

tion had not yielded for that purpose, nor had he moved the previous question.

Speaker's Participation in Debate on the Resolution

§ 10.11 The Speaker may participate in the debate on the resolution adopting the rules.

In the 89th Congress,⁽¹⁵⁾ the Speaker, John W. McCormack, of Massachusetts, took the floor in support of the resolution adopting the rules, and in the course of his remarks, explained his reasons for so doing:

MR. MCCORMACK: Mr. Speaker, as this resolution involves changes in the rules, I feel that my views should be known to the Members of the House. I strongly favor the resolution offered by the gentleman from Oklahoma [Mr. Albert]. I think the 21-day rule is a rule that is for the benefit of the individual Member of the House without regard to party affiliation in giving [him] the opportunity of passing upon legislation that has been reported out of a standing committee.

Correction of the Resolution

§ 10.12 The House, by unanimous consent, may direct the

15. 111 CONG. REC. 23, 89th Cong. 1st Sess., Jan. 4, 1965. See also 109 CONG. REC. 14-22, 88th Cong. 1st Sess., where Speaker McCormack took the floor to debate the resolution adopting the rules and increasing the membership of the Committee on Rules.

Clerk to correct clerical errors in the engrossment of the resolution adopting the rules.

The resolution adopting the rules for the 90th Congress, as passed by the House on Jan. 10, 1967,⁽¹⁶⁾ contained several errors. On Jan. 12, 1967,⁽¹⁷⁾ Majority Leader Carl Albert, of Oklahoma; who had introduced the resolution, asked the House for unanimous consent to direct the Clerk to make the following corrections in the engrossment of the resolution: First, to strike out "Ninetieth Congress" and insert "Eighty-ninth Congress"; and second, to insert the clause "With the following amendment, to wit:", which was necessary to integrate the amendment into the resolution. There was no objection to the request. Mr. Albert then obtained unanimous consent for the resolution as corrected to be printed in the Journal and in the Record.⁽¹⁸⁾

§ 11. Resumption of Legislative Business

Once the two Houses of Congress have assembled, elected offi-

16. 113 CONG. REC. 33, 90th Cong. 1st Sess.
 17. 113 CONG. REC. 430, 90th Cong. 1st Sess.
 18. 113 CONG. REC. 431, 90th Cong. 1st Sess., Jan. 12, 1967.

cers, sworn Members, and adopted rules, the resumption of legislative business is in order.⁽¹⁹⁾ Two important questions arise, however, as to the taking up of business: first, at what point in time does Congress actually begin legislating after organization, and second, to what extent does business carry over from the previous session. As to the time the two new Houses begin transacting business, there is a long established custom of postponing business not pertinent to organization until after the President has delivered his state of the Union message to the Congress.⁽²⁰⁾ In the

19. The Act of 1789, Ch. 1, §2, 1 Stat. 23, as amended, 2 USC §25 (1948) requires that the oath be administered to the Speaker, Members and Clerk "previous to entering on any other business. . . ." See also 1 Hinds' Precedents §§130, 140, 237, 241, 243; 5 Hinds' Precedents §§6647-49; *contra* (allowing business before the election of the Clerk), 1 Hinds' Precedents §§242, 244, 245.

The Speaker has suggested that bills should not be acted upon prior to the adoption of rules. 117 CONG. REC. 16, 92d Cong. 1st Sess., Jan. 20, 1971 (Speaker Carl Albert); the announcement is cited at §12.2, *infra*. For an occasion where a major bill was considered and passed before rules adoption, see 77 CONG. REC. 83, 73d Cong. 1st Sess., Mar. 9, 1933 (cited at §12.8, *infra*).

20. See 1 Hinds' Precedents §§81, 122-125; §7.1, *supra*; §12.10, *infra*. See

Senate, this principle applies both at the beginning of a new session of a new Congress, and at the commencement of a consecutive session of an existing Congress.⁽¹⁾ Although the House does not transact legislative business at the beginning of a new Congress until after the Presidential message, that body does resume business at the beginning of a second or third session before the Presidential message,⁽²⁾ and even on occasion before a quorum has appeared in the Senate.⁽³⁾

Upon convening for a second or third session during the term of a Congress, the House resumes all business that was pending either before the House or before committees at the adjournment *sine die* of the preceding session. That practice of resuming business grows out of Rule XXVI of the House rules,⁽⁴⁾ which specifically continues all business before committees as if no adjournment had taken place; actual practice under

the remarks, in explanation of the custom, by Mr. Michael J. Mansfield, 114 CONG. REC. 4-5, 90th Cong. 2d Sess., Jan. 15, 1968 (quoted at §11.4, *infra*).

1. See §12.10, *infra* (first session) and §11.4, *infra* (subsequent session).
2. See §§11.2 and 11.3, *infra*.
3. See 1 Hinds' Precedents §126.
4. *House Rules and Manual* §901 (1973).

the rule continues all business before the House, not just that before committees.⁽⁵⁾

The vast majority of business remaining at the end of one Congress does not, however, carry over to the beginning of a new Congress, since Congress does not allow the past proceedings of one Congress to bind its successor. Few categories have carried over from one Congress to the next; impeachment proceedings pending on the last day of one Congress have been continued at the beginning of the succeeding one,⁽⁶⁾ and a Presidential veto message to the House was on one occasion read and received at the beginning of the next Congress.⁽⁷⁾

5. For the history and the scope of the rule, see 5 Hinds' Precedents §6727. The practice of resuming all old business at the start of a session during the term of a Congress departed from the rule of the English Parliament, as stated in Jefferson's Manual. *House Rules and Manual* §592 (1973).
6. Jefferson's Manual, *House Rules and Manual* §620 (1973). On two occasions, the impeachment trial was conducted by the Senate following the impeachment by the House in the prior Congress (see 3 Hinds' Precedents §§2320, 2321; 6 Cannon's Precedents §§515, 516). Whether the House itself may continue unfinished impeachment proceedings is discussed in Ch. 14, *infra*.
7. See 5 Hinds' Precedents §6645.

