



2015

# Barney Frank's Rules of Order

Peter Conti-Brown  
*University of Pennsylvania*

Follow this and additional works at: [http://repository.upenn.edu/lgst\\_papers](http://repository.upenn.edu/lgst_papers)

 Part of the [Law Commons](#), and the [Social and Behavioral Sciences Commons](#)

---

## Recommended Citation

Conti-Brown, P. (2015). Barney Frank's Rules of Order. *The New Rambler*, 1-16. Retrieved from [http://repository.upenn.edu/lgst\\_papers/17](http://repository.upenn.edu/lgst_papers/17)

This paper is posted at ScholarlyCommons. [http://repository.upenn.edu/lgst\\_papers/17](http://repository.upenn.edu/lgst_papers/17)  
For more information, please contact [repository@pobox.upenn.edu](mailto:repository@pobox.upenn.edu).

---

# Barney Frank's Rules of Order

## **Disciplines**

Law | Social and Behavioral Sciences

---

THE NEW  
RAMBLER.

---

---

Categories / Political Science / Barney Frank's Rules of Order

# Barney Frank's Rules of Order

By PETER CONTI-BROWN

*Review of* **FRANK: A Life in Politics from the Great Society to Same-Sex Marriage**, by Barney Frank

Farrar, Straus and Giroux, 2015

---

---

[View BARNEY FRANK'S RULE OF ORDER .pdf](#)

---

---

Barney Frank, the retired Democrat from Massachusetts who served in the U.S. House of Representatives 1981 to 2013, has published his political autobiography. Unusual for a politician's memoir, there is no ghost writer. It shows. As one might expect from following the unvarnished Barney

Frank as a politician and policymaker, every page pulses with Frank's characteristic wisdom and intellectual range, presented in a sometimes chaotic style that a ghost writer is usually hired to smooth over.

I'm glad Frank didn't use a ghost writer to water down his torrential narrative. The result is one of the best political memoirs published in many years. If Frank doesn't reach the heights of Ulysses S. Grant, his book has nothing in common with the pabulum that politicians write to coincide with their presidential campaigns. Frank's is a thoughtful, thinking story. It's a personal history with a unique account of his struggles and triumphs in politics during the 1970s and 1980s as a gay man inside the closet, by itself a fascinating, even moving story. It's a history of the politics of gay rights far beyond same-sex marriage (despite the book's title). It's a brief history from the inside on the congressional politics of the Clinton impeachment. And it is an essential account of the politics before, during, and especially after the 2008 financial crisis from one of the leading players of the period.

The book's greatest strength is an astonishing collection of insights and asides on policymaking and

politics that Frank has distilled from his long career as a deep-thinking speaker of aphorisms on behalf of the Democratic Party and its causes. Some of these observations take the form of modern life lessons: “Losers hold grudges longer and more deeply than winners remain grateful,” he tells us, explaining the power of keeping score in politics (page 76). Or, if you must say no to someone, remember: “Whenever you give someone a reason for a decision that is not your real reason, you leave yourself vulnerable. If your ostensible objection is resolved, you have no recourse to your true but hidden objections” (page 28).

Others seek to expose political hypocrisy: “We politicians frequently praise ourselves for bravely defying our enemies. But in most cases this is not so hard. Indeed, excoriating—and even more usefully, being excoriated by—one’s opponents is the optimal way to harvest campaign contributions. . . . Criticizing allies is something else altogether. True political courage involves standing up to one’s friends” (pages 35-36). Still others to articulate his candid assessments of his allies, including activists, those who lament the influence of money on politics, and journalists. To activists, he attributes democratic delusions: “The most

committed activists on the left and the right are convinced that the majority of voters agree with them but that institutional flaws in our democracy prevent popular sentiment from prevailing. They are usually wrong” (page 41). To those who worry about money in politics, he announces the enduring viability of democracy: “Money is very helpful in a political vacuum, but when members are forced to choose between their voters and their contributors, votes kick money’s ass.” (p 314). And to reporters, he tweaks their hypocrisy: “A lot of reporters think I am not nice enough to them. In their view, it is their job to debunk, expose, and rebut elected officials, and our role is to be very polite in return. Reporters regularly accuse the people they’re interviewing of not telling the truth. If the interviewee expressed equal skepticism about the reporter’s words, the latter’s reaction would be indignation, and possibly a lecture on the First Amendment. I have never encountered a more thin-skinned group.” (pages 322-23).

