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978-1-107-04879-9 - Separation of Powers and Legislative Organization: The President, the Senate, and Political Parties in the Making of House Rules

Gisela Sin

Excerpt

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I

A Constitutional Perspective on House Organization

In January of every odd year, following the November congressional elections, the U.S. House of Representatives organizes itself anew by adopting its formal rules of procedure. First, a House majority decides whether to change the rules at all; if it chooses to do so, it then decides what the new rules will be. To the casual observer of national politics, these decisions might seem mundane, but they are in fact crucially important. And this is why countless scholars and political pundits have paid considerable attention to House rules.

Often, the decisions are puzzling. Consider two recent examples. At the beginning of the 110th Congress, in January 2007, the newly elected Democratic majority in the House adopted a package of rules and procedures stipulating that any mandatory spending increases or tax cuts must be offset with respective tax increases or spending cuts elsewhere. This “pay-as-you-go” (or simply, “pay-go”) rule was the most visible commitment of the new House Democratic majority to reduce the budget deficit and national debt, which, it argued, had swollen as a consequence of Republican tax cuts and military spending. Two years later, in January 2009, the same Democratic majority reversed those rules and procedures. Under the new rules, almost any bill could easily be exempted from pay-go requirements by giving it an emergency designation as a response to an act of war, terrorism, natural disaster, or prolonged period of slow economic growth.

A second puzzling occurrence followed the November 2010 congressional elections, when Republicans gained a majority of the seats in the U.S. House of Representatives. When House Republicans met in January of 2011, they adopted a rule change that abolished the so-called Gephardt rule, which automatically increased the debt ceiling upon passage of a budget resolution. First adopted in 1979, the Gephardt rule had provided political cover for Democrats and Republicans alike, by exempting House members from having to cast a politically unpalatable vote on raising the debt ceiling. With the rule’s

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elimination, the House now *had* to hold a separate vote on the debt, which most Republicans did not want to raise. The vote requirement on the debt ceiling immersed the country in an acrimonious debate during the summer of 2011. The policy paralysis also drove the country close to defaulting on its debt obligations, an event that contributed to Standard and Poor's decision to downgrade the U.S. credit rating for the first time in history.

Why, in January 2009, did the Democratic majority reverse the pay-go requirements that, in the name of fiscal discipline, it had adopted only two years earlier? Why, in January 2011, did the newly elected Republican House majority decide to eliminate a rule that had long helped House members avoid lengthy and detrimental debates over increasing the federal debt limit?¹ Had the Democrats, in the first case, and the Republicans, in the second, lost all semblance of rationality?

Given the considerable attention that political scientists have given to understanding House-rule changes, one might expect existing research to offer ready answers to these questions. Surprisingly, it is hard to find explanations of the seemingly puzzling behavior of House Democrats in 2009 and House Republicans in 2011. This state of affairs arises in good part because extant theories of House rule making share an implicit assumption: The House makes and changes rules largely for purposes of internal management. This assumption has led scholars to look inward rather than outward, thus limiting their analyses only to changes in the preferences of House members and not to changes in the larger political environment within which House members function.

Yet, I argue, the two rule changes noted previously, as well as many others, can be understood only by accounting for the encompassing separation of powers bargaining structure, of which the House is only one part. Most fundamentally, decisions about House rules are made not in isolation, but within the constitutionally established separation-of-powers bargaining structure. Representatives recognize that they achieve policy goals by passing new laws; and Article I, Section 7 of the Constitution states that bills become laws only if a House majority, a Senate majority, and the president agree on wording or

¹ Not only did Republicans rescind the Gephardt rule in 2011, they also chose Representative Ron Paul (R-TX) to be chairman of the House Financial Services' Subcommittee on Domestic Monetary Policy and Technology, which controls the Federal Reserve. Paul, one of the most conservative members of the Republican delegation, had consistently supported the elimination of most federal agencies, including the Federal Reserve, while advocating fiscal and monetary policies that included the abolishment of the individual income tax and a return to a fixed exchange rate based on the gold standard. Princeton economist Paul Krugman expressed his surprise at this apparent paradox in a *New York Times* opinion piece where he wrote, "How, after run-away banks brought the economy to its knees, did we end up with Ron Paul, who says 'I don't think we need regulators,' about to take over a key House panel overseeing the Fed?" (Krugman 2010). Why did the Republican majority give Paul substantial control over the main institution capable of affecting monetary policy, and especially so when the country was facing the greatest economic crises since the Great Depression?