The committees of a new Congress do not routinely resume the business that was pending at the end of the prior Congress.⁽⁸⁾ However, should the House membership wish to authorize a special committee of investigation to continue its business into a new Congress, the new House may so authorize by resolution.⁽⁹⁾ On one occasion, the House accepted as binding a concurrent resolution of the last Congress requiring the appointment of a joint committee; although the joint committee was never actually created, the House was prepared to accord to the resolution the force of a binding joint rule.⁽¹⁰⁾

In contrast to the House principle that committees and their functions regularly expire with the term of the Congress, Senate committees may carry over to a new Congress, since the Senate is a continuing legislative body as opposed to the House.⁽¹¹⁾

Resumption of Committee Investigation in New Congress

§ 11.1 A new Congress may, by resolution, continue a special committee investigation begun by a former Congress.

8. See Rule XXXVI, *House Rules and Manual* §932 (1973).
9. See §11.1, *infra*.
10. 4 Hinds' Precedents §4445.
11. See 4 Hinds' Precedents §4544.

On Jan. 3, 1935,⁽¹²⁾ the House agreed to the following resolution:

Resolved, That the Special Committee on Un-American Activities, appointed by the Speaker to conduct certain investigations under authority of House Resolution 198 of the Seventy-third Congress, is hereby granted additional time until February 4, 1935, to prepare and file its report and recommendations for legislation with the House. Any unexpended balance of the total amount authorized for the use of said special committee under House Resolution 199 and House Resolution 424 of the Seventy-third Congress is hereby continued available until said date.

Resumption of Old Business—Second Session

§ 11.2 On the opening day of the second session the House conducted business, the call of the Consent Calendar.

On Jan. 19, 1970,⁽¹³⁾ Speaker John W. McCormack, of Massachusetts, stated that as it was Consent Calendar day, the Clerk would call the first bill on the Consent Calendar.

§ 11.3 A Senate bill, messaged to the House following *sine die* adjournment, was referred to committee on the

12. 79 CONG. REC. 24, 74th Cong. 1st Sess.

13. 116 CONG. REC. 150, 91st Cong. 2d Sess.

opening day of the second session.

On Jan. 10, 1966, the opening day of the second session of the 89th Congress,⁽¹⁴⁾ Senate bill 2471, messaged to the House during the *sine die* adjournment, was taken from the Speaker's table and referred to committee.

Senate Practice

§ 11.4 While the Senate rules do not prohibit business on the opening day of a new session, it is the custom of that body to defer all business until after the President has delivered his state of the Union address.

On Jan. 15, 1968,⁽¹⁵⁾ the opening day of the second session, Vice President Hubert H. Humphrey, Jr. ruled in response to a series of parliamentary inquiries that there was no rule in the Senate rules that required adjournment on opening day without consideration of speeches, resolutions, or petitions, or that prohibited a Senator from making a speech or prohibited the Senate from receiving a petition of grievance from citizens. The Vice President stated, how-

14. 112 CONG. REC. 36, 89th Cong. 2d Sess.

15. 114 CONG. REC. 4, 5, 90th Cong. 2d Sess.

ever, that there was a long-established historical precedent in the Senate for postponing business until after the state of the Union message to the Congress by the President. The Majority Leader of the Senate, Michael J. Mansfield, of Montana, then arose and stated his intention to shortly move for adjournment, for the following reasons:

I have had some conversations with various Senators relative to their desire to have a petition read to the Senate today.

I appreciate the courtesy which they showed in telling me of what they intended to do.

I explained to them, or at least I tried to, that, I had been asked by many other Senators whether there was to be any business today, and I had told them all that under custom and procedures, there would be no business, there would be no morning hours, and there would be no introduction of bills because that was the custom, based on practice and precedent. It was a custom which gave to the President of the United States a courtesy, and it was a custom which was predicated on the idea that no business of any sort should be transacted until after the delivery of the President's state of the Union message.

It is my understanding that only on one occasion was this practice abrogated and that was when Congress received notice that the President of the United States would not be in the position to deliver his state of the Union message until 2 weeks after Congress convened.

The Senate then adjourned, without transacting any business, until the following day.

§ 11.5 Contrary to the usual custom in the Senate of deferring all business at the opening of a session until after the President's message on the state of the Union, the Senate agreed to begin business on the second day of the session, before the President's message.

On Jan. 18, 1972,⁽¹⁶⁾ the Senate agreed by unanimous consent to take up unfinished business from the first session on Jan. 19, the following day. The President informed the Senate that he would deliver the state of the Union message to the Congress on Jan. 20, 1972.

§ 12. Action on Bills and Resolutions During Organization

As a general principle, resolutions may be offered and acted upon in both Houses of Congress during the entire period of organization, from the first call to order to the President's message on the state of the Union. In addition, a

¹⁶ 118 CONG. REC. 4, 92d Cong. 2d Sess.