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**SETTING THE STAGE: PARTY AND PROCEDURE IN THE  
PRE-FLOOR AGENDA SETTING OF THE U.S. HOUSE**

**By**

**Charles Jeffrey Finocchiaro**

**A DISSERTATION**

**Submitted to  
Michigan State University  
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## ABSTRACT

### SETTING THE STAGE: PARTY AND PROCEDURE IN THE PRE-FLOOR AGENDA SETTING OF THE U.S. HOUSE

By

Charles Jeffrey Finocchiaro

In recent years, a growing body of research has sought to account for the role and impact of political parties in the U.S. Congress. This dissertation focuses on the role of party leaders in pre-floor decision making in the U.S. House of Representatives. In particular, it seeks to bridge two somewhat disparate literatures, one documenting the changes in the legislative process that have occurred since the reforms of the 1970s and the other examining the increasing role of parties and partisanship in Congress. I argue that congressional leaders have at their disposal a variety of procedural tools with which to affect the substantive content of legislation prior to floor consideration, and that it is the pre-floor stage at which they enjoy the ripest opportunity for influence.

Three areas of the pre-floor legislative process are considered. With a theoretical foundation grounded in conditional party government theory, I consider which bills are acted upon in House committees. The results indicate a systematic relationship between favorable action on legislation and the institutional context, party affiliation of the sponsor, and other sponsor-level characteristics. The results hold while controlling for variables drawn from competing theories of legislative organization.

Next, I consider the leadership's decision to bypass the committee system altogether and bring legislation directly to the floor. This trend has been increasing in the post-reform House, and possesses implications not only for committee power but for party power as well. A series of case studies are employed to delineate the conditions under which bypass occurs and to demonstrate its appeal to the majority party under particular circumstances. Additionally, this procedural track is contrasted with the more commonly studied discharge petition.

Finally, this dissertation revisits the use of restrictive rules in setting the floor agenda of the House. While rules have been at the forefront of the debate about the significance of parties, I argue that looking at them in isolation runs the risk of incurring selection bias in statistical estimates. In light of this, two extant models of restrictive rules are re-examined using a censored probit model. The results suggest that while there is some evidence of bias resulting from sample selection, the primary results are by and large unchanged.

**Dedicated to  
my wife Lauren**

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## **Chapter 1: Introduction**

On August 5, 1993, House Democratic leaders were struggling to find the votes necessary to secure passage of the momentous budget reconciliation bill that was the centerpiece of President Bill Clinton's young administration. As the allotted time for the recorded vote expired, the party's leadership successfully pressured freshman Rep. Marjorie Margolies-Mezvinsky (D-PA) into voting in favor of the legislation despite her pledge to vote against any new tax increases, thus securing the narrowest of victories by a 218-216 margin (Cloud 1993).<sup>1</sup> Of course, party pressure is rarely as obvious or publicly prominent as was the case in this instance. However, party leaders frequently face some degree of uncertainty with regard to expected outcomes on the floor of the House. Thus, it is not uncommon for them to take advantage of available means in order to secure passage of favored legislation. Other avenues for such behavior include holding the allotted time for a vote open beyond the customary length, as occurred in 1987 when Speaker Jim Wright (D-TX) postponed announcement of the outcome of a vote on a deficit-reduction package until he was able to round up the necessary votes (Wehr 1987), and having on hand a number of pocket or "if-you-really-need-me" votes which members have offered should the leadership find themselves a few votes short (King and Zeckhauser 2003).

These examples highlight an interesting and important aspect of congressional politics—the role of party leaders in influencing members' voting

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<sup>1</sup> Margolies-Mezvinsky's decision to tow the party line was not without cost, as she lost her bid for reelection to Jon Fox, who made the budget vote a centerpiece of his electoral challenge in the 1994 midterm election.

behavior on the floor. However, instances in which roll call votes are so narrowly divided are relatively rare in the House of Representatives, and party leaders do not often find it necessary to twist arms or call on the faithful in order to secure the leadership's favored result. That is not to say that the influence of congressional party leaders should be considered inconsequential. In light of numerous observations like the Margolies-Mezvinsky vote and events not unlike it at various stages of the legislative process, students of Congress have focused a significant amount of attention on the role played by parties in the institution. In fact, in recent years a number of researchers have staked out opposing claims regarding the degree of influence enjoyed by party leaders in the U.S. House. A recurring question has been whether the leadership is capable of compelling or encouraging members to vote against their preferences in order to secure broader partisan goals. Questions of this nature have frequently employed data on members' floor voting behavior and have recently been accompanied by an examination of issues relating to the capacity of roll call-based measures to speak to the relative power and/or influence of internal party structures.

### **The Party Debate**

The primary challenger of the party school is Keith Krehbiel, who in numerous works has argued that parties are little more than rough institutional collectivities emerging from members' commonalities in preferences.<sup>2</sup> In response, others have offered evidence of significant party behavior and

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<sup>2</sup> See Krehbiel (1991, 1993, 1997, 1998, 1999a, 1999b, 2000).

influence that goes beyond members' preferences.<sup>3</sup> In essence, scholars are attempting to disentangle the usually unobserved influence of members' preferences and party pressure on the observed behavior of roll call voting. While the debate regarding the utility of roll calls to measure partisan influence has motivated increasingly thoughtful applications of vote-based measures, it seems unlikely that the debate will be resolved in the very near future. However, a related question that has received significantly less attention deals with what is perhaps a more important domain for party influence—the pre-floor agenda setting stage.

While reasonable arguments can be offered to explain a variety of theoretical perspectives bearing on the degree of party influence at the floor stage, where most observers would expect parties to be influential some proportion of the time, pre-floor maneuvering on the part of leaders is critical to determining what will occur once members are faced with an issue on the floor. For example, depending on how the agenda is structured, it may not be necessary to enforce party discipline if the alternatives are arrayed in such a way as to evoke outcomes consistent with the party's goals by allowing individual members to act on their own preferences (e.g., Riker 1986).<sup>4</sup> Furthermore, on votes that are starkly partisan, such as those to adopt special rules, the costs of defecting are likely to be large enough to induce members with peripheral or

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<sup>3</sup> See, for instance, Ansolabehere, Snyder, and Stewart (2001); Lawrence, Maltzman, and Smith (1999); Wilson (1999); and Snyder and Groseclose (2000).

<sup>4</sup> This is especially likely to hold, if unconventional means are employed, as party and committee leaders enjoy informational advantages over their counterparts that allow them a leg up on the potential impact of procedural maneuvers. One might argue that the floor would be unlikely to allow restrictive rules, for instance, in those cases where they keep a relevant alternative off the agenda. Such an argument presumes knowledge on the part of the floor that such a relevant alternative exists, and for many issues, this may not be the case.

even significant concerns to tow the party line. However, even in the absence of such considerations, it is majority party leaders who determine (with a few caveats) what will be considered on the floor in the first place. The leadership possesses two significant types of agenda control: positive (moving business onto the agenda) and negative (keeping issues off the agenda). While Cox and McCubbins (1999) have examined negative agenda control (which is roughly consistent with the cartel theory of legislative parties and thereby constant across time), pre-floor agenda setting is predominantly characterized by positive agenda control.

Despite a recent flourishing of research on parties in the U.S. Congress, Krehbiel (1998) asserts that “[t]he single, most significant problem in the modern study of the role of parties in lawmaking is the absence of a well-articulated (preferably formal) theory about the consequences of intralegislative party activity on collective choices of legislatures” (165). He goes on to suggest that “when it comes to knowing precisely the conditions under which party activity occurs and knowing precisely the consequences of party activity on lawmaking, we remain largely in the dark” (165-6). An analysis of leadership and partisan activity at the pre-floor juncture, the stage at which we would be most likely to expect party leadership influence, may yield a more complete picture of just how the majority party in Congress utilizes the prerogatives it enjoys to advantage members in the achievement of the party’s objectives.

Of course, the legislative environment has undergone some dramatic changes during the post-war era, changes which have not left the parties

unaffected. Indeed, the impetus for certain of the alterations arose from within the parties. Scholars have examined factors such as the increasingly important role played by party leaders, subcommittees, the Rules Committee, and various procedural techniques. However, there has been comparatively little systematic investigation of the conditions under which legislative leaders employ nontraditional means to bring legislation to the floor and shape its mode of consideration. One example of such work is that of Krutz (2000a, 2001a, 2001b), who examines omnibus legislation and considers the conditions under which this vehicle is likely to be employed. However, omnibus legislation is only a portion of that which traverses the bounds of the “textbook” Congress (Shepsle 1989). We know somewhat less about other types of nontraditional legislative behavior, which Sinclair (2000) terms “unorthodox lawmaking.” And perhaps more importantly, there has been little examination of the role that party leaders play in this area, which is largely under their purview. While Sinclair’s work is significant in that it identifies the existence of such activity, there has been little work that attempts to systematically analyze earlier stages of the legislative process where the means and opportunity for partisan influence in a variety of different ways is vast.

The primary aim of this dissertation is to paint a richer picture of the interplay between parties and procedural options in the early stages of the legislative process in the U.S. House of Representatives. I examine three questions surrounding parties and procedure that have received little attention,

and hope to draw out their implications for theories of parties in Congress and for our understanding of the changing nature of the legislative process.

### **Placing This Work in the Larger Context**

Because of the somewhat unconventional organization of this dissertation as three related yet distinct essays, there is some literature that guides the entire work while other works bear more directly on particular essays. In light of this, I present here a brief review of the two primary strands of literature on work the dissertation is grounded. The first is that of parties in Congress, a large and ever-expanding body of work. This is followed by a brief review of the research on the changing nature of the legislative process in Congress.

As noted above, scholars have examined congressional behavior at the floor stage rather extensively, and have even begun to look at subsets of bills at earlier stages of the process as well. However, to date there has been little consideration of the larger context in which legislative deliberation occurs. Of course, examining particular aspects of the institution to the exclusion of others risks losing focus of a significant amount of congressional action and, perhaps more importantly, the mode of this action. For instance, it is important to realize that the bills on which conflictual recorded votes occur are a minority of the number that pass the House, despite the common conception of Congress as a conflictual body (see, e.g., Rohde 1995; Carson, Finocchiaro, and Rohde 2001). Similarly, looking for evidence of party influence only on bills for which restrictive rules were assigned or roll call votes were taken runs the risk of failing to account



for other dimensions of party influence. Here, I attempt to account for the wide-ranging role parties play in agenda setting in Congress. As Rohde (1991, 1995) and others have argued, we should not expect party and committee leaders to seek partisan ends on all of what occurs in Congress. Rather, other interests and goals are likely to weigh much heavier in certain domains. One of the central goals of this work is to sort out these various motivations and to provide a better understanding of the context in which a variety of procedures are employed to achieve various partisan ends.

The literature on parties in Congress is quite broad and extends over a lengthy period of time. In fact, there are noticeable eras in the study of the congressional party system. While Woodrow Wilson (1885) may have been among the first political scientists to discuss the role of party leadership in Congress (albeit in the context of the committee system), subsequent scholarship has paid more attention to parties as a specific and individual unit of analysis. Early studies fall into the behavioral tradition, and include such works as Turner (1951), Truman (1959), Jones (1968, 1970), Peabody (1967), and Ripley (1964, 1967, 1969).

Later, students of Congress began to consider the changing role of parties in Congress, frequently basing their analyses around roll call voting in the House. For a time, interest focused on the decline in party voting and an apparent decline in partisanship in the House (see, e.g., Brady, Cooper, and Hurley 1979; Cooper and Brady 1981; Collie and Brady 1985). However, subsequent work, motivated in part by the increasing frequency of party activity in the House,

began to reconsider the prevailing explanations of party government in Congress. Rohde (1991) was among the first to document and describe the causes contributing to the resurgence of partisanship in the postreform House of Representatives. At about the same time, Kiewiet and McCubbins (1991) and Cox and McCubbins (1993) advanced important studies of party government. In recent years, interest and research on U.S. legislative parties has flourished as scholars have analyzed both contemporary and historical accounts of partisanship.<sup>5</sup>

A related but distinct body of work focuses specifically on the activities and influence of congressional leadership. Obviously, leaders are elected by their parties, so the general topic of parties and the narrower subject of party leadership are somewhat difficult to disentangle. However, a distinct literature on congressional leadership dates back at least to Robert Peabody's (1976) *Leadership in Congress*. Other work, such as that of Sinclair (1983, 1992, 1995) and Cooper and Brady (1981), has built upon this tradition and extended the discussion to more recent periods. A common characteristic of much of this work is a strong emphasis on qualitative and interpretive understandings of the role of congressional leaders. Such an approach is wholly consistent with this area of legislative politics in large part because of the difficulty in finding appropriate data (leaders frequently do not operate in the limelight) and the small *N* in leaders.

This work is also motivated by recent reviews of the literature on parties in Congress. Evans and Oleszek (1999) suggest that the principal-agent model of

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<sup>5</sup> Prominent among this body of work are Aldrich and Rohde (1997-1998, 2000b), Binder (1997), Cox (2001), Cox and Magar (1999), Dion (1997), Jenkins (1999, 2000), and Schickler (2000, 2001). See Binder (2001) for a party-based interpretation of Schickler (2000).

party leadership, which is prevalent among research in this area, should be adapted to account for the context within which leaders make choices. For instance, they note the importance of time as a constraint facing party leaders in that we might expect different behavior in the late summer of a presidential election year as opposed to the spring following a congressional election. Furthermore, they note the presence of “semiroutine rhythms of the lawmaking process” that could be usefully integrated into models of leadership activity (3). Among the other points raised by Evans and Oleszek (1999) are the potentially disparate preference distributions a leader may face at various points in the legislative process—for example, between the committee of jurisdiction and the floor. Such divisions, when they occur, are likely to impact the nature and extent of leadership involvement. Similarly, in his review of recent positive theoretical research on congressional parties, Smith (2000) suggests the utility of analyses focusing on the emergence and activity of party leaders. Research in this vein, he argues, would “strengthen the empirical basis for claims about the functions of parties as solutions to problems of cooperation and collective action among legislators” (212).

The goal here is to examine areas of the congressional process in which party and committee leadership activity and influence are quantifiable and to consider a number of hypotheses related to their activity in this context. Thus, it is necessary to take into account the avenues and arenas in which the behavior of party leaders is likely to be evident. Of course, the activities and operations of congressional party leaders are varied and occur at any number of places. For

example, the majority and minority party leadership play a significant role in assigning members' committee seats, both historically (see, e.g., Polsby, Gallaher, and Rundquist 1969; Lawrence, Maltzman, and Wahlbeck 1998; and Krehbiel and Wiseman 2001) and in the contemporary Congress (see, e.g., Rohde and Shepsle 1973; Shepsle 1978; Smith and Ray 1983; Deering and Smith 1997; Cox and McCubbins 1993). Additionally, the majority party leadership, via its contingent on the Rules Committee, dominates scheduling and agenda setting on the floor of the House (see, e.g., Oppenheimer 1977, Rohde 1991, Cox and McCubbins 1993, Sinclair 1994, Dion and Huber 1996, Maltzman 1998). Recent research has focused on the role of communication and the strategies employed by party leaders to get their "message" to the electorate (see, e.g., Lipinski 1999, Evans and Oleszek 2000, Evans 2001). However, as alluded to earlier, an additional arena for influence (and the one to be explored here) deals with the role of party leaders in shaping the legislative process prior to a bill reaching the floor.

The analysis is guided in large part by conditional party government theory (Rohde 1991; Aldrich 1995; Aldrich and Rohde 1997-1998, 2000a, 2001), which views party leaders as agents who are interested in pursuing partisan goals under certain conditions and in certain circumstances.<sup>6</sup> This stands in contrast to a view of party leaders as individuals with invariable power (e.g., party cartel theory) or as mere window dressing (e.g., majoritarian theory), both of which suggest a constant level of party effects (or non-effects) across all of what occurs

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<sup>6</sup> A related though somewhat different conception of party leadership is offered by Cooper and Brady (1981). Their basic thesis is extended in Brady, Brody, and Epstein (1989) and Brady and Epstein (1997).

in Congress. In comparison, the expectation here is that certain bills will evoke partisan interests and others will not.

### **Outline of the Dissertation**

Although the legislative process is rather fluid and does not fit into a linear schema as well as it did at one time (see, e.g., Shepsle 1989), there are a number of points at which the process is subject to the intervention of party leaders. This dissertation focus on three important junctures or stages of the pre-floor legislative process.

First, in Chapter 2 I examine how committees go about deciding which bills to report to the floor. This is an important and early agenda setting move in the legislative process, and offers the potential to tell us much about the role of partisan and other influences within House committees.

Second, I consider the increasingly common tactic of bypassing the committee system. Due to a handful of well-publicized cases in the 104<sup>th</sup> Congress, this behavior is often associated with partisan legislating of the Newt Gingrich model. Chapter 3 attempts to offer a more thorough treatment of the subject, characterizing the variety of means and motivations for its use and discussing the implications for theories of committee and party power.

The third essay, Chapter 4, addresses a theoretical and methodological question surrounding the use of special rules in the House. This topic has received a significant amount of attention in the context of the competing theories

of legislative organization. I suggest that existing models may suffer from selection bias, and incorporate a fuller model of legislative agenda setting.

Finally, Chapter 5 concludes the dissertation. In it, I briefly revisit the foundations for the project—touching on the prior literature and the way in which I attempt to fill some gaps in existing research. I then turn to some of the main implications and review the significant findings. The chapter concludes with some of the questions raised here that will be of use for further study.

## Chapter 2

### Committee Agenda-Setting in the U.S. House of Representatives: The Asymmetric Distribution of Policy

*"...the practical effect of [the] Committee organization of the House is to consign to each of the Standing Committees the entire direction of legislation upon those subjects which properly come to its consideration. As to those subjects it is entitled to the initiative, and all legislative action with regard to them is under its overruling guidance. It gives shape and course to the determinations of the House." —Wilson ([1885] 1913: 70)*

#### Introduction

Congressional committees are generally the clearinghouses for thousands of bills in any particular session of Congress. On average, more than 5,000 bills were introduced in each two-year period during which the U.S. House of Representatives met in the 1990s, with less than 15 percent of these measures moving through the legislative process to final passage (Ornstein, Mann, and Malbin 2000: Table 6-1). Of course, the institution has neither the time to nor the broad interest in considering all of the measures that are introduced, and many if not most bill sponsors realize that their product has little chance of further consideration once it is assigned a number and referred to a committee. For many House members, they have obtained their goal by simply introducing the bill and preserving their subsequent opportunity to claim credit for some degree of legislative initiative on a particular issue. Thus, while we know and more or less understand what becomes (or perhaps more appropriately, does *not* become) of the vast majority of bills introduced in Congress, a more interesting question is what goes into committee decisions to act on and in some cases

report (that is, recommend) particular bills to the larger body in which they are members, the House chamber. This issue is important because most studies of congressional organization assume committee agendas to be relatively exogenous to subsequent stages of decisionmaking, such as the Rules Committee's determination of the type of special rule that is to govern floor consideration of a bill. That is, while various theories consider questions such as whether individual bills, based on a set of characteristics, will receive a restrictive or open rule, they most often do not directly address which bills among the many possibilities will arrive at the rule-granting stage of the process. At times this process is loosely modeled or briefly touched upon, but it is rarely if ever the focus of specific and detailed analysis.

Of course, the committee system has undergone significant change in the course of congressional history. The quote at the opening of this chapter draws attention to committee behavior at one extreme: that of complete committee autonomy. The bypassing of committees is relatively rare, particularly when it comes to significant legislation (see Chapter 3), and committee dominance of the House, though characteristic of certain periods of congressional development, has not been the general norm. However, it is important to ascertain the relative influence of various power centers in the House over its system of standing committees. This chapter seeks to address this and other questions relating to committee decisionmaking, taking particular note of the context (or contexts) within which committees operate. As students of politics and Congress have



noted, institutional constraints and rules of procedure hold significant importance in determining outcomes (Riker 1982).<sup>1</sup>

The chapter proceeds as follows. In the next section, I discuss the development of the literature on congressional committees, focusing particularly on theories of legislative organization. I then draw out some aspects of this literature that merit further attention, including the notion of committee agenda setting. In the second section, I briefly review the literature on committee-decision making, which is in varying degrees distinct from the literature on committee organization. I turn next to the issue of multiple referral and describe how this aspect of the legislative process relates to committee decision making and the agenda-setting process. In the subsequent sections, I link the preceding literatures and develop a theory to explain the choice of bills upon which a committee will take action, and then employ the theory to derive hypotheses that are tested empirically using data drawn from the 105<sup>th</sup> Congress. In the succeeding section I link my findings to those of others regarding jurisdictional fragmentation and consider recent developments in the era of Republican control of the House. I conclude with a discussion of the prominent findings and some avenues for future research.

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<sup>1</sup> Not surprisingly, this fact weighs prominently on the mind of political practitioners as well. Representative John Dingell, a Michigan Democrat and former chairman of the House Commerce Committee, is frequently quoted in saying that "If you let me write procedure, and I let you write substance, I'll screw you every time" (Phil Duncan, ed., *Politics in America* 1996: 689).

## **Perspectives of Committees and Theories of Legislative Organization**

Since the dawning of modern political science, and in particular its theoretical and empirical application to the structure and functioning of American politics, students of Congress have contemplated the role of congressional committees. Wilson ([1885] 1913) is often quoted and even more often cited on the subject. However, his work was one among many that focused on the subject of congressional committees in the late 19<sup>th</sup> and early 20<sup>th</sup> Centuries. For instance, as Maltzman (1998: 14) documents, a number of scholars at the time believed that congressional committees were at the behest of the larger body from which they were drawn.<sup>2</sup> These works as a group considered committees, and the Congress more generally, from the perspective of what has come to be known as “old institutionalism.” This perspective is characterized by largely descriptive understandings of the functioning of political institutions.

However, as legislative scholars, along with colleagues in other sub-fields of the discipline, made the shift from the “old” institutional approach to that of behavioralism, the focus and approach to studying committees changed. Analyses began to consider the implications of various institutional apparatuses, behavioral motivations, and incentive structures on the modes of operation in Congress and the decision making taking place within committees. For instance, Polsby’s (1968) seminal article offers insights into the central role of seniority in committees, and later work (e.g., Polsby, Gallaher, and Rundquist 1969) extends the study of seniority to earlier periods of congressional history. Others, such as Jones (1961, 1962), consider the role of representation in committees and

subcommittees. A common theme linking many of these studies and others is the prominent place given to behavioral norms that seemed to be characteristic of the textbook era of Congress (see, for instance, Abram and Cooper, 1968; Goodwin, 1970; and Gertzog, 1976). Fenno's (1966) influential study of the appropriations committees takes a similar, somewhat sociological approach. And of course Cooper's (1970) discussion of the development of the committee system stands as a prominent, characteristic approach to other studies of the period.

Beginning in the 1970s, the study of congressional committees began to move in a decidedly positive (that is, formal or deductive) direction. A large body of work dealing with issues of instability in voting among individuals under a set of basic assumptions regarding rationality and incentives began to be applied both generally and later more specifically to the legislative setting of the U.S. Congress.<sup>3</sup> Bridging the gap between behavioralism and the new institutionalism of contemporary legislative scholarship are such foundational works as Fenno (1973) and Mayhew (1974), both of whom prominently characterize members of Congress as rational, goal-oriented actors seeking to achieve particular ends. Other prominent examples in the sub-field of congressional politics during the 1970s that deal with committees from a rational choice perspective are Ferejohn's (1974) work on pork barrel politics, the examinations of committee assignments by Rohde and Shepsle (1973) and Shepsle (1978). Some writings,

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<sup>2</sup> See, for instance, McConnell (1898), Alexander (1916), and Luce (1922).

