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Rules and the Containment of Conflict in Congress

Congressional rules can be violated by majority vote, but the application of those rules often leads to different outcomes than would prevail under direct majority rule. Why does Congress enact rules in the first place, and why would not a majority violate those rules whenever it disliked the outcomes they produced? Drawing from work in psychology, I argue legislators become angry and engage in socially costly retaliation when unfavorable outcomes are produced by discretionary authority but not when they are produced by the application of fixed rules. Consequently, rules sometimes inefficiently allocate congressional resources, but they also reduce costly conflict within the institution. I present a model that provides conditions under which the legislature prefers to enact and defer to rules and derive its empirical implications.

Congress is a self-governing institution: aside from a few restrictions imposed by the Constitution, each chamber may set its own rules by majority vote (Krehbiel 1991). The majority may change the rules even when previously agreed upon rules formally preclude them from doing so. Thomas Reed's elimination of the disappearing quorum, George Norris's evisceration of the Speaker's right to assign committees, and Harry Reid's invocation of the nuclear option to confirm judicial nominees and executive appointments are all examples of rule changes that were passed by majority vote in violation of the rules and precedents of their respective chambers. These examples of majorities ignoring the constraints imposed by previous rules validate the central premise of remote majoritarianism: rules persist only so long as they work to the advantage of the majority of the legislature.

However, these rules sometimes produce outcomes noxious to a majority of the chamber. To provide one vivid example, in 1942, Carter Glass, Chairman of the Senate Appropriations

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Committee, made his last appearance on Capitol Hill. He spent the remaining 4 years of his life too ill to attend to any government business whatsoever, but he nevertheless retained his position as chairman. In his stead, the septuagenarian Kenneth McKellar presided over the committee. Unfortunately, McKellar was so old and senile that, "after he had been presiding over a committee hearing for some hours, he would pound the gavel to signal the session to begin" (Caro 2002, 82–83). Both of these men owed their positions to the rigid seniority rule which automatically awarded leadership of Senate committees to the member of the majority party with the longest continuous service on the committee. A similar system prevailed in the House of Representatives, and in both chambers, it periodically enthroned chairmen who were plainly too senile, infirm, or incompetent to effectively discharge their duties (Goodwin 1959). It is difficult to imagine that majorities either on the floor or within each party could possibly have constituted to elect chairs incapable of fulfilling the role's most basic duties. Evidently, legislators feel obliged to abide by these rules (and usually do) even in cases where they would prefer some other outcome.

This poses a formidable challenge to remote majoritarianism. If the House, the Senate, and the parties within them are all self-governing institutions that have the right to determine their own rules, why would they create rules like the seniority rule when they could instead select chairmen by majority rule and pick the most senior member as often as it was expedient? And even if choosing committee chairs by seniority is generally advantageous for the majority of legislators (Eguia and Shepsle 2015; McKelvey and Riezman 1992), why would not Congress generally follow the seniority rule but violate it in cases where a floor or party majority prefers some other candidate?

This theoretical puzzle is troubling because much of the political science literature that seeks to explain why Congress chooses the rules that it does adopts the perspective of remote majoritarianism. This paradigm has produced analytically rigorous, if sometimes controversial, explanations for how many seemingly anti-majoritarian rules actually benefit a floor or partisan majority (Diermeier 1995; Eguia and Shepsle 2015; Fong and Krehbiel 2018; Gilligan and Krehbiel 1987; Patty 2008; Schickler and Rich 1997). How can these theories be reconciled with the empirical regularity that rules periodically compel Congress to do things it would otherwise prefer not to do?

To offer a solution to this puzzle, I present a theory that proceeds from the assumption that legislators respond differently to undesired outcomes depending on whether they are produced by discretionary authority or by the application of rules. When an adverse decision results from the exercise of discretionary authority, such as by majority vote, the recipient of the adverse decision may become angry and retaliate against those who made the decision. They can use whatever resources they have at their disposal to harm those who have harmed them. If that same decision follows from the application of a rule fixed far in advance, the recipient retaliates less (although, of course, if the rule repeatedly produces adverse decisions, they may seek to change the rule). Thus, even though reliance on rules sometimes leads to socially inefficient resource allocations, such as the appointment of senile committee chairmen, it also reduces costly conflict between legislators, such as failed candidates for committee chairs becoming reluctant to perform costly services on behalf of their parties.

I articulate this theory through a model that identifies the conditions under which a majority of the legislature prefers to enact and defer to rules. The key distinction between the model and models of congressional procedure that came before it is that it treats the decision of whether to enact a rule as distinct from the decision of how to resolve the relevant resource allocation problem. Reliance on rules is more attractive when the propensity and capacity of legislators to retaliate is high in the absence of a rule but low in the observance of a rule, when the legislature is roughly indifferent between the possible outcomes, and when the rule typically produces the same outcome that would be produced by a majority vote. These results yield novel, plausible empirical implications and also offer a helpful framework for understanding the causes and consequences of Congress's increasing tendency to violate its own rules (Chergosky and Roberts 2018).

Theory and Related Literature

Many conflicts in Congress and its constituent parties are disputes over the allocation of scarce institutional resources—resources like committee chairmanships, access to the agenda, plenary floor time, funds from congressional hill committees, committee assignments, office space, time to ask questions during hearings, staff members, and so on.[1] These resources provide private benefits to those who receive them, but who gets them also

has externalities on the rest of the legislature. For example, becoming a committee chair is a good thing for a legislator, but his performance also produces value (or harm) for every other legislator.

The legislature may enact a rule that prescribes how the legislature (or, depending on the situation, the party) ought to resolve these allocation problems. For example, the seniority rule for chair selection states that the chairmanship of each committee should be awarded to the member of the majority party with the longest service on the committee. The germaneness rule states that an amendment should be considered only if it addresses the same subject as the matter being amended. Senate Rule XXII states senators should have the right to speak on pending measures as much as they like unless at least 60 senators vote to invoke cloture. Each of these rules specifies how conflicts over scarce legislative resources—committee chairs, access to the agenda, and floor time—ought to be solved.

Critically, rules are not self-enforcing. Consequently, these two decisions—whether to enact a rule and how to resolve the resource allocation problem- are ultimately separate. The legislature may violate any rule it has enacted if a majority of legislators wish to do so, and the legislature may make allocation decisions that conform to a rule without actually enacting the rule. For example, the legislature could have a germaneness rule but occasionally violate it, or it could habitually decline to consider non-germane amendments even without a rule that says that it ought to do so.

A theory of rules must answer two questions. First, what good does it do to enact a rule, given that Congress can choose any sequence of allocation decisions it likes (including the one that would be prescribed by the rule) without enacting a rule? Second, what restrains Congress and its constituent parties from violating rules when they prescribe allocations that diverge from what they would have chosen if there were no rule?

Much of the literature on congressional rules cannot address these questions because it does not treat rules as analytically distinct from the decisions that follow from those rules. Many formal models define the enactment of a rule as an equilibrium in which the legislature's allocation decisions always follow the rule. They explain why particular patterns of resource allocations, such as providing the majority party's leader with negative agenda control (Cox and McCubbins 2005) and awarding committee leadership positions to the most senior legislators (Eguia and Shepsle 2015) are to the legislature's advantage but not why it might be helpful

to enshrine them as rules or why the legislature would refrain from violating them if they proved inconvenient in a particular case.

Infinitely repeated play offers a potential answer to both questions. Perhaps rules serve as coordination devices that help legislators converge on a sequence of efficient allocation decisions in equilibrium, and Congress declines to violate rules because doing so would move the legislature to a worse equilibrium. If so, even though there is no immediate cost to violating rules, there is a long-term cost because violations change future allocation decisions. Diermeier (1995) formalizes the second half of this argument in a study of deference to committees.

Although this argument is theoretically elegant, it is difficult to extract its empirical predictions. Infinitely repeated play often leads to infinitely many equilibria; in Diermeier's model, always deferring to committees is one equilibrium, but so is never deferring to committees and sometimes but not always deferring to committees. There is an equilibrium in which even a single instance of declining to defer to committees permanently destroys deference to committees, equilibria in which occasional violations are tolerated, and equilibria in which deference to committees, once lost, can be restored by some appropriate sequence of allocations. Since infinitely repeated play could be used to rationalize all kinds of patterns of enacting, following, and violating rules, it does not provide clear guidance as to which of these equilibria empirical researchers should expect.

