

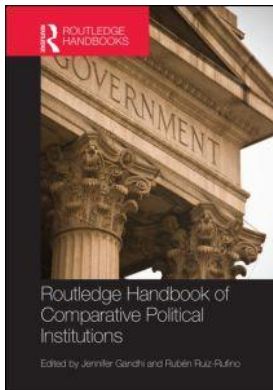
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11

LEGISLATIVE ORGANIZATION AND OUTCOMES

Eduardo Alemán

Interest in the details of parliamentary procedures and how they affect outcomes can be traced back to ancient times, as Riker (1986) reminds us in his story of Pliny the Younger. During the formative years of the political science discipline, in the late nineteenth and early twentieth century, scholarly work on legislative organization was already underway. During this time comparative institutional analysis of legislatures was typically restricted to comparisons between Britain and the United States or among U.S. state legislatures. Throughout the course of the twentieth century the comparative aspect of legislative research declined, and the U.S. House of Representatives became the focal point of most cutting-edge studies (Gamm and Huber 2002). The spread of democracy and democratic institutions after World War II and then again after the 1970s, fostered greater interest in the comparative analysis of legislative politics, including legislative organization. For the last couple of decades legislative scholars have examined a variety of organizational arrangements and behavioral patterns that have expanded our understanding of institutions and have moved the field forward. Theoretical insights from analysis of the U.S. Congress continue to inform many of the institutional arguments about legislative organization, but the institutional variation provided by comparative research is essential to move from narrow arguments about the House of Representatives to general theories of legislative organization.

Modern legislative studies have been significantly influenced by the arrival of rational choice institutionalism to the subfield in the late 1970s. Although legislative scholars have always maintained a deep interest in institutions, even during the heyday of behavioral approaches, the current era has brought institutions to the forefront of the sub-discipline. Institutions are commonly conceptualized as the rules of the game, constraining individual interaction, but the view of institutions as equilibrium outcomes is also embraced by several legislative scholars that emphasize the endogenous nature of many legislative rules.

Legislative organization—the set of procedures that regulate the legislative process and the related set of offices with internal authority—allocates power. As a result, it impacts the outcomes of legislatures both in terms of lawmaking and representation. This chapter reviews some of the central aspects of research on legislative organization. It is divided into three sections and a short conclusion. The first one discusses the rationale for legislative rules and their endogeneity. The second section reviews arguments that stress the exogenous impact of the

larger institutional and partisan context on legislative organization. How organization distributes legislative agenda-setting power to different offices is discussed in the third part.

Legislative rules and the advantages of organization

Legislative work is organized according to a series of rules laid out in the country's constitution and the chamber's internal rules of procedure. In some countries, special legal provisions and institutional norms also regulate the work of legislatures. These rules establish the different offices created to run legislative affairs, such as the chamber's directorate and committees. Since first emerging in the late sixteenth-century Elizabethan House of Commons, a system of permanent committees has been a salient feature of most legislative chambers. The prerogatives of each office and the related procedural rules structure the work of legislators.

Legislative rules stipulate who can introduce bills and amendments and under what conditions they can be discussed and passed; whether any actor can prevent or delay discussion or voting; what is the default outcome when proposals fail (e.g. budget bill); and how speaking time should be assigned. Crucially, legislative rules establish the required majority to pass bills, constitutional amendments, and the various motions and parliamentary procedures available. Thus, rules allocate rights and impose constraints on individual legislators.

A number of legislative rules can be considered exogenous: reforming them requires the agreement of actors outside the chamber. For example, the Chilean Constitution of 1980 establishes the formation of conference committees to resolve bicameral differences in legislation. The Brazilian Constitution of 1988 gives committees the authority to pass some bills without reporting them to the plenary (*terminative* power). The French Constitution of the Fifth Republic specifies the number of committees inside the National Assembly. Furthermore, legislative rules can be stabilized by requiring high thresholds to reform them. In countries like Austria and Costa Rica, changes to the standing orders of parliament require the support of a two-thirds majority. Reforms to legislative rules can also be constrained by choices made at earlier points in time. According to Aldrich (1994) and Evans (1999), the choice of congressional rules often reveals significant path dependencies, which reinforce the exogeneity of legislative structure.

Many legislative rules, however, are endogenous: they can be changed by a simple majority of those subject to the rules. This raises questions about the relevance of these rules. If members of a majority coalition can coordinate their behavior to change a rule that binds them, does it imply that the choice of rules is inherently unstable, as Riker (1980) theorized? Are legislative procedures weak constraints because cooperation to evade them is possible, as McKelvey and Ordeshook's (1984) research implied?