<sup>3</sup> Prominent in this body of literature, which was motivated at least in part by the theoretical work of Arrow (1951), Black (1958), and others, are Plott (1967), McKelvey (1976), and Riker (1980).

even of a more normative nature, became couched in the positivist tradition (see, for instance, Fiorina, 1977).

These and other works set the foundation for what was to become a burgeoning literature applying the positive, or “new” institutionalist, approach to congressional committees and legislatures more generally.<sup>4</sup> The approach lent itself to the consideration of numerous facets of legislative behavior, and scholars considered accordingly everything from congressional elections to institutional development to committee organization and institutional design.<sup>5</sup> A significant topic of interest at about the same time was the issue of institutional reform, and the effects the reforms of the 1970s would have on the policy process. Though much of this research was not grounded in the rational choice paradigm, subsequent work came to view the reforms through such an analytic lens (see, e.g., Rohde 1991, Adler 2002).<sup>6</sup>

Issues surrounding the organization of Congress, and its committee system in particular, have been a topic of enduring interest among congressional scholars. Motivated by early work suggesting that committee members might be considered “high demanders” of certain policy outputs, thus leading to potential

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See Shepsle (1993) for a review of the development of the new institutional economics literature as it grew out of these and other works.

<sup>4</sup> In contrast to the “old” institutionalism, which tends more toward “description and prescription than to articulation of causes and consequences” (Krehbiel 1991: 1), the new institutionalism seeks to ground our understanding of institutions in the endogenous behavior of goal-oriented political elites (Rohde and Shepsle 1978; Shepsle 1986; Soltan, Haufier and Uslaner 1998).

<sup>5</sup> Note that I use the terms institutional design and legislative organization, which is an example of the former, interchangeably.

<sup>6</sup> While the literature on congressional reforms is vast, a sampling of the relevant works include Davidson (1990) and Galloway (1951) on the Legislative Reorganization Act of 1946; Davidson and Oleszek (1977), Ornstein (1975), Rieselbach (1978, 1994), Schickler, McGhee, and Sides (2001), and Welch and Peters (1977) on the reforms of the 1970s; and Aldrich and Rohde (1997-98, 2000b), Davidson (1995), and Evans and Oleszek (1997a, 1997b) on the reforms of the mid-1990s.

policy biases within committees (see, e.g., Niskanen 1971), subsequent research continued to grapple with the evidence for this claim and its theoretical significance for legislatures. Shepsle (1978), Davidson (1981), and Shepsle and Weingast (1984a) all present evidence supporting the notion that members seek assignment to committees which offer electoral benefits to them, and thereby contribute to the committee system in general being composed of “preference outliers.” The question then became one of discerning the degree to which such members were able to exert significant control over legislative outcomes, giving rise to the literature on committee power (e.g., Shepsle and Weingast 1987, Denzau and MacKay 1983) and legislative organization.

### *Preferences, the Outlier Debate, and Committee Organization*

The widespread presence of committee outliers is not universally accepted, however, and a considerable amount of attention has been given to testing this claim. In fact, this lies at the heart of the competing theories of legislative organization. Krehbiel (1990, 1991) was among the first to challenge the notion that committees are in fact composed of preference outliers. His work gave rise to an enduring debate on the organizational motivation for congressional committees. At the same time, significant attention was given to the question of how best to conceptualize and measure the preferences of members of Congress.<sup>7</sup>

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<sup>7</sup> The debate regarding preferences, while relevant to the analysis here, is somewhat tangential. Some of the foremost studies in this vein of the literature include Hall and Grofman (1990), Snyder (1992), Krehbiel (1994), Groseclose (1994), Londregan and Snyder (1994), and Maltzman (1997).

There are three primary theoretical perspectives regarding committee organization in Congress, each relating to various goals and incentives upon which committee members and members of the chamber at large are said to take action and arrive at mutually beneficial solutions.<sup>8</sup> A brief outline of the three theories is presented here, as a full treatment of each would take more space than is warranted by the subject of this chapter.

Proponents of a distributive theory of legislative politics hold that members seek after seats on committees that deal with legislative issues of particular interest to their constituents. Such institutional positions offer members the opportunity to garner distributive benefits that will be of use to them in credit-claiming and reelection. The expectation of distributive theory is that this type of behavior occurs across committees in Congress, with each panel focusing on legislation of particular interest to its membership and deferring to others on less salient measures. As such, an institutional logroll occurs, essentially promoting a gains-from-exchange mode of lawmaking (Weingast, Shepsle, and Johnsen 1981; Weingast and Marshall 1988). There are a number of implications or corollaries to distributive theory. Among them are the expectation that committees will be composed of non-median members (outliers) and that restrictive rules will be employed on distributive legislation in order to prevent the unfolding of logrolls at the floor stage.<sup>9</sup>

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<sup>8</sup> Some have suggested a place for a fourth view, based on the idea that committees emerge and survive principally to balance the interests of one chamber against the other (Hammond and Miller, 1987; Tsebelis and Money, 1997; Diemer and Myerson, 1999). See Groseclose and King (2001) for a review of this “bicameral rivalry” theory, along with an insightful evaluation of the competing theories.

<sup>9</sup> Recent work in the distributive vein includes Adler (2000, 2002) and Adler and Lapinski (1997). Students of Congress have also noted, however, the electoral benefit some members may

In many ways a direct critique of distributive theory, Gilligan and Krehbiel (1987, 1988, 1989, 1990) and Krehbiel (1989, 1990, 1991, 1997) have put forward the view of committees as “exclusively instruments of the legislature that perform for the legislature” (Krehbiel 1991: 80). Rather than being composed of preference outlying high demanders whose primary goal is to secure distributive gains, committees serve as agents of the larger body from which they are drawn. That is, they act as specialized agents in procuring detailed policy information that is of use to the chamber in making more informed decisions. Much of the informational literature focuses on the ways in which more efficient information transmission occurs between the committee and the floor. Through a somewhat intricate signaling process, non-committee members determine the reliability of the information with which they are presented. Some of the propositions drawn from informational theory are that the committee and floor medians should not diverge dramatically from one other and that the bills proceeding to the floor in an information-rich context should be more likely to receive protection from amendment via restrictive rules.

The third theoretical perspective posits that political parties exert significant influence over the organization of Congress and the policy outputs it produces. (Rohde, 1991; Kiewiet and McCubbins; Cox and McCubbins, 1993; Aldrich, 1995; Aldrich and Rohde, 1997-98, 2000a, 20001).<sup>10</sup> Party theory holds

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achieve by maintaining a record of fiscal conservatism or by building a reputation as a “pork buster” (Sellers 1997, Bovitz 2002).

<sup>10</sup> It is important to note that there are different strands of party theory. Some purport that parties operate as cartels, essentially bypassing the minority party altogether (e.g., the work of Cox and McCubbins), while others argue that influential parties emerge under certain conditions, particularly when the majority party is cohesive and diverges from the minority. The latter is known as conditional party government, whose primary proponents are Aldrich and Rohde.

that the majority party organizes the House in such a way as to advantage itself and its members vis-à-vis the minority party. For instance, the prestige committees are stacked with a higher ratio of majority party members so that the issues that are of particular importance to the majority will be more favorably handled in committee. Similarly, the majority party uses the Rules Committee to structure debate and the amendment process so as to seek favorable outcomes on the floor. Rather than the median member of the chamber as the institution's pivotal member, most party theorists would argue that the majority's median member or some conglomeration of its leadership (or both) are the critical actors.<sup>11</sup>

As is evident from the preceding review of the contending theories of legislative organization, there are a variety of motivations that congressional institutions, and the committee system in particular, have been hypothesized to meet. Such motivations (e.g., informational efficiency/expertise, the distribution of gains from trade, and partisan policy outputs) underlie the various theories and their expectations regarding the organization of the committee system, the rules process, and post-floor procedures (such as conference committees). However, an aspect of the legislative process that has largely escaped the attention of scholars is the activities that occur *within* House committees. While the theories have something to say about how institutional apparatuses can be shaped to

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There is an ongoing dialogue between the two in which many of the distinctions are being fleshed out (see, for instance, Cox and McCubbins 2002, Finocchiaro and Rohde 2002).

<sup>11</sup> Of course, the party school is not without its critics. See, for instance, Krehbiel (1993, 1999a, 1999b, 2000), Schickler (2000), and Schickler and Rich (1997). These and other works are part of a burgeoning literature contesting the influence of parties in a variety of congressional contexts—many beyond the area of committee politics. Responses to the preceding works have been made by a host of scholars.



realize certain goals, they have less to say about just what lies beneath those goals (of course this varies both within and across the three dominant perspectives).

Consider, for instance, the informational theory, which is most often linked to the institutional good provided by policy expertise and specialization, a good that in itself may be related little if at all to individual policy choices within committees. Krehbiel (1991) holds that:

“Informational theories, like distributive theories, are individualistic in their axiomatic foundations, but informational theories uniquely embrace the notion of policy expertise as a potential collective good. If obtained and shared, individuals' policy expertise redounds to the whole, that is, to *all* legislators. As in the distributive perspective, informational theories view legislatures as arenas of individual distributive conflict. But unlike the distributive perspective, informational theories also view legislatures as organizations that may reap collective benefits from specialization” (5).

Interestingly, then, even informational theory seems to suggest that the predominant motivation of individual members is the realization of distributive interests. While in theory this distributive pie could be policy that need not be zero-sum in its division, such conflict (defined as distributive in nature) is more often conceived of as a divide-the-dollar scenario in which individuals compete over limited resources. Thus, the incentive exists to engage in logrolls to protect the mutually agreed-upon division. The critical distinction between a pure distributive scenario, which underlies that type of theory, and that of an informational rationale, is that the chamber (by way of its median member and majoritarian nature) imposes some degree of constraint upon members'

distributive tendencies in the interest of more moderate (or middling) policy outputs and higher levels of informational efficiency.

The theories are more closely linked to how and when a committee chooses a final product. It seems to be assumed that the committee can choose from among a variety of products, and the choice tends to be over whether or not to report, what type of signal to send, and how such choices vary under different circumstances (e.g., the heterogeneity of the committee, the type of rule in force, etc.). What seems to be exogenous to the models is the particular issues which are to be addressed, the potential for competition between committees (most models assume a single referral context), and the choice of which legislative vehicle (or bill) is to be employed. Of course, committee rules govern the extent to which individual measures may be modified and even broadened, but for simplicity I assume that the committee chair maintains the right to govern such choices, and that the interesting question is which among many bills and issues he or she chooses to place on the agenda.

### **A Theory of Committee Agenda Setting**

A multiplicity of goals and incentives operate within Congress, some at the individual member level, others at the institutional level, and some at both. Theories of legislative politics, and those relating to institutional design in particular, often (and appropriately) focus on just one level for analysis. At their core, however, each theory must wrestle with and make assumptions about the larger collectivity (if a micro-level theory) or the individual members composing

the body (if a macro-level theory). It is from this point that I begin, and discuss the importance of linking individual-member goals to the theories of organization. From the various perspectives, what should we expect to observe in terms of committee agenda-setting? What do individuals, most particularly individual committee members, want to obtain from the committee system? Thus I begin at the level of individuals, and proceed with the hope of uncovering how the various theories suggest policy goods should be distributed by House committees.

Few would argue with the notion that the positive handling of a member's legislation is a benefit to him or her. This is an electoral and policy good with which an individual can seek to better him or herself. That is, it may be a tool for electoral credit-claiming (and thus part of the reelection goal), it may be a means of institutional advancement, or it may simply be a component of the basic goal of enacting good public policy.<sup>12</sup> While each of these goals has a solid foundation in the literature on legislative activity (see Fenno 1973, Mayhew 1974, Hall 1996, and Wawro 2000), it is less important here to distinguish which among them (or the relative balance between them that) is most characteristic of Congress than it is to note the inherent value in having one's legislation advance through the legislative process.

In Mayhew's (1974) view, credit-claiming is most effective when a member of Congress is able to reasonably assert that she was personally responsible for some "good" done by government or a governmental unit either at her behest or

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<sup>12</sup> A frequently heard refrain from the lips of John Dingell (a House Democrat from Michigan, and the longest-serving member in the 107<sup>th</sup> Congress) in his primary contest against fellow incumbent Lynn Rivers was the fact that not one piece of legislation bearing his opponent's name as its sponsor had been passed into law. For that matter, not even one had been reported out of

due at least in part to her initiative (53). Mayhew goes on to suggest that a locus for such activity, though perhaps largely obscure from the eyes of voters, is the congressional committee, which sits in prime view of important political actors both within and without the institution (60-61, 92). The logic here is similar to that of Arnold (1990), who posits the notion of “attentive publics” who by virtue of their interest and activity are able to translate legislative activity into electoral effects.<sup>13</sup>

It is one thing to argue that positive action on one’s legislation is a “good” that members’ seek in attaining diverse goals in Congress. It is quite another thing to determine how such “goods” are distributed among many actors seeking to obtain them—certainly more actors than opportunities. That is, given the many constraints operating on Congress, not the least of which is time, nowhere close to all measures can even be considered, let alone reported by committees. Thus, there must be some mechanism (or mechanisms), by which committees navigate the array of potential alternatives before them. As discussed at length in a preceding section of this chapter, students of Congress have noted that committees are organized to serve the interests of some center or centers of power. While just whom it is that committees serve remains an issue of dispute, the three primary theories of legislative organization may offer insight into this arena of legislative politics. However, these perspectives have not been directly applied to this stage of the legislative process. Scholars have examined

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committee (Welna 2002). While this fact is not likely to have turned the tide in the election, it underscores the relevance of such considerations to members’ electoral calculus.

<sup>13</sup> A related strand of research points out the relationship between the process by which legislators carry out the business of Congress and the public’s approval of the institution (see, for instance, Hibbing and Theiss-Morse 1995). Others have offered more direct evidence that congressional behavior impacts the public image of the institution (Durr, Gilmour, and Wolbrecht

committee composition, rule choice, voting behavior, and other dynamics of the policy-making process to assess the explanatory power of the competing theories, but to date there has been little consideration given to how the theories may help us understand the decision making that occurs within committees. More specifically, the factors affecting committee choices may be linked to the various theories, and an additional benefit of such an analysis may be that this stage of the process offers insights into the relative power of the three perspectives. Before beginning, however, it is necessary to consider the implications of each in developing a theory of committee decision making.

Informational incentives may be a *component* of committee action, but they are not a *motivation for* committee action. The literature does not deal much, if at all, with how electoral goods should be distributed among members. While it does suggest that members of the relevant committees should benefit from the efficient transmission of information to the floor via the distribution of goods contained in a measure that is preserved on the floor by virtue of restrictive rules, at first pass it seems to have little to say about other possible asymmetries in the committee decision making process. Thus, perhaps the theory is agnostic on which measures should be selected for consideration. If this were the case, then one might expect to find a relatively even or proportional distribution of sponsors according to party, seniority, specialization, etc.

On the other hand, it is quite possible that at even this early stage of legislative agenda setting, goods are distributed according to an informational

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1997) and that party fortunes follow shifts in the preferences and opinions of the public (De Boef and Stimson 1995).

rationale. Such an approach would likely integrate factors relating to members' informational expertise, a good that both the committee and more importantly the chamber is interested in encouraging. Thus, this perspective might hold that members with more expertise in an issue area, those who are more accurate reflections of committee and chamber preferences, and those whose measures seem to be widely supported should achieve greater rates of success. Of course, the latter may be more of a cue for legislative potential, and as such may be better construed as a control variable than one that is directly related to the informational theory. Although the process by which issues are generated in the informational rationale is somewhat unclear, it seems plausible to assume that the process is either random or accrues on the basis of general issue importance nationally. That is, if there is a logic to the way in which committees select issues for action, it is likely to be in response to the degree to which particular issues may be of benefit to committee members (both in credit-claiming, chance of passage, electoral visibility, and perhaps response to the chamber).

Distributive theory, on the other hand, does provide some insight into issue selection. The assumptions underlying much of the theoretical work on gains-from-exchange suggest that members seek to build either minimum winning coalitions or universalistic coalitions. The baseline, however, is that measures are chosen according to the degree to which they contribute to members distributive interests. Those that touch favorably upon more issues of interest to more members of the House are thereby more likely to face a friendly audience than those that do not. One need look no further than the "Christmas

tree” bills that consistently make their way from the Transportation and Infrastructure Committee to the House floor to see that pork attracts votes (and committee members). This dynamic is also evident in the roster of this particular committee, whose membership tends to swell during Congresses in which transportation reauthorization legislation is due for consideration.<sup>14</sup>

Finally, partisan theory holds that committees are organized so as to extract partisan gain from the committee system and the chamber as a whole. Thus, it seems plausible to assume that committee decisions, or at least decisions made by the majority party contingent and chair, are likely to be conditioned upon partisan considerations. Committees are likely to take up bills related to the party’s interests and will likely seek to benefit majority party members and those who fall closer to the party’s positions ideologically.

In line with previous work, I hold to the view that there are multiple domains (or motivations) at work in Congress and that these are often not in competition with one another, and may at times even be encouraged. Additionally, my expectation is that committee politics are multidimensional, although parties and other features of Congress may impose constraints on the dimensionality of observed behavior in the institution (Rohde 1994, 1995; Aldrich and Rohde 1997; Maltzman 1997; Carson, Finocchiaro, and Rohde 2002; Talbert and Potoski 2000, 2002). Consider, for instance, the majority party’s interest in obtaining distributive goods, a desire which may not preclude cooperation with

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<sup>14</sup> I thank Dave Rohde for pointing me to the interesting case of the Transportation Committee in the 105<sup>th</sup> Congress, whose membership rolls, while increasing and decreasing over time, grew to 74 members in 1997—more than any other standing committee in Congress—most likely due to the opportunity to procure pork in the reauthorization legislation (Congressional Quarterly 1997).

the minority party. It has been shown elsewhere that multiple domains may be at work even within individual bills—with partisan interests winning the day in some instances, and distributive interests in others (Hurwitz, Moiles, and Rohde 2002). Therefore, it seems reasonable to expect that such expectations may all be important at various junctures. Even more importantly, it may be reasonable to expect that the majority party, for instance, may reward specialization among members of the majority party.

### **Empirical Implications/Predicting Committee Action**

Based on the preceding discussion and other factors for which it may be desirable to control, I offer a number of hypotheses regarding the conditions under which committees (and their chairs) are likely to act on particular pieces of legislation. I proceed from the assumption that committee decision makers view bills and positive action on them as opportunities for policy initiative that may be viewed as responses to important issues (to themselves, to others in the legislature, and those outside the legislature), as goods that may be allocated among members for credit-claiming purposes, and means to achieve specific goals (including personal goals, partisan goals, and distributive goals). Of course, their decision making is constrained by a host of factors, including the likelihood of a measure's subsequent success in the House (and beyond), the lack of an infinite amount of time to consider all of what one might like, and the need to establish personal and committee credibility (more of an informational rationale for signaling purposes).



### Distributive and Informational Predictions

Distributive theory suggests that members have an interest in collecting goods that are of use to them, and as such they “self-select” onto committees that traffic in such goods. While the degree to which committees are representative of the chamber and/or are composed of “preference outliers” has been the subject of significant dispute, it would seem reasonable to suggest that members would like to realize distributive gains and the more gains that accrue, the better off they will be. As such, distributive theory would suggest that:

Hypothesis 1: Bills with greater degree levels of distributive content are more likely to attract the attention of committees than those with less of a distributive component.

In contrast to distributive theory, informational theory holds that members' predominant interest lies in receiving and transmitting useful signals regarding public policy via the committee system. In this view, the legislature is designed so as to encourage individual committee members to transmit such information to the floor. The primary beneficiary of this process, in the view of informational theorists, is the chamber's median member. Thus, the theory is said to be one of majoritarianism.

There are a number of predictions regarding the legislative process that flow from this framework, as described at length by Krehbiel (1991)—particularly

in his analysis of restrictive rules. Many of the expectations translate fairly well into the context of committee decisionmaking. First, he argues that confirmatory signaling on the part of divergent members increases the efficiency of information transmission, and thereby the attractiveness of the bill. Others, too, have argued that cosponsorship is a means of signaling on the part members of Congress seeking informational cues or shortcuts (see, e.g., Kingdon 1989, Young and Wilson 1993, Kessler and Krehbiel 1996). Thus, one measure of such signaling on a particular piece of legislation is the degree to which the minority party supports it, as captured by the number of minority party cosponsors. This logic provides the next hypothesis:

Hypothesis 2a: The greater the number of minority party cosponsors on a bill, the more likely it is to be reported by the committee(s) of referral.

At the same time, it may be true that in the partisan context in which committees are controlled by the majority party, minority party support is indicative of the underlying division between the two parties. In this scenario, the greater the degree of confirmatory signaling (particularly in the presence of little majority party support), one might expect to see a decreased likelihood of legislative success. If this perspective were to hold true, then the expectation would be opposite of that which Krehbiel proposes. In this case, the alternative hypothesis holds the following, with the null that minority cosponsorship has no effect:

**Hypothesis 2b:** The greater the number of minority party cosponsors on a bill, the less likely it is to be reported by the committee(s) of referral.

Another component of informational theory is the premise that the legislature places a premium on policy expertise. Krehbiel (1991) argues that committees with higher levels of expertise should be more protected on the floor than those with less specialized knowledge of an issue area. A corollary of this conception of the legislative process that may be applied to the committee process is that individual members with higher levels of issue-specific expertise should be more likely to achieve positive action on bills they sponsor than those with lower levels of specialization. As such, there is a degree of deference to senior members who have obtained the benefits of years of experience in dealing with and legislating on a particular issue.

**Hypothesis 3:** The greater the expertise of the bill sponsor, the more likely the bill is to receive favorable action in committee.

Any study of legislative action in the contemporary House must grapple with the issue of multiple referral. The practice of referring legislation to multiple committees in the House is rooted in the institutional reforms of the early and mid-1970s. Davidson, Oleszek, and Kephart (1988) suggest that the change “was intended to bring the wisdom and perspective of several different

committees to bear upon complex public issues, to make the committee system more flexible in considering policies that cut across jurisdictional boundaries, and to encourage intercommittee cooperation and contain jurisdictional conflicts" (5). In contrast to other reforms of the period, the move to multiple referral was thought to be relatively inconsequential in that its proponents simply sought to capture the expertise of various committees in what had become a highly fractionalized and diverge jurisdictional framework.<sup>15</sup> While multiple referral was not commonly employed at the outset, its use rose somewhat in subsequent years. In recent Congresses, about 20 percent of all bills and resolutions are referred to more than one committee.<sup>16</sup> Of course, many of the most important and complex issues traverse the multiple referral process and sometimes appear in the form of omnibus bills (Krutz 2000a, 2001a, 2001b; Sinclair 2000a).

