

Cox + McCalister

Setting the Agenda;

Responsible Party

Government in the

U.S. House of

Representatives

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## Introduction

Modern democracy is unthinkable save in terms of the parties.

- Schattschneider 1942

The party system that is needed must be democratic, responsible and effective - a system that is accountable to the public, respects and expresses differences of opinion, and is able to cope with the great problems of modern government.

- American Political Science Association 1950

Thus, if the parties were in trouble, so too was democracy.

- White 1992

### 1.1. INTRODUCTION

For democracy in a large republic to succeed, many believe that responsible party government is needed, with each party offering voters a clear alternative vision regarding how the polity should be governed and then, if it wins the election, exerting sufficient discipline over its elected members to implement its vision (cf. Ranney 1951; American Political Science Association 1950). America was once thought to have disciplined and responsible parties. Indeed, students of nineteenth-century American politics saw parties as the principal means by which a continental nation had been brought together: "There is a sense in which our parties may be said to have been our real body politic. Not the authority of Congress, not the leadership of the President, but the discipline and zest of parties has held us together, has made it possible for us to form and to carry out national programs" (Wilson 1908: 218, 221; cf. Bryce 1921: 119).

Since early in the twentieth century, however, critics of American politics have often argued that congressional parties are largely moribund. Some contend that they have become nothing more than labels for like-minded politicians who act together when they agree but otherwise pursue their own agendas and careers (Mayhew 1974). A chorus of critics depict members of Congress as dedicated to the pursuit of graft, campaign contributions, and the emoluments of office

and as captured by interest groups who seek to turn public policy into private favors (McConnell 1966; Fiorina 1977a; Weingast, Shepsle, and Johnson 1981; Buchanan 1968; Becker 1983; Stigler 1971; Lowi 1969; Schattschneider 1960; for surveys see Cox and McCubbins 1993, Chapter 1, and Munger and Mitchell 1991).

Even though Congress does suffer from many infirmities, we will argue that a hitherto unrecognized form of responsible party government has characterized U.S. politics since the late nineteenth century. As in the traditional view of responsible party government, our theory depicts congressional parties as electorally accountable and legislatively responsible, at least to an important degree. We differ from the traditional view, however, in at least two ways.

First, whereas traditional theories stress the majority party's ability to marshal a cohesive voting bloc as the source of its legislative power, our theory stresses the majority party's ability to set the agenda as the key to its success. The importance of this distinction can be suggested by recalling that the most prominent line of criticism of partisan theories focuses directly on the issue of voting cohesion.

Many prominent scholars, including Schattschneider (1942: 131-2), Mayhew (1974), and Kalt and Zupan (1990), view legislators' votes as driven primarily by their constituents' and their own opinions, with partisan considerations playing a distinctly secondary role. Building on such views, Krehbiel (1993, 1998) argues that the two parties' attempts to influence votes either are negligible or cancel each other out.

If, as these theories suggest, party pressures cancel out, however, then the majority party cannot marshal its troops effectively, as required by traditional theorists of responsible party governance. Instead of being driven toward the platform promises of the majority party by the force of its discipline, policies in Congress will be driven to the center of congressional opinion by the logic of the famous median voter theorem.

If one accepts the traditional view that parties are strong only to the extent that they can affect their members' behavior on substantive votes, and if one views congressional votes as positioning policy along a single left-right continuum, then Krehbiel's argument is persuasive. In particular, given these two assumptions, majority parties matter only if they can secure nonmedian policy outcomes, and, in order to do this, they must engage in the unenviable and unlikely-to-succeed task of regularly pressuring their centrist members to vote against their constituents' and/or their own opinions.

Our emphasis on agenda control deflects this canonical criticism of partisan theories in the following way. We do not model voting in Congress as if there were a single vote on a single dimension (per the standard unidimensional spatial model); rather, we envision a series of votes on different issues. This opens up the possibility that, even if the majority party were unable to secure a nonmedian outcome on any given issue considered in isolation – a debatable premise – it might nonetheless greatly affect the overall legislative outcome if it prevents some issues from being voted on at all.



FIGURE 1.1. Illustration of leftward and rightward policy moves

To see how agenda-setting power can affect legislative outcomes, imagine a newly elected Congress and the set of existing government policies – label them  $q_1, \dots, q_n$  – that it faces. Each of these policies could in principle be adjusted, sliding them further to the left or right (e.g., less stringent or more stringent regulation of abortion). The newly elected members of the House have opinions regarding how each of the  $n$  policies should ideally be positioned along their respective left-right dimensions. Denote the center of congressional opinion (the median ideal position) regarding each policy by  $F_1, \dots, F_n$  for the  $n$  policies.

Note that one can divide the existing government policies into two main categories, depending on the relationship between the legislative median,  $F_j$ , and the status quo,  $q_j$ . In one category are policies that lie to the left of the current center of congressional opinion,  $q_j < F_j$ . If the House votes on a bill to change such a policy from the status quo (e.g.,  $q_j^L$  in Figure 1.1) to the floor median,  $F_j$ , the result will be a *rightward* policy move. In the second main category are policies that lie to the right of the current center of congressional opinion,  $q_j > F_j$ . If the House votes on a bill to change such a policy from the status quo (e.g.,  $q_j^R$  in Figure 1.1) to the floor median,  $F_j$ , the result will be a *leftward* policy move.

Now suppose in this simple example that Democratic majorities can block bills that propose rightward policy moves from reaching votes on the floor, thereby killing them without the necessity of a clear floor vote on the bill itself. The Democrats' blocking actions might take many forms, such as a chair refusing to schedule hearings, a committee voting not to report, the Rules Committee refusing to report a special rule, or the speaker delaying a particular bill. Each of these actions might in principle be appealed to the floor and reversed via a series of floor votes. It is a maintained assumption of our approach that the transaction costs involved in such appeals are typically so high (see Chapter 4) that the majority's delaying tactics are effective in killing (or forcing changes in) the bills they target.<sup>1</sup> To the extent that they are successful, the Democrats will produce a legislative agenda on which *every bill actually considered on the*

<sup>1</sup> We view "remote majoritarian" arguments (e.g., the argument that the discharge procedure guarantees that any floor majority wishing to extract a particular bill from committee can do so) as establishing interesting theoretical benchmarks, not as empirically defensible models. In our view, such arguments are somewhat similar to the Coase theorem (another argument that explicitly relies on an assumption of zero transaction costs).

*floor proposes to move policy leftward.* As a natural consequence, a majority of Democrats will support every bill.

This example, we hasten to add, overstates what our theory actually predicts (e.g., there are rightward policy moves that even the Democrats would like to make and, similarly, leftward policy moves that even the Republicans would support, when the status quo is extreme enough). Nonetheless, the discussion so far suffices to illustrate the potential power of a minimal form of agenda control (just the power to block) and makes clear that our theory sidesteps critiques that focus on the debility of party influence over floor votes (such as Krehbiel's). We can deny both the notion that parties must secure nonmedian outcomes issue by issue in order to matter and the notion that parties must exert discipline over how their members vote on bills in order to matter.<sup>2</sup> Agenda control alone suffices – if it can be attained – to exert a tremendous influence over policy outcomes.

In sum, traditional theories of responsible party government see a Democratic (or Republican) majority as mattering because the majority can marshal its troops *on a given issue* and thereby attain policy outcomes that differ from those preferred by the median legislator *on that issue*. Aldrich and Rohde's theory of conditional party government shares this perspective: "most partisan theories would yield the expectation that the majority party would have sufficient influence... to skew outcomes away from the center of the whole floor and toward the policy center of [majority] party members" (Aldrich and Rohde 1995: 7). Such theories are vulnerable to Krehbiel's critique and its predecessors. In contrast, our theory sees a Democratic (respectively, Republican) majority as mattering because the majority can prevent reconsideration of status quo policies lying to the left (respectively, to the right) of the current median legislator on a given policy dimension – thereby filling the agenda mostly with bills proposing leftward (respectively, rightward) policy moves.

We should add that we do not view American parties as incapable of disciplining their troops. Indeed, we believe they regularly seek additional support on close votes, employing both carrots and sticks in the process. Such efforts can even lead to nonmedian outcomes on particular issues (typically via procedural maneuvers, such as closed rules, rather than by outvoting the opposition on the merits). However, the majority party's efforts on the floor are designed to *complement* whatever degree of agenda manipulation has already occurred by corraling a few votes on the margin, not to coerce moderate members to cast risky votes in order to maximize party cohesion. Picking which bills will be

<sup>2</sup> In the example just given, we can assume that every bill actually considered simply moves policy to the legislative median and that the parties exert no influence on their members' votes on final passage. Even with these assumptions, the conclusion remains – in the example – that a Democratic House will only be allowed to consider leftward policy moves. Thus, all policy changes actually made will be leftward – a very important policy effect achieved without securing nonmedian outcomes on any given dimension and without party influence over members' votes on bills. Our theory does require that the majority party is able to control the outcomes of key procedural votes, and this may entail influencing their members' behavior on such votes.

voted on at all – that is, which status quo policies will be at risk of change – is the primary technique; garnering enough votes to eke out a victory is important but secondary.

