

Dynamic Theory of Congressional Organization¹

February 17, 2013

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¹ Much of the development of this paper took place during a series of visits by David Rohde as a Visiting Fellow at the Hoover Institution, and he gratefully acknowledges that support. Barry Weingast, who is a Senior Fellow at the Hoover Institution, also thanks the Institution for its support. We benefited from comments on earlier versions from Larry Evans and Eric Schickler

ABSTRACT

For three decades, questions about congressional organization have been at the center of the literature on Congress. In various efforts, theorists attempt to characterize the three defining eras of congressional organization: the textbook era, the reform era, and the partisan era following the Republican revolution. Yet each of these theories is capable of capturing only a single era, so that the literature lacks a general theory of the statics and dynamics of congressional organization over the last half century. Appealing to the concepts of negative and positive agenda powers, we develop a theory that explains the central eras of congressional organization since WWII as well as the transitions between the eras. We apply the theory to the U.S. House in an analytical narrative covering the postwar period.

I. Introduction

For three decades, questions about congressional organization have been at the center of the literature on Congress (Aldrich 1995, Cox and McCubbins 1993, 2005, 2006, Krehbiel 1991, 1993, Mayhew 1974, Rohde 1991, Schickler 2001, Shepsle and Weingast 1987, Weingast and Marshall 1988). These theories aim to understand both who holds power and why; and the specific norms, rules, and institutions within Congress that embody and distribute that power.

Answers to these questions exhibit a temporal schizophrenia. Reflecting the ideas then dominant in the substantive literature, theories in the 1980s focused on committees as the central form of organization and power in Congress, largely ignoring parties.² Reflecting changes in congressional behavior, the dominant view changed in the early 1990s as scholars came to realize that these models at best focused on the “textbook era of Congress” – a view of Congress then in all the textbooks but which no longer characterized Congress (Shepsle 1989). New views focused on parties as the central form of organization and power (Aldrich 1995, Cox and McCubbins 1993, Rohde 1991).

Most of these views are static, largely ignoring the transformation of Congress from the textbook era of committees to one dominated by the majority party.³ Although none provides a complete picture, these approaches have dramatically improved our understanding of both of how Congress works and of the institutional elements of power. As Cox (2006) suggests, all major legislatures require institutions that manage the institution’s plenary time: “the necessity if

2. Most scholars of this era followed Mayhew (1974, 1966), who concluded that parties represented unprofitable units of analysis (see fn 4).

3. Krehbiel (1991) proposed that congressional organization hinged on issues of information, including specialization, expertise, and incentives. Although these ideas reflect powerful aspects of Congress, they have not become the center of the debate.

regulating plenary time leads... to the universal creation of offices endowed with special agenda-setting powers.... While legislators are everywhere equal in voting power, they are everywhere unequal in agenda-setting power.” These works develop important tools for understanding that management.

A central concept in this literature is that of *agenda power*, the power to decide what comes up for a vote and when. Recent work (Cox and McCubbins 2005) divides agenda power into two elements, negative and positive agenda power. *Negative agenda power* (NAP) is the power to prevent issues from coming up for a vote, sometimes called gatekeeping power. In contrast, *positive agenda power* (PAP) represents the ability to propose outcomes and protect them from being defeated by alternatives. The central insight of agenda theories is that understanding power in Congress requires understanding how congressional institutions allocate positive and negative agenda power. Committee theories contend that committees hold NAP and, potentially, aspects of PAP; while partisan theories have, variously argued that the majority party leadership holds NAP, PAP, or both.

Because Congress has changed over time, an important issue is to understand the statics and dynamics of congressional organization, respectively: why, at any moment in time, power is allocated in a particular manner; and why it changes over time.

Viewed from this perspective, the contemporary literature provides neither a general theory of congressional organization nor a full explanation for the statics and dynamics of that organization over the last half century. In the 1980s, it focused too much on committees, ignoring parties; now it focuses on parties without understanding the earlier prominence of committees. And neither approach completely explains the transition in Congress from committee to party organization.

The purpose of this paper is to provide a new theory of congressional organization emphasizing the dynamics in the allocation of agenda powers. We show how different circumstances lead members to lodge agenda power in different ways. Our approach provides three propositions about institutions governing NAP and PAP, stressing how they should change as circumstances change. We then apply our approach to the evolution of congressional organization over the last half century, explaining why committees dominated the so-called textbook era (Shepsle 1989) and why power has since been systematically centralized so that the party leadership now controls NAP and PAP once held by committees.

This paper is organized as follows. Section 2 provides an interpretation of the literature from the perspective of agenda power. Section 3 develops our theory, while section 4 applies the theory to congressional organization. Our conclusions follow.

II. The Analysis of Legislative Organization: Past & Future

The central questions in the literature on congressional organization revolve around whether and how institutional structure influences member behavior and policy outcomes. The extant theories seek to understand both who holds power and why and the specific norms, rules, and institutions within Congress that embody and distribute that power.

Through the 1980s, scholars focused on committees as the central form of organization and power in Congress (“the textbook Congress”). Following Mayhew’s (1974: 5) argument that members were “single-minded seekers of reelection,” the literature in the 1980s viewed committees as the principal organizational structure for serving electoral interests. Committees allowed members of Congress to exploit the advantages of gate-keeping within their jurisdictions

(Denzau and Mackay 1983, Shepsle 1979, Shepsle and Weingast 1987, Weingast and Marshall 1988), thereby protecting the issues dearest to their constituents. This institutional structure also allowed members of Congress to capture gains from exchange, which provided electorally useful distributive benefits to members' constituencies. This literature largely ignored parties as mechanisms for supporting and working with committees.⁴

Within this structure, two additional institutional features related to committees—the property right and seniority norms reinforced committee independence, allocated influence within committees, and blunted the influence of parties. The former meant that once a member was assigned a seat on a committee she was entitled to retain that seat unless a shift in the party balance in the chamber caused that seat to disappear. In practice, this right meant that members did not have to be responsive to their parties in order to retain desirable assignments. The seniority norm, which guaranteed that a committee's chairmanship went to the senior member of the majority party, made these positions (and the power within committees that flowed from them) independent of party as well.

