

**TOWARD A THEORY OF LEGISLATIVE RULES CHANGES:
ASSESSING SCHICKLER AND RICH'S EVIDENCE**

by

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TOWARD A THEORY OF LEGISLATIVE RULES CHANGES: ASSESSING SCHICKLER AND RICH'S EVIDENCE

Eric Schickler and Andrew Rich (henceforth S&R) provide a valuable review of attempts to change selected rules of the U.S. House of Representatives, interpreting their findings against the backdrop of two theoretical approaches--one that emphasizes the role of the majority party in structuring House decisions (Cox and McCubbins 1993; 1994), one that emphasizes the importance of cross-party alliances, hence of the House as a whole, in setting the structure of decision-making.¹ They view their findings as partly supporting the partisan model but stress that “changes in House rules are likely to occur when the balance of forces on the floor changes, even if the majority party caucus median remains unchanged” (p. 2). In this response we indicate how we differ both in our understanding of the partisan model and (relatedly) in our interpretation of the evidence.

Toward a Theory of Legislative Rules Changes

The most important theoretical distinction that needs to be made at the outset is between the whole set of rules in place at any given time (and how they structure House decision-making), and particular changes in the rules at particular times (and how they affect House decision-making on the margin). Most of the partisan theories in the literature, ours included, spend a substantial amount of time considering the latter issue. There is something of a consensus on this score, embodied in the following maxim: the more homogeneous the preferences of the majority party's members, the more disposed these members will be to delegate substantial institutional powers to their leaders, in order that they may more effectively pursue the party's common interests. This maxim is consistent

with Rohde's notion of "conditional party government," with the discussion in chapters 4 and 5 of *Legislative Leviathan*, and with earlier works as well--such as Brady, Cooper and Hurley (1979)--which focused on the determinants of roll-call cohesion, rather than the process of rule-making.

There has been less attention, on the whole, to the first issue raised above--what the whole set of rules is at a given time, and to what extent it favors the majority party. But we do consider this issue in *Legislative Leviathan*, and that consideration sparked our skepticism that the period from the 1920s to the 1970s was one of "committee government." S&R's reading of our work lead them to conclude that "The thrust of Cox and McCubbins' argument is that the conventional wisdom that political parties lost control of Congressional institutions in the aftermath of the overthrow of Speaker Cannon ... is simply incorrect." This is not quite the way we would put it (see below), but it is not an unfair reading. How can we make such a claim in the face of all the well-known evidence of the conservative coalition's power in the House, especially during the period 1937-61, when that coalition controlled a majority on the Rules Committee? Surely, this is a period of committee government staring one in the face.

Maybe not. The point that we make in the more polemical parts of *Legislative Leviathan* is not that this period was one of party government just as strong and vibrant as that which was later to emerge in the 1970s/80s, or had existed before 1920. We stress that the majority party was divided during much of the period of Democratic hegemony and that this division had distinct consequences for the nature of party government--along the lines that the consensual view expressed above would indicate. The question is whether party government in some useful sense disappeared during this period, to be

replaced by committee government (or floor government), or whether it was party government all along, just of a weaker sort.

This is a harder question to answer than the comparative statics question answered consensually above, because there is a surprising degree of observational equivalence between our partisan model and even fairly extreme party-less models. Much of the evidence cited to bolster the claim that the House operated under a species of committee government points to the absolute levels of certain phenomena--for example, low levels of seniority violations or low rates of committee discharge. But party government models that allow for variations in the homogeneity of the majority party--as they surely must--are flexible enough to accommodate the same patterns of evidence.

Consider the issue of seniority violations. The paucity of seniority violations during the period 1937-1974 is a central piece of evidence cited in support of the committee government model. However, even if one assumed that all seniority violations had to be cleared through the majority party's caucus (which would be to accept a strong version of the party government model), one might still expect few seniority violations: if the majority caucus itself was divided. In *Legislative Leviathan*, we argue that the majority caucus *was* divided and that committee members therefore had greater freedom of action than during earlier or later periods when the caucus was more homogeneous. In particular, in order to run a substantial risk of having one's seniority violated during the 1937-74 period, one had to displease both the southern and the northern factions of the party. Displeasing only one of these factions was relatively safe in that both factions could veto any moves to punish particular members.

