III. Intentionalist Puzzles

A. Individual and Legislative Intent

In order to propound an intentionalist theory of statutory interpretation as we do, we obviously must believe that there is such a thing as "legislative intent." Though once the dominant school of statutory interpretation, intentionalism has become passe over the past few decades, due largely to widespread skepticism about the existence of "intent." This skepticism comes in different varieties. At the extreme, some scholars argue that individuals do not have intent. More common, however, is the argument that language cannot communicate understanding, so that there can that there can be no shared understanding among people (hence, no shared intent). From this, people conclude that groups—including legislatures–do not have intent. Finally, a third line of criticism revolves around the aggregation of preferences. The gist of these arguments is that a legislature is a collection of individuals with divergent intentions, and that the aggregation of preferences that produces a legislative decision does not so much represent collective intent as the vicissitudes of agenda manipulation or pressure of interest group lobbying. In this section, we articulate an argument that confronts these criticisms. We contend that: 1) individual intent exists, 2) under a broad range of circumstances, it can be communicated and mutually understood within a group, 3) legislatures meet the conditions for this mutual understanding, and 4) legislators' preferences can be meaningfully aggregated into a collective preference. Hence, legislative intent does indeed exist.

1. Individual Intent and Communication

That people have intentions, and that their behavior is at some level goal-oriented, is a fundamental premise across law and the social sciences.[5] For example, the law considers intent by distinguishing pre-meditated crimes from lesser offenses; "economic man" is assumed to deliberately pursue material wealth; members of congress are treated as "single-minded re-election seekers" in political science (Mayhew 1973); even cultural theories of behavior, which tend to focus on differences in beliefs and goals across cultures, treat people as goal-oriented (Wildavsky 1987). From a rational point of view, moreover, the very fact that someone takes an action strongly suggests that they intend to achieve some change in the world around them: because any action is costly, one would act only if they expected that action to change the state of the world around them with the expected consequences to them great enough to offset the cost of the action.

In a seminal work that is now an early landmark in the development of both cognitive and social science theories of individual choice, Simon (1955) argued that people live in a world prominently characterized by scarcity and complexity. Scarcity necessitates proactive behavior on the part of individuals in order for them to get those things that they need and want; along with complexity, which far exceeds the individual human brain's capacity for understanding complexity, this means that "virtually all

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[5] Economists employ useful fictions about group intent: for example, that firms seek to maximize profits (**cites), that cartels (**cites) and interest groups (**cites) seek to maximize rents, that bureaucrats seek to maximize their budgets (**cites), etc (**general cites). Political scientists often assume, among other things, that nations seek to maximize power (**cites). Indeed, it is quite common to assume that groups have shared intentions behind their actions. Much of our discussion of goal-oriented behavior, cognition, and communication follows, in greatly condensed form, from Lupia and McCubbins (1998). See that volume for a more detailed version.

human behavior is [goal-oriented]. People usually have reasons for what they do" (Simon 1995, 45).

Intentional behavior, moreover, need not be deliberative; in other words, a person need not consciously deliberate about the intended consequences of an action, nor even about the choice that they make, for their chosen actions to be goal-oriented (Satz and Ferejohn 1994). Indeed, scholars in cognitive science emphasize that goal-oriented behavior usually *is not* conscious behavior. As an adaptation to scarcity and cognitive limitations, people form behavioral habits and routines that reflect previous decisions about how to react to recurrent situations (Holland 1995). In fact, such "shortcuts" for decision-making take on physical structure—the structure of the brain changes and develops in ways that facilitate "instinctive" reactions to recurrent situations (Cipra 1995; McBeath, Shaffer, and Kaiser 1995). Thus, even such mundane and seemingly mindless behavior as eating a peanut-butter-and-jelly sandwich for lunch everyday, or following the same routine in getting ready for work every morning, reflects intent on the part of an individual.