A second way in which our theory differs from traditional notions of responsible party government is that the latter stress the enactment of new policies – as promised in the party platforms – as the main normative criterion by which one should judge whether party government is operating successfully. In contrast, our theory stresses the avoidance of party-splitting issues, hence the preservation of some existing policies, as the key to the political survival of majority parties (whatever its normative merits).

We do not claim that parties cannot or do not compile positive records of accomplishment and are restricted merely to the preservation of portions of the status quo. Even the most heterogeneous majorities in congressional history, such as the Democrats of the 1950s, were able to agree on a number of new legislative goals and accomplish them. Thus, we have argued previously (Cox and McCubbins 1993), and will argue again in Chapter 10, that control of the legislative agenda can also be translated into the enactment of some or all of the majority party's platform. However, as we explain in Chapter 10, the majority's success in changing policies, unlike its success in preserving policies, depends on its internal homogeneity.

Another way to frame this second difference is to say that we envision two stories in the edifice of party government, not just one. The first, or bedrock, story involves securing a super-proportional share of offices for the party's senior members, imposing a minimal (primarily negative) fiduciary standard on those senior officeholders, and thereby ensuring that the party collectively is able to prevent items from appearing on the floor agenda. The second, or superstructural, story consists of enhancing the ability of the party's officeholders to push (as opposed to preventing) bills, imposing a more demanding fiduciary standard upon them (one requiring that they use their new powers for the collective benefit) and thereby enhancing the party's collective ability to push items onto the floor agenda.

By shifting the terms of debate from the majority party's ability to marshal its troops on a given issue to the majority party's ability to decide which issues are voted on to begin with, and from the majority party's ability to change policies to its ability to preserve policies, we seek to provide a new theoretical grounding for partisan theories of congressional organization – and to defend it empirically. In what follows, we will show that our theory explains important features of the postbellum history of the U.S. House of Representatives extremely well. To set the stage for that demonstration, in this chapter we provide a précis of our theory and outline the remaining chapters.

## 1.2. A PRÉCIS OF PROCEDURAL CARTEL THEORY

There are two main approaches in the literature on congressional organization. One view stresses how well congressional organization serves members'

nonpartisan goals. For example, the House is declared well organized to (1) promote the reelection of its members (Mayhew 1974, 1991; Shepsle and Weingast 1984c), (2) make gains from legislative trade possible (Weingast and Marshall 1988), (3) make specialization and the efficient generation of information possible (Gilligan and Krehbiel 1989, 1990), and (4) aid in bargaining with the other chamber or other branches of government (Diermeier and Myerson 1999; Epstein and O'Halloran 1999). Political parties are explicitly denied a consequential role in these theories.

On the other hand, a new generation of partisan theories argues that the House is well organized to serve the collective interests of the majority party (Cooper 1970; Cooper and Brady 1981; Sinclair 1983, 1995; Stewart 1989; Kiewiet and McCubbins 1991; Cox and McCubbins 1993; Maltzman and Smith 1994; Binder 1997; Evans and Oleszek 2002; Gamm and Smith 2002). One variant of partisan theory, known as the *conditional party government* model (Rohde 1991; Aldrich 1995; Aldrich and Rohde 2001), focuses on how the majority party leadership's powers expand as the members they lead become more alike in political preference (and more different from the opposition) – leading ultimately to greater voting discipline and thus to greater success in legislating for the majority. Another variant, while accepting a version of the conditional party government thesis, focuses on an array of procedural advantages enjoyed by the majority party that are not conditional on its internal homogeneity. We call this variant “procedural cartel theory” (Cox and McCubbins 1993, 1994, 2002), the key aspect of which is the majority party's use of agenda control to achieve its desired outcomes.<sup>3</sup>

While we develop procedural cartel theory at length in Chapter 2 and in *Legislative Leviathan* (1993), here we can briefly note four key claims that distinguish our approach. First, legislative parties arise, we believe, primarily to manage electoral externalities involved in running campaigns in mass electorates. Second, legislative parties are best analogized, we believe, to legal or accountancy partnerships, with various gradations of junior and senior partners. Third, legislative parties – especially in systems where floor voting discipline is costly to secure, as in the United States – specialize in controlling the agenda, rather than in controlling votes. That is, they seek to determine what is voted on to begin with, rather than to dictate their members' votes issue by issue (although they do regularly seek votes on the margin). Fourth, a legislative majority party allocates both negative (delay or veto) rights and positive (accelerating or proposal) rights among its senior partners (and groups thereof), but the mix of such rights changes with the degree of preference homogeneity among the party's members.

To explain the last point, note that there is a trade-off between increasing veto power (and suffering higher negotiation costs in order to do anything) and

<sup>3</sup> We provide an extensive survey of the literature on the organization of legislatures with a comparison of the models and analogies they each employ in Cox and McCubbins (2004). One can find this literature review on our web site at [www.settingtheagenda.com](http://www.settingtheagenda.com).

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increasing proposal power (and suffering higher externalities from the decisions made by those with such power).<sup>4</sup> The more *heterogeneous* the preferences within a given coalition, the more that coalition's partners will wish to limit the proposal rights of other partners, which necessarily entails strengthening their own and others' veto rights. The value of the coalition then comes more and more in keeping certain issues off the agenda and stabilizing the associated status quo policies. The more *homogeneous* the preferences within a given coalition, the more that coalition's partners will agree to expand each other's proposal rights, which necessarily entails weakening their own and others' veto rights. The value of the coalition then comes more and more in pushing certain issues onto the agenda with the hope of changing the associated status quo policies. Regardless of the coalition's homogeneity or lack thereof, regardless of whether its value stems more from stabilizing status quo policies or more from changing status quo policies, it will continue to seize the vast bulk of offices endowed with special agenda-setting rights and thus to cartelize agenda power. In this sense, *party government* is *not conditional* on the level of agreement within the party; rather, the nature of party government simply changes, from a more progressive vision (implicitly taken to be the only party government worth having in most of the previous literature) to a more conservative vision.<sup>5</sup>

Having stated our inclinations on four important distinctions within the family of partisan theories, we can now diagram the elements of our theory (see Figure 1.2). Reading up from the bottom of the figure, we start with “majority party's control of delegated agenda powers,” that is, with its control of the powers inherent in the various offices of the House endowed with such powers (e.g., the speakership and committee chairs). The better the majority party's control of such powers is, the more able will it be to fashion a favorable record of legislative accomplishment, although certainly other factors enter into this as well (such as the party of the president).<sup>6</sup> The more favorable is the majority party's record of legislative accomplishment, the better its reputation or brand name will be, although again there are other factors that affect this, too (such as the president's actions). The better the majority party's brand name, the better will be the prospects for (re)election of its various candidates and the better will be the prospects for (re)attainment of majority status. The senior partners of the majority party care in particular about the latter because their ability to retain their chairs, speakerships, and other offices depends crucially on their party retaining its majority.

<sup>4</sup> Such a trade-off was noted long ago, in connection with the question of how large a majority (bare, three fifths, two thirds, etc.) would be optimal, by Buchanan and Tullock (1962).

<sup>5</sup> Our purpose is neither to extol conservatism nor to denigrate progressivism on normative grounds. Rather, we simply wish to point out that preserving the existing status quo can be immensely politically valuable to two or more coalition partners, either when the partners all agree that the status quo is better than available alternatives or when they disagree strongly over how to change that status quo.

<sup>6</sup> Note that a “favorable record” may include both positive achievements (enacting new laws) and negative achievements (protecting old laws).

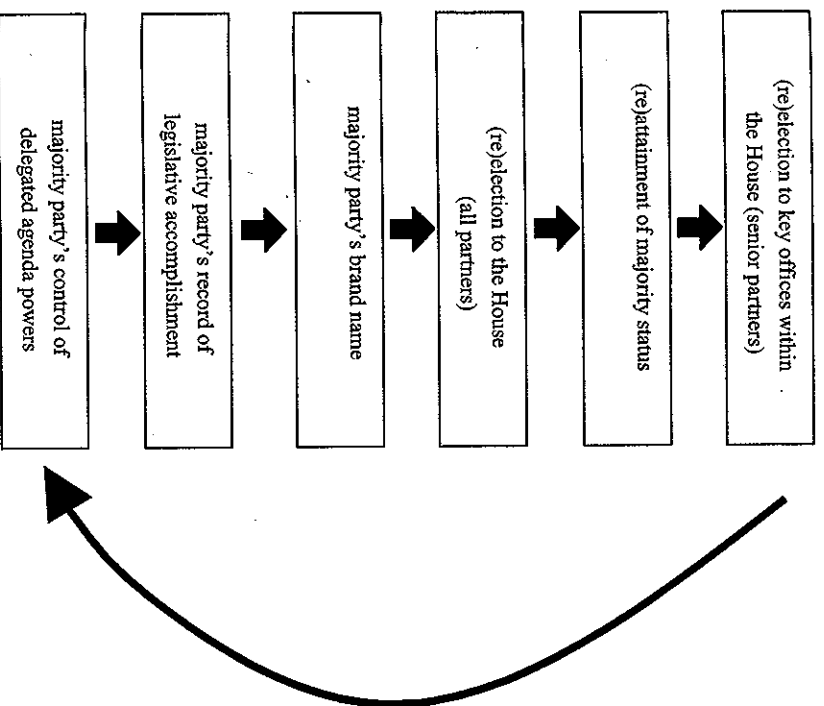


FIGURE 1.2. Majority-party agenda control and legislative success

Reading the diagram top-down, instead of bottom-up, one starts with individual members of Congress assumed to care both about (re)election to the House and (re)election to offices within the House. They recognize that (re)election (especially to internal posts) depends crucially on majority status, which in turn depends on maintaining a favorable brand name for the party. Maintaining a favorable brand name, in turn, depends on the party's record of legislative accomplishment, hence on its ability to solve the various cooperation and coordination problems that arise within the legislative process. The party solves these problems primarily by delegating agenda power to its senior Partners.