What is the difference between the committee government model and the party government model, if they are both compatible with a low rate of seniority violations? If one takes committee autonomy as an exogenous given, then the committee government model does not have anything to say about the increased rate of seniority violations in the post-1974 period. To put it another way, the model cannot explain variations over time in seniority violations. If instead one takes committee autonomy as endogenously determined, then one has to specify the (endogenous) processes that generate autonomy. One possibility is that autonomy is protected by generalized norms of reciprocity developed on the floor of the House (as was central to Shepsle and Weingast's 1987 explanation of committee power). Another possibility, emphasized in *Legislative Leviathan*, is that autonomy is protected by stalemate in the majority party caucus. Our story, in other words, can be viewed as one of several ways to endogenize the agenda power of committees.

Which way of endogenizing committee power better explains the decline in that power in the 1970s? We believe the party government story works better. If committee autonomy is maintained by norms of reciprocity, then one needs to explain why those norms deteriorated in 1974. And presumably the story must be about politics *on the floor* leading to less reciprocity, hence to three southern Democrats losing their chairmanships. No one, as far as we know, has actually tried to spin such a story. The facts of the case show quite clearly that all the key moves on these seniority violations were taken in the Democratic party's caucus (Rohde 1991: 20-23). Thus, we emphasize the changing nature of the majority party caucus--in particular, its increasing homogeneity as the

number of seats held by conservative southern Democrats declined--as the key to explaining the reemergence of seniority violations.

In our view, then, the partisan model complements the committee government model, by endogenizing its key assumptions.² From this perspective, our work is consistent with, and builds on, earlier work such as Shepsle and Weingast (1987) and Weingast and Marshall (1988). But saying this still leaves open two possibilities: (1) the majority party caucus was so divided during the 1937-60 period that the House functioned essentially as a pure majority rule institution, with no particular advantage to majority party members; or (2) majority party members still retained such substantial advantages that it is inaccurate to think of House politics as featuring independent legislators playing on a level field.

Obviously, our view is the latter. When one considers that, even during the heyday of committee government, no minority party member served as chair of any committee, no minority party member served as Speaker, the majority got the lion's share of staff allocations on all committees, and majority party members got a more than proportional share of seats on the key committees, it seems clear that the deck was stacked. Even if no further party action occurred after the initial allocation of posts and resources, members of the majority party held the best cards and policy could be expected to deviate from that sought by the median legislator.³

To put the point another way, if one accepts the following premises--(1) election of the Speaker and of committee members is by straight party-line votes controlled by the majority party; (2) allocation of committee staff is controlled by the majority party; (3) the Speaker and the committee chairs have substantial agenda power; (4) the committee

system as a whole--the structure of jurisdictions, discharge rules, access to the floor--is consistent with the majority party's interests, then one has bought the key assumptions of our argument. These four conditions are a recipe for party government--not in the classical sense of a powerful single leader but in the sense of a group using the rule-making power of the House to entrench their own members' power.

In light of this review of our theoretical approach, we can turn next to consider the evidence. The next two sections consider S&R's evidence on rules changes and on punishments meted out to dissidents, respectively.

Evidence--changing the rules

How does the evidence marshaled by S&R regarding rules changes address the theory articulated above? The first and most important point to make is that evidence about *changes* in the rules (what S&R provide) is tangential to assessing the claim that the 1920s-1970s period was one of party government (the primary focus of their attack). If one *posited* that the partisan model was correct, that there was a long-standing majority party, and that the rules had been optimized for that majority party--giving it as much power as its degree of homogeneity warranted--then what would one expect regarding rules changes? If there were no changes whatever from session to session in the majority party's homogeneity, goals, etc., then one would expect no new rules changes to be passed. If there were small changes from session to session in the majority party's homogeneity, then one would expect marginal changes in the rules that had no consistent effect in terms of increasing or decreasing the majority party leadership's control of the

House.⁴ So S&R's finding that rules changes on the margin were a mixed bag as far as the majority party leadership were concerned--some further enhancing their prerogatives, some eroding them--could be precisely what one expects under a partisan model.

What then would contradict our view? (1) A consistent pattern of majority party losses on the margin, absent a clear decline in majority party homogeneity. (2) A consistent pattern of majority party victories on the margin, absent a clear increase in majority party homogeneity.

Do S&R show any of these patterns? Although they state that their alternative hypothesis is "that changes in House rules are likely to occur when the balance of forces on the floor changes, even if the majority party caucus median remains unchanged," they do not in fact ever control for changes in the majority caucus median in their analyses! They simply assume that there were no such changes. On this ground alone, there is reason to doubt that they have disproved the partisan model. But there is also reason to doubt when one looks at the specifics of some of the cases that they consider to be inconsistent with the partisan model.