Of particular importance here, however, is the fact that the existence and employment of this procedure has implications for decisions on the part of congressional committees, the chamber as a whole, and the majority leadership.<sup>17</sup> In much the same way that there are opposing expectations

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<sup>15</sup> Lest one think that jurisdictional issues are so simple, significant research since the 1970s has documented the degree to which members ferociously seek to protect and acquire turf and the resultant rise in fragmentation of the committee system (Jones, Baumgartner, and Talbert, 1993; King, 1997; Baumgartner, Jones, and MacLeod, 2000; Adler and Still, 2000; Adler, 2002).

<sup>16</sup> For data on the frequency of multiple referrals, see Davidson, Oleszek, and Kephart (1988)—94<sup>th</sup> to 100<sup>th</sup> Congresses; Cooper and Young (1993)—101<sup>st</sup> and 102<sup>nd</sup> Congresses; and Finocchiaro (2000)—103<sup>rd</sup> to 105<sup>th</sup> Congresses. It is also worth noting that a component of the Republicans' reform agenda upon assuming majority status in the House in 1995 was modifying multiple referral procedures (see Evans and Oleszek 1999b). Evans and Oleszek (1997b) provide an enlightening discussion of the Republicans' interest in wholesale changes to the committee system, and the difficulties the party encountered in achieving significant modifications.

<sup>17</sup> The literature that considers the strategic nature of committee decision making in the context of multiple referral has modeled a variety of contexts, with differences based on the actors included and the type of multiple referral. For instance, in his study of the differences in committee power under single and multiple referral, Young (1996) examines joint and sequential referral, while

regarding cosponsorship depending on the theoretical perspective one were to adopt, there is some degree of divergence in views of the potential effect of multiple referral on the likelihood of a bill being reported by a committee.

Krehbiel (1991), in his analysis of the use of restrictive rules, notes the potential attractiveness to the floor of bills considered by multiple committees. Such bills are appealing because the process by which they moved through the legislative process introduces greater heterogeneity. Thus, the floor is willing to cede more protection to committees' products on the basis of the more efficient information transmission that occurs under multiple referrals. Committees are essentially kept more honest in this context. King (1997) echoes this perspective.

Translating this logic to a committee's decision of whether or not to report a bill to the floor, we might say that because of the added protection from amendment that predominates in the multiple referral context, reporting such a bill is more attractive to a committee. Stated as a hypothesis:

Hypothesis 4a: Bills referred to more than one committee are more likely to be reported to the floor by committees of referral than those that were referred to only one panel.

Others have suggested that the introduction of multiple referral has impacted the way in which committees interact over turf issues (see King for a discussion of the nature of jurisdictional disputes in the House) and the efficiency

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Bawn (1996) focuses exclusively on joint referrals in her analysis of the strategic response of committees and the role of party leaders. Additionally, Austen-Smith (1993) incorporates both

with which the House as a whole is able to process legislation.<sup>18</sup> For instance, Collie and Cooper (1989) argue that multiple referrals allow the House to employ “the expertise of its committees in far more flexible and efficient ways” (264), while others have noted the corresponding inefficiency and fragmentation that may occur as a result of involving additional panels in a bill’s consideration. On this latter point, Davidson and Oleszek (1992: 136) note that “the most frequently claimed effect of multiple referrals” is that the number of veto points facing a bill’s enactment is increased.

Young (1996) presents the most thorough formal analysis of the impact of multiple referral on committee power, both in terms of making proposals (reporting a bill) and exercising gatekeeping power. He employs a series of spatial models that yield a number of interesting insights regarding the referral process in the House. Of central interest for the analysis here, he finds that with joint referrals (by far the most common type of referral) the number of points in equilibrium is larger relative to sequential and single referral. Because each committee acts independently in exercising its gatekeeping power, finding a point preferred by all interested parties is usually more difficult under multiple referral (although the effect is lessened in the presence of a closed rule). Thus, in accounting for the alternative perspective on the effect of multiple referral, the alternative hypothesis is stated as follows. Once again, the null hypothesis

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joint and sequential referral into his model of information transmission in the House.

<sup>18</sup> Due in large part to the Senate’s weaker rules on germaneness and the permeability of committee jurisdictions, even at the floor stage, multiple referral has had a comparatively smaller impact on that body’s mode of deliberation and the manner in which it manages its legislative workload (Davidson 1989).

counterpart to Hypotheses 4a and 4b is that multiple referral has no impact on a committee's choice of whether to report a bill to the floor.

Hypothesis 4b: Bills referred to more than one committee are less likely to be reported to the floor by committees of referral than those that were referred to only one panel.

The final hypothesis drawn from the informational literature seeks to account for the potential role of ideology in explaining members' success at achieving positive action on legislation they sponsor. In numerous works, Krehbiel has argued forcefully for the position that Congress is organized as a majoritarian institution in which the chamber's median member holds the balance of power. His central challenge to distributive and partisan theorists has been to demonstrate non-median policy outcomes and/or behavior that can be explained as a function of anything other than members' underlying policy preferences. Applied to the committee context, Krehbiel argues that committees composed of policy extremists are less likely to achieve success than those who are closer to the chamber or committee median. Because the median member is the pivotal voter regardless of the context, whether in committee or on the floor, divergence from this position is not likely to endure.<sup>19</sup> This expectation gives rise to the following hypothesis:

Hypothesis 5: Bills sponsored by members who are more ideologically divergent from the committee median are less likely to be reported to the floor than those that are sponsored by members closer to the median member.

### *Partisan Predictions*

At its core, the partisan theory laid out in the preceding section of this chapter holds that committee action, and particularly the choice of which bills among many to act on, is fundamentally an electoral good (with obvious policy implications) that accrues to members of the majority party. That is not to say that there is no role for members of the minority party to receive some share of the goods produced by the committee system. In fact, a large body of literature suggests that all members of Congress have an interest in seeing to the interests of their colleagues regardless of party status. Such an approach helps to explain the significant universalistic tendencies that hold forth in many domains of congressional activity (Niou and Ordeshook 1985; Collie 1988; see also Carson, Finocchiaro, and Rohde 2001).

Hypothesis 6: Bills sponsored by members of the majority party are more likely to receive positive action in the committee(s) to which they are referred than those sponsored by minority party members.

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<sup>19</sup> Of course, the pivotal voter is not the median member under supermajority rules (Krehbiel, 1998). However, most committee decisionmaking, and that of the House in normal circumstances, proceeds under simple majority rule.



A purely majoritarian theory would see the influence of cosponsors from the two parties as described above. Broader support across opposing factions is an indication that the measure cuts across the ideological spectrum, and thus should be more likely to satisfy the median House voter. However, a partisan perspective is likely to take an alternative view. Recall that partisan theories posit a legislature in which a member of the majority party (who lies away from the floor median) holds the position of power in terms of policy. Thus, in line with partisan expectations, there are different predictions for the cosponsorship variables in this context (see Hypothesis 2b above).

In much the same way that the expectations drawn from partisan theory regarding the effect of minority party cosponsors differ from those of informational and majoritarian theories, the two approaches engender contrasting hypotheses regarding the influence of ideology. While Krehbiel's remote majoritarianism entails the chamber's median member (or, in the committee context, possibly the committee median) controlling the equilibrium space for policy proposals, party theory holds that such power lies away from the median and somewhere within the majority party caucus. Most suggest the pivotal member(s) to be either the party's median or some conglomeration of the majority leadership (speaker, speaker plus other top leaders, etc.). Thus, partisan theory offers the following expectation, while the null maintains no ideological effect.

Hypothesis 7: Bills sponsored by members who are more ideologically divergent from the majority party median/committee median/chair are less likely to be reported to the floor than those that are sponsored by members closer to the pivotal member.

Finally, it may be the case that if majority party specific benefits evidence themselves in the analysis, that particular components of the other theories apply more directly to the majority party than to the legislature as a whole. That is, it is possible that specialization matters only within the majority party, or that the distributive content of majority-sponsored legislation has an impact on its subsequent likelihood of success. To control for this potentiality should strong majority party estimates emerge in the empirical analysis, a series of interaction terms will be introduced to capture majority-specific effects.

### Controls

I turn next to the factors likely to constrain and influence committee chair's decisions regarding whether to take action on a bill or issue. First, given the limited time frame within which a committee may act, as time passes I suggest that action is less likely (Grant 2001). It is well-established that from introduction to passage, most legislation takes months to process. Therefore, I control for the possibility that:

Hypothesis 8: The later it is in a session of Congress, the less likely it is for action to be taken on a bill.<sup>20</sup>

Second, there are some items that might be considered “must-pass” legislation. In this context, one might envision committees as serving a broader institutional constituency, or seeking to offer an institutional good. Realistically, in such a context the committee has little choice over whether or not to act. It is quite rare, although not unheard of, for members to entertain (and even follow through on) the thought of shutting down the machinations of government.<sup>21</sup> Such must-pass items, following Krehbiel (1991) and others, include what one might consider essential or emergency legislation such as appropriations bills, emergency and continuing appropriations, and measures to extend the debt ceiling. In the next section, I develop more completely just how this notion is quantified.

Hypothesis 9: Measures with some degree of urgency are more likely to appear on the agenda than others.

While not directly linked to any of the theories of legislative organization, it is fairly well established that members both strive for and employ positions of power to advance their goals (Fenno 1973), a component of which is likely to

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<sup>20</sup> It is worthwhile to note that each of these hypotheses are formulated such that all other factors are considered to be equal. That is, I would expect lateness of session to have an impact *ceteris paribus*. Controlling for other factors will allow me to establish the impact of each of the hypotheses in the context of a larger model.

hinge at least in part (whether directly or indirectly) on positive legislative action on measures one has sponsored. Given the advantages accruing to those in positions of power, it seems reasonable to expect that such members would be more likely to have a higher likelihood of committee action for their bills. This leads to the third of the general claims to be made regarding committee agenda setting.

Hypothesis 10: Bills sponsored by members holding a position of institutional power are more likely to achieve success in committee than others.

## **Data and Measures**

For the empirical analysis, I compiled a dataset of all bills introduced in the House and referred to one or more committees during the 105<sup>th</sup> Congress (1997-98).<sup>22</sup> A total of 4,874 bills met these characteristics, though when matched up with the available variables, the number of exploitable legislative measures falls

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<sup>21</sup> In the first Bush administration, the government shut down briefly. The better-known case of government shutdown occurred near the end of the first session of the 104<sup>th</sup> Congress in 1995.

<sup>22</sup> The 105<sup>th</sup> Congress was chosen for two primary reasons. First, it is a fairly recent Congress, thus placing the analysis in the contemporary era of congressional politics. The most logical alternatives are the 104<sup>th</sup> Congress and the 106<sup>th</sup> Congress. The former is problematic in that it was arguably the most partisan Congress in more than 80 years, while the latter presented data collection difficulties due to the fact that the LOCIS data extends only to the end of the 105<sup>th</sup>. While it is always preferable to consider more than one Congress, the amount of data collection involved precludes such an endeavor here. In choosing between breadth of time and depth of examination, this analysis errs on the side of the latter. The expected gains in looking at *all* bills in one Congress will likely outweigh the cost of potentially time-bound results. The issue of the degree to which the analysis presented here is time-bound is revisited in the conclusion to this chapter. Additionally, the choice was made to analyze only bills (not resolutions of the various sorts) so as to make a comparison between policy proposals, thus weaning purely procedural measures and those that are predominantly symbolic in nature from the others.

slightly.<sup>23</sup> For each bill, a series of characteristics related to the sponsor (such as party affiliation, seniority, committee membership, and ideology) and the bill (such as the committees to which it was referred, the number of Democratic and Republican cosponsors, distributive content, and urgency) were coded. The primary sources for the data are the Library of Congress Information System (LOCIS), THOMAS (online datasource for Congress maintained by the Library of Congress), and Keith Poole's NOMINATE online data archive. This section describes the rationale underlying the choice of data as well as the coding scheme for the variables included in the analysis. Table 2.7 contains basic descriptive statistics for each of the measures included in this analysis

### *Dependent Variable*

The analysis is focused on determining which factors lead to a greater likelihood that a bill will be reported out of a House committee. As such, the variable of interest is the decision to report or not report. For each bill in the dataset, I coded whether or not it was reported to the floor by one or more House committees. A total of 524 measures made it to this stage of the legislative process in the 105<sup>th</sup> House.<sup>24</sup> Because the dependent variable is dichotomous in

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<sup>23</sup> Certain of the sponsor-level variables are not available for each bill. For instance, because delegates to the U.S. House of Representatives are allowed certain privileges (like introducing legislation and holding committee seats) but not others (such as voting), there are bills meeting the criteria for inclusion in the dataset that for other reasons are excluded from the analysis. Delegate Eleanor Holmes Norton (Democrat, District of Columbia), one of the more active and prominent members without voting privileges, introduced 34 bills in the 105<sup>th</sup> Congress. One of these was reported out of committee. However, because she is not allowed to vote, no NOMINATE scores are available for her and thus her bills are dropped from the multivariate analysis.

<sup>24</sup> Of course, significantly more measures were reported by House committees and/or considered on the House floor in the 105<sup>th</sup> Congress. Among these are resolutions, concurrent resolutions, joint resolutions, and Senate bills. For the reasons mentioned above, such legislation is not

nature, I employ the probit technique drawn from maximum likelihood (Aldrich and Cnudde, 1975; Maddala 1983; Greene 2000). In this context, logit would also be appropriate, but the two methods yield identical coefficient estimates in terms of substantive and statistical significance.

### *Independent Variables*

Many of the variables coded for the bills in the dataset follow the coding scheme of previous committee research. For instance, Krehbiel (1991) describes at great length and in precise detail the logic underlying the informational variables and the methods employed to collect them.<sup>25</sup> While some of these measures are at best proxies for the principal dynamic of interest, they appear to work well in capturing the essence of the informational expectations. The variables relating to the partisan expectations are more straightforward.<sup>26</sup>

***Lateness in Session*** – To control for the possibility that bills introduced later in a session of Congress are less likely to be acted upon due to impending time constraints, the month in which each bill was introduced is coded using a continuous count. Thus, measures in introduced in January of 1997 are

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included in this analysis. The findings here relate only to the committee process in the House as it deals with substantive policy questions.

<sup>25</sup> See Marshall (2002) for a revisionist account of many of Krehbiel's central findings. Marshall employs much the same data as that of Krehbiel in dealing with restrictive rules, while demonstrating a rather consistent majority party domination of the process.

<sup>26</sup> See Dion and Huber (1996), Krutz (2000b), and Marshall (2002), among others, for applications of some of the variables presented here, along with other variants, to assorted aspects of the committee system in Congress.

assigned a value of “1,” those in February of 1997 a “2”, January of 1998 a “13,” etc.<sup>27</sup> Table 2.8 presents a summary of this variable.

***Urgency*** – Following Krehbiel (1991) and others, urgency is captured with a dummy variable that distinguishes those bills that dealt with extending the debt limit, emergency/supplemental appropriations, and continuing appropriations. Measures that mentioned one of these items in their title are coded “1”, with all others receiving a “0.”

***Institutional Power/Position*** – Bills sponsored by House members holding a position of institutional power are captured by two dichotomous variables. The first is coded “1” when sponsors were a committee chair (majority party), ranking member (minority party), or member of the top party leadership. Top party leadership encompasses the Speaker, Majority Leader, and Majority Whip of the Republican Party and the Minority Leader and Minority Whip of the Democratic Party. The second is a dummy variable coded “1” for those bills whose sponsors held a seat on the committee of referral.

***Distributive Content*** – If in fact bills are more appealing to members as the degree to which they offer distributive goods increases, then operationalizing this aspect of the legislation in the dataset is important. Krehbiel (1991: 170) employs a relatively straightforward proxy that is based on the keywords describing bills. When a state is “specifically and directly affected by the proposed bill,” it is listed among the subject keywords. Thus, bills mentioning more states, particularly when comparatively few other subject terms are used,

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<sup>27</sup> There are three gaps in the variable due to recesses: December 1997, November 1998, and December 1998. See Table 2.8.

are likely to be more laden with pork. Following Krehbiel, this variable is a ratio of the total number of states mentioned divided by the total keywords (including the individual states).<sup>28</sup> As such, the higher this ratio, the greater the distributive content of the legislation.<sup>29</sup>

***Minority & Majority Cosponsorship*** – The degree of minority support for a particular piece of legislation is measured by the number of minority party members who have attached their names to it as cosponsors. As noted in the hypotheses section, the expected effect of this variable differs in accordance with the theoretical perspective one adopts. The number of majority cosponsors indicates the degree of majority party support.

***Specialization/Legislative Expertise*** – The degree to which a member has acquired particular knowledge of an issue area, and is thereby more likely to obtain deferential treatment for his or her legislation, is at least in part a function of the length of time that member has served in the House. More jurisdiction-specific measures could be employed, for example the length of continuous service on each committee, but due to the size of the dataset and the fact that most members serve on more than one panel, this is the most straightforward approach. It is also a close approximation to the other alternatives. Thus, this

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<sup>28</sup> This variable diverges from Krehbiel's (1991) in that he used the LEGI-SLATE database, which is no longer available. I adopt the subject keywords assigned to each bill by the Congressional Research Service, as reported in both LOCIS and THOMAS.

<sup>29</sup> I reviewed the top bills of the 105<sup>th</sup> House according to distributive content—serving as a validity check of the appropriateness of the measure. Interestingly, the bills achieving the highest levels of distributive content in this dataset differ somewhat from the type of bills Krehbiel (1991) finds (see p. 170, Table 5.3). This is likely due in part to the fact that my data excludes joint resolutions, which are usually the vehicles for pork-laden continuing and supplemental appropriations. Additionally, it may be true that the CRS and LEGI-SLATE subject term keywords differ to some extent in their scope and usage. Nevertheless, it is apparent from an examination of these bills that measures scoring highly on the distributive content measure deal with the types of issues that are at their core highly concentrated, distributive type issues.



variable is coded simply as the square of the number of terms the member of Congress has served in the House, with “1” denoting a freshman. The most terms served among members introducing legislation is 24, with 3 terms being the model category. The number of terms is squared so as to account for the generally supposed non-linearity of the effect of seniority. Most studies assume a pattern of diminishing marginal returns when it comes to tenure.

***Multiple Referral*** – The process by which a bill that is multiply referred traverses the legislative process is inherently different from that of a measure sent to a single committee. As such, it is quite likely that this procedure has an impact on the mode of decision making in House committees. To control for this expectation, again noting the caveat that there are two divergent theoretical perspectives as to its impact, a dichotomous variable coded “1” for bills referred to two or more committees is employed.

***Ideological Divergence*** – The various perspectives on committee organization, and the partisan approach to understanding committee decision making laid out above, each maintain hypotheses regarding the degree to which various members’ ideological perspectives will be represented in the House committee system. In operationalizing ideology, and the divergence between segments of the House membership, Poole and Rosenthal’s (1997) NOMINATE scores are employed.<sup>30</sup> NOMINATE scores as a class are scaled measures of members revealed preferences based on roll call votes. Of course it is

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<sup>30</sup> More specifically, DW-NOMINATE scores are the measures adopted here. These scores allow for direct comparisons between individual members. The data and documentation, which Keith Poole generously makes available via his website, can be accessed at: [http://voteview.uh.edu/default\\_nomdata.htm](http://voteview.uh.edu/default_nomdata.htm).

impossible to discern whether they indicate, or even closely reflect, members' underlying, unrevealed true preferences. The interaction between personal preference, district pressure, and party pressure, along with the possibility of uncertainty, make this question a supremely difficult one to disentangle (see Rohde 1994).<sup>31</sup>

With this caveat in mind, students of Congress have used NOMINATE scores with a large degree of success in ascertaining the degree to which ideological like-mindedness (or conversely, dissimilarity) has an impact on legislative behavior (see, for instance, Jenkins 1999, 2000). Nearly all contemporary studies of Congress employ one or another variety of NOMINATE scores. In this case, the variable for ideological divergence is the absolute difference between the first dimension DW-NOMINATE score of the bill sponsor and that of the median member of the committee to which the bill was referred. In the case of multiple referral, the average of the committee medians is employed. Figure 2.1 plots the distribution of bills introduced and reported by members based on their DW-NOMINATE score.<sup>32</sup>

***Majority Party Sponsorship*** – Because of the expectation that the majority party functions within the committees system so as to benefit members of the majority caucus, it is necessary to identify those bills sponsored by

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<sup>31</sup> This is not to say that scholars have not attempted to do so. See the burgeoning literature on party effects in voting (Lawrence, Maltzman, Smith 1999; Wilson 1999, Snyder and Groseclose 2000).

<sup>32</sup> Note that the bimodal nature of the distribution reflects the underlying distribution of members according to ideology.

members of the House majority. Thus, a dummy variable is coded “1” for bills whose primary sponsor is a member of the majority party, and “0” otherwise.<sup>33</sup>

## **Results**

By examining the data for this analysis in tabular fashion, it is immediately evident that a number of potentially important patterns exist. While most bills introduced in the 105<sup>th</sup> Congress received no further action subsequent to referral to a committee (nearly 90 percent), measures sponsored by members of the committee of referral saw a significantly higher rate of success. Table 2.1 shows the success rate for committee and non-committee members. Of those bills whose sponsors held a seat on the relevant committee, about 18 percent were reported to the floor. In contrast, only about one in twenty bills sponsored by non-committee members made it past the committee hurdle. Thus, of the 524 bills that made it out of committee in the 105<sup>th</sup> Congress, nearly 75 percent were sponsored by House members with a seat at the table of the panel on which their measure was to be considered. These general findings comport well with Hall’s (1996) significant work on the role played in committee by members of various institutional positions, party affiliation, expertise, and electoral security. More specifically, he finds that members in positions of committee power are more likely to exert effort and have an influence on the eventual products of their committee.

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<sup>33</sup> The “other” category of course includes minority Democrats. It also includes one independent, Bernie Sanders of Vermont, who while technically non-affiliated, is practically speaking a member of the Democratic caucus. Sanders introduced 20 bills in the 105<sup>th</sup> Congress, none of which received favorable committee action.

In much the same way that committee membership is an influential factor on a bill's likelihood of success, the party affiliation of the sponsor plays an important role. Preliminary support for the hypothesis that majority party members receive a disproportionate share of the benefits from committee consideration of their legislation is offered in Table 2.2. The data presented in the table show that bills sponsored by majority party Republicans were more than three and a half times more likely to be acted upon and reported than those sponsored by Democrats.

One of the questions raised in the theoretical section of this chapter dealt with the possibility that multiple domains of interest are at work in the committee system. That is to say that it is quite possibly the case that, at least at times, distributive and partisan interests may be at work on particular bills or across the committee system in general (Rohde, 1994; Hurwitz, Moiles, and Rohde, 2002). One way to get at this idea is to examine the distribution of bill sponsorship across committees for those measures that were reported to the floor.

Deering and Smith (1997) have categorized committees according to the predominant focus of their activity and the difficulty in attaining a seat. Their typology includes: prestige, policy, constituency, and unrequested. Seats on prestige committees are generally reserved for more senior members of the House who have proven loyal to their party (Aldrich and Rohde, 2000a, 2000b). Because of the national scope of the issues with which these committees deal, and the centrality of their role to majority party success, they have also been called "control" committees. They tend to be stacked in favor of the majority

party at a ratio exceeding that of the chamber as a whole. Constituency committees are at the opposite extreme, more often dealing with legislation that is less partisan in nature. Members are said to seek after such seats in the hope of procuring legislative pork for their constituents.

