

Analyzing Institutional Change:
Bill Introduction in the Nineteenth Century Senate

Joseph Cooper
Johns Hopkins University
and
Elizabeth Rybicki
University of Minnesota

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In the nineteenth century procedures for the introduction of bills in Congress underwent a profound transformation. Over many decades bill introduction in both the House and the Senate evolved from a process in which bills were introduced by committees into one in which bills were introduced by individual members. This evolution has much to teach us, despite the mundane character of bill introduction procedures. These procedures constitute a necessary and important component of the overall system by which each house processes its workload. They thus affect and are affected by other components of the system---the role of committees in receiving and preparing business for floor consideration, the manner in which the access of business to the floor is regulated, and the processes of debate and amendment on the floor. The evolution of methods of bill introduction is thus an integral part of the institutional development of both the House and Senate. As a consequence, an analysis of the similarities and differences in the evolution of these procedures in the Senate, as compared to the House, provides a lever for identifying the distinctive character of the Senate as a political institution. Equally important, it provides a lever for comparing and assessing conflicting approaches to explaining institutional change in legislatures.

With these benefits in mind, this chapter examines the evolution of bill introduction in the Senate during the nineteenth century and asks two sets of questions. The first set relates simply to the character of change----- how did procedures for bill introduction evolve in the nineteenth century Senate and what similarities and differences exist between Senate experience and House experience? The second concerns the explanation of change----- why did procedures change in the Senate and how can the similarities and differences with the House be explained? In sum, what we wish to do is to trace the evolution of bill introduction in the Senate as compared to the House, and then use this experience to draw some conclusions regarding the distinctive character of the Senate as a political institution and the relative merits of three approaches to explaining legislative change that are prominent in the scholarly literature-----those based on party, self interest, and context.

However, before we begin there is a caveat that must be noted. Although the results of evolution are the same for both public and private bills in the House and Senate, the process by which private bills evolved from committee bills to member bills varied substantially from that of public bills and differed in the two bodies. We shall therefore focus our analysis on public bills both because we cannot give both types of bills the extended treatment they require and because arguably public bills are

the more important ones. As necessary and appropriate, however, we will provide some basic information on the evolution of methods of introducing private bills in our tables and in notes to the text.

I. The Evolution of Bill Introduction in the Senate

We divide our analysis of the evolution of bill introduction into three periods. The first is the period from 1789-1825. This is the period of the first party system, and the period in which standing committee systems emerged in both the House and Senate (Cooper, 1970 and Canon and Stewart, 2001). The second is the period from 1825-1861. This is the period of the second party system, and the period in which the Senate transformed itself into the premier legislative institution at the national level (Riker, 1955 and Swift, 1996). The third, and last, is the period from 1861-1897. This is the period of the third party system, and it is the period in which many of the key institutional features of the modern Congress from the Rules Committee to unanimous consent agreements to party policy or steering committees became prominent components of the decision making process (Binder, 1997 and Gamm and Smith 2000 and 2002).

The Early Decades: 1789-1825

The original procedures for introducing bills in the House and Senate were quite different than they are today. They were based on a very pristine view of the needs of representative government and reflected very different conceptions of what constituted proper or legitimate methods of legislating. Although not destined to endure, the prevailing notion during the early decades of government under the Constitution was that the principles of policy should be settled by the legislature as a whole before business was referred to select or standing committees. The rationale for this belief, rediscovered by modern rational choice theory, was that prior arrangement by committees would constrain and influence results. Thus, for many members in the early Congresses prior arrangement of the business by committees was something best avoided. In their eyes the inevitable consequence would be to undermine the ability of the whole both to control the parts and to engage in the type of deliberation necessary for government in the public interest. Nor was this belief the only prime tenet of early notions

of lawmaking. In the Senate, and even more in the House, bills were considered "inchoate law". They were therefore not regarded as properly introducible solely on the authority of an individual member or committee, again because of the distorting effects attributed to prior arrangement. Rather, the prevailing conception was that bills should be introduced only with the consent of the chamber and preferably after the principles of action had been settled (Harlow, 1917 and Cooper, 1970).

The impact of these beliefs is clearly evident in the rules and practices of the first several Congresses. Business was initiated through the introduction of subjects, in the form of resolutions, petitions, and messages. In important areas of policy, subjects, so introduced, were usually first discussed by the entire body before being referred to a select committee in the Senate or to a select or one of a small number of standing committees in the House. In addition, the rules of both houses stipulated that bills could only be introduced with the permission of the chamber and that motions by individual members to do so had to lay over for a day. The House rule, moreover, was more stringent with respect to introduction by members than the Senate rule. It required that motions made by members for leave or permission to bring in a bill, even when approved, had to be sent to a committee to frame and bring in the actual bill (Cooper, 1970, Swanstrom, 1985, and Cooper and Young, 1989).

However, control of the initial consideration of important business by the membership as a whole began to erode even before 1801 and could not long be sustained. This was particularly true in the Senate whose small size made it less inclined to differentiate the committee of the whole from the floor as the proper place to deliberate on the principles of action and less hesitant to rely directly on smaller committees. The rate at which proceedings on the floor or in committee of the whole with respect to important subjects were transformed into mere conduits for reference to smaller committees thus differed in the two bodies as did the development of standing committees. Nonetheless, by Madison's first term as President (1809-13), what had long been true in minor areas of business had become the prevailing practice in major areas as well. In both houses important subjects were generally referred first to smaller committees with no or only pro forma consideration by the membership as a whole. Equally important, the triumph of smaller committees as agents of first reference was closely accompanied by the triumph of standing committees over select committees as the form of smaller

committee relied upon by each house for the initial consideration of business. In both houses by 1817 committees that were standing either by rule or continuing appointment dominated select committees in the receipt of business from the chamber. Last, but not least, in both houses by 1817, such committees by rule or resolution were given the power to bring in bills at their own discretion on all subjects referred to them. As in the case of reference, reluctance to grant bill power to smaller committees was from the beginning largely restricted to major business and less strong in the Senate than the House. Nonetheless, it eroded in both as the initial consideration of important subjects by the chamber as a whole became a formality and as standing committees became the predominant form of committee to which business was referred. The result within a brief period of time was to destroy the original rationale for withholding bill power from smaller committees. What the triumph of standing committee system signaled and involved was a profound change in conceptions of the proper nature of the law making process. Traditional norms that prized members as generalists and regarded committees with suspicion were replaced by new norms that prized members as specialists and encouraged deference to standing committees. Providing them with discretionary bill power thus increasingly appeared to be the most reasonable and efficient way to legislate, and in the House became common practice several years before being formally added to the rules (Cooper, 1970, Cooper and Young, 1989 and Canon and Stewart, 2001).

Given the rules and practices of both houses in these decades, committee bills were the dominant vehicle for framing and advancing public legislation both before and after the rise of standing committee systems.¹ In the House virtually all public bills were introduced by committees. As noted, the rules made the introduction of member bills exceedingly cumbersome and there were very few instances of attempts by members to challenge or transform existing procedure. Both before and after the rise of the standing committee system House members rather relied on motions or resolutions to refer major business to smaller committees and these altered in form as the role of the committee of the whole in first reference declined. As part and parcel of increased reliance on smaller committees, referrals to them began to take the form of resolutions instructing them to inquire into the expediency of acting in a certain manner, not resolutions instructing them on the content of what they were to report and/or to

bring in a bill, as was typically the case when the desirability of action was first decided in committee of the whole. Moreover, such resolutions became more detailed as the standing committees emerged, enlarged their control over the first reference of subjects, and gained discretionary bill power (Cooper, 1970 and Cooper and Young, 1989). In the Senate committee bills also were the primary means relied upon for introducing public legislation and, as in the House, resolutions referring important subjects to smaller committees for inquiry became more prevalent with the passage of time and more detailed once a standing committee system had emerged and gained discretion to introduce bills on all subjects referred to them. However, in contrast to the House, Senate rules made member bills a viable option. Member public bills were thus present from the start, attained sizeable proportions even before the emergence of a standing committee system, and did not decline relative to committee bills even after the Senate in 1816 in one fell swoop amended its rules so as to establish twelve standing committees and give all standing committees bill power. See Table 1. Nonetheless, the restrictions in the rule governing bill introduction were operative. On occasion, especially in the first few decades, members were challenged on the floor when they sought permission to introduce a bill or to waive the requirement for a day's notice (Swanstrom, 1985).