Because the element in this theory that we most wish to stress concerns agenda power, we turn now to a more extended consideration – albeit still abbreviated – of the cartel thesis. The next chapter provides a fuller elaboration of our theory.

### 1.3. THE PROCEDURAL CARTEL THESIS

The broadest thesis of this book, which resonates in many legislatures worldwide, is that *agenda power in busy legislatures is almost always cartelized*. To put it another way, even though voting power in democratic legislatures is everywhere equal, proposal and veto power are everywhere unequal.

What do we mean by agenda power being cartelized in the specific case of the U.S. House? We provide a fuller explanation in the next chapter but for now suffice it to say that the agenda is cartelized when (1) special agenda-setting powers are formally delegated to various offices, such as committee chairs, the speakership, and the Rules Committee; (2) the majority party's members secure most of these offices, so that "agenda-setting services" can be procured only from members of the procedural cartel, just as certain kinds of economic services or goods can be procured only from the relevant economic cartel; and (3) the majority party's "senior partners," who hold these agenda-setting offices, act according to a minimal fiduciary standard – namely, that they do not use their official powers to push legislation that would pass on the floor against the wishes of most in their party.

Note that the features we have just listed also characterize most parliamentary governments (cf. Döring 1995): (1) Special agenda-setting powers are formally delegated to cabinet ministers, presiding officers, and directing boards (the analogs of the U.S. chairs, speaker, majority leader, and Rules Committee, respectively); (2) the governing coalition's members secure most, if not all of these offices (cf. Carroll, Cox, and Pachón 2004); and (3) the governing coalition's "senior partners," who hold these agenda-setting offices, respect a norm according to which no bills are pushed that would split the governing coalition (Tsebelis 2002). It is often true that many parliamentary procedural cartels expect an even greater level of cooperation between their senior partners than would have been expected of U.S. committee chairs during the uneasy alliance of Northern and Southern Democrats in 1937–60. Nonetheless, the structural design of the most basic form of party government is similar across a wide range of systems: break the theoretical equality of legislators by creating a class of agenda-setting offices, ensure that the governing coalition's senior partners secure these offices, and deal with the consequent problems of agency loss and floor discipline, as best the local conditions permit.

The basic design of party government within legislatures admits a trade-off between two costly methods of maintaining the power and advantages of these agenda-setting offices: procedural agenda control and voting discipline. Designing and maintaining rules that establish agenda control is costly; ensuring that members of the majority party vote with the party is also costly. Different legislatures, depending on their circumstances, choose different mixtures of these two costly mechanisms.

The question remains, why should agenda power be cartelized according to this basic recipe, in so many legislatures? Let us sketch out an answer to this question, based on our continuing research in comparative legislative studies

(Amorim Neto, Cox, and McCubbins 2003; Cox, Masuyama, and McCubbins 2000; Carroll et al. 2004; Campbell, Cox, and McCubbins 2002; Den Hartog 2004). We plan to articulate this argument more fully in future work.

Although the details of legislative procedure differ widely across the world's democratic legislatures, one generalization holds universally: Important bills can only pass pursuant to motions formally stated and voted upon in the plenary session.<sup>7</sup> The necessity of acting pursuant to formally stated motions means that every bill must consume at least some plenary time, if it is to have a chance at enactment. Simply put, plenary time is the *sine qua non* of legislation.

If all legislators have equal access to plenary time, then plenary time is a common pool resource, and rising demand for such time leads to various problems in the legislative process (cf. Cox 1987; Den Hartog 2004; Weingast and Marshall 1988). Can a coalition restrict access to plenary time, enhancing its own members' abilities to propose and block, while diminishing those of the opposition? At a very general level, models such as those of Duggan and Banks (2000), Calvert and Fox (2000), and Diemerer and Feddersen (1998) illustrate how stable restrictions on access to plenary time should be possible, as part of a repeat-game equilibrium. In these models, a majority of members benefit from better access, at the expense of the minority suffering worse access, to plenary time. The majority is held together by the threat that failure to abide by certain norms of behavior (stipulated in equilibrium play) will bring down the coalition, and with it each majority member's superior access to plenary time. We suggest a somewhat more detailed and concrete recipe by which access to plenary time is restricted. A procedural cartel endows (or inherits) offices ensuring minimally fiduciary behavior by those senior partners, and ensures minimally fiduciary behavior by those senior partners.

How is it that such cartels stick together? In addition to the threat that the whole arrangement can come crashing down, depriving senior members of their offices or stripping those offices of their powers, we would add two additional reasons why access-hogging majorities, once formed, are stable. First, individual nonpivotal legislators in the majority have reason to fear punishment—such as lack of promotion, lack of aid for pet bills, demotion and, ultimately, expulsion from the majority—should they violate crucial norms of behavior (we elaborate such an argument in Cox and McCubbins 1993, 1994). Second, building up a mechanism by which to regulate access to plenary time (creating offices endowed with various special veto and proposal powers and ensuring that one's members secure those offices) entails large fixed costs and very low marginal costs on any particular policy or decision. The large fixed costs arise in creating and maintaining (1) the party's brand name and (2) the rules, procedure, precedent, and interpretation that establish and clarify the powers of agenda-setting offices (on the latter, cf. Chapter 4). To the extent that the parties

<sup>7</sup> In Italy, *leggi* (little laws) can be passed directly by committees, without consideration in the plenary session. However, *leggi* and their ilk exist only because the plenary session has delegated authority, and the plenary retains the ability to rescind the authority to emit them.

succeed in establishing themselves as the only viable route to the top offices, they can become very stable indeed.

Assuming that agenda-setting offices exist and that procedural cartels take most of them (but not all, see Chapter 2), why are senior partners subject to the minimal fiduciary standard we suggest, wherein they cannot use their official powers in such a way as to split their party? Note that, if this minimal standard is not imposed, one has a model similar to the committee government model in the United States (cf. Cox and McCubbins 1993, Chapter 1, for a review of the literature) or the ministerial government model in comparative politics (Laver and Shepsle 1996). Agenda power is delegated to offices, and the governing coalition takes most of these offices; however, the occupants of those offices are then free to act as they please. The result is that, if negotiations between chairs/ministers do not suffice to clinch a policy program supported by all, then the logical possibility exists that different chairs/ministers may push bills that a majority of their coalition would unsuccessfully oppose on the floor. We argue that, to avoid such events, the handiwork of chairs/ministers is subject to central screening—by the Rules Committee and majority floor leaders in the United States, and by the cabinet, directing board, and majority in the typical parliamentary system. The central screen helps ensure that chairs/ministers routinely foresee very low chances of success from using their official powers to push bills that would be (a) supported on the floor by most of the opposition and a swing group of the governing coalition and (b) opposed by a majority of their own party.

In our model, chairs/ministers remain free to use their official powers to *block* bills their partners wish to see passed. The only crime is using those powers to *push* bills that then pass despite the opposition of most of the governing coalition. If this crime of commission can be avoided, the majority coalition can determine which status quo policies will be preserved and which will run the risk of being overturned by bills allowed onto the floor.

#### 1.4. OUTLINE

In the rest of the book, we proceed as follows. Part I (Chapter 2) conveys the logic and intuition of partnerships that cartelize agenda control. In our view, U.S. legislators seek not just reelection but also advancement in the internal hierarchy of posts within the House, good public policy, and majority status for their parties. Their parties compete in mass elections, just as business firms compete in mass markets, by developing brand names. These brand names are public goods to the members of the party, and the value of the brand depends on the party's legislative record of accomplishment. Thus, a key problem for legislative parties is to manage the legislative process, securing the best possible record, hence the best possible brand name or reputation. We also explain how procedural cartels work: how various incentives to "cheat" on the cartel are managed so that the majority party's overall control of the agenda is rarely challenged.



In Part II (Chapters 3 through 9), we examine the consequences of different distributions of agenda power among legislators. We test our Cartel Agenda Model, in which only the majority party wields effective veto power, against two alternatives: a model in which both parties possess veto power (as in the pre-Reed's rules House) and a model in which neither party wields a veto (Floor Agenda Model).

