

The Effects of the Reed Rules on House Agenda Setting

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Many historical accounts of Congress highlight the Reed rules as a dramatic instance of obstruction being restricted in Congress (Alexander 1916; Follett 1896; Galloway 1976; McConachie 1898; Robinson 1930). Also, the emphasis in contemporary congressional scholarship on agenda setting as a primary source of influence over legislative decisions has focused attention on the critical role of the Rules Committee in the modern House, on the origins of this role in the period surrounding adoption of the Reed rules, and on historical variation in the ability to obstruct more generally (Binder 1997; Dion 1997; Koger 2010; Peters 1990; Roberts 2010; Schickler 2001; Strahan 2002; Wawro and Schickler 2006).¹

Recent work, however, raises questions about the nature of the Reed rules' effects on House agenda setting. Cox and McCubbins (2002, 2005) emphasize the empowering of the Rules Committee via the Reed-era procedural changes as a fundamental source of majority party "negative agenda control" (i.e., the ability of the party to block passage of bills it opposes) and show that the majority party is rarely rolled (i.e., a majority of the caucus votes against passage, but the bill passes nonetheless) after adoption of the Reed rules in early 1890. Smith (2007), however, critiques various aspects of this argument. He notes the conventional view is that, due to sharp increases in the House's workload by the 1880s, competition among proponents of different bills for increasingly scarce floor time combined with supermajority requirements for considering bills out of order to created something like a mutual veto, in which both the majority party and the minority party had substantial ability to obstruct the others' proposals. Smith argues that the majority therefore had negative agenda power before

¹ For examples of the emphasis on agenda setting in Congress, see Aldrich 1995; Aldrich and Rohde 1997, 2000; Cox and McCubbins 1993, 2002, 2005; Krehbiel 1991, 1998; Rohde 1991; Shepsle and Weingast 1987; Sinclair 1983, 1997; Weingast and Marshall 1988. For more abstract theoretical treatments of agenda setting and collective choice, see Arrow 1963; McKelvey 1976; Plott 1967; Riker 1980.

the Reed rules' adoption, and the effect of the rules was to give the majority *positive* agenda power (the ability to push proposals through to passage), rather than negative power. Another critique is that, in large part, the Reed rules codified prior procedural changes, so there is ambiguity about when the significant agenda setting changes took effect. Also, Smith points out that Senate majority party roll rates also decreased at about the same time as House majority party roll rates, raising the possibility that some factor other than the Reed rules caused the roll rate changes in both chambers.

I try to clarify our understanding of the Reed changes' effects on agenda setting by addressing these concerns. I argue that, to the extent that they are treated as distinct types of power, the emphasis on negative and positive agenda power is misleading; rather, they are directly related—one actor's ability to block proposals affects other actors' ability to push proposals. The key question regarding the Reed changes' effects on agenda setting is thus, when did the minority have the ability to obstruct majority proposals, and when did it lose that ability? My answer is that the pivotal moment at which the minority party lost the ability to obstruct and the Rules Committee became an effective instrument of majority party power was the period of a few days in early 1890 when Speaker Reed, backed by his caucus, reinterpreted House rules so as to claim the power to count a quorum and to ignore dilatory motions. I then test predictions based on these arguments by examining changes in individual House and Senate members' probability of being rolled on final passage votes during a sixteen-year period centered around the Reed changes. I find that, consistent with the conventional view of the Reed changes, House majority legislators' probability of being rolled did not change, but House minority legislators' roll rates increased. I use the Senate as a control group and find

that, in the upper chamber, neither party's members were more or less likely to be rolled in the period after the following House adoption of the Reed rules than in the prior period.

In the next section I discuss negative and positive agenda control, the structure of the legislative process at the outset of the 1880's, and the changes that ensued across the following decade. The section after discusses hypotheses that follow from this account of the rules changes, followed by a section describing the test I used to evaluate these hypotheses. The final two sections present the results of this test and discussion of their implications.

The legislative process in the late nineteenth century

In this section, I describe the legislative process at the outset of the 1880's, the changes of 1880 through 1890 that sharply restricted obstruction and made the Rules Committee an instrument of majority agenda setting, and the lack of comparable changes in the Senate during this same period. I begin, however, with a brief discussion of agenda power.

Negative and positive agenda power

As noted, the literature has tended to distinguish between negative and positive agenda power, and to at least give the impression that they are discrete types of power (i.e., it is possible to have one without having the other). The distinction is useful for many purposes and has helped foster greater insights into these dual aspects of agenda setting.

But, as Nathan Monroe and I emphasize elsewhere (Den Hartog and Monroe 2011), we have misgivings about this way of thinking. In many respects, negative and positive power are deeply intertwined, since one person's ability to block proposals affects another's ability to move proposals forward. For example, in the modern Senate, the minority party uses threats of filibusters to inhibit the majority party's ability to push proposals through the process. Moreover, even if many actors have negative agenda power, one of those actors might translate

it into some level of positive power by threatening to block others' proposals, thereby creating bargaining chips. A key question for understanding agenda power in a given legislature, therefore, is whether any actor *monopolizes* negative agenda power, which translates into significant positive agenda power.² For purposes of understanding the timing of the Reed changes, therefore, the key question is, when did the majority party gain a monopoly over negative agenda control?

In the following three subsections, I sketch the key changes in House procedures, from 1880 to 1890, that cumulatively consolidated negative agenda power in the hands of the majority party. There is nothing novel in the specifics of my account—it is consistent with, and draws on, many other accounts (c.f., Alexander 1916; Binder 1997; Follett 1896; Galloway 1976; Koger 2010; McConachie 1898; Roberts 2010; Robinson 1930; Schickler 2001; Smith 2007), so readers familiar with the details may wish to skip these sections. My main purposes are to paint a picture of the process by which negative agenda power was concentrated in the hands of the majority, and to identify the point at which the majority gained a monopoly over this power.

