INTENT AND INTERPRETATION OF AMENDMENT RULES IN THE HOUSE OF REPRESENTATIVES

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INTRODUCTION

This paper is the second part of our exploration of the history of the rule governing the amendment process in committee and on the floor of the U.S. House of Representatives. In a 1996 paper, we traced the origins of the rule and concluded that there is a significant difference between what the House intended the rule to mean at the time it was adopted and the way in which the House interprets and applies the same rule today. In this paper, we report on the results of our efforts to discover when, why, and how this change in meaning took place.

We begin with a brief recapitulation of the rule, its origins, and our understanding of the intent of the House in adopting it.

For more than a century, House Rule XIX has permitted Representatives to offer as many as four amendments of different kinds before the House must vote on any of them:

> When a motion or proposition is under consideration a motion to amend and a motion to amend that amendment shall be in order, and it shall also be in order to offer a further amendment by way of substitute, to which one amendment may be offered, but which shall not be voted on until the original matter is perfected, but either may be withdrawn before amendment or decision is had thereon. Amendments to the title of a bill or resolution shall not be in order until after its passage, and shall be decided without debate.

When a Member offers a first-degree amendment to change the text of a measure by adding something to it or replacing something in it, other Members can offer two different kinds of second-degree amendments to the first-degree amendment.[1] A second-degree perfecting amendment proposes to make some

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[1]A first-degree amendment that proposes only to strike something out of a bill is not amendable. However, the text it proposes to strike out is amendable, so that a four-branch amendment tree can develop while a motion to strike is pending.

change in the first-degree amendment by adding to it, deleting from it, or replacing some part of it. A substitute for the amendment (which, for convenience, we shall call a second-degree substitute[2]) proposes to replace all of what the first-degree amendment proposes to insert in the bill. A second-degree perfecting amendment and a second-degree substitute can be offered in either order, and a Member can offer one of them before a vote has taken place on the other. Furthermore, the rule explicitly permits an amendment to the second-degree substitute, even though an amendment to an amendment to an amendment usually is not in order.

Thus, the rule creates the possibility of the four-branch "amendment tree," depicted in Figure 1, comprising (1) a first-degree amendment, (2) a second-degree perfecting amendment, (3) a second-degree substitute, and (4) an amendment to that substitute. If all four amendments are offered, Members first vote on the second-degree perfecting amendment (#1), then on the amendment to the substitute (#4), next on the substitute (#3) as it may have been amended, and finally on the underlying first-degree amendment (#1) as it may have been amended. Members may offer these amendments in committee and on the floor, and they are in order whether the House is sitting as the House or has resolved into Committee of the Whole. In contemporary practice, however, complex amending situations are most likely to arise when the House is considering a major bill in Committee of the Whole under an open rule.

The House adopted Rule XIX for the first time in 1880 as part of a general recodification of its rules. In its report accompanying the recodification resolution, the Rules Committee asserted that "Rule XIX merely embraces, in the form of a rule, that which has long been the practice of the House without rule."[3] Presumably for this reason, there was no discussion, either in the committee report or during the subsequent floor debate, about the meaning or intent of the rule. The House evidently was codifying a set of practices that had become so well-established and well-known to Members that there was no need to explain the purpose and effect of the new rule.

The key first sentence of Rule XIX has not changed since 1880 but its meaning evidently has. As we argued at length in our 1996 paper, the amending practices that the House intended to codify in 1880 are different from the amending practices of the House today. We examined all the relevant pre-1880 incidents that were included in *Hinds' Precedents* and searched the

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[2]The House does not consider a substitute for a first-degree amendment to be a second-degree amendment. We call it a second-degree substitute only for ease and clarity of exposition.

[3]Quoted in U.S. Congress. House of Representatives. *Hinds' Precedents of the House of Representatives*. (Washington: U.S. Government Printing Office, 1907), v. 5, sec. 5753. The second sentence of the rule, which does not concern us here, was added in 1893.