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Excerpt

[More information](#)*A Constitutional Perspective on House Organization*

3

if two-thirds of the Senate and the House approve. If members of the House want to make laws, they need to bargain – implicitly or explicitly, publicly or privately – beyond the House itself. Therefore, long before a Congress’s first bill reaches the president’s desk, House members have a strong incentive to anticipate the dynamics of the impending congressional session. By constitutional design, the success of the House is highly contingent on the actions of the Senate and president; and by constitutional design, therefore, House members must anticipate those actions at the very time they revise (or not) their rules.

In addition, the House majority party itself often consists of distinct groups holding differing views on specific policies. Indeed, an extensive literature has shown that intraparty groups are an enduring and critically important feature of U.S. political parties, both inside and outside of formal governmental institutions (e.g., DiSalvo 2012; Key 1949; Reiter 2004; Schousen 1994). The presence of at least two factions within the major parties, a phenomenon that has existed throughout the country’s history, motivates members of each group to anticipate how the preferences of the Senate and president will affect the dynamics of policy making with respect to their own particular interests. In turn, when the House majority party considers rule changes, it contemplates how it should distribute power between the two groups, given a particular Senate-president configuration. A prominent theme throughout the remainder of this book is that the preference alignment of the House majority intraparty groups vis-à-vis the Senate and president holds the key to understanding rule choice.²

I follow previous theories of House organization in portraying House members as rational, strategic, and policy-oriented. Like these earlier theories, my work emphasizes the importance of political parties in House organization (Aldrich and Rohde 2000; Aldrich and Rohde 2001; Binder 1997; Cox and McCubbins 1993; Cox and McCubbins 2005; Rohde 1991). It adds a focus on intraparty politics; specifically, on the different ideological factions within the House majority party and their relationships with the Senate and president. I also borrow from theories that center on the ideological balance of power on the House floor (Schickler 2000; Schickler 2001) and expand those perspectives by taking into account the balance of power among all three constitutional actors needed to enact laws. In a word, mine is a model in which legislative rules depend on the game being played among the Senate, president, and House majority party factions.

² The focus on the majority party follows the lead of Cox and McCubbins (2005), who convincingly document that, since 1880, power in the House has been in the hands of the majority party, and rule changes are intended to redistribute power within it, not between the majority and minority parties. This is not to suggest that the minority party has become irrelevant, as I show later. However, debates over House rule changes center on how those changes will affect the balance of power between the majority party groups in the policy-making process.

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[More information](#)

Does viewing House-rule changes as a game of strategic politics driven by a broader bargaining environment help us to understand the puzzling rule changes described earlier? In a word, yes. Observing only House membership would not have generated a prediction that House Democrats would reverse the pay-as-you-go rule they had adopted two years before. Indeed, the new 2009 House Democratic majority was actually more conservative than the 2007 majority it replaced. Most of the newly elected Democrats replaced Republicans, and the number of moderately conservative “Blue Dog” representatives reached fifty-five, the highest number since the group’s emergence in 1994. The *New York Times* characterized the 2008 freshman class as serving “to broaden a moderate coalition” that was “more conservative on social issues” (Phillips 2009). In the same article, the *Times* quoted political scientist Gary Jacobson as saying that the cumulative effect of the 2006 and 2008 congressional elections was “to move the Democratic caucus somewhat to the right... You’re not going to get the Berkeley wish-list out of this crowd” (Phillips 2009). He might have added, “Neither should the new Democratic House membership, on its face, be inclined to reverse ‘pay-as-you-go.’”