The legislative process in 1880

After several decades of substantial changes in the House's legislative process from the 1820's through 1860, the process changed little between 1860 and 1880 (Bach 1990; Cooper and Young 1989). Figure 1 is a stylized diagram of the process circa 1880.

Figure 1 here

² I do not claim that positive agenda power is solely a function of consolidated negative agenda power. A group with a monopoly over negative agenda control must still cooperate to take advantage of that monopoly—and congressional literature—especially the conditional party government literature—obviously highlights variation in the extent to which this happens (c.f., Aldrich and Rohde 1997, 2000; Cooper and Brady 1981; Rohde 1991).

In many respects, it was similar to the modern process. Though bills were introduced on the floor of the House, they were then automatically referred to the committee of jurisdiction.³ As in the modern system, if a bill was reported from committee, it went directly to the floor if the committee was privileged to report the bill to the floor, or went to a calendar otherwise. There were three ways that bills could get from a calendar to the floor: the regular order, suspension of the rules, and unanimous consent.⁴

The default procedure, the regular order, was to take bills from the calendars in the order that they went onto the calendars. This method created a potential problem inasmuch as it did not provide the House with a means of prioritizing among bills when deciding which bills to consider.

For non-privileged bills (which was most bills), the only alternative means of reaching the floor was to be made a “special order” via suspension of the rules or unanimous consent.⁵ As in the modern process, a bill could be taken from a calendar and considered on the floor by a two-thirds vote to suspend the rules, or by unanimous consent. These methods were unwieldy, however. In addition to the obvious potential difficulty involved with using procedures that require supermajority approval, suspension of the rules was not in order at most times (Hinds 1907; McConachie 1898), and so was of limited use as a tool for bringing bills to

³ Prior to 1860, bill introduction was more difficult than in the modern system, and was also a more important part of the process. It entailed being recognized on the floor of the House, and reference to the committee of jurisdiction was not automatic. After 1860, it continued to be the case that bills were introduced to the floor, but the process had been extremely streamlined, making introduction almost costless. As part of the streamlining, referral to the committee of jurisdiction became automatic (Cooper and Young 1989).

⁴ Strictly speaking, there were other ways for bills to reach the floor, such as special procedures to expedite consideration of private bills. I ignore such procedures in my account of the legislative process, on the grounds that they appear to have allowed only uncontroversial bills to reach the floor.

⁵ Special order is a common term from the 19th century House, given to bills that were considered before their turns on the calendars came up.

the floor. This left unanimous consent as the primary means of taking bills from the calendars out of turn, meaning that it was easy to block floor consideration of a non-privileged bill if its turn on the calendar was not imminent.

Even if a bill reached the floor, however, a wide range of dilatory (i.e., obstructive) tactics could be used to try to block floor consideration and prevent a final passage vote. As with the filibuster in the contemporary Senate, these tactics typically consisted of a member or group of members chewing up large chunks of floor time by repeatedly making procedural motions that kept the House tied up in debate, procedural decisions, and roll call votes.⁶ These tactics became particularly useful and common in the late 1870's and 1880's, as the volume of legislation skyrocketed, making floor time scarcer and thereby increasing the opportunity costs inflicted by dilatory tactics. This period is generally recognized as the golden age of obstruction in the House, in which the minority party routinely used dilatory tactics to block majority bills, to extract concessions and side payments from the majority, and to force the majority to agree to logrolls (Alexander 1916; Binder 1997; Dion 1997; Galloway 1976; Hinds 1907; McConachie 1898).

Besides the use of procedural motions, the other main dilatory tactic was the disappearing quorum. Per the Constitution, the House could not conduct business without a quorum of half its members present, and precedent had always held that "half" meant half of the number of members elected at the beginning of a Congress. Given higher congressional absenteeism than in modern times due to factors such as mortality, illness, and the greater time needed to travel, majority parties across the nineteenth century sometimes found that the

⁶ Senate-style filibustering through continuous debate had been eliminated by adoption of the previous question rule, which allowed debate to be ended by a simple majority, early in House history (Binder 1997; Wawro and Schickler 2006).

number of their members who were actually present in the House was less than a quorum. When this was the case, minority members sometimes made a point of order that a quorum was not present, then refused to answer the roll call that was used to count a quorum. For 50 years after the disappearing quorum's invention by John Quincy Adams in the 1830's, Speakers had refused to count members present unless they answered the roll call, regardless of whether the members were clearly in the House at the time of the roll call. Rather, Speaker after Speaker ruled that there was not a quorum present and that no business could be conducted, thereby allowing their own party (i.e., the majority) to be thwarted by this tactic.

In sum, the legislative process of the 1880's amounted to a bilateral veto game in which both parties could veto consideration, and therefore passage, of bills. This led to gridlock, stalemate, and tremendous frustration—especially on the part of majority party members. For non-privileged bills, there was no efficient means of prioritizing which ones would get floor consideration. This created a vicious circle in which members increasingly attempted to circumvent the regular order by suspension or unanimous consent, only to have those efforts thwarted by opponents, or by others House members trying to circumvent the regular to get floor consideration for other bills. Moreover, even when bills reached the floor, they were then easily blocked. McConachie (1898, p. 190) summarized the process as follows: “An important bill might never be gotten at because a host of insignificant ones were ahead. Or, if it were finally reached by impatient manipulation of legislative machinery, its enemies might sweep it from the floor, and fatally delay it by the intrusion of favored subjects.”