There is a largely informal literature focused specifically on why Congress might defer to its own rules that posits there must be some direct cost associated with violating a rule. Cox (2000) argues that it requires costly effort to change the rules, and Shepsle (1986) conjectures that those typically benefit from the rules may punish those who attempt to change them. Martin and Thomas (2013) contend that the adoption of new rules destroys the human capital associated with experience operating under the old rules. These are all plausible explanations for why the party might fail to replace a rule that was performing poorly, but as Shepsle (2017) and Binder (2018) note, it is not necessary to actually replace the rule. The legislature or party can simply ignore or violate the rule in one particular instance in which a majority prefers some other allocation and then resume following the rule thereafter. Shepsle and Binder both recognize that there must be some cost associated with breaking rules, but they do not specify the precise mechanism

by which the violation of a rule in one instance limits its force in another.

I offer a different source of costs: retaliation by losers. Whenever there are two or more claimants to a non-divisible resource, one of them will get the resource and the rest will leave disappointed. Legislators, like most human beings, are intrinsically motivated to punish those who have harmed them, so the losing claimant might retaliate against those they hold responsible for the decision. If the target of the losing claimant is a collective, the retaliating actor may take actions that are damaging for the whole collective or the claimant may lay most of the blame and associated retaliation at the feet of the agenda setter (Duch, Przepiorka, and Stevenson 2015).

This proclivity to engage in potentially costly retaliation in response to past wrongs is well-documented throughout the social sciences (Fehr and Gächter 2002; Sobel 2005; Trivers 1971). The ability to credibly commit to costly retaliation gives an actor an advantage in strategic interactions, and evolutionary game theorists and psychologists have argued that human beings evolved cognitive faculties that facilitate credible commitment (Frank 1988). Transgressions triggers anger, and once the target of the transgression is angry, he or she is motivated to inflict damage on the transgressor, even at cost to him or herself (Reed, DeScioli, and Pinker 2014).

In the congressional context, retaliation is so ubiquitous that it is sometimes taken for granted. Collective action problems are endemic to Congress, and resolving these collective action problems requires legislators to incur costs for the benefit of the party or (in the case of some institutional maintenance problems) for the institution as a whole. The simplest form of retaliation is performing fewer of these costly services or demanding greater compensation in order to perform them. More concretely, a member may simply become less inclined to take a difficult vote for the party, fundraise for endangered copartisans, or refrain from criticizing other legislators in media interviews. Sometimes, retaliation takes a more dramatic form. In 2008, when Senate leaders sought to deny Jim DeMint a vote on his amendment to a reauthorization of George W. Bush's AIDS relief program, he exploited his procedural prerogatives to keep senators from going back to their home states over the weekend. When the House of Representatives removed Adam Clayton Powell from his committee chairmanship, Powell mobilized civil rights leaders to lambaste his antagonists

as racists. Speaker of the House Champ Clark reports that by removing two Democrats from the House Interstate and Foreign Commerce Committee, then House Minority Leader John Sharp Williams made "mortal and lifelong enemies" of them Clark (1920, 267).

Fortunately, legislatures and parties can manage the intensity of this retaliation through the design of the process by which they make their allocation decisions.[2] This is the key assumption that distinguishes this theory from other work on rules, and it consists of two parts, each of which addresses one of the central questions surrounding congressional rules and is supported by existing social science research. First, legislators do not get as angry, and hence retaliate less, when the bad outcome follows from the application of a rule that was fixed far in advance of the decision, compared to instances where the bad outcome follows from the exercise of discretionary authority, such as a majority vote or at the whim of an elected party leader. In other words, rules legitimate decisions.[3] Studies spanning psychology, sociology, economics, and political science contend that people obey legitimate authority (Hamilton 1978), that part of what it means to obey is to not retaliate against the actor who made the command (Dickson, Gordon, and Huber 2015), and that procedural fairness (including the faithful application of entrenched rules) enhances legitimacy (Tyler 2006).

Second, legislators get even angrier and retaliate even more if the bad outcome follows from the violation of a well-established rule. This component of the assumption is not as well studied, but the behavioral economics literature on broken promises provides a useful foundation. Baumgartner et al. (2009) find that breaking promises activates regions of the brain associated with emotional conflict. Dufwenberg, Li, and Smith (2018) find that making promises raises the recipient's expectation about their payoff and that subjects punish more heavily in response to a broken promise than when no promise was made. Rules, like promises, create an expectation of reward among those who are entitled to the resource under the rule, so it is reasonable to assume that just as breaking a promise increases a punishment relative to no promise at all, breaking a rule increases punishment compared to no rule at all.

To provide a concrete application of these assumptions, consider a legislator who did not get a chairmanship they coveted. That legislator would be least angry if it were because they were not the most senior member of the majority party's committee delegation

and there were a seniority rule that the party had followed for a long time. They would be angrier if there were no seniority rule, and angrier still if there were a seniority rule, they were the most senior committee member, and their party decided to give the chairmanship to someone else anyway.

This offers an answer to both of the central questions of congressional rules. Congress enacts rules because it faces less retaliation if it follows the rule than it would have *if it had made the exact same allocation decisions without the rule*. Congress defers to rules in situations where the rule's prescription diverges from what Congress would otherwise have chosen because following the rule leads to less retaliation and violating the rule leads to more retaliation compared to the baseline scenario in which there is no rule.[4]

However, this implies that enacting a rule is a gamble. In the best case, the legislature gets an efficient allocation and faces less retaliation for it, but the rule may sometimes prescribe inefficient allocations, such as making senile legislators committee chairs or precluding the consideration of an amendment that most legislators favor. In those cases, the legislature must either defer to that bad allocation or violate the rule and incur the wrath of the righteously indignant loser.

The chief advantage of this theory over those that came before it is that it offers clear predictions about the conditions under which Congress enacts rules and defers to their prescriptions. Assuming legislators are intrinsically motivated to retaliate when they do not get a coveted resource and that the procedures used to arrive at that decision affect the intensity of the retaliation enables me to construct a model in which legislators defer to rules that does not rely on infinitely repeated play. It thereby avoids the problems associated with infinitely many equilibria and offers clear predictions.[5] To derive those predictions, I must first encode this argument in a formal model.

Model

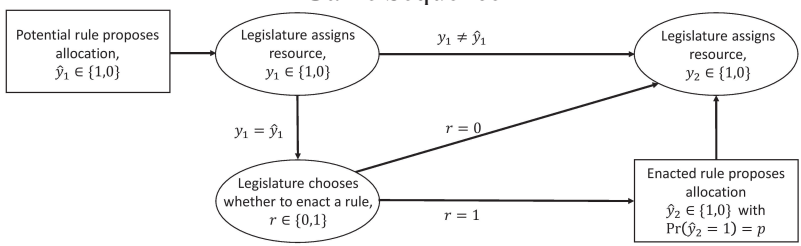
The basic tension of the theory can be conveyed by a two-period decision problem with one strategic player: a unitary legislature. In each of the two periods, the legislature must award some indivisible resource to one of two claimants. The legislature wants to give the resource to whomever will use it to produce the most value for others while also avoiding damaging retaliation from whichever claimant does not get the resource. To focus attention

on the strategic incentives faced by the legislature, the baseline model does not explicitly model the claimants as strategic actors and instead takes their behavior in reduced form.