In the early 1990s, two alternative perspectives emerged. The first, offered by Keith Krehbiel, focused on the implications of majority rule in the chamber (the initial analysis concentrated on the House), and, later, on the impact of pivotal actors.⁵ In his first book, Krehbiel (1991) proposed his “majoritarian postulate,” which holds that, in both the procedural and the policy realms, legislative choices are made by a simple majority. This fact led him to assert that outcomes reflect the preferences of the majority of members. It also led him to pose

4 Most scholars of this era followed Mayhew (1974: 27), who argued: “The fact is that no theoretical treatment of the United States Congress that posits parties as analytic units will go very far. So we are left with individual congressmen, with 535 men and women rather than two parties, as units to be examined in the discussion to come.”

⁵ Both analyses focus on a one-dimensional policy space featuring a well-defined median member.

an explanatory challenge for those with contrary expectations: why would a majority ever agree to an institutional arrangement that would produce an outcome contrary to that majority's wishes. His analysis puts Krehbiel squarely in line with Mayhew's view that legislative parties had no independent net impact on members or outcomes. From this perspective, Krehbiel concluded that the arguments of the distributive theorists that members could systematically secure disproportionate benefits not favored by a majority of members were misdirected.

In his second book, Krehbiel (1998) examined the impact of two supermajoritarian institutional features: the Senate filibuster and the presidential veto. Here, he contends that those institutional features endow "pivotal" legislators -- those who in a particular instance would provide the marginal vote to maintain or defeat a filibuster, or sustain or override a veto -- with disproportionate influence over outcomes. Here too, he concludes that legislative parties have no independent impact.

In contrast to the party-less models of the distributive politics school and pivotal politics, several theories emerged in the 1990s that argued parties are central, consequential features of legislative organization. The first of these was the "conditional party government" (or CPG) theory of Aldrich and Rohde (Rohde 1991, Aldrich 1995, Aldrich and Rohde 1997-98, 2000a, 2000b).

This perspective differed from the previous ones in a number of ways. First, it assumed that members' motivations were more complex, including personal policy preferences, the desire for institutional power, and individual reelection.⁶ Second, it explicitly assumed that policymaking was multidimensional. And third, it concluded that institutional arrangements

⁶ Later work added the desire to be part of the chamber majority as a fourth major motive. Of course before the 1994 elections, when the initial theory was articulated, members of both parties were subjectively certain who would control the chamber after the next election, and so this motive had little influence on behavior then.

could give parties (and particularly the majority party) disproportionate influence over members' choices and legislative outcomes. The degree to which this last generalization was true was hypothesized to depend on the degree of preference homogeneity within the parties and the degree of preference divergence between them.

Around the same time as the initial presentation of CPG, Cox and McCubbins (1993) articulated another partisan perspective termed "cartel theory".⁷ They also confined their assumptions about member motivation to the desire for reelection, but unlike others with this starting point, they used that motive as leverage to reach the conclusion that the majority party has disproportionate power. Specifically, they recognize that party labels and perceptions of the parties influenced voters' choices. As a consequence, they argue, members of the majority party are concerned about their party's reputation within the electorate. Because the fates of the party members are correlated, members are, therefore, willing to grant power over the chamber's rules and agenda so that party leaders can enhance that reputation.

Cox and McCubbins distinguish two types of agenda power: *negative agenda power* (NAP) is the ability to prevent a floor vote on legislation, typically used by the majority party to prevent legislation opposed by a majority of the majority party; and *positive agenda power* (PAP), the ability to control the content of legislation, to secure a vote on bills favored by the majority party, and to control amendments to that legislation. They contend that the former is an unconditional power of the majority party, regardless of the party's size or its lack of homogeneity. On the other hand, Cox and McCubbins say that positive agenda power is conditional on party homogeneity, as in the CPG analysis.

⁷ Many other analysts, particularly Barbara Sinclair (Sinclair 1995; 2006), studied legislative organization from a partisan perspective. However CPG and cartel theory present the main theoretical considerations we want to focus on, so we will deal primarily with those approaches in this paper.

Comparing Theories: Differential Allocation of Agenda Powers

Control over the legislative agenda is a dominant consideration in the theories described above; indeed, the theories can be distinguished by how the rules and norms allocate agenda power within the chamber. In the committee-centered distributive politics perspective, committees hold most aspects of both positive and negative agenda power within their jurisdictions, sometimes subject to the actions of the largely independent Rules Committee, another body holding negative agenda power. According to this account, committees had discretion over whether to block a proposal from reaching a floor vote. When committees chose to open the gates, they, in collaboration with the Rules Committee, shaped the legislation. Thus, outcomes in each policy area tended to reflect the preferences of the members of the corresponding committees, with the more senior members having disproportionate influence.

Krehbiel's majoritarian-pivotal politics view sees agenda setting as a simple matter, especially in the House. He endows the median member with positive agenda setting powers, and grants negative agenda power to specific pivotal players; *viz.*, the veto and filibuster pivots. Although the median of the House may change over time, as after an election, the median of the House always retains agenda powers. The theory is in this sense static rather than dynamic: the allocation of agenda powers remains stable through time.

Partisan theories, likewise, focus on agenda powers. Virtually all partisan perspectives contend that the majority party uses its agenda powers to influence legislative outcomes. In cartel theory, the majority party has the ability to block proposals from reaching the floor (Cox and McCubbins, 2005). This theory maintains that if a majority of the majority party does not favor a bill, the majority party thwarts the bill through one of the various institutional

mechanisms. Cox and McCubbins devote little attention to positive agenda power, predicting only that the size of the majority's agenda varies directly with the homogeneity of preferences within the party.

In contrast, positive agenda power is the central focus for CPG. This focus stems from the observation that the desire to enact new policies was the driving force in the institutional reforms enacted by liberal Democrats in the 1970s. Those liberals believed that the institutional structure was biased against their policy preferences, and they sought to change the rules to secure different policy outcomes. In particular, CPG argues that the majority party's exploitation of procedural advantages (especially via the Rules Committee) sometimes permits the majority to secure policy outcomes that differ from the preferences of the median member of the chamber and are tilted toward those of the median member of the majority party.