The Senate, however, did lag behind the House in extending and refining its rules so as to smooth the conduct of business more generally. In 1811 the House began the process of turning the previous question into an effective method of cloture and in 1822 adopted a general germaneness rule in place of the limited germaneness provision in its original rules. It also began in 1812 to define an order of business in its rules, further elaborated it in 1822, and at the same time raised the requirement for suspending the rules to two-thirds in order to protect their ability to regulate business on the floor (Tieffer, 1989 and Binder, 1997). In contrast, the Senate eliminated its previous question rule, did not adopt a general germaneness rule, and declined to write the rudimentary order business that it followed in practice into its rules. However, it did change its rules to give precedence to the unfinished business (McConachie, 1898).

The Growth of Member Bills, 1825-1861

In this period member public bills became predominant in both houses.² In the Senate the

percentage of such bills at first increased steadily from the levels attained in the 1820's, fell back briefly in the mid-1840s, but then resumed its upward climb. As a result, by the mid-1850's 70% of public legislation was introduced by members, not committees. In the House interest in member bills intensified in the late 1820's and 1830's and led to two important rules changes. In 1837 the House reformulated its original bill introduction rule to give members, with the permission of the House, power to introduce bills on their own initiative and to protect the authority of standing committees to receive such bills once introduced. The new rule thus made member bills a viable option for the first time in the House's history, but also sought to insure that this new mode of bill introduction would not be used as a vehicle for bypassing the standing committees. In 1838 a second rules change provided additional time in the order of business for members to introduce bills (Cooper and Young, 1989). Once these changes occurred, the percentage of member public bills accelerated. The end result was that by 1861 the level of reliance on member public bills matched that of the Senate---71%, despite a far slower start. See Table 2.

However, such convergence was limited to bill introduction. The House continued to outpace the Senate in refining its rules regarding the conduct of business. During this period the House perfected the previous question as an instrument of cloture on the floor, adopted a rule limiting speeches both on the floor and in committee of the whole to an hour, and passed a rule limiting debate on amendments in committee of the whole to five minutes. In addition, the House continued to elaborate its order of business, regulating the times at which different classes of business could be reached and limiting opportunities for debate on procedural matters, including the introduction and reference of bills (Cooper and Young, 1989 and Binder, 1997). The Senate did far less in all these regards. Though the filibuster became a problem for the first time in its history, attempts to institute a previous question and an hour rule were withdrawn before a vote in the early 1840's and renewed support for a previous question rule was stymied in the early 1850's. Similarly, the Senate in the early 1850's voted down attempts to limit debate on motions to consider and to allow amendments to be tabled without affecting the underlying bill (Binder, 1997 and Binder and Smith, 1997). Nor did the Senate rethink its position on germaneness, despite the problems that lack of control over debate and amendment were beginning

to cause. The Senate did finally incorporate an order of business in its rules, but a less detailed one than prevailed in the House. It also sought to prioritize access to the floor when multiple special orders authorizing bills to be considered on a particular day created conflicts (McConachie, 1898). However, the less restrictive procedures of the Senate and the lack of any stringent limitations on debate and amendment preserved ready and flexible access to the floor for all Senators, allowing them to continue to pursue and protect their own agendas.

As a consequence, the power of the individual member remained strong in the Senate. The power of the standing committees did increase since they constituted the prime locus for policy leadership and the chairs of the important committees were, in the absence of a Speaker and any party apparatus past a caucus system for choosing committees, the prime party leaders in the Senate (Gamm and Smith, 2002). However, committee power and party power were checked by the role and prerogatives of the individual member. Indeed, soon after the Senate in the mid- 1840's established the current system of choosing committee members by party lists, seniority norms strengthened and became difficult to challenge (Kravetz, 1974). Overall, the Senate remained a body that worked by mutual consent with substantial regard for the power of the individual member. It therefore relied by necessity on the forbearance and courtesy of individual Senators to conduct and advance its business. In contrast, in the House the increased elaboration of the rules, both by regulating access to the floor and by limiting debate, served to enhance the power of committees and, to a lesser degree the Speaker, at the expense of the ordinary member. Nor was the enhanced power of committees accompanied by increased strength in seniority norms as was true in the Senate. Rather, seniority considerations were clearly subordinated to the needs of party and the Speaker (Price, 1977). As a result, by the 1850's the individual member in the House had far less status and power than his predecessors in the 1790's or even the 1820's. Indeed, even the new prerogatives members gained in bill introduction did little to stabilize or extend their influence. The power of committees was protected by the rule that redefined the bill introduction procedure, by related rules changes in 1837 and 1838 that barred debate on the introduction of member bills and resolutions, and, in a body of several hundred members, by the confinement of member bill introduction to limited hours during certain days. Nonetheless, the individual

member was still far from a captive of the Speaker or powerful committee chairs. Under the rules members still had the power to discuss the reference of bills and resolutions, to move substantive resolutions on the floor, to speak freely and at length in committee of the whole, and to obstruct action through a variety of dilatory tactics and motions. Equally important, the agenda powers of the Speaker and committee chairs were minimal. As a result, they often had to depend on mechanisms, such as suspension and unanimous consent, whose difficulty in implementation preserved the power and independence of the individual member (Cooper and Young, 1989, King, 1997, and Binder, 1997).

The Triumph of Member Bills: 1861-1897

In the decades that followed 1861 reliance on member bills in areas of public legislation continued to expand. By the 1880's members introduced virtually all public bills in both the House and the Senate.³ See Table 3. Equally important were the changes in procedure that were associated with the triumph of member bills. In the House the 1880 rules changes not only removed the historic requirements for permission and one day's notice, but also totally barred debate on the referral of bills. In fact, of course, the requirements for permission and notice had long been mere formalities, and opportunities for debate when bills were referred had been limited in practice for several decades. In the 1890 rules changes introduction and reference were taken off the floor, and the basic framework of modern procedure established. Whatever the gains in efficiency, this step foreclosed the opportunity even to propose alternative forms of reference and for all practical purposes made reference entirely subject to the Speaker's interpretations of the rules and precedents of the House (Cooper and Young, 1989).

In the Senate procedural change was far less sweeping. The 1877 rules changes barred debate on member bills until referred and reported, but nonetheless allowed them to be objected to and placed directly on the calendar. The 1884 rules changes eliminated the requirements for permission and one day's notice. As in the House, such changes brought the rules into conformity with what had long been governing practice. In contrast to the House, however, the revised 1884 rules, nonetheless, provided that the introduction of a member bill, if objected to, had to be postponed for a day. More important, they did not alter the historic provisions in the rules that required bills to be introduced and referred on

the floor and permitted referrals to be debated. Nor did the late nineteenth century Senate follow the example set by the House with respect to standing committee jurisdictions. The House defined them in the rules from the very beginning and in 1880 made reference in line with these jurisdictions mandatory. In the Senate standing committee jurisdictions were not formally defined but entirely controlled by precedent. Reference thus continued to be subject to the discretion of the Senate as a whole. As a result, the ability of Senators to object to the reference of member bills and place them directly on the calendar, to debate and add instructions to referral motions, to propose reference to a select committee, and to influence which of the more than forty standing committees that existed in the early 1890's received a bill were preserved (Riddick, 1941 and Riddick, 1980).

The changes in House procedure with respect to the introduction and reference of member bills were in accord with the centralization of power in the Speaker that occurred after 1870 and especially after 1880. By 1890 the Speaker controlled access to the floor. He had gained absolute power over recognition in the decades that followed the end of the Civil War and chaired a Rules Committee of five, which between 1880 and 1890 had developed from a select committee with limited authority to a standing committee with privileged access to the floor and the power to bring forward special orders that could set the time and terms of debate on legislation. In addition, the Speaker could rely on his appointees on the fourteen other committees that had been granted privilege on certain bills, nine of these grants dating only from 1880, to block the calendar whenever he desired. All this signaled that the House had given up on its long and unsuccessful quest to apportion access to the floor in a fair and impartial manner through a prescribed order of business and was no longer willing to make due with suspension and unanimous consent as default mechanisms. Rather, it now opted to give the Speaker control over the agenda in the interests of advancing the majority party program. Similarly, by 1890 the majority party had closed the remaining opportunities the rules provided for minority obstruction. Given the development of the previous question as a cloture mechanism for floor debate, the main opportunities for obstruction after 1860 pertained to dilatory tactics in committee of the whole and in the House itself, such as the disappearing quorum. However, the Rules Committee provided a mechanism for controlling general debate in committee of the whole, while the rules revisions in 1890

gave the majority control of the agenda in committee of the whole and the Speaker authority in floor proceedings to count all members present in determining a quorum and to disregard dilatory motions (Alexander, 1916; Cooper and Young, 1989; and Binder, 1997).