Discharge petitions. Consider, for example, S&R's discussion of how the signature requirements for discharge petitions have changed over time. Their evidence suggests that dominant factions within majority parties tend to prefer a stricter signature requirement (making it harder to discharge), while progressive factions within majority parties and minority parties tend to favor easier discharge. This makes sense. Who wants freer discharge? Those who want to change the status quo. Who wants to change the status quo? *New* majority parties (seeking to undo mischief perpetrated by their

opponents in the past), progressive factions within majority parties, and *old* minority parties.

From this perspective, consider the puzzle that S&R raise of why the Democrats in 1931 stuck to the demand they had made while in the minority that the signature requirement be lowered. In 1931, the Democrats had been out of power for over a decade. They wanted to change policy. So having more liberal discharge requirements was not obviously to their disadvantage, even though they were now in the majority. By the next Congress, when they had a greatly expanded majority and were more clearly in control of the situation, it made sense to make discharge more difficult in order to protect the new Democratic status quo that the leadership sought to implement. Unsuccessful at the first attempt to adjust the discharge rule, presumably because progressive forces in the party were not yet willing to go along, the leadership succeeded in 1935, after the legislative outburst of the previous Congress had given more members something to protect.

This is a sketchy story that may not bear up under scrutiny but we certainly like it better than the story that S&R offer, which is that “it is better to view the 1931 change as part of an effort to maintain consistency in positions” (p. 9). Why was it better for the Democrats to be inconsistent in 1933, after consistently supporting the policy for two more years, than in 1931? How many voters were aware of this arcane House rule or could have been made to care about inconsistency in supporting it in an election?

Partisan control and rules changes. We also have qualms about S&R’s discussion of the frequency of rules changes after changes in partisan control of the House. They note (p. 7) that “in four of six cases in which partisan control of the House

shifted [during the period 1919-1970], no contested rules changes were made,” asserting that “the absence of such changes in 1919, 1947, 1953, and 1955 reveals that new majority parties do not necessarily confront a structure that is stacked in favor of the former majority party’s priorities.” The apparent belief here is that the partisan model *necessarily* entails stacking the deck in *policy-specific* ways, such as creating committees that address the concerns of special interests within the majority party. This is indeed one sort of deck-stacking that is possible. But the more general form is simply to give institutional advantages to majority party members and let them parlay those advantages into substantive policy achievements as best they can. There is nothing very policy-specific about the Speaker’s powers, for example, but individual Speakers can certainly apply their general procedural powers in the pursuit of specific substantive goals.

Procedural deck-stacking should change when partisan control of the House changes *only if* the incoming majority party is more (or less) homogeneous than the outgoing majority party. Otherwise, the incoming majority has no particular incentive to adjust the relative powers of committee chairs, Speakers, and rank-and-file members--at least no incentive that is highlighted by the partisan model.

So the relevant questions in interpreting the absence of rules changes in 1919, 1947, 1953 and 1955 are two. First, were there policy-specific rules that the incoming majorities ought to have changed? Second, were the incoming majorities at these times markedly more or less homogeneous than the outgoing majorities? If the answer to either of these questions is ‘yes,’ then the absence of rules changes in these years is not explained by the partisan model; otherwise, the absence of rules changes is consistent with the model.

A proper examination of each of the seven changes in partisan control from 1919 to 1995 is beyond the scope of this response but we would note that, of all the cases, 1995 stands out most clearly as one in which the incoming majority party faced policy-specific deck-stacking. And the incoming majority dealt with the problem. S&R prefer to emphasize the (real) limits that Gingrich faced in his procedural revamping and his failure to push the even more radical Dreier plan. But he did after all abolish 3 of the 22 standing committees of the House (14%), precisely those that were most narrowly targeted to Democratic constituencies. In addition, twenty-five subcommittees with markedly Democratic constituencies--such as Education and Labor's *Select Education and Civil Rights*, Agriculture's *Environment, Credit, and Rural Development*, and Post Office and Civil Service's *Compensation and Employee Benefits*--were abolished as well.

Given that the only changes actually made were clearly partisan, why is the best spin on this episode in committee-structuring Evans and Oleszek's (1995, p. 21) claim that "constituency interests and the personal power stakes of key legislators dominated partisan motivations"? The Republicans pushed until they reached the limit of what they could agree on. That limit was defined precisely by the dominance of "constituency interests and the personal policy stakes of key legislators" over "partisan motivations." Suppose constituency and personal interests had *not* been evident in the narrative history of these rules changes. Then the story would have been one in which the Republicans were largely agreed on further changes but for some reason did not pursue them. *This* story would certainly contradict the partisan model. The actual story does not.