Consider, however, the changed policy-making environment that the House Democratic majority faced at the beginning of 2009. A new Democratic president, Barack Obama, had just been elected to replace Republican president George W. Bush. The strict pay-go rules that the House had adopted in 2007 were designed to enhance the bargaining power of the House Democrats vis-à-vis a Republican president; these same rules were no longer optimal now that a Democrat had been elected to the White House. With Obama in the presidency, the Democratic agenda, which presupposed increased spending in areas like energy, health care, and education, had a realistic chance of becoming law. The 2007 pay-go rules were too rigid for the House Democratic leadership, and the party as a whole, which now needed greater flexibility to advance its legislative agenda.³ Why would conservative Democrats allow for this change? The more conservative 2009 Democrats agreed to abandon pay-go because they knew that the supermajoritarian requirements in the Senate would constrain policy from moving too far toward the liberal side.⁴

³ The new rules package also severely restricted the minority party’s right to offer a motion to recommit, requiring that any vote to recommit an amended bill should include instructions that it be returned to the floor “forthwith” (i.e., the House must vote on the amended bill within minutes). The goal of this rule change was to curb the minority’s ability to put Democrats in politically awkward positions. During the 110th Congress Republicans often proposed amendments that forced Democrats to vote on controversial issues and sometimes even to shelve bills (e.g., in the first five months of 2007 the Republican minority party used the motion to recommit successfully ten times; only two of those involved the pay-go provision (*Roll Call*, May 17, 2007)).

⁴ For example, these constraints were visible in the total price of the 2009 stimulus package, which was significantly lower than the House’s initial proposal, reflecting the need to overcome a filibuster in the Senate and gain three Republican votes.

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Excerpt

[More information](#)*A Constitutional Perspective on House Organization*

5

To understand the House Republicans' seemingly inexplicable decision in January 2011 to abolish the Gephardt rule similarly requires consideration of the bargaining context in which Republican House members found themselves. The Republican Party had made strong pledges both to avoid a tax increase and to reduce government spending. At the beginning of the 112th Congress, however, the Republican House majority faced a Democrat-controlled Senate and a Democratic president, and thus recognized that major bills could die in the Senate or be vetoed by the president.⁵ Moreover, an influx of Tea Party candidates into the House meant that opposition to a tax increase and support for reducing government spending would be even more formidable than they had been in the preceding congressional session.

In abolishing the Gephardt rule, Republicans gave outlier members within their delegation, most notably those elected with Tea Party support, the power to block any attempt to increase government borrowing. As majority whip Kevin McCarthy (R-CA) put it, "The freshmen made our hand so much stronger" (Dennis, MacGillis, and Montgomery 2011).

The requirement of a separate, public vote on the debt ceiling also helped Republicans to condition their votes on policy concessions from the White House (Mann and Ornstein 2012). Indeed, from the very opening of the 111th Congress, both Speaker Boehner (R-OH) and House budget chairman Paul Ryan (R-WI) signaled Obama that their price for supporting a higher debt ceiling was broad spending cuts (CQ, January 6, 2011). In a closed-door caucus meeting on January 2011, majority leader Eric Cantor (R-VA) stated to his delegation: "I'm asking you to look at a potential increase in the debt limit as a leverage moment when the White House and President Obama will have to deal with us" (Dennis, MacGillis, and Montgomery 2011).

Did the rule change have the impact the Republicans expected? Apparently it did. Abolishment of the Gephardt rule gave Speaker Boehner (R-OH) greater bargaining power to negotiate with the Senate majority leader and the president. It enabled him to work toward a significant deficit reduction without increasing taxes, by arguing that no debt limit increase would even be considered by a substantial portion of his conference unless it was predicated on budget cuts. As the authors of a *Washington Post* article put it,

In the end, the White House backed off its demand for new tax revenue and agreed to a multi-phase deal that may produce only spending cuts. In return, Congress gave the Treasury sufficient borrowing power to pay the government's bills through the 2012 election. (Dennis, MacGillis, and Montgomery 2011)

As part of the agreement to raise the debt ceiling, moreover, the House created a Joint Select Committee on Deficit Reduction, which was tasked with proposing

⁵ The new rules also substituted the previous "pay-go" rule established by the Democrats in 2007 with a new "cut-go" rule so that any new spending programs could only be supported by equal spending cuts elsewhere, and not through tax increases. In contrast, under the Democrats' pay-go rules, tax increases were allowed as a mechanism to enact deficit-neutral laws.

