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The Centralization of Power under the Republican House Committee System

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Following efforts in the 103rd Congress to reform the House that met only limited success, Republicans came into the majority with a long list of gripes and targets for change. A few were included in the Contract with America, but most received attention after the election, from applying labor standards to congressional offices to limiting closed rules to requiring committees to specify their oversight plans. Reforms pertaining to the institutional structure of committees which were adopted at the start of the 104th included (Evans and Oleszek 1997):

- Abolition of three standing committees;
- Replacement of joint referrals with additional initial referrals:
 - A primary committee of jurisdiction be named for all bills with multiple referrals
 - Once the primary has reported, a time limit is give to all additional committees;
- Six-year term limits for committee and subcommittee chairs;
- Power of Speaker to name committee chairs;
- Increased leadership control over committee assignments;
- Committee staffing cut by one third;
- Elimination of the right of referral for subcommittees;
- Abolition of independent subcommittee staffs;

- Power of committee chair to name subcommittee chairs;
- Limitation on the number of subcommittees per committee;
- Abolition of proxy voting and rolling quorums.

With the exception of the last item, each reform shifted power within committees to their chairs and shifted power across committees to the Speaker and the House leadership.

Together with these institutional changes, members also changed their behavior with the Republican takeover in ways that affected the role of committees in the legislative process. In some cases, behavioral shifts were prompted by the new structures which presented a fresh set of constraints and opportunities. In other cases, behavior appears not to have been prompted by the institutional reforms directly but instead came out of the same expectations that had also produced the reforms. Here I highlight three behavioral shifts that marked a departure from prior practice under the Democratic committee system involving task forces, inter-committee bargaining and conference committees. Finally, a closer look at a recent and significant test for the House committee system, the creation of a Department of Homeland Security, illustrates the role of committees under the Republicans. The past decade has shown a heightened role for the House

leadership in managing legislative business, often in lieu of the standing committees, as well as a greater role for chairs in acting on behalf of their committees.

The Move to Centralize Power

House Democrats used task forces as a method to strengthen the party coalition for matters coming to the floor, Sinclair (1983, 1995) documents, but under Newt Gingrich they came to serve a more prominent legislative function. He and his supporters made bold pronouncements about restructuring the organization of the chamber – “our attempt to change the internal culture of the House,” according to House Republican Conference chair John Boehner (Serafini 1995, 1710) – and task forces were part of an effort to reduce the role of the standing committees. A great number were created, but for most the leadership had little expectation or desire that they would produce policy proposals. A few – including ones on immigration, drug policy and health care – generated bills passed by the House. A top assistant to Gingrich said a key difference between success and failure with the task forces was the direct involvement of the speaker: “It takes a personal commitment on Newt’s part to do it.”¹

For those issues important to the leadership, great care was taken not just in getting representation from the committees of jurisdiction but also from other interested Republicans (and, in a few cases, conservative Democrats). Like Sinclair found with the Democratic task forces, junior members were over-represented; for Gingrich, it was a way to distribute power to the class that put the party in the majority. Leadership staff also took a direct role in mediating negotiations with the committees in order to head off turf challenges;

in the case of the health care and drug task forces in the 105th, all panels with jurisdiction over the product were discharged and had no formal role in the process. When task forces were involved, bill writing was directed by the House leaders rather than the committees.

When Dennis Hastert became speaker at the start of the 106th Congress, he said task forces would be taken off the table as a leadership strategy. Hastert had ascended through the committee system, unlike Gingrich. As a result, he was thought to be more sympathetic to the role of committees, and the chairs had become increasingly resistant to that form of intervention. On the other hand, Hastert had played a prominent role leading the health care task force under his predecessor, one of Gingrich’s successes in the 105th. As Evans (2001) describes, when he tried to name a task force to write Medicare prescription drug legislation midway through the 106th, the move was resisted by the two panels with jurisdiction over such a plan, Commerce and Ways and Means, and Hastert backed down. The victory for the committees in Evans’ story was only temporary, however. The House failed to get a bill, and so Hastert renewed his push for a prescription drug task force in the 107th, and this time followed through; when the GOP again failed to finish the task, a fifty-member Republican task force was named once more in the 108th, and he also named task forces on judicial activism and on terrorism. Though Gingrich’s enthusiasm to bypass the committee system has been tempered, Hastert has proven willing to use leadership-driven mechanisms to push his party’s legislative agenda through or around committees.