A Gap in the Literature

These differing theories of the legislative process have contributed greatly to our understanding of congressional politics. However, important gaps remain.⁸ Congress has experienced enormous changes in its institutional arrangements since the textbook era, first in the reform period of the 1970s and, more recently, following the Republican Revolution of the 1990s. Yet most of the theoretical accounts are static.⁹ The committee-centered distributive theories fail to explain both the reform era and the new, more partisan era. The majoritarian theory, likewise, helps little in explaining these periods of dramatic institutional reforms and the subsequent partisan era.

⁸ For another perspective on this point, see Smith 2007.

⁹ One exception is Schickler 2001.

Within the partisan perspective, the cartel theory, too, is essentially silent on why rules changes happen. A given rules regime allocates negative agenda power to holders of particular positions. Why is such an allocation altered and in what ways? Even CPG, which was specifically created to account for institutional change, has not (as we will show below) dealt with all factors that we believe shape such change. Moreover, neither partisan theory provides an adequate explanation for the textbook era of weak parties and decentralization. Although CPG does say parties should be weaker when preferences are heterogeneous – as in the textbook era – it does not say why committees should be central to legislative organization.

An adequate theory of legislative organization must therefore account for the existing institutional equilibrium at any point in time *and* be able to explain the transition from a given institutional pattern to a new one. The various theoretical perspectives we have discussed may provide adequate explanations of some aspects or segments of the period since World War II, but none, in our view, fully cover the entire period, and this is especially true of the equilibrium of the textbook era. In particular, we want to understand how committees came to be the dominant organizational feature, why this situation persisted for so long, and why the majority party came to replace that dominance.

III. The Theory of the Allocation of Agenda Control in Congress

Members of Congress produce legislation through interactions within an institution that establishes rules and norms for collective decisions. These rules and norms vest in individuals or groups within the legislature both positive and negative agenda powers.

These agenda powers influence legislative outcomes in important ways. Consider first negative agenda power. In a series of prominent publications, Cox and McCubbins (e.g., 2002, 2005) articulate a theory of partisan lawmaking that focuses almost exclusively on negative agenda powers. They posit that, in its efforts to bias legislative policy in favor of its members, the majority party leadership blocks any legislation that harms a majority of their party. Cox and McCubbins demonstrate theoretically that this exercise of negative agenda power produces sharply divergent aggregate policy outcomes than a legislature without partisan negative agenda control. The central prediction from their model maintains that a majority of the majority party never votes against a bill that passes the chamber, a prediction that is supported by numerous empirical works (e.g., Cox and McCubbins 2005; Stiglitz and Weingast 2010).

Positive agenda power, likewise, influences policy outcomes. First, PAP allows those who hold it to control which issues reach a vote in the legislature. Although Congress maintains a busy schedule and passes a substantial number of bills per year, the number passed is small compared to the number of bills introduced or to the number of issues over which constituents lobby Congress. Plenary time is scarce (Cox 2006); the ability to control which issues receive attention, therefore, is valuable. Second, beyond deciding which issues receive legislative consideration, PAP also implies the capacity to shape the legislation on which members vote. This second feature of positive agenda control is particularly important for questions where NAP is difficult to exercise: for example, issues that routinely arise in Congress – such as appropriations – and issues over which the public urges action, such as anti-terrorism legislation after 9-11. In these cases, the question is usually not whether Congress considers a bill, but instead what the bill looks like.

Our theory rests on the premise that congressional organization at any time is, in large part, characterized by a set of instruments that distribute positive and negative agenda powers among legislators. As we show, under some conditions, positive agenda power is central to members' goals; under other conditions, negative agenda power is central to their goals.

Three Propositions about the Allocation of Agenda Power in Congress

Our theory is founded on the premise that plenary time is a scarce resource (Cox 2006). Members' demand for legislative projects, quite simply, vastly exceeds the productive capacity of Congress. This fundamental fact induces members to organize legislative institutions in predictable ways that maximize members' welfare subject to the constraints of limited plenary time. Most evidently, as we discuss, plenary scarcity provides an incentive for members to delegate positive and negative agenda control to legislative agents, most often party leaders. Of course, this incentive is weaker at some times and stronger at others; the costs, likewise, of delegation run higher at some times than others. The propositions identified below consider these incentives in the context of the governing parameters of the last fifty years.

Consider first majority party homogeneity as it applies to positive agenda power (Aldrich and Rohde, 1991, 1995). The central benefit of this form of delegation is that it reduces the friction to selecting a legislative agenda. Thus, the party leader, if delegated positive agenda power, can choose the legislative items that maximize party members' welfare without tedious debate—debate that, in the context of a time-limited Congress, can be enormously costly. On the other hand, the principal hazard of delegating positive agenda power to an agent is that the agent may advance legislation that runs against one's interest—a hazard that decreases in the

homogeneity of the party. This suggests a static that represents our first proposition: increasing majority party homogeneity induces members to delegate positive agenda power to party leaders.

Now consider this same parameter—majority party homogeneity—with regard to negative agenda power. The incentives to centralize negative agenda operate in a similar way: diffuse negative agenda power increases legislative frictions, making it more difficult to pass legislation, implying less efficient use of plenary time. At the same time, diffuse negative agenda power decreases the odds that the chamber passes legislation that runs against members’ interests—a risk that decreases in the homogeneity of the majority party. In a heterogeneous environment, the consequences of allowing a co-partisan to advance a piece of legislation may be severe. A corollary to our first proposition derives from this latter observation: increasing majority party homogeneity induces members to delegate and centralize negative agenda power.

Notice at this point the role of plenary time in these points. Directly, the statics derive from the decreasing or increasing costs of delegating agenda powers, costs unrelated to plenary time. Indirectly, however, plenary time motivates both statics. The benefits to centralization derive principally from increases in legislative productivity, important due to the binding constraint of plenary time. As the costs to delegation decrease, expressed above in terms of party homogeneity, members organize the institution to take advantage of these benefits; and, likewise, the benefits lose their organizational appeal as the costs to delegation rise.¹⁰

Several other parameters, likewise, influence members’ incentives to delegate agenda powers. One class of parameters relates to the opportunity costs of plenary time. As plenary time becomes more valuable, either through increased scarcity or, here, increased opportunity costs,

¹⁰ We do not imply that organizational change in response to changing conditions will be instantaneous or automatic. Current patterns may be “sticky” and require time or effort to change. Space constraints prohibit exploring this nuance, but more detailed empirical analysis than the narrative that follows will have to be sensitive to this consideration.

members face stronger incentives to delegate agenda powers to party leaders. Members' desire to pass new legislation is great at some times and meager at others. Generally, a given set of members demand new legislation when the existing policies run against these members' interests. Our second proposition derives from this notion: members tend to delegate agenda powers when the opportunity cost of plenary time is high.

