

# **Legislative Leviathan Revisited**

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## **Chapter 4: The primacy of Reed's rules in House organization**

### 1. Introduction

The key to our argument is that the majority party in the House seizes control of the law making powers inherent in that legislature. In the case of the House of Representatives, the majority party usurps the power to make law that is delegated to the House by the Constitution. We have argued that they do so by creating a procedural cartel: that is, they seize control of agenda power--principally the power to veto proposed laws--and maintain this control by voting to implement and retain favorable standing rules for the House, even in the face of challenges; in addition, they elect only members of the majority party to the positions of agenda control that result from these standing rules. In other words, returning to our sports analogy, they use the cartel to create an uneven playing field--they tilt the field such that policy outcomes that the cartel wants are easier to achieve, and policy outcomes that the minority party wants are more difficult to achieve.

This tilting of the playing field has been noted previously. Both Sinclair (1997, pp. 21-26) and Finocchiaro and Rohde (2002), for example, note that the majority party rarely loses on either votes to adopt special rules, or on the procedurally crucial previous question votes that precede votes to adopt special rules.<sup>1</sup> Similarly, in our previous work

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<sup>1</sup> From the majority party leaders' position, losing on the previous question is worse than losing on the vote to adopt a rule. If a motion to order the previous question on a special rule (i.e., a motion to hold the final vote on adoption of a rule) fails, the reversion is that opponents of the rule gain control of the floor. By contrast, if the House vote not to adopt

(Cox and McCubbins 1993, chapter 8) we examined the extent to which the majority party uses the appointment power to maintain majority party committee contingents that are ideologically representative of the majority floor contingent. To do so, we examined the “control” committees (Rules, Appropriations, and Ways and Means) across the postwar era, and showed that the majority party systematically appoints representative contingents. Moreover, new members of these contingents are *always* appointed so as to maintain the representativeness of contingents that already reflect the party floor membership, and to make contingents more like the party floor membership when the returning party members on a control committee are not representative of the party floor membership. In *no case* did appointments to control committees make the party committee contingent less representative of the floor, or transform a representative contingent into an unrepresentative contingent (see Tables 33 and 34, p. 226-7, of Cox and McCubbins 1993).

But this view has also been challenged. Notably, Schickler (2001) has argued recently that the rules and agenda positions of the House have often been used *against* the majority party.

In the following section, we examine the rules and organization of the post-reconstruction House of Representatives. We begin by systematically describing changes in House rules and organization in the period 1880-1988 (the 46<sup>th</sup> to 100<sup>th</sup> Congresses). We then use the described observations to make three main points: first, that the modern structure of agenda power in the House--in which access to the floor is regulated by the

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a rule, the reversion is that the majority leaders retain control of the floor. See the Sinclair and Finocchiaro and Rohde cites in the text for more detail.

Rules Committee and the delegation of privilege to selected committees--was erected primarily in the period 1880-94, with the implementation of the "Reed Rules;" second, that this structure of agenda power greatly advantages the majority party; third, that subsequent changes in House rules and organization have not significantly altered the structure erected in the 1880s, although changes in personnel have had important consequences.

In the section after that, in order to test our main points--that the Reed Rules permanently and significantly changed voting behavior and policy outcomes in the House, and that subsequent rules changes have not undone these changes--we investigate a set of House final passage roll-call votes that we will use repeatedly throughout the book.<sup>2</sup> This set of bills, which we shall heretofore refer to as our *Post-Reconstruction data*, consists of observations on all House final passage votes on bills in the H.R. series, for Congresses 45-105 (1877-1998).<sup>3</sup> For each such vote, we ascertain whether the bill in

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<sup>2</sup>. In order to identify final passage votes--as opposed to votes on amendments, etc.--we conducted a systematic search through ICPSR roll call codebooks. ICPSR has collected information on roll calls for every Congress from 1789 to the present. The codebooks contain a one paragraph description of every motion that received a roll call vote in the House. The one paragraph descriptions for most final passage votes contain the words "to pass;" however, because not every final passage vote was described with these words, we also selected votes described with the word "passage" for our analysis.

<sup>3</sup> To be slightly more accurate, our Post-Reconstruction data does not include absolutely *all* final passage votes on H.R.'s; rather, it includes only votes that require a majority for

question proposed to move policy left, right or neither. (The basis for such assessments is simply whether one can predict support for the bill on each vote in terms of each member's left-right ideology, as measured by Poole-Rosenthal DW-Nominate scores). We find that the proportion of proposed moves toward the majority party (i.e., left for Democratic majorities, right for Republican majorities) increases abruptly, substantially and permanently after adoption of Reed's rules. Indeed, as we will show, after Reed's rules became a permanent part of House organization, over 82% of the bills allowed to reach the final passage stage in the typical Congress proposed to move policy in the direction of the majority-party median.

## 1. House Rules

### 2.1. Defining the universe of rule and organizational changes

In this section, we discuss changes in House rules and organization. We begin by considering two databases of rule changes, constructed by Binder (1997) and Schickler (2000). Binder (1997) focuses on the creation and suppression of "minority rights." Schickler (2000, p. 271) includes "any alterations in rules that were intended either to advance or to undermine the majority party and its leaders in their efforts to shape the House agenda." Both employ a similar methodology, which consists of carefully culling through the standard sources on House procedural history and recording the rule changes noted therein.<sup>4</sup>

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passage. It therefore excludes votes to suspend the rules and pass a bill, and votes to override a veto. It also does not include votes on conference reports.

<sup>4</sup> Schickler and Binder rely on widely used historical works such as McConachie (1898), Alexander (1916), Hasbrouck (1927), and Galloway, as well as House Precedents

We employ an alternative methodology for finding rule and organizational changes: looking through standard online databases for all recorded votes pertinent to rule and organizational changes. Our method yields a larger number of rule changes than is included in either previous study.

Before we can say *how many* more rule changes we have found, it will help to consider the unit of accounting. There are three ways that one might count rule changes. First, one might ask of each Congress whether any rule changes (satisfying stipulated criteria) occurred or not. This is the approach that both Binder and Schickler take. They accordingly code each *House* as having made changes relevant for their purposes or not. A second approach is to take as the unit of account, not an entire Congress, but instead each separate *final passage vote* that effected one or more rule changes. The unit of observation here would be a vote to change the rules, and there might be several in a given Congress. As a third option, one might count each individually identifiable change in the rules, in which case the unit of observation would be each individual provision to change a rule, several of which might be included in a single rules-change resolution.

Although it might seem that counting individual rule changes is the best approach, to do so comprehensively would be a gargantuan and intractable task.<sup>5</sup> Our approach

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compiled by Hinds, Cannon, and Deschler. In addition, they use a variety of other sources. See Binder's (1997) and Schickler's (2001) appendices for details.

<sup>5</sup>. The problem can be illustrated by considering the great reform of the rules adopted in 1880. Alexander (1970 [1916], p. 194) notes that what this reform "did was to retain twelve rules entire, drop thirty-two because obsolete or unnecessary, and condense one hundred and twenty-five into thirty-two, making a total of forty-four, each subdivided

accordingly is to count each resolution (or amendment to a resolution) that changed House rules or organization and got one or more roll call votes (we present a detailed list of our set resolutions in appendix A). We exclude some resolutions because they were in effect for less than six months. We exclude others because they had no discernible partisan consequences. This leaves us with a total of 124 resolutions with rule or organizational changes in the period 1880-1988 that had non-trivial partisan effects.<sup>6</sup>

Binder and Schickler, who focus on rule changes only, mention 36 of our 124 resolutions. The 88 resolutions that neither Binder nor Schickler mention fall into three categories: (1) 56 resolutions that affect House organization, by which we mean the funding and staffing of committees; (2) 25 resolutions that affect the establishment or jurisdiction of committees--an activity that we argue should be considered rule-making; and (3) 7 rule changes. Let's consider each of these categories in turn.

## 2.2. Organizational changes

A class of decisions that are frequently pushed to a recorded vote in the House concern committee staffing and funding. We include all House decisions (pursuant to a recorded vote) to fund or staff one or more committees as *organizational* changes, rather

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into clauses..." It would be very difficult to decide what a "rule" was (since each House rule is itself subdivided into clauses that are logically separable and each clause often contains many potentially independent stipulations), hence to count all the rules abolished or adopted even in this single action by the House.

<sup>6</sup> We include all the resolutions identified by either Binder or Schickler in our overall dataset, although a few would have been excluded by one of our two selection criteria (too short a lifespan or not partisan in effect).

than *rule* changes.<sup>7</sup> They are important because they materially affect what committees, their chairs, and their minority-party members can do.

Binder includes, as affecting minority rights, guarantees of a minimum proportion of minority staff in 1970 and 1974 and the abolition of those guarantees in 1971 and 1975. Schickler includes these cases too (except the guarantee extended in 1974, on the grounds that it was never actually implemented). We include all four of these changes, too, classifying them as rule changes (thus they are not counted in the total of 56 resolutions changing House organization).

In addition to these *general* guarantees of staffing, which do rise to the status of rules in the colloquial sense, there are also a number of orders affecting the funding and staffing of *particular* committees, often with regard to particular investigations. We include these under the rubric of organizational changes. Thus, for example, we include no less than 38 decisions that were pushed to a roll call vote in the 96<sup>th</sup> Congress (part of a general Republican protest against the injustice of Democratic rule). Additionally, we include 18 other funding and staffing imbroglios scattered across the years, such as the battle over funds for the Judiciary Committee's conduct of the impeachment hearings

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<sup>7</sup>. One can even make a case for considering these funding and staffing actions as “rules.” Orders directing committees of the House to undertake certain investigations have been in Rules’ jurisdiction since the first decade of the 20<sup>th</sup> century (See 4 Hinds’ Precedents 4322; 7 Cannon’s Precedents 2048). Thus, the House has in essence put such orders under the heading of “rules,” as the committee’s official jurisdiction remains “rules, joint rules and the order of business.” However, ordering a particular investigation logically entails staffing and funding it--and thus these matters too have the character of “rules.”



against President Richard M. Nixon. All told, there are 56 *organizational* changes. None of these changes are included in either Binder or Schickler's datasets--not surprisingly, as these scholars explicitly focus on more traditionally-defined *rule* changes.