Across the 1880's, the majority party in the House made a series of *de facto* rules changes in which the Speaker (or whomever served as Chair on the Speaker's behalf) repeatedly reinterpreted the rules in ways that allowed the House to take actions by majority

votes that had previously required supermajority votes. These changes culminated in the adoption of the Reed rules in 1890, which firmly established the ability of a majority to unilaterally choose which bills would—and would not—get final passage votes. The changes fell into two categories: those in the first category created the modern Rules Committee as a method of getting bills from calendar to floor by majority vote; those in the second category eliminated the minority's ability to use dilatory tactics as a means of preventing a final passage vote on a bill that had been called up for floor consideration.

Since my purpose is to study the effects of the changes, rather than to explain the changes themselves, I limit myself to a brief discussion of others' explanations. Most studies treat the changes as the result of the interaction between increased workload and partisan conflict (Alexander 1916; Binder 1997; Cooper and Young 1989; Dion 1997; Follett 1896; Luce 1972 [1922]; McConachie 1898; Peters 1990; Robinson 1930; Schickler 2001). My discussion of the changes is motivated by the following basic account, which is more or less consistent across studies:

During the 1880's industrialization, immigration, and other factors led to rapid social and economic change, and many new demands on the government. It was period of intense party competition and polarization in which members of Congress introduced bills at rates far greater than had previously been the case. A few summary statistics give an idea of the magnitude of the increased demand for bill consideration that followed the Civil War. In the antebellum period, when the volume of legislation was not heavy, there was time for the House to consider most bills; on average, roughly 75% of all introduced bills received subsequent floor consideration in the period 1827-1861. However, the number of bills introduced per

Congress exploded from roughly 400 in 1860 to roughly 7000 in 1880 (Alexander 1916, p. 217fn).

As the number of bills *considered* in each Congress remained relatively constant but the number of bills *introduced* grew explosively, the proportion of bills getting floor consideration dropped sharply. Because the increase in the number of introduced bills was so large, it became *impossible* to consider a large proportion of all introduced bills; yet, because the standing rules allowed selection of bills from calendar only via the regular order or supermajority vote, considering bills on the floor out of order (i.e., in an order different from the calendar order) became a difficult, time-consuming, and sometimes impossible enterprise. At the same time, the dearth of floor time meant that the opportunity costs imposed by dilatory tactics increased markedly, to the point that dilatory tactics became effective veto instruments.

In short, this led to a period of gridlock in which the status quo rules became increasingly unattractive to *all* members, to the extent that they all had bills that they wished to see considered on the floor. The Reed rules solved this problem for majority party members, by eliminating minority party members' ability to veto, or at least impose steep costs upon, floor consideration of bills.

Getting bills to the floor: creation of the modern Rules Committee

A paramount difference between the 1880 legislative process and the modern process is that there was no Rules Committee, and no system of special rules, in the older system. The modern system was created by a series of changes across the 1880's (summarized in Table 1) that I detail here.

Table 1 here

The Rules Committee had long existed as a minor committee in the House, with jurisdiction only over the House's standing rules. This limited jurisdiction is significant, because it means that, in sharp contrast to the modern Rules Committee, the early Rules Committee had no authority over the daily order of business, terms of debate, amendments restriction, and so forth. It was initially a select committee with little to do. In most Congresses it met briefly, recommended any rules changes it thought desirable, then disbanded for the remainder of the Congress; in some Congresses, it did not exist or never met (Alexander 1916; Galloway 1976; Oleszek 1998).

By 1880, it had become a standing committee, but still warranted little notice. According to Speaker Randall in 1879, "The present Committee on Rules have never, so far as the Chair recollects, been divided politically on any subject, and almost every report made by them, except in two instances (the report on the liquor traffic and that on the woman's rights question), has been unanimous" (*Congressional Record*, First session 46th Congress, p. 2329).

Also by 1880, Rules had been given the privilege to have its reports considered on the floor at any time. But this conferred little power, for two reasons: first, it was still the case that its only jurisdiction was the standing rules of the House. Second, though in theory it had long been the case that dilatory motions could not be made against propositions to change the rules, in practice this rule had not been enforced (Alexander 1916; Hinds 1907).

In 1882, however, the first significant change occurred. Minority Democrats were filibustering House consideration of a contested elections case, when Republican Thomas Reed from Rules reported a resolution to change the rules so as to limit dilatory tactics during contested election cases. The Democrats then filibustered Reed's resolution, and Reed made a point of order that such dilatory tactics were not in order pending a proposition to change the

rules. After heated debate, the Speaker ruled in favor of Reed, and the House sustained this decision on appeal (with Republicans voting overwhelmingly in favor, and Democrats abstaining in protest). This established the precedent that resolutions reported from Rules could not be filibustered (Alexander 1916; Hinds 1907; McConachie 1898).

The next major change occurred the following year. Reed reported a resolution from Rules stipulating that the House could suspend the rules *by majority vote* in order to take a House bill with Senate amendments from the Speaker's table, declare disagreement, and request a conference. Again, heated and bitter debate ensued (Alexander 1916, p. 203), with minority party members raising a point of order and arguing that the resolution was not a rule, or an amendment to the rules. Though all previous practice and precedents were on the minority's side, the Speaker overruled the point of order on the grounds that the resolution was a de facto rules change; the ruling was then sustained by the House (Hinds 1907, Section 3160). This had two important implications: first, for the first time, the rules could be suspended and the order of business changed by a simple majority vote when the Rules Committee proposed doing so. Second, the decision subtly broadened Rules's jurisdiction, so that it included some aspects of the order of business. For the time being, however, the jurisdiction still did not include the order in which bills would be considered on the floor.