Theories of legislative organization have sought to explain why a majority would choose procedural rules that can be expected to produce outcomes biased away from the majority. Shepsle and Weingast (1984) argue that institutions entail different degrees of durability for agreements because some are easier to change than others. According to their view, procedures will prove binding when the transaction costs of getting around them are high. An existing rule will be enforceable, even if a majority coalition might wish otherwise, as long as those wishes cannot be transformed into coordinated action (Shepsle and Weingast 1984). In the case of the U.S. Congress, they argue, jurisdictional complexity increases the costs of negotiating and implementing changes to the rules. Rules institutionalize agreements and practices that facilitate collective action, including preventing post-agreement opportunistic behavior (Shepsle and Weingast 1984). Changing an important rule is a costly battle where reformers themselves become vulnerable to opportunism and renegeing.

Early theories of legislative organization emphasize vote trades. Legislators need the support of others to get their individual projects enacted into law, but arrangements to support each other's projects are hard to enforce. Reputation helps to build trust, but it is generally insufficient to enforce agreements. Weingast and Marshall (1988) argue that a system of committees with the ability to control changes to the status quo in their defined jurisdictions makes possible gains from trade among their membership; that is, it facilitates logrolls by ameliorating the incentives to renege on agreements. In this scenario, committee rights over the design and selection of proposals that come up for a vote mean that a legislator on committee *i* gives up influence over the selection of proposals in the area of committee *j* in exchange for members of committee *j* giving up their rights to influence proposals in policy area *i* (Weingast and Marshall 1988). The combination of self-selection into committees with jurisdictional and gatekeeping rights allow career-oriented legislators the opportunity to keep in place their preferred policies that without a trade of votes would have been difficult to enact and vulnerable to changes.

Distributive theories that point to logrolls as the *raison d'être* for organization face the challenge of explaining why vote trades that in the aggregate make a majority worse off can be the motivation for creating legislative offices with significant power—why a majority would put in place a system where committees consistently lead to inefficient results (Baron 1994; Krehbiel 2004; Diermeier *et al.* 2013).

Informational theories present an alternative view on legislative organization. They start by arguing that uncertainty about the relationship between laws and their consequences creates incentives for developing rules that promote expertise among legislators (Krehbiel 1991). Organization is seen as the solution to the challenges of promoting specialization and taking advantage of the expertise legislators already have (Cooper 1970; Krehbiel 2004).

Improvements in information reduce policy uncertainty. Gilligan and Krehbiel (1987, 1989) argue that the establishment of a system of committees that can make take-it-or-leave-it proposals to the membership works to promote specialization and induces committee members to credibly communicate their expertise in the bills they report. Epstein (1996) shows that giving committees gatekeeping power can have similar results. Kim and Rothenberg (2008) present a signaling model that builds on the assumption that legislators know more about the status quo than they do about new proposals. As long as there is considerable information asymmetry between specialized committees and the floor, they show that the pivotal legislator (i.e. the floor median) has incentives to give gatekeeping and proposal power to committees. They also show that the conditions for forcing bills out of committee (i.e. discharge petitions) are restrictive. Diermeier *et al.* (2013) advance a game-theoretic model where the standing orders remain in place because a majority prefers the asymmetry of power and policy bias they produce over the policy uncertainty that ad hoc procedures would introduce. Their model illustrates how endogenous legislative rules prevent procedural uncertainty and can be sustained *ex post* because they reduce policy uncertainty.

Another explanation for legislative organization begins with the observation that time is a scarce resource (Döring 1995; Cox 2000). An individual member determined to change the standing orders not only must invest time and effort to explain to other legislators the reasons for the reform, but he or she must also convince enough of them and the chamber's authorities that its debate and eventual passage deserves to be prioritized over other matters. This, Cox (2000) notes, is particularly difficult because time is a limited resource and revoking rules that allocate power requires significant amounts of time and effort. He underlines how demand for plenary time can result in a "plenary bottleneck" that undermines legislative work (Cox 2005). The potential for failure is particularly high when procedural rules are ad hoc. The creation of offices endowed with special agenda-setting authority can solve this dilemma. By enabling

coordination among members, organization not only facilitates agreements and specialization, but also helps the passage of legislation (Cox 2005).

To sum up, legislative rules establish the offices and procedures that organize legislative work. This includes the allocation of particular powers over the agenda to some legislative actors and the imposition of some limits on the influence of individual backbenchers. Institutional designers typically expect legislative rules to bring about some desirable effects (Shepsle and Weingast 1984). The rules can be exogenous or endogenous. In the latter case, the challenge has been to explain why a majority would accept to be constrained by an organizational arrangement that occasionally makes it worse off, when it can change the rules it is subject to. Answers have explained how the majority is compensated for this potential policy bias with informational benefits and arrangements that facilitate coordination and cooperation to enact legislation.

The impact of the larger institutional and partisan structure on organization

Legislative organization is also shaped by external forces. Comparative studies of legislative institutions illuminate why organizational features differ across legislative chambers, even when some of the fundamental problems rules are designed to help resolve are similar. Variation in legislative organization across countries has been linked to electoral and partisan incentives, constitutional structure, and the size of the chamber.

