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Source: *The Journal of Politics*, Vol. 57, No. 4 (Nov., 1995), pp. 1093-1118

Published by: [Cambridge University Press](#) on behalf of the [Southern Political Science Association](#)

Stable URL: <http://www.jstor.org/stable/2960403>

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Partisanship and Procedural Choice: Institutional Change in the Early Congress, 1789–1823

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Conventional accounts of institutional change in the early House of Representatives suggest that increases in the size and workload of the chamber led members to adopt rules restricting the procedural rights of its members. In this article, I argue that this conventional explanation understates the influence of partisanship in dictating early procedural choice. Specifically, I use the House's adoption of the previous question rule in 1811 to test competing workload and partisan explanations of institutional change. Analyzing changes in congressional workload and partisanship from 1789 to 1823, I find that the polarization of partisan preferences strongly directed procedural choices in the early House. Moreover, I argue that procedural choices in both the House and Senate outlasted the voting alignments that first shaped them. The findings suggest the power of a partisan theory of institutional change to account for the timing and direction of congressional development and interchamber differences.

In a letter to constituents printed in the *Norfolk Gazette and Public Ledger* on 8 June 1810, Rep. John Stanly (Federalist–North Carolina) made special note of a failed attempt to alter the rules of the House of Representatives to empower the majority party:

If the arguments of the minority did not correspond with the feelings or the interest of the majority, and the majority therefore wished to smother debate, they might under this proposed rule without any regard to the desires of those members who wished to speak, call the "Previous Question," put an end to all debate . . . and obtain a *decision* on the measure proposed, *instantly, without amendment or further debate*. . . . This attempt to smite the minority with a political lock-jaw, was not carried into effect . . . the lips of the minority escaped the *Padlock* for the Session.¹ (Cunningham 1978, 728–29)

Although the majority failed to adopt a rule to cut off debate at the opening of the Eleventh Congress, a previous question motion empowering the majority to control debate was made a rule of the House at the start of the Twelfth Congress in

I am grateful to Stanley Bach, Joseph Cooper, Eric Lawrence, Forrest Maltzman, Kenneth Shepsle, Charles Stewart, Garry Young, and especially Steven Smith for helpful comments and advice. This research has been supported by a doctoral dissertation fellowship from the University of Minnesota and a Robert Hartley research fellowship from the Brookings Institution.

¹"From John Stanly," 10 May 1810, in Cunningham (1978, 728–29).

THE JOURNAL OF POLITICS, Vol. 57, No. 4, November 1995, Pp. 1093–1118
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1811. That rule change was the first significant and successful effort by a House majority to alter formal chamber rules to suppress the minority's right to be heard on the chamber floor.² As the only means House floor majorities have for cutting off debate, approval of the previous question motion orders the House to vote immediately on the pending question.

Why would members of an institution who are formally equal agree to cede control of their individual rights of debate? Conventional accounts of the House's institutional development suggest that constraints posed by an increasing workload and size necessitated changes in its internal organization (Cooper 1977; Stewart 1992). Historians also point to the House's frustration with maverick representatives on the floor (McConachie 1898; Alexander 1916). Yet the comments of John Stanly suggest that conventional themes about the trend toward majoritarian rule in the House understate the influence of partisanship in dictating procedural choice. In this article, I offer and test an alternative explanation of procedural choice for the early House: suppression of members' procedural rights was driven primarily by changes in the alignment of partisan policy preferences. In the case of the previous question, the emergence of polarized coalitions during the buildup to the War of 1812 ultimately led to highly partisan procedural choices on the floor of the House. In the Senate, where partisan divisions appear to have been more muted, no such political lockjaw was placed on the minority.

Understanding the adoption of the previous question motion is prerequisite to explaining the institutional development of the House. Although it is universally recognized that the modern House is a strongly partisan and majoritarian institution, we know little about the factors driving the House to develop that defining characteristic. We do know, however, that the emergence of a majoritarian chamber by the end of the nineteenth century was contingent on the majority's ability to force votes on proposed rules changes concentrating power in majority hands. Without a previous question rule, a simple majority has no such power to direct the course of institutional change. Thus, the majoritarian character of the House, with its strict limits on minority participation, is a byproduct of rules made possible by the previous question motion. Indeed, the experience of the Senate—having eliminated the previous question motion in 1806—makes clear the critical nature of the previous question for shaping institutional development. Because rules changes in the Senate may be subject to a filibuster, simple partisan majorities are unable to alter the rules to enhance their procedural advantages on the floor. The result is a chamber that fiercely protects the rights of minorities, in contrast to the House where partisan majorities can potentially shape policy outcomes as they please.

²Minority procedural rights are defined as procedural advantages protected from arbitrary change that enable members of the minority to debate, amend, or obstruct the majority's agenda. To identify rules changes suppressing minority procedural rights during the early period of the House, I use histories of House rules that appear in the House rules manual (U.S. Congress 1993), Alexander (1916), Hinds (1907), McConachie (1898), and others. For further discussion of the process of identifying minority rights, see Binder (1995).

Thus, efforts to explain the development of Congress—and to craft a theory of institutional change—arguably must start by assessing the origins of the previous question motion.

THEORIES OF INSTITUTIONAL CHANGE

Organizational theory approaches to congressional change suggest that changes in the internal structure of Congress are driven largely by changes outside the institution. For example, Polsby (1968) argues that as the responsibilities of the national government increased and as career paths led to longer terms of service within the chamber in the nineteenth century, the House developed an organizational structure that emphasized a division of labor and more routine modes of procedure. Isolating size and increasing workload, Polsby (1968, 164–65) argues that relating the size of the House to the amount of work it performs would likely explain much of the institutionalization of the House.

A comparison of the early House and Senate illustrates the nature and limits of such a perspective on institutional change. As argued by Alexander (1916), Stewart (1992), and others, the House quickly created a means of limiting debate, while the Senate—a much smaller chamber, frequently meeting in secret and taking its agenda from the House—quietly eliminated the previous question motion in 1806. The Senate dropped its previous question rule because it was rarely used: standing at 34 members in 1806, the small size of the Senate meant that the Senate could afford the time to accommodate largely unstructured debate on the issues before it.³ In contrast, the argument goes, the House had already doubled in size by 1811 to 141 members, creating time constraints that made unlimited debate impossible in that chamber. As argued by Dion (1991), however, a workload/size theory of institutional change yields no precise predictions about the timing or direction of institutional change. Although changes in an organization's environment may create an opportunity to alter institutional structures, it is not clear that changes in the level of demands alone can account for the particular timing of rule changes.

An alternative approach to modeling institutional change views institutions as “intelligent means to preconceived ends. . . . They are chosen by individuals to accomplish particular purposes” (Gamm and Shepsle 1989, 40). From a rational-choice perspective, the suppression of minority rights would result from a particular alignment of majority policy preferences. Unable to secure its policy preferences with ease, a majority might rationally seek to constrict all members' debate rights on the floor. Such a perspective on minority rights is formally modeled by Dion (1991) for the partisan period lasting from the 1830s to the 1890s. Assessing four cases of suppression, Dion argues that when the majority party is small and cohesive—leading the minority to adopt a strategy of obstruction—demand for rules changes limiting the minority's ability to obstruct will rise (43).

³On the early Senate's previous question motion, see Cooper (1962); on the link between time pressures and Senate activity, see Oppenheimer (1985).

But adoption of the previous question rule occurred under a large, not small, majority party—with Republicans holding more than two thirds of chamber seats. Given the strength of the Republican majority in 1811, why would majority members cede their own right of unlimited debate to curtail minority dissent? Drawing from organizational and rational-choice approaches, I specify and test two alternative hypotheses to explain rights suppression in the early Congress. The results suggest that partisan alignments directly affected procedural choices even before political parties were institutionalized in the House.

