

Do Restrictive Rules Produce Nonmedian Outcomes? A Theory with Evidence from the 101st–108th Congresses

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A fundamental tenet of partisan theories of legislative organization is that the majority party is able to generate outcomes that deviate in their preferred direction from the chamber median. While these biased outcomes may be achieved through arm twisting on final passage votes, there is a more efficient means for achieving this bias: restrictive rules. While scholars have recognized this tactic as an important leadership tool in the House, its effectiveness has been often assumed but never empirically tested. We develop a theoretical model that demonstrates how the majority party can use restrictive rules to offer successful “take-it-or-leave-it” proposals to the floor median. More significantly, we test this model using DW-NOMINATE’s estimated cut points of final passage roll calls in the House from the 101st to 108th Congress. Our results support the prediction of our model and suggest that majority party leaders achieve biased policy outcomes through the use of restrictive rules.

Mr. Speaker, this is a sad day for the United States House of Representatives. This rule, quite frankly, is an insult to every single Member of this body. This rule should be open, and instead this rule is typically restrictive. This rule should be defeated. The underlying bill, contrary to what you have heard here today, is not a reflection of bipartisan deliberation, because the truth is that deliberation is all but dead in this House . . . I would say to my colleagues on the other side of the aisle, if you want to show some bipartisanship, if you want to promote a process that has some integrity, this should be an open rule.

—Rep. James P. McGovern (D-Massachusetts)
Congressional Record, H1877, April 27, 2006

The special rule decried by Rep. McGovern, House Resolution 783, went on to pass, 216 to 207.¹ The underlying bill, the Lobbying Accountability and Transparency Act (HR 4975), went on to pass the House by a vote of 217 to 213. This anecdote illustrates not only that restrictive rules are tools of the majority party, but it also offers some insight into *how* these tools are put to use. Why are restrictive rules so important to the majority party’s advantage in the House?

According to partisan theories of House decision making, party influence should lead to “policy outcomes . . . skewed from the center of the whole Congress toward the center of opinion in the majority party” (Aldrich and Rohde 1998, 5–6). That is, party leaders are thought to be endowed with “sufficient resources and powers to hold their members behind median party positions on legislation rather than building winning coalitions by moving to median chamber positions” (Oppenheimer and Hetherington 2006, 3). The core puzzle for partisan theories, then, is this—how do parties in Congress influence outcomes when they are composed of diverse, locally elected members? One prominent answer in the congressional politics literature focuses on the House Rules Committee, arguing that the Rules Committee is an agent of the majority party, helping it bias legislative outcomes. The Rules Committee can be especially useful in the context of parties made up of diverse memberships, since members’ cooperation with its machinations lack the “traceability” of, for instance, a roll call on an important amendment or on final passage of an important piece of legislation

¹The Rules Committee categorized the rule as a “structured rule.” The rule passed the committee on a 9–2 vote. http://www.rules.house.gov/109_2nd/specialrules2nd109/1092ndhr4975.htm

(Arnold 1990). In other words, members have less reason to fear being held accountable by their constituents for votes they make on the procedural maneuvers of their party leadership and the Rules Committee than for votes on the substance of policy.

There are two ways the Rules Committee can aid the majority party in producing biased legislative outcomes: “gate keeping” and “take-it-or-leave-it offers.” First, as Cox and McCubbins (2005) point out, the Rules committee exercises its gate-keeping authority by failing to grant special rules—restrictive or otherwise—to certain proposals and thus “protecting” majority party favorable status quos from exposure on the floor. In this capacity, the Rules Committee generates a bias in the policies that *are not changed*. Second, by granting a rule that restricts amending activity on a proposal, the Rules Committee can protect the proposal from moderation. By making this take-it-or-leave-it offer to the House floor, the Rules Committee creates the possibility of a nonchamber median outcome biased in favor of the majority party.

It is this second type of influence that we wish to expound upon in this paper. While nonmedian outcomes are central to conceptions of party power in Congress, they are often thought to be a function of moderate majority party members toeing the party line on final passage, as a result of the system of punishments and rewards employed by the leadership (Cox and McCubbins 1993; Pearson 2005; Rohde 1991). Indeed, this is certainly a part of the story. But restrictive rules can and do serve the same function, with an added benefit. Instead of requiring majority party members to make difficult choices on highly visible substantive final passage votes, restrictive rules allow for less costly acts of loyalty by voting with the party on much less visible (and less widely understood) “procedural” votes.

Following the lead of other scholars (Cox 2000; Finocchiaro and Rohde 2002; Oleszek 2004; Rohde 1991; Sinclair 1994, 1995; Young and Wilkins 2007), we suggest that restrictive rules should be associated with nonmedian policy outcomes that are biased in favor of the majority party. While this assertion is not new, it has been undertheorized and has not been systematically, empirically tested. This is precisely what we propose to do in this paper. Working within a partisan framework, we present a theory of how and why the majority party uses restrictive rules and propose a hypothesis derived from the theory: that bills which come up under restrictive rules are closer to the majority party’s preference than bills considered under nonrestrictive rules. We then present empirical evidence suggesting that the majority party does

indeed use restrictive rules to achieve more favorable policy outcomes.

The remainder of the paper is organized as follows. First, we briefly review previous literature on restrictive rules. Building on these insights, we then present our theoretical framework, a spatial model of policy proposals, status quos, and outcomes. In the following section, we discuss the operationalization and measurement of our key variables. We then detail the research design, empirical model, and econometrics we employ and present the results of our analysis, using data on all final passage votes in the House from the 101st through the 108th Congresses. A final section follows with some brief concluding remarks.

Previous work on Restrictive Rules

Restrictive procedures are fundamental to any consideration of legislative institutions because they provide a means of controlling the agenda and otherwise structuring the decision-making process (Cox 2000). Some structure is necessary because of the instability of the simple majority decision rule (Arrow 1951; McKelvey 1976; Plott 1967; Schofield 1978).² As Fiorina (1987) points out, the literature on restrictive procedures also owes much to Schelling (1960), who shows how rational actors can gain by “tying their own hands.” By *not* keeping all their options open, actors can make “take-it-or-leave-it” offers that would not be credible if all possible offers were potentially on the table. Romer and Rosenthal (1979) show how making such offers allows an agenda-setter to move policy away from the preferences of the median voter.

Before going further, a brief definition and discussion of special rules is in order. In his recent book on the Rules Committee, Marshall (2005, 63) writes,

Special rules are granted by the Rules Committee and considered privileged motions in the House for the purpose of structuring the House’s legislative business. In effect, special rules determine when and which bills will be considered on the House floor, the length of time a bill can be amended, and which amendments (if any) will be allowed to the bill.

