enactment (*e.g.*, return to the election of United States Senators by state legislatures; reducing the salary of absentee legislators), to others which struck more responsive chords.<sup>40</sup> One of the problem areas to receive a thorough review was the role of standing committees (and subcommittees). The seniority system for selecting committee chairmen was often criticized. The rapid proliferation of subcommittees (174 in 1945; 278 in 1965), and the attendant problem of multiple committee/subcommittee assignments prompted many suggested remedies, such as the setting of limits on the creation of new committees, or, more importantly, subcommittees. Some also believed that an actual reduction in number through merger of some existing committees could be achieved. There also seemed to be substantial agreement that a "bill of rights" for committee members ought to be adopted which would set definite procedural safeguards on such matters as the scheduling of committee hearings and meetings, the casting of proxy votes, and the hiring and supervision of staff personnel. The proponents claimed a bill of rights would hasten the pace of democratization which is already evident in the operation of many, but not all, standing committees.

In regard to the matter of equalizing the workload of individual legislators, it was recognized that committee responsibilities were central to the problem. Obviously, a legislator who holds numerous

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40. The committee heard considerable testimony favoring home rule for the District of Columbia and for lengthening the term of office for House members to four years. However, the committee was barred from making recommendations on measures which were also being considered by the parent Congress. This prevented them from making proposals on these two controversial issues. For a brief listing by subject of all the reforms proposed to the group, see the *Interim Reports of the Joint Committee on the Organization of the Congress*, S. Rep. No. 426, 89th Cong., 1st Sess. (1965); and S. Rep. No. 948, 89th Cong., 2d Sess. (1966). For the entire testimony see the *Hearings Before the Joint Committee on the Organization of the Congress*, 89th Cong., 1st Sess., (1965).

committee and subcommittee assignments will be unable to meet all his responsibilities. The logical solution would be to redistribute committee assignments of all legislators; but a more practical suggestion would be to relieve the lawmakers of those non-legislative tasks which seem to command large amounts of their time and attention. Many proposed that legislators be given additional staff help, either in their offices or on their committees, or both. Almost all who discussed the question of increasing the House term of office to four years were agreed it would allow members to devote more of their efforts to legislative tasks rather than campaign activities. And the professional service agencies of the Congress (*e.g.*, Legislative Reference Service, General Accounting Office) also received some attention as proposals for increased staff were urged.

An interesting and novel suggestion came from a number of those who appeared before the committee, that is, the creation of the office of "ombudsman"—a legislative employee who would investigate all citizen complaints of administrative malfeasance. The innovation has evidently been well received in a number of Scandinavian and European countries. The immediate effect of this change would be to shift the processing of constituent requests (casework) from the legislator to this special officer. Others were lukewarm about the proposal since they believed this is one of the few remaining direct links between a legislator and his constituents. And finally, the old standby, an electric voting board to speed up floor proceedings in the House, was also included in the suggested changes.

Congressional fiscal affairs also attracted considerable attention. Most of the exchange between committee members and those who appeared, centered around the problem of the declining role of the Congress in determining the basic fiscal policies and programs of the national government. Recommendations were offered for strengthening the review function of Congress in the taxing and spending fields, as well as for perhaps recovering some initiatory powers in these same areas.

In addition to the proposals generated during the public hearings, the committee members added some of their own. Its professional staff then conducted the necessary research and study. In closed working sessions, the committee achieved a consensus on its final report which was submitted at midsession in 1966. The final recommendations had to have the approval of a majority from each of the four elements of the committee; thus, the final report contains just those proposals which attracted bipartisan support. This should increase the prospect for ultimate enactment into law of most of the proposed changes.

As is often the case with "blue ribbon" study reports, the recom-

mendations of the Joint Committee reached the floor of Congress at an inopportune time. Election year preliminaries had won the attention of some legislators; others had returned to their districts to probe the public pulse or to help their colleagues in reelection bids. And, at the time of this writing, a number of important measures have not as yet been disposed of by the Congress. Included in this category are: several aid to education bills; a number of appropriation measures; a civil rights proposal; a foreign aid request; and a presidential proposal to establish a Department of Transportation. The original prediction by the Senate leaders of a Labor Day adjournment proved too optimistic, and the date was later postponed until October 15. The schedule was rendered even more uncertain when the President in September asked for legislative authorization to suspend certain tax benefits which were earlier extended to the business community. It is not surprising, then, that the proposals to reorganize the Congress lost a good deal of the priority they originally commanded. This does not mean, however, that all action on the final report has ceased. It may be that the report will be woven into the crowded agenda or perhaps postponed until the next session. At any rate, a review of the final committee recommendations follows.<sup>41</sup>

Included in the category of recommended changes which would have wide influence on future legislative operations are those dealing with fiscal and committee activities. The committee recommended that Congress make a further effort at achieving the caliber of expertise in fiscal procedures which currently exists in the executive branch. Some suggested steps in this direction included: (1) the streamlining of the legislative audit agency, the General Accounting Office; (2) an annual review of the underlying fiscal policies of the executive budget through appearances by the Director of the Budget, the Treasury Secretary and the head of the Council of Economic Advisers before the Appropriations Committee in each House; and (3) the creation, on each standing committee, of a review specialist who would examine the operation of the various administrative agencies, bureaus, and the like, in order to evaluate their performance on a continuous basis. The committee acknowledged the failure of the "legislative budget" provisions of the 1946 Act and suggested its repeal. The members were agreed that if these changes were accepted the legislature would then be better able to meet its responsibilities in the fiscal-review-and-oversight field.