It is thus not surprising that the same changes in 1890 that codified the powers of the Rules Committee and eliminated the remaining sources of obstruction, also took the introduction and reference of member bills off the floor to the further advantage of the Speaker and the committee chairs. This change merely capped a century of development in which the individual member's ability to influence the terms of reference or to discharge committees simply evaporated as rules changes increasingly foreclosed debate when bills were introduced and referred, and as other changes in rules and precedents increasingly limited the ability of members to gain access to the floor at any point in the order of business if the Speaker did not favor them with recognition. The individual member in the House had long been disadvantaged by the weakness of seniority norms as constraints on the Speaker's power to appoint the standing committees as well as by the manner in which the large number of standing committees and the large size of the House combined to relegate many members to committees of little importance. The growth in the Speaker's control over the floor and the agenda, combined with high levels of party voting and an active caucus, provided even more powerful sources of constraint. The power of members thus declined to a far lower ebb than in 1860. Members began to complain from 1880 on that they had been reduced to ciphers. Indeed, though usually ignored, this is one of the main complaints of Wilson's (1885) classic work on the Congress of the 1880's. By 1890 their position had not improved, but worsened because of the Speaker's heightened control over all aspects of the legislative process. Thus, what changed between 1880 and 1890 was that of their two masters---committee chairs and Speaker, the latter gained dominance over the latter and even greater power over the individual member because of the manner in which increases in the Speaker's power as party leader and increases in his formal powers reinforced one another (Smith and Gamm, 2001 and Cooper and Young, 1989).

In the Senate, as well, the end of the story is congruent with the course of its development in the nineteenth century. In the decades that followed the Civil War the Senate also took several steps to

enhance its ability to conduct its business in a manner that was both efficient and responsive to majority will. By 1884 it had limited debate on a number of procedural motions, imposed a germaneness requirement on amendments to appropriations bills, allowed amendments to be tabled without damage to the underlying bill, and established a special time period for bringing minor business to the floor with debate limited to five minutes per speaker. Most important of all, it had created a new rule (IX) under which appropriations bills and other forms of major business could be brought to the floor by non-debatable, privileged motions without regard to their position on the calendar and with amendment barred on motions involving substantive legislation (Riddick, 1980). It is also true that by 1890, prompted both by heightened party unity and the press of business, more powerful party caucuses and newly emergent party steering committees provided a stronger organizational foundation for centralized leadership than had existed in the past. By 1897 a clique of majority party leaders, whose power was based on their control of the party apparatus and the key standing committees, began to lead the Senate in a far more oligarchical manner than it had ever been the case before 1890 and would ever again be true after 1910 (Rothman, 1966 and Gamm and Smith, 2002).

Nonetheless, the Senate resisted rules changes that would alter its fundamental character as a body that worked on the basis of mutual consent and forbearance, even as the strength of party began to rise in the 1880's and 1890's. Despite the heightened partisan atmosphere and substantial dissatisfaction over the filibuster, major efforts to impose some form of cloture failed once again in the 1890's. Nor did the rules changes that were adopted to make the conduct of business more efficient threaten the power of individual Senators in any major way. The various limitations on procedural motions, the germaneness restrictions, and the expanded ability to table amendments were not powerful or extensive enough to have any substantial effect in limiting debate or determining outcomes. The period set aside for handling minor business with debate severely limited was restricted to roughly an hour and the limitation itself was subject to objection by any individual Senator. The new and more flexible procedure for bringing major business to the floor under Rule IX appears to have been of some consequence for a brief period, but reliance on it eroded and it declined in significance for a variety of reasons----the need to compete with the unfinished business which was called at the very same time as

motions under the rule, the precedence that special orders retained over such motions, conflicting rulings on the implementation of the rule, and most important of all, inability to end debate once a bill was brought to the floor. Finally, no matter what the procedures and limitations prescribed in the rules, unanimous consent requests could be and were used to disrupt the orderly consideration of business or to escape the limitations of a rule (McKee, 1891, Gilfry, 1909, Watkins and Riddick, 1964, and Gamm and Smith, 2000).

In sum, the nineteenth century Senate, like the House, failed to solve the problem of establishing a system for conducting its business that was both prescribed and effective. Before 1860, it worked largely through unanimous consent and it continued to work this way after 1860 (McConachie, 1898). Despite the difficulties that unanimous consent involved, the unwillingness of the Senate to adopt a cloture procedure that would empower majorities left it little room to develop effective alternatives. As a result, the Senate's ultimate answer to regulating the conduct of its business was quite different than the House's. It chose to perfect unanimous consent, not to control debate and impose a Rules Committee. It thus began after 1860 to develop and extend unanimous consent from a motion made by Senators haphazardly to promote their immediate needs into a mechanism for forging collective agreements to fix a day certain to consider a bill and/or limit debate. By the 1870's such agreements were frequent, but the Senate's regard for the rights of the individual member still led it to tolerate for decades the disorder that the informal status of such agreements bred. Finally, in 1914, under circumstances and pressures very different than those that had formally prevailed, it transformed them into formal agreements of the Senate that the presiding officer could enforce (Gamm and Smith, 2000). Similarly, though majority party leaders took control of the Senate by 1897, their power was based on the leverage they secured from the heightened degree of party unity, the strategic use of the caucus, party steering committee, and party committee on committees, and their own positions as chairs of the most important Senate standing committees. In short, their power was rooted informally in the party structure and not reinforced formally to anywhere near the same degree as the Speaker's power in the House. Leadership thus was exercised far more than in the House at the sufferance of the members and fell short of any equivalent degree of power or control over fellow partisans or the minority. It is thus

not surprising that in the Senate oligarchic party rule never sought to cripple the filibuster, accepted the seniority rights members enjoyed under the full-fledged seniority system that had emerged in the Senate by the 1870's, could be challenged and frustrated on occasion by its own partisans, and simply disappeared without any rules revolt once the majority party developed a dissident wing early in the next century (Brady and Epstein, 1997 and Smith and Gamm, 2001). Nor is it surprising, given the Senate's willingness to live with disorder in its formal system rather than impair the rights of members and the need for party leaders to respect these rights as well, that bill introduction and reference remained on the floor in the 1890's and thereafter, and were not affected by the rise or decline of party rule.

Conclusion

Important similarities and differences characterize the evolution of bill introduction in the House and the Senate. Both bodies over the course of the century transformed the introduction of public legislation from a process in which committees played the dominant role to one in which introduction became a hallmark of member prerogative and activity. However, the pace of change varied substantially with the Senate far ahead of the House until the 1850's. Nor is the pace of change the only important difference. Whereas the transition to member bills climaxes in the House in 1890 by taking introduction and reference off the floor, this is not true in the Senate. At the end of the century Senate rules provided for the introduction and reference of bills on the floor, and they continue to do so today.⁴ Last, but not least, the broad dynamics of change in the two houses were very different. In the House the transition to member bills was part of a century-long transition in which changes in rules and practice regarding the standing committees, access to the floor, and debate and amendment on the floor served to consolidate power in the standing committees and ultimately in party leaders at the expense of the individual member. In contrast, though the evolution of bill introduction in the Senate was also accompanied by changes in its rules and practices, the Senate continually took pains to limit the monopoly power of committees, to preserve the access of members to the floor, and to protect freedom of debate and amendment on the floor. As a result, Senators were not subject to the same bad bargain House members had to endure----the receipt of discretion to introduce bills at the cost of loss

of power to the standing committees and party leaders over the fate of those bills.

II. Explaining Change

Three broad approaches have been relied upon in the literature to explain institutional change in Congress (Binder, 1997).⁵ The first is reductionist and emphasizes explanation at the individual level in terms of member self interest. This approach does not dismiss the importance of structure and process above the level of the individual, but argues that institutions are human constructs and hence that explanation should proceed at the individual level and focus directly on the egoistic and atomized preferences of the individuals who compose them. In short, the guiding premise is that institutional structures and processes are best explained at the micro level of analysis in terms of the manner in which the self interested motivations of individual actors combine to produce and change them. The second focuses on the dynamics of collective action and emphasizes the role of party and the collective interests of party members. This approach proceeds at a mezo or intermediate level of analysis and declines to view institutional analysis wholly or even primarily in anarchic or atomistic terms. It rather chooses to highlight the cooperative and organizational dimensions of action and sees legislative structure and process as responsive to and explainable in terms of the role of party. Parties, as the most stable, inclusive, and comprehensive groups that form within a legislature, are seen to provide the prime basis for collective action. Although the “glue” that holds parties together is subject to varying interpretations, what is agreed upon is that parties, working through elected leaders and internal coordinating mechanisms, provide the means for solving collective action problems in legislatures because of their ability to mobilize political support, to control and exploit the leverage inherent in the formal structures of decision making, and to take responsibility for leading and directing the decision making process. A third, and in many respects the most traditional approach, focuses on broader contextual factors. This approach does not deny that legislatures are human constructs or the importance of organization in structuring action. What it argues, however, is that human choices and patterns of cooperative action are shaped and constrained by broader contextual forces, and thus that

the key to explanation lies in understanding the impact of these forces on both individual choice and collective action. In short, the guiding premise is that structure and process are best explained at macro levels of analysis.

