

Molly E. Reynolds* and Peter C. Hanson

Just How Unorthodox? Assessing Lawmaking on Omnibus Spending Bills

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Abstract: Scholars commonly observe that lawmaking in Congress has transitioned from the textbook system of “regular order” in which power was decentralized in committees and lawmaking followed a formal process to one of “unorthodox lawmaking” characterized by the centralization of power in party leaders and a lack of formal process. It is debated whether this change marks a decline in Congress’s lawmaking capacity, or is a procedural adaptation that has allowed Congress to remain productive despite high levels of partisanship. In this article, we maintain that lawmaking in Congress varies along two dimensions: formality of process and centralization of power. We analyze non-spending bills added to omnibus appropriations packages to demonstrate that lawmaking on these bills is informal and decentralized. Rank-and-file members retain a capacity to place matters on the legislative agenda and authorizing committees retain gatekeeping and policymaking authority. The process through which add-ons are approved is also bipartisan. Our findings demonstrate that this style of lawmaking is a procedural adaptation used by members to pass legislation important to their districts and in which committees continue to play an important deliberative role.

Keywords: party leaders; U.S. congress; unorthodox lawmaking

1 Introduction

Scholars often emphasize two defining features that distinguish Congress today from the “textbook Congress” of the mid-twentieth century. First, members are politically polarized and partisan conflict is common. Second, power is centralized under party leaders rather than dispersed in committees. The results of these changes, many argue, are sharply negative. High levels of partisanship and the breakdown of the committee system have undermined Congress’s lawmaking capacity (LaPira, Drutman, and Kosar 2019). Committees have responded to this centralization by spending less time holding legislative hearings, marking up bills,

*Corresponding author: **Molly E. Reynolds**, Brookings Institution, Washington, DC, USA,

E-mail: MEReynolds@brookings.edu

Peter C. Hanson, Grinnell College, Grinnell, IA, USA, E-mail: hansonpe@grinnell.edu

and sending measures to the floor (Lewallen 2020). Partisan gridlock prevents the adoption of legislation needed to solve important national problems (Binder 2021). Under this line of reasoning, Congress has become the “broken branch” (Mann and Ornstein 2006).

A growing number of studies, however, now challenge this view. Congress remains productive—including, at times, at passing significant legislation—and, importantly, this legislation continues to be adopted with bipartisan support (Curry and Lee 2020). Committees continue to exercise influence on policymaking (Curry 2019; Hanson 2019) and can, under certain circumstances, function as forums for deliberative inquiry (Kornberg 2023). Individual members pursue bipartisanship, moreover, because it helps them achieve individual legislative goals (Harbridge-Yong, Volden, and Wiseman forthcoming).

Central to both of these competing accounts of the contemporary Congress is the decline of so-called “regular order” and the rise, in its place, of “unorthodox” lawmaking (Sinclair 2012). Importantly, regular order, in the words of legendary Congressional Research Service expert Oleszek (2020, 1), “can be an elusive and changeable concept.” In a period where the processes usually considered to constitute “regular order”—including full committee consideration, ample amendment opportunities, and robust collaboration between the chambers to work out a final compromise—are less frequent, some may even question the need to explore its conceptual pole. Put differently, if most legislating is “unorthodox,” then why are we still anchoring our understanding with the idea of “regular order”?

Here, we argue that by focusing on the two opposing concepts of “regular order” and “unorthodox lawmaking,” we obscure important nuance in the legislative process. In particular, focusing on concrete and observable sign points in the legislative process can cause observers to miss evidence of some of the very qualities that proponents of “regular order” value, including deliberation, bipartisanship, and opportunities for rank-and-file members to contribute meaningfully to the development of bills. Analyzing the ways in which bills are developed versus how floor consideration of them is managed (Curry and Lee 2020) is an important first step in constructing a richer explanation of legislating in the contemporary Congress. As we demonstrate below, lawmaking can be understood as varying along two major dimensions: formality of process and centralization of power in the hands of party leaders. By focusing on the degree to which legislating embodies these features, we are able to gain a richer understanding of the contemporary legislative process.

We begin by describing in more detail the competing perspectives on the transition from what is generally described as regular order to what is characterized as unorthodox lawmaking. Next, we define the two dimensions—formality and centralization—that we argue better capture the nuance of today’s legislative process. From there, we outline one particular type of lawmaking—the inclusion of

non-spending legislation in omnibus appropriations bills—that provides a useful case for exploring lawmaking along these dimensions. Finally, we present evidence, from a combination of interviews and text analysis of legislation, that the legislative process can and does still accommodate decentralized contributions from a range of members of both parties.

2 How Much Change Has Partisanship Wrought?

Central to most modern work on Congress is the assumption that members of Congress are “single-minded seekers of re-election” (Mayhew 1974). Observable features of Congress such as voting patterns, rules, and the body’s internal organization are best understood as the collective outcome of the 535 members of the House and Senate individually pursuing these interests (Shepsle 1992). The rise of partisan polarization (McCarty, Poole, and Rosenthal 2006; Poole and Rosenthal 2007) in recent years has led to an increased scholarly emphasis on members’ individual interest in maintaining a strong collective partisan identity. Partisan theories of Congress such as conditional party government and the cartel model assume that individual members benefit electorally from a strong shared party reputation (Aldrich and Rohde 2001; Cox and McCubbins 1993). Under this logic, members of the majority party seek to enhance their party reputation by empowering their leaders to pursue partisan policy goals when the majority party is ideologically homogeneous and distant from the minority. Two key expectations flow from these theories when Congress is highly polarized: power in Congress should be centralized under party leaders and legislation should be more partisan in nature.

These expectations have found support in a variety of empirical studies conducted as Congress has grown more polarized in recent decades. In the mid-twentieth Century, power in Congress was decentralized and invested in powerful, independent committees (Fenno 1973; Polsby 2004). Committee leaders were chosen strictly by seniority, and party leaders had little ability to compel them to take action. Committees acted as gatekeepers and policymakers. Bills rarely reached the floor without formal committee approval (Curry and Lee 2020).

As polarization has risen, committee independence has declined and committees have been found to play diminished roles in gatekeeping and policymaking (Aldrich, Perry, and Rohde 2013; Lewallen 2020; Sinclair 2012, 2008). Members have vested more power in party leaders, weakened seniority requirements, and reduced the power of committees by imposing term limits on committee chairs. In the face of weaker committees, leaders may bypass them

with informal task forces to produce legislation, further undermining Congress's traditional power centers. Left without other opportunities to influence the legislative process, rank-and-file members may seek to offer large numbers of amendments on the floor that may change or derail legislation altogether (Hanson and Drutman 2017).