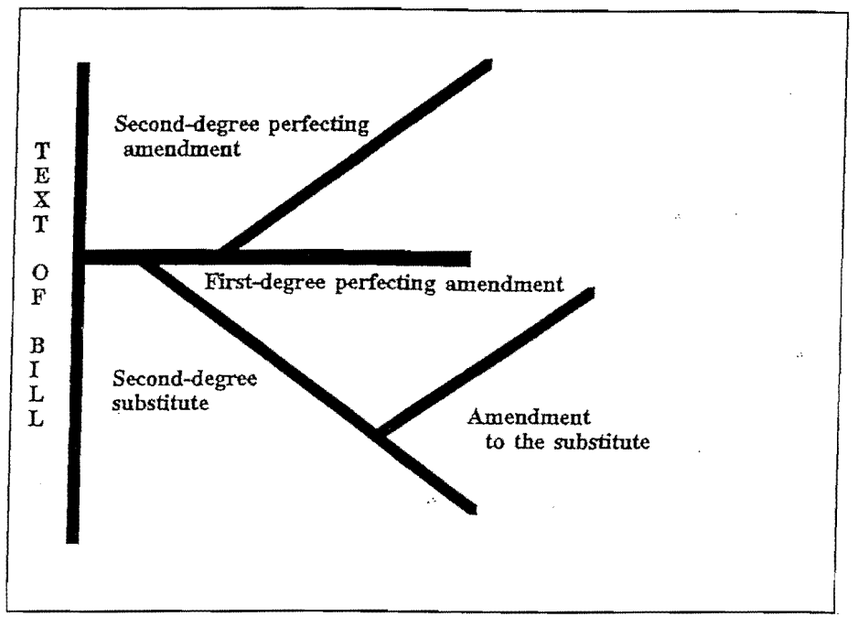

Figure 1: The Contemporary "Cannon" Tree

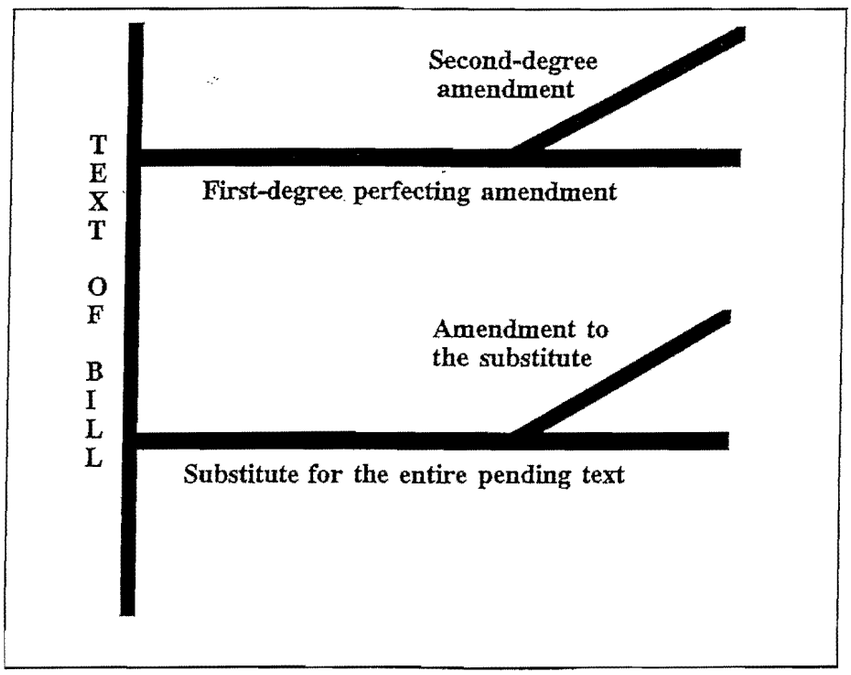

Figure 2: The 19th Century "Hinds" Tree

Congressional Record, especially during the 1870s, for other complex amendment situations. Although we encountered numerous instances of apparent confusion and uncertainty, we were drawn to two conclusions: first, that the House's pre-1880 amendment practices were reasonably consistent from case to case, but second, that these practices were inconsistent with House Rule XIX as we understand it today.

The House's pre-1880 amendment practices were more or less consistent with an alternate reading of Rule XIX. The primary difference between the two interpretations of the rule lies in the meaning of "a further amendment by way of substitute." In contemporary practice, this substitute is a substitute for a pending first-degree amendment. The House's pre-1880 practices indicate, however, that the original intent of the rule was for the substitute to be a first-degree substitute for part or all of the text of a measure. If a bill or resolution was being considered in the House and, therefore, was open to amendment at any point, the substitute was a complete substitute, proposing to strike all after the measure's enacting or resolving clause and insert an entirely different text in its place. If instead, the measure was being read for amendment by section or title in Committee of the Whole, the substitute was a partial substitute that proposed to replace all of the pending section or title, which was the only part of the text then open to amendment.

The pre-1880 cases that Hinds recorded and the other cases that we found were generally consistent with an interpretation of the rule that made in order (1) a first-degree perfecting amendment, (2) a second-degree amendment to it, (3) a first-degree partial or complete substitute, and (4) an amendment to the substitute. (See Figure 2.) The first-degree perfecting amendment and the first-degree substitute could be offered in either order, and both could be pending at the same time, together with one amendment to each. The House (or the Committee of the Whole) voted first on the first-degree perfecting amendment (and any amendments to it). Then it would vote on the first-degree substitute (and amendments to it) that would entirely replace the text that may just have been perfected.

All the cases in *Hinds' Precedents* and almost all the other pre-1880 cases that we examined were consistent with this interpretation of Rule XIX[4] Our 1996 paper concluded, therefore, that the rule, when the House adopted it in 1880, was not intended to be interpreted as it is today and as it has been understood for most of this century. The task remaining for us was to discover the process by which, and the reasons for which, the rule came to be reinterpreted.

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[4]To supplement *Hinds' Precedents*, we focused primarily on selected years between the Civil War and 1880, and then relied on the *Congressional Record* index to identify bills that might have been subject to an extensive amendment process. Some cases involving partial amendment trees were consistent with both interpretations of the rule; others were too ambiguous to test either interpretation with confidence.