### 2.3. The establishment and jurisdiction of committees

Rule X of the House stipulates which committees are to exist and what their jurisdictions are to be. Thus, we include all creations or abolitions of committees, and all alterations in their jurisdictions, as "rule changes," as does the House itself, provided that we can find an explicit vote of the House that effects the change in question. Binder, given her focus on minority rights, includes no such actions in her dataset. Schickler includes only three in his dataset: the creation and abolition of the House Un-American Activities Committee and the abolition (but not the creation) of the Joint Committee on Atomic Energy. These actions were indeed famous and partisan. However, there were many other less famous cases of the creation or abolition of a committee in which the action was pushed to a roll call vote. Indeed, we find 23 such rule changes, and an additional 2 changes that altered the jurisdictions of committees.

### 2.4. Other rule changes

Putting organizational changes aside, separate actions taken by the House to alter the House committee structure account for the bulk of the rule changes that we include, but Binder and Schickler do not. The remainder of the difference is due to seven miscellaneous items that we have uncovered by systematically searching through House roll call votes. Some of these items are votes to sustain a Speaker's decision, hence

establishing precedents. Others are votes to amend the standing orders. We list these items below to show that they are sometimes important and partisan actions.<sup>8</sup>

Item 1: In the 46<sup>th</sup> Congress, the House conferred privileged access to the floor on three financial committees (Ways and Means; Banking and Currency; Coinage, Weights and measures). The vote to do so was highly partisan, with 92% of the majority Democrats supporting the change, 96% of the minority Republicans opposing it.

Item 2: In the 47<sup>th</sup> Congress, during debate on a resolution relating to the land grants of the Northern Pacific Railroad Company, the Speaker ruled that the minority of a committee had no power to append substitutes or resolutions proposing legislation to its reports, and that such power is reserved for the majority of a committee. On a motion to table an appeal of the chair's ruling, the House upheld the Speaker, with 98.9% of the majority Republicans voting to support, and 98.5% of the minority Democrats voting to overturn.<sup>9</sup>

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<sup>8</sup>. In one case, Binder and Schickler do mention a rule-change resolution but do not seem to believe it to be relevant. A vote in the 93<sup>rd</sup> Congress increased the number of suspension days, as both Binder and Schickler note. The same vote also changed House rules to allow “the Speaker to adjust the meeting time of the House with the approval of a majority, eliminating the previous requirement that he obtain unanimous consent. Republicans claimed that this removed an important element of minority rights” (cf. CQ Almanac 1973, p. 30).

<sup>9</sup>. We include this event from 1882 in our dataset on the following grounds. Either the minority had previously exercised the right of appending matter to committee reports, or it had not. If it had exercised such a right, then the Speaker's decision ended this right. If

Item 3: In the 67<sup>th</sup> Congress, the Speaker rendered a decision on a point of order that enhanced the Rules Committee's power to determine the time at which special rules would be brought up to the floor, at the expense of ordinary members. In particular, the Speaker held that the chair of Rules could "report a bill within any reasonable time as fixed by the Committee [on Rules]" and that the member who had introduced the bill in question had no right to call up the bill (or the special rule governing its consideration) as a question of privilege. In the 227<sup>th</sup> roll call of the 67<sup>th</sup> Congress, the House voted to table an appeal from the Speaker's decision, thereby ratifying it (with 99% of the minority party voting against the motion to table, and 86% of the majority party voting in favor). Had the original point of order been sustained, the Rules Committee's ability to control the flow of legislation to the floor would have been lessened, with the original sponsors of bills correspondingly empowered.

Item 4: In the 88<sup>th</sup> Congress, the House permanently expanded the Rules Committee from 12 to 15 members. (Binder and Schickler are well aware of this change but choose not to include it, viewing it as simply a continuation of the action in the previous Congress. We include it as a separate item because there was a separate vote.)

Item 5: In the 95<sup>th</sup> Congress, the House agreed to H. Res. 393, authorizing additional funds for office personnel and equipment for the party leaders and whips (with the lion's share going to the majority). On final passage, 93% of the majority party

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it had not exercised such a right, then evidently the minority was trying to assert such a right in the 47<sup>th</sup> Congress--with the Speaker rebuffing their claim and in the process clarifying an ambiguity in the existing rules. Either a clear or a potential minority right was eradicated.

(Democrats) voted in favor of the resolution, while 73% of the minority party (Republicans) voted against.

Item 6: In the 99<sup>th</sup> Congress, the Speaker ruled that a motion to make a correction in the *Congressional Record* did not raise a question of privilege. The minority Republicans challenged the Speaker's decision but their challenge was rebuffed on a straight party-line vote.

Item 7: In the 100<sup>th</sup> Congress, less than five months after the start of the first session, the House adopted H. Res. 157, which waived the requirement for a two-thirds vote to consider a special rule on the same day that it was reported. The vote on the rule change was almost strictly along party lines, as 99% of the majority-party Democrats voted to waive the requirement, while 95% of the minority-party Republicans voted against the change.

## 2.5. Partisan preview

In their studies of rule changes, Binder and Schickler were both interested in how often rule changes advantaged either the majority or the minority party. With our newly constructed dataset on House rule changes, we also address Binder and Schickler's question: how many of the rule changes were majority-party victories, and how many were minority-party victories? Deciding whether a given resolution benefits the majority or minority is not always straightforward, especially if there are multiple changes within one resolution. We have accepted the judgments of Binder and Schickler on the rule changes that they identify.<sup>10</sup> For other rule changes, we rely principally on the partisan

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<sup>10</sup>. Binder and Schickler do not often disagree in their judgments about rules changes. Of course, identifying rules changes is subjective and there is room to debate whether

divisions on the adoption vote, and secondarily on supplemental information (when available).

Given our classifications of each rule change as favoring the majority or minority, we find that *the vast bulk of changes benefit the majority*. Of the 56 organizational changes in the dataset, 98% were majority-party victories. Of the 25 committee adjustments in the dataset, 74% were majority-party victories. Of the 43 other rule changes, 69% were majority-party victories. Thus, on a simple bean-counting basis, the majority party wins much more often than it loses on rule and organizational changes.

In fact, however, we think this bean-counting vastly understates the advantage that the majority's derives from the rules of the House. If one considers the *importance* of different rule changes, the majority party's dominance looks even greater.

## 2.6. How level is the playing field?

Our view is that the rules of the legislative game have been heavily stacked in the majority party's favor since the readoption of Reed's rules in 1894 capped more than a decade of reform. Reed set out at the beginning of the 1880s to change the House's rules, to enable the majority party to enact its agenda. He succeeded. Rule changes since then have not returned the House to anything like the playing field it had prior to Reed's reforms (and even *that* playing field was not level as between the parties).

Having stated our thesis baldly, we can proceed to elaborate it (and even add some shading). Our first point of elaboration will be to describe the set of changes that Reed (and others) brought about, and how these changes tilted the field to the majority

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particular events should or should not be included--but we do not debate these judgments here.

party's advantage. In this task, we rely extensively on Den Hartog (2003). Our second point will be to show that rule changes subsequent to 1894 did not alter the fundamentals of the system that Reed established. Some changes had important political effects but they did not restore to the minority any abilities that it had enjoyed prior to the Reed revolution. In other words, subsequent changes to House rules have not come remotely close to restoring a level playing field.

### 2.6.1. Reed's revolution

The majority party was at a local nadir of relative agenda power after reconstruction. The reason for this was twofold. First, the number of bills introduced to the House continued to increase--especially with the return to the House of the Southern members, the rapid growth of the nation, and the introduction of new states. Second, all these bills piled up on the calendars, from whence they were to be taken off in the order introduced. The only techniques the House had to alter this regular order were unanimous consent and suspension of the rules, the latter requiring a 2/3 vote. Third, the rule book was still rife with opportunities for dilatory tactics and motions, such as the infamous disappearing quorum.<sup>11</sup> Putting all this together, the minority party had a natural and effective strategy. To prevent the majority party from passing its agenda in a timely fashion, it had merely to insist that bills be taken in the regular order, then delay each bill

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<sup>11</sup>. The minority would demand a call of the House to verify the presence of a quorum when the majority did not have all its troops in the chamber. Minority members would then *not* answer when their names were called. Thus, because a quorum could not be attained with *only* majority members answering the call, the House could not conduct further business.

so taken as much as possible. In this way, it could extract concessions from the majority for agreeing to suspend the rules and proceed with the bills the majority preferred. In sum, the procedure of the 1870s allowed the minority to frustrate the majority.

Thomas Brackett Reed emerged, soon after his entry into the House, as a major player in remaking the old rules. He stated his views on party government succinctly in 1880: “The best system is to have one party govern and the other party watch; and on general principles I think it would be better for us to govern and for the Democrats to watch” (*Congressional Record*, April 22, 1880, p. 2661).<sup>12</sup> The end result of the two parties’ maneuvers over the decade of 1880s was to guarantee that the role of “watching” was the minority’s only option. Through a series of moves, the House created the modern system of agenda control--under which virtually all important legislation gets to the floor via (1) privilege; (2) special rules granted by the Rules Committee; or (3) suspension of the rules.

In addressing the majority party’s procedural problems, Reed (and other rule-makers) did not seek to meddle with the free introduction of bills by members and committees. Rather, he sought--most famously--to break the minority’s power to delay; and--less well-known but no less important--to ensure the majority’s ability to take bills flexibly from the calendars, in any order it chose.

#### 2.6.1.1. Curbing dilatory motions

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<sup>12</sup>. While his preferences on party government were clear, Reed was opportunistic when it came to House rules: decrying the use by Democrats of ploys, when they were in the majority, that he later used himself when the Republicans had a majority.

The adoption of Reed's rules in 1890 is routinely noted as an epochal event in House procedural history. Most of Reed's innovations at this time were calculated to break the minority party's power to delay. In particular, he introduced: (1) a rule giving the Speaker the power to refuse to recognize members seeking to make "dilatatory" motions; (2) a rule allowing the Speaker to count all members physically present in the chamber during quorum calls, even if those members chose not to answer when their names were called; (3) a rule lowering the quorum in Committee of the Whole and permitting closure of debate by majority vote on any part of a bill being considered; and (4) a rule allowing the Speaker to refer House bills, Senate bills and messages from the President to appropriate committees (including conference committees) without debate. Of these changes, the most famous by far is the second, which disabled the "disappearing quorum" tactic that had so frustrated majority parties. It was this change above all that led to the minority party's members storming into the well of the House in outrage and that has assured Reed's rules a place in the history books.<sup>13</sup>

#### 2.6.1.2. Ensuring the majority's ability to select bills

Another, and no less important, pillar of Reed's reform was to ensure the majority party's ability to choose flexibly, from among all the bills on the calendars, those it would put on the floor next. To accomplish this goal, Reed's primary tactic was to bolster the powers of the Rules Committee.