Roll calls on the resolutions that contain the special rules written by the Rules Committee are typically passed on a strictly party line vote, with partisan conflict relating to the rules process only

²Plott (1967) anticipates, in part, the New Institutionalist response to these instability results, which is directly relevant to the longstanding arguments about restrictive rules in the House, when he writes, “Of great importance is the process by which motions are proposed. The decision process *itself* may dictate that some motions cannot be proposed” [emphasis in original] (795).

increasing over recent decades (Bach and Smith 1988; Carson, Finocchiaro, and Rohde 2002; Hixon and Marshall 2001; Marshall 2005).³

The use of the Rules Committee to control the floor agenda in the House goes back to 1883, when the first special rule governing floor debate was issued (Nelson 1994, 1009). The frequent use of special rules that restrict amendments is a relatively recent phenomenon, however (Bach and Smith 1988; Sinclair 1983, 1994). Indeed, with the almost exclusive use of simple open rules up until the mid-1970s, the power of the House Rules Committee lay not in placing proposals (which would presumably be amended anyway) but in *refusing* to grant special rules to particular proposals on which it, or the majority party leadership, preferred no action to be taken (Cox and McCubbins 2005). Since the mid-1970s, though, restrictive rules have become much more common, particularly for major legislation (Sinclair 1994, 1997).

The literature that attempts to explain the use of restrictive rules in the House of Representatives can be broadly divided into two categories. One line of argument suggests that the purpose of restrictive rules is essentially to protect the work product of House committees. The other advances the contention that the majority party uses restrictive rules to produce nonmedian outcomes on the floor that favor the interests of the majority party. This characterization, however, overstates the degree to which these lines of argument are truly distinct.

Weingast and Marshall (1988) build upon Buchanan and Tullock's (1962) treatment of logrolling by examining how legislative committees produce gains from trade, with the implication that restrictive floor procedures represent a means of protecting the committee logroll from *ex post* changes on the floor. Gilligan and Krehbiel (1987) and Krehbiel (1991, 1997a) argue instead that restrictive procedures provide incentives for the specialization of committees who use their expertise to produce policy that better matches the preference of the floor. Bach and Smith's (1988) treatment of restrictive rules in the House is ambivalent with respect to whether the primary beneficiary of a restrictive rule is the committee, the floor median, or the majority party. They write

It would be a mistake to infer . . . that the sole or even primary effect of restrictive rules has been to centralize

power in the House. The conclusion is tempting. After all, special rules are written by a handful of Rules Committee [Democrats], often under the personal direction of the Speaker. Yet there is much more to the story. Restrictive rules serve to reduce the uncertainty of floor decision-making not only for . . . party leaders and Rules Committee members, but also for the standing committees whose legislation is at risk on the floor. To the extent that special rules now shield committee recommendations from certain floor amendments, points of order, and other unfriendly actions, they can reinforce the *decentralized* character of House policymaking (112).

To the extent that Bach and Smith (1988) show ambivalence here, however, there is little when it comes to the effect of restrictive procedures on the power of the minority party. Rank-and-file minority party members have clearly been the biggest losers in the trend toward more restrictive procedures in the House.

Dion and Huber (1996, 1997) similarly leave unclear whether their theory of restrictive rules fits in with the committees or parties camp in the literature. They write, "[R]estrictive rules facilitate noncentrist policy outcomes that are preferred by both substantive committees and the Rules Committee to the policy outcome that would result if the Floor had been allowed an unconstrained choice of policies" (1996, 43). Nowhere in their framework is the policy preference of the Rules Committee explicitly linked to the preferences of the majority party or its leaders. Even when invited by Krehbiel (1997b), Dion and Huber (1997, 946) declined to make that linkage subsequently.

Others, notably Oppenheimer (1977), Sinclair (1983, 1994, 1995), Rohde (1991), Cox and McCubbins (1993, 1994, 2005), and Marshall (2005) *have* explicitly made the link between the Rules Committee's ability to facilitate nonmedian outcomes and the preferences of the majority party and its leaders. Cox and McCubbins write, "[O]ur theory depends on the Rules Committee being at least a minimal agent of the majority party" (2005, 125).

Marshall (2005) presents the most explicit predecessor to our argument, offering a detailed treatment of how the Rules Committee has increasingly come to be an agent of the majority party and its leadership, building especially on the arguments of conditional party government (Aldrich and Rohde 1997–98, 1998, 2000; Rohde 1991). While we take a different theoretical and empirical route, our argument certainly shares a common foundation with Marshall (2005).⁴

³While the typical focus in the literature, and our focus in this paper, is on the use of special rules to limit or not to limit amending activity, Hixon and Marshall (2001) and Marshall (2005) point out that other provisions of special rules can cause conflict, like those regarding time limits, waivers of points of order, and the preprinting of amendments in the *Congressional Record*.

⁴As to empirical similarities, Marshall (2005) demonstrates the bivariate relationship between the restrictiveness of a special rule and the level of minority support for the underlying bill, which we argue shows face validity for the more explicitly spatial findings we present in the fourth section.

In one sense, our theoretical framework is a synthesis of the different threads of this literature. That is, in the next section, we develop a model where the Rules Committee issues restrictive rules as a means of keeping proposals intact on the floor. But the reality of the legislative process does not neatly allow the majority party leadership and/or the Rules Committee to conjure proposals out of thin air, as our simplified model suggests. Despite theoretical advancements, some aspects of the textbook narrative of how a bill becomes a law remain crucial to our understanding. Committees still do the bulk of the work of legislating in the House and in the Senate despite the decline of committees as an independent and even dominant force.⁵ Proposals must almost universally be reported from committee in order to reach the floor. The crucial theoretical link that allows us to unify the ambivalent view Bach and Smith (1988) leave us with is to argue that the substantive standing committees are also tools of the majority party in the House (Cox and McCubbins 1993; Kloha 2006). We assume that the Rules Committee grants floor access to committees and proposal protection to bills *in accordance with the preferences of the majority party leadership*. So even in the rare case that a committee constructs a proposal that the majority party leadership is unwilling to accept, leaders can use their control of the Rules Committee as a safeguard, either to completely block the proposal or to arrange for its adjustment on the floor. It is to the theoretical mechanics of this process that we now turn.

A Theory of Restrictive Rules and Nonmedian Outcomes

We begin with the premise that the Rules Committee—acting as an agent of the majority party—crafts special rules that produce nonmedian outcomes.⁶ This raises the question, though, of why the floor median acquiesces to the suboptimal outcome that is

⁵Other factors, too, like patterns of cosponsorship (Koger 2003), strategic use of roll-call scoring by interest groups (Bell and Roberts 2005), or the motion to recommit with or without instructions (Cox, Den Hartog, and McCubbins N.d.; Krehbiel and Meiorowitz 2002; Roberts 2005; Tiefer 1989, 454–60; Wolfensberger 2003) might also render the majority party's control of the agenda less than deterministic.