Similarly, people usually understand and learn about their environment via shortcuts that economize on cognitive costs. So, for example, a person need not understand electrical engineering or computer programming to use a computer; rather, they need only know what will happen when they press a key on the keyboard or click the mouse button. Instead of developing an encyclopedic understanding of the world around them, people use their impressive capacity for using analogy and pattern

recognition to develop beliefs about the state of the world around them (Churchland 1995). Despite their lack of comprehensive knowledge, individuals are frequently able to apply such beliefs in order to anticipate the consequences of their actions.

It follows from the foregoing discussion that, when people communicate with one another, they do so with a purpose. The purpose of a statement is to affect another person's beliefs about the world—and people *are* able to make inferences about the intent behind others' communications. If, for instance, a person is driving down the street and a passenger says "turn left here," the driver understands the intent behind the statement. Similarly, the driver could readily understand the meaning (i.e., the information that is conveyed about the state of the world) of such statements as "watch out, I think the guy in the pickup is drunk," "we'll get there faster if we go the other way," or "I knew I should've driven."

Of course, the fact that people *sometimes* understand the meaning of others' statements does not imply that they *always* understand the meaning of others' statements. Inferring the meaning of a statement can be particularly difficult when one is uncertain of the speaker's knowledgability or interests. Under such circumstances, the meaning of statements is often unclear: "I didn't do it" might mean "I didn't do it," but it might also mean "I did it but don't want to admit it." Even in these adverse conditions, it is possible for people to learn from others' statements. Lupia and McCubbins (1998) show that, even without confidence in the speaker's motives or knowledge, three external forces—verification of a statement, penalties for lying, and observable costly action—can allow listeners to learn the meanings of statements. Both verification and penalties for

lying reduce the speaker's expected gain from lying, thereby making it less attractive, while observable costly action allows the listener to infer how much the speaker stands to gain by persuading the listener about the state of the world. When these conditions hold, then people are able to communicate and share common beliefs about the state of the world. Put another way, a group of people can reach a common understanding; this refutes claims that language cannot effectively communicate meaning, and that there can be no shared (i.e., group) understandings among people.[6]

2. Legislative Structure and Legislative Intent

The existence of shared understandings does not imply that *all* groups have shared understandings. Especially given that a legislature is a forum for competition among individuals with divergent interests, one might still rightfully ask if it is possible or plausible that legislators share a common understanding of the intent of a bill when they enact it.

We argue that it is both plausible and likely. In fact, a legislature is a type of group in which the conditions for trust and learning are *extremely likely* to be met—in part because legislators are good at identifying people and groups with similar interests, and in part because legislative structure incorporates all three types of external forces that facilitate learning (Lupia and McCubbins 1998). A wide array of political scientists, approaching the topic from a variety of methodological angles, echo the theme that

[6] We find great irony in the fact that those who claim meaning and understanding cannot be shared *use language and communication to try to persuade others of their beliefs*. In other words, such claims are self-contradictory.

members of the House of Representatives put significant amounts of effort into identifying people and groups with similar interests (Fenno 1973, 1978; Kingdon 1977), whose advice can then be used as a shortcut for learning about issues on which a legislator is not well informed (Kingdon 1973; Jackson 1974; Matthews and Stimson 1970, 1975; McConachie 1898). They also carefully screen those to whom they delegate influence over the House agenda (Cox and McCubbins 1993; Fenno 1973; Kiewiet and McCubbins 1991; Krehbiel 1991; Polsby 1968; Polsby, Gallaher, and Rundquist 1969); Rohde and Shepsle 1973; Shepsle 1978; Smith and Deering 1990; Thies 2001).

Even when legislators do not perceive common interests with a speaker, they can learn from one another as a result of the same external forces that we discussed in the previous section: penalties for lying, verification, and observable costly action. We discuss this topic in greater detail in the next section of the paper, in which we discuss how to apply an understanding of the legislative process in order to read legislative intent. For now, however, we briefly overview the ways in which the legislative process facilitates learning among legislators.