ALTERNATIVE EXPLANATIONS OF MINORITY RIGHTS SUPPRESSION

Understanding the dynamics of suppression in a young legislature requires a familiarity with the procedural landscape of the early Congresses. Unlike the modern House, or even the chambers of the late nineteenth century, the early House was essentially uninstitutionalized (Cooper [1960] 1988; Polsby 1968). Only a handful of standing committees had been established by 1800, and committees did not have the right to report measures to the floor at any time. No formal party leadership structure existed and the use of restrictive rules to control the floor agenda was nearly a century away. Although by the 1820s referral of bills to standing committees would become far more routine, during the first few Congresses House practices still reflected what Cooper [1960] (1988) calls Jeffersonian attitudes toward the legislative process: subjects were debated on the floor in the Committee of the Whole before being sent to ad hoc select committees for drafting as a bill. Indeed, because committee members quite often consisted of members favorable to the issues they reviewed (Cooper [1960] 1988; Harlow 1917), the floor often provided a minority with its only opportunity to dissent from a prevailing majority position.⁴

Such arrangements, however, were ill-suited for a chamber experiencing an increase in the size and complexity of its agenda. The Jeffersonian system of floor deliberation and select committees too often left the chamber without a suitable means of securing information and obtaining policy expertise (Cooper [1960] 1988). Furthermore, without either a formal order of business, a means of controlling the floor agenda, or a willingness to empower standing committees, the House was susceptible to time pressures created on the floor by increases in the size and complexity of its workload (Cooper and Young 1989).⁵ Increases in the size of the membership further exacerbated logistical and time constraints, with more members meaning more work and a larger agenda.

Such changes in the scope of a chamber agenda are likely to have an important consequence for an underdeveloped legislative body. Increasing the value of time

⁴To be sure, by 1811 the House was moving away from its reliance on the Committee of the Whole, as routine matters were reported by bill from select committees before being first considered on the floor (Cooper [1960] (1988), 29). Still, standing committees at that time only received for consideration less than half of all bills considered by the House (Gamm and Shepsle 1989, 47).

⁵Even efforts to elect committees by ballot on the floor were defeated in both the Ninth and Tenth Congresses (1805–1809) because of concerns about the amount of time such elections would consume (Cooper [1960] (1988), 35).

for members of the institution, they create a demand for a division of labor to provide expertise and efficiency to the chamber. As time grows more scarce, legislative goals of a majority coalition and of individual members will be constrained. Inevitably, without a means for controlling the floor agenda, some things important to the majority or to individual members will go undone. Under these conditions, a majority will successfully achieve its policy preferences only if it can alter institutional structures to better manage the increased demands faced by the chamber. We might expect then that in the face of mounting workload, majority members might be willing to cede their rights of debate to ensure time for action on legislation important to their coalition—leading to the following relationship:

Workload Hypothesis: The majority party will suppress minority rights when increases in the level of demands on the chamber measurably increase the value of time for the majority.

There is cause to be skeptical, however, about the workload hypothesis. After all, a previous question rule can potentially be used to limit the procedural rights of majority party members as well. Instead, a tool for suppressing chamber debate might only be acceptable to the majority if it found itself unable to enact legislation on which its members held intense and cohesive preferences. This suggests that a different set of conditions must prevail before members of the majority would agree to limit their own procedural rights.

To build a theory of suppression based on the alignment of policy preferences, consider the conditions under which a majority party might be deterred from achieving its preferred outcomes. Of particular importance is the presence of an obstructing minority coalition that prevents the majority party from passing measures it deems important.⁶ As seen in the modern Senate, an obstructing coalition in a chamber with few means of cutting off debate can even prevent the majority from taking a vote on preferred measures. Obstruction, however, is only an attractive strategy if a minority's policy preferences differ substantially from those of the majority. Unless there are clear differences between the two factions, majority party members may be hesitant to foreclose their own future opportunities to obstruct.⁷ Furthermore, obstructing groups are particularly troublesome for the majority party if both the majority and minority are highly cohesive on pending policy questions—the more cohesive the minority party, the more durable and threatening minority obstruction will likely be. Delay or defeat of legislation by obstructive groups will not likely spur calls for procedural change if the majority party is factionalized over policy.

Thus, although scarcity of time may increase the opportunity to obstruct, time pressures by themselves do not produce polarized voting alignments. Consequently,

⁶See Dion (1991) for a formal treatment of the relationship between minority obstructionism and majority pursuit of a policy agenda in the partisan period, 1830s–1890s.

⁷Indeed, the resilience of the filibuster in the Senate suggests that in an institution where floor deliberation is valued, both majority and minority members will be reluctant to cede parliamentary rights (Smith 1989; Fenno 1989).

a rule empowering a majority to cut off debate is important only in the presence of a particular pattern of preference alignments. We might then expect a majority party to choose restrictive procedures under the following set of conditions:

Partisan Hypothesis: The majority party will suppress minority rights when both majority and minority party preferences are highly cohesive and when the two parties are polarized over policy, encouraging the minority to adopt a strategy of obstruction.

Of course, if preference alignments and workload vary independently, they might both be ingredients of explanation. Developments affecting both might influence procedural choices concerning the previous question. My goal is to assess the relative influence of these two factors in driving the first suppression of minority rights in the early House. Contrary to conventional themes about the emergence of majoritarian rule in the House that emphasize expanding workloads and individual obstructionists, the findings here will suggest that a more robust explanation of congressional development must take account of the emerging partisan character of voting alignments on salient issues in the early House.

DATA AND METHODS

I test the hypotheses of rights suppression in three steps. First, I construct and analyze several variables to tap prevailing conditions when the previous question motion was altered. Second, I analyze several floor votes on revising the previous question rule during the first 17 Congresses (1789–1823). Third, I compare briefly the procedural paths taken by the House and Senate in the early period. In this section, I present several measures that operationalize the prevailing conditions and contexts during the period.

Workload and Time Demands

I use several measures of congressional activity to characterize the level of demands on the House chamber. These variables are intended to capture changes in the number of pending issues, the amount of legislative business completed, and the amount of time consumed by the chamber's agenda.⁸ For each of the 17 Congresses from 1789 to 1823, I calculate these measures.

Number of Bills Passed. This variable counts the number of bills passed by the full chamber in each Congress, as noted in the indices to the House *Journal*. The variable only includes those bills that the *Journal* indicates originated in the House. Excluded are those bills that the *Journal* notes were originally passed by the Senate.

⁸Unlike modern congresses, for which precise indicators of time consumed and work conducted are readily available, no such systematic records exist for the early congresses. Instead, I assemble multiple measures of congressional activity to tap changes in the chamber's agenda.

For each bill, I code whether it was a public or private relief measure, yielding separate counts of public and private bills passed.⁹

Number of Bills Introduced. This variable counts the number of different bills mentioned in the indices to the *House Journal*. As explained by Cooper and Young (1989), the nature of bills and rules governing their introduction were far different from modern bills and rules. Individual members generally introduced subjects in the form of petitions and memorials, with bill status largely reserved for legislation drafted by select and standing committees and referred to the Committee of the Whole. Thus, for the early Congresses, the total number of bills introduced in each Congress is a reasonable indicator of the size of the active chamber agenda. For each different bill mentioned in the *House Journal*, I code whether it is a public or private relief bill, yielding separate counts of public and private bill introduction.

Days in Session. Although bill measures tap the level of workload—and by extension the amount of time consumed by the agenda—a more direct measure of time consumed is the length in days of each Congress.¹⁰

Partisanship

As argued by Silbey (1989), Formisano (1974, 1981), and others, political historians have largely overestimated the extent of institutionalized partisan activities before the 1830s. The Federalist and Republican coalitions of the early Congresses accordingly should not be considered fully developed political parties. In contrast to the Whigs and Democrats of the 1830s and 1840s, Federalists and Republicans did not develop comparable electoral machines, legislative organizations, or partisan followers. Federalists and Republicans did engage in considerable electoral campaigning, but Formisano (1981, 35) argues that it is a mistake to confuse passionate partisan emotion with party structure. Still, although there were no durable national or regional party organizations before the 1830s, scholars of the period have argued that policy cleavages in state and national legislatures did on occasion precipitate “incipient partylike behavior,” with Federalist and Republican parties emerging “under the stimulus of events, usually national and sometimes local” (Formisano 1974, 67).¹¹ The most important such events included debates over relations with England, with partisanship flaring in the Fifth through Seventh

⁹I consider a bill to be a private relief bill if a specific individual was mentioned in the bill title, and if it was crafted to address the claims or particular situation of that individual.