Rules had already been made a standing committee by the general reforms of 1880; it was already chaired (since 1858) and appointed by the Speaker; and it had

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<sup>13</sup>. For analyses of the adoption of Reed's rules, see e.g. Galloway and Wise 1976; Alexander 1916; Binder 1997.



already secured the right to report, at any time, privileged resolutions concerning the House's rules. In 1882, Reed exploited a contested election case to establish that Rules' reports had precedence over motions to recess in particular and over dilatory motions in general. In 1883, Reed crafted the first modern special rule--which allowed the House to suspend the rules by simple majority vote, rather than a two-thirds vote--in order to send a hotly partisan tariff bill to conference with the Senate in the waning weeks of a lame duck Congress (with a Democratic majority coming in). The Democrats raised a point of order against the report, "on the ground that 'it does not constitute and is not a rule' because the special order addresses only a 'separate, distinct, specific measure' and not the general system of House rules" (Oleszek 1998, p. 10). In other words, the Democrats were complaining that the Republicans were changing the rules just for this one bill and what was the point of having rules if they could be changed at any time to suit each bill? The Republican Speaker, however, ruled against the point of order and was sustained on appeal. In 1887, it was the Democrats' turn to add to the powers of the Rules Committee, when Speaker Carlisle effectively expanded Rules' jurisdiction from "rules and joint rules" to "rules, joint rules and the order of business," thereby increasing the panel's ability to regulate traffic to the floor. This expansion in jurisdiction was formally recognized and established in Reed's rules, passed in 1890 (Oleszek 1998).

Thus by 1890 Rules had been transformed, from a committee entitled only to propose *general* rules, to a committee entitled to propose *special* rules that would govern the order in which bills would be taken from the calendars (or sent to conference) and that could be adopted by simple majority vote. Rules' resolutions, moreover, were privileged and could not be blocked by dilatory motions. Finally, because Rules was

chaired and appointed by the Speaker, the majority party's control of its actions was virtually assured;<sup>14</sup> and majority-party members quickly found that support for those actions on the floor was a litmus test of party loyalty.<sup>15</sup> Reed and other innovators had created a viable system by which the majority party could flexibly alter the regular order of bills on the calendars.

#### 2.6.2. The permanence of Reed's system of agenda control: dilatory motions

After Reed's system of agenda control had been constructed, with its decisive advantage for the majority party, subsequent rule changes never pushed the playing field in the House back to anything close to what it had been in the 1870s. To show this we first review changes that affected the minority's power to delay (in this section), then changes that affected the Rules Committee (in the next section). Although there were political changes of great importance that affected how the system operated, the fundamentals of the system--structural majority-party advantages in regulating the flow

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<sup>14</sup>. As Oleszek (1998, p. 11) puts it, "Needless to say, Reed dominated the Rules Committee. According to one account, the Speaker would inform the two Democrats on the [five-person] panel that [we] 'have decided to perpetrate the following outrage.' Then he would read and give the two Democrats 'a copy of whatever special order had been adopted by the majority of the committee.'"

<sup>15</sup>. Alexander (1970 [1916], p. 210) refers to members being disturbed by "the feeling, created by the tyranny of alleged party necessity, that one must support whatever the Rules Committee brought forward or become irregular. In fact, nothing better illustrates the extraordinary power that the desire to be regular wields in the House than the dumb fidelity with which the great majority of members yield to this shibboleth."

of bills from the calendars to the floor; weak minority-party ability to delay--did not change.

The main threat to our claim that the majority party's procedural advantage continued largely undisturbed from 1894 (when Reed's rules were readopted) to present is, of course, the famous revolt against Speaker Cannon in 1910. As is well known, a coalition of Progressive Republicans and Democrats combined at that time to force important changes in House procedure. As Forgette (1997, p. 391) has noted, however, the revolt against Cannon in 1910 "did not undo all of Reed's Rules." Forgette notes in particular that the Speaker retained the power to reject dilatory motions and to count a quorum, the two main anti-delaying innovations that Reed had introduced. The House also retained the reduced quorum in Committee of the Whole and the automatic referral of bills and items 'on the Speaker's table'--two additional blows against minority obstruction. Indeed, the revolt against Cannon hardly affected Reed's system, as far as dilatory tactics were concerned.<sup>16</sup>

If dilatory motions and tactics were not restored (or created anew) in the revolt against Cannon, were they in subsequent years? In our dataset of rule changes, there are

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<sup>16</sup>. Of the rule changes effected in the revolt against Cannon, the only one that might be viewed as increasing the minority's power of delay was the guarantee that an opponent of each bill would be given the opportunity to offer a motion to recommit, if the previous question had been employed by the bill's proponents. In practice, however, the motion to recommit has not been effective as a dilatory tactic.

six that *further erode* the minority's ability to delay.<sup>17</sup> As against these six, there is one that improves the minority's ability to delay: the Legislative Reorganization Act of 1970 guaranteed some minimal debate time for the opposition on amendments, on motions to recommit, and on conference reports. All told, then, the particular dilatory measures that the minority used prior to Reed's rules have not been restored, nor have functional equivalents been invented.

### 2.6.3. The permanence of Reed's system of agenda control: the Rules Committee

In this sub-section, we consider three central powers that the Rules Committee had acquired by 1890: (1) the right to report to the floor at any time; (2) the right to have its reports immediately considered (protection against dilatory motions); and (3) the right to report "special rules" regulating the order in which bills are taken off the House calendars and setting the order of business. Our main point is simply that these powers of the Rules Committee have not changed significantly since their institutionalization in 1890-94. Indeed, subsequent actions have sometimes clarified or strengthened Rules' power. For example, in 1933 the House amended its rules to provide that special rules reported by the Rules Committee not be divisible.

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<sup>17</sup>. In 1965, the right to demand a vote on engrossing bills was abolished. In 1970, reading of the Journal was dispensed with. In 1973, restrictions on obstruction were introduced. In 1976, Rules was allowed to report resolutions waiving the requirement that conference reports be available two hours before their consideration. In 1977, quorum calls were prohibited during debate. In 1979, the threshold required for forcing a recorded vote was increased (and various procedures were streamlined).

If the core capacities of Rules have remained intact, have new rules undermined the practical consequences of these core capacities? The only real possibilities along these lines that the extant literature raises are two: a series of rule changes intended to make it easier for bills to bypass Rules; and a series of rule changes that affected the membership of Rules.

#### 2.6.3.1. Bypassing Rules

The House and Union calendars continued to be crowded with bills after Reed's system of agenda control was put in place. Thus, the real logjam for unprivileged bills continued to be at the stage of getting from the calendars to the floor (at least for those unable to command the two-thirds majority needed for suspension of the rules). To navigate this logjam at the calendar-to-floor stage, members had two basic options. First, they could petition Rules for a special rule. However, Rules could delay action on or refuse requests for special rules. Thus, members sought methods to force Rules to take action on "their" special rules. Second, if Rules could not be made to budge, a member might seek some novel procedural route to the floor that bypassed Rules entirely.

Thus, procedural fights in the House that Reed built have tended to focus on Rules' ability to delay or block legislation--an ability inherent in, indeed inseparable from, the system of agenda power that he constructed. Three of the best-known procedural innovations of the first half of the twentieth century--Calendar Wednesday, the discharge procedure, and the 21-day rule--were all attempts by various elements of the House to bypass the tyranny of Rules. We shall consider each in turn but it is best to state our conclusion at the outset: although each of these innovations lessened the power of Rules to delay or block legislation, none of them put the majority party anywhere near

its pre-Reed predicament of having to process all the bills on the calendars in order and in the teeth of effective minority delay. After discussing these three failures to bypass Rules, we briefly consider the one permanent and effective means of bypassing Rules: the system of privilege.

#### 2.6.3.2. Calendar Wednesday

By the closing weeks of the 60<sup>th</sup> Congress, Speaker Joseph Cannon had so angered the moderate wing of his party that many Progressives sought, in combination with the Democrats, to change the House's rules. In order to forestall an even worse outcome, the regular Republicans offered a resolution to institute a Calendar Wednesday. Under this procedure, each Wednesday would be reserved for a call of the committees and each committee, when called, would have the opportunity to bring up unprivileged bills that had not been granted special rules by the Rules Committee. As Binder (1997, p. 133) notes, "Although [Calendar Wednesday] did not exclusively empower a political or partisan *minority*, supporters of the new rule intended to weaken majority leaders' control of the agenda and to ensure action on bills preferred by Democratic minorities and/or Republican Progressives. With an agenda otherwise structured by a partisan rules committee, circumventing the regular and privileged order of business was deemed necessary to weakening majority leaders' control of the floor."<sup>18</sup>

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<sup>18</sup>. The actual vote on adoption of Calendar Wednesday saw 86% of the Republicans obeying their party leaders' instructions and voting in favor, with 99% of the Democrats voting against, presumably on the calculation--motivating the regular Republicans' action in the first place--that this would render more radical reform less likely.

Although Calendar Wednesday was viewed at the time of its creation as “perhaps the most vital of the reforms that the progressives won under Cannonism” (Galloway and Wise 1976, p. 140), in practice only two bills as of 1984 had ever successfully been pushed through the procedure (cf. Oleszek 1984, p. 120). Oleszek (p. 120) explains its ineffectiveness as stemming from four considerations: “(1) Only two hours of debate are permitted, one for proponents and one for opponents. This may not be enough to debate complex bills. (2) A committee far down in the alphabet may have to wait weeks before its turn is reached. (3) A bill that is not completed on one Wednesday is not in order the following Wednesday, unless two-thirds of the members agree. (4) The procedure is subject to dilatory tactics precisely because the House must complete action on the same day.” Given the ease with which a determined minority of the House could block action on a bill brought up via Calendar Wednesday, it has been useless as a vehicle for truly circumventing Rules. It might be serviceable for *uncontroversial* measures but such measures have better options via the Consent Calendar (now the Corrections Calendar) in any event. Thus, as Galloway and Wise (1976, pp. 140-1) note, the procedure is almost always dispensed with.