⁶Note that by “produce nonmedian outcomes,” we mean to imply that the Rules Committee has knowledge of members' preferences and status quo locations, and uses this information to structure the amendment process on a given bill such that the outcome (under simple majority rule voting) will deviate from the center of preferences in the whole House.

implied by such a rule. Put another way, if the final outcome is a foregone conclusion once the rule has passed, and if that outcome is going to be a non-centrist result in a simple majority rule chamber (running contrary to the median voter theorem), then why do the floor median and other moderate majority party members support the party on the rule vote?⁷ To address this question, we rely principally on Cox and McCubbins' (1993) argument that majority party members trade occasional policy loss (due to the procedural maneuverings of their leaders) for the benefit they receive from *party reputation*, which is in part a function of the party's legislative success.⁸ Additionally, once procedural matters have been settled, the majority can let its moderate members vote sincerely on the substantive policy issue and still win, if they have calculated correctly.⁹ The mechanics by which this is achieved go to the heart of our argument.

The strongest sort of a restrictive rule is a closed rule, which disallows any amendment activity on the floor and presents members with a “take it or leave it” choice between the proposed bill and the status quo. Assuming that the majority party gets the support of its moderate members on the rule vote, the majority can make nonmedian proposals, to a greater or lesser extent depending upon the location of the targeted status quo, and these proposals can pass. Figure 1 shows a one-dimensional policy space divided into regions and subregions; we will use this platform to demonstrate our theoretical argument.

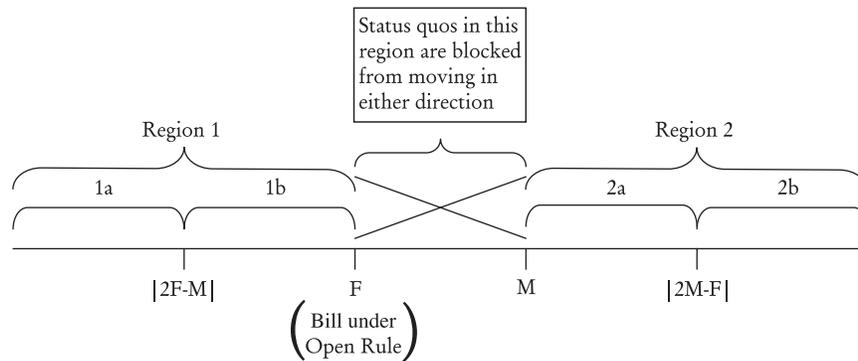
In our formulation, we assume that all actors in the space derive their utility solely from the distance between their ideal point and the location of policy on a given dimension (with single peaked, symmetric preferences about a unique point on the dimension). Further, for simplicity, we assume for now that the majority leadership is free to place a bill proposal wherever it wishes. Thus, there is no variability in proposals based on which committee reported the bill (we revisit this point below). Note that we also assume here a rightward majority; all of our logic

⁷For an excellent empirical test of the assumption that these moderate members do give something up in voting the party line on special rules, see Young and Wilkins (2007).

⁸Jenkins, Crespin, and Carson (2005) find that members who are departing the House, either through retirement or because of a defeat in the primary (and thus no longer benefiting from party reputation), are no longer reliable supporters of their party's procedural maneuverings.

⁹Thus, such members can avoid blame and take positions on these more visible and more easily interpretable votes in order to appease their constituents.

FIGURE 1 Restrictive Rules and Status Quos in a One-Dimensional Policy Space



(as a mirror image) also applies to the case of a leftward majority. Finally, importantly, we assume that bill proposals which come to the floor under an open (or nonrestrictive) rule will be amended to the floor median's ideal point and pass—a standard assumption in the literature (see, e.g., Cox and McCubbins 2005; Krehbiel 1991).

Leftward Status Quos

Given this setup, we can now imagine where proposals would be made given the location of the status quo within each region. Note that bill proposals in this framework are conditional on the location of the status quo (SQ) and the floor median's ideal point (F). Region 1 contains status quos on the minority party side of the floor median, where the majority proposal will “leapfrog” the floor median under a closed rule. In other words, the majority can achieve a net policy gain—over what would result under an open rule—by making its proposal under a closed rule. More specifically, status quos in Region 1a can be moved all the way to the majority party median's ideal point (M) while still passing with the support of F.¹⁰ While status quos in Region 1b cannot be moved *as close* to M, the majority party can still move them past F's ideal point, to the point of indifference about F's ideal point on M's side of the policy space.¹¹ So as

¹⁰This is true because, as we can see in the figure, (1) all status quos in region 1a are further from F than $|2F-M|$ and (2) $|2F-M|$ is the same distance from F as is M.

¹¹Or, assuming F would vote against a bill if perfectly indifferent between the bill and the status quo, then policies can be moved to $F+|F-SQ| - \epsilon$.

$|F-SQ|$ decreases within Region 1b, the set of possible majority-biased bill locations decreases.

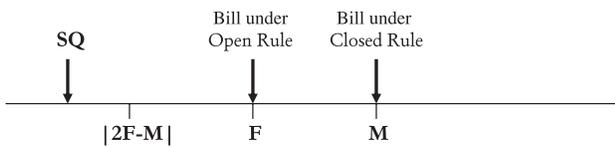
By way of example of the previous two points, consider the scenarios in Figures 2 and 3. In Figure 2, there exists an extreme left SQ.¹² Imagine that a bill, located at the M, is brought to the floor to address SQ. Under an open rule, the bill would be (at some point) amended to F, would then be unbeatable, and would pass. But what if the same bill were to be considered under a closed rule, barring amendments? In this scenario, the bill would pass at the M, because—as we can see in Figure 2—that point is still closer to the chamber median than the status quo. Thus, the closed rule would allow the “leapfrog” effect and produce a net policy gain over the resulting outcome (on the same dimension) under an open rule.

Figure 3 presents a very similar scenario, except that SQ is now somewhat less extreme.¹³ Again assume a bill is brought to the floor at M. Like before, an open rule implies amendment to F and passage there. Under a strictly closed rule, the bill at M would fail, as it is further from F than is SQ. Thus, we would instead expect the majority party to either (1) engineer a closed modified rule that allowed the bill to amend slightly to the left, or (2) engineer the initial bill proposal to lie between F and M. If they do this just right, then the result will be passage of a bill that is just slightly closer to F than is the status quo, but on the majority party side of the policy space. Notice that the “leapfrog” effect provided by a restrictive rule still benefits the majority party, but that the policy gain is smaller than in the previous scenario due to a less extreme status quo.

¹²This status quo would fall in Region 1a in Figure 1.

¹³This status quo would fall in Region 1b in Figure 1.

FIGURE 2 An Example of a Status Quo in Region 1a



Rightward Status Quos

Returning to Figure 1, next consider the area between F and M. We refer to this as the *blocked interval*, in which status quos are in perfect tension between the ideal points of the floor and majority party medians. In other words, any movement of policies in this region must lead to a policy loss for either M or F. Thus, M should exercise negative agenda control to ensure that none of these status quos is addressed by a bill proposal and moved toward F—F, in turn, will vote against (and thus defeat) any bill that proposes to move any of these status quos toward M.