For some, these changes have sparked concern that the lawmaking capacity of Congress has been diminished (LaPira, Drutman, and Kosar 2019; Mann and Ornstein 2006). While partisan models assume individual members benefit from actions that enhance their collective party reputation, the combined effect of members' actions may have negative consequences for Congress as a whole. By undermining committees, Congress makes it more difficult for substantive area experts to influence the legislative process. In addition, a wider ideological gulf between the parties increases gridlock by making it harder to overcome the many veto points of the constitutional system (Brady and Volden 2006). Heightened partisan competition for control over the House and Senate also incentivizes efforts to harm the opposing party's reputation, and staff resources have been shifted away from policy development and toward public relations work (Lee 2016), further undermining Congress' policy expertise. These accounts show that intense partisanship and competition have disrupted the core lawmaking functions of Congress as members have shifted their emphasis from lawmaking to messaging. As a result, Congress struggles to address many major policy areas that confront it and when it does do so, it often must rely on shorter-term solutions than in the past (Binder 2021).

A second body of research, however, finds that Congress remains more bipartisan, productive, and decentralized than expected by partisan theories. These accounts are consistent with the idea that members benefit electorally from solving problems and delivering benefits to their constituents (Adler and Wilkerson 2012). Work in this vein notes that Congress continues to pass legislation, with bipartisan support, at levels similar to the past (Curry and Lee 2020). In addition, committees can sustain an active role by leveraging the informational asymmetries that come with their policy expertise (Curry 2015; Krehbiel 1992). Rank-and-file members also continue to defer to committee leaders when making voting decisions on the floor (Curry 2019). Some policy areas, such as appropriations, remain highly decentralized with committees continuing to play essential policy-making roles (Hanson 2019). This body of research shows that while Congress remains gridlocked on some issues, and party leaders have grown more influential, the changes wrought by intense partisanship to Congress may be less substantial than implied by partisan theories.

3 Unorthodox Lawmaking and Interpreting Inaction in Congress

Both these lines of research emphasize the rapid shift of congressional norms and procedures away from textbook lawmaking toward what Barbara Sinclair labeled “unorthodox lawmaking” (Sinclair 2012), but draw different conclusions from its use. In general, unorthodox lawmaking describes a collection of ad hoc strategies to write and pass legislation that may bypass committees in total or in part and take place behind the scenes rather than in formal, public settings. For scholars who see rising partisanship and polarization as limiting Congress’s legislative capacity, unorthodox lawmaking is symptomatic of the broader problems facing the institution (LaPira, Drutman, and Kosar 2019). But for those who emphasize the degree to which Congress has found ways to continue to legislate, however, it is instead a procedural adaptation that has allowed Congress to retain its capacity and productivity (Curry and Lee 2020).

Sinclair originally coined the term to contrast these methods with “textbook” lawmaking, in which legislation follows a standard path through committee and the floor in both chambers before it sent to the president to be enacted. Principally, Sinclair’s definition of unorthodox lawmaking involved capturing what does *not* happen for a piece of legislation; bills that are handled through unorthodox processes, by her definition, are not referred to single committees, are not marked up by committees in each chamber, are not brought to the floor as standalone measures, are not open for unlimited amendment, and do not have any differences in legislative language between the houses resolved via a conference committee.

Curry and Lee (2020) unpack the concept further, separating unorthodox components of the bill development process from unorthodox elements of a bill’s management on the floor and beyond. The degree to which a piece of legislation’s development is unorthodox similarly rests largely on what does not happen, as they use the absence of a committee hearing and/or a committee report in each chamber as their measurements. For a bill’s management, unorthodoxy includes a mix of elements involving absence, like restricted amendment opportunities, avoiding a conference committee, and ignoring the House’s rules on how long a bill must be available before it is considered on the floor, and those involving the presence of certain choices, like last-minute changes made to a bill’s text and the filing of cloture motions in the Senate.

This distinction between the bill development stage and the bill management stage is valuable in that it can help identify more precisely which actors are influential in the legislative process. Consider, for example, a bill that received a hearing and was marked up in committee but that was brought to the floor under a closed

rule and in violation of the House's layover requirements. The particular version of an unorthodox process used for that measure allowed committee members, but not their rank-and-file colleagues, to exercise influence. In contrast, a hypothetical process involving bill text that did not go through committee but on which some floor amendments could be offered could be characterized as weakening committee members while empowering those legislators whose amendments were made in order by the Rules Committee for floor consideration.

Disaggregating unorthodox lawmaking into stages, then, can illuminate which actors are and are not influential. But we are still confronted with a difficulty of interpreting inaction in Congress. Textbook lawmaking has well-established, often public lawmaking steps such as hearings, markups, floor debates, and conference committees that produce a large volume of observable data. Unorthodox lawmaking, by its very nature, follows no similarly standard path and is frequently characterized by informal, behind-the-scenes negotiations. When a bill moves through an unseen process, the assumption is often that party leaders have taken the place of committee leaders and rank-and-file members in the lawmaking process (Sinclair 2012, 147).

But when the process becomes unobservable, that does not automatically mean it becomes centralized. Committees may be just as active as in the past, but their action and influence may no longer be as publicly visible as it once was. As scholars, when we rely only on observable features of the lawmaking process to capture how unorthodox it is, we may miss important nuance.

We argue that the difficulty in systematically observing the dynamics of unorthodox lawmaking has led scholars to fail to distinguish between two separate concepts: the degree to which lawmaking is informal, and the degree to which lawmaking is centralized. Lawmaking may occur through formal processes such as committee markups or floor debates. It may also occur informally through behind-the-scenes fact-gathering and negotiation. Similarly, lawmaking may be centralized or decentralized depending on the degree to which key agenda setting and policymaking work is divided between rank-and-file members, committees, and party leaders. Additionally, the mix of centralization and formality may shift over the course of the lawmaking process, such as if committees take the initial lead drafting a bill and leadership completes it.