If the preceding characterization holds true, it may be possible to observe differences across committees in terms of the extent of partisanship underlying members' success. Table 2.3 presents the proportion of bills reported out of committee broken down by the party affiliation of the sponsor. Heading the list according to the proportion of reported bills sponsored by majority party members are many of the prominent prestige committees. Appropriations and Budget both reported only Republican-sponsored measures, while 47 of the 48 bills reported by Ways and Means were sponsored by members of the majority party.<sup>34</sup> Near the bottom of the list in terms of majority-party dominance are Agriculture, Resources (formerly Interior), and Transportation (formerly Public Works). Each of these panels are quite well-known for their frequently bipartisan interest in constituency issues. Thus it is not surprising to see higher proportions of Democrats benefiting from the classic logroll.

Table 2.4 breaks the data down by committee type, allowing for a more direct comparison of the variance in the partisan nature of committee success. It is perhaps even more evident in this table that there is a declining progression of majority party asymmetry as one moves from the prestige committees down to

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<sup>34</sup> While at first glance the 75 percent figure corresponding to the House Rules Committee seems paradoxical given this committee's central function as an arm of the majority party leadership in structuring floor debate, it is important to remember that the lion's share of the work done by Rules occurs in the form of resolutions. The data employed here contains only House bills.

the constituency committees, although the balance is still consistently skewed in favor of the majority party. Majority party overrepresentation in the balance of bills reported out of House committees is quite distinct in the tabular data presented, though its extent appears to be a function at least in part of the committee context. In light of this, there is reason to expect a mix of the variables drawn from the contending theories of legislative organization to display significant results in the multivariate analysis that follows.

To accurately assess the degree to which the competing theories and the corresponding hypotheses described in the previous section explain committee decisions regarding the reporting of bills, it is necessary to include all of the explanatory variables in a multivariate statistical model. Table 2.5 presents probit estimates based on a model where the dependent variable is dichotomous in nature, taking the value of “1” for bills reported out of committee, and “0” otherwise. The bottom panel of the table, which reports the diagnostics of the model estimates, suggest that as a group the variables included are highly significant and improve upon a naïve model.

Turning to the individual coefficient estimates, which for ease of exposition are broken down at the bill and sponsor level, most are statistically significant and in the predicted direction. The change in predicted probability ( $\Delta P$ ) is presented as a gauge of the substantive significance of the variable. This value is based on the change in probability when fluctuating the variable of interest from its non-modal to modal value (in the case of dichotomous variables) or from one standard deviation below the mean to one standard deviation above the

mean (for continuous variables), holding all other variables at their mean or mode.

The impact of the control variables as evidenced in the coefficient estimates is largely as hypothesized, save for one variable (urgency) which was dropped due to the small number of realizations of this measure ( $N = 11$ ) and the fact that it perfectly predicts failure. Bills introduced earlier in the Congress are significantly more likely to be reported from the committee to the floor than those introduced later. This supports the expectation that the workload of Congress, and the time necessary to handle a piece of legislation, has an impact on potential success. Bills introduced in January of 1997 (the first month of the 105<sup>th</sup> Congress) were nearly three percent more likely to be reported to the floor than those introduced in April of 1998.<sup>35</sup>

In contrast to the negative impact of the passing of time, members holding positions of institutional power benefit significantly in the handling of their legislation. Representatives who chaired or sat as the minority ranking member on a committee were about four percent more likely to see their sponsored legislation reported to the floor. Of even more importance, however, is the fact that holding a seat on the committee of jurisdiction raises the likelihood of positive action on a member's legislation to more than 13 percent. Thus, members appear to benefit from a seat at the table in terms of the prospect of success at the committee stage in the House.

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<sup>35</sup> While the change in predicted probability for this variable and others seem rather small, recall that the likelihood of any one bill being reported from committee is minute. The baseline probability in this model is 4.6 percent.

Turning to the variables relating to the expectations of the various theories of legislative organization, the findings are mixed. The distributive measure corresponding to the degree of distributive content in a piece of legislation is significant in a positive direction. As predicted, as the distributive content of a bill increases, so does its likelihood of being reported to the floor. For example, a measure with no distributive content is about three and one-half percent less likely to be reported than a bill with a distributive content ranking it one standard deviation above the mean on this variable.

The cosponsorship variables lend support to the idea that this form of signaling is important in framing and influencing committee decision making as well. As the number of majority (Republican) cosponsors for a bill grows, so does its likelihood of being reported. In contrast, minority (Democratic) cosponsorship is a detriment to legislative success. Higher numbers of minority cosponsors are associated with lower levels of committee reports. The magnitude of the effect of these variables is quite similar, although the direction of their impact is opposite. A change from zero party cosponsors to about two and one-half dozen carries with it a one and one-half percent change in the likelihood that a bill was reported out of committee.

The finding regarding minority cosponsorship is particularly important in that the informational and partisan theories make different predictions about its effect. Informational theory holds that members prefer greater heterogeneity in the committee process, one gauge of which is minority cosponsorship. As such, the more minority support for the measure, the more likely it should be to achieve



success. On the other hand, the partisan theory laid out above posits that bill success is likely to be a function of the majority party's interests. The higher the level of majority party support, the greater the likelihood of success; and the higher the level of minority party support, the lower the likelihood of success.

Two other variables relating to informational predictions, multiple referral and seniority squared, failed to obtain statistical significance in the estimates presented here. The coefficient for seniority is in the predicted (positive) direction. However, the coefficient for multiple referral is negative. Recall that informational theory suggests a positive effect for multiple referral, once again based on the attractiveness of the heterogeneity present in the multiple referral context. Other work, however, as described earlier suggests that multiple referral may be a detriment standing in the way of positive committee action. The findings here do not allow for a clear interpretation of which of the two perspectives, if either, holds true in the committee context.

Finally, in line with informational theory and the majoritarian principle, the degree of ideological divergence between the bill sponsor and the median member of the committee(s) of referral has a significant impact on whether a bill is to be reported out of committee. As the degree of divergence increases, the likelihood of positive action on the part of the committee decreases. In this case, a member diverging just slightly from the committee median (a difference of just less than 0.100 in DW-NOMINATE scores) is about two and one-half more likely to see his or her bill reported out of committee than a member who is significantly further from the committee median (a difference of nearly 1.000). Thus, the

underlying preferences of members do seem to play a role in committee decision making. This finding will be discussed in greater detail below.<sup>36</sup>

Lastly, the analysis yields insight into the question of whether there is an effect specific to the majority party status of a bill's sponsor in the likelihood of committee action on legislation. The results in Table 2.5 indicate that there is. Bills sponsored by members of the majority party are about three percent more likely than those put forward by minority party members to achieve success in House committees. Once again, while the magnitude of this variable, along with most others in the analysis, it indicates a non-trivial change in members' potential for gains from the committee system. When considered in tandem with other variables, such as the fact that it is predominantly majority party members who are less divergent from the median members of committees, the effect of majority party status is even more pronounced.

## **Discussion and Conclusion**

This chapter has sought to apply theories of legislative organization, and a new perspective of committee decision making, to a previously unexamined stage of the legislative process: the decision of committees regarding which of the bills referred to them should be reported to the House floor. While this context differs from that of prior studies in the literature on legislative and committee organization, the theories generate valuable insights into this aspect

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<sup>36</sup> It is also important to note that the ideological divergence variable and the majority sponsor variable are highly correlated (at about  $r = 0.8$ ). While this is not as high as the correlation between party and straight NOMINATE scores or other variants of the divergence measures, it is still high enough to indicate the presence of significant collinearity.

of congressional politics. And each perspective seems to explain a degree of the variation that occurs within House committees. However, there is an overarching partisan dynamic that comprises much of what committees decide to do, and in many ways the distributive and informational perspectives seem to have majority-party specific effects. For instance, preferences matter, but they matter most within the majority party caucus. Similarly, distributive measures are attractive to members, but further analysis not presented here reveals that it is those distributive measures sponsored by members of the majority party that are most likely to achieve legislative success.

Certainly important questions remain. For one, this analysis focuses on just one Congress (the 105<sup>th</sup>) and one chamber within that Congress (the House). For this reason, there is a possibility that the findings may be time bound. While a complete analysis of an additional Congress is beyond the scope of this project, Table 2.6 presents the distribution of party sponsorship on bills reported by committees in the 93<sup>rd</sup> Congress. This summary data indicates that patterns similar to those discovered above for the 105<sup>th</sup> Congress appear to be at work in an earlier, significantly *less* partisan period of House history.

Furthermore, this analysis only considers one stage of the legislative process in the House—committees' decisions of whether or not to report bills to the floor. It seems reasonable to suspect that extending the scope of the view presented here to the subset of bills passed by the House would yield a similar partisan distribution, but that cannot be said with certainty. Future research will benefit from extending the scope of analysis in such ways, as well as applying

the perspectives presented here to the Senate, which is a significantly less majority-centric body.

In sum, however, the findings presented here offer students of Congress concerned with the manner in which legislative politics is organized and govern additional fruit for consideration. While lending credence to the notion that committees, just as the Congress, operate on multiple dimensions, one can say with a degree of certainty that one of the more significant dimensions is that of partisanship.

**Table 2.1: Success of Bill Sponsors by Committee Status,  
105<sup>th</sup> Congress (1997-1998)**

Bill Status	Not Reported	Reported
Non-Committee Sponsor	95.2% (N=2598)	4.8% (N=132)
Committee Sponsor	81.7% (N=1750)	18.3% (N=392)

**Table 2.2: Success of Bill Sponsors by Party,  
105<sup>th</sup> Congress (1997-1998)**

Bill Status	Not Reported	Reported
Democratic Sponsor	95.8% (N=1999)	4.2% (N=88)
Republican Sponsor	84.4% (N=2351)	15.6% (N=436)

**Table 2.3: Party Affiliation of Sponsors on Bills Reported by Committee,  
105<sup>th</sup> Congress (1997-1998)**

Committee	Democratic Sponsor	Republican Sponsor	N
<b><i>Prestige:</i></b>			
Appropriations	0.0%	100.0%	14
Budget	0.0%	100.0%	3
Rules	25.0%	75.0%	8
Ways and Means	2.1%	97.9%	48
<b><i>Policy:</i></b>			
Banking	5.6%	94.4%	18
Education	5.1%	94.9%	39
Energy and Commerce	4.4%	95.7%	69
Foreign Affairs	5.6%	94.4%	18
Government Operations	37.1%	62.9%	62
Judiciary	14.8%	85.2%	115
<b><i>Constituency:</i></b>			
Agriculture	22.2%	77.8%	18
Armed Services	0.0%	100.0%	9
Resources	17.8%	82.2%	135
Science	4.6%	95.5%	22
Small Business	14.3%	85.7%	7
Transportation	35.7%	64.3%	56
Veterans Affairs	6.3%	93.8%	16

**Table 2.4: Party Affiliation of Sponsors on Bills Reported by Committee,  
105<sup>th</sup> Congress (1997-1998)**

Committee Type	Democratic Sponsor	Republican Sponsor	N
Prestige	4.6%	95.5%	66
Policy	14.6%	85.4%	280
Constituency	20.7%	79.3%	242



**Table 2.5: Probit Analysis of Bill Reporting,  
105<sup>th</sup> Congress (1997-1998)**

Variable	Coefficient	Robust Standard Error	$\Delta P$
<b><i>Bill Characteristics:</i></b>			
Month of Introduction	-0.0213**	0.0039	-0.028
Urgency	-- <sup>a</sup>	--	--
Distributive Content	4.5368**	0.6292	0.035
Democratic Cosponsors	-0.0053**	0.0018	-0.015
Republican Cosponsors	0.0055**	0.0014	0.015
Multiple Referral	-0.0349	0.0666	--
<b><i>Sponsor Characteristics:</i></b>			
Committee Leader	0.3217**	0.0811	0.041
Committee Member	0.7525**	0.0562	0.131
Seniority <sup>2</sup>	0.0006	0.0005	--
Ideological Divergence	-0.2847*	0.1541	-0.023
Majority Party	0.4215**	0.1317	0.029
Constant	-1.8393**	0.1643	
<i>N</i>		4780	
Log Likelihood		-1345.8035	
Wald $\chi^2$		358.26**	
% Correctly Predicted		89.01	
Pseudo $R^2$		0.1762	

*Note:* Dependent variable is coded 1 if the bill was reported by committee, 0 otherwise.  
Coefficients are probit estimates generated in Stata 7.0 using the Clarify suite of commands (King, Tomz, and Wittenberg 2000; Tomz, Wittenberg, and King, 2001).

Significance: \*\*  $p > 0.05$  \*  $p > 0.10$ .

<sup>a</sup> Dropped from model due to perfect prediction of failure.

**Table 2.6: Party Affiliation of Sponsors on Bills Reported by Committee,  
93<sup>rd</sup> Congress (1973-1974)**

Committee	Republican Sponsor	Democratic Sponsor	N
<b><i>Prestige:</i></b>			
Appropriations	0.0%	100.0%	3
Rules	0.0%	100.0%	2
Ways and Means	14.0%	86.0%	43
<b><i>Policy:</i></b>			
Banking	6.3%	93.8%	32
Education	2.9%	97.1%	35
Energy and Commerce	8.9%	91.1%	56
Foreign Affairs	0.0%	100.0%	25
Government Operations	12.5%	87.5%	24
Judiciary	3.2%	96.8%	31
<b><i>Constituency:</i></b>			
Agriculture	22.9%	77.1%	35
Armed Services	18.2%	81.8%	33
Interior (Resources)	25.3%	74.7%	79
Merchant Marine & Fisheries	8.7%	91.3%	46
Public Works (Transportation)	11.4%	88.6%	35
Post Office	8.0%	92.0%	25
Science	0.0%	100.0%	9
Veterans Affairs	0.0%	100.0%	11

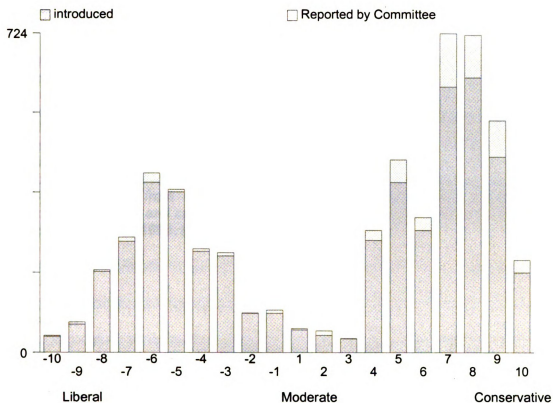
**Table 2.7: Summary Statistics for Data Used in Probit Estimation**

Variable	Dichotomous Variables: Frequency of Values			
	0	1		
Urgency	4,863	11		
Multiple Referral	3,872	1,001		
Committee Leader	4,173	699		
Committee Member	2,730	2,142		
Majority Party	2,087	2,787		
Continuous Variables: Descriptive Statistics				
	Mean	Std. Dev.	Min.	Max.
Month of Introduction	9.719	6.776	1	22
Distributive Content	0.016	0.052	0	1
Democratic Cosponsors	9.108	21.366	0	202
Republican Cosponsors	7.248	19.144	0	212
Seniority <sup>2</sup>	50.228	66.923	1	576
Ideological Divergence	0.510	0.424	0	1.602

**Table 2.8: Lateness of Session Variable**

<b>Lateness Variable</b>	<b>Month</b>	<b>Number of Bills Introduced</b>
1	January 1997	496
2	February 1997	405
3	March 1997	323
4	April 1997	283
5	May 1997	246
6	June 1997	353
7	July 1997	266
8	August 1997	6
9	September 1997	210
10	October 1997	206
11	November 1997	294
12	December 1997	0
13	January 1998	48
14	February 1998	164
15	March 1998	314
16	April 1998	173
17	May 1998	190
18	June 1998	215
19	July 1998	187
20	August 1998	142
21	September 1998	134
22	October 1998	219
23	November 1998	0
24	December 1998	0
	<b>Total</b>	<b>4874</b>

**Figure 2.1: Number of Bills Introduced and Reported by DW-NOMINATE Score, 105<sup>th</sup> Congress**



## Chapter 3

### **Committee Power in the Contemporary Context: An Examination of Committee Bypass in the House**

*“As political power has become concentrated in the hands of a few at the top of the Republican leadership, committees have become increasingly marginalized. Bills have been brought to the floor which have never been reported by the committees of jurisdiction. When bills have been reported, the House leadership has arbitrarily changed them to its liking before the bill comes to the floor. The committee structure is being replaced by webs of personal influence that binds [sic] Members to their leadership, and weaken the value of their individual votes. The minority objects to these efforts to bypass the collective, considered judgment of committees through tactics that discourage members from obtaining information and participating in thoughtful discussion, negotiation, and compromise.” —Rep. George Brown, California Democrat (Congressional Record 1996, page H5577)*

#### **Introduction**

The previous chapter of this dissertation focused on the role of committees operating in their most traditional and common context—framing proposals and sending them to the floor. As such, significant consideration was given to the question of just who it is that the committees in the House of Representatives serve. Framed in the context of the debate on legislative organization, the results suggested that committee behavior is rather consistent in allocating disproportionate benefits to members of the majority party, as well as to others who hold key institutional positions and possess certain individual characteristics. While the analysis in Chapter 2 does not directly speak to the question of the policy consequences of committee decisionmaking, it is at minimum suggestive of the potential for majority party influence in policymaking. Furthermore, it is quite evident that when viewing the allocation of policy

emanating from committees, there are stark partisan effects in terms of the majority party's ability to take advantage of the electoral goods in the form of credit claiming that accrue from successful legislating at the committee stage. More specifically, if one believes that useful information can be drawn from sponsor-level characteristics, then the distribution of policy along these lines correlates quite well with partisan influence in the contexts where such behavior is to be most expected.

This chapter addresses the other side of the committee coin. Rather than focusing on what bills make it out of committee, the analysis here deals with the small sample of legislation that bypasses the committee system altogether. While most legislation proceeds through what is considered the traditional or textbook legislative process, there are a small (and in recent years growing) number of measures that do not fit neatly into this schema.

Why focus on the measures traversing the legislative process in this way? For one, theories of committee power generally assume that committees enjoy vast prerogative over the issues falling within their jurisdiction. For example, in studying the use of restrictive rules, most scholars assume that rules are important in that they allocate amendment rights over legislation that the committee would otherwise dominate. Thus, committees are seen to be the managers of particular areas of policy. However, when legislation is handled *outside* the bounds of the committee system, it is possible (though not necessary) that committees stand to lose their authority over policy—at least for the moment on the bill at hand. Thus, when bills bypass committee, it is

important to consider who wins and who loses, and what implications there might be for theories of power in Congress. That is, coming to a fuller understanding of the reasons behind committee bypass, the circumstances under which this tactic is more likely, and the final outcomes can tell us something about the organizing rationale of the institution.

A second reason to consider the unconventional tactic of committee bypass is due to its increasing frequency in recent years. For some time, scholars have noted the changing nature of the legislative process in Congress—and the House of Representatives, in particular. Placing this analysis in that vein of inquiry will serve to paint a more complete picture of the shifting mode of operation in Congress. When it occurs, at least on major legislation, committee bypass is often associated with strenuous procedural objections by the minority party and sometimes the majority party contingent on the bypassed committee. Members often maintain that such a tactic undermines the division of labor in Congress and the quality of deliberation provided by the institution. Thus, the findings here regarding the frequency of such activity may generate some insights of interest to those dealing with such questions.

This chapter proceeds as follows. In the first section, the evolution of legislation dealing with the child tax credit in the 108<sup>th</sup> Congress is reviewed. This incident provides a useful example of the politics surrounding agenda setting in the House, and the interplay between party and committee politics. The subsequent section reviews the relevant literature and seeks to place this study within the broader context of research on committees. Next is a section



characterizing the various ways in which committee bypass may occur in the contemporary Congress, with corresponding miniature case studies. That is followed by an empirical glance at the use of this unconventional tactic throughout a nearly 20-year period of House history. The penultimate section revisits the question of committee power in the context of committee bypass, and the final section concludes.

### **Income Taxes, the Child Tax Credit, and Partisan Politics in the 108<sup>th</sup> House**

For many years, Republicans have had the relatively simple position of seeking to reduce taxes. A centerpiece of President George W. Bush's administration, and the focus of his economic policy in particular (at least to this point), has been the provision of income tax cuts alongside reductions of other taxes paid by American citizens and businesses. Not surprisingly, Republicans in Congress have gone along with the President in seeking to move such legislation toward enactment. In some cases, members of the President's party in the House have gone even further than he sought. Traditionally reserved for the powerful House Ways and Means Committee, changes in tax policy have increasingly been written and overseen by senior party leaders. Some prominent revisions to the tax code in 2003 provide a case in point as to just how involved the leadership is in the details of writing and presenting legislation to the full House, often without the formal approval or input of the committee with jurisdiction.

Amid much partisan and inter-chamber strife leading up to the Memorial Day recess, Congress passed (and President Bush later signed) H.R. 2, the fiscal year 2004 budget reconciliation bill that included tax cuts amounting to the third deepest cut in American history (Ota 2003a). Fully expecting to bask in the glow of their first major legislative accomplishment since regaining unified control of Congress, Republicans were caught off-guard when it was revealed that the legislation failed to accelerate the increased child tax credit for low income families. Democrats quickly pressed their opponents on the issue of fairness and equity, leading the Senate to adopt legislation expanding the tax credit to those left behind in the earlier law (Allen 2003). House Republicans were less apt to move, however, and eventually folded the extension to low income families into a bill extending the increase in the size of the tax credit that was part of the budget reconciliation and providing additional tax breaks for military personnel (Ota 2003b). While the Senate bill was budget-neutral, the House bill was not and came with a much larger price tag. Furthermore, despite the vociferous objections of House Democrats, the refund to lower income families would not be sent in advance but would rather have to be claimed on their 2004 income tax returns. Additionally, the higher income families added to the qualification for the tax credit would not have to wait for the refund (Firestone 2003).

The final outcome of this exchange remains unclear at this point. Currently, the legislation is mired in a conference committee on which Majority Leader Tom DeLay is seated, with the intention of holding his conferees to the House's proposal. More important for the discussion here, the vehicle for

adopting the changes to the child tax credit (H.R. 1308) was handled entirely outside the formal committee process. Initially passed by voice vote under suspension of the rules without committee consideration in March of 2003, the first draft of the legislation was a catchall bill providing tax breaks for a variety of businesses *and* for families of astronauts killed on space missions (Barshay 2003). When a majority of the Senate determined to extend the child tax credit, H.R. 1308 was the vehicle and language to this effect was inserted along with and in lieu of some of the existing provisions in the bill. Thus, when the House decided to tackle the issue, it did so via a special rule that had the effect of further amending the legislation to incorporate the broader tax provisions noted earlier. The House actions and framing of the floor debate were brought about by the senior Republican leadership's tactical maneuvering on how to handle the issue. Interestingly, the debate was managed not by the chair of Ways and Means, but rather by members of the Rules Committee. This is one simple and recent example of how the leadership can (and does) bypass the standing committee system when they find it in their interest to do so.

### **Committee Prerogative and the Legislative Process**

Committees have long been one of the most prominent features of Congress, if not its most recognizable characteristic. While students of the institution have attempted to ascertain exactly what gave rise to the introduction of committees (see, e.g., Gamm and Shepsle 1989), it is quite evident that these subdivisions of the larger unit enjoy privileged status. Committees serve a

variety of ends. For individual members, they are a means to achieve a variety of goals, including power or prestige within the chamber, the opportunity to impact public policy, and the attainment of benefits that can aid in reelection (Fenno 1973). For the collectivity, committees help in the division of a large sum of labor, each focusing on a narrow piece of the larger pie of issues coming before Congress.