Sequence

Figure 1 illustrates the sequence and Figure 2 describes it verbally. At the beginning of the game, there is no rule in place to guide the decision, and the legislature decides whether to enact one. For the rule to have any chance of reducing conflict, its prescriptions must be clear enough that even those unhappy with the rule's prescription can usually agree on what the prescription is. If the resource allocation problem is selecting committee chairs, one possible rule would be to give the chair to the member with the longest continuous service on the committee, which could be turned into a seniority rule. Alternatively, the party might consider enacting a rule that would give the committee chair to the committee member who raised the most for the party's hill committee in the previous cycle or to the member who introduced the most bills in the committee's jurisdiction. In practice, the legislature can turn any algorithm that provides clear prescriptions about who shall or shall not be chair into a rule. Online supporting information Appendix B generalizes the model to allow the legislature to choose between many possible algorithms for its rule. For the simple baseline model, suppose there is some exogenously given algorithm that the legislature is considering making a rule, which,

FIGURE 1
Game Sequence



Notes: Circles are decision nodes and rectangles are other events. $\hat{y}_t \in \{0, 1\}$ is the resource allocation proposed by the rule during period t, where $\hat{y}_t = 1$ means the rule proposes to give the resource to Claimant 1. $y_t \in \{0, 1\}$ is the actual allocation chosen by the legislature. To enact the rule, the legislature must follow the resource's allocation during the first period, $y_1 = \hat{y}_1$, but the legislature can make that allocation without enacting the rule if it so chooses.

FIGURE 2
Game Sequence

1. The prospective rule proposes which claimant should get the resource during the first period, $\hat{y}_1 \in \{1, 0\}$.
2. The legislature assigns the first period resource to one of the claimants, $y_1 \in \{1, 0\}$.
3. If the legislature assigns the first period resource to the claimant favored by the rule, $y_1 = \hat{y}_1$, the legislature may enact a rule $r \in \{0, 1\}$. Otherwise, the legislature cannot enact a rule, $r = 0$.
4. If the legislature enacted a rule during the first period, the rule proposes which claimant should get the resource during the second period, $\hat{y}_2 \in \{1, 0\}$. The probability the rule proposes to give the resource to Claimant 1 is p.
5. The legislature assigns the second period resource to one of the claimants, $y_2 \in \{1, 0\}$.

as online supporting information Appendix B shows, can be interpreted as the best rule the legislature is able to devise.

This algorithm prescribes which of the two claimants should get the resource, $\hat{y}_1 \in \{0, 1\}$. $\hat{y}_1 = 1$ corresponds to a recommendation to give the first period resource to the first of the two claimants (the ordering of the two claimants will be clarified when the utility function is specified) and $\hat{y}_1 = 0$ corresponds to giving the resource to the second claimant. For convenience, the claimant who corresponds to $\hat{y}_1 = 1$ shall be called Claimant 1 and the other shall be called Claimant 2. If the resource were a committee chair and the party were considering enacting the seniority rule, $\hat{y}_1 = 1$ if Claimant 1 has greater seniority and $\hat{y}_1 = 0$ if Claimant 2 has greater seniority.

Next, the legislature decides which of the two first-period claimants gets the first-period resource, $y_1 \in \{1, 0\}$. $y_1 = 1$ corresponds to giving the first-period resource to Claimant 1 and $y_1 = 0$ corresponds to giving it to Claimant 2. Giving the resource to Claimant 1 gives the legislature a payoff of x, which reflects the legislature's preference for giving the resource to Claimant 1 rather than Claimant 2 if retaliation were not a factor. If the resource is a committee chairmanship, then $x > 0$ if, from the perspective

of the legislature as a whole, Claimant 1 would do a better job than Claimant 2. If the resource is an amendment that Claimant 1 wants to propose even though the bill sponsor, Claimant 2, prefers to avoid a vote, then $x > 0$ if the legislature would prefer to vote on the amendment, all else equal.[6]

However, the losing claimant's retaliation against the legislator is also a factor. Let $c > 0$ be the capacity of Claimant 1 to retaliate against the legislature and $c + \eta > 0$ be the capacity of Claimant 2 to retaliate. If the legislature relies heavily on both claimants' cooperation, c is large. If the legislature relies much more on Claimant 2's cooperation than Claimant 1's, then η is positive; if it relies more on Claimant 1, then η is negative. To provide concrete examples, c is larger in the Senate than it is in the House, because all senators possess procedural rights that they can use to significantly disrupt the legislative process, if they so desire. η is large in magnitude in a conflict between a committee chair and a rank-and-file member, because the committee chair possesses far more resources to make trouble for the legislature than the rank-and-file member does.

The cost of retaliation the legislature incurs is the product of the losing claimant's capacity and how angry (hence motivated) the loser is. In the first period, the loser's anger is given by a_d (a for *anger* and d for *discretionary authority*), because the legislature's allocation decision is not governed by a well-established rule. Thus, if the legislature gives the resource to Claimant 1, its payoff for the first period is $x - a_d(c + \eta)$. If it instead gives the resource to Claimant 2, its payoff for the first period is $-a_d c$.

If the legislature's allocation follows the prospective rule's first period recommendation, $y_1 = \hat{y}_1$, it then has the option to enact the rule. If it appoints the most senior claimant to be the committee chair, in accordance with the seniority rule's dictates, it may either say, "Henceforth, the rule is that the most senior claimant shall become the committee chair," or "Even though this claimant happened to be the most senior, there is no rule that requires the party to appoint the most senior member to be chair." Denote the decision about whether to enact the rule with $r \in \{0, 1\}$, where $r = 1$ corresponds to the legislature enacting the rule and $r = 0$ corresponds to the legislature not enacting the rule. To be clear, there is only one way for the legislature to enact the rule: to follow its recommendation in the first period ($y_1 = \hat{y}_1$) and then to choose to enact the rule ($r = 1$). It can decline to enact the rule either by giving the resource to the other claimant ($y_1 \neq \hat{y}_1$) or giving

the resource to the rule's preferred claimant but declining to enact the rule ($r = 0$).

This sequencing, in which the legislature first makes an allocation decision and then decides whether to enact the rule, is merely a convenient way to encode the assumption that a rule has no normative force in the first period it is enacted. Instead, the legislature must obey the rule for a while before it begins to reduce retaliation. If there were no seniority rule already in place and the legislature told a claimant, "We have decided to enact a seniority rule, so the other claimant will get the resource," it is hard to imagine this appeal would do much to calm the loser.

When the legislature decides whether to enact the rule in the first period, it cannot anticipate what the rule will do in the second period. It just knows that the rule, if enacted, will favor Claimant 1 in the second period with probability p, so $\widehat{y}_2 \sim \text{Bernoulli}(p)$. This gives the rule normative force. If the legislature follows the rule, it can tell the losing candidate that it was acting in accordance with a rule that it has traditionally observed and that it adopted before it knew that the rule would recommend the other claimant. By the model's psychological assumptions, this decreases the loser's coefficient of anger from a_d to $a_f < a_d$ (a for anger and f for following the rule). If, on the other hand, the legislature violates the rule, the losing claimant becomes very angry, because the legislature not only decided against them but also broke a well-established rule to do so. This would increase the loser's coefficient of anger from a_d to $a_v > a_d$, (v for violating the rule). If the legislature did not enact a rule in the first period, the coefficient of anger is the same as in the first period, a_d.

As Figure 1 shows, regardless of whether the legislature enacted a rule or not, it must choose which of the two claimants shall get the resource, $y_2 \in \{1, 0\}$. Enacting the rule in the first period does not commit the legislature to actually following it in the second period; it merely changes the retaliation imposed by the losing claimant in the second period, depending on whether the legislature follows or violates the rule. The parameters for this decision besides the anger coefficient are the same as in the first period: the legislature gets x for giving the resource to Claimant 1 rather than Claimant 2, Claimant 1's capacity to retaliate is c, and Claimant 2's capacity to retaliate is $c + \eta$.[7]

To summarize, the legislature's objective function is formalized via the following utility function for the first and second periods, respectively:

$$u_1(y_1) = \begin{cases} x - a_d c & \text{if } y_1 = 1 \\ -a_d(c+\eta) & \text{if } y_1 = 0 \end{cases}$$

$$u_2(y_2, r; \hat{y}_2) = \begin{cases} x - a_d c & \text{if } y_2 = 1 \text{ and } r = 0 \\ x - a_f c & \text{if } y_2 = 1 = \hat{y}_2 \text{ and } r = 1 \\ x - a_v c & \text{if } y_2 = 1 \neq \hat{y}_2 \text{ and } r = 1 \\ -a_d(c+\eta) & \text{if } y_2 = 0 \text{ and } r = 0 \\ -a_f(c+\eta) & \text{if } y_2 = 0 = \hat{y}_2 \text{ and } r = 1 \\ -a_v(c+\eta) & \text{if } y_2 = 0 \neq \hat{y}_2 \text{ and } r = 1 \end{cases}$$

The legislature's goal is to maximize the discounted sum of these two utilities, $u_1(y_1) + \delta u_2(y_2, r; \hat{y}_2)$. The first period payoff is straightforward, and the second period payoff follows a simple structure. The first three cases correspond to giving the resource to Claimant 1 if the legislature did not enact a rule in the first period, if the legislature is following a rule enacted in the first period, and if the party is violating a rule enacted in the first period, respectively. The remaining cases follow this same structure but for giving the resource to Claimant 2. The choice about whether to enact and follow the rule affects the legislature's payoff only through changing the coefficient on the loser's retaliation from a_d to either a_f (by following the rule) or a_v (by violating the rule).