In the following three Congresses (48-50), the Democrats were the majority party and continued to add to Rules's powers. In 1886, the Chair allowed a Rules resolution to take a bill from a calendar and, by majority vote, make it a special order on a particular future date (Alexander 1916; McConachie 1898). Thus, for the first time, Rules's jurisdiction was extended to include the order of business on the floor. Finally, in 1887, it was decided that *all*

special orders had to go through the Rules Committee and that only the Rules Committee could report special orders (McConachie 1898).

This series of changes added up to creation of the modern Rules Committee. The minor committee of 1880 had undergone a revolutionary transformation: by the late 1880's, it had the ability to propose specific modifications to the order of business, to have these proposals considered immediately and without obstruction, and to have them adopted by majority vote—and it alone could do these things. This amounted to a powerful, flexible solution to the problem of deciding which bills would be considered, and at what times. It is little wonder, then, that Speaker Carlisle appointed himself and the chairs of the Appropriations and Ways and Means Committees to the five-person Rules Committee, making it an instrument of the majority party leadership (Alexander 1916).

Majority revolution: eliminating dilatory tactics

These changes did not, however, solve the problem of dilatory tactics. Though the Rules Committee gave the majority party an effective means of deciding which bills would reach the floor, it could not prevent those bills from being blocked by filibuster once they got there. Indeed, as the majority seized greater discretion over the order of business, the minority relied more heavily on dilatory tactics. The late 1880's therefore witnessed the zenith of minority obstructionism:

Carlisle's administration during the Fiftieth Congress came perilously near being a failure. His name belongs in the short list of great Speakers....But dilatory motions, the disappearing quorum, and his refusal to ascertain the presence of a quorum by counting the House made him the slave of filibusters. As elsewhere stated, their subtle arts

prostituted every legitimate motion and kept the assembly in continuous roll-calls.

(Alexander 1916, p. 205)

In the 51st Congress (1889-1891), Republicans regained majority status and elected Reed as Speaker. This set the stage for one of the most momentous (and riotous) scenes in House history. On January 29, 1890, just after the opening of the Congress, the House voted whether to take up consideration of a contested election case. Fewer than a quorum voted on the question, and minority party members made the point of order that the vote was therefore not valid. Reed, contrary to 50 years of Congressional practice, then took the unprecedented step of ordering the clerk to count as present 41 members who were in the chamber but had not answered the roll call. He then declared a quorum present, and dismissed the point of order.

This triggered a firestorm of chaotic debate and recriminations, full of vitriolic denunciations of Reed by minority party members, in which “pandemonium reigned...for several hours” (Alexander 1916, p. 167).⁷ Minority party members responded in a variety of ways: some tried to appeal the ruling; others attempted to use a procedural filibuster to bring the House to a standstill; still others made reasoned, if emotional, appeals to Reed to reverse course and avoid launching the House into perilously partisan warfare; and some seemed to care only about denouncing Reed as loudly and stridently as possible. Democrats from each of these categories fought (largely against one another) for recognition; the chaos was such that, in a number of places, the *Congressional Record* contains only parts of a given member’s statement, along with a parenthetical notation that the clerk was unable to discern the remainder

⁷ Except as noted, the description given here is taken from the *Congressional Record* for the dates being discussed.

of the member's statement due to the confusion of the chamber. Eventually, the House adjourned without any additional action.

The same type of chaotic proceedings continued the next day; finally, Reed ruled against the minority point of order (from the previous day) that the Speaker was not allowed to count members unless they answered the roll call. The minority appealed, and a majority member moved to table (i.e., kill) the appeal. Pandemonium again ensued, with Democrats trying via procedural motions to obstruct a vote on the motion to table, in hopes of preventing a new precedent that would eliminate the disappearing quorum.⁸ Reed, in a sweeping departure from precedent, disregarded these motions, as well as Democrats' howls that he was again violating the rules, and ordered a vote on the motion to table. Minority members refused to answer when their names were called during the vote on the motion to table the appeal; Reed then again ordered the clerk to count non-answering members as present, declared a quorum present, and held that the House had voted to table the appeal (Hinds 1907, Section 2895).⁹ Bedlam again ensued, in much the same chaotic manner as before.

Democrats then turned to their last remaining form of filibustering, the procedural filibuster. They insisted on the point of order that House rules did not allow the Speaker to ignore legitimate procedural motions, as Reed had done in allowing the vote on the motion to table. Reed promised to rule on the point of order, and to allow a vote on an appeal. Democrats

⁸ Whenever there is disagreement about how House rules apply to a given situation, the Speaker (or his/her proxy in the Chair) makes a ruling on the matter. A small minority of dissenters can appeal the Speaker's ruling, in which case the chamber decides the matter by majority vote. Often, as in this case, an ally of the Speaker makes a motion to table the appeal of the ruling. If a majority of those voting supports the motion to table, the Speaker's ruling establishes a precedent that, in the absence of a new rule or precedent, effectively becomes part of the chamber's legislative process.