Members of the majority party, for example, often face a set of adverse status quo policies when the opposing party has controlled the legislative apparatus for a long period. Thus, after party transitions, members of the new majority party are likely to seek to revise a large number of these status quos, indicating higher opportunity costs for plenary time. Under these circumstances, majority party members are likely to delegate agenda powers to party leaders, with individual members trading off legislative efficiency for control over legislative content.

While the new majority party holds control of Congress it seeks passage of the important elements of its legislative program. These legislative accomplishments lower the opportunity costs associated with plenary time, and the agency costs associated with delegation begin to predominate. This offers an incentive for members to decentralize both positive and negative agenda powers. Thus, all else equal, long-standing majority parties should tend to adopt legislative organizations with decentralized agenda control.¹¹

All else, of course, is not always equal. A corollary of the point above is motivated by the fact that new issues arise in American politics. Energy policy suddenly became important in the mid-1970s due to the oil crisis. National security and terrorism policies took center stage after September 11. The Japanese attack on Pearl Harbor immediately transformed an isolationist nation at peace into an internationalist one at war. These types of exogenous events increase the

¹¹ This *ceteris paribus* point applies to all of our propositions. Thus, at certain times, various factors may provide opposing marginal incentives, leading to mixed empirical results.

value of plenary time and, according with our general logic, induce members to delegate agenda powers. These delegated powers enable members of the majority party to shape a new area of policy, the consequences of which may extend decades into the future.

Actions on these issues represent potentially defining moments for a party. Slow and bumbling legislative responses to these issues threaten to harm all members of the majority party (Cox and McCubbins 1993; also see Smith 2007). Responsive and well-tailored legislative reactions, on the other hand, hold promise to benefit majority party members for many future elections. For many members – often, we suspect, a majority – it is more important to respond quickly and effectively than to quibble about the content of legislation.

A closely related point concerns the volatility of partisan control. If the current majority party expects to retain majority status for a long period, as the Democrats reasonably expected during much of the 20th century, the importance of accomplishing members' legislative priorities in the current Congress diminishes. The scarcity of plenary time, in other words, is less constraining under such circumstances. Members who cannot reasonably expect to maintain majority status, on the other hand, feel the pinch of scarce plenary time, and attempt to accomplish core legislative priorities during the short period of the current Congress. In our account, therefore, members delegate agenda powers to party leaders during time of uncertain party control. This point reflects our third **proposition**: that members tend to delegate legislative authority to party leaders when plenary time is scarce.

To re-state then our main propositions:

(1) Increasing majority party homogeneity induces members to centralize positive agenda power to party leaders; likewise, increasing majority party homogeneity induces members to delegate negative agenda power to party leaders.

(2) Increasing the opportunity costs of plenary time, as when a new party takes control of the chamber, or when new issues arise that demand legislative attention, induces members to centralize positive and negative agenda powers.

(3) Increasing scarcity in plenary time, as when a current majority expects to lose office in the near future, induces members to centralize negative and positive agenda powers.

IV. Legislative Organization After World War II

In this section, we provide an analytical narrative that juxtaposes the theoretical predictions with salient evidence from the historical record and scholarly literature. We concentrate on the period since 1945, because it provides the variation in the factors relevant to assessing our argument.¹² This postwar period contains three main eras of organization: the textbook era, which spanned to the later 1960s and early 1970s; the Democratic Reform era, which followed the textbook era and lasted until the 1994 election brought an end to Democratic control of Congress; and, finally, the most recent stretch of congressional history following the 1994 election. In applying our framework, we seek not only to characterize each era, but to explain why one era evolved from another.

The Textbook Congress and the Path to Reform

Two factors characterize the environment that shaped and supported the institutions of the textbook era. First, the majority Democratic Party was internally divided and therefore highly heterogeneous. Southern members largely held conservative views on economic and social issues; Northern Democrats, by contrast, largely took liberal positions. Second, the Democratic

¹² It probably need not be emphasized that limited space requires a consideration only of broad patterns, and that many qualifications would be necessary in a fuller account.

Party was a long-ruling majority party. With the exception of two congresses,¹³ the Democratic Party enjoyed majority status in every Congress since 1930.

Our theory makes clear predictions in these circumstances. Because the majority party is characterized by heterogeneous preferences, high costs potentially accompany centralized party control over the contents of legislation. Majority party members, therefore, have an interest in dispersing negative agenda powers and also in ensuring that no single group of members has dominant control over positive agenda powers. Notice that the pattern of party control reinforced these incentives. Our second proposition suggests that a new majority party, encountering a substantial number of status quo policies enacted by the *ancien regime*, will delegate greater agenda powers to a central entity to coordinate large-scale revision of these policies. Due to their long-standing majority status, however, Democratic majority party members faced relatively weak incentives to delegate agenda powers to a central authority during most of the textbook era.

Organizationally, as our theory would anticipate, the era of the textbook Congress was characterized by divided parties, weak leadership, and autonomous committees. Although legislative committees did not possess full control over agenda powers, they almost always shaped the content of legislation, and that content was rarely changed significantly on the floor. Positive agenda power was, for the most part, committee power. The central party structures were not sufficiently powerful to compel or induce the standing panels to pursue the party's preferred policy options. Committees were also dominant with regard to negative agenda power, as both the legislative committees and Rules exercised independent gatekeeping power.¹⁴

¹³ The exceptions were the 80th Congress (1947-1949) and the 83rd Congress (1953-1955).

¹⁴ The party leadership also shared some negative agenda power, and could sometimes block conservative policies under Democratic majorities.