In the area of standing committee activities, the group was not as convinced as many who appeared that committee chairmen ought to

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41. For the entire listing, which also includes the views of the committee members, see *Final Report of the Joint Committee on the Organization of the Congress*, S. Rep. No. 1414, 89th Cong., 2d Sess. (1966).



be selected on a nonseniority basis. Rather, they suggested that the "bill of rights" for committee members be adopted. This would have the effect of acknowledging that a chairman is empowered to direct his committee's activities, but that he is also subject to a check by a majority of its members. In attempting to equalize the legislative workload of committees and individual members, the committee suggested a number of changes. Committee jurisdiction would be realigned so as to dovetail more closely with the jurisdiction of the agencies they oversee in the executive-administrative branch. For instance, the yearly expenditure of ten billion dollars on educational programs was recognized to be sufficiently important to warrant creation of a separate education committee in each House. This would require a renaming of the current House Education and Labor Committee. In recognition of the increased scope of urban and housing affairs (and the decreased emphasis on banking and currency matters), the committee recommended to both the Senate and the House the retitling of the Committees on Banking and Currency to Banking, Housing and Urban Affairs.

The above alternations in committee jurisdiction would help to even out the workload of the standing committees. In addition, the reformers were aware that some adjustment was necessary in the allocation of committee assignments to individual members, especially in the Senate. They proposed that a limit of two major and one minor (or joint, select or special) committee assignments be established for all Senators, with these additional restrictions: the Appropriations, Armed Services, Finance and Foreign Relations Committees were to be designated as exclusive committees, and no one would be allowed to serve on more than one of them. In addition, no Senator could be chairman of more than one committee, or more than one subcommittee on a major committee. The Joint Committee members lost some of their courage when they suggested that these restrictions not be made retroactive; and they thus avoided the problem of stripping some current members of the posts they have gradually accumulated.

In order to strengthen the research arm of the Congress the committee agreed upon several needed improvements. The Legislative Reference Service would be renamed the Legislative Research Service to emphasize the role it actually performs; individual members would be allowed to hire a *Washington* "legislative assistant" to relieve the congressman of some of his committee and floor tasks; and regular standing committees would be authorized to increase by two the number of their professional researchers so that all would then be entitled to at least twelve research-clerical employees.

And lastly, a number of miscellaneous recommendations won the

support of the Joint Committee. One change would update the 1946 lobby control law by requiring more lobbyists to register. It was also recommended that the House create a committee on ethics and standards to handle any claims concerning misconduct of House members, similar to the Senate group which was set up in the wake of the Bobby Baker case. In addition, the group proposed that the legislature either adhere to the existing law, and adjourn by July 31, or formally extend the session by resolution. In the event the latter course of action occurs (as seems likely), the month of August would become a mid-session recess. They deemed this necessary since accomplishing the business of the public has required longer and longer sessions. The month-long vacation would reputedly have a healthy effect on all concerned and perhaps eliminate some of the brief recesses which are now frequently called.

One recommendation of the Joint Committee stands out in regard to future reorganization efforts. This is the proposal to establish a *permanent* Joint Committee on Congressional Operations. The members of the Monroney-Madden Committee were evidently aware they might be charged with trying to convert themselves into a continuing body,<sup>42</sup> and proposed that an entirely new body be created. The committee recommended the new body be filled chiefly by members of the regular Operations, Rules and Administration Committees in order to take advantage of the experience of these legislators in procedural affairs. If created, it would have the responsibility for keeping the Congress up to date in organizational matters.

A more important aspect of this recommendation is that this body could assume the task of sponsoring the proposals of the Monroney-Madden Committee in the 90th Congress in the event action on the final report is postponed.<sup>43</sup> This would be a graceful way to recognize the importance of the work of the current committee, while at the same time, an institutional device would be created which would enable the Congress to reorganize itself whenever the need arises. Regardless of the way in which the current uncertainty is resolved, the continuing necessity for an effective legislature in democratic

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42. This has occurred in the past when certain special committees have sought permanent status.

43. It has become increasingly difficult to predict what the fate of the reorganization effort will be in 1966. In the House, the Joint Committee's recommendations were incorporated in a bill introduced by Representative Madden. This measure is now resting in the Rules Committee; it was referred to this body on August 18. The Senate, on August 26, extended the life of its part of the Joint Committee until March 31, 1967. In addition, it also appears that the Congress might be called into special session after the November election. Thus, floor action could conceivably be arranged either in 1966 or 1967, with events seeming to dictate a postponement until the later date.

societies has been aptly stated by Professor George Galloway, a life-long student of congressional affairs:

Representative government has broken down or disappeared in other countries. Here in the U.S. it remains on trial. Its survival may well depend upon its ability to cope quickly and adequately with the difficult problems of a dangerous world. Congress is the central citadel of American democracy and our chief defense against dictatorship. Hence the importance of congressional reorganization and of further steps toward strengthening our national legislature.<sup>44</sup>

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44. Galloway, *supra* note 2, at 68.