Electoral and partisan incentives

Electoral rules and political parties affect the strategies that legislators pursue to advance a political career, including their choices about legislative organization. For example, Katz and Sala (1996) link changes in electoral rules that created new personal vote incentives—the change from party ballots to the Australian ballot during the 1890s—with the development of the modern committee system in the U.S. House of Representatives. After the ballot reform, committee assignments came to be considered a property right and the chamber adopted various practices with important credit-claiming effects (Katz and Sala 1996). The role of ballot reform, primaries, and the direct election of senators in weakening the grip of parties is also underlined by Epstein *et al.* (1997), who argue that legislators who cultivate the personal vote should have incentives to strengthen the role of extra-party organizations within the legislature, such as committees.

Taylor (2006) examines cross-nationally whether electoral rules that foster a personal vote are more likely to be associated with decentralized legislative procedures. He finds a significant association between the personal vote and rules that are more permissive with respect to amendments and bill initiation. Martin (2011) argues that differences within rules that encourage the personal vote also have an impact on legislators' preferences over legislative organization. He expects committees to be stronger when legislators focus mainly on supplying pork to constituents, but weaker when legislators focus mainly on extra-legislative constituency service. Within the latter group we find, for example, the Irish and British parliaments and within the former group the U.S. Congress. To test this proposition, Martin (2011) examines a cross-national dataset of 39 legislatures. His results show that rules that produce incentives for legislators to cultivate a personal vote are associated with strong committees only when fiscal particularism is present. If not, the personal vote tends to be associated with weaker committees (Martin 2011).

Party-centered electoral rules have been associated with centralized forms of organization and lower incentives to put in place powerful committees. Jones *et al.* (2002) argue that

closed-list proportional representation in federal countries weakens incentives to specialize and build autonomous committees. They examine the Argentine case, where provincial (district) party bosses have a significant influence on the crafting of electoral lists and career politicians seek out coveted offices in the provinces rather than legislative careers. According to Jones *et al.* (2002), by moving legislators' electoral incentives away from voters and towards the interests of provincial party bosses, Argentina's electoral rules reduce incentives to specialize or promote constituency service. As a result of the electoral incentives in place, the Argentine Chamber of Deputies has a weak and amateurish committee system, which only modestly enables the development of informational capabilities.

Parties that exert significant control over the careers of legislators are typically associated with weak committees (Shaw 1979: 396; Olson 1980: 269; Olson and Mezey 1991; Epstein *et al.* 1997; Rahman 2008:76). For Weingast and Marshall (1988), the historical evidence from the U.S. Congress suggests that strong parties are substitutes for strong committees. This is similar to the view of Cooper and Brady (1981) and the subsequent literature on *conditional party government* that associates high leadership prerogatives and centralized procedures with strong cohesive parties (Aldrich and Rhode 1997–98, Rhode 1991: 24, 137). García Montero and Sánchez (2002) depict a similar association between committee influence and partisan strength in Latin America.

When strong committees are said to coexist with strong parties, as Cox and McCubbins (1993) claim is the case in the U.S. and Kim and Loewenberg (2005) claim is the case in Germany, committees are portrayed as agents of the majority party (U.S.) or the majority coalition (Germany). Committees in Germany play a significant role policing bargains among the governing parties (Thies 2001: 588; Kim and Loewenberg 2005). More generally, single-party government has been linked to weaker committees than multiparty government (Hallerberg 2000; Martin and Vanberg 2005).

Lastly, there is a literature that extends over a century that sees the lack of careerism (i.e. high membership turnover and locally oriented careers) as the source of a centralized legislature dominated by a small group of senior members (Follet 1986; Chiu 1928; Rothman 1966; Squire 1988; Epstein *et al.* 1997). Evidence from U.S. state legislatures tends to support the view that lower stints in office are associated with weaker committees (Farmer and Green 2007: 10; Kurtz *et al.* 2007). Shaw (1998) notes that in many developing countries high legislative turnover leads to discontinuity in committee membership, which contributes to few experts, absenteeism, and infrequent meetings.¹

Constitutional structure

Several works have called attention to the effects of separation of powers and bicameralism on legislative organization (Lees and Shaw 1979; Diermeier and Myerson 1999; Epstein and O'Halloran 2001; Pereira and Mueller 2004). The claim that presidential systems encourage stronger committees than parliamentary systems is one of the few “stylized facts” in the comparative study of legislatures (Diermeier and Myerson 1999; Lees and Shaw 1979). Active parliamentary committees have been portrayed as incompatible with the classical model of parliamentary government because they potentially threaten the predominance of government and party leaders (Longley and Davidson 1998). While strong assertive committees can develop in parliamentary countries (Strøm 1998), separation of powers is commonly seen as structurally more conducive to this end (Lees and Shaw 1979; Rahman 2008: 72).