These variables can occur in any combination: Centralized and Formal; Decentralized and Formal; Centralized and Informal; Decentralized and Informal. The Centralized and Informal combination, whereby bills are negotiated by a small number of party leaders behind closed doors with little opportunity for input from rank-and-file members, fits the expectations of partisan models in the contemporary Congress well. A Decentralized and Formal approach, meanwhile, would characterize the textbook Congress period of the mid-twentieth century. A Centralized and Formal arrangement would involve legislation moving through these textbook steps,

but with strong influence from party leaders as to bill content. The final combination, Decentralized and Informal, allows committee leaders and rank-and-file members to retain influence in the legislative process in ways that are not immediately observable from examining only formal benchmarks in the legislative process.

By distinguishing between these two dimensions, we can provide additional insight into the debate over whether most legislative activity in the contemporary Congress fits in the Centralized and Informal box or whether other combinations also characterize lawmaking in the current period. Certainly, some legislation can be neatly characterized as having been developed through a centralized and informal process; the 2017 Tax Cuts and Jobs Act, for example, involved far fewer hearings, witnesses, and reports than the 1986 reform to which its proponents often compared it (Cary, Holmes, and Rebala 2019). But we argue that the dynamics of other bills—including the omnibus spending bills on which we focus our attention—are captured by other combinations.

4 Using Omnibus Spending Bills to Study Unorthodox Legislating

To explore these two dynamics of lawmaking, we turn to the case of omnibus spending bills. A common feature of the appropriations process since the early 1980s, this type of legislation provides a rich sample of comparable bills to investigate. Each year, Congress must take action to fund the operations of a wide range of discretionary federal programs, or non-essential services will shut down. Under an approach that dates to 1921, the appropriations process calls for the passage of a series of separate bills (currently, 12), each funding different parts of the federal government (Schick 2007). This process is frequently marked by contention. Partisan disputes, differences in spending priorities, deficit politics, and other factors complicate the writing and passage of the bills, leading to substantial delays in their passage and worries of a government shutdown if they do not pass (LeLoup 2005). It has been common in recent decades for members to respond to these difficulties with unorthodox lawmaking (Hanson 2014; Sinclair 2012). Members abandon textbook procedures and bundle some or all of the spending bills together into a single package for passage; often, several pieces of non-spending legislation are also attached to the large fiscal measure.

Packaging bills together offers a well-understood set of advantages for members seeking to navigate a challenging legislative environment. Both theoretical and empirical studies find that broadening the number of policy dimensions under consideration at one time may increase the overall support for a bill by giving every

member something to support (Black 1958; Hanson 2014; Krutz 2001a; Riker 1982). Omnibus appropriations packages in particular are often characterized as “must pass” bills because they combine both the carrot and the stick. They usually include at least something that members favor, and the failure to pass them may expose members to serious political harm if the government shuts down. These packages are now so common that they are the standard way by which spending bills are adopted.

Our focus is on the practice of adding non-spending provisions to omnibus spending bills—legislation that is analytically distinct from the regular appropriations bills that make up the core components of an omnibus package. In 2017, for example, H.R. 244, the Consolidated Appropriations Act of 2017, was a package that included 11 of the 12 regular appropriations bills and a variety of unrelated authorization bills hitching a ride to final passage such as the Health Benefits for Miners Act of 2017 and Alaska Mental Health Trust Land Exchange Act of 2017. Past research offers a rough guide about which bills are considered for inclusion on an omnibus, who makes the selection, and how that decision is made. Theoretical studies find that bills added to packages will be selected because they broaden its support (Black 1958; Riker 1982). Krutz finds in an empirical study of all omnibus packages (including non-appropriations packages) that included bills are more likely to generate opposition, face minority obstruction, be part of a party’s legislative agenda, or be sponsored by a member of the majority party (Krutz 2001b).

Other work also illustrates how analyzing the inclusion of one bill’s text into another can yield more nuanced conclusions about the lawmaking process than examining the conventional stages of the legislative process alone. Casas, Denny, and Wilkerson (2020) investigate so-called “hitchhiker” bills, or measures that become law as provisions of other pieces of legislation. Not only do they find that it is common for measures to become law via this form of unorthodox lawmaking, but more members are also able to claim credit for at least one legislative win when bills they sponsor that are incorporated into other legislation are included in the calculation. Eatough and Preece (2021) find that failing to consider legislative success via this kind of text reuse across bills obscures the contributions of women and Black representatives who are more likely to use less visible methods to influence the content of bills.

In summary, previous research on using one bill as a vehicle to enact one or more other pieces of legislation suggests the practice is a useful venue for our exploration of the degree to which unorthodox legislating can be more or less formal, or more or less decentralized. Examining the level of consideration that individual components of an omnibus bill receive—that is, whether they received hearings, markups, and/or standalone votes before their incorporation in another measure—provides an additional lens on to the formality of the process. Investigating the process by which decisions are made about which standalone bills will be

incorporated into an omnibus package offers insight into how much centralized influence party leaders have in this form of unorthodox lawmaking. Assessing whether add-on bills tend to come from members of the majority party; from committee leaders; and from members who are effective at using a more traditional approach to lawmaking sheds light on the degree to which rank-and-file legislators can have input via this mechanism. Finally, exploring how much support these additional provisions received from members of both parties as standalone bills also contributes to our understanding of how bipartisan lawmaking continues to exist in the contemporary Congress.

5 Interview Evidence: How Crafting an Omnibus Looks from the Inside

One opportunity to explore these dynamics is through interviews with policymakers; we conducted ten such interviews in April and May of 2019. Our choice of interview subjects was designed to provide the point of view of major players from both parties in both chambers in the decision to attach a bill to an omnibus. Some of the subjects were recently retired. Others were currently working in Congress. We interviewed three staff members who work or worked for party leaders in the House and Senate; two staff members who worked for the Appropriations Committee; two staff members working for authorizing committees; a staff member in the office of a member who successfully attached a bill to an omnibus package; a retired member of Congress; and Congressman Tom Cole of Oklahoma, a senior Republican member of the House Appropriations Committee. All interview subjects were given anonymity as a condition of the interview, with the exception of Congressman Cole, who agreed to be interviewed on the record. All interviews were recorded and transcribed.

The core of an omnibus package is a group of individual appropriations bills that are bundled together for passage. While we are primarily concerned with non-appropriations adds-ons to these packages, the practices that members have adopted to assemble the spending and non-spending components of omnibus packages have a great deal in common. For that reason, we begin by presenting evidence from interviews on the core spending components of omnibus packages. As noted above, previous research has established how omnibus packages are created when the textbook process for adopting individual appropriations bills breaks down, stranding these bills at various stages in the legislative process. At that point, legislating becomes informal. It moves behind closed doors and an omnibus package is formed. Evidence from interviews shows that the legislating

that occurs as this stage of the process is best characterized as decentralized. Interview subjects describe leaders as traffic cops and problem solvers more than policymakers. Leaders coordinate the packages and resolve major disputes, but most spending decisions occur at the committee level. Additionally, our interview subjects stress that the overall tenor of lawmaking on omnibus packages is bipartisan.