There are various types of penalties for lying: party leaders and committee chairs can be removed if they do not represent party members' interests (Rohde 1991), party leaders sometimes sanction party members (Cox and McCubbins 1994; Schickler and Rich 1997), lobbyists can be sanctioned if they provide misinformation (Evans 1991a, 1991b; Hall and Wayman 1990; Herzberg and Unruh 1970; Wright 1990), and those giving testimony face perjury charges.

In addition, the structure of the legislative process reflects various delegation relationships. For instance, party members delegate to party leaders and the majority party delegates to party contingents on committees and subcommittees. In any principal-agent relationship, checks and balances are one way to help ensure that agents are faithful, by giving agents incentives to monitor each others' actions. In the case of Congress, the legislative process creates a competitive system of checks and balances between parties and committees, party leaders and party backbenchers, and policymaking committees and "control" committees (Lupia and McCubbins 1994).[7] This structured competition means that, at various points in the process, a bill must pass the scrutiny of an array of individuals whose expertise allows them to verify (or not) the statements of others, and whose incentives are to do so. In addition, procedures are structured in ways that provide both opportunities and incentives for third parties from outside the legislature to monitor and verify statements, and to reveal untruthful statements to legislators (McCubbins and Schwartz 1984; McCubbins, Noll, and Weingast 1987, 1989, and especially McNollgast 1994).

Finally, Lupia and McCubbins note that many types of observable costly effort occur in a legislature:

[7] "Policymaking" committees are the substantive committees that hold jurisdiction over a particular policy area, such as foreign affairs, and that initially authorize spending or other actions related to that jurisdiction; "control" committees are the Appropriations, Budget, and Rules Committees, each of which serves the collective interests of majority party members by mitigating collective action problems that the party faces (Kiewiet and McCubbins 1991; Cox and McCubbins 1993). Typically, for example, each policymaking committee would like to provide benefits to constituents in their jurisdiction, while having others pay for those benefits—but if every policymaking

> Legislative rules, procedures, and practices often impose costs on the actions of legislators, thereby establishing the conditions for [learning from others]. For instance, drafting legislative proposals, holding hearings and investigations, writing reports, striking deals, and whipping up support for legislation all require the expenditure of valuable resources (e.g., time, effort, and money). (1998, 214-5)

In short, there are many points in the legislative process at which decision-makers with the ability to affect the outcome of a bill take costly action. We will elaborate on this theme in section **, when we discuss legislative process and reading legislative intent in greater detail.

In addition to these institutional arguments, there are additional reasons to believe that communication and shared understanding of intent are common. We believe that the difficulty of communication has often been overstated. Regardless of the institutional setting, we know from cognitive science that other factors help to indicate meaning (in this case, the meaning of a bill): the language of the text, the context of the bill's passage and debate, and the context of the time and place all refine the meaning of the bill (cites). Rules of language use, convention, and context help to exclude some, if not most, possible meanings (**cites). As the context grows richer or the language of a bill is more

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committee were allowed to do so, the Budget as a whole would be in deficit and all members of the party would suffer from damage to the party's reputation.

carefully crafted, the range of reasonable interpretations of the bill's meaning becomes narrower (**cites).

To take a famous example from H.L.A. Hart, suppose that a city council passes an ordinance that says "no vehicles are allowed in the park." (Hart, 19xx) The meaning of this law might be open to debate—for instance, it might mean "no motorized vehicles are allowed in the park," or it might mean "no motorized vehicles, or horses, or bikes, etc." are allowed in the park. There may be some ambiguity about whether, for instance, a baby carriage can be brought into the park. Or one might object that a bronze statue of a Model T to be built in the middle of this park is not within the ambit of the prohibition of "vehicles." There are, after all, a range of acceptable meanings of the statutory term. One thing, however, is clear and indisputable about the meaning of the bill: it does not mean "all vehicles are allowed in the park.