Less apparent to outsiders is the way committee bargaining under the Republicans strengthened chairs. With fewer staff resources, extended turf wars had higher opportunity costs. With time limits imposed on each additional initial and sequential referral, committees were less able to exert leverage by blocking legislation. At the same

1. All unattributed quotes with current and former congressional staff are from interviews conducted by the author in August 1997, August 1998, November 1998 and May 2003.

time, there continued to be a disincentive for them to roll over since that might impact future referrals; a parliamentarian would be less likely to make a referral, especially on more marginal claims, if a panel showed no interest in acting on the jurisdiction. To manage these competing demands, chairs have made much greater use of the “waiver” letter, correspondence written by a chair which yields jurisdiction on a piece of legislation referred to it in favor of another committee of referral. Says one committee’s chief counsel, “If there’s no record of any action, then [the parliamentarians] say, well, maybe you ought to exercise your jurisdiction, and therefore maybe there’s a reason that someone else should be allowed to encroach. And all this happens by millimeters, so these letters are just keeping the wolf at the door.” Such letters were used occasionally under the Democrats, but have become commonplace under the Republicans, almost always with an additional or sequential committee waiving in favor of a panel with the primary referral. Often these letters result from negotiations between the committees, with the legislative language agreed upon included in the letter.

The more frequent use of waiver letters to resolve additional initial referrals has meant greater control by chairs over both agenda setting and over the disposition of legislation within the committee’s jurisdiction. Waivers can be granted only by the chair of a committee and without appeal by the committee membership, essentially by declining to add the legislation to its agenda. As an International Relations staffer puts it, “One of the things that I’ve learned is that in fact one of the greatest powers of committee chairmen is the power to waive. . . . Hypothetically, the changes the chairman insists on could be very different than the changes the committee members would make if the measure came to markup. And so, that’s a hidden power of committee chairmen. What they do when deciding whether to waive or not in theory can be completely at odds with the will of the

committee.”

Interestingly, it was that staffer’s chair who, as the ranking minority member of the committee (then called Foreign Affairs), noted the effect waivers have on suppressing participation by a panel’s full membership. In a letter to the Joint Committee on the Organization of Congress considering reforms in the Democratic 103rd Congress, Rep. Benjamin Gilman wrote that despite his support of multiple referrals, “I fully recognize the role that such referrals can play in . . . promoting inter-committee ‘bartering’ that may not necessarily serve the purposes of open government or the full involvement of all of the members of the committees involved” (Joint Committee 1993, 943). Though it was not the design of the Republican reforms, and there is no evidence that it played a part in the move towards additional initial referrals, the effect has been to centralize further the deliberative power of committees in their chairs.

Changing practices have also affected the use of conferences with the Senate, with implications for committee power. Shepsle and Weingast (1987) demonstrate that in the naming of committee members to a conference, the Speaker provides panels the opportunity to exercise an ex post veto to restore the committee’s preferred policy after amendment on the floor. Krehbiel points out that the House retains a variety of tools to protect its product and prevent a committee from exercising its veto in conference, including messages between the chambers in lieu of a conference and a motion to recommit the conference report with or without instructions (Krehbiel et al. 1987). What he does not challenge, however, is the practice of Speakers in naming members of the committees with jurisdiction over the bill to the conference.

Yet, because that was a matter of custom rather than rule, a Speaker could choose not to provide committees that opportunity, especially in the case of additional initial referrals when panels had been accustomed to

receiving seats with joint referrals. This was coupled with a commitment by Gingrich to make conferences smaller and more easily managed than they had been under the Democrats. As Evans and Oleszek (1997) describe, Gingrich and Majority Leader Dick Arney took a direct role in overseeing conference deliberations, even withdrawing leadership support when the chair in charge of the House contingent did not pay sufficient heed (131). As a result, committees could no longer count on getting representation on a conference, and once getting on the conference could not count on using the position to exercise an ex post veto absent support from the House leadership.

There is a second element of conference appointments as well which speaks to the changing strategic choices for members, in this case flexibility for bargaining between chairs. Because a majority of each chamber's contingent must sign the conference report, a majority party risks losing if the minority members of the conference are able to form a coalition by stealing a handful of votes. Shaping the conference committee, therefore, entails constructing probable winning coalitions. Here, too, the use of additional initial referrals and waivers provide committees flexibility. Take an example from the 105th Congress described by a top-ranking staff member from a constituency-oriented committee. A representative served as chair of one committee of referral and a senior member of the other. The two chairs did not want the ranking Democrat from the first panel to serve on the conference, but anticipated they would have no choice if the overlapping member served in his capacity as committee chair. Instead, the first representative waived jurisdiction for his own committee, which had received an additional initial referral, was named to the conference as a member of the other committee, and thus effectively limited minority representation on the conference. Under the postreform Democrats using joint referrals where each committee is coequal in its

responsibility over a bill, together with a norm to appoint members from each committee of jurisdiction, such a maneuver was all but impossible. The strategy strengthens the roles both of the primary committee of jurisdiction and of the majority party in cherry picking the additional committees named to the conference, including those with cooperative ranking members and excluding those who would cause trouble.