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at least a \$1.2 trillion deficit reduction by November 23, 2011. If the committee did not reach an agreement that the House and the Senate approved, then a “sequestration” budget process would be automatically triggered to recover the money for deficit reduction equally from defense and nondefense accounts in 2013.⁶ Republicans and Democrats reached the agreement hours before the United States was about to default on its debt obligations.

Would the same Democratic majority have rescinded “pay-go” in 2009 had a Republican president still been in office? Would the Republican majority have abolished the Gephardt rule had Republicans controlled the presidency and Senate? I believe not. Although both rule changes appear puzzling when viewing the House in isolation, the strategies behind them are not at all mysterious from a broader institutional perspective. Nor are these changes anomalies. Rather, they are only two examples of a long history of seemingly puzzling House-rule decisions that other theories seem not to explain. Recognizing that the House majority party takes the preferences of other constitutional actors into account when deciding on rules and procedures transforms the inexplicable into the obvious. Strategic political calculation about the broader bargaining environment motivates many House-rule decisions.

This book aims to demonstrate, theoretically and empirically, that the preferences of the Senate and the president, as well as the configuration of the House majority party factions, are paramount in the adoption of House rules. In Chapter 2, I make a case for incorporating both features of the American political system into the study of House rule making. One feature, rooted in the Constitution, gives the Senate and president crucial roles in policy making. The other, the existence of factions in the House majority party, captures the challenges its leaders face when adopting rules that set the agenda, control scheduling, and allocate power.⁷

That other constitutional actors enter into House members’ calculations might seem obvious. However, it marks a significant departure from existing theories of House organization, which implicitly view the House as an organization unto itself. In Chapter 3, I develop a Constitutional Theory of Legislative Organization that shows how the constitutional requirements of lawmaking demand a more expansive coalition than just a House majority; it must include a Senate majority and possibly the president. I show how House members’ knowledge that the Senate and president can effectively influence the final form of all legislation shapes the rules they adopt.

If legislators and many others think in terms of the constitutional separation of powers, then why have not students of Congress also done so? In part, the

⁶ The process is similar to the one enacted as part of the 1985 Gramm-Rudman-Hollings antideficit law and the 1997 balanced budget law, although it differed in terms of timing. This time, the automatic budget cuts would not occur immediately, but rather in 2013.

⁷ I do not consider factions within the Senate. Instead I represent the Senate very simply, as a unitary actor. For an excellent account of the workings within the Senate see Lee (2009).

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Gisela Sin

Excerpt

[More information](#)*A Constitutional Perspective on House Organization*

7

answer lies with scholarly specialization. Research has become so narrowly focused that political scientists increasingly claim expertise in the presidency, or in one or the other chamber of Congress. It is a natural step, then, to focus on how a particular institution manages itself internally, without regard for context. Furthermore, House members themselves sometimes speak as though House rules are designed primarily for internal management. One would not expect the Speaker or other House members to announce that House-rule changes are intended to counter a partisan change in the Senate and/or president, let alone to rein in a faction within the majority party. Yet, remembering that legislators are foresighted beings who anticipate the legislative process and policy outcomes leads directly to consideration of how they might use rules to strengthen their bargaining power vis-à-vis the Senate and president. Indeed, the Constitution renders it impossible for House members to ignore these other actors, at least as long as they care about policy outcomes. And thus political scientists should not ignore them, either.