For Epstein and O'Halloran (2001), committees serve to check the executive branch's policymaking. In the U.S. Congress, they argue, strong committees not only help to direct

resources to favored constituents but also provide an alternative source of expertise that rivals executive agencies. Members of Congress benefit from this competition, and committees' assignments seek to enhance such information gathering (Epstein and O'Halloran 2001). Diermeier and Myerson (1999) model the organizational choices of a chamber as a non-cooperative game between chambers (and a president) that have to interact with outside lobbyists, who in turn are trying to influence legislative outcomes. One implication of their analysis is that incentives to delegate legislative prerogatives to particular offices (e.g. authorities or committees) are likely to be affected by the presence and organizational characteristics of other chambers.

In presidential countries, constitutional rules that give the executive substantial legislative prerogatives have been associated with weaker committees. In their analysis of the Brazilian Congress, Pereira and Mueller (2004) remark how presidents can bypass committees with urgency procedures, as well as affect the committee selection process, influence the choice of committee presidents and rapporteurs, and create temporary committees. Changes in individual committee assignments occur frequently. Brazilian presidents also have control over the distribution of many of the financial resources legislators seek to access. These institutional features, Pereira and Mueller (2004) argue, work to make the committee system in the Brazilian Chamber of Deputies weak, and facilitate the concentration of power in its directorate and the committee of party leaders. According to Figueiredo and Limongi (2000), a centralized organization in Congress and significant executive prerogatives help presidents overcome the challenges brought about by personalistic electoral incentives.

The size of the chamber

The problems of cooperation and coordination faced by legislators tend to be less acute when the number of members is low. Olson (1965) believed that the provision of a collective good would decline with increases in the number of members because opportunities to free-ride on the efforts of others would be greater and so would be the transaction costs of reaching agreements. Trust and reciprocity is usually more easily developed in small groups. Large groups make voluntary information flows more difficult and increase the need for formal institutions (Dixit 2004:66). In contrast, small groups are more likely to have frequent face-to-face communication, which experiments have shown raises cooperation (Ostrom and Walker 1997). In large legislatures, centralized arrangements can help to overcome gridlock and reduce the transaction costs of legislative bargaining (Taylor 2006).

Long ago, Orfield (1935) noted that committees are "less essential" in small legislatures. Empirical studies of the U.S. Congress, state legislatures, and councils have tended to associate increases in the number of legislators with more complex and hierarchical types of organizational structures (Hedlund 1984). For Richman (2010) and Mooney (2013) smaller chambers facilitate agreement and the resolution of collective action problems. They expect the powers of the chamber's leaders to be greater when the number of members is more numerous. Richman (2010) finds that in U.S. state legislatures the formal power of the Speaker increases with chamber size, while Mooney (2013) finds that chamber size is correlated with legislators' evaluations of the power of the Speaker.

Taylor (2006) expects the size of parliament to affect incentives to choose centralized or decentralized organizational schemes. He presents evidence from 55 chambers in 32 countries that shows that as the size of the chamber increases legislators are more likely to put in place centralized procedures that limit bill initiation, amendments, and debate (Taylor 2006). Mattson (1995) finds that across Western Europe, smaller parliaments impose fewer restrictions on an

individuals' right to introduce legislation. And Rogers (2002) presents evidence that per capita legislative output is likely to decline with chamber size.

Baldwin's (2013) edited volume on small legislatures in 36 states reveals chambers with a low degree of organizational complexity, weak committees, and a rather consensual style of decision-making. In his examination of the small Costa Rican Assembly, Carey (1996: 28) notes that the substantive debate, negotiation, and detailing of legislation that takes place during plenary meetings is much greater than in more numerous chambers.

Carrubba and Volden (2000) link theoretically the choice of voting rule (i.e. the type of majority required) to the size of the chamber. They argue that in smaller chambers there are greater incentives to choose rules that require qualified majorities for passage than in chambers with numerous members. If high voting thresholds are put in place in a legislature with a large membership, greater obstacles to agreement should be expected. As examples, they mention differences in debate rules between the U.S. House of Representatives and the Senate, as well as increasing voting thresholds inside the EU as its membership expanded. Their formal model, which presents a logrolling game where the initial choice of voting rule and the legislative coalition are endogenous, shows that the voting majority selected decreases with increases in chamber size (Carrubba and Volden 2000).

To sum up, the larger institutional context and other exogenous forces appear to have consistent effects on legislative organization. Parties with significant influence over the political career of legislators, electoral rules that emphasize a partisan vote, and high turnover have all been linked with stronger leadership and a weaker system of committees. Presidential constitutions tend to generate stronger incentives for autonomous committees than parliamentary constitutions, but presidents with strong legislative powers usually weaken the power of committees. Leadership prerogatives and individual constraints usually increase with the size of the chamber.

Agenda setting

Legislative organization allocates procedural rights that affect who can bring proposals to debate on the plenary floor and how voting on these proposals may proceed. Canonical models show that committees with strong gatekeeping and proposal powers influence the location of policies.