¹⁰Days in session data are taken from *Congressional Directory*, One-Hundred Third Congress. The days variable is admittedly an imperfect measure of time consumed. In the first session of the First Congress, for example, it took more than a month for a quorum to be achieved after the start of the Congress. Still, as noted later in this article, for later congresses in the time series the days variable appears to more closely approximate real legislative activity.

¹¹See also Aldrich and Grant (1993) on the ideological character of Federalist and anti-Federalist coalitions in the First Congress and on the relationship of those coalitions to party development.

Congresses around the Jay Treaty and Alien and Sedition Acts and again from the Eleventh through Thirteenth Congresses around the War of 1812 (Hoadley 1980; Formisano 1981). Thus, although the coalitions of the early Congresses may have been no more than “proto-parties,” Federalist and Republican coalitions clearly can be identified before their demise in the 1830s. Although I use the term “parties” in assessing the behavior of majority and minority coalitions in the early Congresses, I do not intend to imply high levels of party organization in or outside of Congress at that time.

To measure the behavior of majority and minority party coalitions, I calculate for each Congress partisan cohesion and difference scores for the first 17 Congresses (1789–1823). I use the Rice index of cohesion to calculate intraparty cohesiveness and the Rice index of party difference to measure the distance between coalitions.¹²

Policy Context

As noted earlier, partisan coalitions in the early period tended to rise and fall with changes in the congressional agenda. For the early period, foreign policy issues were paramount in polarizing Federalist and Republican coalitions, with the War of 1812 the dominant event of interest around the time of changes in the previous question rule. Accounts of the period (see, for example, Varg 1983 and Formisano 1974) imply that political, economic, and military events associated with the war extended from roughly 1810 to 1814. Thus, I consider Congresses before the Eleventh (1789–1809) as “prewar,” the Eleventh through Thirteenth Congresses (1809–1815) as “war,” and the Fourteenth through Seventeenth (1815–1823) as “postwar.” I assess each of the workload and partisanship measures above in light of the changing policy context in the early Congresses.

Procedural Context

When the previous question was adopted into House rules in the Twelfth Congress, several changes had already been made in House procedure. The original House rules had in fact included a form of the previous question motion. On the demand of five members, the motion could be raised “Shall the main question be now put?” However, the motion was not a device for cutting off debate. Instead, it was understood as a means of putting off undesired decisions (Cooper 1962, 4). If the motion was defeated, the House proceeded to other business for the day (Hinds

¹²Rice cohesion scores are calculated for each party as the mean absolute difference of the percentage voting aye and the percentage voting nay over all roll-call votes for each congress. Rice party difference is the mean absolute difference between the percentage of majority members voting aye and the percentage of minority members voting aye over all roll-call votes for each congress. House cohesion, party size, and party difference data were provided by Garry Young and are based on roll-call data from the Inter-University Consortium for Political and Social Research (ICPSR), File 0004. Members’ party affiliations are those reported in Martis (1989).

1907, 5:5445). If the motion was approved, the effect was not cloture: debate on the main question could simply continue (Hinds 1907, 5:5445).¹³

That interpretation of the previous question defined the first procedural context for the House, lasting from the First through Tenth Congresses. Indeed, there was a vote in 1807 in the Tenth Congress that overturned a ruling by speaker Varnum (Republican–Massachusetts), who had held that approval of the previous question cut off all debate and brought the House to an immediate vote on pending business.¹⁴ A bipartisan vote of 103–14 rejected the attempt to suppress minority rights of debate. However, near the close of the Eleventh Congress in February 1811, speaker Varnum again was called on to interpret the effect of the previous question. This time, following the procedural precedent affirmed in the previous Congress, Varnum ruled that the right of debate could not be curtailed. The House, however, reversed itself and overruled the speaker in a largely party-line vote 66–13. Hence, the procedural context changed: approval of the previous question was now considered to suppress debate and to bring the pending matter to a vote. Thus, when the new previous question rule was formally adopted as part of the standing rules in the Twelfth Congress in December 1811, members were acting under a procedural context shaped just months before. I return in detail to these votes later.

ANALYSIS

In this section, I assess the influence of workload and preference alignments on adoption of the previous question rule. First, I analyze bivariate relationships between aggregate trends in congressional contexts and changes in the previous question rule. Second, I examine the shape of partisan alignments on floor votes concerning changes in the previous question rule. Third, I assess the correlation of expressed preferences on procedural votes with policy choices made at the same time.

Conditions of Suppression

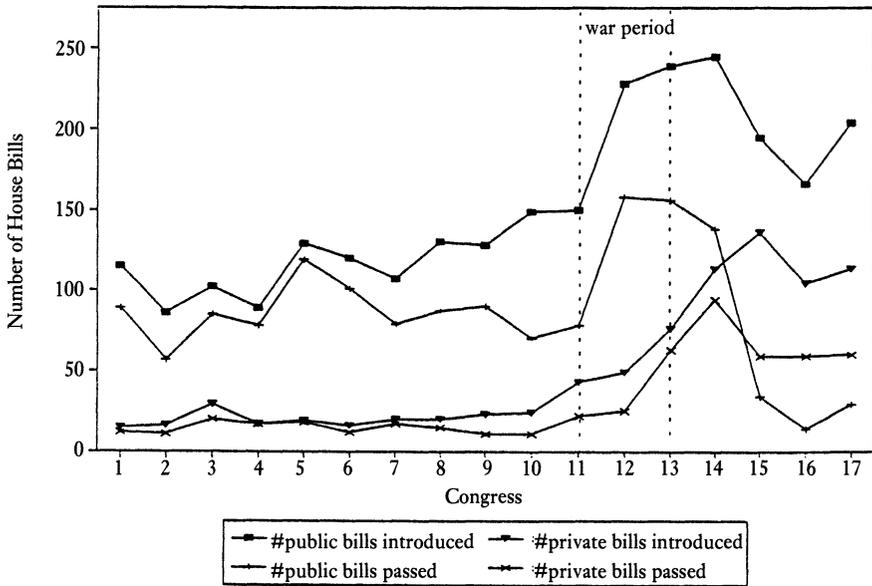
The data in figure 1 provide a first test of the hypothesis that increases in workload spurred changes in the previous question. Figure 1 shows changes in levels of bill introduction and bill passage activity in the first 17 Congresses (1789–1823). Evident in the figure are marked increases for each measure of congressional activity during the war period.¹⁵ The data suggest that aggregated across the three war

¹³Indeed, as argued by Cooper (1962), the original previous question motion was poorly designed for use as a cloture mechanism. Neither defeat nor approval of the motion brought the House to a vote on the pending matter.

¹⁴Although Varnum's ruling was unprecedented in the House, a form of the previous question rule had been used in the Continental Congress before 1780 that appears to have led to an immediate vote on the main question (Cooper 1962, 9n).

¹⁵The difference in mean number of public and private bills introduced in the prewar and war periods is statistically significant at $p < .001$, and the difference in mean number of private bills passed in the two periods is statistically significant at $p < .01$. The difference in mean number of public bills passed in the two periods is not statistically significant.