On the whole, we expect that the majority party should be less likely to propose bills that address status quos in Region 2 because such would create absolute policy losses for extreme members of the party.¹⁴ While the majority party may occasionally find it in its interest to moderate these status quos, there is likely only so much “good will” on the part of these extreme members who stand to lose on such proposals.¹⁵ Further, if these extreme members go on to vote sincerely on final passage, and the bill passes on the strength of support from members of the minority party, then it begins to dilute the credit that can be claimed for the legislative accomplishment, which leaves room for doubt as to how often this scenario will produce outcomes that improve the reputation of the majority party.

Still, the basic intuition of our theory holds for status quos in this region. Region 2a in Figure 1 contains status quos whose change the majority should attempt to block, or at least restrain. Any

¹⁴By absolute policy loss, we mean that the resulting policy is actually worse for these extreme members than the status quo. This stands in contrast to the relative policy losses moderate members will suffer—say, those majority party members clustered around F—from getting a restrictive rule as opposed to an open rule. While they would be made better off under the open rule, both the open rule and restrictive rule outcomes are, in most cases, better for them than the status quo.

¹⁵Carson, Finocchiaro, and Rohde suggest that leaders are motivated in their selection of the type of rule (and of whether to allow a rule to be granted at all) so that “issues likely to divide members are kept off the agenda” (2002, 8).

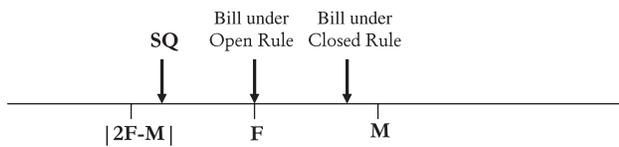
change in these status quos that M prefers is also preferred by F and thus will pass. But since F would clearly prefer to move these status quos as close to her ideal point as possible, M now employs restrictive rules not to leapfrog F but to prevent herself from being leapfrogged, because an open rule would allow F to move the bill all the way to her ideal point, creating an absolute policy loss for M. A strong theoretical prediction that follows from this is that SQs in Region 2a should always get a restrictive rule if they are allowed to come to the floor. A restrictive rule here is not only useful but essential, since the difference between a restrictive and a nonrestrictive rule is the difference between an absolute policy gain and an absolute policy loss for M. Testing this prediction, however, is limited by the difficult task of measuring the location of status quos and must be left for future empirical investigation.¹⁶

While M would prefer the nonrestrictive rule outcome, F, to any status quo in Region 2b, M can achieve *more* policy gains by using a restrictive rule to make proposals at (or at least *nearer*) M. In some ways, this mirrors the situation in which the status quo falls in Region 1a. In both cases, we need to consider M’s policy gain under a restrictive rule not just in terms of the difference between the status quo and the final outcome, but also in terms of the difference between the final outcome under a restrictive rule and *what the outcome would have been under a nonrestrictive rule*. In fact, for status quos in Regions 1a, 2a, and 2b, a proposal at the majority party median’s ideal point can pass on the floor with a *net* policy gain to the majority median of $|M-F|$. And the means by which this nontrivial gain can be made is the use of a restrictive rule.

Figures 4 and 5 present examples of our logic where status quos fall in regions 2a and 2b,

¹⁶Another prediction whose testing suffers from this same limitation is that the impact, or usefulness, of restrictive rules is directly related to the distance $|F-SQ|$. In other words, restrictive rules are less useful (and thus, perhaps, less likely to be used) the smaller the distance between the status quo and the floor median’s ideal point, since the difference between the most extreme passable closed rule proposal and the open rule outcome is decreasing. Any nontrivial cost to employing a restrictive rule would suggest that for some status quos, the policy gain under a restrictive rule does not offset the attendant costs. For our purposes, though, we assume that bills addressing any status quo in the space, if given any special rule, have an equal probability of being given a restrictive rule. We suspect that the use of a restrictive rule is often motivated more by the “message politics” of the majority and minority parties than by the location of the status quo (Evans and Oleszek 2001). But regardless, we make no claim that our argument explains why a particular bill gets a restrictive rule, but rather explains what happens to the resultant policy outcome when it does.

FIGURE 3 An Example of a Status Quo in Region 1b



respectively. In Figure 4, we see SQ to the right of M, though not particularly extreme.¹⁷ Assume the initial bill is proposed at M. Under an open rule, the bill would be amended to the floor median's ideal point, passing with the support of the minority party and over the objections of almost all of the majority party, a disaster for the majority party leadership.¹⁸ Thus, the leadership has a significant incentive to be sure the bill instead comes up under a closed rule. In that case, F, along with a healthy majority of the majority party, would prefer the bill to the status quo, and it would pass at the majority party median's ideal point. Notice that in this case, the closed rule not only produces a relative policy gain (i.e., outcome under closed rule vs. outcome under open rule), but it prevents an absolute policy loss.¹⁹

In Figure 5, this threat of absolute policy loss under an open rule no longer exists, but there are still relative policy gains to be had under a restrictive rule. In this case, SQ is to the right of the majority median, but now more extreme.²⁰ Again, an open rule would lead to a bill at F, making the majority party median only slightly better off than she was under the status quo. If a closed rule is administered, however, the bill will pass at the majority median's ideal point (since that bill is preferred to the status quo by the floor median), and thus will yield a much larger policy gain.

Key Hypothesis

Figure 6 summarizes the logic of our argument. The figure shows, in stylized fashion, the difference in the relationship between the position of the status quo and the position of the final passage outcome of the bill with respect to the type of rule. Under an open rule, any bill not blocked by the majority party is

¹⁷This status quo would fall in Region 2a in Figure 1.

¹⁸Note this constitutes a classic example of a majority party "roll" as conceived by Cox and McCubbins (2005).

¹⁹Note that this would be achieved by producing any bill/rule combination such that the distance between the bill and M was smaller than the distance between SQ and M.

²⁰This status quo would fall in Region 2b in Figure 1.