Many recent works focusing on legislative organization and decision-making have been explicitly or implicitly influenced by Black's (1948) classic work on the rationale of group decision-making and the gatekeeping and agenda-setter models (Romer and Rosenthal 1979; Denzau and Mackay 1983). Given the inherent instability associated with majoritarian decision-making, as exemplified by the Condorcet Paradox, Black (1948) sought to find the conditions under which voting would produce an equilibrium outcome. He showed that if members' preferences can be arranged in such a way that they have single-peaked preferences, then the voting equilibrium under majority rule is the position of the median voter. The median is a Condorcet winner; it beats every alternative in a pairwise contest. Black (1948, 1958) was the first to demonstrate that under a unidimensional choice space with no restrictions on amendments, legislative outcomes decided under majority rule will tend towards the position of the median legislator. Many works on legislative politics have built on the insights provided by Black, such as Shepsle's (1979) work on structure induced equilibrium and Krehbiel's (1998) model of legislative pivots.

While the models of Black and many of their successors predicted that policy would be located at the median, it became apparent that this was not always the case. So scholars developed another generation of models to explain why policies often deviated from the median.

The general idea is that rules that provide certain actors with gatekeeping or proposal powers allow them to pull policy away from the median.

The gatekeeping model was originally formalized by Denzau and Mackay (1983), who concentrated on committee advantages.² In this two-stage game, the committee can open the gate and schedule a bill or reject it and preserve the status quo. The legislative chamber moves second, either debating the committee's proposal and eventually passing a bill, or rejecting it and therefore keeping the status quo. In this game, the dominant strategy for the committee is to close the gates on all bills whose final outcome is preferred less than the status quo. Assuming a unidimensional choice space and majority rule, if the committee opens the gate and there are no restrictions on amendments, then voting should move policy to the position of the median voter in the chamber.

The agenda-setter game differs in that the chamber cannot amend the bill proposed by the committee. It is a take-it-or-leave-it proposal. Under this condition, the committee will propose to move the status quo to its own ideal position and the chamber will accept as long as the median legislator prefers the bill to the status quo. In other circumstances, the committee makes a proposal that moves the status quo towards its position, while still making the median legislator indifferent between accepting and rejecting (in which case passage is assumed). When the status quo is located between the median legislator and the committee's position, it will stay there. Otherwise, the committee will successfully bring outcomes closer to its position.

Figure 11.1 illustrates the results of the gatekeeping and agenda-setter games for various positions of the status quo.³ The horizontal axis represents the possible status quo positions, and the labels C and M indicate, respectively, the preferences of the committee and the median legislator. This is mirrored in the vertical axis, which captures the outcome of the games. Lines indicate the result under different status quo positions (solid for the gatekeeping game and dashed for the agenda-setter game). As Figure 11.1 illustrates, gatekeeping and the

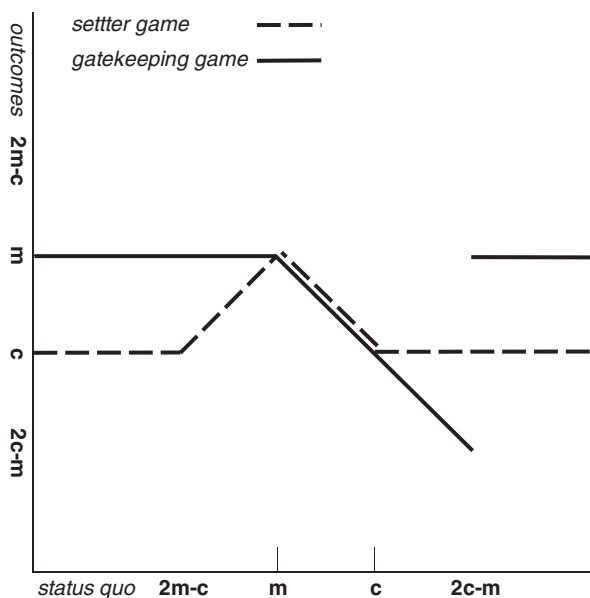


Figure 11.1 Gatekeeping and setter games

agenda setter's ability to make take-it-or-leave-it proposals can bias results away from the median voter and towards the position of the committee.

The gatekeeping power of partisan majorities and committees

Research on legislative cartels, originated by Cox and McCubbins (1993, 2002, 2005), has emphasized the gatekeeping power of the majority party. The procedural cartel thesis states that if a majority government forms, it will constitute an agenda cartel (Amorim Neto *et al.* 2003; Chandler *et al.* 2006). In the U.S. case, it is the majority party that functions as a legislative cartel (Cox and McCubbins 1993). An agenda cartel has control over the legislative offices with substantial agenda-setting power, as well as over which proposals will be allowed access to the plenary. The cartel acts as a gatekeeper, allowing policy changes only when most of its members support it. As a result, policy changes under a single-party majority require the backing of most members of the majority party. In a coalition government, changes demand the backing of most members of each pivotal party in government (Amorim Neto *et al.* 2003). When the plenary passes a bill without the support of most members of a party, such party is said to be "rolled." If a cartel exists, it should control assignments to agenda-setting offices and its constituent parts should not be rolled on the plenary floor.