In the words of a former Republican leadership aide in the Senate: “We let the appropriators do their work. Bipartisan, bicameral.... And they let their clerks do 90 % of the work. Maybe 5 % gets kicked up to the staff directors, and we really pushed them, ‘You guys solve that.’ ... And then 2 % would get kicked up to the leaders to get resolved” (Hanson/Reynolds Interview I 2019). Similarly, a former Senate Appropriations staff member explained: “[A]t some point, leadership says, ‘We need to land this plane. Tell us what you’ve been unable to resolve’” (Hanson/Reynolds Interview F). Leaders resolve top level issues like overall spending levels and difficult policy riders outside of the Appropriations Committees’ expertise. Occasionally, these issues remained unresolved at the subcommittee or committee level because leaders at that level do not want to be seen as the ones giving up on certain personal or party priorities (Hanson/Reynolds Interview I 2019). More granular spending decisions generally remain with the committee (Hanson/Reynolds Interview F 2019) because leaders lack the expertise to make these decisions and because committee members regard them as under their jurisdiction and push back on leadership efforts to exert control.

Interview subjects also describe the spending packages as bipartisan. Agreements at each level of decision-making, from committee to leadership, require the sign-off of all the principals at that level from each party in the House and Senate, generally referred to as the “Four Corners” at the committee level and the “Big Four” in the context of the party leadership. Policymakers attribute this fact to the shared belief about the need to ensure continued funding for the government, and the reality that support from both parties is needed to overcome the multiple veto points of the constitutional system to secure enactment. Policymakers specifically observe that, in the period about which we were speaking, Republicans could not summon enough votes within their own party to pass appropriations bills, and needed Democratic support. This appropriations “math” as the Democratic Senate leadership aide put it, is well known among key players. “[A]t the end of the day, a spending bill on the floor will still be passed with a majority of Democratic votes even when we are in the minority” (Hanson/Reynolds Interview A 2019). Policymakers also cite the need to overcome a potential filibuster in the Senate. As Congressman Tom Cole explained in reference to the period when Republicans controlled the House between 2011 and 2018:

Republicans have to have Democratic votes on appropriations, and even Democrats once it gets to the Senate, unless we're down at 40 [seats], have got to ask Republican votes because of the rule of 60 [votes needed to overcome a filibuster]. Appropriations, which have to get done, have to be bipartisan at some point along the way. If they're partisan in the House, they'll become bipartisan in the Senate.

The determination by both sides to ensure the enactment of spending bills prompts bipartisan negotiations to build a broad bipartisan coalition of support for the package—prompted, in part, by the need to build a 60-vote coalition in the Senate—regardless of which party is in control.

Interviews with policymakers show that the lawmaking behind the non-spending provisions of central interest here is consistent with the informal/decentralized model, and is also bipartisan. First, lawmaking in this context is informal because it largely takes place behind closed doors in private meetings and conversations. Members avoid formal, textbook processes because they believe they have become unwieldy due to high levels of partisanship. Second, lawmaking is decentralized due to the fact that agenda-setting and policymaking are broadly distributed among members. There is a bottom-up demand for legislation from rank-and-file members driven by the need to solve problems for constituents. Leaders frequently field these requests, and make the ultimate decision about what bills go into a package, but core policymaking work remains with committees. Leaders rely on relevant authorizing committees to “clear” add-ons for inclusion in a package by reviewing and approving their policy substance. This finding underscores an important aspect of informal lawmaking: it retains many of the key deliberative functions of the textbook process, but these functions take place primarily in private settings out of the public eye. Third, the need for a “Four Corners” agreement ensures that both parties sign off on the bills that are added to an omnibus package.

The “bottom up” nature of the demand for legislation is illustrated by an interview we conducted with a staff member for a rank-and-file member of the House (Hanson/Reynolds Interview G 2019). The House member was a supporter of the bipartisan Health Benefits for Miners Act of 2017, a stand-alone bill attached to H.R. 244, the Consolidated Appropriations Act of 2017, that was designed to rescue a failing health insurance plan covering retired coal miners. Passing the bill was a top priority for the member. The staff member explained:

People were about to lose their benefits at the end of the calendar year of 2016 ... There were letters that were going out, and keep in mind, this was an election year in October of 2016, saying, ‘... You’re going to lose your healthcare benefits at the end of the year.’ And, I mean, and obviously, we deal with the real world [for] what this means. We’ve had people in this office that are crying because they were like, ‘How can I get my cancer treatment? I have black lung.’ I mean, these are people that have had a hard life and worked in a hard industry, so they rely on these benefits. So, there’s that personal connection for us. (Hanson/Reynolds Interview G 2019)

The bottom-up demand for legislation is also keenly felt by authorizing committees. We interviewed staff members from the Senate Energy and Natural Resources Committee and the House Natural Resources Committee, which together have jurisdiction over public lands issues in the United States. These staff members described continual pressure to enact a myriad of small public lands bills that solve pressing constituent problems—demands that are not new, but that need to be dealt with in new ways as other parts of the legislative process have broken down. One aide explained: “[In one bill], we were dealing with homeowners in Louisiana who discovered that they didn’t have clear title to their homes because of a nineteenth century surveying error... [Public lands bills are] terribly important to individual constituents, to individual congressman, to individual senators” (Hanson/Reynolds Interview C 2019). Members want to pass these bills because they believe they must be problem solvers and pass legislation that meets the needs of their constituents.

A common theme in our interviews was that staff and members believe the textbook process is riddled with obstacles and that, to meet the demand for legislation, they must find “must pass” packages to which they can add important bills. The staff member who had advocated for the Health Benefits for Miners Act explained: “Everybody says, ‘Regular order [is] great,’ right? ... [E]ven in a one-party controlled government, that’s always an imperfect system, and people have priorities that don’t get addressed through that for a variety of reasons” (Hanson/Reynolds Interview G 2019). Attaching the bill to a must-pass package was viewed as the natural alternative given the difficulty of the textbook process. “[Y]ou always are looking for those end-of-the-year bills, usually omnibuses, whatever it is. Something that’s moving as a place that you could potentially get something attached, and that’s always just something that you can keep in the back of your head” (Hanson/Reynolds Interview G 2019).