For all of their work, committees are provided certain rewards, or returns on their investment. Many observers have noted the incentive structure surrounding committee membership and behavior. As much of this literature has been discussed at length already, I will only briefly revisit the key points here. One of the tenets of this body of research holds that committees specialize in a particular policy area, and in return for this specialization are awarded control over the issues falling into their jurisdiction. There is of course a diversity of views regarding just what it is that the membership at large seeks to obtain from this institutional framework—whether it is gains from exchange, information, etc. However, many scholars assume that this structure protects the work of committees and provides them with what has come to be known as gatekeeping power. Gatekeeping simply means that a committee controls the flow of legislation to the floor of the House, and can close the gates to legislation it opposes while opening the gates for preferred legislation.

Studies of the manner in which Congress makes decisions have frequently built into their formal, theoretical models the notion that committees enjoy such gatekeeping power. For instance, in their influential study of

committees, Denzau and Mackay (1983) make this central assumption.

Subsequent to this work, many others have availed themselves of a similar theoretical construct.<sup>1</sup> A similar approach is evident in the non-formal literature as well, where many assume that committees enjoy such a prerogative.

As research on committees has advanced, however, there has been a realization (or perhaps more precisely, an incorporation) of the fact that these units in Congress do not in reality maintain complete leeway over the issues falling within their jurisdiction. Krehbiel (1995: 913) has argued that the discharge petition is a credible threat that undercuts the universal power of committees to dominate a policy area.<sup>2</sup> In this context, the majoritarian nature of the floor is said to hold sway over the legislative process. In Krehbiel's view, prior models of legislative choice that did not account for the discharge procedure thus likely overstate the power of committees.

Krehbiel and Rivers (1988) challenge the often-cited notion of committee power and propose a method for testing the existence of such a norm in Congress.<sup>3</sup> And Krehbiel (1996) and Shipan (1992) raise questions about the degree to which jurisdictional interests take precedence over members'

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<sup>1</sup> See, for instance, Weingast and Marshall (1988), Shepsle and Weingast (1984b) and Snyder (1992). Note that Groseclose and Krehbiel (2002) challenge the notion that gatekeeping permeates U.S. legislative bodies (at both the national and subnational level) and find no evidence for the granting of gatekeeping rights in legislatures outside the United States.

<sup>2</sup> Of course, the broader point Krehbiel seeks to make regarding the role (or lack) of partisanship in the context of the "A to Z" discharge petition has been challenged by Binder, Lawrence, and Maltzman (1999) and Aldrich and Rohde (2000a).

<sup>3</sup> Perhaps not surprisingly, this method has been challenged as well—see Wilkerson (1991) for a critique.

underlying policy preferences.<sup>4</sup> On the other side of the coin, Shipan (1996) documents a case, dealing with the Senate's extension of daylight-saving time, where jurisdictional interests appeared to be relevant, although only for members of the committee that were deprived of their traditional committee influence.

While much attention has been focused on the discharge petition as a means for undermining committee power and restoring majoritarian mechanisms of procedural choice and substantive policy choice, it is important to consider the frequency of its use. While some of the power of the discharge certainly arises from the periodically credible threat of its use, it is a tactic that is employed only rarely in the House. Beth (2001) documents the fact that action seldom occurs on measures subject to a discharge petition. In fact, over the period from 1931 – 2000, fewer than one bill per Congress has been discharged from a committee.

When contrasted with bypass of committees by other means, the discharge is quite evidently an even more irregular element of the legislative process than might be imagined based on the amount of attention it has received in recent years. Given the greater frequency of other means of committee bypass, it is important to consider why such behavior occurs and exactly who benefits from it. While there are many reasons that likely give rise to bypass, one of the probable reasons for its use on many occasions is grounded in the notion of party power. The majority party, in controlling the committee system and organization in general, chooses to circumvent committees when it is in its interest to do so. Further, other reasons for bypass may be unrelated to party

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<sup>4</sup> Krehbiel (1996) deals with the smoking ban on domestic airline flights, a case which has received a large amount of attention in this context. Other studies of this legislation include LaRue and Rothenberg (1992) and Shipan (1995).

government, and have more to do with institutional efficiency. In such cases, it is likely that the committee, or at least its chair and any other members who care, are on board with the bypass decision. The next section considers these and other issues in more detail, providing a sketch of the various rationales underlying the use of this unconventional mode of legislating in the House.

### **Committee Bypass and the Contemporary Congress**

The fact that committees are periodically bypassed in handling particular pieces of legislation is nothing new in Congress. In fact, in the earliest Congresses, the floor reigned supreme by setting up ad hoc committees to deal with bills on a case-by-case basis. Over time, with the advent of the standing committee system, these subunits of the larger chamber came to enjoy more influence over issues on a recurring basis. However, there have been and continue to be times during which some segment of the broader membership finds it desirable to forgo one or even all of the body's committees.

While at first glance, it would appear that bypassing a committee is a relatively straightforward action to characterize, in actuality there are a variety of ways in which a bypass may occur. In her study of unorthodox lawmaking in Congress, Sinclair (2000) describes three prominent vehicles for bypassing the committee system: through a discharge petition that has the effect of extracting a bill from a recalcitrant committee, at the direction of the majority party leadership,

and by employing a task force to handle a specific issue or piece of legislation.<sup>5</sup> In her discussion, she notes that the reasons underlying the leadership's choice of moving legislation through this route are quite varied (15).

For the purposes of this analysis, a finer categorization of the means of committee bypass is useful as a foundation before turning to issues of measurement and examination. There exist at least five distinct categories in which such activity may be classified, excluding the discharge petition. The remainder of this section presents these typologies along with corresponding examples from the House.

### *Outright Bypass*

While most casual observers generally think of the House bypassing its committee system through a discharge petition, the action is much more frequently taken by less formal means. For all practical purposes, bypass most commonly occurs when the leadership decides to schedule a bill for floor consideration before a committee has acted upon it. The circumstances in which this transpires with the committee's consent will be discussed in greater length below. In this section, I consider the scenario in which the leadership chooses to overtly circumvent one or more committees in order to serve the party's interest.

One such example occurred in the 105<sup>th</sup> Congress. Republicans, anxious to demonstrate their concern about and action on the issue of education, advanced a number of legislative initiatives that sought to improve education.

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<sup>5</sup> Sinclair (1981) is the earliest source for more detail on the logic behind the use of task forces in the House of Representatives, and Oleszek (1999) presents a more recent update incorporating events occurring under Republican majorities.



One means by which the party attempted to reach this goal was through increased access to private schools. The proposal, H.R. 2746, would have allowed states the opportunity to hold back a portion of the federal money they receive under Title IV of the Elementary and Secondary Education Act and apply these funds toward scholarships that would permit economically disadvantaged families to send their children to private schools. This legislation would have effectively put into place the first federally sponsored voucher program.

In considering the voucher legislation, the Republican leadership apparently realized that they did not have the votes in the Education and the Workforce Committee to advance the bill out of that panel and to the floor (Katz 1997). In light of that, they scheduled the bill for floor consideration under a closed rule (H.Res. 288) without the approval of the committee with jurisdiction. Democrats vociferously pointed out the unusual tactics surrounding the scheduling of H.R. 2746. During the debate over the rule, Tony Hall of Ohio, a member of the Rules Committee, noted that "H.R. 2746 was introduced just 2 days ago. There were no hearings, committee markups, or committee reports. This closed rule effectively guarantees that no Member will have a chance to offer amendments" (*Congressional Record*, October 31, 1997, pg. 9817).

William Clay, ranking member on the bypassed Education and the Workforce Committee, claimed to be "appalled at the arrogant and dictatorial way that [the bill was] brought to the floor." He went on to say:

I urge my colleagues to defeat the previous question and defeat this rule. The majority party has run roughshod over the entire democratic process. A previous Republican speaker this morning said that this is not a vote on vouchers, but it is a vote to permit

debate on the issue of vouchers. How misleading. This rule continues that farce. This bill has never had a public hearing in either the Subcommittee on Early Childhood, Youth and Families or on the full Committee on Education and the Workforce. This bill has never been marked up by the committee. There was no debate, no discussion, no public involvement, no give-and-take. Clearly, Madam Speaker, the doors of democracy have been slammed shut" (*Congressional Record*, October 31, 1997, pg. 9823).

In this case, the Republican leadership won the procedural debate, and the restrictive rule was adopted on a highly partisan vote. However, the leadership did not win on the substance of the debate. A handful of moderate Republicans defected from the leadership's position and voted against the voucher legislation. Thus, while the party was able to move its agenda to the floor without the consent of the authorizing committee, it was unsuccessful in appealing to the broader membership.<sup>6</sup>

#### Bypass by Referral/Drafting

On occasion, the proponents of an initiative enjoying broad support (at least enough to warrant passage should it be given a vote on the floor) are faced with a hostile committee of jurisdiction in which the legislation is certain to die should it arrive there. One strategy pursued by members facing such a scenario is to attempt to draft the legislation in such a way as to bring to bear the jurisdiction of an alternative committee composed of members less averse to the proposal. Stewart (2001: 343) describes what is perhaps the most well known

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<sup>6</sup> Interestingly, as Katz (1997) points out, it was a particularly bad day for Republicans' education agenda. As the House was voting down the voucher bill, the Senate defeated a bill that would have put into place tax breaks for educational savings accounts that could be used toward the cost of public or private school tuition. Other bipartisan legislation moving forward at about the same time did achieve success—H.R. 2616, a bill aimed at improving and expanding charter schools, was eventually enacted into law later in the Congress.

example of this sort in the case of the civil rights legislation introduced in 1963. This legislation faced a very difficult course in both the House and Senate due to the power of entrenched conservative Southern Democrats and like-minded Republicans.

While it seems natural that a bill dealing with civil rights would fall to the Judiciary Committees of each chamber for consideration, the path of this legislation was anything but routine. In the Senate, the Judiciary Committee was chaired by James Eastland, a Democrat from Mississippi and a staunch opponent of civil rights legislation. In light of this, the authors of the Senate bill drafted it in such a way that it touched on the constitution's commerce clause, thereby bringing it under the jurisdiction of the Commerce Committee, a panel chaired (not coincidentally) by the more liberal and pro-civil rights Warren Magnuson of Washington. In the House, a similar state of affairs was in place, although the major players sat in opposite places. There, the Commerce Committee was chaired by Democratic Representative Oren Harris of Arkansas, who like Eastland was an opponent of the legislation. The Judiciary Committee, on the other hand, was headed by Emanuel Celler of New York, who was strongly in favor of the civil rights bill. The legislation proceeded successfully in this case thanks largely to the favorable committee venues obtained in each chamber.

A more recent example of artful drafting aimed at sending legislation to a preferred committee was evident on the issue of access to public school buildings by religious student groups. In March of 1984, the Senate rejected a

constitutional amendment to allow prayer in schools. In the aftermath of this defeat, proponents advanced a proposal to cut off federal funds to schools that bar religious student groups from using school facilities for meetings if the school allows other student groups to use the facilities (H.R. 5345). According to contemporaneous reports, "the bill was drafted to bypass review by the Judiciary Committee, where," according to a member of the Education and Labor Committee, "it 'would have been killed'" (Hook 1984). In this case, as well as that of the 1960s civil rights legislation, bypassing the committee of jurisdiction by artfully drafting a bill meant success for the sponsors.

After the positive report of the Education and Labor Committee (by a 30-3 margin), H.R. 5345 was voted on under suspension of the rules. The outcome of the vote was 270-151, just short of the two-thirds necessary for passage under the expedited procedure. The choice of suspension as the vehicle, however, appears to have been because of the favorable amendment environment it carries with it. Carl Perkins, the Democratic Chairman of the Education and Labor Committee, sought the suspension route because of growing opposition and amendment threats on the part of more liberal colleagues. The main opponent of the bill was Democrat Don Edwards, who chaired the House Judiciary Subcommittee on Civil and Constitutional Rights (Cohodas 1984). However, the fact that about 64% of the House voted in favor of the bill indicates its fairly extensive appeal, and when the Senate broadened the access language to apply to all student groups, the House agreed and allowed the bill to be

incorporated into H.R. 1310, which dealt with improving math and science education.

### *Bypass in a Multiple Referral*

The House's move in the mid-1970s to allow bills to be referred simultaneously to more than one committee provides another occasion where a committee (or committees) may be bypassed. For example, there have been instances in which the Speaker sets a time limit for a committee to complete its work on joint referral, with the panel's failure to act resulting in an automatic discharge of the bill. When Republicans modified the multiple referral process in 1995 to eliminate joint referrals (where each committee of referral enjoys equal prerogative over a bill), they put into place a system in which multiply referred bills would have a lead (or primary) committee, with all the other panels on the referral designated as secondary. The procedure calls for the automatic discharge of secondary committees that fail to act within a reasonable period of time after the primary committee makes its report.

While there are certainly tactical opportunities offered by the new procedural context, of probably more significant substantive importance is bypass that occurs due to the fact that competing committees are working on the same legislation under a multiple referral. A good case in point is the development of product liability legislation in the 104<sup>th</sup> Congress. Both the Judiciary and Commerce Committees reported legislation to the floor that would overhaul the nation's laws governing producer liability for problems resulting from

faulty products. It was left to the Rules Committee to arbitrate the differences and work out a compromise between the two committee chairs—Henry Hyde of Illinois and Thomas Bliley of Virginia. The final version looked much more like the Judiciary Committee's bill than that of Commerce (Masci 1995, Masci and Freedman 1995). While the exchange was conducted at the highest levels of committee and party leadership, and thus with at least the tacit approval of both committee leaders, it is evident that the work of the committees was to varying degrees undone prior to the bill coming to the floor for consideration.

### *Nominal Bypass*

By far the most common type of detour around the committee system is the situation in which the leadership essentially works the will of the committee by bringing a bill straight to the floor. As in many of the other examples discussed here, there are a variety of reasons this might occur. For instance, if a bill had been considered by the committee in a previous Congress (or for that matter, had been previously passed), there may be little reason to exert any committee effort in holding another markup session to review and report the bill. Such was the case in the House in 1988 with its consideration of S. 557, a bill that would overturn the Supreme Court's ruling in *Grove City College v. Bell*. In that case, the high court ruled that enforcement of certain civil rights legislation could be applied only to specific programs with federal government involvement at institutions receiving federal aid. The legislation was brought to the floor under highly restrictive terms of debate with no committee action—requiring an

extended colloquy on the floor in order to replace the traditional committee report that would accompany legislation and allow for subsequent interpretation.

However, proponents argued that committee action was unnecessary in light of the fact that the House had passed very similar legislation on two recent occasions. The bill passed by a wide margin of 315-98 (Cohodas 1988).

Periodically, legislation lacks controversy to the degree that consideration by the full committee is not necessary. In 1993, the House passed H.R. 890 under suspension of the rules by a margin of 409-1 after favorable action in the House Banking Financial Institutions Subcommittee. The legislation dealt with allowing more time for depositors to make a claim for lost funds that were protected by federal insurance, and was primarily in response to the problems of long-term depositors who were not aware of the failure of their bank or thrift. A feature of the bill that added to its attractiveness and ease of passage was that it would not increase the Federal Deposit Insurance Corporation (FDIC) budget in that the calculation of loss risk had already been incorporated into the pre-existing framework (Taylor 1993).<sup>7</sup>

### *Skirting the Committee System Via Special Rules*

On occasion, the leadership finds it attractive to bypass the work of a committee by modifying its product prior to floor consideration or simply allowing members the opportunity to add amendments containing legislation the

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<sup>7</sup> The path of the legislation authorizing the minting of commemorative state quarters (H.R. 3793) followed a similar trajectory to that of the FDIC insurance extension. The bill enjoyed wide support, would be revenue *positive* for Treasury, and received unanimous approval by voice vote in the Domestic and International Monetary Policy Subcommittee of the House Banking Committee (CQ *Weekly* 1996).

committee had bottled up. The latter strategy, while common in the Senate due to that body's lack of germaneness rules on the introduction of amendments, requires direct intervention in the House. An example of both of the House strategies are presented here.

One of the planks of the Republicans' well-known Contract with America from 1994 was a pledge to bring to a vote a constitutional amendment establishing term limits for members of Congress. Leading up to the vote on the House floor, there were significant divisions within the Republican caucus regarding the details of how the limits should be established.<sup>8</sup> The Judiciary Committee marked up H.J.Res. 2, and included some language (such as applying the limits to just consecutive service) that the leadership decided to forgo (Babson 1995). Instead, the Rules Committee set forth terms of debate allowing for a series of substitute amendments with the leadership's preferred legislation, more closely mirroring the original language of H.J.Res. 2, the base bill for amending purposes. While a majority of House members voted in favor of term limits in 1995, the margin was narrow and not close to the 2/3 necessary for a constitutional amendment.

The Rules Committee can also bypass or forgo committee prerogative (at least in terms of its gatekeeping power) by what it does *not* do. For instance, by providing an open rule that allows amendments, or waiving standing rules of the House that would prohibit certain types of amendments on the floor, the Rules Committee can essentially leave the door open for members to step in and offer

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<sup>8</sup> There were, of course, some highly publicized opponents of term limits within the caucus as well, including then-Majority Whip Tom DeLay of Texas, Conference Secretary John Boehner of Ohio, Conference Vice Chair Susan Molinari of New York, and Henry Hyde



amendments that undercut the work of a committee (or challenge the committee's attempt to keep the floodgates closed).

A very good example of this occurred in 1990, when Oklahoma's Democratic House member Mike Synar made an end-around of the House Interior Committee on the issue of fees for cattle grazing on public lands. For a number of years, Synar had been attempting to reduce the subsidies enjoyed by ranchers in western states. His position appealed to both conservatives who sought a lesser role for government intervention in the marketplace (and budget-minded members who saw increased dollars as a result of heightened fees) and to environmentalists concerned with the preservation of public lands.

While the general orientation of the House was receptive toward the proposal, the Interior Committee stood directly in Synar's path. The panel, which is dominated by rural interests, was unwilling to consider the proposal. Thus, Synar found a more welcoming audience in the House Rules Committee, which allowed him to attach the proposal as an amendment to the Interior Department appropriations bill for fiscal year 1991 (H.R. 5769). His measure, which called for a steady increase (eventually reaching 500 percent) in the fees imposed on ranchers who use public lands to graze their cattle, passed the House on a 251-155 vote (Pytte 1990).

### *Summing Up: Committee Bypass in Perspective*

While each of the sections above describes a means for bypassing House committees, it is important to note that the motivation for doing so varies. To

obtain the same goal (for instance, choosing preferred legislation for consideration on the floor), the leadership may opt for different procedural tactics. In some circumstances, they may engage in a nominal bypass of a committee in order to keep an issue out of the public limelight or to protect a preferred proposal from modification. In other circumstances, as described earlier, the nominal bypass may be simply a function of time pressures or the apparent lack of need for an accompanying committee report due to the straightforward nature of a piece of legislation.

Certain changes in Congress have carried with them implications for the frequency and role of committee bypass. At times, bypass is difficult to observe. For example, there has been an increasing trend toward incorporating authorizing language into appropriations bills. In this case, appropriators (and often the leadership as well) forgo the authorizing committees entirely—frequently raising the ire of the members who technically hold jurisdictional authority over an issue. Also, with the increasing degree of polarization evident in the contemporary Congress, it should come as no surprise that the majority party sometimes finds it appealing to bypass a committee in order to score quick points on an issue. For example, in the 105<sup>th</sup> Congress, House Republicans called up H.R. 3097, a bill to repeal the tax code. The bill had received no action by the Ways and Means Committee, had no hope of obtaining the filibuster-proof sixtieth vote in the Senate, and was not even managed on the floor by Bill Archer, the Republican chair of the authorizing committee (Hosansky 1998). However, the tactic on the part of House Republicans seemed to be that of

simply using their domination of the agenda to highlight stances that would resonate with their core constituency and emphasize their differences with the minority Democrats.

### **Tracing Committee Bypass in the House**

The previous section documented a number of ways in which committees in the House may be circumvented, with legislation passing directly to the floor absent the formal or informal input of these important subunits of the chamber. While miniature case studies such as those presented are informative for illustrative purposes, and offer evidence for the various motivations underlying the decision to bypass the committee system, it is desirable to look in greater depth, and in a more systematic fashion, at the trends in this behavior over time.

At the outset, it is important to note that studying committee bypass in a systematic way is challenging in that this behavior is inherently idiosyncratic. While it would be going a bit too far to say that there are as many conditions under which committees are bypassed as there are occasions in which a panel is circumvented, the previous section clearly shows the diversity in means and motivation for such actions. In light of this, I examine empirically those cases in which a committee is formally bypassed—that is, when a bill is brought to the floor without the committee of referral reporting.<sup>9</sup> In seeking to ascertain the

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<sup>9</sup> As in the other chapters of this dissertation, the focus here is simply on House bills—resolutions fall into a somewhat different class of legislation, and Senate bills that are considered in the House, because they often have a House bill as a counterpart, are likely to give numerous false positives of committee bypass.

prevalence of such behavior in the House, I consider the 97<sup>th</sup> to 105<sup>th</sup> Congresses, or the period from 1981 to 1998.

Before turning to the data, a few points on what this analysis does not (and cannot) deal with are merited. The search criteria employed here are based on available electronic resources through Thomas (the Library of Congress online source for legislative data on Congress) and Scorpio (the predecessor to Thomas, accessed through a telnet interface). With these tools, one can search for bills reaching particular stages of the legislative process, such as a committee report, a passage vote, etc. Naturally, any search device such as this is limited in its capacity for flexibility. As such, I cannot look for bills that fall into categories not captured by the mechanism's categorization scheme. For example, Thomas does not make available a search for bills brought to the floor for consideration—the only related category is whether a measure was adopted or failed of passage on the floor. Thus, it is impossible to ascertain with this instrument which bills were initially brought to the floor without committee consideration, but were subsequently pulled from consideration prior to a vote on passage.<sup>10</sup>

However, the data can tell us something about the trends in bypassing committees over nearly two decades. Table 3.1 presents the number of bills without formal committee approval that were nonetheless brought to a vote on the House floor. As a whole, the number of these bills is higher at the end of the

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<sup>10</sup> The number of such instances is undoubtedly quite small, but it is highly likely that such things do occur on occasion. More frequent are cases in which the leadership pulls from the floor a bill proceeding through the traditional legislative process. The supplementation of this study of committee bypass with a detailed search of secondary sources such as *CQ Weekly* aids in overcoming this problem (at least on a case-by-case basis), while at the same time lending further credence to the claim that such events are quite rare. However, it is not unreasonable to surmise that there are occasions in which the leadership is forced to pull a bill from the floor due to outrage on the part of committee members that their panel was bypassed.

period than it was at the beginning, ranging from 34 in the 97<sup>th</sup> Congress to 120 in the 105<sup>th</sup>. The sum of such measures in any individual Congress exceeds the number of bills circumventing the committee system by a discharge petition from the entire period (1931 to 2000) examined by Beth (2001).<sup>11</sup> Thus, while the discharge petition has garnered most of the scholarly attention surrounding the circumvention of committees, it is rarely observed empirically.<sup>12</sup>

Table 3.1 breaks down the number of bypasses per Congress according to the various means of scheduling in the House. This categorization offers some initial insight into the circumstances under which this activity is undertaken. For instance, a bill called up under unanimous consent is obviously non-controversial in that a single member could stymie its progress. Thus, it is very unlikely that committees are taken advantage of in this context. And as the table indicates, a large number of bypassed bills are scheduled by unanimous consent. In three of the nine Congresses examined here, unanimous consent was the most common means of bypass.