In Chapters 4 and 5, I show how changes in partisan control of the Senate and presidency, combined with House intraparty groups' dynamics, affect the timing and directionality of rule adoption in the House. I generate two key predictions: First, a House majority adopts new rules and procedures when changes in the preferences of constitutional actors alter the set of bills that could become law; and, second, the alignment among the preferences of five key actors – the two majority intraparty groups, minority party, Senate, and president – strongly influences whether new rules centralize power in the Speaker or decentralize it across the majority intraparty groups.

I test these implications about timing and directionality of rule changes by analyzing House rule adoptions from 1879 through 2013. First, I examine the timing of rule changes in the House, identifying the factors that influence House members to change power-sharing arrangements in some Congresses and not others. Second, I consider how changes in the alignment between the House majority intraparty groups and minority party, on the one hand, and the Senate and president, on the other, influence whether new rules centralize power in the hands of the Speaker and his faction or decentralize it across the majority party factions. The analyses show that majority intraparty groups choose rules so as to maximize their gains, given the configuration of preferences among all the constitutional actors.

Finally, Chapter 7 revisits the iconic revolt against Speaker Cannon in 1910, during which a group of progressive Republicans and Democrats stripped Cannon of his powers on the Rules Committee. I show that all constitutional actors must be taken into account to understand the revolt, and that policy outcomes serve as the mechanism that connects constitutional actors' preferences with rule changes. My explanation of the revolt challenges the currently prominent view.

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[More information](#)

2

Constitutional Actors and Intraparty Groups

Two important features of American politics profoundly influence House bargaining over power-sharing agreements. One is the constitutionally stipulated separation of powers structure; the other, the presence of distinct ideological groups within the House majority party. These two features of U.S. national policy making serve as my point of departure for understanding House-rule changes. I devote more space to the latter because intraparty groups are less familiar to political scientists than the constitutional framework.

CONSTITUTIONAL ACTORS

In arguably one of the greatest political experiments of all time, the Founding Fathers established a separation of powers system for the United States, built on the idea that no single branch – presidency, legislature, or courts – or legislative chamber – House or Senate – should be able to run roughshod over the others and thus over the American people. This system of checks and balances has served as the bedrock of American governance for more than two centuries.

This constitutional framework, within which House rules and procedures are adopted, establishes minimum requirements for bills to become laws. Any bill needs the support of both House and Senate majorities, as well as the signature of the president; or, alternatively, supermajorities from both the House and the Senate. Perhaps precisely because these constitutional requirements are so ingrained in the fabric of American politics and policy making, scholars have largely overlooked them in their analysis of rule making in the House.

Article I, Section 7 of the Constitution states that bills become laws only if a House majority, a Senate majority, and the president agree on wording; or if two-thirds of both the Senate and House approve. If House members want to make laws, they need to bargain beyond the House itself. Figure 2.1 depicts the

8

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[More information](#)*Constitutional Actors and Intraparty Groups*

9

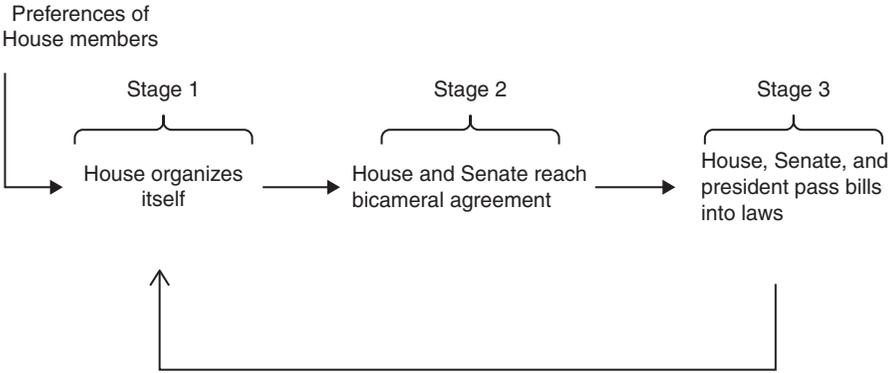


FIGURE 2.1. House organizational decisions within a constitutional framework.

legislative process as consisting of three stages, and underlines the simple fact that the Constitution requires House members seeking to achieve legislative objectives to prevail in all three stages, not just the first.