Given these three approaches, let us assess their ability to explain the evolution of bill introduction in the Senate and the similarities and differences that exist with respect to the House. For purposes of exposition we will use the terms self interest, party, and context as summary labels for these approaches, but our use of these terms should not be understood to imply that as generic concepts they are necessarily confined to a single model or approach. We will start with party because in the case of bill introduction it possesses little explanatory power, and then proceed to self interest and context, which have far more to contribute.

Party

It has become quite common in the study of Congress in recent decades to see party as a determinant of structure and structural change (Schickler, 2000). As with all three approaches, however, the power or force of party as a determinant can be and has been conceived in varying ways. Some conceive its cohesion and organizational capabilities in terms of the shared interests members have in promoting their reelections and controlling positions of power in the legislature. Others see party's capacity to provide a basis for collective action in terms of the shared policy orientations and preferences that unite members ideologically and induce them to act cooperatively to gain desired policy objectives (Smith, 2000). In reality, although most authors explicitly or implicitly frame their analysis in terms of one or another, the two complement each other (Cooper and Young, 2002). They thus reinforce one another in providing a rationale for seeing partisan need and partisan action as the basis for change in structural arrangements, both incrementally over time and in major alterations at particular points in time. However, in the case of bill introduction, any attempt to rely on party as a determinant, no matter how conceptualized or rationalized, fails to explain either the evolution of practice and procedure in the Senate or the similarities and differences with the House.

If we turn first to a general examination of the relationship between party strength and bill evolution, the patterns of variation are highly discordant in both houses. This can be seen simply by

averaging the party vote score by decades.⁶ In the Senate the mean party vote by decade from 1799 to 1829 fell from 64.3% to 46.3%. Yet, the proportion of member bills increased to 40% of the total. See Table 1. In the two decades from 1829 to 1849 the mean party vote by decade rose from 46.3% to 68.6%, but then fell in the decade of the 1850's to 51.6%. Yet, during these three decades member bills increased fairly steadily to the 70% level. Results in the House are similar, though levels of party voting are almost invariably higher. There are no member bills in the House until the late 1830's, but the character of variation in the mean party vote by decade are similar to the Senate. The mean party vote by decade fell from 70.3% in the decade between 1799 to 1809 to 44.2% in the decade between 1819-1829. It then rose to 69.5% from 1829-1839 and to 76.6% from 1839-1849, but then fell to 52.7% in the 1850's. Yet, once the rules were changed to facilitate member bills in 1837-38, their growth was rapid and highly linear. See Table 2.

It is thus difficult to see party as a determinant of the change in any general or overall sense. But there is a more limited argument that can still be made. It is that, after the rise of the second party system in the early 1830's, minority members, confronted with committees led and controlled by the majority party, seized on member bills as a way of attracting attention to their legislation and increasing its chances of passage. Our data, though limited to the Senate, does indicate that the great preponderance of committee public bills were majority party bills in the 1830's, 1840's, and thereafter. Still, there is good reason to doubt the claim that the growth of member bills was driven by minority members. Member bills could be expected to be referred to a standing committee once introduced in any event, and detailed resolutions of inquiry provided a ready alternative to a member bill. Our data sustains such skepticism. In nine of the ten Senates between 1831 and 1873 that we have examined, minority members introduced less or about the same proportion of member bills as their proportion in the Senate. The single exception is the 27th Senate (1841-43).⁷ Similarly, though it is true that the success rate of minority member bills relative to minority party committee bills increased in the 1840's and 1850's, so too did the success rate of majority member bills relative to majority party committee bills. Nor are the increases in the relative success of minority or majority member public bills in this period consistent with the increases in the overall percentage of public bills introduced by members.⁸ In

sum, then, our data provide only slim and isolated support for the minority party thesis.

We can conclude that party has little, if any, explanatory power when it comes to the evolution of member bills in either the House or the Senate. Nor is this surprising. Even aside from the differences that now exist among those scholars who find party to be a prime or dominant determinant of rules change and those who do not, the fact remains that the current debate centers on aspects of structure and process that directly and immediately pertain to the role and power of party leaders and the party majority (Schickler and Rich, 1997 and Aldrich and Rohde, 2000). Yet, there are many aspects of structure and process that are not so directly and immediately related, but rather concern more general problems of time, workload, and division of labor to which structural arrangements must and do respond (Polsby, 1968 and Cooper, 1977). Indeed, a good argument can be made that most institutional change over time in Congress has concerned these aspects of structure and process. Nor should such changes be dismissed because their political effects are cumulative and indirect. Over time they too can have important consequences for agenda control. The rise of the standing committee system from 1789-1821 as well as the evolution of its control over the reference and retention of bills during the remainder of the nineteenth century provide a good illustration (Cooper, 1970). Our findings on bill introduction provide another.

Self Interest

As in the case of party, self interest, approached in atomistic or highly individualized terms, is a familiar and popular perspective for deriving explanations of institutional change in Congress, and one that is subject to different forms of framing (Evans, 1999). Those who adopt this perspective necessarily equate self interest with member self interest. But they approach explanation in different ways, depending on how they operationalize the concept of self interest; that is, depending on which self interested motive or combination of motives they emphasize as the driving force for members. Inspired by Richard Fenno's (1973) classic formulation, the three types of motives relied upon are reelection, power within the legislature, and policy goals. The latter, however, is usually framed in a more restrictive manner than Fenno originally suggested when he defined this motivation as the desire for "good public policy"(p.1). It rather is understood in distributional terms, and often in a very narrow

or parochial manner, as befits an individualized emphasis on self interest.

Given this, if we seek to explain the evolution of bill introduction in terms of member self interest, two broad approaches exist in the current literature. One is internally oriented and emphasizes the desire of members to change legislative procedures both to increase their personal power and to serve the policy interests of their constituents. In this approach the desire for reelection is not denied, but remains implicit. Similarly, the focus on the pursuit of member self interest within the legislature leads to limited attention to the span of constituency interests members seek to serve or to different modes or forms of distributional politics. Current attempts to explain changing patterns of committee jurisdiction in terms of the entrepreneurial activities of members provide a good example (King, 1997). A second is externally oriented and emphasizes the desire for reelection. This approach to explanation has been extremely influential among students of Congress and was originally tied to the narrowest form of distributional politics. As developed by Mayhew (1974) and Fiorina (1974), an integral corollary of a careerist approach to Congress was an emphasis on the delivery of particularistic benefits to constituents as the primary means of winning election. As a consequence, credit seeking, advertizing, and position taking were identified as the three prime strategies for members to follow to win reelection. In recent years, in response to the growth of both partisanship and plebiscitary democracy in the United States, the approach has been broadened to recognize the importance of issues whose span or reach is national and to highlight modes or types of politics that are conflictual or “zero sum game” instead of “divide the pie” in character (Fiorina, 2001). Such change is compatible with an approach focused on reelection as well as with the strategies of credit seeking, advertizing, and position taking originally proposed for securing reelection. One need simply redirect the thrust of these strategies and enlarge the importance of position taking, which Mayhew even in 1974 (p.73), argued was the most important of the three for Senators, while preserving the emphasis on reelection as the prime motivation of members.

Both forms or types of self interest approaches to explaining the evolution of bill introduction merit examination, but both start with some serious disadvantages. On its face, explanation, premised on the desire of members to gain power and policy advantage within the Congress, does not appear

promising. Over time the growth of member bills did not contribute to the power of members. Rather, in combination with the tightening of opportunities for debate in introducing and referring bills that was associated with the transition to member bills, it circumscribed the power of members in the Senate and seriously undermined it in the House. Moreover, even if assessment is limited to the short run, as is appropriate for processes of change that are highly incremental, problems remain. The authority to introduce bills at one's own discretion is not a preeminent source of personal power within a legislative body in a separation of powers framework, and especially not when functional alternatives, such as resolutions of inquiry exist, and standing committees receive the bills once introduced in any event. Nonetheless, it can be and has been argued that the growth of member bills was motivated by the desire of individual members to gain added leverage vis a vis the standing committees in passing pet pieces of legislation (Damon, 1971).