#### 2.6.3.3. Discharge

Another of the major innovations introduced by the Progressive-Democratic alliance in 1910 was the discharge procedure. With the possible exceptions of the 68<sup>th</sup> and 72<sup>nd</sup> Congresses, however, the discharge procedure has never allowed the minority to push its bills effectively against majority-party opposition. In the early forms of the discharge rule, the most that discharge might have done in any event was to put a bill on a calendar, where it could die just as easily as in committee--especially if Rules was

opposed to it. It was not until 1924 that the possibility of discharging Rules itself (of special rules) was introduced. Even after this possibility was reintroduced in the modern version of the discharge procedure, however, discharge remained an unwieldy and difficult procedure (cf. Beth 1998). As detailed defenses of these points will take some time, we present them in appendix B.

#### 2.6.3.4. The 21 day rule

In 1949, in the 81<sup>st</sup> Congress, a special procedure for discharging the Rules Committee, known as the 21-day rule, was instituted for the first time. The rule gave *committee chairs* the right (on specified days) to bring certain special rules to the floor--namely, those that their committee had submitted to the Rules Committee and that Rules had not favorably reported to the floor within 21 days. This rule was repealed in the next Congress. A similar rule was adopted in 1965, in the 89<sup>th</sup> Congress, although in this version the Speaker had complete discretion in recognizing members seeking to make motions under the 21-day rule; and any member of a committee, designated by that committee, might make the motion.<sup>19</sup>

Schickler (2000) views the 21-day rule as a majority-party gain, presumably because liberal Democrats seeking to end-run the conservative blockade in the Rules Committee were the motive force behind its introduction. Galloway (1976, pp. 68-9), in contrast, asserts that “those who believed that the party in power should control legislative action” opposed the rule, while “those who believed in the principle of majority rule by the whole House” favored the rule. In other words, by Galloway’s account, the 21-day rule was a majority-party loss. Finally, Binder (1997) does not view

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<sup>19</sup>. See Deschler’s Precedents ch 17, s. 52, p. 3037.



the rule as enhancing minority rights, given that majority-party members (chairs in the 1949 version, the Speaker in the 1965 version) are explicitly empowered under it.

We would side with Binder on this matter. The 21-day rule was only adopted in two Congresses with large Democratic majorities. It did not transfer formal agenda power between the majority and the minority parties. Rather, it took power away from a body (the Rules Committee) on which the majority had a more-than-proportional share of seats, and gave it to other members of the majority party: committee chairs in the 1949 version; the Speaker in the 1965 version. In other words, *the 21-day rule simply redistributed formal agenda power within the majority party.*

#### 2.6.3.5. Privilege

There is one way to partly get around the blocking power of the Rules Committee: to grant privileged access to the floor to certain committees for certain bills. The House has indeed made such grants since the nineteenth century. The main point we would stress is that the most important grants of privilege have always been made to committees on which the majority party has given itself super-proportional representation--in particular, Ways and Means; Appropriations; and Budget. Thus, grants of privilege have always been consistent with majority-party control of the agenda, in the sense that they merely transfer control over access to the floor from one "stacked" committee to another. Privilege has thus mostly affected the distribution of agenda power within the majority, not the partisan balance of agenda power.

#### 2.6.3.6. Bypassing Rules by amending special rules

If a complete end-run of the Rules Committee has never been engineered (with the partial exception of the system of privilege), what about amending Rules'

recommendations? If the committee simply reports resolutions to the House, why not amend those resolutions on the floor to secure whatever the majority *du jour* wishes?

The key to avoiding agenda control by shifting floor majorities is the routine practice of moving the previous question on special rules (cf. Finocchiaro and Rohde 2002). If the previous question is carried, then the House proceeds immediately to an up-or-down vote on the special rule. Accepting the rule typically gives the majority what it wants. Defeating the rule puts the ball back into Rules' court: they can try again. Only if the previous question is defeated does control of the agenda pass to the floor (as, after defeat, the special rule itself can be amended and then adopted).

The practice of moving the previous question before voting on special rules allows majority-party members whose constituents disapprove of the underlying bill the maximum amount of "cover" in supporting their party. They are not asked to vote directly for the objectionable bill, nor even for the special rule that will regulate debate and amendment on that bill. They (seemingly) are only asked to vote for a motion to bring the special rule to a quick vote. The majority party has made clear that support for the previous question is a key test of party regularity, even more important than supporting the Rules Committee's proposed rules (see Burger 1995). As a consequence, one finds a certain number of cases (56 in the postwar House) in which the House defeats a proposed rule and yet does not defeat the previous question. Dissidents in the majority party can thus express serious disgruntlement without ceding agenda control to the floor.

#### 2.6.3.7. The Membership of Rules

Reed's system of agenda control required *both* that the Rules Committee have ample powers *and* that the majority party be able to control its members. When Reed first

constructed his system, he himself as Speaker chaired the Committee on Rules and appointed all the other members. Thus, he had created not only a powerful and flexible tool, the special rule, but he had also ensured that the majority party leadership would control its usage. In the 1910 revolt against Cannon, however, the Speaker was removed from the Committee on Rules and the committee itself was to be elected by the House rather than appointed by the Speaker. Did this new system of appointing Rules mean that the majority no longer had a structural advantage in controlling it?

We say no, for two main reasons. First, and most important, the majority party gave itself a more-than-proportional share of the seats on the Rules Committee, starting in 1910. Moreover, the majority's bonus in seats has been larger when its share of House seats is smaller (Aldrich and Rohde 2000, 43-45). Second, starting in the first decade of the twentieth century, each party has proposed a slate of committee appointments for its own members; and starting in 1917, the House resolution proposing committee appointments has been unamendable. Thus, each party has had substantial control over which of its members will get onto which committees.

These structural advantages of the majority party have remained constant from the 1910s to present. What has varied is the majority's practical ability to control its members on Rules. Pursuant to a series of unlucky or imprudent appointments in the 1930s (cf. Schickler 2001, pp. 163-8), when the party had very large majorities and perhaps thought it could afford a more diverse membership on Rules, the Democrats lost a measure of control over the committee. The damage, moreover, could not easily be undone because the North-South split within the Democratic party made seniority violations almost prohibitively costly to the New Dealers. Thus, the party had to endure a

period from 1937 to 1960, during which the conservative coalition could effectively block many liberal policy initiatives.

We wish to stress two points, however. First, although the Democrats could no longer always rely on Rules as an effective means of pushing through liberal legislation, they could, for the most part, continue to rely on Rules not to push through conservative legislation. This much is clear from the pattern of voting on special rule adoption (which we discuss in detail in Chapter 9) and final passage votes (that we detail in Chapters 6 and 7). Second, the loss of Rules as an instrument of partisan achievement was a Democratic malady, not a general feature of congressional governance. Respect for seniority did not prevent the Republicans from purging several members of their contingent on Rules in the 1920s. Nor did it prevent them from using Rules for partisan purposes in the 80<sup>th</sup> and 83<sup>rd</sup> Congresses (Bolling 1965). This reflects our main point: The rules governing appointment to the Rules Committee had not changed. A sufficiently united majority party could still use the appointment procedure effectively to ensure adequate control of the committee, and hence use special rules for partisan purposes. A divided party, however, might well find that, lacking consensus on policies within its caucus as a whole, it would also lack firm control of its contingent on Rules, when it came to prosecuting a partisan legislative agenda. To put the point another way, what did not change was the rules governing Rules; what did change was the political composition of the majority party and hence of its contingent on the Rules Committee.

### 3. Testing the primacy of Reed's rules

Thus far in this chapter, we have argued that the adoption of Reed's rules is the primary watershed in post-bellum House organizational history. Before Reed's rules were adopted, post-bellum majority parties had relatively weak agenda control. Afterwards, majority parties had significant advantages that fluctuated little thereafter. We will test these two hypotheses by looking at roll call voting behavior in the House.

The logic of our test follows from a model of agenda control that we presented in previous work (Cox and McCubbins 2001). We begin by assuming a unidimensional spatial model of legislation dealing with a given issue. If the majority party enjoys agenda control (i.e., the ability to decide which bills do and do not reach the floor of the House), and uses its agenda control to pursue policies that are nearer to the majority median's ideal point than is the status quo, then one of two things will happen with each bill—either the majority leaders will block it because it does not move policy nearer the majority median, or the majority leaders will allow floor consideration, and policy will move closer to the median.

For additional ease of exposition, we assume that the Democrats are the majority party, and that they fall on the left side of the dimension. We also assume that any bills reaching the floor are considered under open rules and are therefore amended to, and passed at, the floor median's ideal point. Given these assumptions, the Democratic agenda setter will allow consideration of *any* bill that amends a status quo falling to the right of the floor median. In contrast, the agenda setter will *not* allow consideration of any bill that amends a status quo falling in the zone between the floor median (on the right) and the point that is the same distance to the left of the majority median as the floor

median is to the right of the majority median (i.e., the reflection of the floor median's ideal point over the majority median's ideal point).

Thus, any bill that reaches the floor will either move policy to the left by amending a rightist status quo (likely on a party line vote), or will move policy toward the right by amending an extreme-left status quo (on a bipartisan vote). To simplify this analysis, we ignore the possibility of such bipartisan votes. This leads to our expectation that, in the post-Reed era, bills that pass the House should move policy to the left when the Democrats are the majority party; similarly, passing bills should move policy to the right when the Republicans are the majority party. Hence, we test the following two hypotheses:

H1: Adoption of the Reed Rules significantly increased the proportion of votes moving policy toward the majority party.

H2: House rules changes subsequent to adoption of the Reed Rules have not significantly reduced the proportion of votes moving policy toward the majority party.

To test these hypotheses, we examine our Post-Reconstruction data. Figure 4.1 illustrates the intuition of the technique that we use to measure the direction of policy change for individual bills in the data. For any bill  $b$  that proposes to change policy from  $Q$  to  $b$ , there will be a cutpoint  $c$  that divides legislators into those voting yes and those voting no. Those on the same side of the cutpoint as  $b$  will vote for the bill, while those on the same side as  $Q$  will vote against the bill. So, if we work backwards and notice that legislators with ideal points  $x_1$ ,  $x_2$ , and  $x_3$  all vote yes, while legislators with ideal points at  $x_4$  and  $x_5$  all vote no, then we can infer that the cutpoint is between  $x_3$  and  $x_4$ , and that the

bill moves policy to the left (we can also infer that the status quo is to the right of  $c$ ). If we were to run a probit regression, regressing legislators' ideal points on their votes, we would find that, the further left a member's ideal point is, the more likely that member is to vote for a left-of-status quo bill, and the more likely that member is to vote against a right-of-status quo bill. And, of course, as a member's ideal point moves farther to the right, that member is more likely to oppose bills to the left of  $Q$ , and to favor bills to the right of  $Q$ .