Over the entire period, consideration of bypassed bills under suspension of the rules was most frequent. A total of 366 bills out of the 673 that formally circumvented the committee system were brought to the floor via suspension. While not requiring the same degree of unity as unanimous consent,

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<sup>11</sup> Interestingly, over the period from 1981 to 2000 (97<sup>th</sup> to 106<sup>th</sup> Congresses), there were only three successful discharge petitions—one in the 102<sup>nd</sup> Congress and two in the 103<sup>rd</sup>. In each of these cases, however, when the petition was entered (i.e., received the requisite 218 signatures), the House opted to consider the bill by unanimous consent rather than moving ahead with a formal vote on discharge (Beth 2001: 20). A recent exception to this pattern occurred with campaign finance reform legislation in the 107<sup>th</sup> Congress. H.R. 2356 was discharged and brought to the floor despite strong objections from the Republican leadership (Foerstel 2002).

<sup>12</sup> Again, this does not mean that it is not important. As others have argued, the mere existence of the discharge petition may be influential enough to alter the actions of committees and their leaders.

suspensions also possess a supermajority requirement for success, and thus are still likely to be somewhat bipartisan in nature. Their role has been increasing in the House in recent years, and the level of consensus on such bills has been on the rise as well.<sup>13</sup> The final category is special rules, whose use in the context of committee bypass rose dramatically in the 104<sup>th</sup> and 105<sup>th</sup> Congresses.<sup>14</sup> In fact, in these two Congresses, the number of special rules connected with bills not acted upon in committee yet finding their way to the floor matched or exceeded that of bills arriving at that juncture via unanimous consent.

Figure 3.1 offers a slightly different perspective on the data shown in Table 3.1. It presents the percentage of each of the three primary types of bypass by Congress as a share of the total. Here the trend is somewhat more visible, with unanimous consent dominating early on, only to be supplanted by suspensions over the remainder of the period. Note, as well, the up tick in special rules during the last two Congresses.

While the method of calling up legislation is informative, what is perhaps an even more interesting question is to the degree to which bills bypassing committees exhibit controversy at the floor stage. Table 3.2, which displays the percentage of bills evoking a roll call vote on final passage and of those, the percentage exhibiting conflict, offers some insight into this question. For the purposes here, conflict is defined as an instance in which fewer than 90 percent

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<sup>13</sup> On these recent trends in suspensions, particularly as they relate to their prominence in the House and the impact on party voting, see Wolfensberger (2002) and Crespín, Rohde, and Vander Wielen (2002), respectively.

<sup>14</sup> Note that the “Other” category encompasses comparatively obscure scheduling procedures such as the Consent Calendar, calling up legislation due to its privileged nature, etc.

of the members vote in agreement. A 70 percent threshold is similarly employed for the sake of avoiding the potential pitfalls inherent in an arbitrary cutoff level.

The first point that should be recognizable in the table is that there are relatively low levels of conflict on suspensions, at least when compared to special rules, as indicated by the fairly small proportion of the former that are roll called. This finding, while not particularly distinct from the same general relationship on bills that do *not* bypass committee, does underscore the tendency for special rules to be employed on controversial legislation.

Also of interest is that the actual number of bills subject to a roll call vote on final passage increases over the time period for both procedural paths. For suspensions, the number of bills requiring a roll call increased from four in the 97<sup>th</sup> Congress to 30 in the 105<sup>th</sup>. In a similar vein, three bills brought to the floor via a special rule in the 97<sup>th</sup> Congress were roll called on passage, while by the 105<sup>th</sup> Congress, 20 such votes were taken. Consequently, while there is not an apparent temporal pattern in the percentage of each category that is subject to a roll vote, it is quite evident that the sheer number has increased dramatically over the period examined here.

What does this trend indicate? For one, it likely corresponds to the increasingly partisan atmosphere in which the House operates. Since the early 1980s, the majority party has become progressively more effective in their agenda setting capacity. Thus, it should not be surprising to find that even in the context of committee bypass, the leadership seeks to press its procedural

advantage over the minority. One way in which this conjecture may be examined more directly is by looking at the roll rates on final passage of such bills.

An entity, often times a party or committee, is said to be “rolled” when an opposition group successfully pushes forward legislation the group of interest opposes. Thus, a roll is said to occur when a majority of one group (say the majority party) successfully votes in favor of a motion over the objections of a majority of a competing group (in this example, the minority party). If in fact the majority party uses its procedural prowess to its advantage, then we would expect to find it rolling the minority on these bypassed measures. The data in Table 3.3 bear out this expectation. In no instance was the majority party rolled, and the minority was rolled with some regularity on bills that circumvented the committee system.

### **The Issue of Committee and Party Power**

While the preceding discussion has drawn attention to the evolution of committee bypass in the contemporary Congress, and has documented a number of cases (and manners) in which the tactic has been employed, the relationship between committee power, party power, and the prerogative of the floor has not been given much attention. In light of the literature seeking to explain the existence (or absence) of committee power, it is worthwhile to consider the degree to which bypass is evident as a direct limit on committee gatekeeping power. To reiterate, the assumption that mechanisms exist which allow the floor to extract legislation from committees is at the heart of the



scholarly interest in the discharge petition. In this section, I briefly revisit a few of the cases discussed earlier and show that in fact committee preferences were standing in the way of broader membership preferences on the issue at hand. However, the tool of choice was not a discharge petition, but rather intervention on the part of the leadership to bring about action on legislation that would have otherwise been stalled.

The history of school access legislation (H.R. 5345) is a case in point. Recall that this is the bill that was artfully drafted to go to the Education Committee rather than Judiciary. The claim of the bill's authors was that it would not have had the votes on the latter committee to make it to the floor. Examination of the vote on passage of H.R. 5345, as reported by the Education Committee, indicates that this belief on the part of the sponsors was indeed probably true. The first section of Table 3.4 presents the breakdown of voting on final passage according to party and committee status. Clearly, in the aggregate members of the two committees held differing opinions on the issue of allowing religious groups access to public schools. In this case, at least, bypass was a strategy that undercut what would normally have been the committee with jurisdiction.

A similar pattern is true for two other pieces of legislation discussed earlier: Mike Synar's amendment to levy higher cattle grazing fees on western ranchers and House Republicans' school voucher initiative. In each instance, a majority of the committee with jurisdiction opposed the language, yet leadership involvement created a path to the floor. In the case of Synar's amendment, the

House agreed with him in overturning the Interior Committee. However, on school vouchers, the opposition within the Education and the Workforce Committee was simply a preview of opposition on the floor, and the leadership was unable to convince a majority of members to vote for the bill.

## **Conclusion**

In this chapter, I have attempted to add to the richness of the growing contemporary understanding of the changing nature of congressional politics by examining what has become an increasingly important procedural avenue for legislation in the House. While other research has paid significant attention to various unconventional procedures such as the discharge petition, there has been comparatively little focus on the other, more common means of bypassing the standing committee system. This study fills this gap by categorizing the various ways in which such detours around committees may occur, and considering the implications of this activity on theories of committee power.

The section containing the case studies provides the foundation for further examination of the various means by which committees are bypassed in the House. This chapter took an empirical look at just one means of bypass—where the committee is formally circumvented without completing a report. However, it would be equally (if not more) interesting to conduct an in-depth examination of House special rules to determine the degree to which committee products are modified prior to floor consideration. In her study of the unconventional processes of legislating in Congress, Sinclair (2000) identifies such post-

committee adjustment as an increasingly common practice on major legislation. However, we know little beyond her observations of major legislation about just how common the course of action is and the underlying rationale behind its use.

Finally, this analysis lays the groundwork for the further development of a study of the role of party power in the context of the committee system. While it is tempting to think of committee bypass by the party leadership as often resulting from divisions between the party caucus and/or the leadership on the one hand, and one of its committees on the other, this is probably not the most common cause. Rather, there are a host of other factors that may give rise to the party finding it advantageous to forgo committee action. Foremost among these motivations are likely the desire to keep an issue from being openly aired for public consumption, an action which has certain implications for the quality of legislative deliberation, and the desire to frame floor consideration in a way that is advantageous the party.

**Table 3.1: Methods of Committee Bypass,  
97<sup>th</sup> – 105<sup>th</sup> Congresses (1981-1998)**

<b>Congress</b>	<b>Unanimous Consent</b>	<b>Suspension of the Rules</b>	<b>Special Rule</b>	<b>Other</b>	<b>Total</b>
97	21 (62%)	8 (24%)	4 (12%)	1 (3%)	34
98	42 (56%)	29 (39%)	4 (5%)		75
99	30 (46%)	30 (46%)	6 (9%)		66
100	17 (25%)	42 (63%)	6 (9%)	2 (3%)	67
101	23 (28%)	51 (62%)	6 (7%)	2 (2%)	82
102	23 (25%)	56 (62%)	6 (7%)	6 (7%)	91
103	28 (49%)	24 (42%)	5 (9%)		57
104	11 (14%)	47 (58%)	23 (28%)		81
105	21 (18%)	79 (66%)	20 (17%)		120
<i>Total</i>	216	366	80	11	673

**Table 3.2: Conflict on Bills Bypassing House Committees,  
97<sup>th</sup> – 105<sup>th</sup> Congresses (1981-1998)**

Congress	Suspension of the Rules			Special Rules		
	% roll called	% conflictual (90 percent)	% conflictual (70 percent)	% roll called	% conflictual (90 percent)	% conflictual (70 percent)
97	50.0 (4)	100.0 (4)	25.0 (1)	75.0 (3)	66.7 (2)	0.0 (0)
98	27.6 (8)	25.0 (2)	0.0 (0)	75.0 (3)	100.0 (3)	66.7 (2)
99	16.7 (5)	60.0 (3)	40.0 (2)	83.3 (5)	80.0 (4)	0.0 (0)
100	26.2 (11)	18.2 (2)	0.0 (0)	100.0 (6)	33.3 (2)	16.7 (1)
101	9.8 (5)	40.0 (2)	20.0 (1)	100.0 (6)	100.0 (6)	66.7 (4)
102	23.2 (13)	23.1 (3)	0.0 (0)	83.3 (5)	80.0 (4)	20.0 (1)
103	37.5 (9)	55.6 (5)	22.2 (2)	60.0 (3)	100.0 (3)	100.0 (3)
104	29.8 (14)	42.9 (6)	35.7 (5)	100.0 (23)	87.0 (20)	65.2 (15)
105	38.0 (30)	30.0 (9)	16.7 (5)	100.0 (20)	70.0 (14)	40.0 (8)

*Note:* Figures in parentheses indicate the actual number of bills. In characterizing the percentage of the roll called bills exhibiting conflict, two different thresholds are employed: bills on which fewer than (a) 90 percent and (b) 70 percent of members voted in the same way on final passage.

**Table 3.3: Minority Party Rolls on Passage of Bypassed Bills  
Considered Under a Special Rule,  
97<sup>th</sup> – 105<sup>th</sup> Congresses (1981-1998)**

Congress	Minority Rolls
97	0
98	2
99	2
100	1
101	3
102	1
103	3
104	11
105	6

**Table 3.4: Committee Member Voting on Legislation Bypassing Committee**

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*H.R. 5345 (1984) – School Access*

Education and Labor: 21 – 14 (Dem. 9 – 13, Rep. 12 – 1)

Judiciary: 14 – 17 (Dem. 5 – 15, Rep. 9 – 2)

*Synar Amendment to H.R. 5769 (1990) – Cattle Grazing Fees*

Interior and Insular Affairs: 16 – 18 (Dem. 15 – 7, Rep. 1 – 11)

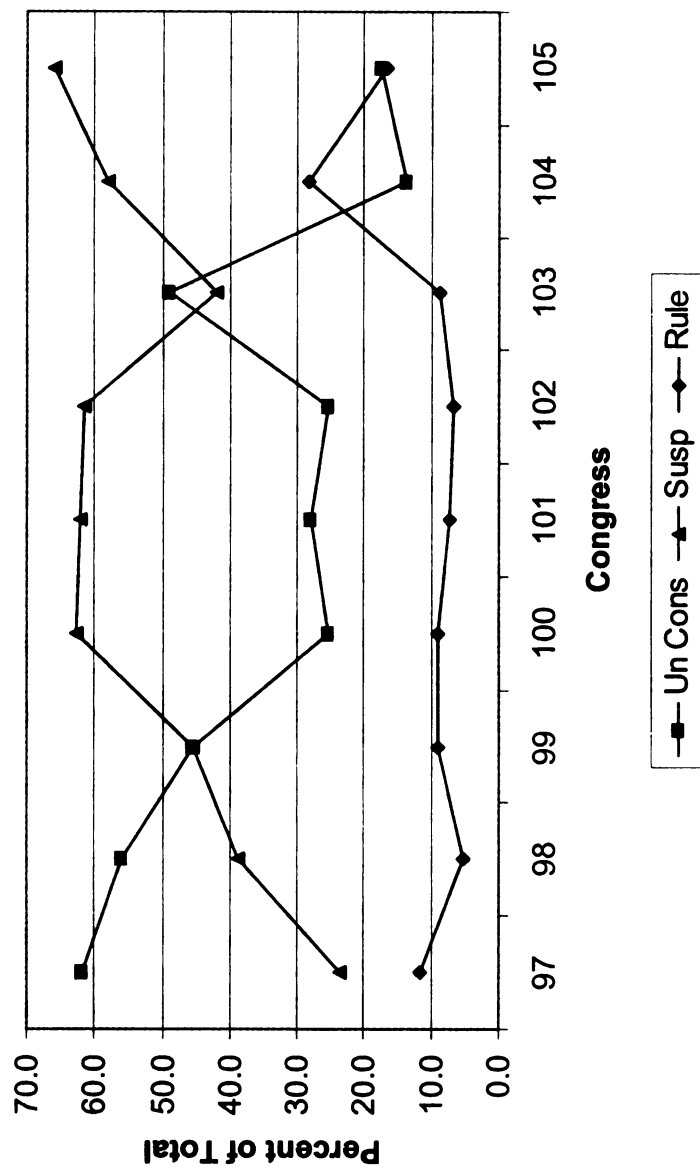
*H.R. 2746 (1997) – School Vouchers*

Education and the Workforce: 22 – 23 (Dem. 0 – 19, Rep. 22 – 4)

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*Note:* Votes are drawn from the final passage (or adoption) votes on the House floor.

Figure 3.1: Method of Committee Bypass by Congress





## **Chapter 4**

### **Suspensions, Special Rules, and Selection Effects: A Unified Model of Agenda Setting in the U.S. House**

#### **Introduction**

The legislative process in the House of Representatives is not a neat, linear process. The path from introduction to enactment for the handful of bills that successfully navigate this course varies considerably from bill to bill. And as time has passed, the number of viable progressions has, if anything, only increased. The traditional "textbook" legislative process, if it ever truly existed, has been replaced by a legislative process characterized by unorthodoxy and diversity (see, e.g., Shepsle 1989, Sinclair 2000a). One area in which this diversity is readily apparent is in the scheduling of legislation for floor consideration in the House. No longer are committees guaranteed a seat at the table, and highly restrictive rules have become commonplace for major legislation. In light of the importance of these changes, and the potential impact they have for altering the balance of power within the chamber, students of Congress have paid significant amounts of attention to particular aspects of the legislative process. One area where this is clearly evident is in the domain of restrictive rules. With the increase in partisanship in the mid-1970s and the rise to prominence of restrictive rules shortly thereafter, a multitude of studies have grappled with the strategic importance of the Rules Committee and its products, which govern the mode of consideration for individual bills on the floor.

Of course, there is much more involved in floor scheduling than simply special rules. In fact, most bills brought to the floor for consideration arrive there not via a special rule, but rather through a motion to suspend the rules and pass the bill. The decision of whether to schedule a bill by suspending the rules or via adoption of a special rule is necessarily a choice between alternatives. If the route to the floor proceeds through the Rules Committee, a subsequent choice over whether to use a restrictive rule is encountered. However, existing models of floor scheduling that examine special rules in isolation fail to consider the selective, two-stage nature of agenda choice. That is, they attempt to explain the choice regarding the restrictiveness of special rules absent the preceding choice between the two primary routes to the House floor.

This chapter seeks to contribute to the literature on legislative organization in two ways. First, by incorporating bills brought to the floor via the suspension procedure, it is possible to ascertain whether and to what extent existing models may suffer from selection bias resulting from considering only bills brought to the floor via a special rule. If the two processes are related, then the omission of one stage from consideration of the other may hamper the inferential capacity of the separate models. Second, in the context of a more fully specified model, this chapter offers a more comprehensive treatment of the topic of suspension of the rules and the motivations for using this procedure as opposed to the more commonly examined vehicle of special rules. Significantly less research has been done on suspensions (see, e.g., Bach 1990), much of which covers fairly brief periods of time and does not offer a fully strategic account of their use.

By reexamining Krehbiel's (1991) rules data for the 98<sup>th</sup> and 99<sup>th</sup> Congresses and Marshall's (2002) data for the 97<sup>th</sup> and 98<sup>th</sup> Congresses in conjunction with data on bills that were considered under suspension in the same period, the question of whether significant bias exists as a result of sample selection is addressed directly. The multivariate MLE models are estimated using censored probit, providing evidence of the degree of selection bias and at the same time painting more thorough picture of the two processes side by side.

The chapter proceeds as follows. In the next section, a review of the literature on suspension of the rules is presented, along with some expectations regarding the conditions under which this mechanism is likely to be employed. The subsequent section briefly revisits the restrictive rules literature and the primary hypotheses contained therein. Next, an overview of the issue of sample selection issue is provided, followed by a discussion of the data and method employed in this analysis. The fifth section describes the empirical results. The chapter concludes with a brief summary of the findings, the main implications, and some areas for future research.

### **Suspension of the Rules**

The ability of the House to suspend its standing rules in order to consider legislation out of regular order is a long-standing component of parliamentary practice in that body. The current procedure for considering a bill under suspension of the rules allows for 40 minutes of debate equally divided between opponents and proponents, prohibits amendments (except for those incorporated

into the motion by the committee of jurisdiction), and requires a two-thirds vote for passage. The motion is in order on particular days of the week (Mondays, Tuesdays, and the last six days of the session), and the right of recognition is reserved to the Speaker.<sup>1</sup>

While the procedure as it currently stands is relatively straightforward, it has evolved over time. Bach (1990) discusses the history of the suspension motion, tracing it back to its roots in 1822 when the House first allowed its rules to be suspended by a two-thirds vote. For some period of time, the traditional employment of suspensions involved bringing up a bill for consideration out of the regular order of business, with the vote on passage occurring separately and later. This is in contrast to contemporary practice, in which the motion deals with suspending the rules *and* passing the bill. Another important innovation in procedure deals with the Speaker's right of recognition. At first, the Speaker traditionally recognized members' indiscriminately. This, coupled with an increasingly frequent use of the procedure for petty or simply position-taking measures, gave rise to limitations similar to those persisting to this day dealing with the particular days of the week on which suspension motions were in order, the Speaker's right of recognition, and debate rules.

Cooper (1990) identifies a few distinct segments of time over which rather stark differences in the frequency of suspension motions are evident. From 1822 until the emergence of the party era (beginning about 1880), suspensions were ascendant in the House. With the rise to prominence of the Rules Committee

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<sup>1</sup> See Oleszek (2001: 112-115) for a detailed discussion of the suspension procedure in the House.

during the period of strong speakers, and the expanding ability of the leadership to employ special rules in setting the legislative agenda, the need to rely on motions to suspend the rules diminished significantly. As Cooper notes, the motion "had been transformed into a method used occasionally to deal with relatively non-controversial matters in an expeditious manner" (32). Suspensions remained mostly in the background of House politics through World War II, with the exception of a few notable cases.<sup>2</sup> The use of suspensions has increased rather dramatically since the 1950s, a trend Cooper attributes to an increasing legislative workload and greater levels of floor uncertainty due to the changing status of committees and the waning prerogatives enjoyed by committee leadership over junior members (à la Smith 1989, Bach and Smith 1988). A growing reliance by the House, and the majority party in particular, on suspensions in the late 1970s led to criticism that it was being employed on increasingly controversial and significant legislation. In light of this criticism, House Democrats changed their party rules to disallow the Speaker to recognize suspension motions on bills estimated to cost more than \$100 million in any fiscal year.<sup>3</sup>

In recent years, which have been characterized by heightened levels of partisanship, Wolfensberger (2002) notes the rather ironic fact that more and more bills are proceeding through suspension of the rules. He argues that the pattern reflects the majority party leadership's interest in providing an outlet to members who have fewer opportunities for legislative initiative on the floor in the

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<sup>2</sup> See Cooper (1990: 32-37) for an enlightening discussion of this period.

<sup>3</sup> On this point, and for more details, see Bach (1990: 59), Rohde (1991: 95-98), and Wolfensberger (2002: 7-9).

context of major legislation that is increasingly being considered under highly restrictive structured rules. Interestingly, according to Wolfensberger, about three-quarters of bills enacted into law in the 106<sup>th</sup> Congress were considered under suspension of the rules in the House.

Despite the relatively broad, and of late, growing, body of descriptive research documenting the changes in the suspension process over time and seeking to explain changes in its use and the procedural context surrounding its employment, we lack a compelling treatment of the subject that seeks to place it within the broader legislative context. Such an analysis might, for instance, attempt to delineate the conditions under which particular pieces of legislation will be treated under the varied alternatives for bringing legislation to the floor for consideration. Thus, the ability to predict at the level of individual bills the choice on the part of the leadership to employ one avenue to the floor as opposed to another appears to be an area of Congress that is largely untapped by scholars and one that offers the potential for a more nuanced understanding of a critical area of legislative politics. As will be discussed in greater length in the next section, other aspects of legislative agenda setting have received much more attention, but the focus tends to be on one component in isolation from the others. Finally, while the literature offers a number of intuitive explanations of the logic underlying the choice to employ suspension of the rules, few (if any) scholars have attempted to test these expectations in a systematic fashion.

One exception to this generalization is Grant and Hasecke's (1999) study of the duration from introduction to floor consideration under suspension of the

rules on bills introduced in the 105<sup>th</sup> Congress. Although their characterization of the suspension procedure as one that frequently bypasses committees and undercuts committee power (see, e.g., page 2) seems to overstate the case when contrasted with the studies discussed above, they do identify a few factors, such as committee action and simplicity of the legislation, that affect the timing and likelihood that a bill will be considered under suspension. Their study takes a step toward integrating suspensions into the broader theories of congressional organization, as their framework considers suspension of the rules in the context of the committee system. However, Grant and Hasecke's study, like most of the work on floor agenda setting, treats other means to the floor (such as special rules) as censored (7). As such, the focus remains on one avenue to the floor to the exclusion of others. It seems plausible, however, to imagine that the duration of time between introduction and passage on bills called up under a suspension motion, while informative, may not speak as directly to the question of agenda setting as a study of which bills proceed through which route, why, and how.