The view looks much the same from the standpoint of authorizing committees. Historically, the House and Senate committees with jurisdiction over public lands issues processed these bills efficiently and secured their adoption on the floor via the textbook process with little controversy. In recent years, the committee’s traditional approach has been disrupted by the decision of a handful of senators to filibuster public lands bills. With the Senate gridlocked, the House and Senate committees began to bundle such bills together into packages and look for “must pass” bills to carry them:

[T]here really is not a mechanism through an authorizing process to get anything through this committee, through ENR [Senate Energy and Natural Resources], and across the finish line. Literally nothing. I mean it can be the smallest thing.... So we have had to develop this omnibus process. So we go to [leadership]. We need a vehicle, right? ...I don’t care if it’s an approps vehicle, I just need something that’s a must pass, right? So there are a short and shrinking list of possible candidates, right? The NDAA, the [National Defense Authorization

Act], continues to be arguably the only remaining must pass annual authorizing bill. Then you get these approps packages ... But those are then the vehicles we look at to try and hitch a ride because we can't move individual bills through our normal authorization channels. (Hanson/Reynolds Interview D 2019)

These comments suggest a new informal lawmaking norm has emerged in which members now routinely seek to attach their favored bills to must-pass packages. Members understand that this is an effective way to get bills passed. A Senate leadership staff member explained: "If I were a staffer twenty years ago I'd be gaming out for committee on the floor or for conference [to pass a bill]. As a staffer now, what I'm doing is I'm ... gaming out for how to win in the 11th hour" (Hanson/Reynolds Interview A 2019).

Leaders, for their part, field a constant stream of requests for assistance passing legislation and make the final decision about what to include in an omnibus package. Leaders play this role because they are in a position to coordinate with various players in the talks, including other leaders and members of key committees. They are also responsible for assembling a winning coalition for the package that will navigate the veto points of the constitutional system. "[Leaders are] the ones who ultimately have to make the calculus ... of what it's going to take to get to 218 [House votes], 60 [Senate votes] and one [presidential signature]" (Hanson/Reynolds Interview F 2019). These facts represent important ways in which the omnibus process does centralize power in party leaders.

Importantly, leaders do not make these decisions in isolation. Add-ons are rarely included in a package without sign-off from the relevant authorizing committee. This fact preserves a key policy-making and gatekeeping role for committees—a fact that leads us to describe omnibus legislating as "decentralized" despite the important coordinating role played by leaders. "Almost exclusively, if something made it into a bill, it was because the authorizers were on board with it" (Hanson/Reynolds Interview I 2019). Congressman Cole offered a similar assessment from his perspective on the Appropriations Committee: "Before you do it, it has to be cleared by both your leadership, and it's usually leadership asking you to do it, and the chairman of the relevant authorizing committee." The formal process a bill receives matters less to leaders than receiving the assurance that it has been thoroughly vetted and does not contain controversial provisions that would cost the final package votes. "[T]he guiding principle ... is it should be something that has for a long time been well-known, well-studied" (Hanson/Reynolds Interview A 2019).

These accounts underscore the point that the absence of textbook steps such as committee hearings and markups does not mean an absence of deliberation. Committee staff report that any bill that they clear is given substantial scrutiny prior to its enactment, regardless of whether it passes through a formal or informal lawmaking

process. In their view, public processes are important because they create a public record, but are not required for meaningful deliberation. Public hearings can be thoughtful fact-gathering, or upstaged by partisan bickering. Markups may involve genuine bargaining, or be scripted in advance by staff. Fact-gathering and bargaining can always take place behind the scenes, and staff can informally ensure that the bills meet a set of basic committee standards prior to passage. The House Natural Resources Committee staff member explained:

[W]e are able at staff level working with career people at whatever the relevant agency is to vet this stuff pretty well in a way that a hearing ... may or may not have done, right? ... [Y]ou know ... a lot of the stuff that we work on, there's a map. The agency has produced the map. The map is based on GIS data that's legit. The agency has talked to people on the ground [and] we're able to run that stuff down and we're not gonna [agree to the bill] without having run that stuff down. And I think even members who are urging to have their thing included understand if you can't sort of meet these standards, it's not gonna happen. (Hanson/Reynolds Interview D 2019)

Notably, the desire to thoroughly vet a bill is driven both by self-interest and a desire to make good public policy. Committee staff explained that if they sign off on a bill that is later found to be problematic, they will embarrass their chair and create headaches for themselves. Leadership staff want to avoid unexpected controversy that may upset the coalition for the omnibus package and make its passage more difficult.

Beyond clearing a bill with the authorizing committee, interview subjects say leaders weigh a variety of considerations when deciding whether to add a bill to a package. The key problem leaders face is that there is a long list of potential candidates to add to an omnibus, forcing difficult decisions about which provisions to add. "[T]hat list could be endless," a Republican leadership staff member explained. "There needs to be some compelling reason [to add a provision]" (Hanson/Reynolds Interview I 2019).

Interview subjects describe a variety of contextual factors that make it more likely a particular provision will be added to a bill, stressing that no individual factor is determinative. Overall, leaders rely on cues such as the degree to which its sponsors have been raising the issue with leaders, its political urgency, whether the sponsor is in cycle, and a sense that all other options for passage have been exhausted. Bills that have received substantial formal process more are likely to be strong contenders because process serves as an indicator that sponsors made a good faith effort to move the bill. Party leaders and principal committee members often receive favorable treatment. At times, an individual senator threatening a filibuster may also succeed in attaching a provision. A Senate leadership staff member explained:

[Y]our state may have a real problem. You may have had terrible flooding. [W]e wanna help you. Or, it might be you are such an amazing support on a series of really brutal votes and we would like to help you... [I]t's help in the general for all kinds of things. Or, might be an issue where your coalition has done a good job and leadership is hearing about it. They can't walk into a room anywhere without someone asking about this issue. So, the issue has a ton of buzz. So we're like, "Aw, I'm just gonna come take care of it." And, there's all sorts of ways that issues build themselves up.... If you're showing up the day before..., you're too late. But, if you've been working for months, and you have promises with cardinals, and you have promises with leadership; broad, bipartisan coalitions, and people in the House and Senate. All of that ... will help. (Hanson/Reynolds Interview A 2019)

Leaders' understanding of member needs helps them understand how to prioritize the selection of bills for a package from a long list of possible candidates. "[L]eadership has the broad spectrum view. Not that the appropriators don't, but they know I have these people on cycle [up for re-election], and I have to deal with these folks whose states are having this issue, and we owe these five people.... That broad view that can be helpful on the political side" (Hanson/Reynolds Interview A 2019).