FIGURE 4 An Example of a Status Quo in Region 2a

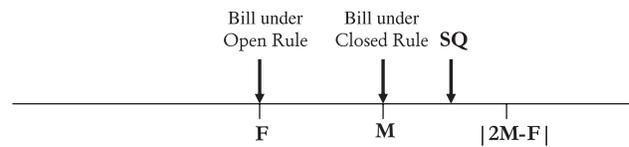
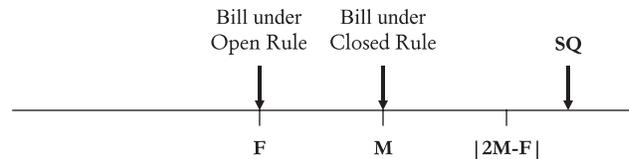


FIGURE 5 An Example of a Status Quo in Region 2b



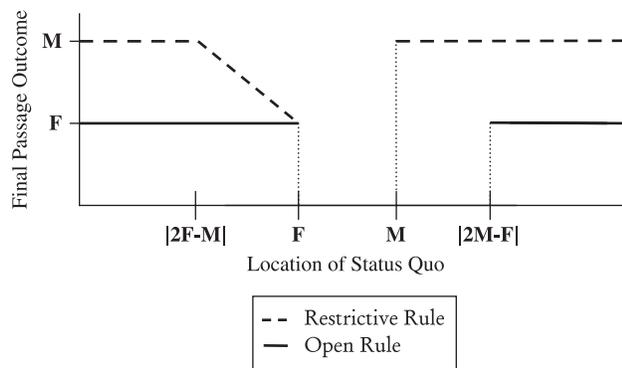
brought to the floor and is, by assumption, located at the floor median's ideal point (F) at final passage. As Figure 6 shows, *under an open rule* the majority party will block consideration of any status quo between F and $|2M-F|$, which is the point at which the majority party median would be indifferent between the status quo and the bill at final passage (i.e., the floor median's ideal point).

The relationship is somewhat more complex under a restrictive rule. Starting from the extreme left of the policy space, bills addressing status quos on the minority party side of F can be moved to M and pass under a closed rule until we reach $|2F-M|$, the point at which the floor median would be indifferent between the status quo and M. Between this indifference point and F, final passage outcomes move steadily closer to F in relation to the position of the status quo even under a restrictive rule. Between F and M no status quos will be considered, since the only policy change that could be successful on final passage, even under a closed rule, would be movement toward F and away from M, leading the majority party to block consideration of these status quos. To the right of M, we again see that bills addressing these status quos can be moved to and held at M if a restrictive rule is employed. Further, some status quos (those between M and $|2M-F|$) whose consideration under an open rule would be blocked can be considered and moved to M under a restrictive rule.

From this logic, we derive our principal theoretical hypothesis:

H1: Bills that come to the floor under a restrictive rule are proposed further to the majority party side of the floor median than bills brought to the floor under a nonrestrictive rule.

FIGURE 6 The Relationship between Status Quo Locations and Final Passage Outcomes under Restrictive and Open Rules



“A bill as proposed” here actually means a bill as it stands when it reaches final passage, since it is quite possible, especially given that committees provide the input into this system, that the exact same *initial* proposal could conceivably come up under a restrictive or a nonrestrictive rule. Crucially, however, the difference is that the floor process moves the bill in the policy space in one case and not in the other.

Some Caveats

One might ask why, given our theoretical framework, the majority party does not simply call everything to the floor under a restrictive rule and make every proposal at the majority median’s ideal point.²¹ First of all, as we show above, some status quos in the policy space cannot be moved to M (or, proposals that attempt to move these status quos will not pass). Such a loss could mean damage to the majority party’s collective reputation as well as a loss of the time and effort invested in bringing the bill to the floor. Proposals addressing status quos between $|2F-M|$ and F can still be made on the majority side of F , but these proposals must move closer to the floor median’s ideal point as $|SQ-F|$ decreases. Thus, the potential gains from using restrictive rules vary considerably across policy dimensions, depending on where the status quo is located.

Second, we would contend that both the placement of the majority party’s proposal and the use of a restrictive rule are the result of an intraparty bargain. As we have noted, moderate members are—at least

²¹See also Young and Wilkins (2007) for a discussion of this point.

hypothetically—giving up some policy utility by going along with majority party motivated restrictive rules. Since the use of special rules as a positive agenda setting tool requires strong party cohesion on rules votes, individual members of the majority party have some leverage in bargaining with the party leadership.²² Almost everyone in the party is hurt, on some occasions and to some extent, in the majority party’s exercise of agenda control. Moderates who would often prefer bills at F to bills at (or closer to) M might therefore prefer a nonrestrictive rule. Extreme members of the majority party would prefer that extreme status quos, which the majority party median would like to moderate toward her ideal point, not be brought to the floor for consideration at all. An important capability of the majority party leadership, though, is the ability to make deals across bills in order to compensate members who suffer these sorts of losses. So, for example, the leaders might secure enough votes to support a restrictive rule on one piece of legislation by promising particular members that, in exchange for their support of the rule, the leaders will allow consideration of some other piece of legislation. So while we do not expect the majority party to practice perfectly the manipulation of outcomes with special rules, we do expect the use of special rules to produce a consistent and strong bias in policy outcomes in favor of the majority party.

Third, the majority party is constrained in its placement of proposals by the fact that, in general, bills must be reported from standing committees whose proposals are not necessarily going to be made at the majority party’s median *on the floor*. Because of this, we think it is useful to think about our theoretical framework as portraying the aggregated result of letting majority party biased committees make proposals on the floor. To the extent that committee rosters are constructed by the majority party to serve the party’s interest in making policy (Cox and McCubbins 1993; Kloha 2006), we think that this is an appropriate way to frame our argument. Regardless, variability in the initial proposals from committee is not too troublesome for our argument since the majority party should still use restrictive rules to protect any such proposals that

²²We follow Finocchiaro and Rohde (2002) in viewing procedural control via special rules as having two components: positive agenda control and negative agenda control. While we see the exercise of the latter as unconditional (as emphasized in Cox and McCubbins 2005, Chap. 3, and in Gailmard and Jenkins 2007), we concur with Finocchiaro and Rohde (2002) and Cox and McCubbins (2005, Chap. 10) in viewing the positive agenda control function of special rules as conditional on the homogeneity of policy preferences within the majority party.

it prefers to F but that can still pass, thus producing a majority-biased outcome as predicted.²³

Finally, the role of the previous question motion must be addressed in any discussion of special rules. Defeat of a special rule itself represents an exercise of negative agenda power by those forces in the House who engineer its defeat, since the underlying bill will then not be considered. But opponents of a rule who want to consider the bill but under a different set of procedures must defeat the motion for the previous question on the resolution containing the rule. When this happens, the leading opponent of the motion gains control of the floor and can then offer amendments to the rule itself (see Tiefer 1989, 369–79).

Empirically, the previous question motion is rarely defeated in the postreform era (Finocchiaro and Rohde 2002). Indeed, the last significant instance was the previous question defeat on the rule for the Reagan budget in 1981, which resulted in the passage of most of Reagan's proposal. Its rarity does not mean that the possibility of the defeat of a previous question motion is unimportant, though. One could imagine a model in which the previous question motion is never defeated in equilibrium but where policy even under restrictive rules is moderated because of the threat that the motion could be defeated if the majority party median tries to move policy too far from the floor median's ideal point.