Figure 4.1 here

So, for each final passage vote, we determine whether the bill was significantly to the left of the status quo, significantly to the right of the status quo, or neither. We do this simply by examining each final passage vote statistically to see if further-left members were more likely to support the bill (indicating a bill left of the status quo), further-right members were more likely to support the bill (indicating a bill right of the status quo), or neither. Technically, we ran a probit regression for each final passage vote, in which the dependent variable is coded 1 if the member voted for the bill and the independent variables are a constant term and each member's ideological location (first dimension DW-Nominate score).

Insignificant coefficients can theoretically arise when the status quo is extreme enough to produce a bipartisan, or even unanimous, vote. They also arise on votes that simply do not "scale" in one dimension. In our analysis, we use only those votes on which ideology was significant (i.e., votes that do not scale and bipartisan or unanimous votes are dropped).

Aggregating across the significant roll calls within each Congress, we can then compute the proportion of bills reaching final passage that seek to move policy “toward the majority party” (leftward in the case of the Democrats, rightward for the Republicans).<sup>20</sup> Assuming that either the distribution of status quo points is symmetric around the ideal point of the median member of Congress, or (if it is not symmetric) that the distribution of ideal points is skewed toward the majority party,<sup>21</sup> then the proportion of bills that get a final passage vote and propose to move policy toward the majority party side of the issue space is a measure of the majority’s control of the agenda. We call this proportion  $P_{maj}$ , where

$P_{maj}$  is the proportion of scalable final passage votes on H.R. bills that propose to move policy toward the majority party.

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<sup>20</sup> If a move is leftward and the Democrats are the majority, this is counted as a move toward the majority median. A rightward move is counted as a move away from the majority median (if the Democrats have the majority). Note that we ignore the possibility that a bill proposes to move policy from a status quo that is already more extreme than the majority’s median, to an even more extreme policy on the same side of the House median.

<sup>21</sup> If one makes the relatively mild assumptions that (1) status quo points are a function of both prior legislative outcomes and stochastic shocks, (2) most bills are considered under open rules and amended to a point at or near the floor median’s ideal point, and (3) shifts in the location of the floor median’s ideal point from one Congress to the next typically are not large, then it is reasonable to believe that status quo points are not skewed toward the minority party.



### 3.1. Reed's rules and policy moves "toward the majority"

To test whether Reed's rules were indeed the watershed we claim them to have been, we measure  $P_{maj}$  before and after their adoption. We employ a classic regression discontinuity research design, in which the introduction of Reed's rules is the treatment and we have pre-test (i.e., pre-Reed rules) and post-test (i.e., post-Reed rules) measures on our dependent variable,  $P_{maj}$ . Inferences drawn from a research design such as this are comparable in internal validity to conclusions from a randomized experiment (Trochim 2001, p. 222). The validity of the test is dependent on two major factors: first, the assumption that there is no spurious discontinuity in the pre-post relationship on  $P_{maj}$ , that happens to exactly coincide with the introduction of Reed's rules; and second, the degree to which we can model the pre-post Reed relationship.

To control for the first threat to validity, we include two variables in our estimate of  $P_{maj}$ : first,  $Trend_t$ , where

**$Trend_t$**  takes the value zero in the 45<sup>th</sup> Congress and increases by one for each subsequent Congress;

and second,  $Revolt_t$ , where

**$Revolt_t$**  takes the value one for the 62<sup>nd</sup> through 86<sup>th</sup> Congresses—reflecting the period from the famous revolt against Speaker Cannon to just before the packing of the Rules Committee by Northern Democrats in the 87<sup>th</sup> Congress—and zero otherwise.

These two variables should capture history threats to validity that might spuriously account for a change in  $P_{maj}$  after Reed's rules. To control for the second threat to validity, we include

**Majority margin**<sub>*t*</sub>, which is the difference between the percentage of seats held by the majority party and 50%, in each Congress.

This provides a model for  $P_{maj}$  that spans both the pre- and post-Reed eras. Our main independent variable is

**Reed** <sub>*t*</sub>, which takes the value one for Congresses operating under Reed's rules, and zero otherwise.<sup>22</sup>

We expect the coefficient on *Reed* to be positive and significant. Thus, we estimated the following regression using the extended beta binomial method (King 1989):

$$P_{majt} = \alpha + \beta_1 \text{Reed}_t + \beta_2 \text{Trend}_t + \beta_3 \text{Revolt}_t + \beta_4 \text{Majority margin}_t + \varepsilon_t$$

where  $\alpha$ ,  $\beta_1$ ,  $\beta_2$ ,  $\beta_3$ , and  $\beta_4$  are estimated coefficients,  $\varepsilon_t$  is an error term, and  $t$  denotes Congresses from the 45<sup>th</sup> through the 105<sup>th</sup>.<sup>23</sup>

Our results, displayed in Table 4.1, can be summarized as follows: first, there is no significant trend in  $P_{Maj}$  but it does tend to be larger when the majority party holds a larger share of seats. Our analysis suggests that  $P_{Maj}$  would increase by about half a percentage point for every percentage point increase in the majority party's margin of control in the House. Increasing from the smallest observed majority margin (0.1) to the average margin (9.2) would increase the proportion of final-passage bills moving policy toward the majority by about 4.4 percentage points. This effect is marginally significant in a statistical sense ( $p = .063$  in a one-tail test).

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<sup>22</sup> We code *Reed* as zero in Congresses 45 – 50 and 52; we code it as one in all other Congresses.

<sup>23</sup> We have no reason to expect, nor did we find (when including lags of the dependent variable), any evidence of auto-regressive structure in the data.

[Table 4.1 about here.]

Second, and more important for our purposes,  $P_{Maj}$  is substantially larger in Houses operating under Reed's rules than in those operating without them. The estimated proportion of bills moving policy toward the majority party was about 52%, in non-Reed Congresses, but about 82%, in Reed Congresses. The difference of 30 percentage points is statistically significant at conventional levels ( $p = .003$ ).

Third,  $P_{Maj}$  declines by about 5 percentage points after the revolt against Cannon. However, this decline is statistically insignificant and substantively small relative to the estimated increase due to Reed's rules (30 percentage points). When we drop the insignificant *Trend* variable (see Model 2), we find a slightly larger and statistically significant decline in the post-revolt period of about 5.5 percentage points.<sup>24</sup> This indicates that our control variables, controlling for potential history threats to the validity of our research design, in fact functioned as we expected.

All told, the results in Table 4.1 suggest that the adoption of Reed's rules abruptly increased the majority party's ability to control the agenda, with only marginal or second-order change thereafter. Figure 4.2 reinforces this impression by displaying the proportion of final-passage bills that seek to move policy toward the majority for each Congress, along with a lowess regression line (similar to a running average).<sup>25</sup> As can be

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<sup>24</sup>. Our results remain much the same if one controls for the heterogeneity of preferences within the majority party (via the standard deviation of first dimension DW-Nominate scores within the majority party).

<sup>25</sup>. Lowess "is a method for smoothing a scatterplot,  $(x_i, y_i)$ ,  $i = 1, \dots, n$ , in which the fitted value at  $x_k$  is the value of a polynomial fit to the data using weighted least squares,

seen, the lowess line varies without trend before the adoption of Reed's rules, increases abruptly when those rules were adopted, and then again varies without trend (albeit at a much higher level).

[Figure 4.2 about here.]

Moreover, one can see some of the finer details of the data in this figure. Look in particular at the 50<sup>th</sup> to 53<sup>rd</sup> Congresses. The 50<sup>th</sup> was the last pre-Reed Congress and only 50% of the bills reaching final passage proposed to move policy toward the majority. The 51<sup>st</sup> was the Congress in which Reed adopted his famous rules--and  $P_{Maj}$  shoots up to 96%. In the 52<sup>nd</sup> Congress, the Democrats took over the House and repealed Reed's rules:  $P_{Maj}$  declines to 38%. In the 53<sup>rd</sup> Congress, the Democrats restored part (but not all of Reed's rules) and  $P_{Maj}$  increased to 61%. Finally, in the 54<sup>th</sup> and succeeding Congresses, Reed's rules have remained in force and, as one can see, the "running average" given by the lowess regression line fluctuates without trend around the post-Reed mean of about 82%.

The abrupt and permanent change in  $P_{Maj}$  is difficult to understand within any of the prominent "partyless" views of congressional organization. Scholars such as Mayhew (1974) and Krehbiel (1997) doubt that the majority party has had any significant procedural advantage over the minority in the postwar era. Presumably, these scholars would either expect Reed's rules to have had little effect to begin with, or an effect that was reversed by later rule changes. Yet the data are inconsistent with both expectations.

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where the weight for  $(x_i, y_i)$  is large if  $x_i$  is close to  $x_k$  and small if it is not. A robust fitting procedure is used that guards against deviant points distorting the smoothed points" (Cleveland 1979, p. 829).

We investigate in chapter 10 whether one can explain variations in the proportion of final-passage bills proposing leftward or rightward moves in terms of the preference distribution of the House (and the location of the pivots), finding that one cannot.

### 3.2. Other rule changes and policy moves “toward the majority”

Our results also address a small debate between us (Cox and McCubbins 1997) and Schickler and Rich (1997). Schickler and Rich argue that rule changes in the House can best be predicted by what House centrists want, rather than by what the majority party wants--casting doubt on Cox and McCubbins' (1993) claim that the majority party derives substantial benefits from the rules. Cox and McCubbins respond by saying that most of the rule changes examined by Schickler and Rich are “marginal” and leave the “base” of the rules (which they view as heavily biased in favor of the majority party) intact. Thus, it does not matter much what predicts rule changes of the sort examined by Schickler and Rich, at least when it comes to assessing the size of the majority party's procedural advantage.

We can test directly Schickler and Rich's hypotheses in the design just used for testing the effects of Reed's Rules. If Schickler and Rich are correct, then we should find that these other rule changes had systematic effects comparable in size to the adoption of Reed's rules. If we are correct, then we should find that these other rule changes had inconsistent effects that were substantially smaller than that of Reed's rules.