Thus the early postwar period represented an institutional equilibrium in the House under which major policy changes were usually infeasible. Blocking power was spread widely, and divisions within the Democratic party made it difficult to marshal support for significant departures from the status quo.¹⁵ The situation was reinforced by the election of Eisenhower to two presidential terms. Eisenhower was neither a conservative ideologue nor a supporter of the expansion of the federal role in domestic policy. As a consequence, the White House was not a source of major initiatives for new federal programs or for major cutbacks in existing ones. In the textbook era, the institutional equilibrium largely supported the status quo.

The underlying conditions supporting this equilibrium began to change with the elections of 1958, when the Democrats gained 49 House seats, nearly all in the North. Although this did not alter formal party control of the House – Democrats controlled the chamber before and after the election – it altered coalition politics by weakening the conservative coalition and consolidating the left-leaning wing of the Democratic Party.

Most of the new northern Democrats held liberal views, strongly favoring new federal domestic programs, a departure from the status quo in those areas. They, and their more senior allies, recognized that the existing institutional arrangements were biased against their goals and that significant policy change required institutional reform. To change this balance, the numerically strengthened liberals chose as their initial target the center of negative agenda power against their policies: the Rules Committee.¹⁶ Since the 1930s, the Rules Committee had actively

¹⁵ Cox and McCubbins 2005.

¹⁶ In addition to the Rules Committee's use of negative agenda power, new research has shown that this committee was an important collaborator in employing positive agenda power on behalf of conservative policy initiatives. Schickler and Pearson's (2008) analysis indicates that between 1937 and 1952 Rules pushed 44 conservative initiatives that were opposed by Democratic presidents, the chair of Rules, and most northern Democrats.

blocked liberal initiatives.¹⁷ Although Rules consisted of 8 majority members and only four minority members, two conservative Democrats, including the Chair, “Judge” Smith of Virginia, frequently voted with the GOP members to create a 6-6 deadlock that prevented positive action.

The issue of the Rules Committee’s NAP became more salient with the election of John Kennedy as president. Kennedy campaigned on a platform of change, and sponsored an ambitious legislative agenda. As Rayburn’s biographers stated: “To break the [conservative] coalition’s power, Rayburn knew that he had to strike at its heart—the Committee on Rules. . . . If Kennedy’s program could not get past the Rules Committee, his administration would be a failure from the start.”¹⁸ The danger that Rules posed became clear in 1960 when the committee prevented Democratic proposals for an increase in the minimum wage, federal aid to education, and an expanded housing program from reaching the floor.¹⁹

In early 1961, the Speaker joined with the northern liberals to propose and pass an expansion of the Committee by three members. Two of the new appointees were northern Democrats who would be less likely to support conservative positions. This institutional change transformed what would have been 6-6 deadlocks into 8-7 majorities supporting the leadership. The majority contingent on Rules was still ideologically divided, and the Committee was still independent of the leadership, but it was less likely to be a roadblock to majority-party initiatives. Greater preference homogeneity in the majority and strong desires to change policy provided sufficient incentives to change the organizational structure and redistribute agenda power, consistent with our first and second propositions.

¹⁷ (Oppenheimer 1977; Hardeman and Bacon 1987)

¹⁸ (Hardeman and Bacon 1987: 447-48)

¹⁹ (Hardeman and Bacon 1987: 449)

The Democratic Reform Era

Although the liberal wing of the Democratic Party enjoyed stunning legislative successes following Kennedy's assassination and Johnson's landslide 1964 victory, popular reaction against the Great Society programs and Civil Rights initiatives in the South, coupled with divisions in the country over the Vietnam war, quickly undermined the Northern Democrats' ability to pass favored legislation. The conservative coalition once again exercised its negative agenda powers.

By the late 1960s and early 1970s, the northern faction of the Democratic Party was increasingly numerically dominant and increasingly homogeneous in preferences. On the other hand, division increased between northern and southern Democrats. And even after the legislative successes of the mid-1960s, this re-fashioned Democratic Party faced a relatively undesirable set of status quo policies. Our theory suggests that this context favored a number of reforms. First, as the Democratic Party redefined itself as more homogeneously liberal, its members faced incentives to centralize aspects of positive agenda control and to neutralize, at the least, the negative agenda power of conservative agents within the party. Second, the emergence of new national issues – the environment and energy, to name two prominent examples – reinforced this incentive. Liberal Democrats saw the opportunities inherent in, for example, the rising national concern with the environment, and sought to define the legislative response to this issue. In these circumstances, Southern Democrats held and valued NAP while Northern Democrats simultaneously sought to remove that NAP and gain positive power.

Much has been written about this era and its consequences, so we will just briefly summarize the main points. In the Legislative Reorganization Act of 1970 reformers succeeded

in securing recorded votes on floor amendments during consideration of bills in the Committee of the Whole (the normal venue for dealing with significant substantive legislation).²⁰ Before this constituents could not know how members voted, and this gave committee chairs who wanted to protect their bills from changes a tremendous advantage in exerting pressure on members without countervailing pressure from the members' constituency preferences. This change represented a major shift in positive agenda control from the committees and their leaders to the House floor.²¹

The reform effort accelerated in 1971 and continued through 1975. During this period, the arena for conflict was not the House floor but the Democratic Caucus. The DSG realized that it would be far easier to overcome conservative resistance if only Democrats could vote on reform proposals. The plans involved both undermining the power of committees and their leaders as well as strengthening the hand of the majority leadership.²² One set of reforms undermined the independence of committee chairs by requiring automatic secret-ballot Caucus votes on chair nominees at the opening of every Congress. The membership demonstrated that these were not cosmetic changes: in 1974 they voted out three chairs; a few others followed in later years. Evidence indicates that in the wake of these events senior committee leaders adjusted their behavior to act more in line with the preferences of the Democratic Caucus, enhancing the leadership's positive agenda control.²³

Then in 1973, the Subcommittee Bill of Rights reduced the powers of committee chairs, transferring much authority to subcommittee heads.²⁴ Collectively, the Subcommittee Bill of

²⁰ See Rohde 1991: 21)

²¹ Smith 1989

²² Details on these reforms and their impact may be found in Rohde 1991; Sinclair 1995, 2006.