Jurisdictional changes. S&R provide a brief description of each of 26 rule-based jurisdictional changes that their research uncovered in the period 1920-1993. They

classify four of these changes as mostly forced by the majority party, seven as matters of bipartisan conflict, and the rest as noncontroversial. On this basis, they conclude that jurisdictional changes have rarely been controlled by the majority party, challenging “the view that the committee system is designed to protect majority party logrolls” (p. 16).

Our interpretation of this evidence would focus again on the base, not the marginal changes. The main question is whether the committee system in place at any given time is consistent with majority party interests or not. We do not claim that changes in jurisdiction will necessarily be dictated by the majority party in the teeth of minority opposition. The interests of the majority and minority regarding jurisdictions are not inherently at odds, as they tend to be regarding restrictions on floor debate, for example. Our view is rather that committee jurisdictions are one of the tools that the majority can use to pursue its interests. Thus, we do not provide an exhaustive review of jurisdictional changes, contenting ourselves with the claim that the majority party has used this tool “several times since the Legislative Reorganization Act of 1946.” S&R’s evidence supports this claim.⁵

The oil depletion allowance. S&R also doubt our claim that the majority party attempts to protect its key logrolls through the “judicious allocation of committee power,” criticizing in particular the notion that the Democrats required those seeking a seat on Ways and Means to support the oil depletion allowance as part of a party logroll. They note that the depletion allowance was originally sponsored by the Republicans and was later opposed by Democratic presidents and members of the Democratic House delegation. While it is true that the allowance did originate with the Republicans, after the collapse of the oil industry in 1931 and 1932, oil producers, especially in Texas and

Oklahoma, overwhelmingly supported Roosevelt and the New Deal, helping to finance many New Deal candidates around the country. In return, Roosevelt rigidly enforced existing federal conservation policies, bringing stability to volatile oil markets. That northern Democrats mostly opposed the oil depletion allowance is no surprise, given the transfer of most of the oil industry to the south. Its unpopularity with the north is precisely why the depletion allowance needed institutional protection. Just as the south had an institutional leg up on the Committee on Rules, to protect its view of civil rights (among other things), so it had an institutional leg up on the Committee on Ways and Means, to protect the oil depletion allowance (among other things). Just as the north reneged on its tacit pledge to ignore the issue of civil rights, once it grew powerful enough, so it also removed both the protection for the depletion allowance and the allowance itself, once southerners no longer wielded an effective veto within the Democratic party.

Evidence--Crime and Punishment

In the second main part of their essay, S&R seek to put our general claim that majority party leaders can credibly punish rank-and-file members to the test. Their strategy is to focus on a class of “big” crimes--opposing the party’s nominee for President, opposing the party’s nominee for Speaker, and defecting on the vote to adopt the rules at the beginning of each Congress--and one particular form of “big” punishment--the lowering of dissidents in the seniority rankings on one or more of their committees. They then proceed to count the total number of crimes and consequent (seniority) punishments.

We doubt that much can be learned from the evidence presented. By focusing on what are presumably heavy punishments, S&R are also looking at punishments that should be meted out rarely in equilibrium--at least if members follow a standard cost-benefit calculus in deciding whether to defect.

The reasoning behind this claim is as follows. Consider a member deciding whether to dissent (D) or not (-D) on one of the three issues noted above. Normalize the expected utility of not dissenting to zero: $EU(-D) = 0$. Letting $P[SV|D]$ be the probability that a member's seniority is violated, given that they defect; V_D be the value of dissent; and C_{SV} be the cost (to the punished member) of having their seniority violated, the expected utility of dissent can be expressed as $P[SV|D](V_D - C_{SV}) + (1 - P[SV|D])V_D$. A little algebra reveals that the expected utility of dissent exceeds that of loyalty when $P[SV|D] < (V_D/C_{SV})$. Thus, the heavier one believes the prospective punishment is (i.e., the larger C_{SV} is), the lower the punishment rate conditional on defection should be--even if one posits that the system of punishment is effective on the whole in deterring crime. If members know the size of the punishment and the probability of its being meted out upon defection, then few should choose to defect when large punishments are at stake and the probability of punishment is large.

It may be that seniority violations are not heavy punishments. But in order to interpret S&R's results clearly, one definitely needs to know something about the relative size of the costs and benefits involved. Since the costs and benefits cannot be specified, it is difficult to accept S&R's results as conclusive.