Various works focused on the U.S. Congress, U.S. state legislatures, and other chambers around the world have sought to evaluate the implications of the cartel thesis. Cox and McCubbins (2005) find that between 1953 and 1998 the majority party roll rate was on average less than 2 percent (never more than 5 percent), while the minority party roll rate hovered around 26 percent. Before the 1950s, the majority party had roll rates that sometimes ran higher than the 5 percent threshold expected for a cartel,⁴ although regularly lower than minority roll-rates (Cox and McCubbins 2005). Gailmard and Jenkins (2007) present data for the period 1877–2000 that shows majority party roll rates to be on average 4.5 percent in the House of Representatives and 5.5 percent in the Senate. Their analysis leads them to conclude that in terms of keeping unwanted measures off the plenary floor, the majority party is not less successful in the Senate.

Evidence from other presidential countries with single-party majorities is consistent with the cartel thesis. The majority-party roll rate is less than 3 percent in Argentina (Jones and Hwang 2005, Alemán 2006) and 0 percent in Uruguay (Chasquetti 2013).⁵ In both countries, majority parties have significant influence over assignments to key committees and minority parties are rolled much more often in plenary votes.

In presidential countries, multiparty majority governments do not always act as legislative cartels. For example, Amorim Neto *et al.* (2003) and Lyne (2008) examine roll call votes in Brazil and show that some majority coalitions have parties with rather high roll rates.⁶ In Uruguay, Chasquetti (2013) finds that the majority coalitions made under presidents Sanguinetti and Batlle had roll rates below the 5 percent threshold, but the one led by President Lacalle in the early 1990s had higher rolled rates. In Chile during the 1997–2000 legislative period, the government was rolled in less than 2 percent of final passage votes and each party in government was rolled less than 5 percent of the time (Alemán 2006), which is consistent with the presence of a cartel. In Brazil, Chile, and Uruguay, parties in the opposition have much higher roll rates than government parties.

In parliamentary countries, the roll rates of parties in majority governments are consistent with the expectations of the cartel thesis. In the U.K. and Malta, single-party majority governments are never rolled (Cox and McCubbins 2005). In Germany, Japan, and Italy, parties in government coalitions have roll rates near 0 percent, and in Sweden the roll rates of government

parties are less than 5 percent (Cox *et al.* 2000; Chandler *et al.* 2006; Cox *et al.* 2008). An analysis of the Israeli parliament during Sharon's second administration shows that parties in government have roll rates that do not exceed 6 percent.⁷

The argument that government parties in parliamentary countries have gatekeeping power is consistent with Tsebelis (2002) veto players' theory. For Tsebelis, parties in government are considered veto players; they must agree on policy for a change to occur.⁸ He shows why increases in the number of veto players and their relative distance tend to reduce the winset of the status quo, thereby increasing policy stability.

Procedures to force bills out of committee and on to the plenary floor appear to neutralize gatekeeping (Patty 2007). Since in both chambers of the U.S. Congress there are mechanisms by which a majority can force a bill out of committee, Crombez *et al.* (2006) conclude that committees do not have gatekeeping rights. They also note that committees in the U.K., France, Germany, Italy, Norway, Poland, and Israel lack codified gatekeeping rights (Crombez *et al.* 2006).⁹ But others disagree. For instance, Cox and McCubbins (2005: 86) argue that passing discharge petitions in the U.S. House of Representatives is "extremely difficult," particularly when going against the Rules Committee or majority party leadership.¹⁰

The proposal power of committees and the executive

Agenda setters may also have the right to make proposals under favorable conditions.¹¹ The most common are (i) the prohibition of amendments (i.e. closed rule); (ii) the confidence procedure; (iii) restrictive amendment rules (e.g. the guillotine); (iv) the last move (e.g. amendatory vetoes); and (v) the first move (e.g. provisional measures).

In the U.S. House of Representatives, the classic tool embodying proposal power is the closed rule, which prohibits amendments to a bill. The Rules Committee has the authority to write special rules that specify how a bill will be debated and voted on when it arrives at the plenary floor, including limits on amendments.¹² The proposed closed rule must be put to a vote of the full membership before proceeding to address the bill. When conference committees report legislation, it is voted under closed rules in both chambers of Congress. The implications of the ability to make take-it-or-leave-it proposals are captured by the agenda-setter model introduced in the first part of this section.

Legislative theories focused on the U.S. House of Representative have advanced alternative predictions regarding when bills reported by committees will receive a closed rule. While informational theories expect closed rules to be used more often on bills that come from committees composed of legislators with heterogeneous preferences, distributional theories emphasizing vote trades imply that closed rules should be used more often with pork barrel legislation (Krehbiel 1991: 162). Marshall (2002) emphasizes the partisan nature of the Rules Committee and expects closed rules to be more likely the closer the reporting committee is to the position of the Rules Committee. When the reporting committee is positioned between the median legislator and the Rules Committee, he also expects a higher probability that closed rules would be used. His examination of special rules during the periods 1981–1984 and 1995–1998 finds support for both hypotheses. In addition, and consistent with prior findings, Marshall (2002) shows that restrictive rules are more likely to be used on bills coming from heterogeneous committees, and less likely to appear on pork barrel proposals.