Who should receive a policy gain from a final bill that is moderated by a threat to defeat the previous question motion? If the threat to defeat the previous question motion is important, it should be reflected in the location of the final bill. If majority party moderates²⁴ exercise this threat against a restrictive rule, the effect should be to moderate the bill and thus shift the location of the underlying proposal away from the majority party median. For our purposes this

would make a bill under a restrictive rule look more like a bill under an open rule, thus making for a harder test of our contention that the majority party uses restrictive rules to bias bill-level outcomes in its favor.

A related question is whether party extremists can use the threat of defeating a previous question motion on a special rule to move the final bill in their favor. Looked at one way, it seems they can only lose by doing so. The effect of defeating a previous question motion on a special rule is to open the rule itself to amendments on the floor. But these amendment votes require a majority vote, making the floor median the pivotal actor. These amendment votes on the rule must be viewed instrumentally by the floor median, in that an opportunity has been afforded by the defeat of the previous question for the floor median to pull the outcome of the bill as close to her ideal point as possible. Looked at this way, the defeat of a previous question is never in the interests of extreme members of the majority party because it would result not just in relative but also in absolute policy loss for these members. This leaves open, of course, the question of whether these extreme members can use the threat of defeating the previous question motion in a brinkmanship game with the majority party leadership and the Rules Committee.

The fact remains, though, that the majority party risks losing some of its credibility if it is defeated on a previous question vote, while individual party members may face significant intraparty sanctions for defying the party on an important "cartel" vote. There are therefore strong incentives for the leadership and the rank-and-file of the majority party to avoid such conflicts.

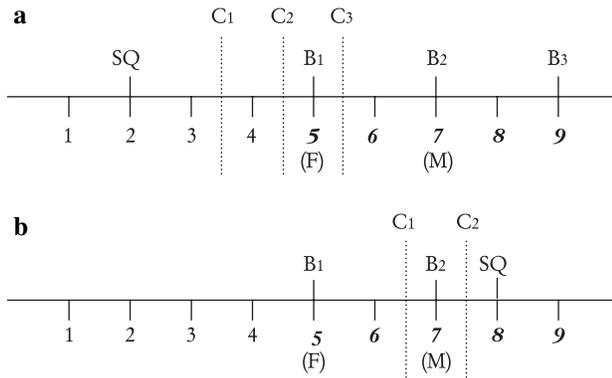
Operationalizing Our Key Concept

While we are prevented from testing some of the implied predictions of our theory because we lack a reasonable proxy for the location of status quos in a policy space, we can test the prediction we state in Hypothesis 1 because we *do* have a reasonably good proxy for the location of *proposals*. While scholars have often used the various incarnations of Poole and Rosenthal's (1997) NOMINATE procedure to proxy ideal points for individual legislators, scholars have more rarely employed NOMINATE's estimation of roll-call locations to test their theories (see Cameron 2000, Chap. 6). Specifically, NOMINATE provides us with cut points on each of the two dimensions for every roll call. The cut point on a single dimension represents the ideal point of the hypothetical legislator who would be perfectly indifferent between the outcomes

²³In fact, one potential explanation for the empirical variability in restrictive rules in the House (e.g., Closed, Modified Closed, Structured, etc.) relies precisely on this potential variability. These modified restrictive rules may be a set of tools by which the majority party leadership can make ex post adjustments to a committee proposal while still protecting the bill from hijack by the floor median (who would try to move the bill all the way to F). These procedures could potentially be used on committee proposals the leadership finds either too extreme to pass the floor or too moderate for its liking. Alternatively, an additional tool of the Rules Committee that was used multiple times under Republican majorities is to rewrite the content of bills before granting them a rule. The use of this tactic, which clearly undermines any notion of committee government, only serves to reinforce our theoretical argument, as proposals can be crafted by the leadership and the Rules Committee to be spatially optimal vis-à-vis the location of status quos.

²⁴Or more simply, the floor median.

FIGURE 7 Cut points in a Nine-Member Legislature



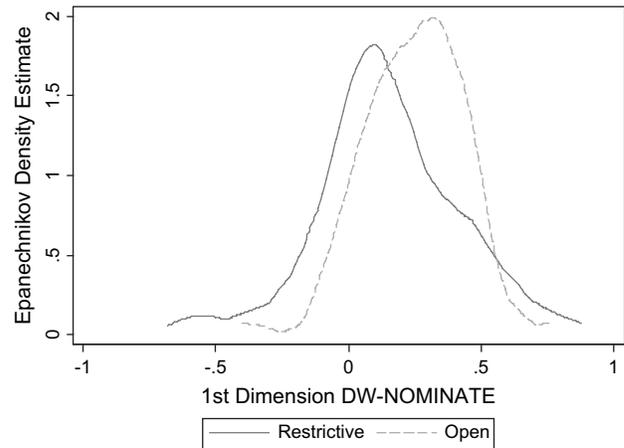
produced by passage or failure of a proposal. While the cut point *does not* represent the location of the proposal itself, it does allow us to infer important things about the proposal. To show how we can infer crucial information about the location of proposals from cut points we present a simple illustration using a hypothetical nine-member legislature in Figures 7a and 7b.

Figure 7a shows what we believe to be the most common situation in which the majority party will use restrictive rules to move proposals, and thus outcomes, in its favor. We have a rightward majority party (whose members are shown in *bolded italics*), a leftward status quo (SQ), and three potential bill proposals (B₁, B₂, and B₃). Either through an initial proposal at F (the ideal point of Legislator 5 in the figure), or more importantly through amendments under an open rule, B₁ passes with the support of Legislator 4 and everyone to her right. This combination of status quo and bill proposal produces a cut point (C₁) equidistant between the ideal points of Legislators 3 and 4. Regardless of the initial placement of a proposal, if it is brought to the floor under an open rule, it will be amended to B₁ and will produce cut point C₁.

However, Legislator 7, the majority party median (M), would prefer to place the bill (B₂) at her ideal point. If B₂ can be brought to the floor under a restrictive rule, it can also pass, this time with the support of Legislator 5 (F) and everyone to her right, yielding cut point C₂. Crucially, we point out here that the use of a restrictive rule produces a more extreme cut point to the majority median's side of the policy space than the cut point produced under an open rule.

While it makes less sense in this simplified legislature, B₃ illustrates what happens when the majority party "gets it wrong" in using restrictive rules to bias outcomes, as we suspect sometimes happens

FIGURE 8 Democratic Majority (100th-103rd) - Comparing Final Passage Cutpoints



in the House of Representatives. Here, a bill comes to the floor under a closed rule that proposes to move SQ all the way to the ideal point of Legislator 9. This time, the bill fails with the support of only Legislators 6 through 9. Despite the failure of the proposal, notice that our prediction still holds—a bill proposal brought up under a restrictive rule produces a more extreme cut point (C₃).