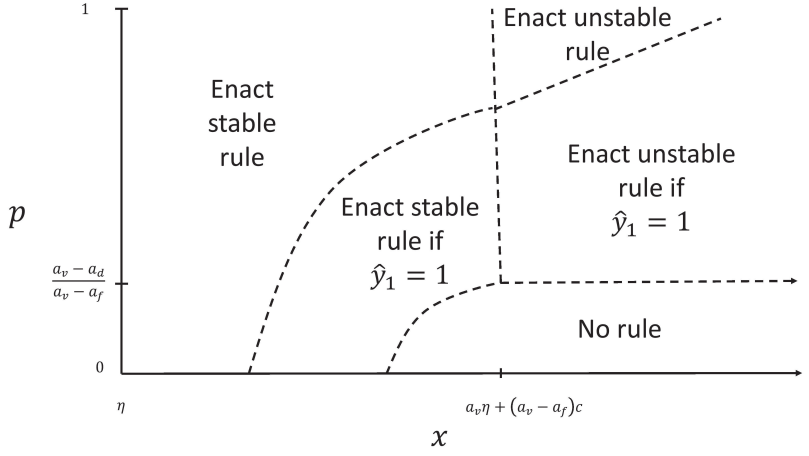
Solution

Assume without loss of generality that Claimant 1 in each period is the one who gets the resource if there is no well-established rule, $x - a_d c \geq -a_d(c + \eta)$. This is without loss of generality because if it were not true in either period, Claimant 1 could be relabeled as Claimant 2 for that period and Claimant 2 could be relabeled as Claimant 1 for that period.[8]

Proposition 1 states the optimal solution and Figure 3 presents the solution graphically. For all steps of the solution, it is important to remember that, by assumption, the legislature prefers to give the resource to Claimant 1 if there is no rule.

Proposition 1 Assume without loss of generality that the legislature awards the resource to Claimant 1 in each period under discretion ($x \geq a_d \eta$). The legislature's optimal strategy is as follows:

FIGURE 3
Optimal Strategy for Legislature



Notes: Enacting a rule is shorthand for $y_1 = \hat{y}_1$ and $r = 1$. A rule is stable if the legislature follows it in the second period regardless of which claimant favors, $y_2 = \hat{y}_2$. A rule is unstable if the legislature violates the rule in the second period whenever it proposes to give the resource to Claimant 2, $y_2 = 1$. If the legislature does not enact a rule, $y_1 = y_2 = 1$.

- If $x \leq a_v(c+\eta) - a_f c$ and $x \geq \frac{(a_d - a_f)c + (a_d - pa_f)\eta}{1-p}$, then $y_1 = y_2 = 1$ and $r = 0$.
- If $x \leq a_v(c+\eta) - a_f c$, $\frac{a_d\eta + \delta[(a_d - a_f)c + (a_d - pa_f)\eta]}{1+\delta(1-p)} \leq x \leq \frac{(a_d - a_f)c + (a_d - pa_f)\eta}{1-p}$, then $y_1 = 1, r = 1$, and $y_2 = \hat{y}_2$ if $\hat{y} = 1$ and $y_1 = y_2 = 1$ and $r = 0$ if $\hat{y}_1 = 0$.
- If $x \leq a_v(c+\eta) - a_f c$ and $x \leq \frac{a_d\eta + \delta[(a_d - a_f)c + (a_d - pa_f)\eta]}{1+\delta(1-p)}$, then $y_1 = \hat{y}_1, r = 1$, and $y_2 = \hat{y}_2$.
- If $x \geq a_v(c+\eta) - a_f c$ and $p \leq \frac{a_v - a_d}{a_v - a_f}$, then $y_1 = y_2 = 1$ and $r = 0$.
- If $x \geq a_v(c+\eta) - a_f c$, $\frac{a_v - a_d}{a_v - a_f} \leq p \leq \frac{a_v - a_d}{a_v - a_f} + \frac{x - a_d\eta}{\delta(a_v - a_f)(c+\eta)}$, then $y_1 = 1, r = 1$, and $y_2 = 1$ if $\hat{y}_1 = 1$ and $y_1 = y_2 = 1$ and $r = 0$ if $\hat{y}_1 = 0$.
- If $x \geq a_v(c+\eta) - a_f c$ and $p \geq \frac{a_v - a_d}{a_v - a_f} + \frac{x - a_d\eta}{\delta(a_v - a_f)(c+\eta)}$, then $y_1 = \hat{y}_1$, $r = 1$, and $y_2 = 1$.

The proposition can be proven via backwards induction.

If there is no rule in the second round, the party assigns the resource to Claimant 1 by assumption. This yields a second period payoff of $x - a_d(c+\eta)$.

Suppose the legislature has enacted a rule in the first period. In the second period, does the legislature follow the rule or violate it? If the rule says that Claimant 1 ought to get the resource, the legislature follows the rule and gives the resource to Claimant 1. By assumption, the legislature gives the resource to Claimant 1 if there is no rule, and compared to that scenario, the payoff for giving the resource to Claimant 1 is higher (because Claimant 2's anger coefficient will be $a_f < a_d$ rather than a_d) and the payoff for giving it to Claimant 2 is lower (because Claimant 1's anger coefficient will be $a_v > a_d$ rather than a_d) if there's a rule that favors Claimant 1. Formally, $x - a_f(c + \eta) \geq -a_v c$ by the assumptions $a_f < a_d < a_v$ and $x - a_d(c + \eta) \geq -a_d c$.

However, if the rule proposes to give the resource to Claimant 2, the legislature must make a more difficult choice. If it follows the rule, it faces retaliation $a_f c$ from Claimant 2. If it violates the rule, it gets x for giving the resource to Claimant 1 but faces retaliation $a_v(c + \eta)$ from Claimant 2. Compared to the scenario in which there is no rule, giving the resource to Claimant 2 entails lower retaliation and giving the resource to Claimant 1 exposes the legislature to greater retaliation. It follows the rule if the value of giving the resource to Claimant 1 is small relative to the additional retaliation that would be incurred by violating the rule, $x \leq a_v(c + \eta) - a_f c$. This inequality is the vertical line in Figure 3. To the right of that line, if the legislature enacts a rule, it is unstable, meaning that the legislature follows it if it favors Claimant 1 and violates it if it favors Claimant 2. To the left of that line, if the legislature enacts the rule, the rule is stable and the legislature defers to it no matter which claimant it favors.

Therefore, the legislature's expected payoff going into the second period if it has enacted a rule is

- $p(x - a_f \eta) - a_f c$ if $x \leq a_v(c + \eta) - a_f c$ (if the legislature will defer to the rule no matter which claimant the rule favors).
- $x - [pa_f + (1 - p)a_v](c + \eta)$ if $x > a_v(c + \eta) - a_f c$ (if the legislature will violate the rule whenever it it proposes to give the resource to Claimant 2).