Stage 1 consists of House members deciding on a power-sharing arrangement. Every two years, at the beginning of each Congress, the House of Representatives chooses the rules that will govern its collective behavior. Although political scientists (Binder 1997; Schickler 2001) have documented that House rules limit the influence of some legislators while expanding that of others, Article I, Section 5 of the Constitution states only the following: “Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.” In other words, Section 5 offers no guidance about how the House should organize itself.

The Constitution mandates that the House and Senate approve identical bills. Stage 2 dynamics thus entail the House and Senate seeking agreement on a bill that can be sent to the president. If the House and Senate pass different versions of a bill, then the two chambers must eliminate all differences before seeking presidential approval.¹ An outcome can emerge from informal back-and-forth bargaining or by formally shuttling the bill between the chambers. Most commonly, for important legislation, a conference committee produces a bill. Whichever process the chambers pursue, neither chamber can impose its will; each needs the consent of the other.²

¹ An important feature of the U.S. Constitution is that the House and Senate share equal power to determine legislative outcomes (Longley and Oleszek 1989). This is not true for many countries, in which one of the two chambers has the last word to decide on the legislation sent to the president.

² Even though an extensive literature has focused on “who wins, the House or the Senate,” there is no consensus on whether one chamber gets its way more often than the other. Some scholars have found that the House is advantaged in negotiations due to the chamber’s superior ability to develop policy specific expertise (Steiner 1951; Strom and Rundquist 1977). Others contend

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[More information](#)

Only when majorities in both chambers agree on a joint outcome does the bill reach stage 3. At this stage, the bill is subject to an “up or down” vote in the House and the Senate, with no possibility of amendments.³ At this point, legislators must decide between no bill at all and the bill generated by the bargaining process between the two chambers. If the House and Senate agree on a bill, it is sent to the president, who can either veto or sign it into law. If he vetoes it, then two-thirds of the House and Senate need to approve the bill for it to become a law. The preferred outcome of a House majority materializes only when the Senate and president, or a substantial proportion of the Senate and the House, prefer the House-Senate agreement to no bill at all.

By constitutional design, the passage of bills entails complex dynamics among president, Senate, and House, all of whom are driven by partisan-based preferences. A Democratic House majority might need to negotiate with a Democratic Senate and president; or with a Republican Senate and president; or with some combination of the two. Equivalent situations occur when there is a Republican House majority. When choosing rules for the upcoming Congress, House members will naturally take into account their expectations about the challenges and opportunities that lie before them, challenges and opportunities that are defined by the partisan configuration of the other constitutional actors. Appendix A shows, by Congress, how the configurations of preferences among House majority, Senate majority, and president have varied since 1879.

Because House members achieve policy objectives in large part by passing laws, the separation of powers framework established by the Constitution compels House members to consider the Senate and the president when making laws. Since the bulk of politics and policy making is partisan in nature, the partisanship of the Senate and president shape the strategies House members use to optimize their leverage in the policy process.

INTRAPARTY GROUPS

The existence of ideologically distinct House intraparty groups that seek to achieve their particular policy goals also shapes the House’s rule making decisions, since the rules typically codify the majority intraparty groups’ relative

that the Senate is advantaged. Arguments vary, and include the following: (1) The Senate committees and conferees draw more directly and more completely upon the support of their parent chamber than do House committees and their conferees (R. F. Fenno 1973; Vogler 1970); (2) the Senate’s political decisions are more in line with the demands of interest groups and constituents (Manley 1973); and (3) the Senate usually acts on legislation after it has already been passed by the House, and thus it can make adjustments that the House will accept (Strom and Rundquist 1977).

³ There are some internal rules by which the House can deal with nongermane amendments inserted by the Senate and agreed upon by the conferees. However, the rules only delay the process of approving the bill, and do not give the House a “line item veto” over conference reports (Bach 2001).