Similarly, there are difficulties in a careerist approach. Explanation based on the desire for reelection has to be reformulated into a far broader notion of pursuing a career to have any resonance in the nineteenth century. In the nineteenth century members in the House and the Senate did not desire or expect to spend most of their careers in Congress. They were not avid seekers of reelection. In the House members often chose not to run for reelection and in the Senate resignations before the end of one's term were common (Ripley, 1969; Price, 1977; and Brady et al, 1999). However, if members did not pursue careers in Congress, they did pursue careers in politics. They sought to use service in Congress as a pathway to state and national offices of a variety of types. If, then, we define careerism in terms of the pursuit of a political career, not merely a legislative career, the external form of careerist explanation remains applicable. It can be and indeed has been argued that the growth of member bills was tied to the desire of members to publicize themselves for their own personal and political gain (Alexander, 1916).

If we turn now to assessing the merits of these two forms of explanation based on self interest, some support can be found for the claim that member bills were prompted by the desire of members to gain leverage over the committees. But it is quite limited. A good test of this claim is to compare rates of passage. Though our data is restricted to the Senate, the gap between the percentage of member bills

that pass and the percentage of committee bills that pass does narrow in favor of member bills in three of the four Senates we have examined between 1845 and 1857. However, the proportion of public bills introduced by individual Senators is quite substantial by the 1840's, does not fluctuate in line with the narrowing of the gap in favor of member bills, and continues to expand after the 1860's when the gap again widens in favor of committee bills.⁹ Equally important, a division of member bills into constituency topic and national topic bills, on the basis of whether a bill does or does not confer a highly disproportionate benefit on a particular state, refines the evidence and adds considerable insight. In terms of this distinction, such narrowing as did occur was due far more to an increase in the success rates of member constituency topic bills relative to committee constituency topic bills than an increase in the success rates of member national topic bills relative to committee national topic bills.¹⁰ Hence, if the desire of members to gain more power internally was a factor, it was more closely tied to external incentives than internal incentives.

All this brings us to the more substantial argument for the power of self interest in explaining the evolution of bill introduction-----the desire of members to advance their careers by using member bills to publicize themselves. Here again a distinction between constituency topic and national topic bills is useful. In the case of the Senate, if we look at the percentage of member bills that are constituency topic as opposed to national topic in the ten Senates we have examined, the overall average from the 12th Congress (1811-13) through the 34th Congress (1855-57) is 50.3%. In short, despite some variation in individual Congresses, member bills were roughly equally divided between constituency topic and national topic bills in the period in which member bills became predominant. Nonetheless, if we look at the percentage of constituency topic bills that are member bills, it is clear that members, not committees, are the driving force in the growth of constituency topic bills to a far greater degree than with respect to national topic bills. See Table 4.

Nor is this the only evidence that can be mobilized in support of explanation based on self interest. If we distinguish Senators from states with three or less representatives in the House from Senators from states with four or more, some striking differences emerge. Small state Senators in the ten Senates we examined were far more inclined than large state Senators to introduce constituency

topic bills than national topic bills. So much so, that despite the fact that they account for roughly only a third of the Senate in our ten Senates, they nonetheless are the driving force for constituency topic bills in these Senates, and especially from the 1820's to the 1840's. See Table 5. This fact is in accord with recent evidence regarding the greater particularistic inclinations of small state Senators and provides added testimony to the power of the distributional incentives that fueled member bills (Lee and Oppenheimer, 1999). We do not have the same breadth of data for the House. But the evidence we do have that is comparable makes an even stronger case for the role of self interest in propelling member bills than in the Senate. In the House, as reliance on member bills gained momentum, the percentage of member bills that were constituency topic rose from 42% in the 27th Congress (1841-43), shortly after the rules changes of 1837-38, to 70% in the 31st Congress (1849-51) and 73% in the 32nd Congress (1851-53) (Cooper and Young, 1989).

Clearly, then, member self interest played an important role in the transition from committee bills to member bills in both the House and Senate. Nonetheless, it is far from the whole story. In and of itself, explanation of the transition from committee to member bills, based purely on self interest, cannot explain the long process of evolution that was required in both houses or the differences in the pace and results of change in the two bodies. Nor, can it explain why, especially in the Senate, national topic bills, along with constituent topic bills, play a major role in the growth of member bills or why national topic bills figured so prominently as a proportion of member bills introduced by large state Senators. See Tables 4 and 5. In the former regard, the rough balance between national topic bills and constituency topic bills is attributable not only to the activities of large state Senators, but also to the activities of small state Senators, who did not at all confine themselves to constituency topic bills. In the latter regard, it is arguable, of course, that in the case of both large and small state Senators, the introduction of national topic bills is attributable simply to self-serving position taking, and that the disparities that exist are due to the greater demands for posturing in states that are larger and more complex politically. But that is to assume that the Webster's, Clay's, Calhoun's, Benton's, and Seward's of the second party system were nothing but mere position takers. It is to assume that they had no serious and deeply felt policy convictions on issues, such as slavery, the tariff, bank, and national expansion and

development, that crossed constituencies, divided the nation, and defined the major points of conflict in the politics of the period. Without disregarding the need all politicians have to do some posturing, such a claim exaggerates the case for position taking far beyond its merits.

We can conclude, then, that whatever its strengths, member self interest is not sufficient unto itself to explain the evolution of bill development in the Senate or the differences in House and Senate experience. To point out its limits, however, is not to dismiss the power of self interest as an explanatory mechanism. It is only to affirm that its effects are highly conditioned and thus that it provides no wholly sufficient or adequate basis for explaining bill introduction or any other aspect of structural change in Congress.

Context

The contextual approach focuses on determinants or factors at more comprehensive or generalized levels of analysis than those focused on particular organizational components or the psychic drives that ostensibly control human choice (Polsby, 1968 and Cooper and Brady, 1981). As a consequence, even more than in the case of the other perspectives, this approach is open to being framed in different ways and must be specified to be applied. There are, in fact, numerous contexts that can be identified. They exist not only on the same plane as overlapping circles, but also on different planes as circles within circles. Hence, what is regarded as exogenous rather than endogenous in institutional analysis is not definitively identifiable in terms of some firm or absolute distinction between the internal and the external. Rather, it can be seen to include generalized or systemic features of institutional structure, norms, and linkage as well as factors that are clearly outside the boundaries of the institution. The precise boundaries of the contextual are thus subject to the purposes of the researcher, the test being the value or worth of the explanatory results. What must be true of a contextual approach, however, is that explanation does not treat what is identified as exogenous as a constant or given, with little role in explanation, but rather as a critical source of explanatory power. For our purposes, we shall regard context as the institutional setting within which decision making occurs and see it as molded or shaped by two key ingredients---- the formal linkages that tie the House and Senate to the electoral and executive components of their immediate political environments and the sum of

broad and diffused institutional attributes, such as size, workload, conceptions of lawmaking, behavioral norms, and established modes of procedure and practice, that together define and constitute the internal working environment.

Our notion of context thus involves the intersection between the broader political environment and the internal institutional environment. It assumes that the processes of institutional change are never governed by individual motivations or the imperatives of collective action in the abstract, but that choices are made in a historical context that influences conceptions of self interest, regulates the interplay between self-regarding and other regarding motivations, and limits options due to established patterns of linkage, thought, and procedure (Simon, 1985). It further assumes that there are both stable and dynamic aspects to context so that external linkages and institutional attributes operate both to transmit and energize the forces of change and to direct and restrain them (Cooper, 1981).

How well, then, does a contextual approach help explain the evolution of bill introduction in the Senate and similarities and differences with the House. The answer is quite a lot, though not in isolation from assumptions about motivation at the individual level. That the Senate, like the House, in the first decades of government under the Constitution required the permission of the chamber to introduce bills and relied primarily on committees bills is attributable to prevailing conceptions of lawmaking. As noted earlier, the belief that principles should be settled by the chamber as a whole before subjects were referred to smaller committees, and bills not allowed until they were, resulted in rules and practices in both houses that restricted the introduction of bills and favored committees as the instruments of bill introduction. It is equally true that the differences, as well as the similarities, in Senate and House practice with respect to bill introduction during our first period are attributable to contextual factors. As noted earlier, even in the early Congresses the small, almost intimate, size of the Senate prompted less restrictive practices in referring subjects to committees and a very broad and simple bill introduction rule.¹¹ What should be added now is that the effects of size were powerfully reinforced by the high regard Senators had for their status as Senators and the habits of mutual deference that flowed from it (Swift, 1996). As a result, Senate practice, in contrast to the House, involved member bills from the very start. Similarly, the fact that member bills in the Senate, in contrast to the House, grew to

substantial proportions by 1825 is also explainable in contextual terms. When attachment to the pristine representative ideals of the early Congresses, based on generalist norms that sought to protect the rights of the whole, eroded, and a standing committee system emerged and was granted discretionary bill power, the rationale for restricting member bill introduction crumbled as well. As a consequence, the looseness in the original Senate rule could and did serve as a vehicle for a sizeable expansion in member bills. In the House, the greater size of the body from the start, combined with a more limited sense of entitlement on the part of members, led to a complex and constraining rule, one that made member bills highly impractical and placed far greater reliance on the introduction of bills through committees. In the House, then, when the ideals that had led to this rule atrophied and a standing committee system with discretionary bill power emerged, the original rule still barred member bills for all practical purposes. House members thus relied far more than Senators on the functional equivalent of member bills----- detailed resolutions of inquiry referring legislative subjects to committees.