⁹ As they realized that Reed would count them as present, some minority party members began to duck behind desks so that Reed would not see them (Luce 1972 [1922]).

were determined to use the procedural filibuster itself to prevent such a vote, with the intention of bringing the House to a complete standstill in order to force Reed to rescind his ruling on the disappearing quorum. The next day (after Reed again counted a quorum, on the vote to approve the *Journal*), Reed ruled on the point of order—and dropped another bomb by taking it upon himself to summarily decide when otherwise-legitimate motions were being used for dilatory purposes, and to rule such motions out of order. In a replay of the previous day’s scene, Democrats erupted fiercely; on the vote to sustain his decision, Reed again counted a quorum (Hinds 1907, Section 5713); and, using the power he had just granted himself via precedent, Reed refused to entertain additional points of order or appeals on the grounds that they were dilatory (Alexander 1916).

This is the point at which the majority gained a monopoly over negative agenda power. They could use the Rules Committee to move bills to the floor, and the minority’s power to obstruct on the floor was effectively eliminated. Shortly after this point, Reed and the Republicans passed the “Reed rules,” a new set of standing rules that codified the momentous changes that had been made by precedent—but it was the precedents themselves that put the changes into effect.

It is debatable whether this monopoly continued during the next (52nd) Congress. Despite campaigned heavily against Reed’s “tyranny” and repealed the Reed rules once they became the majority, which sometimes serves as the basis for the claim that the Reed system disappeared temporarily. From the point of view of monopolizing negative agenda power, however, it is unclear whether the Democrats really backtracked on the Reed system. They retained control of the Rules Committee and even strengthened its powers to bring bills to the floor, in part by restricting dilatory motions on resolutions from the committee (Hinds 1907,

Sections 5740 and 5747; Koger 2010; Roberts 2010; Schickler 2001). They also had a large enough majority that the disappearing quorum was irrelevant (Binder 1997). What remains unclear, however, is the extent to which the minority party could effectively use dilatory tactics to obstruct bills once they reached the floor. Roberts (2010) shows a sharp increase during this congress in the use of the Rules Committee as a mechanism for putting bills on the floor—but also shows that resolutions which did so included no time limitations or amendment restrictions, leaving it ambiguous whether the minority could effectively use dilatory motions during this Congress.

Moreover, they backtracked and began counting quorums in the 53rd Congress when their majority became small enough that Reed could (and did, apparently with great glee) use the disappearing quorum against them (Alexander 1916, p. 206-7; see also Sections 5716-9 and 5741 for dismissal of dilatory motions in the 53rd Congress). Thus, it is possible that the Democrats' formal repeal of the Reed rules was window dressing, though it remains unclear.

Aside from these questions about the 52nd Congress, Reed's dismissal of dilatory tactics was the final, crucial, step in the building of a legislative process in which the majority party monopolized negative agenda control. The Rules Committee allowed the majority to decide which bills would reach the floor, and the elimination of dilatory motions removed the minority's ability to veto bills or extract concessions once they reached the floor. Thus, from the outset of the 51st Congress onward, the majority party enjoyed control over which would receive final passage votes, and the minority no longer enjoyed the ability to keep bills from final passage.

Did the Senate experience similar changes?

My purpose for including the Senate in this analysis is to use it as a “control group” against which to compare the House; for it to serve this purpose, it needs to have had a relatively constant agenda setting regime across the period I examine. Research on the Senate across this period is less extensive than research on the House, but there is little evidence of change. Though perhaps disagreeing about the extent to which the chamber was supermajoritarian during this period, Senate procedure is portrayed as being relatively constant across this period (Binder 1997; Gamm and Smith 2002; Koger 2010; Smith 2007). Gamm and Smith (2002) illuminate the emergence of informal party leaders during this period, but argue that they had little ability to shape the legislative process. Binder and Smith (1997) and Wawro and Schickler (2006) note restrictions on obstruction in 1881, 1884, and 1897, but leave the impression that these were marginal changes with limited effects on agenda power.

Hypotheses

If it is correct that minority party members enjoyed substantial blocking power across most of the 1880s, but saw that power permanently swept away by the Reed system at the outset of the 51st Congress, then we should see an increase in legislative outcomes that House minority party members found unfavorable once the Reed system was in place, all else constant. Or, in the jargon of recent congressional scholarship, we should see a post-Reed increase in House minority party members’ probability of being rolled on a final passage votes;¹⁰ on the other hand, however, since the House majority retained its blocking power, we should not see a change in majority members’ probability of being rolled the later period. And if, as conventional wisdom holds, there was no significant change in Senate agenda setting,

¹⁰ Following convention, I define a roll as a vote on which an actor—in this case, an individual legislator—votes against a bill that passes.

then there should be no change in either majority or minority party senators' probability of being rolled when comparing the post-Reed period to the pre-Reed period. For the sake of clarity I label these four predictions:

House Minority Hypothesis: The probability of a House minority party member being rolled on a final passage vote will be higher in the post-Reed period than in the pre-Reed period, c.p.

House Majority Hypothesis: The probability of a House majority party member being rolled on a final passage vote will not be higher in the post-Reed period than in the pre-Reed period, c.p.

Senate Minority Hypothesis: The probability of a Senate minority party member being rolled on a final passage vote will not be higher in the post-Reed period than in the pre-Reed period, c.p.

Senate Majority Hypothesis: The probability of a Senate majority party member being rolled on a final passage vote will not be higher in the post-Reed period than in the pre-Reed period, c.p.

Research design

I test these hypotheses by running parallel analyses of the House and the Senate. For each, I compare majority party legislators' probability of being rolled in the pre-Reed period with their probability of being rolled in the post-Reed period (i.e., the period beginning with adoption of the Reed system), and by comparing majority party legislators' probability of being rolled in the pre-Reed period with their probability of being rolled in the post-Reed period.