In Latin America, conference committees are only mandated to resolve bicameral differences in Colombia and Chile. In both countries they make take-it-or-leave-it proposals to the plenary. In Chile, conference committees can modify any aspect of the bill, and it is an established norm that conferees belong to the committee with jurisdiction over the bill.

Conference committees in Colombia, however, can modify only the matters under bicameral dispute and the Speaker has wide discretion to choose the composition of conference committees (Alemán and Pachón 2008).¹³

The classic tool of proposal power available to the government in parliamentary countries is the confidence procedure (Huber 1996a; Döring 2003). It allows the governments to link a specific policy to an up or down vote of confidence. Prime ministers can usually use it unilaterally on a wide variety of policy issues and at any point in the legislative process (Huber 1996a). In France, Belgium, and Germany, the prime minister's motion is automatically approved unless a majority of elected members votes against it (Döring 2003). When deciding how to vote on such a motion, members of the majority must consider not only the proposed policy but also the costs of censuring the government, while the prime minister needs to be mindful of the electoral costs of making this strategic move (Huber 1996a). While most prime ministers in Western Europe have this right, some others are restricted from linking a policy proposal to a confidence motion. Such is the case, for example, in Poland and other Central European countries (Zubek 2008).

Prime ministers have other tools to restrict amendments to their bills. For instance, according to the Greek Constitution, amendments are out of order unless submitted prior to debate and the government agrees to their being discussed (Heller 2001). The British "guillotine" sets a deadline for a vote in which only amendments accepted by the Speaker can be considered. The French "guillotine" gives parliament 24 hours to censure the government or the bill proposed by the prime minister is considered passed, while the vote *bloqué* allows only amendments proposed or accepted by the government.¹⁴ Governments tend to resort more often to the vote *bloqué* than to the vote of confidence, and both procedures are used more frequently by minority government than by single-party governments (Huber 1996b: 96, 144–170; Hayward 2004). Döring's (2003) examination of the use of restrictive rules in Western Europe suggests that governments are more likely to use them towards the end of the legislative term with complex bills and when they are of the single-party minority type. In addition, he finds that the use of restrictive rules decreases with the number of parties in government and their ideological distance.

Another advantage commonly held by several governments in parliamentary countries is the ability to make the last amendment before voting. By being able to craft a last offer after seeing all amendments proposed, the government has a strategic advantage to try to improve outcomes (Heller 2001). The theoretical rationale for the last-move advantage was introduced by Weingast (1989) in his analysis of the open rule in the U.S. House of Representatives. According to Heller (2001), governments enjoy a clear last-offer authority in Denmark, France, Italy, Netherlands, Spain, and Sweden.¹⁵

The agenda-setting power of governments may also affect whether amendments can be used as a coalition management tool. Martin and Vanberg (2005) argue that in divided coalition governments, ministers face strong incentives to take positions that deviate from coalition compromises, which leads other coalition members to challenge and amend the proposed legislation to bring it in line with the coalition agreement. Using data from Germany and the Netherlands, they show that bills proposed by ministers are likely to be changed more extensively in the legislative process the greater the level of policy divisiveness among parties in government (Martin and Vanberg 2005). Franchino and Høyland (2009) confirm this finding with a larger sample of countries and go on to show that parliamentary involvement in the amendment process decreases as the government's agenda-setting power increases.

In the presidential countries of Latin America, bills reported to the plenary floor are typically voted under open rules that allow amendments. The standing orders do not commonly give

leadership committees the ability to write special rules for debating and voting a particular bill. Although restrictions to amend money bills are common, most other proposals are vulnerable to amendments.¹⁶

Presidents in Latin America have various institutional prerogatives at their disposal, although typically fewer and less far-reaching than those enjoyed by governments in parliamentary countries like the U.K., France, Ireland, or Greece. One of the most significant agenda-setting tools at their disposal is the ability to introduce a last modified version of a bill through the veto procedure (Tsebelis and Alemán 2005). In 15 countries, the president can veto a bill in its entirety (absolute veto) or issue a constructive veto, which sends a modified version back to Congress for one final round of voting with no additional amendments. Five countries limit the presidential modifications to deletions (partial veto), while 10 countries allow the president to introduce modifications and additions (amendatory observations).¹⁷ Evidence from Argentina, Chile, and Uruguay suggests that when presidents have the option between an absolute veto and a constructive veto, they very rarely choose the former. In addition, urgency provisions that force legislative proposals to the plenary floor give some Latin American presidents *de jure* authority to overcome congressional gatekeeping attempts. Presidents in Brazil, Chile, Colombia, Ecuador, Paraguay, and Uruguay have this authority.¹⁸ In the latter three countries, the default in case of congressional inaction is the automatic passage of the bill.