Similarly, context holds the key to explaining the growth and rise to predominance of member bills during the period from 1825-1860. In the Senate this development is tied to the transformation of the Senate into the Nation's leading political institution during these years (Riker, 1955, Swift, 1996, and Mayhew, 2000). This transformation, in turn, is tied to all the elements of context identified earlier. In terms of linkages, change in the character and impacts of its ties to the electorate profoundly altered the role and power of the Senate. The extension of suffrage, the rise of state party organizations and the canvass, and the continuing erosion of the doctrine of instruction all combined to tie Senators closer to the electorates in the states, and in so doing transformed the Senate into a body whose members began to act as policy initiators and leaders instead of mere critics of and checks on House and executive proposals. These tendencies were powerfully reinforced by the uneven growth of population in the North and South and the different methods of electing the House and Senate. By 1820 Northern control of the House was established and unchallengeable. In the Senate, however, the principle of representation by states rendered the North and the South equal. Given the fact that the key issues of the day were sectionally defined, this made the Senate the arbiter of national policy issues both with respect to key substantive issues such as the tariff, economic development, and slavery and with regard

to the systemic issue of preserving the balance between North and South as new states came into the Union (Kromkowski, 1999).

Nonetheless, the aspects of context that relate to institutional attributes were also of importance. The Senate's closer ties to the electorate and its enhanced strategic position led not only to an increase in its activism and power, but also to a profound change in the way in which it conceived its duties and responsibilities, in the values and norms that defined it as an institution. No longer did the Senate conceive of itself as an American House of Lords, but rather as the unit in the national political system best fitted to represent the nation and exercise policy leadership in the public interest (Swift, 1996). Equally important, the ability of the Senate to fulfill its new sense of mission as leader and arbiter of the policy process was greatly facilitated and enhanced by its size and lax procedures.¹² These allowed the Senate to become the cockpit of national policy debates which in turn made it the focal point of national attention. In so doing its role as the preeminent unit in the national political system was confirmed and strengthened. It is thus no accident that the leading American politicians in this period were Senators, such as Clay, Webster, Calhoun, Douglas, Benton, etc---not House members or even, with some exceptions, Presidents. Nor is it an accident that the main pathway to the cabinet and to presidential nomination was through the Senate, not the House or state office.¹³

In such a context, member public bills understandably flourished in the Senate. They were fed, by a sense of the Senate's mission, by policy commitments, by constituency concerns, and by career ambitions. Such bills were easy to introduce under Senate rules and readily acceptable. Indeed, permission to introduce them had long been transformed into a mere formality, not a means of insuring policy control by the whole body. Moreover, they provided more effective methods both of promoting oneself and advancing ones policy objectives than detailed resolutions of inquiry, and had strategic advantages when action was stalled due to House inaction or when there was objection to a House bill. In contrast, development is slower in the House and more attributable to constituency bills. Yet, the results by 1860 are similar in both Houses. This is due, in part, to the fact that by the 1830's the expanded size and workload of the House had made resolutions of inquiry a highly inefficient mechanism for allowing members to introduce business.¹⁴ However, it is tied, as much, if not more, to

the change in representative ideals. Once the House, like the Senate, had abandoned the view that the whole should control policy decision making and bill introduction by smaller committees, the transition to member bills was inevitable. If discretionary committee bills were legitimate, so too were discretionary member bills with the result that the original rule appeared increasingly to be an anachronism. If there were differences in the rate of development, then, it was simply that the Senate had a broader range of incentives and a more favorable institutional setting.

Finally, context does much to explain the end of the story in both the nineteenth century Senate and House. In the Senate and House the tipping point with respect to member bills in public areas of legislation had been reached by 1860, and there was little, if any, incentive to reverse the momentum in this direction.¹⁵ The direct tie between Senators and constituents grew even stronger as state party organization gained increasing importance and the canvass as a method of selecting Senators grew even more dominant. In a politics that continued to be sectionally defined and was more highly structured by state party organizations led by Senators, the power and prestige of the Senate as an institution continued to grow and it extended its position as the preeminent national political institution (Riker, 1955 and Rothman, 1965). Similarly, in the House there were no incentives for halting the momentum in favor of member bills. The constituency linkages and growing size and workload of the House, as well as the declining power of the individual member, barred any reversal of the trend.¹⁶

The prime difference that exists between the House and Senate is rather one of the preservation of member rights on the floor with respect to the introduction and reference of bills. As noted, Senate-House differences in this regard fit in with the march to centralized power in the House and the Senate's continuing desire to preserve and protect the prerogatives of its members. Thus, as far as bill introduction is concerned, institutional setting had more to do with the differences in procedural results than the force of party, which increased in strength in both houses. In the Senate it was its norms in combination with its size that determined the outcome. By 1890 the size of the Senate had grown to 88, a size that was two and a half times its size in 1803, but still 54 less than the size of the House in that year. Thus, it was not of such proportions as to preclude introduction and reference on the floor with the result that the ability of members to block or control reference could be preserved. In contrast,

the size of the House, 332 by 1889, severely limited the feasibility of allowing members to use floor introduction and reference for strategic purposes, and House rules, which had long barred debate when bills were introduced, in 1880 barred it on reference as well. Hence, though reference on the floor still involved some advantages for the individual member, their weight in 1890 was insufficient to block taking introduction and reference off the floor. In a House that had for many decades steadily reduced the power of the individual member and now numbered over 300, efficiency needs easily trumped the case for preserving rights that had been reduced to a pale shadow of their original selves (Cooper and Young, 1989).

Conclusions

In sum, then, in explaining the evolution of bill introduction in the 19th century Senate and the similarities and differences in House and Senate experience, an emphasis on context provides indispensable elements of explanatory power. Nonetheless, it remains true that, if a self interest approach is inadequate, so too is a contextual approach. Thus, our emphasis on institutional setting only explains the choices that were made when blended with assumptions about motivation. Such assumptions are open to the researcher and we have assumed they pertain to broad policy issues as well as career interests. Still, it is no accident that self interest in the form of career aspirations cannot be denied an explanatory role, even if it is an incomplete one. In contrast, the force of party does not contribute much to explanation. It should, nonetheless, not be dismissed because it does not work here. Rather, two things may be concluded. The first is that since it does possess explanatory power in other areas, e.g., limitation of debate and amendment in the House, there is no single approach to explanation---no magic formula or algorithm that can be universally applied (Remington and Smith, 1998 and Evans, 1999). Second, when a form of explanation based on party does work, it, like self interest, does so within contextual determinants and parameters (Binder, 1997 and Gamm and Smith, 2002). In short, the force of party may be seen as a form of collective motivation, be it rooted in career or policy goals, and as a motivational factor needs to be blended with institutional setting and environmental forces, to explain its impacts on institutional change. The explanation of institutional change thus always involves blending facets of context and motivation and in differing ways depending

on the aspect of structure or process that is involved. In other words, it calls for strategies that enable explanation to integrate micro, mezo, and macro approaches or perspectives, rather than being confined to a single one, and to do so in ways appropriate to the topic or object of explanation.