Having painted a brief sketch of the literature dealing with suspension of the rules in the House of Representatives, it is necessary to turn to a discussion of the factors contributing to its use on particular pieces of legislation. The literature generally holds that suspensions are reserved for relatively minor, sometimes inconsequential, legislation.<sup>4</sup> This is not to say that there are not exceptions, because cases certainly do exist in which it is obvious that either the

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<sup>4</sup> This characterization likely holds for most members on most bills called up under suspension of the rules. Of course, there are usually a small number of members who, on any particular bill, possess intense preferences and therefore would not consider the bill inconsequential—thus its appearance on the calendar.

committee or the leadership (or both) miscalculated and failed to realize potential controversy. Cooper (1990: 83) notes a number of reasons why suspension motions fail, including such miscalculations of broader chamber sentiment, the occasionally troublesome nature of the limitation on amendments inherent in the context of a suspension, and even the cascading effect of apparent controversy on the floor.<sup>5</sup>

However, it is quite safe to say that most suspension votes evoke little controversy, whether of a partisan nature or otherwise. In fact, most votes are not even recorded, but rather are adopted by a simple voice vote. And, while interesting to note, the few cases in which overt controversy was evident can often be attributed to miscues on the part of the leadership, unforeseen objections, or underlying tactical considerations. One case worth noting in which the leadership used suspension for tactical purposes occurred in the spring of 1998 on campaign finance reform legislation. Rather than run the risk of voting on a rule, which could be modified to allow votes on widely favored provisions that were opposed by the Republican leadership, the decision was made to call up a bill under suspension of the rules. Speaker Gingrich hoped that by doing so he could fulfill his promise of allowing a vote on campaign finance reform while determining in advance that his opponents would not carry the day. The measure went down to defeat for a host of reasons. However, this example dealing with the nature of consideration under suspension of the rules hearkens

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<sup>5</sup> Cooper (1990) notes that because of the traditionally consensual environment in which suspensions are debated and voted upon, many members have come to accept them as routine and generally possessing little that could lead to electoral concern. Thus, when controversy does emerge, it catches the attention of representatives (83-84).



to a more general point on the procedure in question. That is, suspensions hold some of the same features as restrictive rules in that they preclude amendments. Cooper (1990: 74-75) suggests that under normal circumstances, the bills brought up under suspension would probably be considered under an open rule were the suspension not employed, so the fact that suspensions shield bills from amendments is an attractive feature. Thus, it is worthwhile to bear in mind the nature of amendment protection offered in a suspension motion, all the while realizing that the supermajority requirement and unique amendment environment carry with them consequent considerations for the leadership in setting the floor agenda.

Given what we know about the history of suspension, along with the tactical and practical considerations underlying its use in the House, what expectations may be drawn for predicting and more fully explaining when it is likely to be employed? It is important to realize that for bills evoking any level of controversy, and even those with the potential to raise the objection of at least one member, the leadership is effectively faced with scheduling measures via either a special rule or a motion to suspend the rules.<sup>6</sup> Given some marginal expectation, realization, or worry of controversy, what motivates the leadership to

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<sup>6</sup> This relationship is said to hold true *effectively* in that there exist a few other means by which bills can make it to the floor for consideration. The most frequent alternative, though still comparatively rare, is for a bill to be agreed to by unanimous consent. As the name suggests, the objection of a single member makes this path impassible. However, there are a small number of bills considered in this fashion in any one Congress. Additionally, though occurring very rarely, bills may make it to the floor due to the “privileged” status they hold by virtue of their committee reference, or by simply being pulled from one of the multiple House calendars. This analysis is confined simply to bills brought to the floor via suspensions or special rules because these two categories encompass the lion’s share of the legislative agenda, and empirically modeling the other types would pose a number of challenges that would seem to exceed the value added.

choose one approach in favor of the other? A series of factors can be said to be important. First, given that the suspension motion requires a supermajority vote for passage, controversy (particularly if it is nontrivial or partisan in nature) may preclude the leadership from pursuing the suspension route. Thus, the behavior related to the bill in committee is often a strong indicator of the nature of discourse regarding the bill and the broader issues it invokes.

Second, bills with a formal stamp of committee approval are probably less likely to be considered under suspension. This is likely due in part to at least two factors: (1) the nature of the relationship between the party leadership and committee leadership in scheduling bills under suspension and (2) the narrow scope of much of this legislation. Most bills considered under suspension are done so at the request of the chair of the committee of referral, and the details are worked out with the Speaker and/or the majority floor leader. Because such bills are relatively narrow in scope, they are less likely to have attracted much, if any, attention in committee. In many cases, the committee leadership may feel that it is not necessary to schedule a hearing on a bill of little or no consequence that nearly all members will support. Thus, a committee report is not necessary, as the relevant negotiation and decision making can be carried out between the committee and party leadership.

Also impacting the choice of procedure regarding floor scheduling is the scope of a piece of legislation. Bills of great detail, touching on broad federal programs with large funding components, are both less likely to be noncontroversial, *ceteris paribus*, and more likely to run into caucus rules

regarding the acceptability of handling them under suspension. Thus, there is an *a priori* expectation regarding the incidence of rules versus suspensions.

With these considerations in mind, a brief discussion of the nature of special rules in the House of Representatives is presented next. Because one of the central aims of this analysis is to merge competing strands of theory into a more encompassing model of legislative agenda setting, it is necessary to touch briefly on the primary theories and expectations of the competing theories of committee organization and their implications for the use of restrictive rules in the House.

### **Restrictive Rules**

For some time, students of legislative politics in the U.S. House have focused a great deal of attention on the role of the Rules Committee. The allure of this committee is largely a function of the unique role it plays in setting the floor agenda of the House through special rules it reports to the chamber that, if adopted, govern the consideration of bills. The committee has long been seen as an entity acting on behalf of the Speaker and the majority party leadership (see, e.g., Oppenheimer 1977). While there have certainly been periods of time in which this was not the case, such as when a conservative coalition of southern Democrats and Republicans dominated the committee despite the numerical Democratic majority, the history of the committee hints (some would say screams) at the influence of the majority party's interests. The critical power of the committee lies in the nature of the special rules it reports—by ruling out of

order certain amendments and/or making others in order, many have argued that the committee has the opportunity to sway floor outcomes from what the chamber's median voter prefers.

This view of the Rules Committee, and particularly the partisan characterization of its role, has been a matter of dispute. Alongside the developing theories of legislative organization and the role of committees in the House, a series of analyses of both formal and empirical orientation has sought to place the Rules Committee as the arbiter between and servant of various centers of power or interests in the chamber.<sup>7</sup> The three competing centers of power are said to be (1) members of particularistic committees with high demands over subsets of policy, particularly in the distributive arena (thus the term **distributive** theory), (2) the median member of the chamber, whose interest lies in producing legislation on which he or she is informed about the policy consequences (the crux of the argument here centers on majoritarianism, à la the median voter theorem, and **informational** motivations), and (3) the **majority party** or some member of the majority party (often the party median). A brief exposition of the underlying logic of each perspective is presented next.

According to distributive theory, the committee system is organized in such a way as to allow for gains from exchange (Weingast and Marshall 1988). In this model, the Rules Committee serves to protect cross-committee logrolls by employing restrictive rules on distributive legislation. In contrast, informational theory claims that committees are encouraged to specialize in particular areas of

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<sup>7</sup> For a good overview of the three dominant theories, as well as critiques of their shortcomings, see Shepsle and Weingast (1995) and Groseclose and King (2001).

policy. The reward for specialization and the transmission of useful information to the chamber is restrictive rules that protect the products of informative committees (Gilligan and Krehbiel 1987, 1988; Krehbiel 1991, 1997). Finally, partisan theory contends that committees in general, and the Rules Committee in particular, are organized in such a way that benefits accrue not to the chamber as a whole (as with informational theory) but rather to the majority party.<sup>8</sup> As such, restrictive rules are most often employed to protect legislation of interest to the majority party and carrying likely electoral implications (Sinclair 1994, Marshall 2002). Further, Dion and Huber (1996) argue that the incidence of restrictive rules is related directly to the preference configuration of the Rules Committee vis-à-vis the committee of referral and the floor.

Because the analysis to be presented here is principally concerned with placing special rules within the larger context of floor agenda setting in the House, the prior studies of restrictive rules that have focused on the mechanisms underlying rule choice at the level of the bill-rule pairing merit most of the attention. That is, while much has been (and continues to be) written about the competing theories of legislative organization, for the purposes here, it is most important to draw from existing models of rule choice at the bill level. To date, there have been only a few studies that seek to model the restrictiveness of special rules at the micro-level on the full sample of rules. While some studies examine the dynamic in the aggregate (e.g., Dion and Huber 1996), and others

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<sup>8</sup> See, e.g., Rohde (1991) and Cox and McCubbins (1993) for general presentations of the primary partisan perspectives. Partisan theories may differ somewhat regarding the degree to which party interest reign supreme across all facets of congressional politics, and agenda control in particular, but a continuing dialogue seems to be linking the assorted perspectives (Rohde 1994, Cox and McCubbins 2002, Finocchiaro and Rohde 2002).

look at subsets of the rules agenda dealing with “major legislation” (Sinclair 1994), two studies have taken a broad, encompassing look at all (or nearly all) the special rules reported in one or more Congresses (Krehbiel 1991, 1997; Marshall 2002).<sup>9</sup>

Krehbiel, who analyzes the choice of rules in the 98<sup>th</sup> and 99<sup>th</sup> Congresses, considers the restrictive rule phenomenon to be a product of an informational and largely majoritarian motive in congressional organization. In contrast, Marshall purports that there is an inherent partisan structure to the special rules process, which he argues his data (drawn from the 97<sup>th</sup>, 98<sup>th</sup>, 104<sup>th</sup>, and 105<sup>th</sup> Congresses) demonstrates. For the purposes of this analysis, and to take advantage of the slight overlap in the time series of previous studies, the focus here is on the 97<sup>th</sup>, 98<sup>th</sup>, and 99<sup>th</sup> Congresses and the corresponding work presented by Krehbiel and Marshall. To conserve space and for ease of exposition, the hypotheses and primary variables of the competing theories will be referenced in passing in subsequent sections of this chapter. Tables 4.3 and 4.4 present this information, for Krehbiel and Marshall respectively, in table format for the interested reader.

### **Sample Selection and the Unification of Legislative Agenda Setting**

As noted in the introduction, one of the primary aims of this analysis is to incorporate the two principal means by which legislation is scheduled for floor

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<sup>9</sup> Note that Krehbiel (1997) is essentially an extension of the model seeking to explain rule choice presented in his earlier work (Krehbiel 1991). As he notes, there are two “minor differences” between the later analysis and that presented in his book. In contrasting the results, Krehbiel maintains that the “main substantive findings” and “the thrust of the findings” are not affected (1997: 935).

consideration in the U.S. House of Representatives. This step toward building a comprehensive theory that accounts for scheduling at the bill level is important in that, first, procedural choices do not occur in vacuum—that is, the leadership of Congress inherently makes a choice between the various alternatives at their disposal. The decision with which they are faced is more involved than simply whether a bill should be brought to the floor under a restrictive or an open rule, although this choice receives most of the attention when people think or talk about how the House schedules legislation. As previously noted, many more bills are brought to the floor via suspension of the rules. Second, if the two processes are related, and there is cause to suspect that they are, then there exists the potential that the selection process (by which a bill is first sorted between suspension and special rules, and then subsequently for those receiving a rule, re-sorted between open and restrictive) introduces bias into estimates that model the two phenomena separately. In fact, Krehbiel (1991) alludes to this possibility in discussing his sample of special rules:

“In light of the alternative paths that legislation may take in the House, this sample is obviously not a random sample of all legislation that comes to the floor. How misleading are the inferences, given this selection bias? The bad news is that relative to other bills, these are atypical...While a more comprehensive analysis of bill-specific procedural choice that seeks to predict, for example, bills that come up under suspension as opposed to under a rule would be worthwhile, it is beyond the scope of this analysis” (167).

To what degree might the choice of a restrictive versus an open rule be related to the choice between suspension of the rules versus a special rule? First, it seems quite plausible to assume that these two processes are affected

by a number of common factors. For example, in the informational perspective, the complexity of legislation is said to be a component in determining whether a bill ought to be awarded amendment protection on the floor. A similar, though in this case inverse, logic plays out in determining the applicability of suspensions in that they are generally reserved for more minor legislation with a lower price tag. More generally, suspensions offer at least the same and often times greater levels of amendment protection than do restrictive rules, such that they are a viable alternative to restrictive rules in those instances in which there is a relatively high threshold of consensus. Thus, the same types of factors that contribute to the leadership's predilection for restrictive rules may lead them to employ suspensions when feasible. Second, though the two processes have generally been considered independent of one another, it is appealing to think of them together. While one might argue that the choices are not separate processes—the leadership may choose from among the three alternatives (suspension, open rule, restrictive rule) simultaneously, this view possesses some empirical and practical limitations. Empirically speaking, one does not know in advance what the outcome will be if the Rules Committee is asked to produce a special rule.<sup>10</sup> When it comes to statistical modeling, employing an estimator that considers the three simultaneously (an ordered probit, for example) unnecessarily constrains the effect of the variables to be monotonic.

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<sup>10</sup> The cost of the leadership miscalculating on a rule is much greater than misjudging support for a suspension vote. In the former case, the vote is taken solely on the procedural question, and there exists the potential for agenda setting power to shift to the minority party (see Finocchiaro and Rohde 2002). On the other hand, a suspension vote ties together the procedural and substantive question, and defeat simply kills the bill. It does not open the floor to minority party agenda setting. I thank Dave Rohde for drawing my attention to this important distinction between the two procedures.



Should these suppositions hold true, the statistical effects of failing to take into account the nature of the relationship between these two agenda setting processes have the potential to significantly undermine the results of existing analyses. The dangers inherent in selection bias are well documented in political science and the social sciences more generally (Achen 1986, Dubin and Rivers 1989). Essentially, if one were to model two related processes separately, while in reality they possess common factors driving outcomes, then the disturbance terms of each of the separate equations would be correlated. In this context, biased coefficients and/or inefficiency are likely products. Drawing inferences from estimates suffering from the problem of selection bias is therefore a cause for concern. Following an emerging body of political science research (see, e.g., Berinsky 1999, Reed 2000), I employ a maximum likelihood technique that explicitly tests for and addresses correlation across the error terms of two equations—a selection equation (suspension versus special rule) and an outcome equation (open versus restrictive rule). The model produces three estimated parameters of interest: a vector of independent variables  $\beta_1$  for the selection equation, a vector of independent variables  $\beta_2$  for the outcome equation, and the correlation of the errors between the two equations  $\rho$ . If  $\rho$  is not significantly discernible from zero, then we are unable to reject the null of independence between the two equations. If, on the other hand,  $\rho$  is significant, then the errors are correlated and the two processes are related.

## Data and Method

The data employed in this analysis are drawn from two sources. For the sake of comparability, the time period covered is the same as that of Krehbiel (1991, 1997), who examines the 98<sup>th</sup> and 99<sup>th</sup> Congresses (1983-1986), and Marshall (2002), who examines the 97<sup>th</sup> and 98<sup>th</sup> Congresses (1981-1984). The data on bills receiving special rules is the identical data employed by each of these authors, both of whom generously provided their datasets. The variables relating to the selection equation (and the choice between restrictive and open rules) were collected using Thomas and Scorpio, two online sources of congressional data offered by the Library of Congress. Included in the analysis are all House bills considered on the floor with an eventual passage vote taken.<sup>11</sup>

Krehbiel codes a series of variables for each bill that are related to informational and distributive expectations. These include distributive content, urgency, the number of laws cited, and the number of Republican and Democratic cosponsors (all of which relate directly to the bill). In addition, he includes a series of variables relating to the committee to which the bill was referred, including committee seniority, preference outlier, and heterogeneity. Table 4.3 describes the measurement of and expectations for the variables in greater depth.

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<sup>11</sup> For the sake of simplicity (and making the data collection more manageable), as well as for comparison purposes, only House bills are included (that is, those bearing the preface "H.R."). It is predominantly measures of this type that possess policy consequences—most resolutions do not. Further, it is primarily House bills that get considered under special rules, though there are a few exceptions. The collection criteria employed here allow for a close match with the data employed by Krehbiel (1991, 1997) and Marshall (2002), though there are a few discrepancies in that their data includes some resolutions and a handful of Senate bills. The results are generally quite comparable, however. Future analyses may incorporate more bill types.

Marshall's dataset is similarly constructed, with many of the same variables employed. While he does not incorporate distributive content (instead using a dummy variable capturing whether or not the committee of referral is considered a "constituency" committee) or committee seniority, Marshall's model bolsters Krehbiel's framework by introducing a series of partisan variables to allow for a more direct and parallel test of the three theories. These measures seek to capture the position of the majority party median relative to the committee of referral and the floor, as well as the relative position of the Rules Committee and the distance between the median member of the referral committee and the median of the floor. Additionally, since Marshall's data includes both singly- and multiply-referred legislation, a dummy variable for multiple referral is included to capture the potential effect of bills considered in this context.

For the full sample of bills (i.e., those considered under *either* suspension or a special rule), the following variables are collected: committee referral(s), whether there was a conflictual vote to report the bill to the floor, whether the bill was reported to the floor by the committee, and the number of CRS subject terms identified in Thomas. Procedural choice is binary in the context of the models to be estimated here. That is, there is a choice between suspension and a special rule. If the latter route is selected, then a subsequent choice is made between an open and a restrictive rule. For the sake of comparison, and to simply replicate the substantive results of the existing models used here as a frame of reference, separate probit models are estimated for each of the choice criteria. Presented

alongside the individual probit results are the estimates of a censored probit model that directly incorporates the nature of the choice context and the possibility of correlation across the disturbance terms of the two separate equations.<sup>12</sup>

## Results

### Krehbiel's Informational Model and the Unified Model

Table 4.1 presents the estimates of a series of models predicting procedural choice. In panel 1, a traditional probit model predicting the restrictiveness of special rules, and replicating Krehbiel (1997), is displayed.<sup>13</sup> The substantive results are generally quite consistent with those in existing informational models. For instance, bills that cite numerous laws (and are thereby considered more complex) are more likely to receive restrictive rules, in line with the theory. Similarly, the heterogeneity of the signals being sent by the committee, as indicated by the number of minority (Republican) cosponsors, is a positive factor in influencing the use of a restrictive rule. On the other hand, committees considered to be preference outliers relative to the chamber are significantly less likely to receive floor protection via a special rule. All of these results comport with the expectations and findings of previous research on restrictive rules from the informational perspective. Also not unlike prior findings, urgent legislation is more likely to receive a restrictive rule, while legislation with higher levels of distributive content is *less* likely to receive such protection on the

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<sup>12</sup> All models are estimated in Stata 8.0.

<sup>13</sup> See, in particular, Krehbiel (1997), Table 3, Model 3.

floor.<sup>14</sup> The only divergent finding between the results presented here and those of Krehbiel (1997) is the coefficient for heterogeneity—it falls slightly outside the conventional bounds of statistical significance. However, it should be noted that the effect of this variable is fairly susceptible to slight changes in model specification, as indicated by subsequent models presented in Krehbiel (1997). As a whole, the model displayed here correctly predicts 84.4% of the cases, a slight improvement over the model with which it is compared.

The second column of Table 4.1 presents the results of a probit model estimating the likelihood that a bill receives a special rule as opposed to being brought to the floor under a suspension motion. The complexity of the bill, as indicated by the number of subjects, is significantly related to the initial choice regarding procedure. Bills that are more involved and complicated are much more likely to receive a rule than those that are comparatively simple. Additionally, bills that received formal committee approval via the committee's reporting the bill to the floor are more likely to be considered under a special rule. This suggests that in many of the cases where bills seem to formally bypass committee, they end up being considered in a rather consensual venue—the suspension of the rules. Perhaps this is not surprising in that committee leaders have significant leeway with the party leadership in determining bills that should be brought up under suspension of the rules. Finally, conflict on the vote to report the bill out of committee, which is the vote most analogous to the passage vote on the floor, is positively related to the use of special rule. That is, when

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<sup>14</sup> Krehbiel (1991, 1997) discusses to varying degrees the surprising sign of the distributive coefficient, in light of the large literature which seems to hold that restrictive rules are likely to be employed to encourage and enforce gains-from-exchange, or logrolling, agreements.

there is conflict in committee at a level approaching the threshold for supermajority passage, leaders appear much more likely to go the route of needing a simple majority vote for passage.<sup>15</sup>

Turning to the variables common to both models, which were included under the assumption that there may be similarities in the rationale for using suspensions in line with the rationale for using restrictive rules because they both offer amendment protection, the results are somewhat mixed. Committee seniority does not lead to a lower likelihood for the employment of special rules—in fact, the opposite is true. However, more heterogeneous committees are associated with a higher likelihood of suspensions (and inversely, a lower likelihood of receiving a special rule). The coefficient for committee outliers is indistinguishable from zero in the suspension vs. special rule equation. As a whole, this model predicts the bills on which special rules will be employed quite well—the percent correctly predicted in this case is fully 83.0%.

The estimates resulting from the unified model employing censored probit are reported in the third column of Table 4.1. This allows for comparisons between the unified model of procedural choice and the separate probit models of special rule vs. suspension and restrictive vs. open rule. In the censored probit model, the two dependent variables are special rule (the selection equation, shown in the lower portion of the column) and restrictive rule (the outcome equation, shown in the upper portion of the column). Modeling procedural choice in this fashion allows for the estimation of all the variables simultaneously, and should selection bias be evident, provides more confidence

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<sup>15</sup> Conflict is defined as occurring when less than 75% voted in favor of reporting the bill.

in the accuracy and robustness of the coefficient estimates. With these preliminary points in mind, I turn to a direct discussion of the results.

It is evident that there are some substantive differences based on the estimation procedure. For instance, while heterogeneity as measured by minority party cosponsorship plays a significant role in affecting the use of a restrictive rule in the independent probit model, the effect washes out in the unified model. In contrast, while committee seniority, which is said to capture committee expertise, fails to exhibit a significant influence in the separate probit, it is a significant positive influence in the unified model. The remaining variables in the outcome portion of the censored probit model remain roughly consistent with their counterparts in the simple probit in terms of sign and significance. Not surprisingly, there are no changes in the selection portion of the equation when contrasted with the probit model predicting whether a suspension or special rule will be employed. This is due to the fact that the censored probit does not incorporate the estimates of the outcome equation into the estimates of the selection equation.

Evidence of correlation across the two independent probit models beyond the changes occurring at the level of individual variables is also available. The parameter  $\rho$  is positive and significant, suggesting that the factors influencing the incidence of special rules also exert an influence on the likelihood that a restrictive rule will be employed. Further, a likelihood ratio test that the two simple probits are independent can be rejected with a relatively high level of confidence. Thus, based on an examination of one existing model of restrictive

rules, there are a few indications that the two procedural choices of interest here are related, although to date they have been modeled independently (if at all).