One way to approach the issue is to examine the introduction of individual rules over time. We focus on five major rules changes in particular: the Holman rule, the twenty-one day rule, and stipulations regarding the size of the Rules Committee, Calendar Wednesday, and the discharge petition. Each of these rules was revisited several

times by the House. Each is associated with sometimes famous organizational battles (see the discussions above and in Schickler 2001). We have coded each systematically (in line with codings by Schickler (2000), among others, where relevant), so that we can easily keep track of when each rule was introduced, repealed, strengthened, or weakened. The Holman rule and the twenty-one day rule are particularly straightforward: each is either “on” or “off” for each Congress, so simple dummy variables suffice to keep track of them:

*Holman<sub>t</sub>* is a dummy variable coded one for Congresses in which the Holman rule was in effect; and

*TwentyOne<sub>t</sub>* is a dummy variable coded one for Congresses in which the twenty-one day rule was in effect.

To keep track of majority-hostile changes in the size of the Rules Committee, we use the *Revolt<sub>t</sub>* variable already introduced (the Committee was expanded in the 61<sup>st</sup> Congress, to the majority party’s apparent detriment, then again in the 87<sup>th</sup>, to its benefit). Both Calendar Wednesday and the discharge procedure were changed several times. In these cases we simply follow Schickler’s (2000) method and code each change as making it easier or harder to use the given procedure. From this, we create two variables that capture changes in these procedures, each of which ranges in value between -3 and 0 in our dataset:

*CalWed<sub>t</sub>*, a running sum that codes the cumulative number of rules changes, as of Congress *t* (inclusive), that make it easier or harder for members to use the Calendar Wednesday procedure, where: for Congresses prior to the procedure’s creation, the variable is coded zero; for Congresses in which there was a rules

change that made it easier to use the Calendar Wednesday procedure, we subtract a 1 from the running tally; and, for Congresses in which there was a rules change that made it harder to use the Calendar Wednesday procedure, we add a 1 to the running tally; and,

*Discharge<sub>t</sub>*, a running sum that codes the cumulative number of rules changes, as of Congress *t* (inclusive), that make it easier or harder for members to use the discharge procedure, where: for Congresses prior to the procedure's creation, the variable is coded zero; for Congresses in which there was a rules change that made it easier to use the discharge procedure, we subtract a 1 from the running tally; and, for Congresses in which there was a rules change that made it harder to use the discharge procedure, we add a 1 to the running tally.

All the variables are coded so that a positive coefficient is expected by Schickler, except *Revolt<sub>t</sub>* (where a negative is expected).

Model 3 in Table 4.1 displays our results when we add to Model 2 four additional variables—*Holman<sub>t</sub>*, *TwentyOne<sub>t</sub>*, *CalWed<sub>t</sub>*, and *Discharge<sub>t</sub>*. As can be seen, none of the newly included variables exert a significant effect on the proportion of bills that propose to move policy toward the majority, while estimates of the impact of the previously included variables are only slightly affected.<sup>26</sup> Reed's rules and the majority party's margin of control remain significant factors; the revolt against Cannon has about the same estimated impact but is no longer statistically significant.

Another approach to studying the impact of rules would be to cumulate the various rule changes into some sort of summary measure. We have tried two--a variable

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<sup>26</sup>. The newly included variables are jointly insignificant as well.

coded by Schickler (2000) that tracks pro- and anti-majority changes in each Congress; and a cumulative version of that variable. Neither variable is close to significant, although both have the sign expected by Schickler. The rules that Schickler examines may have affected many things; but (aside from Reed's rules) they do not appear to have greatly affected the majority's ability to pursue its agenda or to keep the minority party from pursuing its agenda.

All told, we believe the evidence we have presented strongly supports the main thesis of this chapter: that when it comes to rule changes affecting the majority party's control of the agenda, the adoption of Reed's rules stands out from all others in importance--so much so that congressional history can be simply divided into pre-Reed (small advantage) and post-Reed (large advantage) (Hinds 1907; McConachie; Alexander 1916; Galloway 1976). The main caveat we would register to this conclusion is that the time period we examine here begins with the 45<sup>th</sup> Congress in 1877 and so we have nothing here to say about the civil war Congresses and their pre-bellum predecessors. On these earlier Congresses and the majority's varying ability to control the agenda, see Den Hartog (2002).

#### 4. Conclusion

In this chapter, we have argued three main points: that the modern structure of agenda power in the House was erected in the period 1880-94; that this structure of agenda power greatly advantages the majority party; and that subsequent changes in House rules have not moved it significantly away from the structure erected in 1880-94. Of these three points, the first two have ample precedents in the previous literature, even



if we present the case somewhat differently. It is really the last that constitutes a controversial position and so we review it more extensively here.

What we call the modern structure of agenda power differed from its predecessor in two main ways. First, the minority party (and other minorities) had substantially reduced powers to delay legislation. Second, the majority party (through its floor and committee leaders) had substantially enhanced powers to set the House agenda.

The first point to make is that the minority's powers of delay were neither restored to their pre-Reed levels nor pushed back significantly in that direction, by any subsequent rule changes. The first pillar of the House that Reed built has remained fully intact.

The second point is more complex but of a similar flavor. The majority party's ability to set the House agenda depends on two devices: special rules emitted from the Rules Committee; and privileged bills reported from a few "privileged" committees. In order for this system of agenda control to work in the majority party's favor, it is necessary that privilege and special rules be the *only* viable pathways to the floor for controversial bills; and it is also necessary that the majority party has rule-based advantages in controlling the relevant committees. Both conditions were fully met in the system as originally constructed. Moreover, we believe that both have continued to be met ever since.

The Rules Committee's power to determine which bills from the calendars are considered, and in what order, has been seriously challenged on only a few brief occasions in House history. The only real and permanent loophole in its ability to block bills is the system of allocating privilege to selected committees. Thus, since 1890-94, it

has almost always been true that controversial bills had a chance of experiencing life on the floor only if they were either reported from a privileged committee or given a special rule by the Rules Committee.

It has also been true, since 1890-94, that the majority party has an advantage in controlling the “control” committees--Rules, plus the major committees with privileged access to the floor. Prior to the early twentieth century, the Speaker appointed all the committees. After the revolt against Cannon, the majority party has consistently given itself more than a proportional share of seats on the key committees. We will expand upon this topic in the next chapter, by examining in detail the extent to which the Rules Committee acts as a faithful agent of majority party agenda control.

Here, we have provided evidence of the importance of Reed’s rules in bolstering the majority party’s agenda power by analyzing the proportion of bills reaching the final passage stage that propose to move policy toward the majority party. Looking at post-reconstruction Congresses operating without Reed’s rules (45<sup>th</sup>-50<sup>th</sup> and 52<sup>nd</sup> Congresses), one finds that this proportion is about 52% on average. In contrast, the analogous figure is 82% in post-reconstruction Congresses operating with Reed’s rules (51<sup>st</sup> and 53<sup>rd</sup>-105<sup>th</sup> Congresses). Evidently, when the majority party broke the minority’s ability to delay and established a method by which it could flexibly select which bills the floor would consider next, it was able greatly to increase the proportion of final-passage bills that proposed to move policy toward its median. No other rule changes in the post-reconstruction House come close to matching the impact of Reed’s rules.

## Appendix A: Rule Changes in the House, 1880-1988

### A.1. Procedures used in compiling the dataset

Our dataset of rule changes was compiled by systematically searching a database of roll call votes in the House. We used special roll call software--Voteview 2.9 for Windows--to narrow our search to votes dealing with “internal organization” (by the Peltzman coding). We then looked at the summary provided for each such roll call, to determine whether or not it pertained to a change in House organization or rules.

We first identified all roll call votes that pertained to organizational or rule changes. We then grouped together any set of organizational/rule changes that was adopted via one or more related roll call votes, and treat this as a single resolution. So, for example, if three distinct rule changes were adopted on a series of roll calls that included two amendment votes and one final passage vote, those three rule changes would all be lumped together as a single resolution. Similarly, if several rule changes were adopted on an amendment vote, these changes would be lumped together as a single resolution. In an instance like the last example, where the final passage vote was not a roll call vote, we verified that the rule resolution passed by going to the *Congressional Record*.

Of course, there are likely to be some rule changes that we have missed using this method. For example, we miss any instances where the Speaker makes a ruling that changes the rules of the House, yet his ruling is never challenged in a roll call vote. Similarly, we miss instances where rules change as a result of a proposal that is adopted without a roll call vote at *any* stage of its consideration. Despite these potential omissions, we are satisfied that our method captured all of the major rule changes in the

House over the time period that we investigate; neither Schickler nor Binder, nor any of the other standard secondary sources, report any rule changes that we miss.

In compiling our final data set, we excluded any rule changes that 1) were in effect less than six months or 2) did not have significant partisan consequences. We considered rule change resolutions as having partisan consequences if at least one of the roll call votes on the resolution was a party vote (pitting over 50% of Democrats against over 50% of Republicans). In a few cases, however, we included rule change resolutions that did not have a partisan roll call, but were coded by either Schickler (2000) or Binder (1997) as having had partisan consequences. In all, we excluded 41 rule change resolutions because they were positively known to have been in effect less than six months, 59 resolutions because they did not have partisan consequences, and 19 resolutions that failed on both counts.

On the following pages is a list of all of the resolutions included in our data set, separated into four categories: organizational changes; creation or abolition of committees or changes in their jurisdictions; miscellaneous changes; and resolutions that include rule changes identified by Schickler and/or Binder. We highlight in bold font those changes regarding the Reed Rules, the Holman Rule, Calendar Wednesday, the discharge procedure, the twenty-one day rule, or the Rules Committee's powers.