In Chapter 3, we formalize the Cartel Agenda Model (a simplified view of the procedural cartel theory) and the Floor Agenda Model of legislative organization, with a particular focus on who controls the legislative agenda. In the Cartel Agenda Model, one can think of the agenda setter as the majority party leadership, whose reelection incentives ensure a centrist-within-the-majority-party stance. In the Floor Agenda Model, the agenda is determined as if by majority vote on the floor.

Chapter 4 argues that changes in the House rules during the 1880s, culminating in Reed's rules, greatly advantaged the majority party, and that subsequent changes in House rules and organization have not significantly altered that advantage. We show that, after Reed's rules became a permanent part of House organization, over 80 percent of the bills allowed to reach the final-passage stage in a typical Congress proposed to move policy toward the majority party median (as compared to only 57 percent in pre-Reed Congresses).

We examine negative agenda control empirically in Chapter 5. To measure such control, we examine the frequency of majority and minority final-passage rolls. Operationally, we say that the party has been *rolled* on a given final passage vote if a majority of its members vote against the bill, but the bill nonetheless passes. Think of a legislative train leaving the station and a party that has tried to stop it – but been run over. We find that the majority party's roll rate is much lower than the minority's roll rate. Moreover, variations in the two parties' roll rates conform to what one would expect under the Cartel Agenda Model, rather than the Floor Agenda Model.

In Chapter 6, we refine our theory by considering the costs the majority party bears when it blocks bills that a majority of the House prefers to the status quo. We note that it will not always be worthwhile to block legislation, particularly if the majority party believes the Senate or president will stop the legislation anyway. From this perspective, *inconsequential* rolls of the majority party (i.e., those that do not lead to enactments) are consistent with the majority party controlling the main levers of agenda power. Consequential rolls, however, remain inconsistent with the theory. Empirically, we find that only about one half of all majority rolls were consequential.

The role the Committee on Rules plays in setting the legislative agenda is examined in Chapter 7. To test the majority party's control of the Rules Committee, we examine every vote held in the House on motions to adopt special rules from the 54th to the 105th Congress. We find that the majority party has a lower roll rate than the minority party on such votes, regardless of the particular arrangement of minority, majority, and floor medians.

In Chapter 8, we extend our argument that committee chairs act as agents of the majority party. We find that bills are virtually never reported from committee against the wishes of a majority of the committee's majority party members.

Chapter 9 investigates which direction bills that reach a final-passage vote propose to move policy: to the left or to the right. We show that the proportion of final-passage bills proposing to move policy leftward is significantly related to the location of the majority party median, regardless of which conception of the pivot structure of the House one adopts. This provides the single most compelling test of the various theories that we present in this book. The outcome clearly favors procedural cartel theory.

In Part III, we first examine positive agenda power in Chapter 10. In particular, we examine how varying the homogeneity of preferences within the majority party affects the majority party's ability to enact its agenda. In Chapter 11, we conclude with an overview of our findings and their implications.

## Procedural Cartel Theory

The job of speaker is not to expedite legislation that runs counter to the wishes of the majority of his majority.

– Speaker Dennis Hastert (R-IL)<sup>1</sup>

In this chapter, we present and discuss the assumptions that undergird procedural cartel theory. To provide a context for comparison, however, we first briefly survey the literature on partisan legislative organization.

### 2.1. THEORIES OF PARTISAN LEGISLATIVE ORGANIZATION

Much of the literature on legislative organization focuses on why political parties are created within legislatures in the first place. We divide extant explanations into those that hinge primarily on the internal legislative payoffs to forming parties and those that hinge primarily on the external electoral payoffs. We then turn to survey the literature on how parties are organized and what parties do.

#### 2.1.1. Why Are There Parties in Legislatures?

##### 2.1.1.1. *Parties are Created to Solve Internal Collective Action Problems*

One line of theorizing about why parties exist is similar to the distributive line of argument regarding committees. Absent any organization (other than a voting rule for floor decisions), legislators face a chaotic and unpredictable agenda. They cannot be sure that the legislature will not vote tomorrow to strip them of benefits conferred today. Nor is it clear how to ensure that the benefits are conferred to begin with, given a world where any legislator can move any amendment at any time.

<sup>1</sup> Quoted in Babington (2004).



In order to deal with the unpredictability – and unprofitability – of the unorganized legislature, legislators form political parties to bind themselves together in durable coalitions. Gains from legislative trade that could not be accrued without parties are thus accrued. Probably the clearest exponents of such a view of legislative parties are Schwartz (1977) and Aldrich (1995), but many others similarly stress the purely legislative payoffs to forming a party (e.g., Smith and Gamm 2001; Young 1956).

### 2.1.1.2. *Parties Are Created to Solve External Collective Action Problems*

An alternative theory views legislative parties as being formed primarily to accrue electoral gains. Modern political parties facing mass electorates, similar to modern corporations facing mass markets, have a strong incentive to fashion and maintain a brand name. Such brand names are, however, public goods to all politicians running under the party's label. Thus, parties arise in order to ensure that the usual problems of providing and maintaining public goods are overcome – and in particular to internalize electoral externalities that would otherwise arise. Probably the clearest exponents of this view of legislative parties are Cox and McCubbins (1993), but others (e.g., Kiewiet and McCubbins 1991; Cox 1987; Evans and Oleszek 2002; Ström 1990) similarly stress how legislative actions can foster valuable collective reputations (brand names) and how politicians take legislative action with an eye to such payoffs.

### 2.1.2. *How Are Parties Organized?*

If parties exist to solve collective action problems, as seems the main tenet in the literature, then how do they organize to solve these problems? The literature has several suggestions, which we now survey.

#### 2.1.2.1. *Parties as Firms*

Many scholars envision parties as being similar to the firms depicted in the literature on industrial organization (cf. Alchian and Demsetz 1972; Tirole 1988), in that they involve delegation to central agents (party leaders) in order to reduce transaction costs and ameliorate collective action problems (e.g., Cooper and Brady 1981; Sinclair 1983, 1995; Stewart 1989; Rohde 1991; Maltzman and Smith 1994; Binder 1997; Cox and McCubbins 1993; Döring 2001; Gamm and Smith 2002). Scholars in this tradition implicitly accept the industrial organization literature's focus on hierarchical firms with single chief executive officers.

#### 2.1.2.2. *Parties as Partnerships*

In the case of the political party, we believe a more fruitful analogy is to partnerships, such as law or accountancy firms, in which various gradations of senior partners provide overall strategic and tactical direction to the firm. The "senior partners" in our story – at least as regards the majority party – will be

committee and subcommittee chairs, majority party floor leaders, campaign finance committee chairs, and the like. Agenda-setting and other powers are distributed across the offices held by these senior partners rather than fully concentrated in the hands of the speaker, just as the right to recruit new clients and take on new jobs is distributed among the senior partners in a law or accountancy firm, rather than fully concentrated in the hands of the firm's president. Similarly, just as the job of ensuring that no senior partner's actions impinge too unfavorably on a law firm's overall reputation falls not just on the firm's president but also on the other senior partners collectively, so too the job of policing committee chairs falls partly to the speaker and partly to informal politics centered on the party caucus.

### 2.1.3. *What Do Parties Do?*

Once organized, what do parties do to mitigate the collective action problems that are assumed to be the reason for their existence?

#### 2.1.3.1. *Parties as Floor Voting Coalitions*

Some partisan theories view parties primarily as floor voting coalitions. In such theories, the central issue is the degree to which parties can discipline their members, ensuring a cohesive voting bloc on the floor, even when there are internal disagreements over policy.

The best-known model that seeks to explain variations in American parties' ability to discipline their members, and hence enact programs, is the conditional party government model of Aldrich (1995), Rohde (1991), and Aldrich and Rohde (2001). In this model, majority party backbenchers delegate more power to their party leaders, when preferences vary less within each party and more between the parties. Party government is thus conditional on a sufficient disagreement in preferences between the parties (relative to their internal disagreements) arising. When this condition is met, American parties act more in accord with the traditional model of responsible party government.

#### 2.1.3.2. *Parties as Procedural Coalitions*

Other partisan theories, including our own, view parties primarily as procedural coalitions. For such theories, the central issue is the majority party's ability to control the legislative agenda, defined as the set of bills considered and voted on the floor.

### 2.1.4. *How do Majority Parties Control the Agenda?*

Strict party discipline, at least on important votes, is one method for the majority party or coalition to control legislative outcomes. When party leaders have the means to impose discipline on their backbenchers, agenda control is attained by the extension of the will of the party leadership. But, where discipline is costly, other methods may be substituted. In considering these other methods,

there is an important distinction to be made between positive and negative agenda power. Positive agenda power is the ability to push bills through the legislative process to a final-passage vote on the floor. Negative agenda power is the ability to block bills from reaching a final passage vote on the floor. Formal and informal models of legislative parties differ in whether they depict parties as controlling the agenda via the allocation of proposal rights (positive agenda power) or veto rights (negative agenda power).