### *Marshall's Partisan Model and the Unified Model*

Having reconsidered Krehbiel's model of restrictive rules based on informational theory, I turn next to an examination of Marshall's partisan model of restrictive rules. The dependent variables in the models are the same as those presented above: rule vs. suspension, and restrictive vs. unrestrictive rule. Table 4.2 presents results analogous to those of Table 4.1, the obvious difference being that the baseline model is now that of Marshall. In panel 1, a probit model replicating Marshall's is presented, the only difference being that the model is based just on singly referred bills (for the sake of comparability with the results in Table 4.1).<sup>16</sup> The general results are quite similar to those presented by Marshall. As in his analysis, the findings related to the informational theory are somewhat mixed: some measures are significant while others are not. Consistent with Marshall's results, and the informational perspective, increased levels of heterogeneity are associated with a higher likelihood that a bill will receive a restrictive rule. In the estimates presented here, outlying committees tend also to be more protected via restrictive rules, with the remaining informational variables exhibiting no statistically discernible impact.<sup>17</sup>

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<sup>16</sup> More specifically, the model is that of Marshall (2002), Table 2, Model 4.

<sup>17</sup> While one variable (committee outlier) obtains statistical significance in these estimates, two coefficients are not significant here though they were significant in Marshall's analysis: bill urgency (a distributive measure) and majority party distance (a partisan measure). Because of the slightly different samples employed, and the fact that I am most concerned with issues of selection related to the choice between suspension of the rules and special rules, the differences



Additionally, and consistent with earlier findings, the legislative profile variable (indicating the position of the Rules Committee vis-à-vis the committee of referral and the floor) is negative and significant. Committees considered to be in the distributive mold (pork barrel) are less likely to be protected via a restrictive rule, while bills referred to committees whose median majority party member is more moderate than the party's median are more likely to be protected (party median variable). As a whole, the model performs quite well—its predictive success is greater than 90 percent.

Turning next to the probit model predicting whether a bill will be considered under suspension or a special rule, the same basic model is employed as that discussed previously. As a whole, the results comport roughly with the earlier model, with two primary exceptions. First, in this case, a bill referred to an outlying committee was significantly more likely to be considered under a rule than under suspension. This is not surprising in that the floor is probably not inclined to offer the amendment protections inherent in a suspension to a committee with which it is likely to disagree. Second, unlike the results extending Krehbiel's model, whether or not the bill was reported by committee exerts no influence on the decision of rule vs. suspension at conventional levels of significance. As a whole, the model performs rather well, correctly predicting 78 percent of the cases.

The estimates based on the censored probit model incorporating both stages of the agenda-setting process are presented in the third column of Table

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described here are not surprising and do not seem to suggest cause for concern about the primary question.

4.2. Somewhat unlike the results reported in Table 4.1, the unified model based on Marshall's specification in the outcome equation does not differ dramatically from the independent probits. The sign and significance for all variables are consistent across the models save for one, committee heterogeneity, which is not significant when estimated in the context of the complete model. Further, the estimate of  $\rho$  does not offer compelling evidence that the two equations are related ( $\rho = .17$ ). Similarly, the likelihood ratio test of independence of the equations, which produces a  $p$  value of .25, cannot be rejected at conventional levels of significance.

As a whole, the results of the informational and partisan models presented here merit scrutiny. While the substantive impact of the separate modeling strategy appears to be modest, in that the estimates are not dramatically different for most variables, the results suggests that there are some inherent characteristics of the selection process leading to House floor consideration of bills that have implications for the inferences drawn from existing models. While the estimates do not change dramatically when incorporated into a unified model, there is evidence that Krehbiel's model of restrictive rules suffers from selection bias, and that minor substantive changes occur in both Krehbiel and Marshall's estimates when modeled alongside suspension of the rules. While the results do not dramatically alter our understanding of restrictive rules in the House per se, they do suggest that future studies of procedural choice would benefit by incorporating a more nuanced approach to the variety of scheduling alternatives at hand.

## **Discussion**

This chapter represents an initial step in two directions. The first is an attempt to build a broad model of the procedural choices underlying agenda setting in the U.S. House of Representatives. As such, attention has been given to the often-overlooked suspension of the rules. The second goal of the chapter, running alongside the first, is to ascertain whether, and if so, the degree to which, existing models of restrictive rules may suffer from selection bias by failing to incorporate other procedural options that may be related to them. The results described above offer some preliminary and modest evidence that further analysis may be warranted, in that (1) it appears possible to predict quite well the likelihood that a bill will be scheduled via suspension of the rules and (2) the choice regarding rule type and procedure (suspension versus special rule) are likely not independent.

However, it is important to keep in mind a number of caveats. First, the data employed here cover just three Congresses, and only certain types of bills. Second, as has been noted elsewhere (see, e.g., Clark and Reed 2003: 84), the effects of selection bias may be attenuated if the specification of the outcome equation is improved. Thus, if there are issues with omitted variables in existing models of restrictive rules, they may appear under the guise of selection bias in a censored probit. This point seems to be born out to some degree in the fact that Marshall's model represents a more thorough specification of the competing theories, and in terms of the selection effects diagnostics, does not appear to

suffer from the problem to the degree that Krehbiel's model does. This points to the need to continue thinking specifically about the interplay between the theories and the proper specification of an encompassing model of restrictive rules, and procedural choice more generally.

With these caveats in mind, it seems worthwhile to proceed to a larger scale analysis in the future. Realizing the critical importance (in any context) of proper model specification, and particularly in the case of selection models, a more encompassing model of restrictive rules that nests competing explanations should be composed and tested. If one or more of the existing models of restrictive rules omits a significant explanatory variable, then the inferences drawn from it may be limited. Similarly, without such a test, it is more difficult to ascertain the effects of sample selection, if any, in the broader context of procedural choice. The results provided here indicate that there exists the potential for selection bias in modeling House agenda setting, though the general results of two existing models based on data from three Congresses are roughly consistent when a censored model is employed. However, the findings suggest that future studies should account for the interdependence of choices in floor scheduling in the House.

Furthermore, it will be worthwhile to consider additional factors that may play into the decision modeled in the selection equation. That is, it is possible (if not likely) that additional explanatory variables related to the choice between suspension and special rules may be obtained. While the predictive success of the model as it stands is good, it is plausible to imagine that even more detail

may be provided about this choice process, thus offering a more complete and rich explanation for this frequently overlooked but quite important mode of scheduling legislation in the U.S. House of Representatives.

**Table 4.1: Predicting Procedural Choice in the House:  
An Informational Rationale**

Variable	Simple Probit		Simple Probit		Censored Probit	
	$\beta$	(S.E.)	$\beta$	(S.E.)	$\beta$	(S.E.)
Distributive Content	-1.960*	1.064			-1.821*	1.024
Urgency	1.072**	0.469			0.866*	0.451
Laws Cited	0.093**	0.022			0.107**	0.021
Committee Seniority	0.095	0.078			0.161**	0.079
Preference Outlier	-0.054**	0.020			-0.055**	0.019
Heterogeneity	0.081	0.055			0.045	0.056
Republican Cosponsors	0.043*	0.026			0.036	0.024
Democratic Cosponsors	-0.002	0.007			-0.002	0.006
Congress	0.259	0.262			0.323	0.240
<i>Restrictive Rule <math>\alpha</math></i>	-29.672	26.428			-35.735	24.270
Committee Seniority			0.134**	0.050	0.111**	0.050
Preference Outlier			-0.010	0.009	-0.005	0.009
Heterogeneity			-0.112**	0.023	-0.114**	0.022
Subjects			0.027**	0.003	0.029**	0.003
Committee Report			0.421*	0.246	0.720**	0.282
Conflict in Committee			0.654*	0.259	0.573**	0.262
<i>Special Rule <math>\alpha</math></i>			1.621**	0.826	1.458*	0.833
$\rho$ Correlation Parameter					0.640**	0.292
LR Test of Independent Equations ( $\chi^2$ )					3.23*	
Log-Likelihood	-68.254		-274.186		-335.553	
N	180		669		667	

\* =  $p < .10$ ; \*\* =  $p < .05$

**Table 4.2: Predicting Procedural Choice in the House:  
A Partisan Rationale**

Variable	Simple Probit		Simple Probit		Censored Probit	
	$\beta$	(S.E.)	$\beta$	(S.E.)	$\beta$	(S.E.)
Legislative Profile	-1.322**	0.552			-1.211**	0.549
Pork Barrel	-1.940**	0.569			-1.974**	0.622
Bill Urgency	0.809	0.528			0.678	0.499
# of Laws Cited	-0.008	0.014			-0.007	0.014
Committee Outlier	-14.221*	7.522			-19.700**	8.096
Heterogeneity	15.414*	8.142			11.457	8.849
Minority Cosponsors	0.020	0.025			0.030	0.026
Majority Cosponsors	-0.014	0.012			-0.018	0.013
Party Median	1.626**	0.467			1.461**	0.446
Majority Party Distance	-8.448	6.482			-8.958	6.647
<i>Restrictive Rule <math>\alpha</math></i>	1.836	1.438			2.597*	1.466
Committee Outlier			2.868*	1.467	3.145**	1.478
Heterogeneity			-7.116**	1.808	-7.200**	1.832
Subjects			0.026**	0.003	0.026**	0.003
Committee Report			0.129	0.259	0.246	0.286
Conflict in Committee			0.982**	0.308	1.045**	0.307
<i>Special Rule <math>\alpha</math></i>			-1.214**	0.262	-1.370**	0.289
$\rho$ Correlation Parameter					-0.411	0.296
LR Test of Independent Equations ( $\chi^2$ )					1.33	
Log-Likelihood	-42.683		-274.344		-304.327	
N	164		543		537	

\* =  $p < .10$ ; \*\* =  $p < .05$

**Table 4.3: Description of Variables in Krehbiel's Model of Restrictive Rules**

Variable	Theory	Expectation	Measurement
Distributive Content	Distributive	+	Using LEGI-SLATE keywords, the number of states listed divided by the total keywords (including states).
Urgency	Distributive	+	A bill is considered urgent if it extends the debt ceiling or offers continuing or supplement appropriations.
Laws Cited	Informational	+	The number of laws cited in the bill.
Committee Seniority	Informational	+	The average number of years of continuous service on the committee of referral.
Preference Outlier	Informational	-	The absolute deviation between the committee of referral and floor medians' ADA scores.
Heterogeneity	Informational	+	The standard deviation of the ADA scores for the committee of referral minus the standard deviation of the ADA scores for the House as whole.
Republican Cosponsors	Informational	+	The total number of Republican cosponsors of the bill.
Democratic Cosponsors	Partisan?	+?	The total number of Democratic cosponsors of the bill.

*Note:* Description of variables is drawn from Krehbiel (1991: 156-173).



**Table 4.4: Description of Variables in Marshall's Model of Restrictive Rules**

Variable	Theory	Expectation	Measurement
Legislative Profile	Rules Committee	+	Dichotomous variable coded 1 if the medians of the Rules Committee and the referral committee are on the same side of the floor and 0 otherwise.
Pork Barrel	Distributive	+	Dichotomous variable coded 1 if the bill was referred to a constituency committee: Agriculture, Armed Services, Interior, Merchant Marine, Public Works, Science, Small Business, and Veterans' Affairs (Deering and Smith 1997: 64) and 0 otherwise.
Bill Urgency	Distributive	+	Dichotomous variable coded 1 if the bill is an extension of the debt limit ceiling or a continuing, supplemental, or emergency appropriation and 0 otherwise.
# of Laws Cited	Informational	+	A count of the number of laws cited and/or repealed by the bill.
Committee Outlier	Informational	-	The absolute difference between the median NOMINATE scores of the referral committee and the floor.
Committee Heterogeneity	Informational	+	The signed difference between the standard deviation NOMINATE scores of the referral committee and the floor.
# of Minority Cosponsors	Informational	+	The number of minority (Republican) cosponsors of the bill.

(continued on next page)

Table 4.4 (continued)

# of Majority Cosponsors	Partisan	+	The number of majority (Democratic) cosponsors of the bill.
Referral	Control	+	Dichotomous variable coded 1 if the bill was referred to more than one committee and 0 otherwise.
Party Median	Partisan	+	Dichotomous variable coded 1 if the majority party median is more extreme than the referral committee median and both are on the same side of the floor median and 0 otherwise.
Majority Party Distance	Partisan	-	The absolute difference between the median NOMINATE scores of the referral committee and the majority party.

Note: Description of variables is drawn from Marshall (2002: 68; 80-81).

## **Chapter 5: Conclusion**

In this conclusion, I briefly revisit the motivation for the dissertation, highlighting once again its foundations in the political science literature and the reasons for pursuing the questions addressed here. I then return to some of the main findings and attempt to draw out the contributions of this project to our understanding of the contemporary legislative process of the House and the role of party leaders in that process. I conclude with some potential avenues for future research, several of which are natural outgrowths of the present analysis, while others arise from questions encountered along the way.

### **The Groundwork**

Political parties in the U.S. House of Representatives have displayed remarkable resilience in the 20<sup>th</sup> Century despite a variety of institutional and electoral forces that have impacted them in a number of ways. While their strength and prominence have most certainly varied over the course of the century, many have suggested that contemporary political parties in the House are more similar to their counterparts at the turn of the century than those at mid-century. The House as it was under the leadership of Thomas B. Reed and Joseph G. Cannon more than 100 years ago certainly possesses similarities to the House under Newt Gingrich, an observation frequently made in the months and years of the latter's tumultuous rise and fall from power. Of course, even at the peak of his power, Gingrich did not possess the broad formal powers held by his Republican forbearers of the late 1800s.

Nevertheless, it is interesting to contrast the contemporary U.S. House with a body that displays what many would consider a more complete picture of effective party discipline—the House of Commons in the United Kingdom Parliament. The British Prime Minister (PM), who is the leader of his party and sits as a member of the House of Commons, enjoys significant prerogative. The Cabinet which he heads is effectively the executive branch of government, although it is centered in the legislature. Because the PM (and his party) control access to governmental posts and even the ballot, backbenchers are rather beholden to the party when it comes to their behavior as MPs. This environment sows very rich seeds for unified party behavior and control.<sup>1</sup>

In the past, American political scientists have often looked across the Atlantic for insights into the potential benefits of a more disciplined legislature. In fact, at the midpoint of the 20<sup>th</sup> Century the American Political Science Association (1950) issued a report calling for changes that would empower congressional leaders and bring about a legislative apparatus more closely paralleling that of Britain. While calls for such radical reform have been unmet, the institution has not gone without encountering systemic change at various points in time.

While it is appealing to think of the contemporary House as one of stark partisanship and strong majority party power, it is important to bear in mind the fact that leaders, and the parties which they head, are subject first and foremost

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<sup>1</sup> Of course, party control is not perfect, as evidenced in the recent vote regarding the War in Iraq. While this is an exceptional case, and did not represent a vote of truly formal consequence in that PM Tony Blair did not Parliamentary approval in order to enter the war, it shows that the PM is not assured of perfect cooperation.

to the electorate. American legislative politics is unlikely to mirror that of Britain for a host of reasons—not the least of which is the differences in the mode of election for its members.<sup>2</sup> The electoral foundations of the U.S. Congress are the source of party power, and power is granted only in those instances in which members find it in their electoral interest to do so. Thus, while it is clear that parties are meaningful and influential to contemporary observers, it need not be this way.

And of course, recent findings by students of the institution have been decidedly mixed over the question of whether parties maintain influence over substantive outcomes in the chamber. While most of these works have focused on the latter stages of the legislative process, this dissertation turned to a more detailed examination of the pre-floor legislative process, an arena in which I have argued that parties and their leaders enjoy the ripest opportunities for influence. While this work will most definitely not be the final chapter of this evolving body of work, its aim has been to direct attention to other avenues of leadership participation that move toward completing the picture of party leadership influence and activity in the House of Representatives.

In much the same way that the role of parties has varied throughout the 20<sup>th</sup> Century, the legislative process has undergone a number of significant changes. At times, even seemingly innocuous modifications to the standard textbook model of operations have brought about major transformations in the

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<sup>2</sup> For drawing my attention to the useful contrast with Britain's Parliament, I thank Ken Williams. Further, I am grateful to Ken and the other members of my committee for fleshing out a number of the implications of the unique institutional traits possessed by this body and its American counterpart.

balance of power and mode of operation within the chamber. Students of Congress have focused much more attention in recent years on issues of procedure and the importance that such matters have for our theoretical understanding of the institution. Yet there are many more facets of the legislative process that have escaped close scrutiny. The procedural component of this dissertation has moved in the direction of filling that gap.

### **The Findings**

In Chapter 2, insights generated by the competing theories of legislative organization were brought to bear on the question of committee agenda setting. More specifically, I examined the pattern of legislative success in the committees of the 105<sup>th</sup> House. The chapter presents a model predicting the likelihood that a bill would be reported to the floor based on a variety of sponsor and bill characteristics. A central hypothesis in this chapter was that the majority party will use its procedural advantage in committee to benefit its members by taking action on their bills. A strong majority party effect was evident, alongside other characteristics such as ideology and institutional status.

Notably, the probit results presented in this chapter represent one of the infrequent occasions on which *both* party affiliation and ideology are significant. Because the two are highly correlated (particularly in a polarized Congress such as the 105<sup>th</sup>), one might have expected the results to wash out. Such a pattern is a hallmark of the critique of party power in Congress—a recurring challenge has been to find instances in which party is influential above and beyond members'

underlying preferences. That challenge was met in Chapter 2, and the results lend credence to the notion that parties may enjoy even more influence at the committee stage than at later junctures in the legislative process.

Of additional interest in Chapter 2 is the fact that the findings support those of earlier studies relating to the importance of context as it relates to members' activity and success in committee (see, e.g., Hall 1996). Committee leaders (chairs and ranking members) and even their rank and file counterparts on the committee all seemed to benefit from their prime position on the panel dealing with issues encapsulated in their legislation. Furthermore, in contrast to the expectations drawn from informational theory, the empirical relationship between seniority and legislative did not hold.

Finally, the probit results of Chapter 2 contained an interesting dichotomy regarding the influence of cosponsorship. While majority party support for legislation (via cosponsorship) was positively associated with success in committee, minority party support exerted a *negative* influence. Thus, the signal being sent by minority party approval works in the opposite way that informational theory predicts. Rather than appealing to members based on the homogeneity implied in such a situation, legislation with minority party support was disadvantaged in the 105<sup>th</sup> Congress.

Chapter 3 approached the recurring issue of committee bypass. As the other side of the committee reporting coin, such activity is much more common in the House than is its frequently discussed sibling the discharge petition. However, committee bypass has received little more than passing attention by

students of Congress. This chapter placed committee bypass into the broader context of theories of committee power, noting its potential implications for party power. It then moved to characterize the various conditions under which bypass may occur, and provided an example of each. The five types of bypass noted in this chapter are: outright bypass, bypass by referral/drafting, bypass in a multiple referral, nominal bypass, and bypass via special rule.

The chapter concluded with a discussion of the frequency of formal committee bypass, and the conditions surrounding its employment. One of the interesting findings is that as time has passed, bypasses have become much more commonly associated with significant conflict on the floor. In fact, on bills bypassing the committee system via a special rule in the two Congresses of Republican control examined here, the minority party was rolled quite frequently. Thus, as with other areas of House politics in the 1990s, the realm of committee bypass appears not to have been immune from the increasingly partisan and conflictual mode of operation.

The final essay deals with the issue of potential selection bias in models of procedural choice in the House. More specifically, it addresses the possible limitations of prior studies of restrictive rules which do not integrate the diverse nature of the choice context. In this chapter, I incorporate a richer perspective of agenda setting that takes into account the leadership's choice between suspension of the rules and restrictive rules as avenues to the floor. The empirical modeling employs a censored probit to allow (and test for the presence of) bias due to sample selection.



Two prior studies of restrictive rules were reexamined in this context, one based on the informational perspective, the other on a partisan rationale. Evidence of selection bias was present for the informational model, while the partisan specification failed to demonstrate such an effect. One potential implication that may be drawn from the results is that the partisan model is more fully specified, thus capturing some of the potential bias that inheres in the informational construct. This underscores the importance of fully developing theoretical models, even in those instances in which competing perspectives may be at work. However, in light of the fact that the substantive results of the models were largely unchanged, it seems safe to say that no significant selection bias encumbered the inferences drawn from the prior analyses.

What are the broader implications of this study? One question to which the results may be applied has to do with the future employment of partisan tactics aimed at manipulating the agenda. For instance, is it likely that the majority party will find it necessary to do so given what I have found here. Due to the institutional framework within which members operate, parties will often find it appealing (if not essential) to creatively structure the agenda. With strong parties, it may be less necessary for them to engage in overt arm twisting. However, as long as the minority party maintains the opportunity to meaningfully participate in the legislative process through avenues such as offering amendments to bills on the floor, the majority party stands to benefit from strategically blocking proposals on occasion.

How does this bear on the findings here? For one, committee bypass will not likely be a necessary tactic for sidestepping recalcitrant committees. Because the Republican majority has been successful in bringing committees (and their chairs in particular) into line with the preferences of the leadership, there will probably be few occasions on which a committee stands in the way of a majority party initiative. On the other hand, there has been a growing trend toward employing restrictive rules that, if adopted, bring about changes to the legislative language of the underlying bill. As such, we might expect to see continued skirting of the committee system in this way—not in response to wayward committees, but rather for a host of other partisan goals.

## **Extensions**

While this dissertation has touched on a number of different components of the legislative process in the House, there are many things that can occur in the history of a piece of legislation prior to its reaching the floor that have been either ignored or somewhat downplayed in this study. For instance, in much the same way that party leaders attempt to influence votes on the floor of the House, committee leaders may exert influence over the voting agenda within their committee. And there are other junctures on the way to the floor at which bills are subject to intervention—those “unorthodox” means described by Sinclair (2000a). Avenues of influence such as post-committee adjustment, only tangentially touched upon here, are quite significant in their potential for partisan influence. Similarly, the use of conference committees to add to, delete, or

extensively modify legislation has been a long-standing prerogative of the parties in Congress.

While these and certainly other areas offer promising opportunities for future research, the analysis presented here also raises a number of questions for future study which, due to the nature of this work, it was not possible to probe in the extended form necessary. For example, while there are at least five different ways in which the committee system can be circumvented, the empirical glance at such behavior in Chapter 3 considers only one. It is quite likely to be those cases in which committees are skirted or bypassed by Rules Committee action that the majority party stands to gain the most from its intervention. That is, while a direct bypass to the floor may be a result of a host of different factors, such as time constraints, a relatively minor issue, etc., when the Rules Committee steps in to modify the language of a particular piece of legislation, it is often doing so in the hope of advancing one or more party goals. Thus, further exploration of the role of the Rules Committee in this context is warranted to determine just how frequently such activity occurs.

The findings in Chapter 2 regarding committee agenda setting, while instructive, are based on just one Congress. While the 105<sup>th</sup> is a reasonable choice for study, the results beg for further analysis. They might be extended, for example, to the 103<sup>rd</sup> House, the last under Democratic control, to determine what, if any, differences exist between the two parties. Also, it would be interesting to step back to the beginning of the post-reform Congress to find out whether party influence on committees extended to that earlier and very different

period of time in the House. The descriptive statistics presented at the end of the essay offer some reason to think that parties were quite influential then, as well, but systematic analysis is necessary in order to control for competing explanations.

In sum, while the dissertation raises these and other questions, the results it provides serve to solidify our understanding of a few heretofore overlooked aspects of congressional organization and behavior. More importantly, the results offer implications for theories of how this important institution of American government operates and conducts its charge as the “people’s House.”

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