FIGURE 1
HOUSE WORKLOAD, 1789–1823

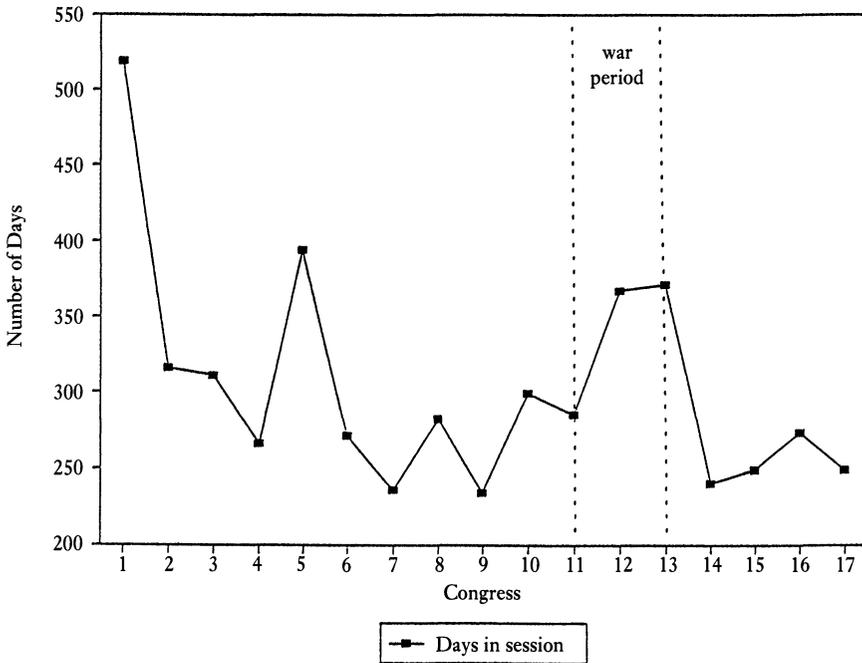


Source: House *Journal*, First through Seventeenth Congresses.

Congresses, the level of demands experienced by House members did indeed increase as changes were made in House rules. Also, the number of days in session peaks in the Twelfth and Thirteenth Congresses before dipping considerably after the war (figure 2). This last variable suggests that increases in legislative activity during the war period required the House to spend more time addressing the expanded agenda it faced.

Focusing on the mean increase across the war period, however, obscures the relationship between workload changes and the timing of procedural change. As noted earlier, the use of the previous question motion as a cloture mechanism was first established by overturning a ruling of the speaker at the close of the Eleventh Congress, with the formal rule change following at the start of the Twelfth Congress. The variables for each Congress are calculated from data for the entire Congress. Thus, if increases in legislative activity led to restrictive procedural choices at the end of the Eleventh Congress and the start of the Twelfth, there would need to be measurable increases in the variables between the Tenth and Eleventh Congresses. In figure 1, however, the increase between the Tenth and Eleventh Congresses in legislative activity is only moderate. In contrast, a sharp increase in public bills introduced and passed had occurred by the end of the Twelfth

FIGURE 2
TIME CONSUMED BY THE HOUSE AGENDA, 1789–1823



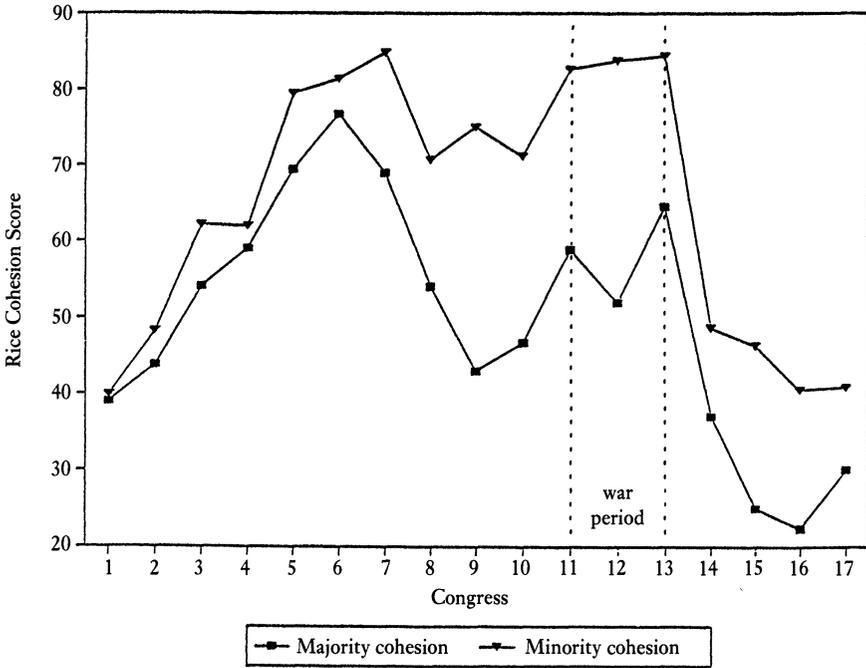
Source: *Congressional Directory*, One-Hundred Third Congress.

Congress—an increase in legislative business that, while possibly anticipated, could not yet have been experienced at the opening of the Twelfth Congress. Further, the amount of time in session actually declined slightly in the Eleventh Congress, before jumping by the end of the Twelfth. These trends suggest that striking increases in the size and scope of the legislative agenda had not yet occurred when changes to the previous question were adopted in the Eleventh and Twelfth Congresses.¹⁶ Marked increases in congressional activity appear to have followed, not preceded, changes in the previous question rule during the war period. The data therefore give little support for a theory of institutional change that links growing workload and time constraints to the adoption of restrictive rules.

To test the partisan hypothesis—whether partisan preference alignments covary with restrictive procedural choices—I assess several measures of partisanship for

¹⁶But note, members several years earlier had complained about time constraints on the floor in rejecting balloting for committee appointments, and the number of new standing committees increased during the period (McConachie 1898; Gamm and Shepsle 1989).

FIGURE 3
PARTISAN COHESION IN THE HOUSE, 1789–1823



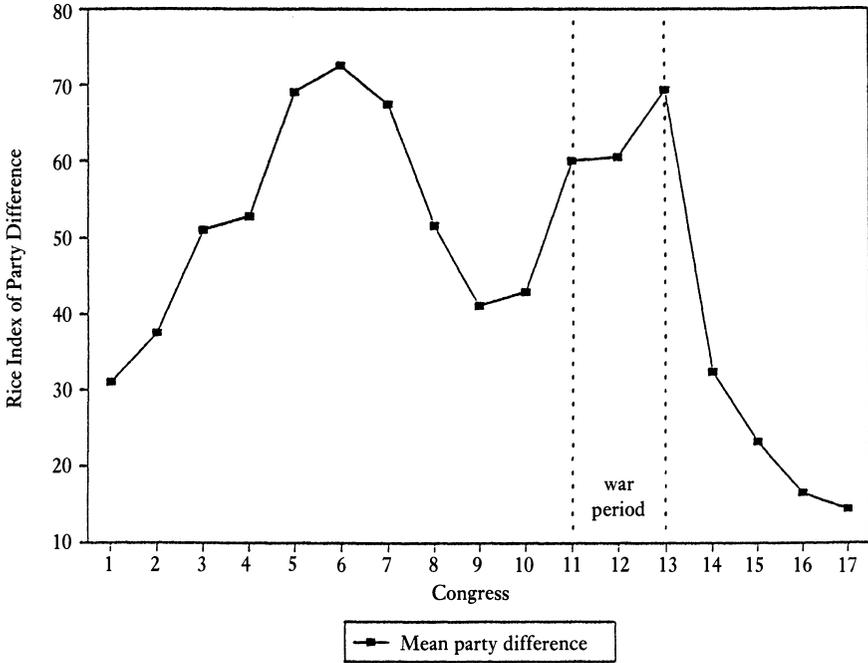
Source: See note 12.

the early Congresses. Consider trends in party cohesion (figure 3). Minority cohesion is consistently higher than majority cohesion throughout the early Congresses, although the two series roughly vary together. Further, mean minority cohesion rises from a Rice score of 72 to 84 between the prewar and war periods, falling to 44 after the war; mean majority cohesion also eases after the war, dropping from an average Rice score of 58 to 29.¹⁷

These trends hold up well when I look directly at party cohesion in the Eleventh Congress. Assessing their party’s internal cohesion at the close of the Eleventh Congress, members of both the majority and minority would find that their party’s cohesiveness had increased since the previous Congress. In short, the trends suggest that majority Republicans during the period of rules changes did face highly

¹⁷Differences in mean minority cohesion between the prewar and war, and between war and postwar, periods are statistically significant at $p < .01$. The fall in mean majority cohesion after the war period is statistically significant at $p < .01$. The prewar period is considered here as the Eighth through Tenth Congresses. Cohesion during the longer prewar period (First through Tenth Congresses) varies with intense partisan debate over relations with England and France in the late 1790s (Hoadley 1980; Formisano 1981), making the shorter prewar period a better comparison.