IV. Continuing Problems

We cannot end this chapter without acknowledging that the answers we have supplied, as helpful and clarifying as we believe them to be, still raise difficult and larger issues. If context and motivation must be blended in explaining institutional change, such blending must not subordinate one to the other. Neither a rigid notion of the role of context that treats motivation as a junior partner because it is ostensibly controlled by context nor a pristine view of motivation that treats context as a junior partner because it exists only as a set of parameters around the forces that truly determine decision making is adequate. On the one hand, context influences the very definition of interest and the priorities accorded to different types of motivation rather than simply constraining preordained conceptions of values and interests. Equally important, it defines the balance of advantages and disadvantages that confront advocates of change due to established structural arrangements and the character of environmental incentives and forces. On the other hand, motivation is rooted in the human psyche. It is not the servile prisoner of context. Human nature and circumstances are too varied and change too constant for context to be able to put motivation in any permanent straightjacket. Rather, as all of human history demonstrates, individuals can and do battle and alter institutional arrangements and linkages as broad aspects of social and economic change create incentives and opportunities for daring, restless, and ambitious individuals to lead challenges to the existing order of thought and behavior. It is only the explanatory schemes we cling to free ourselves from uncertainty, in a sense our own intellectual weaknesses, that induce us to ignore these complexities and seek simple, deterministic ways of confronting a highly intricate and contingent reality. Blending thus means doing more than treating choices as necessary results once conditions are determined or treating conditions as broad parameters that define the playing field but do not affect the game or the players. Yet, at present, we have only

begun to confront the problems of blending context and motivation in a fashion that escapes the limits and bias of any single approach or perspective, be it framed in terms of individual self interest, the role of party, or the role of contextual factors (Satz and Ferejohn, 1994, Scharpf, 1997, and Strahan, 1999).

Similarly, the fact that there is no simple, all-purpose formula or algorithm for explaining institutional change, also creates difficult issues. If context and motivation must be blended, the character of the blend must vary in different areas and be sensitive to the specific components that have explanatory power in those areas. It must also be open to the dynamism inherent both in contextual circumstances and human actors. Yet, how then to escape reducing all explanation to the particular and idiosyncratic, how then to preserve generalizability? To put the point another way, how can contingency be combined with explanatory power? The answer may well be that political scientists, no more than quantum physicists, can expect absolute and simple generalizability, but only highly bounded and contingent generalizability. If so, it is not generalizability that is destined for the dustbin of intellectual history, but only explanation that takes certainty and simplicity as its hallmarks. Contingency does not mean that general classes of conditions and determinants cannot be established and related or that empirical evidence is irrelevant (Schickler, 2001). Still, somehow we must learn to traverse the twilight zone between assumptions of universality, and determinism and particularism and chaos. As yet, unfortunately, it remains a journey that many in the varying, methodological camps of the discipline refuse to embark on, while those who do must be guided more by conviction and instinct than by a ready and serviceable compass. That, however, is the mark of any truly challenging voyage of discovery.

Notes

1. Committee bills were even more dominant in areas of private legislation. In the Senate they constituted 86% of private bills in the 12th Congress (1811-13) and 88% of private bills in the 17th Congress (1821-23). In the House there were few, if any, member bills, public or private, in this period. See Cooper and Young, 1989.
2. In private areas of business committee bills continued to dominate in both House and Senate. In the House the percentage of committee private bills fell only from 98% in the 27th Congress (1841-1843) to 84% in the 36th Congress (1859-1861). The Senate pattern was more erratic. The percentage of committee private bills fell from 77% in the 22nd Congress (1831-33) to 53% in the 27th Congress (1841-43) but then rose to 82% in the 29th Congress (1845-47) and 87% in the 34th Congress (1855-57). In short, committee bills dominated private legislation in both bodies before 1860 and in the Senate such bills were as prevalent in the late 1850's as in the early 1820's. As a result, taking all bills into consideration and given the greater proportion of private bills, member bills constituted only somewhat more than 40% of all bills in the late 1850's in both houses.
3. In the period after 1860 practice changed quickly and decisively with respect to private bills as well. By the 42nd Congress (1871-73) 73% of private bills were member bills in the House and 82% in the Senate. By the 47th Congress (1881-83) 99% of private bills were member bills in the House and 97% in the Senate. As a consequence, the overall total changed as well, even though the proportion of private to public bills increased substantially from 1860 to 1890 in both houses. Thus, by the 47th Congress (1881-83) 97% of all bills were public bills in the House and 94% in the Senate.
4. However, in recent decades the Senate has provided a mechanism by which members can introduce

bills at any time the Senate is in session by filing them at the desk. This was done first by special orders and then by rule (Tiefer, 1989 and Riddick, 1992). In 1946 the Senate also finally adopted the House practice of defining mandatory standing committee jurisdictions in the rules which has enhanced the authority of the presiding officer over reference (Riddick, 1980 and Maltzman, 1997).

5. Our categorization of approaches takes level of analysis into account as a salient factor. Hence, in contrast to many such lists, it includes context as a primary approach but not informational theory. It rather sees informational theory as another form of micro approach, although focused on the “belief” side of the rational choice paradigm rather than the “desire” side. It should also be noted that, whatever explanatory value such theory may have for committee structure, it has little such value for bill introduction procedures. See Maltzman, 1997 and Evans, 1999.

6. The party vote data are provided by Garry Young and measure the percentage of roll call votes in which a majority of one party votes against a majority of the other party.

7. In the 27th Senate (1841-3) the 44.2% of the Senate who were in the minority introduced 55% of member bills. In the 29th Senate (1845-47) the 41.4% of the Senate who were in the minority introduced 44% of member bills. These are the only two Senates of the ten Senates we have examined in which minority members did not introduce substantially less member bills than their proportion in the Senate.

8. In the 25th Senate (1839-37) the percentage of minority member bills passed to the percentage of minority committee bills passed was 50% to 55%, and in the 27th Senate it was 44% to 75%. In contrast, in the 29th Senate (1845-47), 31st Senate (1849-51), 32nd Senate (1851-53), and 34th Senate (1855-57), the comparable figures are 43% to 37%, 38% to 35%, 33% to 29%, and 44% to 43%. Majority member bills did not reverse the situation in their favor as did minority member bills. But they moved in the same direction, and appear to have done so somewhat earlier. The percentage of majority member bills passed to majority committee bills passed in the 25th Senate was 49% to 66%, and in the 27th Senate it was 56% to 64%. In the 29th, 31st, 32nd, and 34th Senates the gap varied between 6%-11% in favor of committee bills, about the same size gap that prevailed in the 27th Senate. Finally, neither of these trends is consistent with the increasing percentage of member bills overall. The proportion of member bills of all public bills falls from 67% to 46% between the 27th and 29th Senates, just as minority member bills are gaining the upper hand relative to minority committee bills. Moreover, when the overall percentage of member public bills has increased to 62% in the 32nd Senate and 70% in the 34th Senate, the relative advantage of minority member bills declines somewhat rather than increases. Similarly, the ups and downs in the overall percentage of member bills do not correlate with the pace of improvement in the passage of majority member bills relative to majority committee bills. Once the gap between majority member bills and majority committee bills has been cut in half between the 25th and 27th Senates, it remains stable until the 1860's.

9. In the 27th Senate (1841-43) the percentage of member bills passed to committee bills passed was

49% to 65, and this relationship was typical of the situation in the 1830's. In the four subsequent Senates the percentage of member bills passed to committee bills passed was 33% to 31% in the 29th Senate (1845-47), 28% to 50% in the 31st Senate (1849-51), 38% to 47% in the 32nd Senate, and 42% to 50% in the 34th Senate (1855-57). Yet, the percentage of public bills that were member introduced was 67% in the 27th Senate, 45% in the 29th Senate, 62% in the 31st Senate, 62% in the 32nd Senate, and 70% in the 34th Senate. Moreover, by the 37th Senate (1861-63) the percentage of member bills passed to committee bills passed dropped to 36% to 72%, and the gap remained of this size into the 1880's as the percentage of committee public bills continued to dwindle.

10. In the 22nd Senate (1831-33), 25th Senate (1837-39), and 27th Senate (1841-43) the average gap between the percentage of member constituency topic bills that passed and the percentage of committee constituency topic bills that passed was the same as the average gap between the number of member national topic bills that passed and committee national topic bills that passed-----23% in each case in favor of committee bills. In the 29th Senate (1845-47), 31st Senate (1849-51), 32nd Senate (1851-53, and 34th senate (1855-57) the average gap between member constituency topic bills and committee constituency topic bills that passed was reduced to 1% in favor of committee bills, whereas the average gap between member national topic bills that passed and committee national topic bills that passed was 18% in favor of committee bills. As was true generally, the gaps with respect to both types of bills widened to higher levels in favor of committees after 1860.

11. The size of the Senate in 1789 was 26. Two decades later in 1809 it had grown only to 32. In the next two decades Its size increased to 46 by 1819 and 48 by 1829, but it remained only about a fourth the size of the House which increased from 65 in 1789 to 142 in 1809 to 186 in 1819 and to 215 in 1829. (Martis, 1989).