Returning now to the question of legislative intent, all this leads to the conclusion that legislators have ample opportunities to communicate and learn from one another about the intentions behind a bill, and to share a common understanding about the intent of the bill's author. When a bill is amended, moreover, this does not change: the same external forces facilitate learning about the intent of a given amendment. It is therefore the case that, when legislators choose between a bill and the status quo on a final passage vote, they can have a common understanding of the intent of the bill. From this we conclude that an individual legislator's vote for a bill, as well as legislature's passage a

bill, should be interpreted as acceptance and recognition of the bill's intent, as framed by the bill's authors and as amended by the legislature.

3. Aggregating Individual Intent

We now turn to the final criticism of the notion of legislative intent, which is that legislative intent is meaningless, an oxymoron. The most radical of these criticisms argues that social decisions are "incoherent" or meaningless -- devoid of any real measure of social "preference" – and that seeking legislative intent is therefore a fools' errand. This line of argument is summarized by Shepsle (1992, 254): "If legislative intent must go ... then so, too, must deference to it. The courts cannot defer to something that is nonsense."

In fact, there is dissension within social sciences about the extent to which we can believe that groups (such as a legislature) have intentions. On the one hand, many have criticized the notions of collective and legislative intent because legislatures are a "they" not an "it." All 535 voting members of Congress have their own preferences over policy and, hence, their own most preferred interpretation of any piece of legislation. Moreover, as social choice theorists have known since Condorcet, majority-rule decision making in the absence of agenda control is often unstable. Arrow (1951) and others have shown that collective choices may not reflect a transitive ordering of alternatives for the group. Schwartz (1986) showed that the collective choice of a group may indeed cycle. McKelvey (1976) has shown that, under very specific and extreme circumstances,

collective choices *will* cycle. Often, scholars interpret these findings as meaning that collective choices are "unstable" or "chaotic".[8]

But, even if collective choices are intransitive, does that imply that collective actions are unintentional or meaningless, as is often argued? The instability results say nothing of this sort. Rather, they point out that social choices need not necessarily be transitive--this is far from saying that social choices will be chaotic. The instability results, moreover, depend entirely on the implausible assumptions that all legislators are omniscient, and that legislators' resources for changing law and policy are infinite. McNollgast note the critical importance of these assumptions:

> [I]f you want to claim that social choice theory implies legislative intent is oxymoron, then you must accept two implausible assumptions about legislators' knowledge and resources. If, however, you replace these assumptions with ones that are more realistic, then you can no longer claim that discovering legislative intent is impossible (1994, XX).

Certainly, if three of us get together to push a boulder up a hill, it seems reasonable to infer, once we have finished, that each of us understood that the group was pushing a boulder up a hill. The three members of the group understood that it was a group effort to push the boulder up the hill, and that the consequence of their action would be to transport the boulder to the hilltop. The members of the group may not have all agreed, to the same extent, on the necessity or wisdom of transporting the boulder, and they may not have all put in the same level of effort toward moving it. Nonetheless, they

[8] For a rebuttal to this argument, see Tullock (cites).

each undertook costly effort toward a collective goal. If we assume that they had free will in choosing whether or not to push, then we can assume that it was their intention to move the boulder, and that they understood the consequence of their collective action.

Using similar reasoning, collective intent is routinely recognized by areas of the law other than statutory interpretation. For example, both corporate and contract law grant legal recognition to collective entities such as corporations, and to the collective decisions that they make (McNollgast 1994).

By analogy, when the legislature comes to a final decision whether to accept or reject a bill, each member of the legislature knows that they are making a choice between the proposed bill and the status quo (that is, the existing law), regardless of the agenda, procedure, and rules that got the proposal to this point. Legislators may disagree about the wisdom of the bill, or they may prefer different versions of the bill. They do, however, have shared beliefs about the consequences of the bill, and voting for it indicates a collective intent to change policy away from the status quo and toward the bill's consequences.