FIGURE 4
PARTISAN DIFFERENCES IN THE HOUSE, 1789–1823



Source: See note 12.

cohesive minorities. Clearly, holding two thirds of chamber seats in the Eleventh Congress and three fourths of seats in the Twelfth Congress, the majority party during the war period was not threatened by a loss of a working majority. Thus, the first condition regarding preference alignments is satisfied—individual members of the majority are likely to limit their own procedural rights when they belong to a cohesive coalition and face a cohesive opposition.¹⁸

Two coalitions, however, can be internally cohesive without having any sizable gulf between them. Hence, we also need to assess the distance between majority and minority parties. Figure 4 shows partisan differences over the early Congresses. Rising from an average Rice score of 45 to 63, mean partisan differences markedly increase between the prewar and war periods, and subsequently plummet to 22 after the war.¹⁹ These trends are also reflected in the change in mean

¹⁸As seen in figure 3, similarly high levels of minority cohesion appeared between the Fifth and Seventh Congresses as well. Later, I address important procedural differences between the two periods.

¹⁹Mean partisan differences between the prewar and war, war and postwar, and prewar and postwar periods are statistically significant at $p < .01$.

party difference between the Tenth and Eleventh Congresses: partisan differences surge significantly during the Eleventh Congress. Majority members at the close of the Eleventh Congress would clearly identify their relationship with the minority as intensely polarized. Although partisan differences remain steady across the Eleventh and Twelfth Congresses, at the start of the Twelfth Congress returning members would already have experienced the highly divisive politics of just months before.

Although the data thus far strongly indicate the coincidence of polarized voting alignments and restrictive procedural choice, no such procedural change occurred in the Fifth Congress (1797–1799) when partisan conflict over relations with Britain and France and the Alien and Sedition Acts under a Federalist majority peaked. As seen in figure 3 and figure 4, partisan cohesion and differences jump sharply in the Fifth Congress, as well as in the Eleventh. In addition, as noted earlier, the number of days in session and bills passed also rose during the foreign policy conflicts of the Fifth Congress. No change in members' procedural rights occurred at that time, however. Indeed, during the fight in the Eleventh Congress over changes to the previous question, Timothy Pitkin (F-Connecticut) raised this question as well:

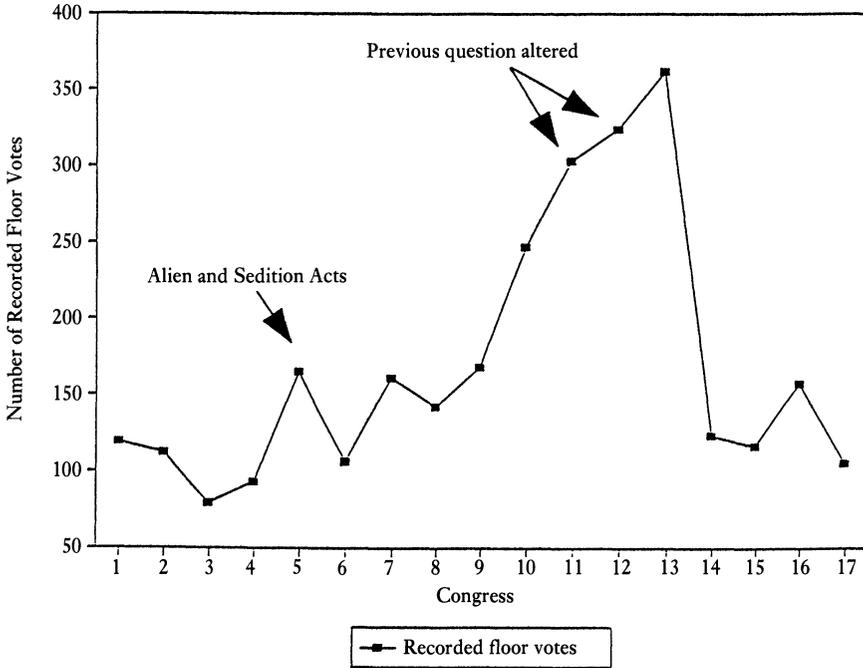
Why has it so happened that this necessity [for debate limits] has never existed until the last session of Congress? Was it then for the first time, that a division of sentiment appeared on this floor? Were not parties arrayed against each other in . . . 1798–9 on the question of a war with France? (*Annals of Congress*, 1811, 11th Cong., 3rd sess., 580, 23 December)

Although the *Annals of Congress* infer that no one responded to Pitkin, several differences between the Fifth and Eleventh Congresses suggest an answer to his question. Despite similarly high levels of intraparty cohesion and interparty differences, floor proceedings in each period were significantly different. Consider overall levels of floor activity in the First through Seventeenth Congresses (figure 5). As measured by the total number of recorded floor votes, far more time was consumed by recorded roll calls during the War of 1812 period than during the Congress that passed the Alien and Sedition Acts.²⁰ Partisan differences in the war period appear to have had a different procedural impact than they did during the Fifth Congress. Indeed, the data suggest that the majority would have been far more taxed in pursuing its floor agenda in the later period.

The total number of floor votes, of course, does not provide much insight into the nature of minority floor strategy. One relevant element of floor proceedings would be the amount of time consumed by purely obstructive motions by the minority. If much of the increase in floor voting activity during the war period was consumed by purely obstructive motions, there would be a strong incentive for the majority to choose restrictive floor rules at that time. Obstructive floor motions (as measured by dilatory motions to adjourn) did indeed peak in the Eleventh

²⁰Total number of recorded floor votes are counted from the ICPSR code books for each Congress.

FIGURE 5
LEVELS OF HOUSE FLOOR ACTIVITY, 1789–1823



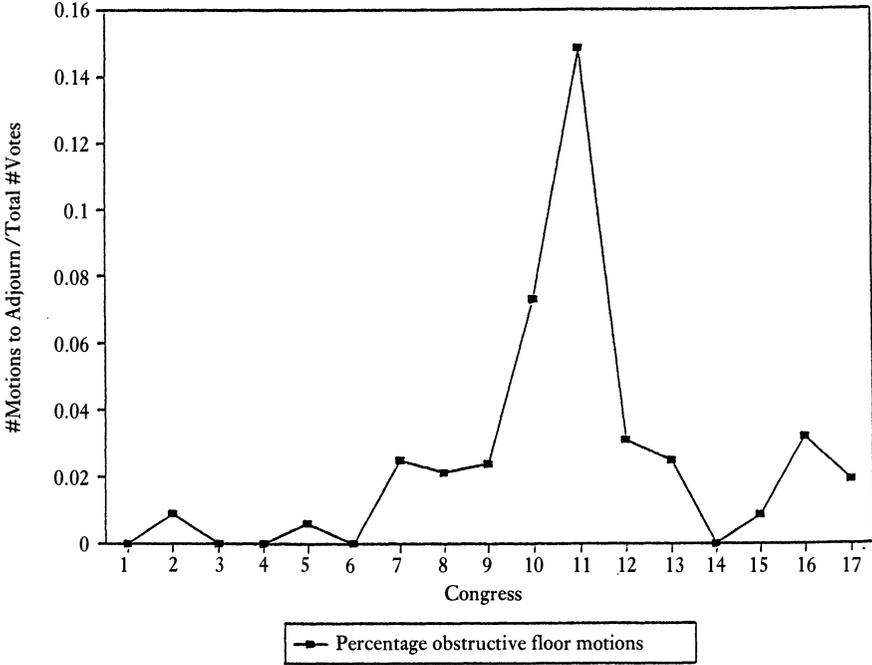
Source: Inter-University Consortium for Political and Social Research, File 0004, First through Seventeenth Congresses.