12. The size of the Senate grew only from 48 in 1829 to 52 in 1839, but then grew to 62 by 1849. By 1859 it had increased somewhat more to 68. Nonetheless, it remained as small as the House had been at its inception in 1789 (Martis, 1989).

13. In the years between 1801 and 1817 only 22% of permanent (not temporary appointees) cabinet members had prior Senate service. In the years between 1837 and 1853 40% had served in the Senate. As for pathways to the presidency, Senators were prominent contenders for presidential office even before 1825, though more often in the Federalist Party than the Jeffersonian and more often losers than winners. However, their prevalence and importance as presidential contenders increased after 1825. From the election of 1828 through the election of 1860 there is not an election in which one of the prime contenders had not served in the Senate, and in some elections it was true of the runner-up as well. Moreover, ex-Senators were often the winners---Jackson, Van Buren, Harrison, Pierce, and Buchanan.

14. The size of the House increased from 187 in the 17th Congress (1821-23) to 242 in the 25th Congress (1837-39), the Congress in which the rules were changed to permit and facilitate member

bills. Thereafter, however, it declined slightly and stood at 238 in the 36th Congress(1859-61) (Martis, 1989). The number of public bills introduced was 139 in the 17th Congress (1821-23), 338 in the 27th (1841-43), and 491 in the 36th Congress (1859-61). This upward trend, however, was irregular and not consistent. The total number of bills, public and private, was typically more than twice this number, but the House had a separate track for private bills (Cooper and Young, 1989).

15. The Senate did not attain its pre-war size of 68 until the 40th Congress (1867-69). Thereafter, it increased to 76 in the 45th Congress (1877-79) and 88 in the 51st Congress (1889-91). As for workload, the number of public bills increased from 357 in the 34th (1855-57) to 1154 in the 47th (1881-83). The tipping point for private member bills was not reached until the early 1870's when private member bills as a percentage of all private bills rose to 82% in the 42nd Congress (1871-73) as compared with 46% in the 40th (1867-69). Why this occurred so quickly is not clear. Though the number of private bills expanded from 277 to 564 between the 40th and 42nd Congresses and to 1355 by the 47th Congress, the example provided by the dominance of member bills in public areas was probably as important a factor as the growth in private business. 16. The House did not fully attain its pre-war size until the 41st Congress(1869-71), when it numbered 243. Thereafter, it increased to 293 in the 45th Congress (1877-79) and 332 in the 51st Congress (1889-91). As for workload increases, the number of public bills increased from 491 in the 36th Congress (1859-61) to 2398 in the 47th Congress (1881-83) to 2812 in the 52nd (1891-93). Increases in private legislation were even more explosive. The number of private bills rose from 529 in the 36th Congress to 2207 in the 42nd (1871-73), 2398, in the 47th, and 2812 in the 52nd. In line with these increases the percentage of private member bills rose from 16% in the 36th Congress to 73% in the 42nd Congress and 99% in the 47th Congress. In the case of the House, it the expansion in private business arguably played a greater role in changing practice than in the Senate. We may note that even in the 42nd Congress the percentage of private bills in the House was less than in the Senate (73% to 82%) but that thereafter it accelerated faster and passed the Senate by the 47th Congress (1881-83)---99% to 89%.

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Table 1: Senate Bill Introduction 1789-1823

Congress	Total Bills	% of Bills That Are Public	Member Bills as % of Total Bills	Member Bills as % of Public Bills
1 st (1789-91)	23	100	17	17
2 nd (1791-93)	27	85	26	30
3 rd (1793-95)	44	79	34	37
4 th (1795-97)	31	87	35	30
12 th (1811-13)	106	79	26	30
17 th (1821-23)	160	55	28	41

Table 2: The Growth of Member Bills, 1831-1861

<u>Congress</u>	<u>House</u>			<u>Senate</u>		
	Total Bills	% of Bills That are Public	Member Bills as % of Public Bills	Total Bills	% of Bills That are Public	Member Bills as % of Public Bills
22 nd (1831-33)	762	62	0	342	47	41
25 th (1837-39)	--	--	--	713	45	53
27 th (1841-43)	829	41	13	468	47	67
29 th (1845-47)	--	--	--	455	45	46
31 st (1849-51)	494	46	42	484	64	62
32 nd (1851-53)	368	65	52	647	48	62
34 th (1855-57)	--	--	--	646	55	70
36 th (1859-61)	1020	48	71	--	--	--

Table 3: 1861-1893

<u>Congress</u>	<u>House</u>			<u>Senate</u>		
	Total Bills	% of Bills That are Public	Member Bills as % of Public Bills	Total Bills	% of Bills That are Public	Member Bills as % of Public Bills
37 th (1861-63)	792	77	60	578	84	83
40 th (1867-69)	--	--	--	980	72	89
42 nd (1871-73)	4052	54	89	1652	67	93
45 th (1877-79)	--	--	--	1865	54	93
47 th (1881-83)	7685	31	93	2509	54	91
52 nd (1891-93)	10623	26	97	--	--	--

Note: Figures for the 45th, 47th, and 52nd Congresses are based on a sample of 10% of bills.

Table 4: Public Bills by Type and Agent

Congress	% Member- Introduced Public Bills with Constituency Topic (% with National Topic)	% Constituency-Topic Bills Introduced by Members (% by Committees)	% National-Topic Bills Introduced by Members (% by Committees)
12 th (1811-13)	32 (68)	42 (58)	26 (69)
17 th (1821-23)	53 (47)	46 (54)	36 (64)
22 nd (1831-33)	56 (44)	49 (51)	33 (67)
25 th (1837-39)	39 (61)	59 (41)	50 (49)
27 th (1841-43)	44 (56)	78 (22)	60 (40)
29 th (1845-47)	55 (45)	63 (37)	35 (65)
31 st (1849-51)	47 (43)	73 (27)	60 (40)
32 nd (1851-53)	62 (38)	70 (30)	52 (48)
34 th (1855-57)	64 (36)	82 (18)	56 (44)
37 th (1861-63)	17 (83)	81 (19)	83 (17)
40 th (1867-69)	35 (65)	91 (8)	89 (11)
42 nd (1871-73)	48 (52)	97 (3)	91 (9)

Note: Constituent topic bills include the following: road and harbor repair or construction, railroad construction, incorporation, establishment of collection and judicial districts, compensation of judges and other public officials, the time and place for holding district court, Indian removal, restoration of civil liberties, settlement of private land claims, and grants of lands or the right-of-way through public lands. Percentages do not always equal 100 because in some cases the record does not indicate whether the bill was introduced by a committee or a member or because the bill was introduced by some other means.

Table 5: Public Member Bills: Small State and Large State Comparisons

Congress (Years)	% of Small State Member Bills with Constituency-Topic (% with National Topic)	% of Large State Member Bills with Constituency-Topic (% with National Topic)	% of Small State Senators in Senate (% of Large State Senators)	% of Constituent-Topic Member Bills That Were Introduced by Small State Senators (% by Large State Senators)	% of National Topic Member Bills That Were Introduced by Small State Senators (% by Large State Senators)
12 th (1811-13)	60 (40)	25 (75)	28 (72)	38 (62)	12 (88)
17 th (1821-23)	88 (12)	25 (75)	33 (67)	74 (26)	12 (88)
22 nd (1831-33)	65 (35)	35 (65)	33 (67)	81 (19)	55 (45)
25 th (1837-39)	59 (41)	18 (82)	31 (69)	76 (22)	33 (66)
27 th (1841-43)	57 (43)	28 (72)	27 (73)	70 (30)	41 (59)
29 th (1845-47)	78 (22)	50 (50)	24 (76)	26 (74)	9 (91)
31 st (1849-51)	42 (58)	52 (48)	29 (71)	40 (60)	50 (50)
32 nd (1851-53)	79 (21)	49 (51)	18 (62)	55 (45)	23 (77)
34 th (1855-57)	72 (28)	59 (41)	29 (71)	41 (59)	28 (72)
37 th (1861-63)	22 (78)	13 (87)	44 (56)	59 (41)	43 (57)
40 th (1867-69)	44 (56)	26 (74)	39 (61)	61 (39)	42 (58)
42 nd (1871-73)	48 (52)	48 (52)	35 (65)	40 (60)	40 (60)

Note: Constituent topic bills include the following: road and harbor repair or construction, railroad construction, incorporation, establishment of collection and judicial districts, compensation of judges and other public officials, the time and place for holding district court, Indian removal, restoration of civil liberties, settlement of private land claims, and grants of lands or the right-of-way through public lands. Percentages do not always equal 100 because in some cases the record does not indicate whether the bill was introduced by a committee or a member or because the bill was introduced by some other means.