### 2.1.4.1. *Parties as Allocating Proposal Rights*

Two examples of theories in which proposal rights are the key resource allocated by parties to their members are Laver and Shepsle's (1996) model of the ministerial government and Diemerer and Feddersen's (1998) model of the vote of confidence. In a common interpretation of Laver and Shepsle's model, multiparty coalition governments allocate ministerial portfolios to their various member parties, with each minister then possessing both positive and negative agenda power in his respective jurisdiction. Thus, each minister can make proposals directly to the assembly, without needing cabinet clearance. In Diemerer and Feddersen's model, coalitions of legislators allocate increased "recognition probabilities" to their members, thereby increasing their ability to make proposals. Once recognized, a given member of a coalition again needs no preclearance by other members of the coalition for his proposals: They go straight to a final-passage vote in the plenary.

### 2.1.4.2. *Parties as Allocating Veto Rights*

An alternative view of parties is that they allocate negative agenda power, or veto rights, among their members. Tsebelis (2002) takes this view of parliamentary coalitions. Rather than view individual parties as possessing both negative and positive agenda power across a range of issues (those under the jurisdiction of the party's ministers), Tsebelis views parties as possessing a general veto over the entire range of issues the coalition must face – therefore no coalition partner possesses unilateral proposal power. Similarly, Cox and McCubbins (2002) view majority parties primarily as allocating veto (or delaying) power to various offices held by their senior partners, such as committee chairs and speakers, thus necessarily lessening the proposal power of any given party member or subset of members.

## 2.2. PROCEDURAL CARTEL THEORY

In this section, we list the assumptions and motivating principles of procedural cartel theory. Assumptions 1–5 are from our previous book, *Legislative Levetism*, and are defended at length in the second edition of that volume. Assumption 6 is new to this book, and, accordingly, we expand on it here (in Section 2.3). After elaborating the assumptions of our theory, we sketch some of the intuitions that have steered our research (in Section 2.4) and conclude

(in Section 2.5). In subsequent chapters, we will present and test simplified and formalized models consistent with the broader theory presented here.

**Assumption 1:** Members of Congress seek reelection to the House, internal advancement within the House, good public policy, and majority status.

In our previous work (Cox and McCubbins 1993), our formal statement of members' goals included three of the motivations just discussed: reelection, internal advancement, and majority status.<sup>2</sup> Key to our approach was the assumption that majority status confers substantial benefits. In particular, advancement to committee chairs and other key posts in the House is possible only if one's party gains a majority, and advancement of one's legislative projects is greatly facilitated by majority status.<sup>3</sup> Thus, majority status is arguably an essential gateway to internal advancement and policy goals. The more substantial the benefits of majority status are, the more incentive they provide to the senior partners in a given party to pursue majority status – hence to undertake the sorts of agenda-setting actions that we describe in the remainder of the book.

**Assumption 2:** The reputation (or brand name) of a member's party affects both the member's personal probability of reelection and, more substantially, the party's probability of securing a majority.

We have discussed this premise at length in our previous work (see Cox and McCubbins 1993, Chapter 5). To the extent that this assumption holds, a political party's reputation is a *public good* to all candidates sharing the party's label. More specifically, if a party's reputation improves or worsens, all members benefit or suffer together, regardless of whether they contributed to the improvement or worsening.

**Assumption 3:** A party's reputation depends significantly on its record of legislative accomplishment.

The policies with which a particular party and its leaders are associated – both those it promotes and those it opposes – can significantly affect the party's

<sup>2</sup> We did not there formally incorporate the third of Fenno's (1973) famous trio of goals: the pursuit of good public policy. In this book, however, we adapt the standard spatial model of policy making for much of our argument, and this model is sufficiently abstract so that one can easily read personal policy goals into it. Thus, one can add the pursuit of policy as one of the goals that is consistent with the model we present here – although we do not insist on that interpretation.

<sup>3</sup> As an example of the importance of majority status for members' legislative projects, consider the statements that Representative Ralph Hall made as he switched from being a member of the Democratic minority to being a member of the Republican majority: "This is the first time, I've just been zeroed out [by the Appropriations Committee].... I've always said that if being a Democrat hurt my district, I'd either resign, retire or switch parties.... And it hurt my district this time [because I was denied funds]" (Wolf 2004).

reputation. A recent example of this is the budget battle waged between Speaker of the House Newt Gingrich and President Bill Clinton in 1995. This battle led to the opening of the new fiscal year without a federal budget, causing the closure of nonessential government services. For present purposes, the important point about this budgetary stand-off is simply that it led to a sharp reduction in the popularity of congressional Republicans and their leaders, as measured by thermometer ratings in mass surveys (Jacobson 1996). In other words, in this instance a leader's legislative policy – that of refusing to compromise on the budget – led directly to a decline in the party's overall popularity.

We assume that this anecdote points to a more general phenomenon, in which legislative actions taken by various members of the party can affect the overall party's reputation on the margin. There is some disagreement about how much and how quickly party identification incorporates new events and evaluations (cf. Gerber and Green 2000). For our purposes, we need simply to assert a position similar to that adopted by V. O. Key (1966), in which parties' legislative actions *do* consequentially affect voters' behavior. Whether the path by which legislative actions influence votes is through party reputations (party identification) or through some shorter-term partisan pathways is less important.

**Assumption 4:** Legislating – hence compiling favorable records of legislative accomplishment – is akin to team production and entails overcoming an array of cooperation and coordination problems.

Achieving their goals – reelection, internal advancement, and majority status – requires passage of legislation, yet legislators' ability to accomplish things on their own is quite limited. Legislation must be accepted by majorities in both houses of Congress and be signed by the president to become law.<sup>4</sup> To get through even one house, moreover, a bill needs to get scarce floor time and the support of a majority coalition, both of which are costly and difficult to achieve. Legislating thus requires that members somehow join forces, cooperate, and engage in "team production" (Alchian and Demsetz 1972).

Team production, however, means confronting and overcoming a variety of collective action and coordination problems. For example, all members would like to spend more money on their own districts than might be optimal from their party's perspective (Cox and McCubbins 1993); all members would like to have free access to floor time, but the result could be that nothing can get done reliably (Cox 1987); divergent national, regional, and partisan interests might lead members to pursue different policies in the absence of some coordinating mechanism (Calvert 1995). Most important for our theory, as noted above, the party label itself is a public good (for party members) that is subject to free-rider problems. Managing the party label is the primary collective action problem that members of a party must solve, and their collective goal of solving this and

<sup>4</sup> Alternatively, of course, a bill can be vetoed, and the veto can be overridden by two thirds of both houses.

other collective action problems is the sense in which they are members of a partnership.

**Assumption 5:** The primary means by which a (majority) party regulates its members' actions, in order to overcome problems of team production in the legislative process, is by delegating to a central authority.

Though other solutions for collective action problems exist, the most common solution seems to be delegation to a central authority – an idea that appears in a wide variety of literatures (cf. Olson 1965; Alchian and Demsetz 1972; Salisbury 1969; Frohlich, Oppenheimer, and Young 1971; Frohlich and Oppenheimer 1978; see Kiewiet and McCubbins 1991 and Cox and McCubbins 1993, Chapter 4, for more detailed discussions).<sup>5</sup> Three common elements in all these works are that the central authority to whom power is delegated monitors individual behavior, controls carrots and sticks with which to reward and punish individuals, and is motivated to solve the collective action problem(s) faced by the group. Along these lines, the core point of our previous book (Cox and McCubbins 1993) is that majority party members delegate to party leaders the authority to manage legislative resources and the legislative process in order to solve the cooperation and coordination problems they face, including maintaining the value of the party label.<sup>6</sup>

How are party leaders motivated to use their delegated powers for collective, rather than purely personal, gain? We argue that members wishing to hold important offices in the House (such as the speakership and committee chairs) know that the only realistic route to getting these offices is for their party to attain a majority of seats and for them to be in sufficiently good standing with their caucus to be (re)nominated for such offices.<sup>7</sup> Thus, the more valuable are the top posts going to the majority party's senior members, the more motivated are those members to ensure the party's continued majority status (and their own good standing).

As noted in the previous chapter, we believe that political parties are more fruitfully analogized to legal or accountancy partnerships than to strictly hierarchical single-leader firms (or armies). Thus, when we speak of delegation to

<sup>5</sup> Among the other solutions suggested in the literature are preplay communication, repeated play, and property rights (Tirole 1988; Friedman 1971).

<sup>6</sup> Describing the authority associated with party leadership, Dennis Hastert stated, "So I have two functions. One is governmental, the other political. The governmental function is to run the House, more legislation through, make sure the chairmen and the committees are all operating smoothly.... The other function is political. I have to recruit the best possible candidates for Congress and make sure they have the financial and other resources they need to run on, if they're already in Congress, to make sure they have enough to stave off potential challengers" (Hastert 2004: 181–2).

<sup>7</sup> Speaker Dennis Hastert clearly recognized the importance of majority status and being in good standing with his party. He emphasized, "Stripped to its essentials, my job is to run the House and make sure we [Republicans] hold the House" (Hastert 2004: 181).

a central authority, we do not mean literally to a single person but instead to a group of "senior partners."