Finally, interview subjects describe the process of choosing add-ons to omnibus bills as bipartisan. This is because the requirement for a Four Corners agreement on the core appropriations bills in a package extends to the add-on provisions of an omnibus. This is true whether negotiations are taking place among leaders or at the committee level. The House Natural Resources Committee staff member explained that reaching an agreement on a package of bills at the committee level required the sign-off of the chairs and ranking members in the House and Senate:

[I]f ... you are hitching a ride on a must pass bill... both Republican and Democratic leadership [are] ... dictating that a Four Corners agreement is required. You actually have more leverage in the minority than you might otherwise. "[Y]ou're able to ... veto some things because ... you need bipartisan, bicameral agreement or else the whole thing just falls out." (Hanson/Reynolds Interview D 2019)

Accordingly, members aim to add bills to the package that will broaden, rather than narrow, its coalition of support. "You have to do the math" and assess how the provision will affect support for the package a former Senate Appropriations staff member explained. "[T]he ones that wind up riding on the back end are almost always ... additive to the vote totals in both bodies" because they give members on the fence something to support (Hanson/Reynolds Interview F).

Within that context, the two sides may mutually agree to add provisions that normally spark partisan conflict as part of an overall agreement that gives each side policy wins. The House Natural Resources Committee staff member explained how this process looks at the committee level when members negotiate packages of authorizing bills to add to a must-pass package:

[E]arly on [you] need to establish what are the four “must haves” for each of the Four Corners. We sort of refer those as the tent poles of the deal.... You ... put those on the table and those are frequently, relatively partisan things, right? Those are things that maybe the other corners don’t support, but they’re ... represented as your price of admission ... [T]he four ... major players ... need to get something big out of this deal, or who cares? If you then have those four corner pieces, then the idea is: “All right, what is the universe of other smaller items that can sort of be added to this package?”.... So it’s a mix of partisan, bigger ticket things, and then ... a long list of just kind of horse trading back and forth with smaller things, many of which are bipartisan. (Hanson/Reynolds Interview D 2019)

Staff members say accepting some provisions their party would normally oppose is part of the give-and-take needed to put together an overall package that both parties support. They describe doing their best to remove or soften objectionable provisions from the other party, while understanding that both sides will need to claim policy wins (Hanson/Reynolds Interview A and D 2019). Members view the package in its entirety as bipartisan because both sides sign off on the deal, not because none of the provisions are partisan.

6 Analyzing Omnibus Add-Ons

Building on this interview evidence, we turn next to a presentation of descriptive data about add-ons to omnibus spending bills. To gather these data, we used a multi-pronged data collection strategy to assemble information on stand-alone legislation attached to spending packages. For each omnibus appropriations bill signed into law between 2007 and 2016,¹ we reviewed five sources of information. First, we reviewed the Table of Contents that appears at the beginning of the public law text and recorded any component that appeared to be a standalone non-appropriations piece of legislation; we did the same for the Table of Contents sections of each division of each omnibus bill.² Next, we reviewed the list of “Titles” provided by the Library of Congress on congress.gov for each omnibus bill and again noted any titles that appeared to be standalone non-spending bills. Third, we utilized the list of “Related Bills,” also supplied by the Library of Congress on congress.gov, to identify measures that were associated with the omnibus spending measure. Fourth, for omnibus bills since 2011, we used a tool provided by GovTrack that assesses whether a given bill incorporates language from other legislation (Tauberer 2017); this did not identify any observations that had not been captured

¹ Omnibus bills for 2007–2011 are drawn from Hanson (2014). Omnibus bills for 2012–2016 are drawn from congress.gov.

² Omnibus spending bills are generally organized into divisions, and some divisions contain their own Table of Contents section. See, for example, Section 1 of Division P, “Tax-Related Provisions,” of P.L. 114–113.

using one of the first three approaches. Finally, we examined the legislative history entry for each omnibus bill in the ProQuest Congressional database, which contains a list of bills related to each omnibus.

This five-part strategy provided us with a partial list of non-spending provisions included in omnibus appropriations bills. To identify additional provisions, as well as to establish whether the legislative language we identified in the first data collection step had been introduced and considered separately as standalone bills, we turned to automated text analysis using WCopyFind, a plagiarism detection software package. For each omnibus bill, we compared all other bill texts introduced in the same Congress, but before final enactment of the omnibus spending package, to identify a set of candidate non-spending bills that may have been folded into the final appropriations legislation.³ Each candidate bill was manually checked to determine whether its language did, in fact, appear in the omnibus in full or in part. Together, this approach produced 374 standalone bills related to 235 separate non-spending components of omnibus appropriations legislation.

While this data collection strategy captures a significant amount of information, it is also worth noting what we have *not* captured. Our analysis does not seek to examine legislative riders. While consequential in terms of both policy outcomes and their effects on the bargaining environment, they have been explored elsewhere (e.g. Hassell and Kernell 2016; MacDonald 2010, 2013). We also do not examine the “General Provisions” sections of individual appropriations titles in our manual review of spending bills, though the automated text analysis component of our data-gathering process does identify some legislative language included in these sections. Future work may incorporate these components more broadly.

There are constraints on the kind of analysis we can conduct with our dataset due to limits on available data. We can identify bills that were attached to omnibus packages but not the population from which these bills were selected. There is no master list of candidate bills for inclusion on an omnibus. Other potential comparisons, such as lists of all bills introduced in a session of Congress, are not acceptable

³ We used a 6-word exact match setting to produce two scores for each non-spending bill that could be included in an omnibus. After excluding certain bills (such as those introduced after the omnibus was enacted into law), we manually checked a bill for whether it was included in an omnibus if at least 20 % of its words appeared in an omnibus, or if at least 15 % of its words appeared in an omnibus and the number of matching words was greater than or equal to 75. More details are available from the authors upon request. In addition, for any omnibus bill that was passed in the early months of a Congress after being carried over from the previous Congress, we also compared the previous Congress's bill texts to the omnibus. For example, HR 933, an omnibus appropriations measure for fiscal year 2013, was passed during the 113th Congress in March 2013 after having been worked on during the previous Congress. Thus, we also examined bill texts from the 112th Congress as potential candidates for inclusion in the omnibus.

substitutes. Most introduced bills were likely never serious candidates for inclusion on an omnibus. Additionally, some stand-alone bills attached to packages were not previously introduced. This fact imposes constraints on the type of analysis we can conduct, the most important being that we cannot directly compare selected bills against others that were considered for selection. For that reason, we rely on descriptive and comparative statics with other enacted bills to make our case rather than regression analysis.