A.2. A listing of organizational and rule changes

| <b>56 Organizational Changes</b> |   |
|----------------------------------|---|
| <i>Congress<br/>(Year)</i>       | <i>Summary</i>  |
| 50 (1888)                        | Employed a clerk for five committees                              |
| 53 (1893)                        | Provided an assistant clerk for the Committee on Naval Affairs    |
| 61 (1909)                        | Provided for clerks for three committees                          |
| 65 (1918)                        | <b>Provided an assistant clerk for Committee on Rules</b>         |
| 67 (1921)                        | Funded the joint committee on the executive branch reorganization |
| 84 (1955)                        | Funded investigations of the Small Business Committee             |
| 92 (1971)                        | Increased allowances for certain committees                       |
| 93 (1973)                        | Funded the Judiciary Committee for impeachment duties             |
| 95 (1977)                        | Funded the Committee on the JFK and MLK Assassinations            |
| 95 (1977)                        | Funded the Committee on Congressional Operations                  |
| 96 (1979)                        | Funded the Committee on Veterans Affairs                          |
| 96 (1979)                        | Funded the Committee on Small Business                            |
| 96 (1979)                        | Funded the Committee on Armed Services                            |
| 96 (1979)                        | Funded the Committee on Banking, Finance, & Urban Affairs         |
| 96 (1979)                        | Funded the Committee on House Administration                      |
| 96 (1979)                        | Funded the Committee on Ways and Means                            |
| 96 (1979)                        | Funded the Committee on Public Works                              |
| 96 (1979)                        | Funded the Committee on Education and Labor                       |
| 96 (1979)                        | Funded the permanent select Committee on Intelligence             |
| 96 (1979)                        | Funded the Committee on Foreign Affairs                           |
| 96 (1979)                        | <b>Funded the Committee on Rules</b>                              |
| 96 (1979)                        | Funded the Committee on the District of Columbia                  |
| 96 (1979)                        | Funded the Judiciary Committee                                    |
| 96 (1979)                        | Funded the Committee on Science and Technology                    |
| 96 (1979)                        | Funded the Committee on Interior and Insular Affairs              |
| 96 (1979)                        | Funded the Committee on Government Operations                     |
| 96 (1979)                        | Funded the Committee on the Post Office and Civil Service         |
| 96 (1979)                        | Funded the Committee on Committees                                |
| 96 (1980)                        | <b>Funded the Committee on Rules</b>                              |
| 96 (1980)                        | Funded the Committee on Agriculture                               |
| 96 (1980)                        | Funded the Committee on Science and Technology                    |
| 96 (1980)                        | Funded the Committee on Merchant Marine and Fisheries             |
| 96 (1980)                        | Funded the Committee on Ways and Means                            |
| 96 (1980)                        | Funded the Committee on Government Operations                     |
| 96 (1980)                        | Funded the Committee on Banking, Finance, and Urban Affairs       |
| 96 (1980)                        | Funded the Committee on Interior and Insular Affairs              |
| 96 (1980)                        | Funded the Committee on Foreign Affairs                           |
| 96 (1980)                        | Funded the Committee on the Post Office and Civil Service         |

|   |  |
|---|--|
| 96 (1980)   | Funded the Committee on Public Works   |
| 96 (1980)   | Funded the Committee on Aging  |
| 96 (1980)   | <b>Funded the Committee on Rules</b>   |
| 96 (1980)   | Funded the Committee on House Administration   |
| 96 (1980)   | Funded the Committee on Education and Labor  |
| 96 (1980)   | Funded the Judiciary Committee   |
| 96 (1980)   | Funded the Committee on Committees   |
| 96 (1980)   | Funded the Committee on Narcotics Abuse and Control  |
| 96 (1980)   | Funded the Committee on Interstate and Foreign Commerce  |
| 96 (1980)   | Funded the Committee on House Administration   |
| 97 (1981)   | Package of funding for House Committees  |
| 97 (1982)   | Package of funding for House Committees (2nd Session)  |
| 98 (1983)   | Package of funding for House Committees  |
| 98 (1984)   | Package of funding for House Committees (2nd Session)  |
| 98 (1984)   | Funded the Committee on Hunger   |
| 99 (1985)   | 4.45% funding increase for House Committees  |
| 100 (1987)  | Package of funding for House Committees  |
| 100 (1988)  | Package of funding for House Committees (2nd Session)  |
|   |  |
| <b>25 Committee Jurisdiction or Establishment Changes</b> |  |
| 48 (1883)   | Created the Committee on Liquor Traffic  |
| 51 (1890)   | Created the World's Fair Committee, to be appointed by the Speaker   |
| 57 (1901)   | Made the Committee on the Census a standing committee; Created the select Committee on Industrial Arts and Expositions; Abolished select Committee on Examination and Disposition of documents |
| 58 (1903)   | Made the Committee on Industrial Acts and Exposition a standing committee  |
| 60 (1908)   | Created a speaker appointed committee to investigate wood prices   |
| 61 (1910)   | Created a committee to investigate the interior department   |
| 62 (1911)   | Created a committee to investigate Anti-Trust  |
| 66 (1919)   | Created a speaker appointed committee to investigate the War Department.   |
| 83 (1954)   | Created a joint committee to study Postal Reclassification   |
| 84 (1955)   | Created a committee to investigate Indiana bridge tolls  |
| 91 (1970)   | Created a committee to study events in Southeast Asia  |
| 93 (1973)   | Created a committee to study committee procedures  |
| 94 (1975)   | Created a committee on intelligence  |
| 95 (1977)   | Renewed the committee to investigate the JFK and MLK assassinations  |
| 95 (1977)   | Created the Committee on Ethics  |
| 95 (1977)   | Created the Committee on Congressional Operations  |
| 95 (1977)   | Created a "permanent" select Committee on Intelligence   |
| 95 (1977)   | Transferred control of the House Beauty Shop   |
| 95 (1978)   | Renewed the committee on the JFK and MLK assassinations  |
| 96 (1979)   | Established a committee on Committees  |

|  |  |
|--|--|
| 96 (1979)  | Created a committee on the Outer Continental Shelf   |
| 96 (1980)  | Transferred Energy Committee jurisdiction to the Committee on Interstate and Foreign Commerce  |
| 98 (1984)  | Created Committee on Hunger  |
| 99 (1985)  | Renewed Committee on Hunger  |
| 100 (1987)   | Renewed Committee on Hunger  |
|  |  |
| <b>7 Miscellaneous rule changes</b>                  |  |
| 46 (1879)  | Gave privilege to three committees   |
| 47 (1882)  | Prohibited minority committee from offering substitutes or resolutions   |
| 67 (1922)  | <b>Gave the Chair of Rules more discretion over when to report bills</b>   |
| 88 (1963)  | <b>Permanently expanded the Rules Committee to 15 members</b>  |
| 95 (1977)  | Provided additional funds for the Majority and Minority leadership offices   |
| 99 (1985)  | Upheld the chair's ruling: motion to correct CR is not privileged  |
| 100 (1987)   | <b>Waived the 2/3 rule for consideration of Rules Reports</b>  |
|  |  |
| <b>Rule changes noted by Schickler and/or Binder</b> |  |
| 46 (1880)  | Clerk prohibited from calling house to order without the Speaker; Expanded appropriations jurisdictions for the Agriculture Committee; Prohibited Amendments to general appropriations bills; Required debate on Suspension of the Rules and Previous Question; Suspension motions restricted to 1st and 3rd Mondays; Reinstated seconding of suspension motions |
| 47 (1882)  | Only 1 motion to adjourn allowed before and after previous question is ordered   |
| 47 (1883)  | Suspension votes reduced from 2/3 to a simple majority for some bills; <b>Rules Committee granted power to report bill specific Rules.</b>   |
| 51 (1890)  | <b>Reed's Rules Adopted</b>  |
| 52 (1892)  | <b>Reed's Rules Repealed</b>   |
| 53 (1894)  | <b>Readopted Reed's disappearing quorum rule</b>   |
| 54 (1896)  | <b>Readopted Remainder of Reed's Rules</b>   |
| 60 (1909)  | <b>Established Calendar Wednesday</b>  |
| 61 (1909)  | Created Consent Calendar; <b>Strengthened Calendar Wednesday;</b> Motion to recommit secured for the minority.   |
| 61 (1910)  | <b>Changed Rules Committee size and makeup, removed speaker.</b>   |
| 61 (1910)  | <b>Created Discharge procedure</b>   |
| 62 (1911)  | <b>Tightened Discharge Petition requirements;</b> Tightened germaneness requirement on revenue bills; <b>Restored the Holman rule</b>  |
| 62 (1912)  | <b>Discharge Calendar delayed in the order of business</b>   |

|           |  |
|-----------|--|
| 64 (1916) | <b>Made Calendar Wednesday process more workable</b>   |
| 68 (1924) | Loosened germaneness rule on revenue bills; <b>Loosened discharge signature requirement; Rules Committee pocket veto banned</b>  |
| 68 (1924) | 2/3 vote required to waive layover rules   |
| 69 (1925) | <b>Discharge petition rule tightened</b>   |
| 72 (1931) | <b>Discharge signatures reduced to 145; Loosened speaker control over discharging conferees</b>  |
| 73 (1933) | <b>Special orders reported by Rules Committee made non-divisible</b>   |
| 74 (1935) | <b>Discharge signatures increased from 145 to 218</b>  |
| 79 (1945) | Established House Un-American Activities Committee   |
| 81 (1949) | <b>21 day rule adopted, making it easier to bypass Rules</b>   |
| 82 (1951) | <b>21 day rule repealed</b>  |
| 87 (1961) | <b>Expanded Rules Committee to 15 (+2 Dems, +1 Rep)</b>  |
| 89 (1965) | <b>21 day rule adopted, making it easier to bypass Rules; Demanding engrossed bills prohibited</b>   |
| 90 (1967) | <b>21 day rule repealed</b>  |
| 90 (1967) | Created committee on Ethics, with equal majority/minority representation   |
| 91 (1970) | Dispensed with Journal reading unless ordered by a majority; Minority right to<br>to call witnesses guaranteed; minority party staff increased; minority party guaranteed 1/3 investigatory funds; printing of minority views to be included in committee reports; minority guaranteed debate time |
| 92 (1971) | Minority party guarantee of committee staff funds eliminated   |
| 93 (1973) | Number of suspension days increased; Speaker allowed to change meeting time of the House with a majority vote  |
| 93 (1974) | Guarantees vote on any non-germane Senate amendment; Quorum calls severely limited; Cluster voting on suspensions allowed  |
| 94 (1975) | Proxy voting ban in committee eliminated   |
| 94 (1976) | Conference reports available 2 hrs before consideration  |
| 95 (1977) | Increased the number of days for suspensions   |
| 96 (1979) | Increased threshold for demanding a recorded vote; No quorum necessary<br>prior to approving the journal; Only one vote allowed on approving the journal;  |
|           | Eliminated seconding of suspensions motions  |
| 98 (1983) | Limited riders to appropriations bills   |



### A.3. A note on our coding of the Holman rule

The Holman rule is a device intended to allow a majority party in the House to deal on better strategic terms with a President of the opposite party. It was first adopted in the 44<sup>th</sup> Congress (1876), when a Democratic House majority faced a Republican President; dropped in the 49<sup>th</sup> Congress (1885) when a Democratic House faced an incoming Democratic President; readopted in the 52<sup>nd</sup> Congress (1891), when a Democratic House faced a Republican President; dropped again in the 54<sup>th</sup> Congress (1895) when a Republican House faced a Republican President; readopted in the 62<sup>nd</sup> Congress (1911) when a Democratic House faced a Republican President; then refurbished substantially in the 98<sup>th</sup> Congress (1983), when a Democratic House faced a Republican President.