**Assumption 6:** The key resource that majority parties delegate to their senior partners is the power to set the legislative agenda; the majority party forms a procedural cartel that collectively monopolizes agenda-setting power.

This is our key assumption, and our point of departure from most of the previous literature. A *procedural cartel* is a coalition of legislators who constitute a majority in the assembly, share a common label (at least in the United States), and cartelize the agenda via the following basic strategy. First, the cartel creates (or, more typically, inherits) a set of offices endowed with special agenda-setting powers. In the case of the U.S. House, the main agenda-setting offices are the committee chairs, slots on the Rules Committee, and the speakership.<sup>8</sup> Second, the cartel ensures that its members get all, or nearly all, of the agenda-setting offices.<sup>9</sup> Third, cartel members expect those appointed to agenda-setting offices to *always* obey "the first commandment of party leadership" – *Thou shalt not aid bills that will split thy party* – and to sometimes obey the second commandment – *Thou shalt aid bills that most in thy party like*. Fourth, cartel members expect rank-and-file members to support the agenda-setting decisions rendered by officeholders when those decisions are made in conformity to the expectations just noted. Fifth, the cartel's leadership takes action to maintain cooperation and coordination within the cartel.

We use the term "cartel" because procedural cartels, like economic cartels, seek to establish a collective monopoly on a particular resource (in this case, agenda-setting power), seek to restrict supply of products made with this resource (in this case, bills that are placed on the floor agenda), and face problems of free-riding (in this case, members reluctant to vote for a party measure when such a vote will not sell well back home, or members eager to use their delegated agenda powers for personal gain). We have also used the term "legislative Leviathan" to describe party organizations within legislatures, in order to emphasize their sometimes considerable degree of centralized authority.<sup>10</sup>

<sup>8</sup> Although the speakership is a constitutional office, its agenda-setting powers, as well as those of the other offices mentioned, are stipulated in House rules and precedents. The cartel controls the allocation of agenda power to the various offices to the extent that it can control votes on the adoption of rules.

<sup>9</sup> In the United States, the cartel ensures a near-monopoly on agenda-setting offices to the extent that it can control the relevant votes on the floor (on election of the speaker and appointment of committees). To aid in controlling these floor votes, the cartel establishes an intracartel procedure to decide on the nominee for speaker and on a slate of committee appointments.

<sup>10</sup> The role of the majority party has also been analogized to former Soviet Congresses. Indeed, as Hastert (2004: 250) notes, "Representative David Obey ... compares the way the House is run today to 'the old Soviet Congresses – stamp of approval and ratify' rather than using your own judgment. Well, Obey was here when Democrats ran the place ... Talk about rubber stamps and domination by a party that had lots of votes and squish room. They were ruthless. They did

Indeed, even during their relatively decentralized periods, parties in the U.S. House have been more hierarchical and stable than the typical economic cartel. Even though neither term's connotations are fully satisfactory, in this book we will refer to party organizations as forming procedural cartels (and we will stress the analogy of a group of senior partners directing a law or accountancy firm rather than of a CEO running a corporation or a general commanding an army).

## 2.3. HOW DOES THE MAJORITY CARTELIZE THE AGENDA?

In this section, we reconsider the defining features of "procedural cartels," as mentioned in Assumption 6. At this point, we wish only to argue that these features *plausibly* characterize the modern (i.e., post-Reed) House of Representatives; we will return to them in greater detail later in the book.

### 2.3.1. The Structure of Agenda-Setting Offices

An initial question is whether there exist offices endowed with special agenda-setting powers in the House and whether these offices' powers were in some sense chosen by the majority party. By "special agenda-setting powers," or agenda power for short, we refer to any *special* ability to determine which bills are considered on the floor and under what procedures. Because any member can participate in an attempt to discharge a bill, we would not count "the ability to participate in a discharge attempt" as an "agenda power" in our sense. Such an ability is not special; it is general. In contrast, only members of the Rules Committee can participate in fashioning special rules,<sup>11</sup> and only chairs can delay bills merely by not scheduling them – to mention two examples of agenda power as we define it.

Given this definition, there obviously do exist offices in the House endowed with agenda power. As noted previously, the most important of these include the committee and subcommittee chairs, the seats on the Rules Committee, and the speakership.

Did the majority party in some sense choose the level of agenda power delegated to the various agenda-setting offices? Yes, in two senses.

First, the House adopts rules anew in each Congress. These rules are proposed by the majority party and are usually adopted on a straight party-line vote. Thus, among other things, the majority chooses (or reaffirms) the delegation of agenda power in those rules.

Second, the modern structure of agenda power in the House was erected in the period 1880–94 to enable the majority party to legislate, even against

things like the old Soviet Congresses, such as removing offenders from their hideaway offices, grabbing their office furniture, and taking their parking spots away."

<sup>11</sup> A "special rule" is a resolution reported by the Rules Committee that regulates the consideration of a bill or resolution.

the wishes of the minority. In Chapter 4, we will show that the House's rules have not, since 1894, changed so as to erase the majority party advantages accrued in this period. In particular, the minority party's ability to delay has not been restored, nor has the central position of the Rules Committee been significantly altered.<sup>12</sup> The powers of the speaker have waxed and waned, but when they have changed, they have simply been redistributed within the majority party, not allocated to any minority party members. In this sense, the majority party chose the structure of agenda power and the majority's overall advantage has remained largely constant since the 1890s (a claim we defend at length in Chapter 4).

### 2.3.2. Who Gets the Agenda-Setting Offices?

A second question is whether the majority party sets up a procedure for selecting the occupants of the agenda-setting offices that is likely to lead in principle, and does lead in practice, to its members winning most of the agenda-setting offices. The answer in practice is clear: the majority party secures all chairs, the speakership, and a super-proportional share of seats on the Rules Committee. It also secures super-proportional shares on the major committees that enjoy privileged access to the floor and on conference committees (which also exercise special agenda-setting powers) (Cox and McCubbins 1993).

As for the procedures regulating access to the House's agenda-setting posts, they all include an initial stage in which each party decides on nominees for the various posts, followed by a choice between, or ratification of, the parties' nominees in the House. The choice of a speaker is largely unregulated, as this is the first vote in each Congress and occurs before the adoption of rules. The choice of all other agenda-setting posts – committee positions of various sorts – is regulated. In particular, since 1917 the procedure has been as follows. First, the majority party informs the minority of how many seats each party will receive on each committee. Second, each party submits a slate specifying its nominees for its designated committee positions. Third, the two party slates are combined into a single resolution that is then voted up or down (since 1917 it has not been permissible to amend the slates on the floor). Given these procedures, it is not surprising that the majority party has never failed to secure a monopoly on chairs, the speakership, and a disproportionately large share of seats on the control and conference committees.<sup>13</sup>

<sup>12</sup> We are talking here about the powers of the Rules Committee, not its membership.

<sup>13</sup> Decrying this monopoly power of the majority party, Dennis Hastert stated, "The truth is that since the last time we had a majority in 1954 only one Republican, Missouri's Bill Emerson, had ever stood on the House Floor – and he stood there as a page. We [the Republicans] had been in the wilderness so long that nobody remembered anything about being in the leadership. We didn't even know where the special back rooms were; we didn't even know where the keys to those rooms were" (Hastert 2004: 118).

### 2.3.3. Fiduciary Behavior of Officeholders

A third question is whether party members expect that party officeholders will exercise their official powers partly for the benefit of the party, rather than purely to pursue personal goals, and whether officeholders who do not act as expected are sanctioned in some way. Since agenda cartelization entails delegation of authority from party backbenchers to party leaders, cartelization creates the possibility of mischief by party leaders (i.e., not serving the collective interests of the party). Much of the literature implicitly adopts a strict standard by which to judge when officeholders act in the interest of their party, according to which they must aid legislation favored by significant majorities of their party. For example, the well-known accounts of Judge Smith's tenure on the Rules Committee point out – quite accurately – that he frequently obstructed legislation desired by large portions of his own party, and they conclude from this that Smith was acting in pursuit of his own or his faction's interests, not his party's.

Delay or outright obstruction of bills that significant portions of one's party want to turn into "party issues" represents an agency loss, but it does not mean that the persons in question have utterly abandoned representing or serving their party. After all, the wets in Thatcher's government delayed and obstructed when they could, and many other examples of hard bargaining over tough issues in coalition governments involve such tactics. Are we to conclude from every instance of persistent obstruction by elements of the governing coalition that the coalition is entirely toothless?

We think that would be premature. There are less stringent standards that might serve as "lines in the sand" demarcating behavior that is minimally fiduciary from behavior that is treasonous. Here, we wish to characterize such a standard, one that we believe has been expected of officeholders in the House at least since the late nineteenth century. This standard focuses on crimes of commission – pushing legislation one's party mostly dislikes – not on crimes of omission – failing to aid (or actively blocking) legislation one's party mostly likes. Crimes of commission increase in seriousness (1) with the proportion of the party that dislikes it and (2) if the bill actually passes. As a specific benchmark, *we claim that officeholders are expected never to push bills that would pass despite the opposition of a majority of their party*. We call such an event – passage of a bill against the votes of a majority of a given party – a *roll* of that party. If the majority's officeholders are not held to even the minimal standard of not using their powers to roll their own party, then they do indeed look like nonpartisan figures willing (and able with impunity) to build shifting coalitions in support of their projects.