To get to these nuggets of apothegmatic wisdom requires some patience: again, Frank’s writing style can be exhaustingly excursive. But taken together, they are Barney Frank’s Rules of Order. Students and

practitioners of politics will benefit from reading the memoir for these sentences alone.

Frank owns up to this aspect of his intellect. He explains that he almost became a political scientist, and indeed was (and apparently is?) ABD in Harvard's government department. But he abandoned the scholar's life for the politician's, ultimately concluding that, despite his intellectual talents, he was as ill-suited to scholarship as he was well-suited to politics. "As I contrasted my success as a political and administrative troubleshooter with my failure as a scholar," he writes, "I realized that a key aspect of my makeup helped explain both results: I have a very short attention span" (page 40).

His attention span didn't lengthen when he became a memoirist. In one passage, he recites the chronology of the Clinton impeachment and his role in defending the president when few in the Democratic Party would, at least publicly. It was Rosh Hashanah as he awaited news of Bill Clinton's grand jury testimony, in connection with Clinton's sex and perjury scandals. The disclosure of the High Holiday prompts an immediate and lengthy, interesting, and in the moment irrelevant explanation of Frank's religious

agnosticism but cultural pride in his Jewish heritage. After 1,000 words or so, we get a hard section break: “To return to Clinton’s impeachment...” (page 219).

Somehow, all the asides, disruptive as they are, add to the book’s appeal. Frank documents how his time in public life coincided with two trends, the first disturbing to Frank, the second liberating. First, from the 1970s through the present, Frank saw a long decline in respect for the government and politicians, and in confidence in government employees’ ability to serve the public interest. This is a decline—especially among working-class white men—that Frank thinks many politicians and pundits have misdiagnosed: “In my view, white men reject activist government not because they reject a major role for the public sector but precisely because they support one—implicitly, perhaps, but nonetheless strongly— and have been punishing government for its failure to fulfill that mission” (page 185). One wonders whether Frank is suffering under the same illusions of other activists, but it’s a politically interesting theme, and Frank develops it well.

The second trend is the rapid deterioration of hostility against the LGBT community—a trend he applauds.



This part of the Frank's story will be essential and sometimes provocative reading for scholars, activists, and citizens interested in the gay rights movement of the last forty years. Frank's personal story is moving, especially as he recounts how he and his two partners, first Herb Moses and now his husband Jim Ready, navigated the world of congressional socializing not designed for same-sex partners and spouses. Activists will be less moved by his hard words for their strategies, even as he shared their goals. Most fundamentally is Frank's justification for focusing almost exclusively on the LGB part of the coalition, ignoring the transgender community, on the basis of political expediency. But Frank had a more basic dispute with gay rights activists: he didn't like militancy as a political strategy. He is, for example, dismissive of the 1993 March on Washington launched by LGBT activists was a pale, overly militant, and strategically immature comparison to its 1963 civil rights predecessor. His dispute wasn't over a difference in vision of where policy should be with respect to LGBT rights (including the T), but with the best strategy for getting there. To take another example, he pointed to the National Rifle Association's political

power as an example LGBT activists should follow.

Frank writes:

As I enjoyed pointing out, especially to those LGBT activists who decried my lack of “militancy,” I have never seen an NRA public demonstration. They do not have marches. There have been no NRA mock shoot-ins to rival the die-ins staged by AIDS activists. And those liberals who try to comfort themselves with the notion that the NRA wins legislative battles because of their vast campaign contributions are engaged in self-deceptive self-justification. The NRA wins at the ballot box, not in the streets and not by checkbook. (p 203).