In either case, enacting the rule is a gamble. If the rule will be stable, enacting a rule ensures the legislature faces low levels of retaliation but risks giving the resource to Claimant 2. If the rule will be unstable, the legislature knows Claimant 1 will get the resource but risks facing higher retaliation than it would have if there were no rule.[9]

If the prospective rule proposes to give the resource to Claimant 1 during the first period, then the legislature enacts a rule if the expected value of having a rule in the second period exceeds the expected value of not having the resource in the second period. The legislature prefers to give the resource to Claimant 1 in the first period anyways, so it does not have to forfeit anything to enact the rule. If $\hat{y}_1 = 1$, the legislature enacts the rule if

- $x \leq a_v(c+\eta) - a_f c$ (the legislature will defer to the rule in the second period) and $x \leq \frac{(a_d - a_f)c + (a_d - pa_f)\eta)}{1-p}$ (the expected payoff from enacting the rule exceeds the payoff from eschewing the rule and giving the second period resource to Claimant 1).
- $x \geq a_v(c+\eta) - a_f c$ (the legislature will violate the rule in the second period if it proposes to give the resource to Claimant 2) and $p \geq \frac{a_v - a_d}{a_v - a_f}$ (the expected payoff from enacting the rule exceeds the payoff from eschewing the rule and giving the second period resource to Claimant 1).

However, if the prospective rule proposes to give the resource to Claimant 2 in the first period, the legislature must calculate whether the long-run benefit of having a rule for the second period exceeds the short-run cost of giving the resource to Claimant 2 in the first period. The regions in Figure 3 in which the legislature enacts a rule only if $\hat{y}_1 = 1$ correspond to parameters such that the expected value of having a rule in the second period exceeds the payoff the legislature would get without a rule but is too small to offset giving the resource to Claimant 2 in the first period. Formally, if $\hat{y}_1 = 0$, the legislature enacts the rule if

- $x \leq a_v(c+\eta) - a_f c$ (the legislature will defer to the rule in the second period) and $x \leq \frac{a_d\eta + \delta[(a_d - a_f)c + (a_d - pa_f)\eta]}{1+\delta(1-p)}$ (the expected payoff from giving the resource to Claimant 2 in the first period and enacting the rule exceeds the payoff from eschewing a rule and giving the resource to Claimant 1 in both periods).
- $x \geq a_v(c+\eta) - a_f c$ (the legislature will violate the rule in the second period if it proposes to give the resource to Claimant 2) and $p \geq \frac{a_v - a_d}{a_v - a_f} + \frac{x - a_d\eta}{\delta(a_v - a_f)(c+\eta)}$ (the expected payoff from giving the resource to Claimant 2 in the first period and enacting the rule exceeds the payoff from eschewing a rule and giving the resource to Claimant 1 in both periods).

The conditions to enact the rule if $\hat{y}_1 = 0$ are more restrictive than the conditions to enact the rule if $\hat{y}_1 = 1$.

- Suppose $x \leq a_v(c+\eta) - a_f c$. $\frac{(a_d - a_f)c + (a_d - pa_f)\eta}{1-p} \geq \frac{a_d\eta + \delta[(a_d - a_f)c + (a_d - pa_f)\eta]}{1+\delta(1-p)}$ by $(a_d - a_f)(c + p\eta) \geq 0$. This is true by $c + \eta \geq 0$ and $c \geq 0$, so the condition for enacting the rule is weaker if $\hat{y}_1 = 1$ than if $\hat{y}_1 = 0$.
- Suppose $x \geq a_v(c+\eta) - a_f c$. $\frac{a_v - a_d}{a_v - a_f} + \frac{x - a_d\eta}{\delta(a_v - a_f)(c+\eta)} \geq \frac{a_v - a_d}{a_v - a_f}$ by $x - a_d c \geq a_d(c+\eta) \rightarrow x \geq a_d\eta$ (the assumption that Claimant 1 is favored under discretion).

Therefore, these inequalities define successive thresholds at which the legislature (1) will not enact a rule regardless of $\hat{y}_1$, (2) will enact a rule if $\hat{y}_1 = 1$ but not if $\hat{y}_1 = 0$, and (3) will enact a rule regardless of $\hat{y}_1$. This gives Proposition 1, whose intuition is summarized by Figure 3.

Comparative Statics

Online supporting information Appendix A derives the comparative statics and Table 1 summarizes the results. All can be explained on an intuitive level without reference to the formal derivations. As Figure 3 shows, the importance of giving the resource to Claimant 1, x, and the probability the rule proposes to give the resource to Claimant 1, p, play a central role in determining whether the legislature enacts and defers to a rule. If the legislature does not care much about who gets the resource apart from the retaliation the loser imposes (if x is small), then it enacts the rule, because even if it loses its gamble and the resource goes to Claimant 2, the legislature does not suffer much. If the rule is very likely to propose to give the resource to Claimant 1, who would get it in the absence of a rule, (p is large), then enacting a rule is attractive because, most likely, the legislature gets the same allocation it would have gotten anyway but faces less retaliation for it.

Precisely how small x and how large p must be for the legislature to enact a stable rule in equilibrium depends on the other parameters. As rule violations provoke greater outrage from the loser (a_v increases), the legislature becomes more inclined to defer to the rule if it enacts one, because it becomes costlier for the legislature to violate the rule. However, the legislature also becomes less inclined to enact the rule in the first place, because the payoff the legislature gets if it violates the rule in the second period shrinks.

As the losing claimant becomes angrier in the absence of a rule (a_d increases), the legislature becomes more inclined to enact

TABLE 1
Comparative Statics

Parameter	Interpretation	**Effect on Attractiveness of Enacting Rule**	**Effect on Stability of Rule When Enacted**
x	Importance of efficient allocation	−	−
p	Probability rule recommends preferred candidate	+	0
a_v	How angry loser gets when legislature violates rule	−	+
a_d	How angry loser gets in the absence of a rule	+	0
a_f	How angry loser gets when legislature follows rule	−	−
c	Capacity of claimants to retaliate	+	+
η	Claimant 2's advantage in capacity to retaliate	+	+
δ	Discount factor	+	0

a rule to avoid this retaliation. However, this has no effect on the stability of the rule, because once the legislature has enacted a rule, what would have happened in the absence of the rule is irrelevant to the payoff.

As following the rule does less to mollify the loser (a_f increases), the legislature becomes less inclined to defer to the rule if it enacts one and it becomes less inclined to enact the rule in the first place. If following the rule does not do much to protect the legislature from retaliation, then it has less to gain by enacting a rule in the first place and less to lose by violating a rule it has already enacted.

As the capacity of both claimants to retaliate increases (c increases), the legislature becomes more inclined to defer to the rule if it enacts one and it becomes more inclined to enact a rule in the first place. As the capacity of the loser to retaliate grows, reducing retaliation becomes more important, which the legislature can achieve by enacting and following the rule. It also becomes costlier for the legislature to violate the rule in cases where the rule proposes to give the resource to Claimant 2, because the punishment is $a_f c$ for following the rule and $a_v(c + \eta)$ for violating the rule. The latter grows faster in c.

The same thing happens as Claimant 2's capacity to retaliate grows relative to the preferred claimant (η increases). For every case except the one where $\hat{y}_2 = 0$ and the legislature defers to the rule, Claimant 2 is the one retaliating against the legislature. All of the same logic from c applies to η, except that η increases the attractiveness of deferring to the rule even more, because deferring the rule allows the legislature to sometimes face retaliation from Claimant 1 instead of Claimant 2.

Finally, as the legislature becomes more patient (δ increases), the legislature becomes more willing to give the resource to Claimant 2 in the first period to enact the rule, because δ does not affect the desirability of having a rule in the second period.[10] Rather, it influences how the legislature balances its payoff between the two periods, and these two payoffs are only in conflict when enacting the rule requires giving the resource to Claimant 2 in the first period.

Extensions

The simple baseline model abstracts away from many considerations to focus attention on one central tension: the legislature's competing desires to get its preferred allocation and avoid costly retaliation. Nevertheless, the predictions from Table 1 are robust to many plausible extensions. Online supporting information Appendix D endogenizes x, c, and η by relaxing the assumption that the claimants are non-strategic actors and instead supposing they strategically devote some of their resources to public goods provision and keep the rest as rents. Retaliation takes the form of withdrawing resources from public goods provision. Online supporting information Appendix E relaxes the assumption that the legislature is a unitary actor and instead supposes that decisions about how to allocate resources and whether to enact a rule are determined by a majority vote that includes the claimants. Online supporting information Appendix F relaxes the assumption that the legislature considers only a single resource allocation problem per period and instead allows there to be many decisions affecting many claimants. All of these extensions yield the same substantive results as the baseline model.