An example of a violator of our proposed standard is Representative Phil Gramm (D-TX) who, during the negotiations leading to the first Reagan budget, clearly used his position in a way intended to roll his own party. In this specific instance, Democratic party leaders branded Gramm's behavior as



unconscionable after they discovered it and took quick actions to sanction him, including stripping him of the posts he had abused (Roberts 1983a).<sup>14</sup>

Other similar examples can be cited. In 1924, eight Republicans on the Rules Committee cooperated on the passage of a strengthened discharge procedure, which most majority party members opposed; six of them were removed from the committee in the next Congress (in which the offending rule was also evicted cf. Hasbrouck 1927: 163–4). In 1975, Chairman Richard Ichord of the Internal Security Committee, a longtime thorn in the side of liberal Democrats, found that the committee had essentially been disestablished, due largely to actions taken in the Democratic Caucus (Jacobs 1995). In all these cases, the majority party caucus essentially *denied renomination* to wayward officeholders. There was no House vote needed to ratify the majority's decision; moreover, it would have been difficult to reject those decisions in the House, given that each party's slate of committee nominations is unamendable under House rules. To the extent that threats to deny renomination are credible, they induce officeholders to abandon, or at least sweeten, bills that substantial portions of their party dislike.

Our position is that these anecdotes generalize. In any period of congressional history, an officeholder behaving as Gramm did would have met with comparable reactions. In any period, it would be common knowledge that the standard of "not conspiring, explicitly or implicitly, with the enemy to roll one's own party" would apply to officeholders and that violators of this standard could expect to lose their offices and/or face other sanctions.

Many in the congressional literature seem to believe that sanctions against officeholders, especially against committee chairs, were simply not feasible in the period from 1937 to 1960. If this were so, then one should expect that Southern Democrats in this period used their agenda powers with impunity to push bills that they and the Republicans agreed on. Such "conservative coalition" bills, moving policy rightward, would have provoked splits in committees chaired by Southerners – with Northern Democrats outvoted by a combination of Southern Democrats and Republicans. Moreover, such bills would easily have made it to the floor, with the help of a Rules Committee often seen as controlled by the conservative coalition in this period. Once on the floor, conservative coalition bills would have *both* split the majority party *and* passed. Passage would follow as long as the number of conservative Southern Democrats plus regular Republicans exceeded the number of Northern Democrats plus liberal Republicans. Put another way, as long as the policy being changed lay to the left

<sup>14</sup> A number of his coconspirators, the so-called Boll Weevils, were also punished by then-Speaker Tip O'Neill. For example, John Breaux of Louisiana and Roy Dyson of Maryland failed to win spots on the Budget and Appropriations committees, respectively (Roberts 1983a). In Breaux's place, the Democratic Party awarded the Budget Committee position to Martin Frost, a Texas Democrat who had "proven himself to be a national Democrat" (Roberts 1983b). Although G. V. Montgomery of Mississippi was reelected chairman of Veterans' Affairs, he lost 53 votes in the party caucus and remarked that conservatives would henceforth likely be more cooperative with their party leaders in Congress (Roberts 1983a).

of the House median, the conservative coalition would have outvoted a majority of the Democratic Party. We assess the impact of the conservative coalition in detail, and evaluate these predictions, in Chapter 7. For now, suffice it to say that we do not find significant evidence of Southern Democrats defecting from their party and joining with Republicans to successfully push an agenda unpalatable to Northern Democrats.

### 2.3.4. Loyalty from the Rank and File

A final question is: how does a procedural cartel ensure that its rank-and-file members support the agenda-setting decisions of its officeholders, even though at least some members' short-term interests would be better served by voting against those decisions? A key to the answer is that votes taken on procedural decisions (e.g., a vote to ratify a special rule proposed by the Rules Committee or to sustain a decision rendered by the speaker) are more obscure to constituents than are ordinary substantive votes (cf. Froman and Ripley 1965). If a member votes for a bill her constituents oppose on final passage, she runs a clear risk. If she supports a special rule filled with arcane boilerplate that helps ensure the bill's success, she runs a smaller risk.<sup>15</sup> Thus, party pressures can affect members' decisions on procedure more than their decisions on substance, even though all legislators know that procedural motions directly affect substantive outcomes.<sup>16</sup>

Another key point is that the cartel does not need the loyalty of every member on every vote. Often, it needs only enough votes to snatch victory from the jaws of defeat on close and important votes (cf. King and Zeckhauser 2003). This is a much more limited and manageable task than enforcing some minimum standard of cohesion across the board, which some mistakenly take to be what any "partisan" model must predict.

Is there evidence that cartels in the U.S. House do demand loyalty? Alexander (1970 [1916]: 210) notes that, soon after Reed's elevation of the Rules Committee to its modern status, members chafed under the expectation that "one must support whatever the Rules Committee brought forward or become irregular." More recently, Republican Whip Tom Delay (R-TX) has made the party's expectations regarding behavior on procedural motions clear to his freshmen (Burger 1995).

To buttress such anecdotal evidence that majority parties do expect loyalty on key procedural votes, one can also point to more systematic evidence that the majority party's rank and file support their officeholders' agenda-setting

<sup>15</sup> In Arnold's (1990) terms, procedural votes are less "traceable."

<sup>16</sup> Nokken's (2004) analysis demonstrates that departing members of Congress in lame duck sessions increasingly vote with their party (as opposed to their constituency). The explanation for this phenomenon is that when constituency constraints are severed (as they are in this situation), members vote with their party in hopes that the party will reward them for their loyalty by aiding them in their future career moves.

decisions, while minority party members oppose them. First, after the packing of the Rules Committee in 1961 (and especially after the procedural reforms of 1973), members have voted with their parties significantly more than would be expected on the basis of their left-right position on a wide range of procedural and organizational votes (Cox and Poole 2002).<sup>17</sup> Second, in the postreform Congress, majority party members have been prone to support special rules, even when they then vote against the bill in question, while minority party members have exhibited the opposite tendency (Sinclair 2002a). Sinclair's interpretation of this evidence is that majority party members are supporting their leaders' agenda-setting decisions, even when they oppose the substance of the proposals aided by the special rule in question, while minority party members oppose the Rules Committee's resolutions, even when they support the measure being aided. Third, more evidence of parties' influence over their members' voting behavior is reviewed in Chapter 10.

In addition, party leaders reward party members' loyalty on key votes, and especially on "agenda votes" in which the leaders of the two parties take opposing positions.<sup>18</sup> More loyal members are more likely to be appointed to the most desirable committees and to have committee transfers granted than are less loyal party members (Cox and McCubbins 1993, Chapter 7).

In summary, majority party leaders make clear their expectations of loyalty on certain key procedural votes; there is evidence that party pressures are greater on such votes (Cox and Poole 2002; Sinclair 2002a); and there is evidence that more loyal members get better committee assignments (for the postwar period, see Cox and McCubbins 1993, Chapter 7; for the period following Reconstruction, see Nokken and Goodman 2003; see also Maltzman 1997). These findings are all consistent with a picture in which majority party leaders both *expect* and *get* "loyalty on the margin," enough to make the difference between winning and losing on close votes (King and Zeckhauser 2003).

Nevertheless, it is the very costliness of enforcing discipline in the U.S. House that helps to explain why U.S. parties principally rely on controlling the legislative agenda to achieve their legislative goals. In the model of responsible party government (American Political Science Association, 1950), parties ensure cohesive voting blocs through a combination of control over nominations and disciplining their members. U.S. parties, however, have relatively weak nominating powers. Similarly, discipline is weaker in the United States than in some other countries. This puts more emphasis on agenda control, or influencing the bills and motions on which members must vote, as the single most powerful mechanism by which legislative outcomes can be affected in the

U.S. House. By using agenda control, the party can prevent votes on which its disciplinary abilities would be strained or broken.

### 2.3.5. What About Quitting the Party?

In the discussion of fiduciary behavior and loyalty in Sections 3.3 and 3.4, we did not address the issue of why members of a cartel do not quit their party, join the other side, and form a new cartel (with a better share of the spoils for themselves). In particular, one might wonder why centrist members cannot extract a better deal. Why are not all the committee chairs centrists, for example? Alternatively, why are not centrist chairs free to exercise agenda power in any way they see fit, subject only to majoritarian and not specifically partisan constraints?