²³ (Crook and Hibbing 1985; Rohde 1991; Wright 2000)

²⁴ Rohde

Rights deprived committee chairs of many (albeit not all) of the powers that gave them influence over the decisions of other members of their committees, and thus over both positive and negative agenda control.

The reformers also targeted the Rules Committee by giving the Speaker the authority to appoint and remove its Democratic members, including the chair. This reform made Rules, in Oppenheimer's words, an "arm of the leadership."²⁵ Control of the floor agenda passed from a set of largely independent actors to the top majority party leadership. Then the party used its control over Rules to block potentially successful amendments (or electorally embarrassing ones) favored by the minority party, and otherwise bias floor consideration in their favor.²⁶ This change substantially enhanced the leadership's positive agenda control with regard to both what bills got considered and the ability to control bill content. Taken as a whole, the reforms of the early and mid-1970s dislodged the ability of committee chairs – typically southern Democrats – to exercise NAP; and they transferred important elements of PAP to subcommittees and to the majority party leadership.

The Republican Revolution

The unexpected election of a Republican House majority in 1994 offers another political transition with features related to the elements of our theory. The election was significant for three reasons. First, the election ushered GOP members from a long-suffering minority party into positions of authority reserved for the majority party. Second, the election produced a majority

²⁵ (1977)

²⁶ (Rohde 1991; Sinclair 1995, 2006; Cox and McCubbins 2005; Finocchiaro and Rohde 2008)

party with the most homogeneous preferences in the postwar period.²⁷ Third, the election introduced significant uncertainty about the identity of the majority party in the future.

Our theory predicts that all three of these features provide incentives for centralization in the distribution of positive and negative agenda powers and raise the value of the former relative to the latter. Due to the concentration of unfavorable status quo policies, members of a new majority party have incentives to centralize legislative authority in party leaders to enhance productivity. Moreover, the electoral uncertainty produced great concern among members about the implications of the party's legislative accomplishments for its electorally consequential brand name. In addition, the need to overcome an unsympathetic president of the other party to enact their proposals reinforced this willingness to delegate to the majority party leadership. All told, therefore, the 1994 election induced a kind of perfect storm for the centralization of legislative agenda control.

Consistent with our perspective, the new Republican majority went much further in centralizing agenda power than the Democrats of the 1970s. Consider first the matter of committee leadership. Shortly after the elections, and without consultation with most rank-and-file members, Newt Gingrich (the expected Speaker) simply asserted the right to choose the chairs of a set of major committees essential to passage of the party's early priorities. The membership acquiesced in this assertion of power. Moreover, Gingrich ignored seniority in making these appointments, bypassing the most senior Republican in three instances: Appropriations, Commerce, and Judiciary (Aldrich and Rohde 1997-98). These actions simultaneously guaranteed the close alliance of these important committees with the Speaker and

²⁷ Aldrich & Rohde, *Revisiting the Electoral Connection*

announced to all that obtaining – and presumably maintaining – prestigious positions required the support of the Speaker.

To further undermine the committee system as an independent source of influence, the GOP reduced the number of standing committees and committee member positions, and slashed committee staffs by one-third. They also limited committee and subcommittee chairmen to six years tenure. On the other hand, the party also subordinated subcommittees and their chairs to the full committees; giving committee chairs the power to appoint heads of the subcommittees. This too was publicly stated as an effort to reduce the independence of the committee system.²⁸

Thus under the new GOP system, chairs control their committees, but the leadership control the chairs. Panel heads had to coordinate with the leadership in making their decisions regarding legislation. Recognizing that many Republican committee members had vested interests in existing programs that most GOP members off the committee of jurisdiction wanted abolished or changed, the Gingrich leadership adopted procedural strategies to overcome that attachment to the status quo. The agenda control—both positive and negative--exercised in committees was put firmly under majority leadership control. The best illustration of this, and of the GOP strategy more generally, was the unprecedented use of the Appropriations Committee to make changes in substantive policy (Aldrich and Rohde 2000b), even though this was nominally prohibited by House rules. This strategy wrested both positive and negative agenda control from the usual committees of jurisdiction, lodging it in a panel over which the leadership had more direct control.

Under Gingrich, the Republicans also enhanced the leadership's influence over members' committee assignments, and retained the Speaker's dominance over the Rules Committee that

²⁸ (Aldrich and Rohde 1997-98: 551)

the Democrats had adopted. Moreover, the Republicans expanded the use of restrictive and closed rules relative to the Democratic years, further increasing the leadership's positive agenda control. To summarize, as our propositions predict, the Republicans under Gingrich created a centralized form of congressional organization.

Post Revolution: the Hastert Speakership and the Bush Presidency

Gingrich was forced by political and electoral failures to step down after four years as Speaker. Then when scandal short-circuited the speakership of Gingrich's intended replacement, Robert Livingston, the GOP turned to Dennis Hastert of Illinois, the party's Chief Deputy Whip. Hastert was not an ideological activist in the Gingrich mold, and he promised both greater cooperation and compromise with Democrats and a restoration of the "regular order" for considering legislation under which committees would have greater influence and independence.

The transition to Hastert's speakership is particularly important for assessing the relevance of our account. Hastert promised to move away from the centralization of the Republican revolution, something that was expected by many congressional analysts even before the fall of Gingrich.²⁹ Yet our theory suggests the opposite for various reasons. First, the polarization between the parties and preference homogeneity within them had not abated. Indeed these factors became more pronounced since 1994.³⁰ In addition, the election of 2000 restored unified government in the hands of the Republicans, a situation that had not obtained for nearly half a century. This opportunity to secure significant policy change in the direction favored by congressional Republicans provided substantial incentives for maintaining centralized control of

²⁹ See, for example, Dodd and Oppenheimer 1997.