Escaping the Model

Although the model treats the parameters as exogenously given, insofar as the legislature can reduce the motivation and capacity of legislators to retaliate (a_d and c), it can avoid the trade-off

between ensuring an efficient allocation and avoiding retaliation. The legislature could reduce c by depriving legislators of the capacity to retaliate, either by eliminating individually held procedural rights or by centralizing as many resources as possible in the hands of a leader who is fully accountable to the floor. The legislature could reduce a_d by making it difficult to trace allocation decisions, such as by making allocation votes via secret ballot or making decisions collectively through some convoluted, opaque process.

The legislature's payoff from the game is decreasing in both c and a_d, so the legislature would like to reduce legislators' capacity to retaliate and make it more difficult to trace allocation decisions. In situations where the legislature does not use rules, it indeed sometimes attempts to obscure who actually makes the decision. For example, party leadership elections are conducted by secret ballot and committee assignments in the House of Representatives are conducted by an opaque steering committee process.

However, there are practical constraints that limit their ability to reduce c and a_d. Because all legislators are guaranteed the right to participate in floor votes, legislators have a powerful, inalienable tool for retaliating against those who have wronged them. This sets a floor on how low c can go. There may also be other reasons to keep c high that are outside of the model, such as incentivizing legislators to acquire expertise, work hard to get reelected, or exert costly effort on behalf of the party. Duch, Przepiorka, and Stevenson (2015) suggests limits on the ability to diffuse responsibility for bad outcomes; if the process is difficult to trace, losing claimants may default to punishing top chamber or party leaders. Insofar as the institution has been designed so that the leaders' interests are aligned with those they lead, retaliation against leaders tends to hurt those they lead. Thus, even if the legislature or party can influence c and a_d at the margin, there are good reasons to believe that they cannot do so to such an extent that the basic tension in the model disappears.

Empirical Implications

The central argument of the theory—that legislators adopt rules to contain costly conflict and defer to those rules because violating them would provoke retaliation—is difficult to test directly. In general, researchers infer legislators' preferences by observing what those legislators do, so if we observe legislators following a

rule, it is hard to say whether they did so because they feared retaliation or because enough legislators simply preferred the path prescribed by the rule.

The model addresses this difficult but important question. It assumes rules contain costly conflict between legislators and derives the implications that follow from that assumption—namely, the comparative statics just described. Testing these empirical implications is relatively tractable. If the implications withstand empirical scrutiny, then the assumption that rules contain conflict offers a promising foundation for further inquiry.

To translate the model's comparative statics into empirical predictions, I enumerate empirical referents for the model's abstract parameters. The goal here is not to subject the model to a rigorous empirical test. These empirical implications all raise measurement and data collection challenges that would require far more space to address satisfactorily. Rather, the goal is to show that the theory provides a broad set of testable predictions about the kinds of resource allocation problems that are most likely to be decided by rules and the conditions within the legislature that make it more or less hospitable to rules. The precise mapping from these concepts to quantitatively measurable empirical referents varies between resource allocation problems—an issue to which I return in the conclusion.

The first category of predictions—the kinds of resource allocation problems most likely to be decided by rules—draws on the comparative statics on p, x, c, and η. Based on the comparative static on p, the theory predicts that the stronger a behavioral regularity in Congress is, the more likely it is to be enshrined as a rule. This is the same prediction tendered by positive political theorists who define rules as equilibria in which Congress's allocation decisions conform to the rule, so the theory should be seen as an elaboration on their ideas rather than as an alternative. The key extension is that my theory permits the legislature to always choose the most senior member to be the committee chair without enacting a seniority rule or to always decline to consider nongermane amendments without enacting a germaneness rule. The theory clarifies that if selecting on the basis of seniority usually favors the candidate the party would otherwise choose (p is high), then it is a good idea for the legislature to enact a seniority rule, because the seniority rule reduces retaliation and usually makes the same allocation the legislature would have made anyway.

This clarification allows my theory to offer a wide range of novel predictions. Rules are also more attractive for dealing with allocation problems that matter only to the claimants themselves than they are for allocation problems that have broad implications for the legislature or party as a whole. This follows from the comparative statics on x. Some problems, such as matching legislators to office space, are important to the claimants but matter little, if at all, to other legislators. Other problems have profound consequences for every legislator, such as the selection of the Senate Majority Leader. Most fall somewhere in between. The theory predicts that the legislature is more likely to use rules to resolve problems like allocating office space than for problems like selecting the Senate Majority Leader. This ought to be true cross-sectionally across different resource allocation problems, but it also ought to be true dynamically as the characteristics of a given resource allocation problem change. For example, if House party leaders usurped the policy-making role of standing committees such that the primary value of a committee seat was to have an opportunity to take positions and fundraise rather than make policy, concern over which members got which committee assignment would become more of a private matter for the claimants, and the theory predicts the legislature would become more inclined to make committee assignments according to rules.

The theory also predicts that rules are more attractive for solving problems within a party than between the two parties. This follows from the comparative statics on c and η. Members of the minority have relatively few resources with which to retaliate against the majority, especially in the House. Many of its legislators already withhold their votes from the majority's legislation, none occupies an institutional position with any meaningful gatekeeping rights, and they certainly do not have any campaign funds that would otherwise have gone to members of the majority party. The majority party has comparatively little to lose by alienating members of the minority party. This corresponds to η being negative: the claimant that the legislature as a whole would typically favor has a lower capacity to retaliate than the favored claimant does. For conflicts between members of the same party (especially between members of the majority party), c is large, because both have a high baseline rate of cooperation with their party and could do meaningful damage by withholding some of that cooperation.

This implies that partisan polarization has a differential effect on different types of rules. On the one hand, as partisan

polarization increases, the majority party has less to lose by alienating members of the minority (η decreases), which makes floor rules that govern the relationship between the majority and minority less attractive. On the other hand, precisely because it becomes harder for the majority to attract votes from the minority party as partisan polarization increases, it makes the majority party more wary of antagonizing its own members (c increases), which makes party rules that govern the relationship between members of the majority party more attractive. The theory predicts that partisan polarization does not lead to deinstitutionalization, but rather a relocation of institutionalization away from floor rules and towards party rules.

Beyond its predictions about the kinds of resource allocation problems that are most likely to be resolved by rules, the theory also clarifies the causes and consequences of violating rules. Observers have decried the violation of precedents and the subversion of legislative norms in recent years (Mann and Ornstein 2016), but these accounts do not explain why a transition from a rule-bound institution to a more directly majoritarian institution ought to be lamented. My theory provides such an explanation through the comparative statics on a_f. Keizer, Lindenberg, and Steg (2008) find that the violation of one rule or norm tends to weaken the force of other rules and norms. In the model, this implies violating one rule diminishes the capacity of other rules to mitigate conflict between legislators (violating a rule increases a_f for other rules), so once the legislature violates one rule, it becomes more attractive to violate others.[11] A highly institutionalized legislature in which many conflicts are resolved via rules will be hesitant to violate any one of its rules, because a single violation diminishes the effectiveness of all of the other rules. However, if the legislature does violate one of those rules, it creates a positive feedback loop in which each additional violation of a rule reduces the benefit from following the remaining rules, which encourages further violations.

This offers an explanation for the decline of regular order and its replacement by procedural hardball in both the House and Senate over the past 30 years. Rule violations do not just undermine the rules that are violated; they also destabilize rules that the legislature prefers to keep. This undermines Congress's capacity to contain conflict between its members. Furthermore, if it takes time for rules to acquire the normative force required to mitigate conflict, as the model assumes, establishing new rules sometimes requires allocating resources inefficiently to conform with the

rule without an offsetting reduction in retaliation. Consequently, Congress may be unable to establish new rules to replace the discarded ones. Even if it does, entrenching those rules entails a short-term cost.