Whether Frank’s critique of militancy as a strategy for social change is correct or not, LGBT and other activists on the front lines will do well to grapple with Frank’s criticisms.

As a student of financial regulation and central banking, I picked up the book looking for insight into Frank’s signature legislative achievement, the Dodd-Frank Act. (He refuses to call it by this name in the book—“the only person I have ever heard refer to himself in the third person without sounding both silly

and pompous was Charles de Gaulle,” he writes on page 184). I wasn’t disappointed. It doesn’t match Robert Kaiser’s deeply reported history of the Act, in Act of Congress, but Frank’s memoir serves the different purpose of defending his worldview about the causes of the crisis, its consequences, and the politics of crisis response and financial reform. For that, it is a valuable tool to identify his largely exculpatory version of events, a version that is surprisingly substantive and detailed.

One set of critics he engages are those who view the crisis as the sole consequence of Congress’s (and Barney Frank’s) enthusiasm for expanding federal guarantees of home mortgages, primarily through political support for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). Here, Frank is at his most partisan: those who view the crisis as the consequence of the artificially lower interest rates on home mortgages are “Republican fundamentalists”; the idea that their view that the government caused the crisis “retains any credibility at all” frustrates him (p. 271-72).

Frank's arguments on this score are two. First, he thinks that the agencies played only one role among many in causing the crisis. To blame them to the exclusion of other contributing factors, including especially lax regulation of mortgage lending standards from the Federal Reserve, creates a caricature of the lead-up to the crisis. And second, even where the agencies did play a role, Frank's critics are wrong to say that he and the Democrats are the ones responsible for their political protection.

On the first point, a reader unfamiliar with the debates about the 2008 crisis might think Frank is engaging a straw man: surely no one really attributes the whole of the crisis to the underwriting standards of these two corporations. But this is no straw man. The monocausal explanation has been a powerful one, from politicians like Dick Cheney to prominent Republican commentators like Peter Wallison. Frank isn't particularly original in taking down this narrative (Alan Blinder's [After the Music Stopped](#) rebuts it more carefully and thoroughly than Frank), but it's helpful to read his insider's account about why the crisis defies simple explanation.

More original is Frank's response to the second point, that even where the agencies did contribute to the crisis, it was not because of exclusively Democratic policies and politics. Frank puts forward a detailed, alternative chronology in which he emerges as a critic of giving Fannie and Freddie a completely free hand and was blocked by a bipartisan consensus that supporting the agencies was good politics and good policy. I don't know enough about the legislative history of the early 2000s to evaluate Frank's historical arguments, but he has provided a coherent narrative that those who endorse the view that the crisis was the result of Democratic politics run amok must now rebut.

On the legislative response to the crisis, the passage of the Dodd-Frank Act, Frank brings insight into some of the debates—especially in dealing with the politics of congressional committees, the political power of community bankers, and much else. But his final conclusion that Dodd-Frank has solved, forever, the problem of what to do about too-big-to-fail banks is wrong. The biggest criticism of Dodd-Frank from scholars and others, on the left and right, is that the Act doesn't solve the problem of too-big-to-fail

financial institutions because it's focused on the wrong problems. (The most compelling critique is, in my view, Anat Admati & Martin Hellwig's book, [The Bankers' New Clothes](#)).

But Frank is having none of it: Dodd-Frank ended too-big-to-fail by declaring it so. More specifically, those large financial institutions that fail, threatening a systemic crisis and triggering Dodd-Frank's Orderly Liquidation Authority (OLA), will get no taxpayer handouts. An institution that fails under Dodd-Frank will see its "officers [] dismissed, its board [] dissolved, and the shareholders' equity [] wiped out" (page 305). Even those creditors who would be paid back, to staunch the flow of the financial contagion, would be reimbursed from a fund generated by assessments on other large financial institutions. The taxpayers aren't a part of Frank's system.