7 Add-Ons to Omnibus Appropriations Bills: Descriptive Statistics

Interview subjects describe omnibus lawmaking as informal, decentralized and bipartisan. Next, using the data described in the previous section, we present descriptive statistics about add-ons to demonstrate that these quantitative data also fit those characteristics.

7.1 Informal Lawmaking on Add-Ons

Interview subjects describe omnibus add-ons as following an unorthodox path through Congress in which much of the work of lawmaking takes place informally, behind closed doors. They describe add-ons as typically being measures that are known to members, and which have been the subject of sustained advocacy over time. The bills generally have faced difficulty moving through the textbook lawmaking process, and may not have had a formal hearing or markup. Interview subjects also note that add-ons are reviewed informally and generally need to be “cleared” by an authorizing committee before leaders will incorporate them into an omnibus package.

Consistent with these reports, we find that provisions added to omnibus packages are usually bills that have been formally introduced but have not proceeded far through the textbook process. We identified at least one analogue for 94 percent of non-spending provisions that were included in omnibus packages, while 6 percent of provisions had not previously been introduced before being attached to a package. Each attachment is related to an average of 2.4 bills, ranging from a low of 1.7 in the 110th Congress to a high of 2.7 per provision in the 114th Congress. The variable ranges from zero to 8, though high values are uncommon. Nearly 95 percent of provisions have 5 or fewer related bills, and the median value is 2.

Omnibus add-ons have received less formal deliberation on average than other adopted bills. Table 1 depicts the average amount of formal deliberation received by

Table 1: Deliberation on omnibus add-ons versus important bills, 110th–114th Congresses.

Congress	Add-ons			Important laws		
	Average House deliberation	Average Senate deliberation	Average combined deliberation	Average House deliberation	Average Senate deliberation	Average combined deliberation
110	0.23	0.09	0.16	0.31	0.4	0.36
111	0	0.19	0.10	0.51	0.54	0.52
112	0.21	0.13	0.17	0.33	0.52	0.42
113	0.19	0.19	0.19	0.55	0.67	0.61
114	0.24	0.11	0.18	0.48	0.5	0.49

each non-spending provision in an omnibus spending package between the 110th and 114th Congresses in the House, Senate, and across both chambers. Our measure of deliberation, and the comparison figures for important laws, are drawn from Curry and Lee (2020). Bills were coded for whether they received a hearing and/or a markup and if they were reported to the floor. If a bill received the maximum deliberation in one chamber under this measure, it would receive a score of 2; if it did so across both chambers, it would receive a score of 4. Following Curry and Lee, we rescale the index to range from zero to 1. Almost universally, we see that non-spending provisions added on to omnibus bills received less deliberation on average than important laws passed in the same Congress. On average, add-ons have not proceeded far through the textbook process, and have had less formal process than other major laws in recent years.

7.2 Decentralized Lawmaking on Add-Ons

We assess whether lawmaking on omnibus bills is decentralized by evaluating whether the winners and losers of omnibus legislating appear to differ from legislating in general. We find evidence that the legislators who are successful in the omnibus process are reflective of members who are successful legislating in general, but that the omnibus process appears to be more permeable to members of the minority and rank-and-file members than the traditional process.

Past research suggests that particular member characteristics are associated with legislative success. Volden and Wiseman's (2014) research on legislative effectiveness—where effectiveness is a member's ability to advance his or her priorities through the legislative process—in the House finds systematic differences across legislators. While bills sponsored by members of the majority party are more likely to be considered in committee, once legislation reaches the floor, majority legislators

no longer enjoy a systematic advantage. In addition, when Democrats control the House, their committee and subcommittee chairs enjoyed an advantage over their same party, rank-and-file peers. Under Republican control, however, committee and subcommittee leaders were not significantly more effective than their co-partisan, non-leadership colleagues. Female House members tend to be more effective than men, while Black members tend to have lower scores than their white colleagues. Many of these trends are also present in the Senate, though state legislative experience in a professionalized legislature, seniority, and electoral security appear to matter more in the upper chamber (Volden and Wiseman 2018).

Because the inclusion of non-spending provisions in omnibus spending bills represents a form of “unorthodox lawmaking” (Sinclair 2012), we might expect different individual-level characteristics to be associated with success than those that predict effectiveness in the ‘regular’ legislative process. Recent work by Casas, Denny, and Wilkerson (2020), for example, suggests that rank-and-file and minority party members of Congress are relatively more effective than their leaders and majority peers, respectively, at advancing bills as “hitchhikers” on other pieces of legislation that eventually become law than they are at moving measures to become standalone laws. Research by Eatough and Preece (2021) also indicates that women and Black members often rely on incorporating bill text they propose into other legislation to advance their priorities.

We draw on our quantitative data to explore three particular expectations about which members might be especially successful at using the omnibus appropriations process to advance other priorities: members with high LES scores; members of the majority party; and chairs and ranking members of important committees. We turn first to an analysis of the success of members at attaching provisions to omnibus appropriations bills by their Legislative Effectiveness Score (LES). We find that members who sponsor measures related to provisions on omnibus bills have a higher LES on average than those who do not. Since an LES is a measure of a member’s overall success advancing their legislation through the textbook process, this finding is evidence that members who do well in the textbook process also do well in informal lawmaking. This finding is consistent with more recent work comparing LES scores calculated using only the textbook steps of the legislative process to a version that also includes the incorporation of bill text into other legislation.⁴

⁴ These revised scores have been calculated for the 117th Congress only, where “the correlation between Legislative Effectiveness Scores that account for legislators’ language being incorporated into other vehicles and Legislative Effectiveness Scores that are calculated using the original methodology are 0.89 for the 117th House. Likewise, there is a 0.97 correlation between our two scores for the 117th Senate.” See “Methodology,” <<https://thelawmakers.org/methodology>>.