On top of the fact that intransitivity does not imply that collective intent is non-existent, many social scientists have also argued that organizational structures and institutional settings can and do provide stability to social choices (c.f., Weingast and Marshall 1988; Krehbiel 1991; Cox and McCubbins 1993; Laver and Shepsle.1994; for a counter-argument, see Riker 1980). In particular, a division of labor (Shepsle 1979,

Shepsle and Weingast 1987) and a hierarchy (Williamson 19XX) are the principal means for translating individual intentions into a collective intent.

In legislatures, the structure and process of legislative decision making lead to policy choices that are structurally stable. In addition, choices over structure and process are neither random nor unstable, but are chosen by members of the majority party in each legislative chamber in order to establish an order of business that a majority of legislators view favorably. In other words, legislative decisions are quite stable -- rather than being "unstable," "chaotic," etc. – and institutional structure that produces stability is chosen quite deliberately in order to produce collective choices in a way that the majority favors.

The details of the rules and procedures under which a bill is considered matter a great deal in determining which (sets of) legislators influence the collective decisions that legislatures make. In the next section, we turn to the question of how to interpret legislative intent. Our argument about how to read intent is founded upon a detailed understanding of the legislative process, and how it works.

B. The Legislative Process and Interpreting Legislative Intent

Our approach to discerning statutory intent, which derives closely from that of McNollgast 1994), consists of two steps: first, identifying the key political actors who cooperated to enact a bill, and second, detecting the actions that reveal those actors' policy preferences. Both are essential to discovering the nature of the agreement that the members of the enacting coalition thought they were making. In particular, to ascertain

legislative intent requires separating the meaningless, inconsequential actions (or signals) of participants in the legislative process from the consequential signals that are likely to reveal information about the coalition's intentions.

To understand the intent of a statute, an outsider to the legislative process must be able to determine whose interests were key in developing the legislative agreement and what bargain was struck. All bills are bargains among the members of some winning coalition, but the way a bargain is composed depends critically on the route a bill takes through the decision making structure of Congress, as well as the reversionary policy that is in place. By understanding the route a bill took -- including who the decision makers were at key stages in the legislative process and what demands they made on the bill -- an outside observer can begin to identify the elements of the agreement the coalition thought it was making that are not explicit in the language of the statute.

In this section, we begin by describing the legislative process in some detail, in order to provide a framework for understanding who the key actors are and how their action should be understood. We then discuss how the system works, and what how we can use this information to learn about intent. Finally, we discuss certain aspects of the process that should *not* be used to make inferences about intent.

Legislatures make law, which involves a collective effort on the part of at least a majority of legislators. This collective effort requires the allocation of scarce resources, the most important of which is plenary time, among numerous legislators who are competing over its use. To overcome the implied problems of collective action,

legislatures typically delegate the task of allocating the legislature's scarce resources to the majority party leadership. This delegation, however, creates the potential for agency losses, whereby the legislature's agents might use their power to allocate resources for their own benefits rather than for the legislature's benefit as a whole.

Legislatures each attempt to strike a balance between solving collective action problems and mitigating potential agency losses by creating institutions that govern the allocation of resources and the flow of proposed legislation through the system. The rules, procedure, and institutional design of law-making make up the legislative process. In addition, they provide a framework for identifying key decision-makers and for making inferences about their preferences. Hence, we go into some detail to describe this process.

Three elements of procedure are common to all legislatures. First, because each legislature must allocate plenary time, a substantial fraction of each legislature's rules, procedures, and structure are devoted to defining and proscribing the means by which the legislature's agenda is controlled. Second, the rules must also proscribe what happens when no new laws are passed, i.e., how is it that the "reversionary policy" is set? Third, once plenary time is allocated and the reversionary policy is set, the legislature must have rules and procedure that dictate how a collective decision on policy change will be reached. While the just listed features of the legislative process are ubiquitous, of course, there are many additional elements to the legislative process that vary from one legislature to the next, and which have important effects on the flow of legislation. Many

of these involve attempts to mitigate the aforementioned problem of agency loss and are important for our purposes. We will discuss these elements of the legislative process later in this section.