To those who think the OLA doesn't solve the problem, Frank is unimpressed with their intellect and incoherent understanding of policy and politics. As he writes:

Despite the bill's very clear, legally binding directives [against governmental bailouts], some

critics insisted that taxpayer-funded bailouts were permitted and “too big to fail” was alive and well. Some of these critics simply ignored what the law said. Others took a different, and an even less intelligent, tack. According to them, even though the law specifically prohibits the Treasury and Federal Reserve from advancing funds to keep an institution alive, if a major financial institution were to become insolvent, there would be irresistible political pressure to violate federal law and intervene. My question to those who make this case is a simple one: “On what planet have you spent your time since 2008?” Certainly no cogent—even coherent—observer of the backlash against TARP could imagine voters insisting that one more big, failing bank receive a taxpayer bailout and a new lease on life. (pages 306-07).

There are two vulnerabilities to the idea that taxpayer money won't be used to save large financial institutions in the event of a systemic crisis. First, Dodd-Frank institutionalizes the transfer of money to the creditors of such institutions. In the very likely event that the Orderly Liquidation Fund that Frank alludes to is insufficient to cover those losses and

prevent that crisis, then Dodd-Frank has come up empty. This is especially true if, as in 2008, we see not a one-off failure of a large financial institution, but a cascading failure due to the common and unanticipated depreciation of an asset class held by most or all of the largest financial institutions (I discuss these problems at greater length [in this article](#).)

Second, an even more fundamental weakness to Frank's account is that his confidence that the OLA will be followed in precisely the way he has envisioned it is a startling view of the way political actors react to statutory restrictions. History is not on Frank's side here. There were plenty of laws stretched or ignored during the 2008 crisis, sometimes by loose interpretations of statutory mandates, sometimes by blunt force (Philip Wallach's [To the Edge: Legality, Legitimacy, and the Responses to the 2008 Financial Crisis](#) is the most comprehensive critical treatment of these issues; Posner & Vermeule's *Executive Unbound* explains why law's fragility during financial and national security crises is appropriate and inevitable.).

Indeed, on this second point, Frank's confidence in law representing an impermeable wall against executive activity is puzzling for biographical reasons. Earlier in



the book Frank admits to getting a law degree because he was tired of “one persistent form of obfuscation” he encountered as a policy-maker in the early 1970s, when he would challenge one or another status quo. After proposing some new policy action, a lawyer would tell him it couldn’t be done. Frank, pushing back, would admit he wasn’t a lawyer, and “there followed the condescending debate stopper: “Then you wouldn’t understand.”” So it was that Barney Frank, although already member of the Massachusetts House of Representatives, enrolled at Harvard Law School. He reports the conclusion: “Three years later, when I was asked if I was a lawyer and I replied that I was, I found that ‘You can’t do that’ quickly became, ‘Well, you could do that, but it wouldn’t be a good idea.’” (p. 64).

It’s unclear what changed between Frank’s salad days as a legal realist who knew that law invited strategic decision-making by political actors and his days as a legal formalist who thought that the resolution of major problems of public policy can occur simply because Congress declared that the problem was solved in the U.S. Code.

Even fundamental disagreements aside, my verdict on the book remains. Frank has written an enduring memoir that will stay relevant to students of Congress, gay rights, financial regulation, and many others beyond. And if for nothing else, the book provides, page after page, Frank's very good sentences, a modern Rules of Order that will provoke and entertain for many years to come.

---

---

PETER CONTI-BROWN is an academic fellow at Stanford Law School's Rock Center for Corporate Governance and author of *The Power and Independence of the Federal Reserve* (Princeton, forthcoming) and co-editor of *Research Handbook on Central Banking* (Edward Elgar, forthcoming). In July 2015, he will join the faculty of the Wharton School of the University of Pennsylvania as an assistant professor of legal studies and business ethics.

---

---

***The New Rambler*** publishes reviews of books about ideas, including literary fiction. It takes its