Congress, reaching almost 15% of all floor votes (figure 6).²¹ In contrast, in the Fifth Congress, barely 1% of voting was consumed by such obstruction. Aggregate partisan measures then tend to obscure procedural differences between the two periods.

Indices of partisan and procedural trends thus together suggest that the most severe threat to the majority in the Eleventh Congress was an obstructing and time consuming minority. Despite the similarity in partisan trends in the Fifth and Eleventh Congresses, the minority appears to have chosen a far more obstructive strategy in the Eleventh Congress—leading the majority to curtail minority procedural rights during the height of debate over the war. Indeed, such an

²¹Before the limits on dilatory motions made in the late nineteenth century, motions to adjourn were routinely used by the minority to prevent the majority from taking further action on its agenda. In counting motions to adjourn from the ICPSR code books, I exclude motions to set a future time of adjournment, since these motions were often used by the majority as a scheduling tool.

FIGURE 6
OBSTRUCTIVE HOUSE FLOOR MOTIONS, 1789–1823



Source: ICPSR, File 0004, First through Seventeenth Congresses.

interpretation focusing on floor conflict, rather than on levels of floor activity, is reflected in Cooper’s (1962) portrayal of the night the speaker was overruled in 1811: “. . . the nearness of the end of the session, and the series of abuses the House had sustained combined to exhaust even its great capacity for patience” (10n).

Preferences and Procedural Choice

Although aggregate measures suggest a high correlation between partisan preferences and rights suppression, a closer look at the procedural votes cast is necessary to decipher better the relationship between preference alignments and procedural choice. In particular, the partisan hypothesis suggests that majority members would vote for restrictive procedures under conditions in which they found themselves unable to secure their policy preferences. We should expect then in the Eleventh and Twelfth Congresses, when members voted to suppress minority rights, to find members’ procedural choices highly correlated with policy choices made concurrently. In this section, I focus on three procedural votes affecting the previous question from the Tenth through Twelfth Congresses.

TABLE 1

VOTING TO SUSTAIN THE SPEAKER'S RULING ON THE PREVIOUS QUESTION MOTION BY VOTING TO REFER A PETITION TO REPEAL TRADE RESTRICTIONS, TENTH CONGRESS, 1807

	Vote	All Members Refer Petition ^a		Majority Members Refer Petition	
		Yes	No	Yes	No
Sustain speaker ^b	Yes	1 (10%)	9 (90%)	1 (11%)	8 (89%)
	No	45 (51%)	44 (49%)	26 (38%)	43 (62%)

Note: Table shows count (row percentage). All members: Pearson's $r = -.24$, chi-square significant at $p < .01$; Majority members: chi-square not significant.

^aA "yes" vote is in favor of lifting trade restrictions against Britain; a "no" vote is opposed (ICPSR variable 32).

^bA "yes" vote is in favor of using the previous question motion to suppress debate; a "no" vote is in favor of protecting extended debate (ICPSR variable 30).

Tenth Congress. The vote in 1807 overturning the speaker's interpretation of the previous question rule confirmed the House's opposition to imposing debate limits on its members. On that vote, every minority Federalist voting and 85% of majority Republicans voting opposed debate limits. When the vote on the previous question was taken, the pending issue was whether to refer the Philadelphia Memorial to the Committee of the Whole—a petition from Philadelphia merchants calling for repeal of a commercial nonimportation act. Those favoring referral wanted to repeal trade restrictions against England; those opposed to referral favored keeping restrictions in place (*Annals of Congress*, 1807, 10th Cong., 1st sess., 1178–1188, 15 December). On the procedural vote, 95% of Federalists supported referral and two thirds of Republicans were opposed. Cross-tabulating all members' positions across the two votes shows that 90% of those voting to sustain the speaker and suppress debate also voted against referring the repeal petition (left side of table 1). However, those voting to overrule the speaker and protect debate split evenly across the policy question. Focusing only on Republicans' positions across the two votes (right side of table 1), 89% of those favoring debate limits opposed referral, while 62% of those opposed to debate limits also opposed referral. A test of independence for the two votes fails to show a statistically significant relationship.

The pattern of votes across the two questions suggests that in the prewar period, the relationship between procedure and policy preferences was imperfect. For the minority, policy preferences were almost uniformly aligned with procedural choice. Fearing that debate limits would cost them their chance at promoting their policy interests—interests narrowly aligned with the British—Federalists saw procedural rights as necessary to fighting for their policy preferences. For the majority Republicans, however, the connection is less clear. Intense policy interests clearly shaped procedural choices for a minority of the majority. The relationship of

policy to procedural interests for the rest of the majority, however, is much weaker suggesting that those members likely lacked a strong enough policy stake in the pending issue to manipulate the rules in their interest. With a divided majority, many majority members also were likely unwilling to limit their own future opportunities for dissent.²² Such an interpretation is supported by the relatively low level of party differences for the Tenth Congress and the prewar period. In a period of less intense partisanship, majority members appear to have been more willing to protect the rights of the minority.

Eleventh Congress. When partisanship heats up in the buildup to war, we should expect a tighter correlation between procedural and policy choices. Indeed, it is precisely party interests to which John Stanly (F-North Carolina) called his constituents' attention in the Eleventh Congress: "Dominance of party spirit . . . rejects every proposition coming from the minority in Congress. . . . The existence of this baleful party jealousy is strikingly obvious. . . ." ²³ With seven days left at the close of the Eleventh Congress, majority Republicans feared they would lose their fight to pass an embargo bill restricting commerce with Britain. Recounting the event after the war, William Gaston (F-NC) noted that a night session was held to finish completion of the bill; unless the majority found a way to limit minority obstructionism, the bill would fail (*Annals of Congress*, 1816, 14th Cong., 1st sess., 713, 19 January). This time, the majority overruled the speaker's ruling on the previous question motion, setting the precedent that approval of the previous question brings an immediate vote on the main question. A vote to interdict commerce with Britain soon followed and passed.

On the procedural vote, all minority Federalists voted to sustain the speaker and protect extended debate; 93% of Republicans voted to overrule the speaker and revise the previous question to suppress debate. On the policy vote that followed, all Federalists voted against the bill, and 93% of Republicans voted in favor. Cross-tabulating the two votes for all members (left side of table 2) suggests that members' procedural choices were nearly perfectly aligned with their policy preferences. All minority Federalists opposed debate limits and opposed the embargo bill (middle of table 2); 98% of Republicans favoring debate limits also favored the bill (right side of table 2). Facing a cohesive minority in a period of increasing partisan differences, majority policy preferences dictated the course of procedural outcomes.²⁴

²²Note also that the motion appealing the speaker was made by John Randolph (R-Virginia). Given that he was ideologically closer to the Federalists, his position opposing debate limits might have spurred some fellow Republicans to oppose his motion.

²³"From John Stanly," 10 May 1810, in Cunningham (1978, 730).

²⁴Rates of abstention on the procedural and policy votes, however, were 77% and 78%, respectively, for the minority but only 22% and 24% for the majority. In comparison to the previous votes that day (on which minority abstention averaged 36%), there appears to have been some nonrandomly distributed abstention. However, given that the procedural challenge occurred after 2 A.M. and appears to have been unexpected by the minority (Alexander 1916, 186), it seems reasonable that minority voting

TABLE 2
 VOTING TO SUSTAIN THE SPEAKER'S RULING ON THE PREVIOUS QUESTION
 MOTION BY VOTING FOR PASSAGE OF A TRADE EMBARGO BILL,
 ELEVENTH CONGRESS, 1811

	Vote	All Members Trade Embargo Bill ^a		Minority Members Trade Embargo Bill		Majority Members Trade Embargo Bill	
		Yes	No	Yes	No	Yes	No
Sustain speaker ^b	Yes	1 (9%)	10 (91%)	0 (0%)	7 (100%)	1 (25%)	3 (75%)
	No	63 (98%)	1 (2%)	0 (0%)	0 (0%)	63 (98%)	1 (2%)

Note: Table shows count (row percentage). All members: Pearson's $r = -.89$, chi-square significant at $p < .001$; Majority members: Pearson's $r = -.73$, chi-square significant at $p < .001$.