Figure 7b, using the same legislature, illustrates what should happen to cut points when a status quo falls on the right (majority) side of the space. This time SQ is at Legislator 8's ideal point. The outcome under an open rule in this scenario again locates the final bill (B₁) at F, producing a cut point (C₁) between Legislators 6 and 7.²⁵ Using a restrictive rule, however, the majority median can locate the bill proposal at her ideal point, winning the support of Legislators 1 through 7, thus producing a *more extreme* (to the majority party side) cut point (C₂) than that which results under an open rule. Again, in this scenario we see that cut points can be used to test our prediction, in that cut points which are further to the majority party side of the policy space are produced by bill proposals that favor the majority party median over the floor median.

Data, Measures, and Research Design

We use estimated first dimension DW-NOMINATE cut points in the House of Representatives as our

²⁵This bill "rolls" the majority (Cox and McCubbins 2005), in that it passes even though a majority of majority caucus members vote against it.

dependent variable. Within our sample, covering the 101st–108th Congresses, this variable ranges from $-.859$ to $.942$, containing most of the DW-NOMINATE space on the first dimension.²⁶ These data are estimated for all roll calls from the 1st through 108th Congresses and are furnished by Keith Poole.²⁷ By necessity, we limit the sample to those roll calls for which the NOMINATE procedure estimates cut points at all, and we also throw out roll calls coded in the Rohde/PIPC Roll Call Dataset as consensus votes.²⁸ We combine these measures with roll-call level data on special rules from the 101st through the 108th Congress that were compiled from various sources by Duff and Rohde (2006).²⁹ We limit our sample to final passage votes on bills and resolutions.³⁰

Figures 8 and 9 summarize our data using Epanechnikov's kernel density estimate. We have split the sample into Democratic and Republican majorities, and in each figure the solid line estimates the distribution of cut points under restrictive rules, while the dashed line represents cut points under open rules. The key point to take away from this summary of our data is that the peaks of each distribution are arranged as we predict—cut points under restrictive rules are further toward the majority party's side of the NOMINATE space. While they are illustrative, we cannot use these figures to demonstrate statistical significance, so we now move to our rather simple multivariate analysis.

Our principal explanatory variable is *Restrictive Rule*, which is a dummy variable coded one for closed, modified closed, and structured rules, and zero for modified open and open rules.³¹ We also use a dummy variable, *Republican Majority*, coded 1 for the 104th–108th Congresses and 0 for the 101st–103rd. Also included is the floor median's first dimension DW-NOMINATE score as a control variable.

²⁶See online Appendices A and B at <http://journalofpolitics.org/articles.html> for some descriptive statistics of our sample of roll calls.

²⁷See ftp://pooleandrosenthal.com/junkord/HC01108A1_PRES.DAT.

²⁸One of the principal sources of unreliability of particular cut point estimates in NOMINATE is the incidence of consensus votes.

²⁹Those bills and resolutions that were not considered under a special rule, whether open or restrictive, were also dropped from our sample.

³⁰Our sample includes bills that received rules and that were coded in the Rohde/PIPC Roll Call database as bills (Vote Type 11), resolutions (13), joint resolutions (14), and concurrent resolutions (17). Dropping simple resolutions and concurrent resolutions from the sample did not change our substantive findings.

³¹For detailed explanations of these types of special rules, see Marshall (2005, 84–85).

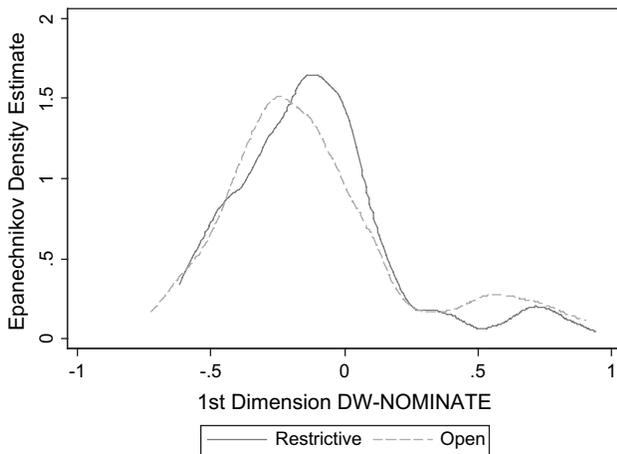
We employ a basic two-by-two factorial design (Trochim 2001, 198) to assess the impact of restrictive rules on cut point location. For our purposes, one factor is the partisan majority control of the House and the other is the type of special rule. The majority control factor can be Democratic or Republican, and the type of rule factor can be open or restrictive. Our groups are necessarily nonequivalent, since we cannot randomly assign particular roll calls to groups and manipulate the factors, so our research design remains only a quasi-experimental analogue. The logic of the design, though, is appropriate to our argument, in which restrictive rules represent a factor separable from the power of the majority party to exercise negative agenda control, regardless of the type of special rule, through the several manifestations of its gate-keeping power.

Note that we expect cut points to be further *left* under Republican majorities but further *right* for bills that are considered with restrictive rules under a Republican majority. The opposite is true for Democratic majorities. The intuition for these expectations is as follows. Even if majority party power only takes the form of keeping certain status quos off the floor but allowing others, principally on the minority's side of the policy space, to move to the floor median (which is our expectation under an open rule), cut points on average should be on the opposite side of the floor median from the majority party median. However, if the majority party uses restrictive rules to push nonmedian proposals, cut points on these bills should be *further to the majority party's side of the policy space* than other bills. On bills that pass, the cut point under a restrictive rule should still fall on the minority party side of F. On bills that fail, the cut point should fall on the majority side of the floor median. Yet, as the examples in Figure 7 show, the cut points for both should be further to the majority party side of the policy space when the bill was brought to the floor under a restrictive rule, if, as we argue, restrictive rules are used in the attempt to produce nonmedian policy outcomes. So even though we are principally interested in the interactive effect of restrictive rules, the factorial design is the appropriate structure for the test.

Econometrics and Results

To put our research design into action we use OLS regression with Huber-White standard errors. We estimate the following regression equations:

FIGURE 9 Republican Majority (104th-108th) - Comparing Final Passage Cutpoints



$$\begin{aligned} \text{Cut point} = & \alpha + \beta_1(\text{Restrictive Rule}) \\ & + \beta_2(\text{Republican Majority}) \\ & + \beta_3(\text{Republican Majority} \\ & \times \text{Restrictive Rule}) + \varepsilon \end{aligned} \quad (1)$$

and

$$\begin{aligned} \text{Cut point} = & \alpha + \beta_1(\text{Restrictive Rule}) \\ & + \beta_2(\text{Republican Majority}) \\ & + \beta_3(\text{Republican Majority} \\ & \times \text{Restrictive Rule}) + \beta_4(\text{Floor Median}) + \varepsilon \end{aligned} \quad (2)$$

Equation (2) is identical to equation (1) except for the addition of a control for the floor median's ideal point. We include this control because the degree to which the majority party can use the Rules Committee and special rules to bias outcomes (whether through open *or* restrictive procedures) is anchored by the preferences of the floor median, so it is important to show that our cut points result is not somehow being driven by shifts in the location of the floor median.