I do so using a window of sixteen years from 1881 to 1897 (Congresses 47-54), which includes the eight years leading up to the Reed rules and the first eight years after

implementation of the Reed system. I use this window in order to include variation in partisan control of the House, Senate, and presidency, while keeping the time frame relatively short in order to reduce the risk of factors other than the Reed rules and the control variables I include interfering with the results. By 1881, some years had passed since the end of Reconstruction and Southern states were reintegrated into national politics; in addition, by this time the congressional workload had unequivocally grown large enough to create the House “mutual veto” regime that I want to contrast with the Reed system.

The dependent variable that I use to compare pre- and post-Reed roll probabilities is the individual roll rate of each Representative and each senator in each Congress.¹¹ For each chamber, I pool observations for all members in each of the eight Congresses, then regress members’ roll rates on dummy variables for the Reed rules and for minority party legislators, as well as the interaction between these dummies. The coefficient for the Reed dummy captures how majority party legislators’ probability of being rolled changes in the post-Reed period, while the sum of the coefficients for the Reed dummy and the interaction capture how minority party legislators’ probability of being rolled changes in the post-Reed period.¹² For each chamber, I estimate the following model using extended beta binomial regression:¹³

¹¹ Each legislator’s roll rate for a given Congress is the proportion of final passage votes on bills originating in the legislator’s chamber on which the legislator was rolled.

¹² Use of individual-level measures of legislators’ success or failure, such as individual roll rates, has increased in the last several years (c.f., Carroll and Kim 2010; Carson, Monroe, and Robinson 2011; Cox and McCubbins 2005; Lawrence, Maltzman, and Smith 2005, 2006; Smith 2007). For discussions of the merits of using such individual-level measures, see especially Smith 2007 and Carson, Monroe, and Robinson 2011.

¹³ To be more technically accurate, the dependent variable is not actually senator *i*’s roll rate; I have written it that way because it is more intuitive. The dependent variable in the hypotheses is a legislator’s probability of being rolled on a final passage vote, which suggests using a simple probit or logit with an observation for each member on each vote. To do so, however, would be to ignore the lack of independence among all the votes that each legislator casts. Using the extended beta binomial (EBB) method (King 1989; Palmquist 1999) allows me to

$$\begin{aligned}
Rollrate_{it} = & \alpha + \beta_1 Reed_t + \beta_2 Minority_{it} + \beta_3 Reed_t * Minority_{it} + \beta_4 Distance_{it} + \\
& \beta_5 DividedPresident_t + \beta_6 DividedCongress_t + \beta_7 DividedPresident_t * DividedCongress_t + \\
& \beta_8 MajoritySize_t + \varepsilon_{it}
\end{aligned}$$

$Rollrate_{it}$ is individual i 's roll rate in Congress t . $Reed_t$ is the dummy for the Reed rules (coded one from the 51st Congress onward).¹⁴ The House Majority and Senate Majority Hypotheses predict that the $Reed$ coefficient will not be significant, indicating that the chambers' majority legislators were no more likely to be rolled once the Reed rules were in place than they had been before.

$Minority_{it}$ is the dummy for whether legislator i was a member of the minority party in Congress t , and $Reed_t * Minority_{it}$ is the interaction of the two dummy variables.¹⁵ The House Minority Hypothesis predicts that the sum of the coefficients for $Minority$ and $Reed_t * Minority$ will be positive and significant, indicating that House minority party members' roll rates increased once the Reed rules went into effect. The Senate Minority Hypothesis, however, predicts that the sum of the coefficients will not be significant, indicating that Senate minority party members' were no more likely to be rolled once the Reed rules were in effect.

deal with this problem. EBB is somewhat akin to grouped logit but, unlike the latter method, it explicitly models, and accounts for, the fact that each binary "trial" (i.e., each separate final passage vote) is not independent of other trials for a given individual. As with simple probit or logit, EBB is a maximum likelihood method that produces coefficients which can be translated into a variable's effect on the probability that a trial has a "positive" outcome (in this case, the probability that a legislator is rolled on a final passage vote). Moreover, since with EBB the estimated significance of each coefficient takes into account the non-independence of observations, it produces better estimates of significance than would be produced by probit or logit (or simple OLS using roll rates as the dependent variable). EBB thus best allows me to directly evaluate the hypotheses from the previous section.

¹⁴ There were no final passage votes prior to implementation of the new rules in the 51st Congress.

¹⁵ Partisan affiliation data are from ICPSR roll call files and Martis (1989).

The other variables are controls. First, even very different spatial models of legislatures typically predict that legislative outcomes are at least weakly biased toward the ideological center of a chamber (c.f., Black 1958; Cox and McCubbins 2002, 2005; Downs 1957; Krehbiel 1991, 1998). More centrist legislators are thus more likely than less centrist members to be happy with the outcomes, all else constant. I therefore control for members' distance from the floor median with the variable *Distance_{it}*, defined as the absolute value of the difference between legislator *i*'s score and the floor median's score on the first dimension of DW-Nominate (Poole and Rosenthal 1997).

The next three variables account for partisan control of the other chamber and the president. If either of these actors is able to influence the agenda in a chamber, then majority roll rates might increase and minority roll rates might decrease when the other party controls one or both of these other institutions. *DividedCongress_t* and *DividedPresident_t* are dummy variables, coded one when the when the majority party of the other chamber or the president, respectively, are from the minority party in legislator *i*'s chamber. *DividedCongress_t* * *DividedPresident_t* is an interaction between these dummies that takes the value of one when the minority party from legislator *i*'s chamber controls both the other chamber and the presidency. Table 2 shows the partisan alignments of the House, Senate, and president across this period.