^aICPSR variable 270.

^bA "yes" vote is in favor of protecting extended debate; a "no" vote is in favor of using the previous question motion to suppress debate (ICPSR variable 269).

Interestingly, the shift among Republicans from the Tenth to Eleventh Congresses was due to both a conversion of returning members and the infusion of new ones. Of the 26 newly elected Republicans in the Eleventh Congress who cast a procedural vote, 25 supported suppressing debate. Of the 38 returning Republicans who cast the procedural votes in both Congresses, 30 converted from opposing to supporting suppression. Increased Republican unity—stemming from both new and old members—thus contributed to the party's conversion on the previous question, further supporting the partisan hypothesis.

Twelfth Congress. The new use of the previous question was formally adopted into House rules at the start of the Twelfth Congress in December 1811. The only recorded roll call was on an amendment to weaken the rule by guaranteeing every member a chance to speak on the floor after approval of the previous question. The expected partisan division over the amendment prevailed, with all minority Federalists in favor and 94% of majority Republicans opposed. As in the previous Congress, members' views about procedural rights reflect their views about policy. Voting to declare war against England in June 1812, members divided along partisan lines, with every Federalist opposing war and 84% of Republicans in favor. Cross-tabulating the policy and procedural votes highlights the correlation between the two choices, with a test of independence rejected (table 3). Again, procedural choices reflected preference alignments at the height of debate over the nation's foreign policy.

was so low. The majority, in contrast, had a much greater incentive to be present to ensure passage of the heretofore obstructed war measure, as suggested later by Rep. Gaston. When the minority challenged the new interpretation of the previous question rule several days later, minority and majority abstention were similar at 31% and 27%, respectively.

TABLE 3
 VOTING TO WEAKEN THE PREVIOUS QUESTION MOTION BY VOTING TO
 DECLARE WAR AGAINST BRITAIN, TWELFTH CONGRESS, 1812

Vote	All Members Declare War against Britain ^a	
	Yes	No
Weaken previous question ^b	3 (12%)	23 (89%)
	60 (86%)	10 (14%)

Note: Table shows count (row percentage). All members: Pearson's $r = -.69$, chi-square significant at $p < .001$.

^a ICPSR variable 224.

^b A "yes" vote is in favor of weakening the previous question rule to protect extended debate; a "no" vote is in favor of using the previous question motion to suppress debate (ICPSR variable 38).

A COMPARISON WITH THE SENATE

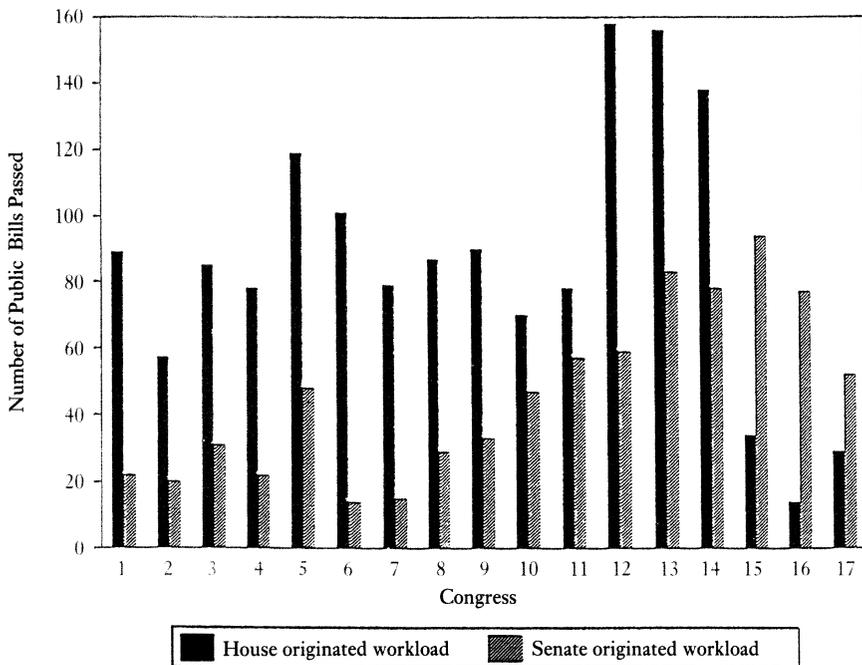
The conventional wisdom about the development of the House and Senate is, of course, a comparative argument: a swiftly growing House required restrictive rules, while the smaller size and agenda of the Senate fostered unlimited debate in the Senate. Indeed, in the Ninth Congress in 1806, the Senate eliminated the previous question motion from its rules. Although the rule had not been used to limit debate, its relatively infrequent use apparently led the Senate to drop it during a general housekeeping of its rules (Cooper 1962). Thus, just as the House was moving to restrict debate, the Senate had already eliminated its only potential means for bringing debate to a close.

The divergent paths taken by the House and Senate provide an additional arena for testing the relationship between policy and procedural preferences. If emerging partisanship dictated the timing and choice of restrictive rules in the House, we might expect that the Senate's move to eliminate debate restrictions was also driven by a particular configuration of policy preferences. First, we should find that low levels of partisan differences prevailed when the Senate eliminated the previous question. Second, we should find that preferences during the period were less sharply polarized in the Senate than in the House. If debate over policy was much less intense in the Senate, there arguably would be fewer incentives for the minority to obstruct and little reason for the majority to re-adopt a previous question rule. In theory then, preferences would dictate one procedural avenue for the House and another for the Senate.

Before examining Senate voting alignments, I first assess legislative activity in the two chambers by comparing the number of public bills originating in and passed by each chamber.²⁵ House workload clearly outpaced the Senate's for the

²⁵ All bills considered in the House are distinguished by origin in the indices to the House *Journal*.

FIGURE 7
COMPARISON OF HOUSE AND SENATE WORKLOAD, 1789–1823



Source: *House Journal*, First through Seventeenth Congresses.

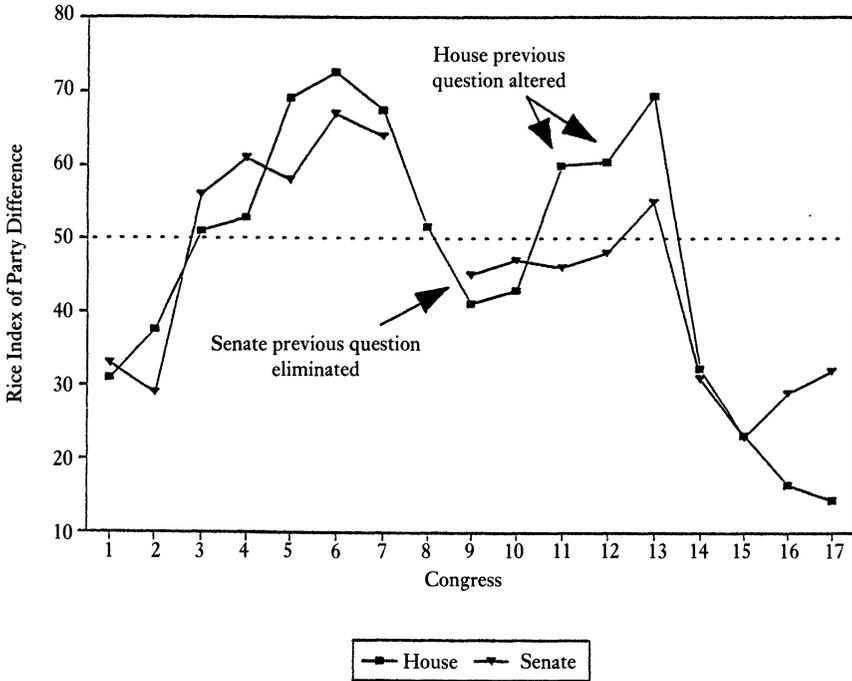
first 14 Congresses (1789–1817) (figure 7). Indeed, by the Ninth Congress when the previous question motion was dropped from Senate rules, House legislative activity over the prior eight Congresses had exceeded Senate activity by, on average, nearly three to one. When the House altered the previous question rule in the Eleventh Congress, Senate activity had increased markedly, but House activity continued to exceed the Senate’s for the rest of the war Congresses.²⁶

I now consider voting alignments in the Senate during the war period, comparing House and Senate party difference scores (figure 8).²⁷ When the Senate eliminated the previous question in 1806, partisan differences were muted, having declined precipitously since the foreign policy crises at the end of Federalist rule in the late 1790s. Coupled with relatively low demands on the Senate, low partisan

²⁶The data confirm general assessments of early Senate activity (see, for example, Stewart 1992, 86).