The rule allows the Appropriations Committee to insert legislation into general appropriations bills. The majority party can thus insert some of its legislative priorities--those the President would veto if submitted separately--in the safe confines of a general appropriations bill that must be passed. The logic is similar to that governing the use of omnibus continuing resolutions (Kiewiet and McCubbins 1991) and omnibus bills (Krutz 2001), both of which are used more intensively under divided government in order to present the President with unvetoable or veto-proof packages.

We count every adoption of the Holman rule as an important victory for the majority party. Thus, we include in our database the adoptions in 1891 and 1911, as does Schickler. Binder includes neither, as the rule does not explicitly address minority rights.

What about removals of the Holman rule? We do not count these as minority victories or majority losses. The rule is removed in 1885 and 1895, when the majority

party enjoys a President of the same party and thus does not need the additional ability to create omnibus vehicles.

## Appendix B: The discharge procedure

In its original form, the discharge procedure was not a threat to the majority party's control of the agenda. First, motions to discharge were limited to public bills and joint resolutions. Thus, the Rules Committee could not be discharged of a special rule, as these took the form of simple resolutions. Second, motions to discharge could pass only with "an affirmative vote of a majority of the membership of the House." As Hasbrouck (1927, p. 142) noted, attendance rates in the House at that time were sufficiently low that requiring approval by a majority of the whole membership was often tantamount to requiring nearly unanimous approval of those present and voting. Third, the majority party leadership did not find it difficult to hamstring the rule, making it completely unworkable and inducing the House to agree in dispensing with the Discharge Calendar on most days. The main tactic was to introduce a fake discharge motion and then insist on reading the bill to be discharged in its entirety until the time allotted for discharges had been exhausted (see Hasbrouck 1927, pp. 142-4).

When the Democrats came into power, they changed the discharge rule (on April 5, 1911), putatively to make it more workable. As Binder (1997, p. 140) notes, however, "their solution in practice *constrained* members' rights to initiate a committee discharge" (italics added). Moreover, the Democratic leadership used adjournment motions to avoid sitting on Mondays (the only day discharge motions were in order) and, when the House finally did sit on a Monday, the leadership used a special rule from Rules to skip over all discharge motions. It was not until the next session of the House, in January 1912, that any discharge motions were considered. And then it transpired that the minority leadership had filed motions to discharge some of the majority party's key bills, before

they were ready, with the result that some had to be abandoned (Hasbrouck 1927, p. 146-7). The Democrats responded on February 3<sup>rd</sup>, 1912, by relegating the Discharge Calendar to third place on Mondays, behind both the Unanimous Consent Calendar and motions to suspend the rules. In the next year, as further protection, “the discharge rule was suspended on June 3, 1913, for the duration of the special session” (Hasbrouck 1927, p. 147). As Hasbrouck (1927, p. 147) notes, “the discharge rule remained for ten years a ‘dead letter’.”

It was not until 1924 that the rules governing discharge were again revisited, in an attempt to make the procedure workable. The circumstances were similar to those in 1910, with a Progressive-Democratic alliance pressuring a Republican majority. The important changes in the discharge procedure were as follows: (1) Under the old rule, a motion to discharge had to be seconded by a majority of those present voting by tellers. Under the new rule, a motion to discharge was put at the Clerk’s desk and required 150 signatures (about the size of a typical majority of those present at the time) to be seconded. This allowed the committee subject to discharge to negotiate with those signing or threatening to sign the petition. (2) Discharge motions were moved to first place in the order of business on the first and third Mondays of each month (instead of third place as formerly). (3) The vote to discharge required only an ordinary majority of a quorum, instead of a majority of the whole membership of the House. (4) “Any signer of the discharge petition could move immediate consideration of the bill. Formerly, it had merely gone to its appropriate calendar, where it was little better off than in committee.” (5) “The new rule applied to resolutions as well as to bills. Thus a proposal to change the rules, to adopt a special order, or to undertake an investigation, if held up in the

Committee on Rules, could be brought out by a discharge motion” (Hasbrouck 1927, pp. 152-3).

The 1924 version of the discharge procedure was in fact used to push a bill regulating labor disputes in railroads several steps through the legislative process, in the teeth of a determined filibuster. It thus did seem to be a workable procedure and one that had the potential to disrupt the majority party’s control of the agenda. However, in the end the bill did not pass. Moreover, when the Republican majority increased in the 69<sup>th</sup> Congress, they promptly removed from the Rules Committee all but two of the eight Republican members of the last House, who had agreed to report the new procedure from Rules. The new Rules Committee then brought in a new procedure designed to be unworkable.<sup>27</sup> As a Democratic leader noted, the Republicans knew “that they have proposed a rule which hermetically seals the door against any bill ever coming out of a committee” against their leaders’ wishes (Hasbrouck 1927, p. 164). Nonetheless, the new rule was adopted.

The discharge procedure was liberalized once again in the 72<sup>nd</sup> Congress. Motions to discharge no longer had to be seconded and had to be signed by only 145 members (down from 218) to be put on the Discharge Calendar. Once on the calendar, motions could be brought up on the second and fourth Mondays of each month (rather than on just

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<sup>27</sup>. Among other things, the motion to discharge (1) had to be seconded by 218 members voting by tellers; (2) had to be signed by 218 members; (3) had to be approved by 218 members; (4) was in order only on the third Monday of each month; and (5) only had the effect of removing the bill from committee and placing it on the appropriate calendar, rather than bringing it to the floor (Hasbrouck 1927, pp. 163-4).

the third). Approval of discharge required a simple majority of those voting, rather than a majority of the whole House. Whereas the old rule had merely placed the discharged bill on the appropriate calendar, the new rule allowed the House to choose between this course and the immediate consideration of the bill “under the general rules of the House.” Although the new rule clearly made discharge more workable than did the old, we would note that any coalition using the discharge procedure to push legislation anathema to the Rules Committee still faced a tougher parliamentary row to hoe, than would an equally-sized coalition with Rules’ backing. If the coalition chose to place the bill on the appropriate calendar, they would then need to mount a second discharge petition in order to force the Rules Committee to report out a special rule for the bill (something that was allowed under the new procedure). If instead they chose to consider the bill immediately, they would have to do so under the general rules of the House--meaning that all points of order against the bill would be admissible, that all amendments would be in order, and that the full array of dilatory tactics could be employed. (The majority party could choose to consider its bills under the general rules of the House. In practice, however, it *never* does, for the very good reason that these rules make it very difficult to legislate effectively, especially for a controversial or complex bill.)

The Democrats weakened the discharge motion in the 74<sup>th</sup> House (1935), increasing the signature requirement once again to 218. Binder (1997, p. 153) opines that the reform of discharge in 1935 ended any challenge to Rules’ agenda power. Beth (1998) describes discharge as difficult by design, providing comprehensive statistics on how infrequently it has been used.

For most of the Congresses after 1894, the discharge procedure did not seriously challenge the Rules Committee's ability to control the legislative agenda. Even in the 68<sup>th</sup> and the 72<sup>nd</sup>-73<sup>rd</sup> Congresses, when the discharge procedure was at its most workable, it took a disciplined, committed and patient majority to push bills through the procedure, if the majority party leaders were opposed.

Table 4.1. The effects of Rules Changes on the proportion of Final-passage bills that move policy toward the majority, Congresses 45 through 105.

| <b>Independent Variables</b>       | <b>Model 1</b>     | <b>Model 2</b>      | <b>Model 3</b>     |
|------------------------------------|--------------------|---------------------|--------------------|
| <i>Reed<sub>t</sub></i>            | 1.210**<br>(0.405) | 1.345***<br>(0.263) | 1.229**<br>(0.405) |
| <i>Majority Margin<sub>t</sub></i> | 0.027*<br>(0.015)  | 0.027*<br>(0.015)   | 0.028*<br>(0.015)  |
| <i>Revolt<sub>t</sub></i>          | -.314<br>(0.215)   | -.363*<br>(0.186)   | -.310<br>(0.197)   |
| <i>Trend<sub>t</sub></i>           | 0.003<br>(0.007)   |                     |                    |
| <i>CalWed<sub>t</sub></i>          |                    |                     | 0.081<br>(0.203)   |
| <i>Discharge<sub>t</sub></i>       |                    |                     | -.208<br>(0.226)   |
| <i>TwentyOne<sub>t</sub></i>       |                    |                     | 0.162<br>(0.454)   |
| <i>Holman<sub>t</sub></i>          |                    |                     | 0.167<br>(0.191)   |
| <i>Constant</i>                    | 0.063<br>(0.247)   | 0.073<br>(0.247)    | -.064<br>(0.285)   |
| $\gamma$                           | 0.039<br>(0.014)   | 0.040<br>(0.015)    | 0.034<br>(0.014)   |
| Log likelihood                     | -1336.385          | -1336.477           | -1335.5            |
| Pseudo R <sup>2</sup>              | 0.040              | 0.040               | 0.040              |
| N =                                | 61                 | 61                  | 61                 |

Standard Errors in parentheses; \* $p < .10$ ; \*\* $p < .05$ ; \*\*\* $p < .01$

Our estimation technique is extended beta-binomial regression. The dependent variable is the proportion of bills that move policy towards the majority party.



Figure 4.1. Identifying the direction of policy change

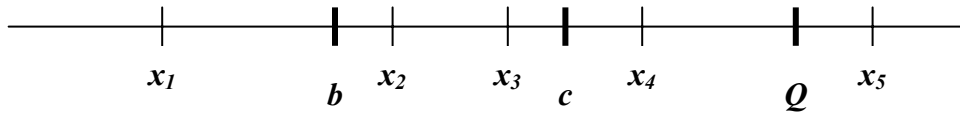


Figure 4.2: Effect of Reed's Rules on the proportion of bills moving policy toward the majority party