Table 2 here

Finally, Smith (2007) emphasizes the importance of the size of the majority party as a determinant of Senate behavior. I control for the size of the majority party with *MajoritySize_t*, which is the proportion of chamber seats held by the majority party in Congress *t*.

Results

The left-hand column of Table 3 shows estimated coefficients for the House; the right-hand column shows results for the Senate. For the House, the sum of the coefficients for *Reed* and the *Reed*Minority* interaction— capturing the change in majority party members' probability of being rolled—is positive and highly significant; for the Senate, by contrast, it is positive, but not close to significant. In short, the results are as hypothesized: House minority members were more likely to be rolled post-Reed (all else constant), while there was no significant change in the likelihood of being rolled for House majority members or senators of either party.¹⁶

Table 3 here

Table 4 shows substantive meaning of these results. The cell entries are the predicted probability of a legislator being rolled on a vote, by majority-minority status and pre- and post-Reed.¹⁷ A number of patterns stand out in this data. Most notably, there are only small changes in the estimated probability of being rolled for a House majority member or for senators of either party—but a House minority party member's probability more than doubles, from 15.5 percent to 37.1 percent. Also, the probability of being rolled is lower for minority party legislators than for majority party legislators in the pre-Reed House, as well as in the pre- and post-Reed Senate; but minority party legislators' probability is much higher than majority party legislators' probability in the post-Reed period. Finally, House members of either party are less likely than senators of either party to be rolled in the pre-Reed period; but this shifts post-Reed, with House minority legislators becoming more likely than senators of either party to be rolled.

¹⁶ An interesting side-note to the results is that the coefficient *Minority* dummy is negative and significant for both chambers, indicating that, in each chamber, minority party legislators were less likely than majority party legislators to be rolled in the pre-Reed period.

¹⁷ All control variables are held at their chamber means in generating these predicted probabilities.

Table 4 here

Discussion

These findings support the claim that, with the creation of the Rules Committee and the elimination of dilatory tactics, majority party members alone wielded negative agenda power. I now briefly discuss implications of the findings. First and foremost, the findings highlight the central role of the Rules Committee as an efficient and flexible instrument for the majority party to decide which bills reach the floor, and which do not. Rules has retained this central role ever since 1890, and has remained stacked with majority party members. The House has never returned to anything even remotely approaching the pre-Reed system, in which minority party members could filibuster, there was no flexible mechanism for deciding which bills would get floor consideration, and all members had a high degree of floor access.

This provides an institutional underpinning for the claim that the majority party has exercised an unconditional ability to block bills that it opposes throughout the modern era of Congress (Cox and McCubbins 2005). It also explains the higher rates at which the majority party as a whole was rolled prior to the 51st Congress, and the discrete drop in majority party rolls beginning with the 51st Congress (see Cox and McCubbins 2005 for majority and minority party roll rates from 1877 to 1998; see Den Hartog 2004 for roll rates from 1789 to 1877).

The emergence of the Rules Committee-based system also has implications for the Conditional Party Government model of Congress (Aldrich and Rohde 1997, 2000; Cooper and Brady 1981; Rohde 1991). There is some evidence that aggregate majority party roll rates covaried with majority heterogeneity in the period from 1857 to 1890 (Den Hartog 2004). This changed once the Reed rules came into effect—since then, the majority party has rarely been

rolled. There seems to be plenty of anecdotal and historical evidence, however, that since 1890 the Rules Committee *has* reflected changes in majority party heterogeneity, but in a different manner. Whereas higher heterogeneity was manifested in higher majority party roll rates prior to the Reed rules, it seems to be manifested as a larger set of bills that are blocked from floor consideration under the modern rules. That is, the Rules Committee lets through fewer bills when the majority party is divided than it does when the party is unified (Cox and McCubbins 2005).¹⁸

Conclusion

The changes of 1880-1890 revolutionized the legislative process, as well as the nature of agenda control, in the House. Prior to that time, minority party members held many rights to obstruct and delay, and majority party Speakers repeatedly upheld these rights—often to the detriment of their own parties. Such rights were widely considered to be a fundamental part of the democratic process; to dismiss them, it was often said, would be to throw out the democratic process by eliminating the ability of some members to represent their constituents, and by allowing the majority to govern unchecked by the minority (Alexander 1916; Galloway 1976; McConachie 1898).

These rights, however, were at odds with the ability of the majority to accomplish its goals. When the reality of floor time scarcity set in and the minority party began using obstructive tactics at unprecedented levels, the costs to majority party members of continuing to honor such rights grew too large. Majority party members rallied around the notion of *majority* rights, and summarily swept away many prerogatives that minority party members had enjoyed

¹⁸ The Conservative Coalition's blocking of civil rights legislation, and the passage of civil rights bills after Northern Democrats gained dominance within the party, is probably the most obvious example (Rohde 1991).

since the beginning of the Republic. The justification was stated by Reed in his decision to prohibit dilatory motions (51st Congress, 1st Session; *House Journal*, p. 181; *Congressional Record*, p. 999):

There is no possible way by which the orderly methods of parliamentary procedure can be used to stop legislation. The object of a parliamentary body is action, and not stoppage of action. Hence, if any Member or set of Members undertakes to oppose the orderly progress of business, even by the use of the ordinarily recognized parliamentary motions, it is the right of the majority to refuse to have those motions entertained, and to cause the public business to proceed.