1. Controlling the Agenda

Controlling the legislative agenda involves the creation and proscription of two types of powers. One type of power is the authority to get proposed policy changes onto the legislative agenda; we call this authority *positive agenda control*. The alternative type of power is the authority to keep proposed policy changes off of the legislative agenda, and thereby protect the status quo—or reversionary policy—from change; we call this authority *negative agenda control*. In what follows, we discuss each.

a. Positive Agenda Control

Positive agenda control is the power to propose new policies. The issues of who has it or controls access to it, and who does not, may affect the decisions that a legislature can make depending on the various policy makers' preferences. Possessing positive agenda power grants the policy maker the formal right to introduce bills, or at very least, it entails the privilege to bring up for consideration a motion or an amendment before the full legislative body.

are considered in their own chamber. Within the House, committees of a particular jurisdiction and specialized task forces have the power to initiate policy change in their policy area. But simply proposing legislation hardly implies that it will be considered by the full legislative body. With the exception of some bills that are "privileged,"[9] most House scheduling is controlled by the Speaker and the Rules Committee.

To untangle who really controls the legislative agenda, it is important to know both who can initiate proposals and who controls the consideration of proposals—and to whom those actors are accountable. The power to initiate policy and the power to schedule policy consideration may be defined by the constitution or such procedural decisions may be delegated to the legislative chamber itself to resolve. In the United States, these determinations were left entirely to the chambers themselves. Over time, something of a dual system has developed, in which the legislature divides positive agenda power between individual committees and the parties. Committees act as a filter, shaping nearly all proposals in their particular policy jurisdiction, but the majority party leadership may be given the power to allocate scarce common resources, including committee assignments. Presumably, each party's committee contingent acts as a representative of the whole party. To the extent that the party exercises control over committee assignments, and to the extent that those assignments are desirable to individual members, the party's representatives should be faithful to the party's collective interests. A similar relationship holds with regard to the leadership's scheduling

[9] For example, outlined in US House Standing Rules, five committees, such as Appropriations and Budget, have direct access to the floor on select legislation.

activities, such that the leadership will pursue the majority party's preferences to the extent that the party can discipline its agents, their leaders.

b. Negative Agenda Control

An alternative form of agenda control also exists, which essentially is the veto power. We call the authority to halt or to delay a bill's progress *negative* agenda control, and it can be exercised either explicitly through vetoes or implicitly through inaction. Veto power is usually held by the legislature, although when the executive possesses a decree power, for example, policy may be changed without legislative assent.

Any person or faction with the power to block, or significantly delay policy, is often referred to as a veto gate. There exists significant variance across nations in the number of veto gates that inhabit the legislative process. The United States' presidential system with its bicameral, decentralized legislature represents one end of the spectrum, and the United Kingdom occupies the other end of the spectrum with its more centralized parliamentary form of government. In the House of Representatives alone, the substantive committees, Rules Committee, Speaker, and the Committee of the Whole each constitute veto gates through which legislation must pass, and the Senate has even more veto gates due to their liberal restrictions on debate. By contrast, in the United Kingdom, the legislative process is much more efficient, since the Cabinet and Prime Minister serve as the main veto gates through which new legislation must pass.

c. Reversion control

Whenever legislatures consider passing a law, they must always consider its effects relative to what would occur if no law were passed. Indeed, in virtually every legislature the final vote taken on a proposal is that for final passage, which forces members to contrast directly the proposed change and the status quo. Reversion control is the power of setting the default policy outcome that will result if no new legislation is enacted. It is important to note that the reversionary policy is not necessarily the extant policy. For example, some laws are crafted with 'sunset provisions,' which mandate that a program be dissolved or an appropriation be terminated by some specified date.