There are three points we would urge in answer to this line of inquiry. First, it is rare for a single member to be pivotal (Senator James Jeffords in May 2001 being the most notable exception). Typically several members must simultaneously switch parties in order to bring down the current cartel. Potential defectors must thus *coordinate*, not just in the sense of jumping at the same time but also in the sense of negotiating, *before* actually defecting, with their prospective new partners over the division of the spoils.<sup>19</sup>

Second, and more important, it is ex ante costly to switch parties. The Grenville faction in late eighteenth-century English politics could pivot freely, little constrained by electoral considerations, because they literally owned their seats. In the modern U.S. House, however, elections are partisan, and party labels count for a lot. When a member switches party labels, can he communicate that fact – and at what cost – to his constituents? How many voters in his former party will continue out of habit or loyalty to support that party? How many voters in the new party will remember that he used to be in the other party and refuse to support him on that ground? Among those voters who do learn of the member's switch, how many will view it as purely opportunistic, making the representative seem unreliable? Can he combat such ideas at low cost? How many names on the member's donor list will stop contributing? Who has been planning to run for the other party and how will they react to the incumbent's switch? All these questions about electoral ramifications – and more besides – would have to be considered by prospective defectors, at least if they are prudent.

Third, it is ex post costly to switch parties. Grose and Yoshinaka (2003) report "that incumbent legislators who switch parties have poorer showings after their switch in both general and primary election contests." Moreover, if one regresses the number of terms remaining in a legislator's career in Congress

<sup>17</sup> Quantitatively, Cox and Poole estimate about five to 10 votes switching on key procedural votes, which is consistent with qualitative evidence regarding vest pocket votes.

<sup>18</sup> Loyalty is always important in committee assignments, but during times of high homogeneity within the majority party, there may be an increased premium placed on legislative competence. High levels of intraparty homogeneity decrease the relative importance of high loyalty and increase the importance of competence (Wawro 2000, Crook and Hibbing 1985).

<sup>19</sup> The Jeffords case is informative here, as it demonstrates the costs of negotiating a defection. The Democrats gave Senator Jeffords the chairmanship of the Environment and Public Works Committee as an inducement to switch parties, which required Harry Reid to give up his status as the ranking Democrat on the committee (Lancaster 2001).



on her seniority (i.e., the number of terms already served through Congress  $t$ ) and a dummy variable equal to 1 if the member switched parties in Congress  $t$ , one finds the switched party dummy variable to have a statistically significant coefficient of roughly  $-3$ . In other words, by one crude estimate, the cost of switching parties is three fewer terms in the House than would otherwise be expected, given a member's current seniority.<sup>20</sup>

These various costs help explain why actual party switching has been rare in the House and Senate. To the extent that the exogenous electoral costs of switching are large, moreover, it would follow that the threat of switching parties would not be as effective as it would be in a pure spatial representation of politics, such as those described by Riker (1962) or Krehbiel (1998).

## 2.4. CONCLUSION

In this chapter, we have laid out the main assumptions underpinning our theory of legislative parties. In our view, U.S. legislators seek not just reelection but also advancement in the internal hierarchy of posts within the House, good public policy, and majority status for their parties. Their parties compete in mass elections, as business firms compete in mass markets, by developing brand names. The value of a party's brand name depends on its legislative record of accomplishment. Thus, a key problem for majority parties is to manage the legislative process, in order to secure the best possible record, hence contributing to the best possible reputation.

This much was already evident in our original exploration of congressional organization, *Legislative Leviathan*. In this book, we develop several additional themes.

First, we portray agenda control as the key to the majority party's influence over the legislative process. In the responsible party government model, the primary mechanisms by which a party overcomes collective action problems, so that it can enact a program, are screening candidates and disciplining

<sup>20</sup> The analysis covers only the 80th through 100th Congresses. It is a crude estimate for two main reasons. First, the (negative) correlation between whether a member switches parties and how long that member continues in the House may be only partly due to switching being bad per se. Perhaps members who switched had very poor electoral prospects, had they remained in their parties, and switched for this reason. So far as we know, however, there is no systematic evidence that party switchers did face greater electoral risks than the typical nonswitching member. Indeed, Ansolabehere, Snyder, and Stewart (2001) find qualitative evidence that discomfort with being ideological misfits accounts for legislators' switching; however, Casto and Pratt (2000: 236–7) find that switching is more likely the more ideologically out of step a member is with his copartisans, controlling for a measure of primary electoral risk. Second, our data do not include the full number of terms served by members whose careers continue past the 100th Congress. For these members, the number of terms remaining is coded as zero. As there were no members who switched parties in the 100th Congress, this defect of the data biases our estimate of the cost of switching downward. In other words, if we knew the correct total terms remaining for all members whose careers reached the 100th Congress, the difference between switchers and nonswitchers would be even larger than we report here.

legislators. In the U.S. context, however, both screening and discipline are – although utilized to some extent – relatively costly. This raises the importance of a third technique to manage conflicts between collective and individual goals: controlling the agenda so that the sharpest conflicts are never even considered on the floor.

How does a legislative majority party work to control the agenda? The mechanism is similar to that portrayed in *Legislative Leviathan*. Certain members of the party – whom we have here dubbed the “senior partners” – are given valuable offices wielding substantial agenda-setting powers. In order to secure their party's (re)nomination for these offices, senior partners are expected to obey a minimal commandment of party loyalty – namely, not using their official powers in order to promote bills that will, if considered on the floor, lead to serious splits in the party (operationalized as *rolls* in the coming chapters). The rank and file, meanwhile, are also expected to obey a minimal commandment of party loyalty – namely, supporting their officeholders' agenda-setting decisions, especially on the more procedurally arcane (yet substantively critical) votes. Their incentive to support such procedural maneuvers is the prospect of better internal advancement and a greater chance of majority status for the party as a whole.

Analogizing parties to partnerships is our second main point of departure from *Legislative Leviathan*, where we more often focused on the speaker and the top few leaders rather than the entire set of party members holding agenda-setting offices. Law and accountability partnerships are designed to allow their senior partners considerable autonomy. By stressing the analogy to a partnership and the importance of agenda power, our approach naturally raises the question of how specific agenda powers are distributed among senior partners.

There are many theoretical possibilities, such as allocating *all* agenda power to the top party leader, allocating proposal power(s) to various senior partners, or allocating veto power(s) to various senior partners. We have argued that, whatever the details of agenda-power allocation, all majority parties in the U.S. House since adoption of Reed's Rules have structured agenda power in such a way that it is very difficult to roll them.

Closely related to the issue of what powers are distributed to which senior partners is the question of what standards of behavior those partners are expected to uphold. At one theoretical extreme, senior partners may have no fiduciary responsibilities to their parties. This is the case, for example, in Laver and Shepsle's (1996) depiction of ministerial government and Dion and Huber's (1996) study of the U.S. Rules Committee. Agenda power is clearly allocated in these models but officeholders are then free to act in pursuit of their own interests, with neither formal checks (e.g., the necessity of securing their party's renomination) nor informal norms to constrain them. At the other theoretical extreme, senior partners may be expected completely to subordinate their personal goals to the party's. This is implicitly the case, for example, in Ranney's (1951) or the American Political Science Association's (1950) portrayal of responsible party government. Agenda power is not mentioned in such models,

but officeholders are clearly enjoined to marshal their parties behind a coherent party platform.

We have opted for a theoretical middle ground of sorts, in which the norm to which senior partners are held depends on the internal homogeneity of the party. If the party is extremely heterogeneous (perhaps similar to a multiparty coalition government in other countries), then only a minimal standard can be realistically enforced: that of not using one's official powers to push legislation that will roll the party. As the party becomes more homogeneous, its senior partners are held to a higher standard, in which they must also use their official posts to help push legislation that most in the party support. Thus, for example, Jamie Whitten (D-MI) continued as chair of the powerful Appropriations Committee in the 1970s because he considerably increased his willingness to cooperate with the party leadership in pushing through Democratic priorities, even those he personally found distasteful (Crook and Hibbing 1985).

Why does the fiduciary standard become higher for more homogeneous parties? This prediction is entailed by our theory because procedural cartels, as we describe them, primarily distribute veto power among the senior partners of the party. Distributing veto power necessarily interferes with pushing through an ambitious program of legislation, as each senior partner with a veto in a particular policy area has to be brought on board. Thus, the ability of a procedural cartel to legislate necessarily depends on how similar their senior partners' preferences are. (We return to this point, and discuss the theory of conditional preferences in Chapter 10.)

Even when a majority's senior partners disagree on a wide range of issues, however, it becomes no easier to roll the majority party (i.e., pass bills that most majority party members dislike) because some senior partner or partners with relevant veto power will derail the bill. Thus, even internally divided majority parties do not surrender their *negative* agenda-setting power. They simply avoid bills that cannot be passed and move on to bills that can be passed, which tend to be less ideological and more porcine. The minority benefits from the internal divisions of the majority, in the sense that the bills the senior partners can agree on are less likely to have a clear ideological bite to them, hence less likely to roll on the minority. But the minority is no more successful in dismantling the majority's previous accomplishments than before. Nor does it benefit by receiving a larger share of chairs, of staff, or of pork.

Because negative agenda power is the bedrock and "first story" of party government, in our view, most of this book considers the consequences of such power. We return to the "second story" of party government, and discuss when a majority party might wish to build up such a story by readjusting the mix of positive and negative agenda power, in Chapter 10.

## PART II

### NEGATIVE AGENDA POWER