Table 2 reports the average LES for sponsors in the House and the average for each party as a whole, while Table 3 does the same for the Senate. We compare scores of sponsors of related provisions and non-sponsors within each party, since members of the majority party typically have higher LES scores than members of the minority. We see that in both chambers, legislators who are successful at getting add-ons attached to omnibuses have higher Legislative Effectiveness Scores than their average same-party, same-chamber counterparts in almost all cases. This suggests that members who are able to get their priorities enacted via standalone legislation are also often able to do so via the add-on process.

Next, we examine whether members of the majority party are more successful attaching provisions to omnibus bills than they tend to be in the legislative process overall. In Table 4, we compare the share of add-ons introduced by members of the majority party to the share of all public laws in each Congress sponsored by members of the majority party. We see that, generally, while there are not large differences across the two groups, the majority's share of add-ons is somewhat lower than its share of all public laws in all Congresses under study except the 114th. This suggests that add-ons provide a somewhat smoother pathway for enacting legislation than the regular process.

Finally, we compare the success of chairs and ranking members of committees in informal lawmaking via omnibus add-ons versus public laws as a whole (Table 5). We

Table 2: Legislative effectiveness, House, 110th–114th Congresses.

	Mean LES, House Democratic sponsors of add-ons	Mean LES, House GOP sponsors of add-ons	Mean LES, House Democrats	Mean LES, House GOP
110	2.85	0.53	1.45	0.45
111	1.11	0.29	1.36	0.44
112	0.54	1.58	0.47	1.42
113	0.81	1.7	0.51	1.41
114	0.86	2.03	0.58	1.31

Table 3: Legislative effectiveness, Senate, 110th–114th Congresses.

	Mean LES, Senate Democratic sponsors of add-ons	Mean LES, Senate GOP sponsors of add-ons	Mean LES, Senate Democrats	Mean LES, Senate GOP
110	2.63	0.91	1.48	0.52
111	2.82	0.63	1.42	0.40
112	2.35	0.40	1.46	0.49
113	1.83	0.52	1.32	0.61
114	1.02	1.85	0.81	1.54

Table 4: Majority party success, 110th–114th Congresses.

Congress	Share of add-ons	Share of public laws
110	0.71	0.74
111	0.81	0.86
112	0.70	0.75
113	0.69	0.70
114	0.72	0.65

Table 5: Success by chairs and ranking members, 110th–114th Congresses.

	Share of add-ons introduced by chair or ranking member	Share of public laws introduced by chair or ranking member
110	0.10	0.20
111	0.14	0.24
112	0.11	0.22
113	0.17	0.20
114	0.14	0.21

find that, generally, add-ons are less likely to have been introduced by a chair or ranking member than public laws—suggesting that the omnibus appropriations process remains a way for individual, rank-and-file legislators to garner legislative achievements.

7.3 Bipartisanship in Omnibus Lawmaking

The interview evidence provided above indicates that add-ons to omnibus bills, as a group, can generally be described as bipartisan. To better assess the validity of that description, we compared the level of partisanship in the co-sponsorship of add-on bills to that of all public laws (Table 6). To do so, we use a measure of the partisan balance of the co-sponsorship coalition each of related piece of legislation drawn from Magleby and Reynolds (2017) that takes on a value of 1 if a bill's co-sponsors are evenly divided between both parties and zero if they are all from one party.⁵

⁵ Formally, this is calculated by taking the absolute value of the difference between 0.5 and the proportion of a bill's cosponsors who belong to the Democratic party, multiplying it by 2, and subtracting that number from 1.

Table 6: Bipartisanship in omnibus add-ons versus public laws, 110th–114th Congresses.

Congress	Mean bipartisanship, omnibus add-ons	Mean bipartisanship, public laws
110	0.29	0.44
111	0.38	0.33
112	0.31	0.35
113	0.39	0.41
114	0.29	0.45

Here, there are two broad points to make. First, as a whole, both groups of bills tend to have bipartisan co-sponsorship coalitions; this is consistent with Curry and Lee's (2020) finding that most legislation that becomes law does so with bipartisan support. Roughly 50 percent of both omnibus add-ons and public laws have at least one co-sponsor from the other party. Second, there is some variation over time, but on average, the amount of bipartisanship in the co-sponsorship coalition of public laws is higher than that of stand-alone bills included in omnibus spending legislation. The overall average across Congresses is approximately 0.38 for all public laws versus only 0.32 for omnibus related bills. Omnibus add-ons are mostly bipartisan, but they are more partisan than public laws as a whole.

8 Conclusions

In this article, we argue that academic debate about two alternative approaches to lawmaking—unorthodox lawmaking on one hand and regular order on the other—has obscured two important dimensions along which lawmaking can vary: centralization of decision-making and formality of process. Additionally, the increasing informality of lawmaking—measured by the observable reduction in textbook lawmaking steps like hearings, markups, and bills being reported by committee—has been widely interpreted as reflecting a centralization of power in party leadership and a reduction in effective deliberation by members of Congress on legislation. We analyze add-ons to omnibus appropriations bills to show that informal lawmaking that takes place behind closed doors rather than through textbook lawmaking steps can be decentralized. Rank-and-file members retain a capacity to place matters on the legislative agenda and authorizing committees retain key gatekeeping and policymaking authority. Leaders act more as traffic cops and problem solvers than policymakers. Critically, committees continue to carry out core deliberative functions such as fact-gathering, policy review and negotiation

prior to legislation being included on an omnibus package. Finally, we show the process through which add-ons are included on an omnibus package is bipartisan, requiring sign off from key Democrats and Republicans in each chamber.

Our findings underscore several important points about lawmaking and research in the contemporary Congress. First, Congress retains the capacity to legislate despite high levels of partisan polarization; to do so, it relies on different approaches than in the past. The process we describe is a procedural adaptation in which core lawmaking functions have not disappeared entirely but rather shifted from public to private settings. Members advocate for bills behind the scenes, committees review them informally, and leaders make the final call about what to include in a package. This system bypasses textbook steps that are subject to being derailed by partisan gamesmanship and shields bills from disruptive activity on the floor by including them in a must-pass package. Second, these findings point toward important ways in which researchers must adapt their strategies in the study of Congress. Lawmaking in Congress has always included important closed-door elements, but today it is increasingly a black box in which key steps of bill drafting and consideration are not easily visible from the outside. The decline of public proceedings and increase in closed-door lawmaking mean that researchers must take care how to interpret the absence of data that was once readily available, and utilize methods such as elite interviews that can continue to provide a window into legislative proceedings.

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