²⁷Senate Rice party difference scores were calculated by the author from ICPSR roll-call data, File 0004, based on party affiliations reported in Martis (1989). Roll-call data for the Eighth Congress are indefinitely unavailable from ICPSR.

FIGURE 8
COMPARISON OF HOUSE AND SENATE PARTISAN DIFFERENCES, 1789–1823



Source: See notes 12 and 27. Eighth Senate data indefinitely unavailable from ICPSR.

differences likely fostered little need for managing the flow of debate. Moreover, partisanship remained relatively muted through much of the ensuing war period. Not until the Thirteenth Congress in 1813 did differences between majority and minority party coalitions rise. Still, the mean party difference during the war period remained just less than 50%. Thus, Senate coalitions did not appear to diverge strongly over wartime policy, arguably making re-adoption of a previous question rule unnecessary in the Senate. Indeed, as noted by Cooper (1962), “it may well be argued that it would have taken at least as severe a set of experiences as the House underwent before the Senate would have allowed cloture to be imposed on its minorities . . .” (9).

Although a much smaller Senate membership likely also reduced demand for managing the flow of Senate business, preference alignments appear to have helped to launch the two chambers down separate procedural paths. The Senate’s early procedural decision in fact had lasting consequences. With the previous question eliminated, the impact of any subsequent increases in Senate partisanship would in

theory be strongly diluted: a simple though cohesive majority would no longer be able to suppress minority rights. Indeed, senators defeated several efforts to create a previous question rule later in the nineteenth century, forestalling any restrictions on minority rights until another world war in 1917. In sum, it seems difficult to account for early institutional change in either chamber without recognizing the influence of partisan alignments.

CONCLUSIONS

Conventional explanations of early debate limits in the House portray rules changes as widely accepted, rational responses to an expanding workload and membership and to occasional maverick obstructionists. Yet members of the House did not share such a view. In 1816, after conflict over the war had disappeared, William Gaston (F-North Carolina) proposed on the floor to drop the previous question motion from House rules. Arguing that the passing of wartime partisanship eliminated the need for restrictive rules, Gaston urged his colleagues to restore the rights of the minority:

In the bustle of incessant action, in the animated contests of parties, goading and goaded by each other, in the paroxysms of political fever, these principles [of the minority's right to be heard] will be forgotten. It is prudence, it is duty, to avail ourselves of a season when passion is lulled and reason is free to act, when the preternatural excitement has abated; to review past errors and guard against their recurrence. The rule in question ought not to exist. No majority should be trusted with it. (*Annals of Congress*, 1816, 14 Cong., 1st sess., 718, 16 January)

Gaston suggests that members were well aware of the link between policy and procedural choice. According to the minority, democratic institutional norms were threatened by the emergence of partisanship during the war period.²⁸ But Speaker Henry Clay (DR-Kentucky) disagreed—defending the previous question partly because “the majority had the power to make [it], and therefore were right in making [it]” and partly because “the public interest required it . . . [and] the abuse of debate rendered it expedient” (*Annals of Congress*, 1816, 14 Cong., 1st Sess., 698–99, 16 January).

Clay and his party majority prevailed. Gaston had urged the majority to eliminate debate limits because

at this moment no one can confidently pronounce whether before this Congress closes he will be found among the majority or minority of the House. . . . The victims of oppression should disdain to become its instruments; the possessors of arbitrary power know not how soon they may be compelled to feel its injustice. (*Annals of Congress*, 1816, 14 Cong., 1st Sess., 718, 16 January)

Of course, the Federalist party had all but disappeared by the following Congress, making improbable that the Republicans would fall into the minority. With the demise of the Federalists, neither did majority Republicans likely believe that a

²⁸The impact of bitter partisanship was evident to members of the majority as well, as noted by Rep. Israel Pickens (R-North Carolina) in a letter to constituents: “The political division among us . . . still continues to weaken the public energies” (Cunningham 1978, 860).

cross-party coalition could emerge to demand procedural concessions—a condition that often leads the majority to create minority rights (Binder 1995). Not only did the Republicans refuse to relent on the previous question rule, but—as shown in detail by Gamm and Shepsle (1989)—Clay continued to build a system of standing committees to hold together the Republican coalition after the war.

Changes in rules allocating parliamentary rights thus appear to reflect partisan calculations by the majority party. For the early House, such calculations demanded suppression of the minority when partisanship and obstruction peaked—even in a period before organized parties were established. Most importantly, procedural choices in the early House and Senate outlasted the preference alignments that first shaped them. With low levels of party conflict after the war, majority members should have had little incentive to oppose minority efforts to eliminate the previous question rule. Yet preference effects in House and Senate rules were durable, suggesting that preferences can change without a corresponding shift in procedural outcomes. Such durability of institutional arrangements is important. Long before party-based rules appeared in the chamber, partisanship shaped a central aspect of House procedure. Indeed, the ability of future partisan majorities to alter other rules to their advantage hinged on prior changes to the previous question in a preparty era. Although partisan majorities in the nineteenth century may have felt vulnerable to obstructing minorities, those majorities benefited from procedural legacies written into House rules. Preference effects in Senate rules, of course, had a very different impact. Far from institutionalizing majority rule, they entrenched the rights of minorities long after the original set of preferences prevailed in the Senate. Having eliminated a potential means of cutting off debate, it took over a century until extraordinary circumstances in 1917 helped provoke the Senate to alter its rules. Although institutional choices may appear susceptible to the majority-rule instability experienced over policy choices (Riker 1980), inherited rules arguably alter the character of subsequent procedural battles.

The previous question case then has important implications for theories of institutional change. First, it suggests the power of the partisan theory to account for procedural change, even in a nominally preparty era. Changes in the level of demands on the House and Senate seem only remotely related to the choice of restrictive rules. Instead, changes in the partisan character of voting alignments appear to shape early procedural choices. The next step in testing the partisan theory is to assess its fit to subsequent change in procedural rights in both chambers.²⁹ Second, the aftermath of the adoption of the previous question suggests that there are lasting preference effects in both House and Senate rules. Procedural choices made for partisan reasons persisted long after the original partisan motivation had passed; choices made in the Twelfth Congress about the previous question rule continued to affect deliberations over policy and procedure in the following decades. Subsequent procedural choices then were driven not simply by contemporary

²⁹See Binder (1995), Dion (1991), and Fink and Humes (1992).

preferences, but also by rules selected and maintained by majorities in the preparty era; “the particular sequence of events,” in other words, “is consequential What outcome occurs depends upon the historical path” (Aldrich 1994, 229–30). The previous question case, in sum, suggests the need to integrate inherited institutional choices into theories of institutional change—assessing the joint effects of contemporary preferences, external demands, and inherited rules.

Manuscript submitted 25 July 1994

Final manuscript received 1 November 1994

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