Committee Power and the Department of Homeland Security

The move to create and then oversee a new Department of Homeland Security (DHS) demonstrated both the power and limits of centralized power. The creation of the department has had the greatest impact on the House committee system of any change in the last decade, and also shows the power and limits of party leaders in shaping its consideration. In the summer of 2002, Hastert took as his starting point a device used by Speaker Tip O'Neill and the Democrats a quarter century earlier in their attempt to steer President Jimmy Carter's energy plan through the maze of committees (Oppenheimer 1980). In consultation with Minority Leader Dick Gephardt, the Republican leadership created an ad hoc committee with jurisdiction over the Homeland Security bill. Each House standing committee would retain jurisdiction but report to the ad hoc committee. They were given a deadline beyond which they would be discharged if they had not completed their work. The ad hoc committee would then take the panels' recommendations, hold its own hearings and markup, and report the bill for consideration by the full House.

In these respects, the Republican plan matched the Democratic one from the 95th Congress. At the same time, Republican leaders understood that the ad hoc committee would be little improvement if it replicated in miniature the turf battles the panels would fight regardless. Consequently, Hastert and Gephardt made the committee small – five

Republicans and four Democrats from their parties' leadership – to act as a buffer between the committees' turf battles and the House floor, and for the leadership to retain control of the product. Despite the daunting complexity, each committee met its deadline, and the ad hoc committee then marked up and reported the legislation a week later. More importantly for the Republican leadership, while the standing committees made substantial changes, usually to keep agencies within their original departments, nearly the President's entire plan was restored by the ad hoc committee by the time it was reported to the House. The squabbles fought were partisan not jurisdictional – sixteen of the nineteen recorded votes taken by the ad hoc committee fell along strictly party lines² – and at no time did turf impinge on their deliberations.

The question in the 108th Congress then turned to how to oversee DHS: Whether to let committees that had jurisdiction over the department's components maintain their role, to create a new committee dedicated to DHS with sole primary jurisdiction over it, or to have to committee work alongside the existing panels. From the start, Hastert made two important concessions to the standing committees. First, he pledged on the opening day, prior to the adoption of the rules package, that the creation of the Select Committee on Homeland Security – despite the proposed rules giving it jurisdiction over DHS matters – would not affect the jurisdictions of the other

2. For one of the “bipartisan” votes, Representatives Watts and Pryce voted with the Democrats on an amendment by Representative Menendez. However, Watts did so in order to move to reconsider the vote, a motion that can be made only by someone who voted on the prevailing side. On the motion to reconsider, the Republicans collected themselves – Pryce now returning to the fold – and the Menendez amendment was defeated the second time along party lines. Therefore, on only two of eighteen distinct questions was there cross-party voting.

standing committees. In practice this meant that the role of the parliamentarian was not merely to apply neutrally the rules and referral precedents of the House (King 1994), but to limit the measures referred to the select committee; in a congress when national security issues were at the top of the agenda, only 40 measures were referred to the select committee, and with thirteen of them was it given primary jurisdiction and on only three minor bills did it have sole jurisdiction.

Second, the chairs of nine other panels were named to the select committee, along with the chair of the new Homeland Security Subcommittee on Appropriations, accounting for more than a third of its Republican contingent. Given that one role for the select committee was to investigate what sort of permanent institutional structure the House ought to use, this gave the standing committees direct influence over its deliberations. At the end of the Congress, Hastert announced that he supported making the select committee permanent. But how jurisdictional responsibilities relative to those of the standing committees will develop in practice – and how much leverage the leadership would continue to exert – is yet to be determined.

Conclusion

The behavioral changes under the Republicans with respect to the committee system do not constitute a wholly new way to conduct the House's business. Task forces, bargaining between committee chairs, and leadership direction of conferences were all present under the Democrats. Nevertheless, their use accelerated; more precisely – and importantly for understanding House committee behavior – the expectations of members about the likelihood of leadership or chair intervention changed dramatically from the pre-Gingrich days.

At the same time, the House also showed there were limits to centralization, as we have seen with Hastert's more careful use

of task forces and with the Select Committee on Homeland Security. Take also the role of subcommittees. While they lost the formal role they had under the Democrats, committees did not abandon use of them. Most bills continue to receive subcommittee referrals, and their number and importance in the process, while certainly never disappearing, has seen a resurgence. Though lacking staff and procedural guarantees, members continue to see subcommittees as a source of power. More generally, while the Republican leadership post-Gingrich have continued to exert a great deal of influence over pre-floor deliberations, members value the committee system as an important tool for accomplishing their goals and so have worked to protect their prerogatives even while they uphold their leaders' vigorous exercise of power.

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