Conclusion

Rational choice institutionalism proceeds from the theoretically compelling premise that congressional rules cannot survive unless a majority of legislators prefer them to alternative arrangements. The theory presented here reconciles remote majoritarianism to the empirical regularity that legislators defer to their chosen rules even when they produce outcomes noxious to a majority of legislators. Its key contribution is that draws a clear distinction between rules and equilibrium resource allocations. In the model, there is no sequence of allocation decisions that implies the legislature has enacted a rule. Instead, in the first period, the legislature makes an allocation decision and then, conditional on choosing an allocation that conforms to the prospective rule, separately chooses whether to enact a rule. That choice influences how claimants react to allocation decisions in the second period. If the decision in the second period conforms to the rule, the losing claimant retaliates less than they would have in the absence of the rule. If it violates the rule, the losing claimant retaliates more than they would have in the absence of the rule. The parties and the legislature as a whole are more likely to enact and defer to rules when they do not care much about which claimant gets the resource, when the rule is likely to recommend the allocation they would have chosen anyway, when the claimants (especially the claimant who would lose in the absence of a rule) have a substantial capacity to retaliate, and when following a rule greatly reduces and violating a rule greatly increases the loser's inclination to retaliate.

The theory extends beyond Congress to other institutional settings. The key ingredients are that there is some decision maker that both allocates resources and decides whether it wants to enact rules, the claimants to those resources have the capacity and motivation to retaliate against the decision maker, and the claimants' motivation to retaliate diminishes when the decision is made according to fixed rules. Public bureaucracies sometimes have the opportunity to choose between writing rules that afford themselves substantial discretion in deciding individual cases or rules that prescribe in careful detail exactly what the agency shall do

in excruciating detail.[12] In that setting, the ability of the public bureaucracy to follow its own rules when it does not like their prescriptions is not puzzling (courts act as an enforcement device), but the decision to write rules that gives the bureaucracy less discretion than the underlying statute allows is. The theory suggests that bureaucracies may write these precise rules to reduce retaliation from aggrieved citizens or interest groups (and their allies in Congress) who do not get what they want out of the bureaucracy.

A test of the theory using a large data set of rules, rule changes, and rule violations (Binder 1997; Binder 2018; Schickler 2000) would have two major limitations. First, the theory's unit of analysis is a resource allocation problem, not a rule, so such a data set could only speak to the predictions about the conditions under which rules were stable, not the predictions about the conditions under which rules arise in the first place. Second, it would be difficult to construct measures of the parameters that are cardinally comparable across a broad range of resource allocation problems.

Instead, it is better to focus on one particular resource allocation problem at a time and apply the theory to explaining variation in support for enacting and deferring to rules over time. I close with outlines of two applications to be more fully developed in future work: the filibuster and the minority's right to make it's own committee assignments.

There is already an extensive literature on how the filibuster, which is effectively a supermajority requirement, can survive given that it can be violated by a simple majority through the nuclear option (Bawn and Koger 2008; Binder 2018; Dion et al 2016; Judd and Rothenberg 2021; Shepsle 2017; Schickler and Wawro 2011). My theory offers a novel explanation: the filibuster reduces costly retaliation from majority party extremists.[13] The majority party leaders possess agenda setting rights and control political resources that allow them to pass non-centrist policies, if they so choose. However, pursuing more extreme policy may reduce the party's prospects for retaining its majority. Extreme members are more inclined to take this risk and may make trouble for others if they do not get the more extreme policies they desire. The filibuster provides a rule for resolving this problem: the party may not pursue policies that cannot attract at least sixty votes. The agenda setter can mollify extremists by telling them that the rules preclude him from pursuing more extreme policy rather than arguing that doing so would be unwise. This theory predicts that the attractiveness of the filibuster rule is decreasing in policy disagreement

between the party median and the floor median (x in the model), decreasing in policy disagreement between the floor median and the filibuster pivot (p in the model), and decreasing in the distance between party extremists and the floor median as well as the political resources of the extremists (η in the model). All of these predictions can be tested using appropriately measured ideal points, and the results can be compared to alternative theories that seek to explain the persistence of the filibuster.

The right of the minority to appoint its own committee members has received far less attention, apart from Krehbiel and Wiseman (2005). Partisan theories argue that the majority and minority parties are in intense competition with one another (Koger and Lebo 2017) and control over committee assignments is an important tool for enforcing party discipline. However, committee assignments are ultimately determined by a resolution which must pass on the floor, so why does not the majority make committee assignments for both the majority and minority parties, as it did before the tenure of Speaker Cannon (1903–1911)? My theory offers an explanation: seizing control over minority party committee assignments would expose the majority party to retaliation from members who did not get their preferred assignments. It predicts that delegating this authority to the minority party is most attractive when the majority party does not care which minority party members get which committee assignments (x is small), when the choices the minority makes are usually acceptable to the majority (p is large), and when the minority party members have a substantial capacity to retaliate against the majority party (η is large). Each of these has measurable empirical referents. The stakes of the minority party's committee assignments, x, are small when party leadership plays a large role in policymaking relative to rank-and-file committee members, which could be measured by the degree of reliance on omnibus legislation (Krutz 2001). The likelihood the minority will make acceptable choices from the majority's perspective, p, and the minority's capacity to retaliate, p, both can be measured with between-party polarization. When between-party polarization is high, the minority has more opportunities and a greater incentive to appoint members who are obnoxious or embarrassing to the majority to key committees (p is small), and the majority does not have much to lose by angering members of the minority, because they are already attempting to hurt the majority party (η is small). The theory predicts that x, p, and c were all high when Speaker Cannon began allowing the minority to make its

own committee assignments, and that these variables were lower during episodes in which the rule was violated (as in the case of Marjorie Taylor Greene).

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NOTES

1. Most theories of rules, including this one, seek to explain both party rules and chamber rules. For a theory to explain both kinds of rules, parties must be self-governing institutions that select their own rules and have the capacity to violate them if they so choose. Some resources are allocated by parties, such as party leadership positions and campaign funds from the hill committees, so theories of chamber rules straightforwardly applies to rules for these problems. However, there are others resources, like committee assignments, that are typically governed by party rules but are technically allocated by the floor. To apply my theory to party rules governing these kinds of resources, including the seniority rule, I must assume it is as if these decisions are made by parties.

2. This builds on a growing literature in economics which considers how organizations influence the preferences of their members (Akerlof and Kranton 2000; Patty and Penn 2020; Tabellini 2008) but offers a different account of which preferences are influenced, how, and to what effect.

3. Patty and Penn (2014) also provide a model in which there are principles (which could include rules) that legitimate decisions. However, their interest is in cases in which there are multiple overlapping principles and how that creates opportunities to legitimize a wide range of possible decisions. I am interested in cases in which the rules provide clear guidance about what is to be done and the legislature does something else anyway.

4. As the phrasing of this argument suggests, the assumption that legislators are motivated to retaliate by anger is not strictly necessary for the argument to follow. Other motivations can work if they can explain why losers retaliate *and* why promulgating rules decreases retaliation. Audience costs provide one plausible alternative mechanism. If there is a reputational benefit for retaliating in the absence of a rule, following an established rule imposes a cost for retaliating, and violating an established rule increases the benefit from retaliating, then the core implications of the theory would follow. I adopt anger in the main text because it has been empirically well documented, permits a simple model that does not appeal to infinitely repeated play, and facilitates reasoning about how the costliness of retaliation to the legislature might vary with the political context, but other mechanisms are plausible.

5. The baseline model is decision-theoretic, so it would be more precise to say "optimal solution" rather than "equilibrium." However, online supporting information Appendices D and E generalize the baseline model to make the

claimants strategic players and disaggregate the unitary legislature into many different players. These extensions are games rather than decision problems, but they likewise have unique equilbria (up to tie-breaking).

6. This example suggests how the model applies to rules that restrict the rights of legislators, such as the germaneness rule. In such cases, the description of legislators as rival claimants to a resource is not quite accurate. However, the essential features of the model remain. There are two legislators who demand mutually exclusive things from the legislature. One must leave disappointed and may retaliate. In the case of the germaneness rule, if the proposed amendment is not germane, then the rule favors whichever claimant does not want the amendment to be considered. This prescription may or may not be what the legislature would have chosen in the absence of the rule. If the proposed amendment is germane, the rule provides no guidance—a scenario not contemplated by the baseline model. Online supporting information Appendix C generalizes the model to rules which sometimes leave the decision to the legislature's discretion and shows that the substantive results are the same as in the simple baseline model.