³⁰ (Jacobson 2000; Aldrich and Rohde 2009)

the agenda. This expectation was further reinforced by the Bush administration's decision to adopt a style of governance that eschewed inter-party compromise and depended almost entirely on its congressional partisans to pass legislation.³¹

Here the results are clear. Far from reducing central control of committees and the powers of the leadership, the Hastert speakership retained all the significant powers of his predecessor and saw further expansion in both realms. The most striking event was in 2000, when the six-year term limits for committee chairs came due. Not surprisingly, many members affected by the term limits sought abolition of the limits or exceptions from them. Speaker Hastert and the leadership blocked these efforts. Moreover, Hastert rejected a return to the seniority criterion for selecting those chairs and created instead a system of competitive elections within the leadership-dominated Steering Committee. In this and subsequent years, the Steering Committee bypassed the most senior candidates in multiple instances, often choosing a more junior but also a more conservative candidate who would cooperate with the leadership.

The Republican leadership also increasingly employed the conference committee process for partisan ends, biasing the selection of conferees in favor of the party's majority³². On a number of occasions, the GOP leaders even prevented appointed Democratic conferees from participating in the deliberations of their panels.³³ This control over conference committees transferred the positive agenda powers conferred by the conference committee's ex post veto from committees to the leadership.³⁴ Moreover, Hastert continued the partisan use of the Rules Committee, which arguably expanded even further. Donald Wolfensberger, the former Republican Staff Director of Rules, said: "By the 107th Congress (2001-2003), their fourth

³¹ (Jacobson 2007)

³² Lazarus and Monroe 2007

³³ (Aldrich and Rohde 2009)

³⁴ (Shepsle and Weingast 1987)

consecutive Congress in power, the Republicans had far exceeded the Democrats' worst excesses in restricting floor amendments."³⁵ Evidence indicates that these restrictions succeeded in biasing floor outcomes in favor of majority preferences.³⁶

The Hastert years include what was probably the most extreme use of party leadership power to control the committee system of the post-War era. Christopher Smith of New Jersey had been the chairman of the Veterans Affairs Committee in the 108th Congress (2003-2005). Despite having solid conservative credentials on most issues, Smith was a strong supporter of veterans' benefits, and he had openly resisted the GOP leadership's efforts to impose expenditure cuts in that area. Smith had been warned that his efforts jeopardized his position, but he persisted. As a result, at the beginning of the next congress in 2005, the leadership stripped him of his chairmanship and removed him from the committee. Dennis Hastert had further reduced the independence of committee leaders from party influence, and the centralization of positive agenda control on matters of partisan import was complete.

Fluctuations in Party Rule, 2007-2013

We close this account with a focus on the period since the restoration of the Democratic majority in the 2006 elections. Evidence on these six years is more limited than on the previous three decades, so any conclusions must be regarded as preliminary. However, theoretical expectations are fairly clear, and we think the pattern of available evidence so far is as well.

All evidence indicates that the internal preference homogeneity of both parties and the divergence between persisted for the two Democratic congresses. Similarly, uncertainty about

³⁵ (2007: 293)

³⁶ (Monroe and Robinson 2008)

majority control over the Congress over those years remained significant. Therefore we would have expected continued centralization of agenda control in the Democratic majority leadership. This tendency should also have been reinforced by the fact that change in the majority occurred after a long period of the chamber being in opposition hands. The GOP had frustrated Democrats' efforts to influence policy, and the new majority had an agenda brimming with proposals for significant change. Moreover, support for centralized control was further heightened by the Democrats' presidential victory in 2008.

The rules package that was drafted and submitted by Speaker Nancy Pelosi and her allies in 2006 was consistent with our expectations. It combined all of the significant features of leadership power from the last time the party was in control with some additions retained from the GOP era. One surprising element (especially to some participants) was the decision to retain term limits for committee chairs. Pelosi did not even inform the prospective chairs in advance of this move, and many voiced their displeasure, but they went along. Pelosi indicated that this provision *might* be reconsidered in the future, providing additional pressure on chairs to be responsive to the Speaker.³⁷

Pelosi was also forceful in exercising agenda control. At the beginning of the Congress, she selected a set of six high-priority bills to be considered during the first 100 hours of the session. These bills bypassed committee consideration and went directly to the floor under closed or restrictive special rules, blocking GOP amendments. All six bills passed in the form desired by the leadership and sought to enhance the Democrats' reputation and contrast it with that of the Republicans and especially President George W. Bush

³⁷ The term limit was repealed in the following congress, after it became clear that the chairs would be responsive to the Speaker's directives.

Pelosi also exerted direct influence over committees. The most striking example was her interaction with John Dingell of Michigan, chair of the Energy and Commerce Committee, on the energy bill in 2007. The committee's draft included two major provisions that were contrary to leadership priorities. The Speaker told Dingell that he must remove the two provisions from the bill, and after some negotiations, he agreed. Rep. Henry Waxman (D-Cal.), chairman of the Energy Committee's Oversight subcommittee, later said: "I have never seen a speaker take such an active and forceful role on policy...."³⁸ Control of special rules was also a widely used aspect of the Speaker's powers, and closed or restrictive rules were employed on almost all major legislation³⁹ Finally, we should note that after the 2008 elections, House Democrats took the extraordinary step of removing John Dingell from the chairmanship of Energy and Commerce. They chose Henry Waxman of California, who was much closer to the median of the Caucus than Dingell, as the new chair. In seeking the post, Waxman argued that he would be more effective in working with the new administration for policy change, saying: "When a new president is elected there's often a limited opportunity to get through the major bills that he's backed."⁴⁰ Thus the available evidence from the 110th and 111th Congresses indicates that the centralization of positive and negative agenda control in the majority party leadership persisted in accord with theoretical expectations.⁴¹

The restoration of Republican rule in the house after the 2010 elections illustrates how the multiple facets of our theory can produce countervailing tendencies and, therefore, mixed results. The very large Republican freshman class, dominated by Tea-Party insurgents,

³⁸ Quoted in Cohen 2007: 22.

³⁹ In addition to using special rules for positive agenda control, Pelosi employed other techniques for negative control. For example, she blocked a trade agreement submitted by President Bush by changing the rules for its consideration.

⁴⁰ Quoted in the New York Times, November 21, 2008, p. A23.