In Brazil, an important agenda-setting tool in the hands of the president is the ability to issue provisional measures. Presidential bills pushed as provisional measures become effective immediately but are only valid for 60 days.¹⁹ The measure can be amended or rejected by Congress, and after 45 days it is automatically scheduled for deliberation by the chamber. Many scholars have begun to analyze the power given to the Brazilian president by the right to issue provisional measures, how it is used, and how it differs from executive orders or decrees elsewhere (Pereira *et al.* 2005 and 2008; Rennō 2010; Hiroi 2008; Reich 2002; Negretto 2004).

Conclusion

This chapter has discussed the importance of legislative rules and the advantages that organization is supposed to bring to individual legislators. It also reviewed arguments that try to explain why majorities would choose institutional arrangements that sometimes lead to outcomes biased away from them. Legislative organization is also shaped by exogenous forces. Constitutional structure, electoral rules, the size of the chamber, the strength of parties, and careerism appear to influence organization in consistent ways. The power of agenda setters to propose and block proposals was also reviewed, and their implications discussed with reference to various published works.

Legislative studies appear to be in the midst of a fruitful era. Various new works have illuminated the great variation in procedural rules and offices that exists across countries. Arguments about legislative organization narrowly targeted to address the U.S. Congress have begun to be tested in other countries. Examples include studies about the use of restrictive rules, the gatekeeping power of majority parties, and committee strength. This has improved the breadth of legislative theories and allowed for generalizations that go beyond the U.S. House of Representatives. Institutional analyses of European parliaments are also rapidly increasing. Our understanding of parliamentary procedures and the impact of governments and heads of state have deepened with evidence from Central and Eastern European countries.

Several topics remain underdeveloped or demand to be tested in countries other than those that generated the arguments in the first place. Important questions about the choice of rules, the involvement of executives in parliamentary decision-making, the amendment process, and

the organization of legislative speech remain to be answered. Likewise, information about the organization of African and Asian parliaments remains elusive. A comparative research agenda on legislative organization that includes single-chamber as well as multiple-chamber studies and embraces the generalizability of legislative theories should continue to strengthen the sub field.

Notes

- 1 In Costa Rica and Venezuela, for example, incentives to cultivate a personal vote are low and most legislators serve one term. In addition, party leaders have substantial influence over the political career of legislators and regularly shuffle individual committee assignments. As a result, both countries have considerably weak committee systems (Crisp *et al.* 2009).
- 2 See also Weingast and Moran (1983), who focused on regulatory policymaking by the U.S. Federal Trade Commission.
- 3 The representation of the gatekeeping game in Figure 11.1 is similar to the one presented in Crombez *et al.* (2006).
- 4 The cutoff value of 5 percent is put forward in Amorim Neto *et al.* (2003) based on earlier findings by Cox *et al.* (2000).
- 5 Chasquetti's (2013) evidence is from the Uruguayan Senate.
- 6 Amorim Neto *et al.* (2003) hypothesized that a proportional distribution of cabinet positions relative to seat shares reduces the roll rates of government parties.
- 7 Sharon's coalition lost its parliamentary majority for a while.
- 8 If they do not, the government dissolves and a new round of government formation follows.
- 9 The authors also argue that gatekeeping procedures are Pareto dominated by the ex-post veto (Crombez *et al.* 2006). For an alternative view that sees gatekeeping Pareto dominating the ex-post veto see Kim and Rothenberg (2008).
- 10 According to Patty (2007), the support of the Speaker or a majority of the Rules Committee is needed for the discharged bill to reach the plenary floor. The leadership can also force a bill out of committee. The mechanisms available to the House leadership include: unanimous consent, suspension of the rules, enactment of a special rule reported from the Rules Committee, and expiration of the time limit imposed on the committee by the Speaker (Patty 2007).
- 11 Legislators typically have the right to introduce legislation, although restrictions are common. In the German Bundestag, for example, bills can be introduced by parliamentary parties or 5 percent of membership, but not by individual members (Mattson 1995). In presidential countries, limitations to individual members' rights to introduce bills are typically fewer than in parliamentary countries.
- 12 The modified closed rules restrict the number of amendments.
- 13 In Chile conference committees must report the bill, although they can choose to issue a negative report recommending the status quo. In Colombia, conference committees may not report the bill (but they can be easily compelled to do so by the chambers' authorities or even by a plenary vote).
- 14 Bills entering the French parliament tend to receive a large number of amendments (Hayward 2004).
- 15 In Italy, the Netherlands, and Denmark, committees can also make the last offer (Heller 2001).
- 16 In some countries amendments must be pre-filed (e.g. Argentina) or sent to committee prior to debate (e.g. Chile).
- 17 Alemán and Schwartz (2006) show that veto clauses in presidential countries are consequential. (i.e. they change outcomes), sometimes in unexpected and paradoxical ways.
- 18 In Ecuador, only economic legislation can be declared to be urgent.
- 19 There is one automatic renewal.

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