To understand law making, it may be important to know whether the reversion policy can be manipulated, and if so, who possesses the power to do so. This requires an understanding of the relationship between the reversion policy, any new policy proposal, and the various policy makers' preferences. Reversionary policies can be defined formally by a constitution and/or statutes, or as the result of informal solutions to immediate problems. In Germany and the United States, for instance, the constitution defines the reversion for budgetary items, but the reversionary policy for entitlements, such as Social Security, are typically defined by statutes to be adjusted incrementally.

The importance of reversion control can be seen in the following example of the effect of varying the regulatory burden of proof. The US Federal Food, Drug, and Cosmetics Act of 1938, as amended, requires that before a pharmaceutical company can market a new drug, it must first prove that the drug is both safe and efficacious. By contrast, in the Toxic Substances Control Act of 1976, Congress required that the

Environmental Protection Agency (EPA), before regulating a new chemical, must prove that the chemical is hazardous to human health or the environment. In one case, then, the burden of proof is on the industry that wishes to promote its product; while in the other case the burden of proof is on the regulator that wishes to halt a product's introduction. The results of the differences in the burden of proof are stark: few new drugs are marketed in the United States relative to European democracies, while the EPA has managed to regulate none of the 50,000 chemicals in commerce under these provisions in the Toxic Substance Control Act.

In fact, the effectiveness of agenda control may itself be contingent on the reversionary outcome. Whether or not those who possess positive agenda control will be able to make "take-it-or-leave-it" offers (also known as ultimatum bargaining) to the legislature depends largely on the attractiveness, or unattractiveness, of the reversionary outcome to the policy makers.

d. Procedural control

Most legislatures possess rules that structure the handling of proposed legislation. Rules define voting procedures, the types of amendments that will be allowed, if any, how amendments will be considered, provisions for debate, the public's access, and so forth. It is possible to draw a distinction between two different forms of procedural rules: standing rules and special rules. Standing rules guide the day-to-day procedure by which the legislature conducts itself and the internal lawmaking processes. Standing rules may

continue from a previous legislative session, or they may be redrafted each new legislative session.

By contrast, special rules create exceptions for consideration of a bill, which violate the standing rules. In the House of Representatives, floor debate usually takes place under a special rule restricting debate and amendments, and the Rules Committee possesses the power to write special rules. Successful consideration of most nontrivial bills typically entails giving certain members procedural privileges, whether accomplished by a special rule or by a suspension of the rules. Restrictive rules, such as limiting debate or amendments, are one way for the majority party leadership to eliminate opportunities for defection by their party members.

The procedure structuring debate, and restrictions on debate, are typically encompassed by a legislature's standing and special rules. In addition to the obvious importance of who gets to participate in the deliberative process and how extensively, control of debate may have serious policy implications. For example, in the United States, judicial interpretation of laws often refers to the congressional record to ascertain the lawmakers' intent. As a consequence, the ability to participate in debate is an opportunity to possibly have your preferences or understanding of a law incorporated in its interpretation.

In the House of Representatives, unless proposed legislation is governed by a special rule or there is a suspension of the rules,[10] the House's standing rules and precedents limit each member's speaking time to one hour during debate and five minutes when considering amendments. Upon recognition, a member controls her allotted time to yield or allocate as she desires, but this rule is circumscribed by the fact that the Speaker of the House possesses recognition power. Hence, given their power to suspend the rules, and to write special rules, and given the Speaker's discretion to recognize members, the majority party leadership is able to structure chamber debate quite effectively.

In the Senate, however, the majority party's control over debate is a bit more tenuous. The Senate's standing rules do not limit debate, and the chamber has developed a notorious reputation for members' ability to frustrate a majority through the filibuster. Over time, the rules have been modified, to allow a three-fifths majority to invoke what is called "cloture," ending a filibuster by either limiting debate to one hour per member, establishing a maximum of thirty hours more for debate.

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[10] As mentioned above, special rules (e.g., limiting debate) are recommended by the Rules Committee and approved by simple majority in the full chamber. The Rules Committee is stacked with majority party loyalists selected by the Speaker. Suspension of the rules, however, requires a two-thirds majority and thus typically requires some bipartisan support.