⁴¹ For more details on the developments in these two congresses, see Aldrich and Rohde 2009.

significantly altered the distribution of preferences in the House. The divergence between the parties was not increased, reinforcing the trend since the 1970s, but unlike the recent past, the majority became less homogenous. And that increased heterogeneity involved a substantial increase of members at the extreme right of the party.⁴²

We would expect this development to affect the party's incentives, and it did. While there was no significant reduction in the formal delegation of power to leaders in the majority (the main rules change was the return of term limits for chairs), the relationship between the leaders and the rank-and-file members regarding the exercise of agenda powers shifted noticeably. Speaker Boehner had pledged a more open amendment regime on the floor, and he followed through. This did not, in practice, mean free amendment opportunities for the minority; most special rules on substantive legislation were still restrictive. But it did mean that the Tea-Party freshmen demanded (and usually got) the chance to propose alternatives. Moreover, those insurgents (who generally did not trust Boehner's commitment to their ideals) often refused to follow the Speaker's strategic plans. The alteration of the distribution of preferences within the majority made it more difficult to achieve consensus on party goals and to pursue them effectively. Much of the conflict over strategy revolved around different emphases on goals, with Boehner and his allies putting priority on collective electoral success and protecting the party brand, while the more junior conservatives emphasized large-scale budget cuts and major policy changes. The leadership maintained substantial powers, but they were restricted in the exercise of those powers.

V. Conclusions: Implications of Agenda Power for Congressional Organization

⁴² What was unusual was the magnitude of the numbers at the right end. Having new members positioned to the right of the previous median was the pattern for the party in the previous decade. See Carmines 2011.

Our approach uses the lens of allocation of PAP/NAP as a means of understanding congressional organization. Different circumstances favor different forms of agenda allocation and hence different forms of congressional organization. Our theoretical propositions provide considerable power in understanding the different allocation of these powers as circumstances change. To summarize:

- Proposition 1: The more homogeneous the majority party, the greater the centralization of agenda powers.
- Proposition 2: Increasing the opportunity costs of plenary time induces members to centralize agenda powers. Examples of events relevant to this proposition include a new party taking control of the chamber, or the rise of new policy issues that demand legislative attention.
- Proposition 3: Increasing the scarcity of plenary time induces members to centralize agenda powers. Examples of events relevant to this proposition include uncertainty over the future control of the chamber, and changes to the electoral landscape, such as those related to campaign finance, that force members to spend less time legislating.

These propositions provide insight into congressional organization over the Post-WWII era. During the textbook era, the majority party was very heterogeneous. On many dimensions, policy changes that would make one faction of the Democratic party better off made the other worse, and vice versa. This circumstance implies that no coherent party platform existed to enhance the majority party's reputation nationwide. Congressional organization in this era was therefore characterized by strong decentralization, with committees and their chairman holding most of the important positive and negative agenda powers.

Changing circumstances altered the basis for congressional organization. Growing numbers of northern Democrats with a new policy agenda sought to use their party to transform national policy, but existing rules and congressional organization frustrated them. NAP held by southern Democrats in committee leadership positions prevented new legislation from being

considered or watered it down considerably. As the northern Democrats grew in number, they gained the power to alter the rules in an effort to break the NAP of committee chairs. The new series of rules at once decentralized some agenda powers to subcommittees while centralizing other powers to leadership. This trend continued with the decline of conservative southern Democrats and growing homogenization of the Democratic party.

Rule changes helped break the positive and negative agenda control held by committee chairs. The move to record votes on amendments during the Committee of the Whole made members accountable for their votes, forcing them to favor their constituents rather than cooperate with committee chairs. Secret ballots for committee chairs forced the latter to be far more responsive to committee and caucus majorities. The Subcommittee Bill of Rights transferred important positive and negative agenda powers from the committee chair to subcommittees. And the transformation of the Rules committee at once reduced its independent source of NAP and made it more beholden to the leadership, enhancing the leadership's powers to coordinate policy changes with the majority of the Democratic party, now clearly in the hands of liberal northern Democrats.

Circumstances continued to evolve however; for example, the congressional delegations of both parties became more homogeneous. The 1994 elections brought a new Republican majority to power following a long period of minority status and consequent frustration in their policy goals. Combined with strong homogeneity of the party, further centralization occurred. Majority status came as a surprise, seen by members as due in part to the party's agenda announced in its "Contract with America." Considerable uncertainty remained over majority status, however.

The theoretical propositions suggest that all these changes pointed toward greater centralization. Consistent with these predictions, Gingrich engineered the most centralized House since the revolt against Speaker Cannon. Committees retained some powers, especially over issues of not of direct concern to the majority party leadership. But for issues of central concern to the leadership, it retained agenda control. Committees that failed to cooperate with the leadership saw their jurisdictions bypassed and their chairs threatened with removal from power. The Rules Committee granted the leadership PAP by fashioning restrictive rules to govern consideration of important bills, simultaneously preventing Democratic alternatives and defections by their members from leadership positions. The leadership employed considerable new tools and techniques for controlling committees, including using Appropriations for substantive legislation; using the Rules Committee to alter bills passed by committees; and using task forces to bypass committee consideration.

Although Speaker Hastert asserted he would end some of the strong-arm leadership tactics employed by Gingrich, circumstances continued to favor centralization, especially after the 2000 elections that replaced a Democratic president with Republican George W. Bush. As a consequence, Hastert maintained and increased centralization rather than dismantling it. Similarly, following the 2006 elections, the House under Democratic Speaker Nancy Pelosi also continued centralization, including successfully weathering direct challenges from former powerful chairs, such as John Dingell.

Notably, this course of centralization subsided following the 2010 Republican victory. The infusion of Tea Party adherents into the Republican Party resulted in a more heterogeneous majority party. Consistent with our theory, Speaker Boehner democratized agenda control, effectively granting the right wing of the party amendment rights.

Our perspective has considerable implications for congressional organization in other periods. The various propositions should also apply to other major changes in circumstances prior to the post-WWII period that we treat in this paper. Indeed, other periods represent potential out-of-sample tests of our approach. Our approach helps integrate disparate features of the literature on congressional organization. Our propositions suggest that, as circumstances change, so too will the allocation of both NAP and PAP. The literature on congressional organization tends to favor approaches that are timeless in the sense that they predict only one form of congressional organization. Taken together, these propositions imply that no single form of congressional organization – party or committees – should dominate all of congressional history.

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