This leaves us with two parallel predictions based on which party is in the majority. We expect that the coefficient associated with *Restrictive Rule*—which represents the effect of restrictive rules on cut points under a Democratic majority—should be significantly different from zero in the negative direction. Our expectation of the effect of the interaction *Republican Majority* \times *Restrictive Rule* is the opposite. Table 1 presents a guide to the interpretation of the predictions and the results of our empirical model. Each row represents a scenario

to which the different variables correspond, along with our expectation about the associated coefficients. Table 2 shows the results of our empirical analysis.

In Equations (1) and (2), the empirical results bear out the expectations set out in Hypothesis 1. Bills that get restrictive rules under Democratic House majorities produce cut points further left than bills under open rules and restrictive rules under Republican majorities produce cut points further to the right. Even controlling for the position of the *Floor Median*, the partisan effects of restrictive rules remain. The result for Equation (2) shows that the location of the floor median drives cut points under open rules. For instance, cut points under an open rule are predicted to shift approximately 0.4 to the left in the NOMINATE space (thus moving from interior to the Republican coalition to interior to the Democratic coalition) as a result of the change in the floor median brought about by the Republican take-over following the 1994 elections. The Republican majority variable and the Constant, which together provide our empirical result for open-rule cut points, cease to be significantly different from zero when the floor median is controlled for.

Our analysis demonstrates a relationship between majority party control and cut points under restrictive procedures. Of course, the broader inference to be drawn from this analysis, that restrictive rules are associated with nonmedian, majority party preferred *proposals*, depends on how convincingly we have demonstrated the necessary linkage between the location of cut points and the location of bill proposals.

Conclusion

If the majority party can control the agenda by keeping certain proposals from being considered it can preserve status quos it likes and allow those it dislikes to be moved to the floor median's ideal point. If the majority party can protect its proposals from amendment on the floor through the use of special rules it can do even better than that—it can move status quos it dislikes even further, in many cases all the way to the center of opinion in its caucus. These non-(floor) median outcomes can be achieved with a minimum of arm twisting on the substantive vote on the policy, as long as the majority party can enforce strict discipline on the votes that sustain its procedural maneuvering.

TABLE 1 Empirical Expectations

Scenario	Coefficient(s)	Expectation
Open rule with a Democratic majority	α	$\alpha > 0$
Restrictive rule with a Democratic majority	β_1	$\beta_1 < 0$
Open rule with a Republican majority	$\alpha + \beta_2$	$\alpha + \beta_2 < 0$
Restrictive rule with a Republican majority	β_3	$\beta_3 > 0$

In this paper, we have developed a formal theoretic structure for the preceding argument, and tested its central implication—that restrictive rules are associated with more extreme (to the majority side) proposals than nonrestrictive (open) rules. We find support for this contention using NOMINATE cut point estimates for all final passage roll-call votes in the 101st through 108th Congresses. From this we infer that the majority party can and does use restrictive rules to achieve outcomes that are closer to the median position of the party than would occur under the “unmanipulated” processes of the House. In other words, when a bill is brought to the floor under a restrictive rule, the cut point on final passage of the underlying bill indicates that the policy outcome (at least in the House) has been biased in favor of the median member of the majority party caucus.

Our model is built on the notion that restrictive rules “protect” bills that are biased in favor of the majority party from being moderated by amendments, thus enabling the majority party to force take-it-or-leave-it votes on their proposals. Implicit in the model is that voting is (at times) a public act, with members of Congress behaving as if they will be held responsible both for the position they take as well as the outcomes that result. If this were not the case, then there would be no difference between voting for a restrictive rule that protects a majority party proposal and voting against any amendments to such a noncentrist proposal that was being considered under an open rule. One of the primary functions of the Rules Committee, in this view, is to help majority party members mitigate the tension between their collective party goals and their induced preferences by, in Arnold’s (1990, 258) terms, breaking the “traceability chain” between members’ choice of procedure and the final legislative outcome.

Future work on this topic could explore this further, especially by examining in more detail the strategic considerations that have led to the diversity of procedure even within the category of restrictive rules. For instance, many restrictive rules are modified closed rather than closed, under which the majority party holds votes on particular preselected amendments. This suggests, then, that the majority party is attempting to stage a public vote on some amendments while denying votes on other amendments,

TABLE 2 The Effect of Restrictive Rules on Cut Points, 101st–108th Congress

	(1) Roll Call Cut Point	(2) Roll Call Cut Point
Restrictive Rule (β_1)	−0.092** (0.033)	−0.092** (0.033)
Republican Majority (β_2)	−0.319** (0.036)	0.083 (0.181)
Republican Majority × Restrictive Rule (β_3)	0.088* (0.047)	0.100* (0.048)
Floor Median’s DW-NOMINATE Score (β_4)	—	−1.268* (0.549)
Constant (α)	0.229** (0.022)	0.059 (0.078)
<i>Linear Combination:</i>	−0.090**	0.141
Constant + Republican Majority ($\alpha + \beta_2$)	(0.029)	(0.107)
Observations	757	757
R-squared	0.12	0.12

Huber-White Standard errors in parentheses *significant at 5%; **significant at 1% (one-tailed)

a strategy that may be driven as much by the majority party's consideration of its message politics (see Evans and Oleszek 2001) as by the spatial location of a particular proposal.

In the broadest sense we might ask whether this is good for democracy. As Cox and McCubbins (2005) point out, advocates of responsible party government argued for cohesive party action on the policy items found in well-publicized party platforms (APSA Committee 1950). If nothing else, the proposal of the APSA Committee was intended to bring *increased clarity* to politics and lawmaking. In many ways, though, party power as agenda power represents the deciding of policy *out of the view of citizens*, where rules are crafted that make the final outcome a foregone conclusion. Caucus members who go on to vote against the substantive policy initiative—presumably on behalf of constituencies who would prefer a different policy—are pushed to vote with the party on the procedural maneuvers that facilitate the seeming disenfranchisement of themselves and their constituents.³²

Such criticisms are often the material for rhetorical attacks launched against the majority party by the opposition. While we have shown how the majority party in the House can use restrictive procedures to produce nonmedian policy outcomes, we leave it to others to decide the appropriateness of that use.

[A] corrupt legislative process produces corrupt legislation. If bills are written and changed behind closed doors, then there will be no way to know what is hidden in them. If amendments to bills are rejected, not because of their contents, but because of the party they come from, then democracy will have been denied.

—Rep. Louise Slaughter (D-New York) *Congressional Record*, H1876, April 27, 2006

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³²At minimum, the party line nature of the procedural votes surrounding the use of special rules and the apparent use of restrictive rules to substantively bias policy toward the majority party median can put majority party moderates in a tough spot with the interest groups who monitor their behavior (Bell and Roberts 2005), and thus potentially with their constituents.

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