**3 reforms for repairing Congress, the 'broken branch'**

By Adam Carrington, opinion contributor — 01/26/18 06:00 AM EST

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“Washington is broken.” Hardly a political battle goes on in D.C. during which we do not hear or read this appraisal.  And if the city in general is broken, we are told, then in no place is the break deeper or more evident than the United States Congress. In fact, one well-known book about Congress is cleverly titled “[The Broken Branch](https://www.amazon.com/Broken-Branch-Congress-Institutions-Democracy/dp/0195368711/ref=sr_1_1?ie=UTF8&qid=1516740249&sr=8-1&keywords=the+broken+branch).” From the debacle in replacing the Affordable Care Act to the persistence of budget showdowns, Congress appears to struggle in nearly all that it does, which itself seems to be very little.

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Many lay the blame for this circumstance at the feet of congressional leadership. If only better persons occupied those offices, they argue, then outcomes would improve. Yet we should not only look to personalities in assessing Congress’ troubles. After all, these complaints predate much if not most of the current leadership in both chambers. Instead, we should consider another issue underlying the problem: how Congress operates. Process and structure matter. How Congress goes about its job says a good deal about how well it does that job, regardless of who serves within it.

In assessing Congress, we should begin with defining its purpose, the job it is accused of failing to accomplish. The Constitution, in the article creating this branch, declares that “All legislative powers herein granted shall be vested in a Congress of the United States.” Congress’ job resides in the making of laws.

To legislate well, the Constitution’s Framers emphasized one quality in Congress above all others: deliberation. “[Federalist 70](http://avalon.law.yale.edu/18th_century/fed70.asp)*,”* in comparing Congress to the presidency, described the former “as best adapted to deliberation.” By the act of deliberation, the Framers believed that Congress would pass better legislation — laws more refined, more precise, more adapted to the problems lawmakers sought to address.

Therefore, Congress’ mode of operation should be conducive towards a healthy deliberation that results in good legislation. In some ways, Congress’ constitutional structure forces this kind of deliberation, regardless of other factors. By splitting Congress into two chambers, for instance, the Constitution forces those two bodies to discuss and debate with each other. The differences between the two bodies — particularly in terms of office — give different perspectives that all can contribute to healthy discussion. And distinctions between states and districts provide an additional means to give disparate perspectives that can enhance deliberation and improve legislation.

Yet the Constitution leaves much about how Congress goes about writing and passing legislation to that body. Where it possesses this freedom, Congress too often has harmed its own ability to do its job well. While not an exhaustive list, I suggest three changes, all within Congress’ constitutional power, that could improve its own legislative performance.

**First: End omnibus spending bills.**

Well-written legislation has an internal coherence. It focuses on an issue or a closely related set of concerns and seeks to address them in a cohesive fashion. Doing so results from good deliberation in a bill’s writing. It also results in good deliberation in its passage, giving a clear, understandable text which Congress can debate, then pass or reject.

But for too long, Congress has ignored this rule of legislation in its spending bills. Instead, it has passed omnibus packages that combine numerous, unrelated matters into one piece of legislation. The very reverse of good legislation, these bills show a lack of deliberation in their composition and cripple deliberation in their consideration.

**Second: Strengthen committees in the legislative process.**

Over its history, Congress has established committees focused on particular areas of government responsibility, from taxes to the environment to the military. These committees aid deliberation in two ways. First, they allow congressmen to develop knowledge in a particular area. Second, they allow these members to use that specialized knowledge to refine bills before they go to a full vote on the floor.

Yet most important pieces of legislation never make it to a committee. Now, too often, they are written by party leadership in Congress and either rubber stamped in committee or rushed to the full floor. Republicans complained about problems along these lines when Democrats held the majority. They have acted in much the same manner upon assuming control themselves. Regardless of party, such proceedings negate important means to deliberation.

**Third: Reform or end the filibuster.**

The previous suggestions pertain to enhancing deliberation. This reform concerns enhancing the process of passing legislation by not facilitating stagnation. The filibuster stems historically from attempts in the Senate to keep the majority from shutting down the minority’s voice. It allowed space for deliberation by forcing both sides to hear each other’s arguments. However, the vast majority of the time, the filibuster no longer operates for this purpose. Instead, it mostly serves the purpose of heightening the threshold for passing legislation from a simple majority of 51 to a supermajority of 60. Doing so is an abuse, changing majority rule into a *de facto* minority veto.

To stop this abuse, the Senate could eliminate the filibuster entirely. It is not a constitutional requirement. In fact, the Senate did eliminate the filibuster for Supreme Court nominees during the confirmation of Justice Neil Gorsuch. Another route would be to return the filibuster to its procedural roots.

Filibusters used to shut down the entire business of the Senate, not just voting on an individual bill. Since the 1970s, however, the Senate can proceed with other legislation while a particular bill is filibustered. Though the change was originally intended to facilitate more action in the Senate, it has made filibustering too easy. A return to a higher-stakes filibuster might make it more politically dangerous and thus less routine. Either way, greater ease in passing legislation is sorely needed.

Changes along these lines will not be easy. They will challenge Congress to work in ways it has not for a long time — to actually practice the art of legislating. But, taken together, these reforms might help to restore some needed power to the legislative branch. Through them, the “Broken Branch” may begin the process of self-repair.

*Adam Carrington is an assistant professor of politics at Hillsdale College.*