To our eyes, the most striking thing about S&R's evidence is the paucity of crimes. How are we to interpret this? If one supposes that party leaders have only a

trivial power to punish, then the only explanation for the fewness of crimes is that not very many majority party members disagreed with their party's nominees or rules. Is it really the case that only thirteen southern Democrats preferred to desert Truman in 1948, that only five southern Democrats preferred to desert Kennedy in 1960, or that only one preferred to desert Humphrey in 1968? Perhaps. The other option of course is to say that the fewness of crimes suggests a punishment mechanism that has some effectiveness--whether it depends on the threat of seniority violations or not.

Given the paucity of dissent on major matters, and the fact that one would expect few big punishments to be meted out in equilibrium, we do not see how S&R's evidence supports their conclusion that "majority party members apparently were relatively free to disobey the party on even the most important procedural matters up through the mid-1970s" (p. 23). If all S&R mean by this is what we have argued--that the north/south division within the majority party caucus meant that a member had to run afoul of both factions in order to risk punishment, leading to "relative freedom" on anything that touched on the north/south split--then we of course agree. But their claim seems to be rather broader, essentially suggesting that any member at any time could have departed from any decision of the party with relative impunity. This claim we do not believe is supported by the evidence.

Conclusion

We conclude by returning to the distinction made at the outset, between the set of rules in place at any given time and changes to those rules. In principle, the majority party could lose several battles on the margin but still benefit substantially from the rules

as a whole. Thus, evidence regarding ordinary rules changes (such as that marshaled by S&R) is only relevant to claims about the overall partisan impact of the rules (such as those made in *Legislative Leviathan*) if the changes consistently decrease, or consistently increase, the power of majority party leaders. S&R do not find any consistent pattern; they find a mixed record, with some majority party victories and some losses. This is what one might expect on the assumption that the centralization of power in the House was as great as could be supported by the homogeneity of the majority party. A mixed record is consistent, moreover, with any level (small or big) of majority party advantage from the rules base. Thus, finding a mixed pattern of majority party success in amending the rules neither validates nor invalidates claims that the majority party was substantially advantaged by the rules base.

If S&R's evidence does not bear on claims about the partisan impact of the rules as a whole, does it falsify a partisan theory of rules changes? We think not, because the key variable in such a theory would be the character (and in particular the homogeneity) of the majority party's caucus, something that S&R do not explicitly control in their discussion.

If one wants to examine rules changes from the perspective of a partisan theory, one has to look systematically at changes in the homogeneity of the majority caucus. One expects decreasing homogeneity to lead to fewer institutional powers for majority party leaders, increasing homogeneity to lead to greater institutional powers. *Legislative Leviathan* provides a little evidence on this score--e.g., in the discussion of the revival of leadership powers in the 1970s. Other authors have attempted a more systematic

canvassing of the relevant evidence (e.g., Binder 1996; Dion 1995), and concluded largely in favor of a partisan theory.

Finally, S&R's evidence on majority party crime and punishment shows (1) very low rates of serious crime and (2) low rates of observed punishment. Low crime rates are consistent with either homogeneity of preferences within the party (doubtful) or with the presence of an effective system of sanctions. Low punishment rates are consistent either with the notion that members had little punishment to fear (doubtful) or with the notion that they knew the size and probability of punishment and behaved accordingly.

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ENDNOTES

¹ Schickler, Eric, and Andrew Rich. 1997. "Controlling the Floor: Parties as Procedural Coalitions in the House." *American Journal of Political Science* [COMPLETE CITE]

² As another example, consider the difficulty the majority party had in curbing the power of the Rules Committee from 1937 to 1960. The difficulty of curbing Rules is consistent with a view in which committees are exogenously powerful or endogenously powerful, due to reciprocity on the floor. But it is also consistent with a view in which committees are powerful because the majority party caucus is stalemated by internal divisions. So again the question is which of these alternative theories best explains the fact that eventually Rules was curbed? A model in which committees are exogenously powerful says nothing. A model in which their power derives from reciprocity predicts that Rules should have suffered only when those norms of reciprocity decayed. But no one says that reciprocity decayed in the 1960s. Finally, a model in which committee power derives from divisions in the majority party caucus seems to work well.

³ Theoretically, this deviation might arise either because the status quo deviated from the median legislator's preferences and was hard to change or because new policy initiatives deviated and were steered through the House by those with institutional power.

⁴ These small changes could arise from either membership turnover or exogenous changes in the legislative agenda.

⁵ The most challenging cases for our theory are the seven involving bipartisan conflict. In particular, the creation and maintenance of HUAC is inconsistent with our theory because it benefited a larger portion of the minority than of the majority party.