7. This assumption is not critical for the key results, but makes the statement of the equilibrium more compact. Similarly, Claimant 1 in the second period need not represent the exact same legislator as Claimant 1 in the first period. Since the claimants are non-strategic, naming them just offers a helpful shorthand for which claimant has a capacity to retaliate of c and which has a capacity of $c + \eta$.

8. This does not imply that $x \geq 0$; the legislature may think Claimant 2 would do more for the legislature with the resource but still prefer to give it to the Claimant 1 because Claimant 1 would impose very costly retaliation if she lost.

9. It may seem odd that Claimant 2 would be pacified by a rule which the legislature would have violated if $\hat{y}_2 = 2$. However, the results of the model are robust to changing it so that the claimants retaliate with coefficient a_d whenever the legislature cannot credibly commit to follow the rule. Additionally, online supporting information Appendix F presents an extension to the model where the legislature makes many allocation decisions simultaneously and breaking the rule for one leads everyone to retaliate with coefficient a_v. That model offers a more realistic account of the stability of rules that is nevertheless consistent with this simpler baseline model.

10. δ also represents how much time it takes the rule to acquire normative force. For example, if existing behavioral norms acquire normative force faster than totally novel rules, δ is larger for the former than the latter.

11. Online supporting information Appendix G formalizes the argument.

12. This is separate from Congress's decision about how much discretion to give the agency in writing the rule in the first place.

13. Schickler and Wawro (2011) offer the related argument that moderates like the filibuster because it provides them with political cover from their voters rather than copartisan legislators.

REFERENCES

Akerlof, G. A., and R. E. Kranton. 2000. "Economics and Identity." *The quarterly journal of economics* 115: 715–53.

Baumgartner, T., U. Fischbacher, A. Feierabend, K. Lutz, and E. Fehr. 2009. "The Neural Circuitry of a Broken Promise." *Neuron* 64: 756–70.

Bawn, K., and G. Koger. 2008. "Effort, Intensity and Position Taking: Reconsidering Obstruction in the Pre-Cloture Senate." *Journal of Theoretical Politics* 20: 67–92.

Binder, S. 2018. "Dodging the Rules in Trump's Republican Congress." *The Journal of Politics* 80: 1454–63.

Binder, S. A. 1997. *Minority Rights, Majority Rule: Partisanship and the Development of Congress*. Cambridge, UK: Cambridge University Press.

Caro, R. A. 2002. *Master of the Senate: The Years of Lyndon Johnson*. New York, NY: Alfred A. Knopf.

Chergosky, AJ, and J. M. Roberts. 2018. "The De-Institutionalization of Congress." *Political Science Quarterly* 133: 475–95.

Clark, C. 1920. *My Quarter Century of American Politics*, Vol. 2, New York, NY: Harper & Brothers Publishers.

Cox, G. W. 2000. "On the Effects of Legislative Rules." *Legislative Studies Quarterly* 169–192.

Cox, G. W., and M. D. McCubbins. 2005. *Setting the Agenda: Responsible Party Government in the US*. New York, NY: Cambridge University Press.

Dickson, E. S., SC Gordon, and GA Huber. 2015. "Institutional Sources of Legitimate Authority: An Experimental Investigation." *American Journal of Political Science* 59: 109–27.

Diermeier, D. 1995. "Commitment, Deference, and Legislative Institutions." *American Political Science Review* 89: 344–55.

Dion, D., F. J. Boehmke, W. MacMillan, and C. R. Shipan. 2016. "The Filibuster as a War of Attrition." *The Journal of Law and Economics* 59: 569–95.

Duch, R., W. Przepiorka, and R. Stevenson. 2015. "Responsibility Attribution for Collective Decision Makers." *American Journal of Political Science* 59: 372–89.

Dufwenberg, M., F. Li, and A. Smith. 2018. *Promises and Punishment*. Unpublished manuscript.

Eguia, J. X., and K. A. Shepsle. 2015. "Legislative Bargaining with Endogenous Rules." *The Journal of Politics* 77: 1076–88.

Fehr, E., and S. Gächter. 2002. "Altruistic Punishment in Humans." *Nature* 415: 137.

Fong, C., and K. Krehbiel. 2018. "Limited Obstruction." *American Political Science Review* 112: 1–14.

Frank, R. H.. 1988. *Passions within Reason: The Strategic Role of the Emotion*. WW Norton & Co.

Gilligan, TW, and K Krehbiel. 1987. "Collective Decisionmaking and Standing Committees: An Informational Rationale for Restrictive Amendment Procedures." *Journal of Law, Economics, & Organization* 3: 287–335.

Goodwin, G. 1959. "The Seniority System in Congress." *American Political Science Review* 53: 412–36.

Hamilton, V. L.. 1978. "Who is Responsible? Toward a Social Psychology of Responsibility Attribution." *Social Psychology* 316–28.

Judd, G., and L. S. Rothenberg. 2021. "The Waning and Stability of the Filibuster."

Keizer, K., S. Lindenberg, and L. Steg. 2008. "The Spreading of Disorder." *Science* 322: 1681–85.

Koger, G., and M. J. Lebo. 2017. *Strategic Party Government: Why Winning Trumps Ideology*. Chicago, IL: University of Chicago Press.

Krehbiel, K. 1991. *Information and Legislative Organization*. Ann Arbor, MI: University of Michigan Press.

Krehbiel, K., and A. E. Wiseman. 2005. "Joe cannon and the Minority Party: Tyranny or Bipartisanship?" *Legislative Studies Quarterly* 30: 479–505.

Krutz, G. S. 2001. *Hitching a Ride: Omnibus Legislating in the US Congress*. Ohio State University Press.

Mann, T. E., and N. J. Ornstein. 2016. *It's Even Worse than it Looks: How the American Constitutional System Collided with the New Politics of Extremism*. New York, NY: Basic Books.

Martin, A., and D. Thomas. 2013. "Two-Tiered Political Entrepreneurship and the Congressional Committee System." *Public Choice* 154: 21–37.

McKelvey, R. D., and R. Riezman. 1992. "Seniority in Legislatures." *The American Political Science Review* 86: 951.

Patty, J. W. 2008. "Equilibrium Party Government." *American Journal of Political Science* 52: 636–55.

Patty, J. W., and E. M. Penn. 2014. *Social Choice and Legitimacy: The Possibilities of Impossibility*. Cambridge University Press.

Patty, J. W., and E. M. Penn. 2020. "Identity and Information in Organizations." *Journal of Political Institutions and Political Economy* 379–416.

Reed, L. I., P. DeScioli, and S. A. Pinker. 2014. "The Commitment Function of Angry Facial Expressions." *Psychological Science* 25: 1511–17.

Schickler, E. 2000. "Institutional Change in the House of Representatives, 1867–1998: A Test of Partisan and Ideological Power Balance Models." *American Political Science Review* 94: 269–88.

Schickler, E., and A. Rich. 1997. "Controlling the Floor: Parties as Procedural Coalitions in the House." *American Journal of Political Science* 41: 1340–75.

Schickler, E., and G. J. Wawro. 2011. "What the Filibuster Tells US about the Senate." *The Forum* 9.

Shepsle, K. A. 1986. "Institutional Equilibrium and Equilibrium Institutions." *Political Science: The Science of Politics* 51: 51.

Shepsle, K. A. 2017. *Rule Breaking and Political Imagination*. Chicago, IL: University of Chicago Press.

Sobel, J. 2005. "Interdependent Preferences and Reciprocity." *Journal of Economic Literature* 43: 392–436.
Tabellini, G. 2008. "The Scope of Cooperation: Values and Incentives." *The Quarterly Journal of Economics* 123: 905–50.
Trivers, R. L. 1971. "The Evolution of Reciprocal Altruism." *The Quarterly review of biology* 46: 35–57.
Tyler, T. R. 2006. "Psychological Perspectives on Legitimacy and Legitimation." *Annual Review of Psychology* 57: 375–400.

Supporting Information

Additional supporting information may be found in the online version of this article at the publisher's web site:

A Comparative Statics for Baseline Model
B Choosing from Many Possible Rules
C Rules That Are Sometimes Indeterminate
D Endogenizing Retaliation
E Incorporating the Claimants in Collective Choice
F Many Decisions
G Linking Rules