These changes constituted a categorical shift in the majority party's role, and in the nature of representation within the House. Prior to the Civil War, all members had enjoyed parliamentary rights that granted them the ability to get a bill to the floor with fairly high probability, even if the bill was too controversial to be considered under suspension or unanimous consent.¹⁹ The Reed system made the majority party the only game in town for members who cared about getting such bills to the floor. Prior to 1890, all members also enjoyed parliamentary rights that granted individuals the ability to make the passage of a bill significantly (and often prohibitively) more costly. From 1890 onward, however, the *default* outcome for a non-privileged controversial bill that made it to a calendar was to die on the calendar. Only *positive* action to take it from the calendar and consider it on the floor could

¹⁹ In theory members retained these rights through 1890, though the flood of bills and legislative gridlock of the 1870's and 1880's precluded these rights in practice (Cooper and Young 1989).

overcome this hurdle, and the only means of doing that was action by the Rules Committee. Moreover, once Rules took a bill from a calendar and put it on the floor, minority party members could no longer obstruct. Thus, the House shifted to a process that greatly advantages those interests represented by the majority party, at the expense of those represented by the minority party.

The 51st Congress was marked by bitter recriminations. Democrats relentlessly attacked the Republicans as tyrannical usurpers of the legislative process, and House Republicans suffered a severe collective defeat in elections to the 52nd Congress.²⁰ Democrats snidely labeled the 51st Congress the “Billion-Dollar Congress,” since it was the first Congress to spend more than a billion dollars. Of course, this phrase also highlights the benefit to Republicans of the Reed system—only because they were unencumbered by minority obstruction were the Republicans able to spend so much money. Indeed, Reed responded to the phrase by declaring (with apparent pride) that the U.S. was “a Billion-Dollar Country” that demanded, and deserved, high levels of government action (Reed 1892).

²⁰ It is unclear to what extent the Reed Revolution caused the defeat; arguably, it resulted from voter unhappiness with inflation spurred by the extremely high tariff Republicans passed shortly before the elections. Ironically, they probably would have been unable to pass the tariff, which was quite controversial, if not for the Reed rules.

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Table 1. Creation of the modern Rules Committee via House precedents

Year	Congress	Change and Significance
1882	47	<p>Change: Reports from the Rules Committee proposing changes to the standing rules could not be filibustered.</p> <p>Significance: Allowed Rules to have its reports considered on the floor at any time of the Rules Committee’s choosing, without obstruction. But the set of things that the Committee could propose was still restricted to changes in the standing rules.</p>
1883	47	<p>Change: Rules was allowed to report a resolution stipulating that the rules could be suspended <i>by majority vote</i>, to declare disagreement with the Senate and ask for a conference committee.</p> <p>Significance: For the first time in the House, the rules could be suspended by majority rather than supermajority vote—and the Rules Committee alone could propose this. Also, Rules’s jurisdiction was subtly broadened to include business other than the standing rules.</p>
1886	49	<p>Change: Rules was allowed to report a resolution specifying the date and terms of debate for a specific bill.</p> <p>Significance: This was essentially the beginning of special rules. For the first, Rules was given jurisdiction over the daily order of business.</p>
1887	49	<p>Change: All special orders had to be reported to Rules, and only Rules could report special orders to the floor.</p> <p>Significance: From this point, only Rules controlled the tools by which controversial bills could be taken from calendar and considered on the floor</p>

Table 2. Partisan control, 1881-1897

Congress	House majority	Senate majority	President
47 1881-83	Republicans	Republicans	Republican
48 1883-85	Democrats	Republicans	Republican
49 1885-87	Democrats	Republicans	Democrat
50 1887-89	Democrats	Republicans	Democrat
51 1889-91	Republicans	Republicans	Republican
52 1891-93	Democrats	Republicans	Republican
53 1893-95	Democrats	Democrats	Democrat
54 1895-97	Republicans	Republicans	Democrat

Table 3. Reed rules and changes in legislators' probability of being rolled (1881-1897)

Variable	House	Senate
<i>Reed</i> (change in majority roll rate)	0.011 (0.071)	0.001 (0.140)
<i>Minority</i>	-0.238** (0.061)	-0.442* (0.184)
<i>Reed*Minority</i>	1.158** (0.063)	0.030 (0.160)
<i>Distance</i>	1.882** (0.109)	2.730** (0.279)
<i>DividedPresident</i>	-0.052 (0.103)	-0.084 (0.212)
<i>DividedCongress</i>	0.446** (0.053)	-0.143 (0.092)
<i>DividedPresident * DividedCongress</i>	-0.606** (0.086)	0.117 (0.262)
<i>MajoritySize</i>	-1.058 (0.622)	-5.159** (1.740)
<i>Constant</i>	-1.554** (0.317)	0.850 (0.893)
<i>Reed + Reed*Minority</i> (change in minority roll rate)	1.168** (0.068)	0.031 (0.130)
<i>gamma</i>	0.037** (0.003)	0.039** (0.010)
N	2623	676
Pseudo-R ²	0.1019	0.0748
Log-likelihood	-20798.447	-3103.4739

Cells contain extended beta binomial coefficients and standard errors. * Indicates significant at the 95% or greater level; ** indicates significant at the 99% or greater level.

Table 4. Estimated probability of a legislator being rolled on a final passage vote before and after Reed rules, by majority status

House

	Pre-Reed	Post-Reed
Majority Party	0.189	0.190
Minority Party	0.155	0.371

Senate

	Pre-Reed	Post-Reed
Majority Party	0.297	0.297
Minority Party	0.219	0.213

Note: *Distance*, *DividedPresident*, *DividedCongress*, *DividedPresident*DividedCongress*, and *MajoritySize* are held constant at their mean values for each chamber.

Figure 1. The Legislative Process circa 1880