THE "CANNON TREE"

We can be reasonably confident that the reinterpretation of Rule XIX had taken place by 1920 at the latest. On September 27, 1919, the House agreed to a resolution providing for the publication of "A Synopsis of Procedure in the House of Representatives," to be prepared by Clarence Cannon, "parliamentary clerk of the House."[5] The first edition of Cannon's *Procedure in the House of Representatives* appeared in the following year (the last edition was to be published in 1963). On the first page of the text appears a diagram (see Figure 3) which is a clear representation of modern practice, and preceding the diagram is this explanation:[6]

> While only one amendment may be offered at a time, and amendments in the third degree are not admitted, four motions in the first and second degrees may be pending simultaneously, as follows: (a) Amendment, (b) amendment to the amendment, (c) substitute for the amendment, and (d) amendment to the substitute. The amendment must, of course, be offered first, and the substitute before the amendment to the substitute, but otherwise there is no rule governing the order in which the various motions may be offered. (Citations omitted.)

By 1920, therefore, this was established as the authoritative interpretation of the rule, the interpretation that the House has followed more or less consistently ever since, and an interpretation that we shall call the "Cannon tree." With the publication of Cannon's manual, there was now an official, accepted interpretation of Rule XIX to which Members could refer.

In October of the following year, the House was debating a bill to revise the laws affecting contested election cases.[7] Dallinger of Massachusetts offered an amendment to replace the second section of the bill and Sanders of Indiana then proposed a second-degree perfecting amendment to Dallinger's amendment. When Rep. Raker proposed to offer a substitute for the Dallinger amendment, a debate ensued that might have been the inspiration for Abbott and Costello's famous routine, "Who's on First?".

One major source of confusion was the fact that the amendment Dallinger had offered was a partial substitute, and some Members could not understand how anyone could offer a substitute for a substitute, especially when a second-degree perfecting amendment was already pending. They argued that Raker's

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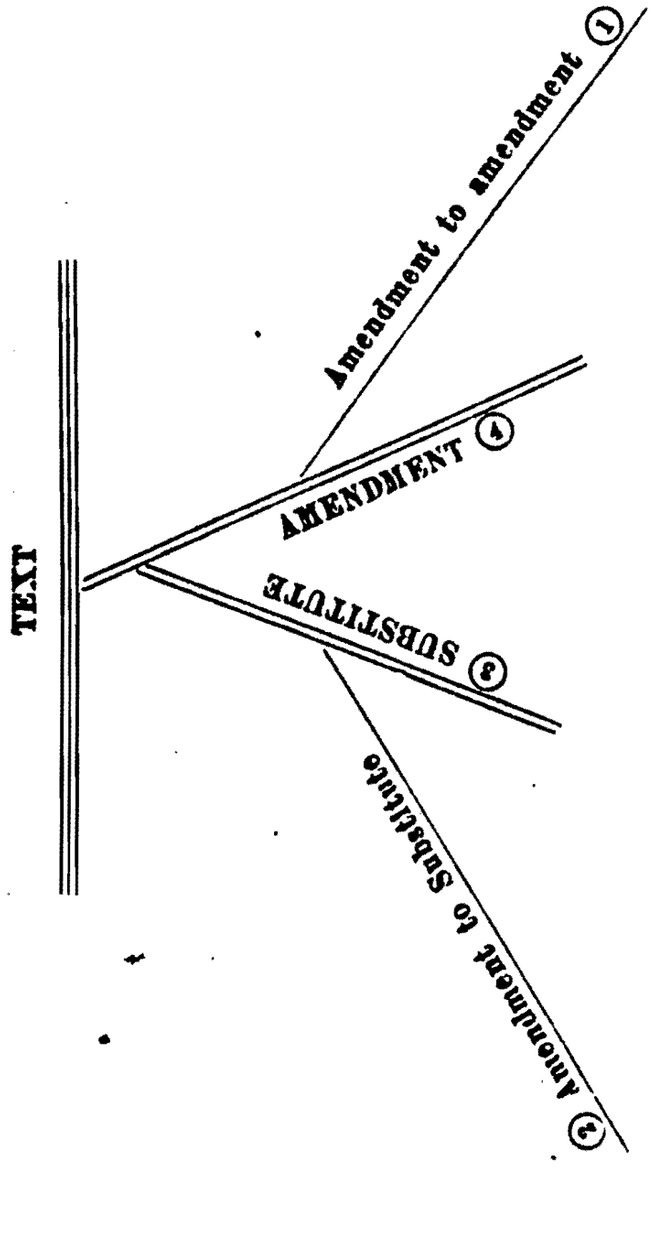
[5]*Congressional Record*, September 27, 1919, pp. 6040-6041.

[6]Clarence Cannon, *Procedure in the House of Representatives* (Washington: Government Printing Office, 1920), p. 7.

[7]These proceedings are found in *Congressional Record*, October 17, 1921, pp. 6394-6401.

Figure 3



Source: Clarence Cannon, Procedure in the House of Representatives. (Washington: Government Printing Office, 1920), p. 7.

second-degree substitute was not in order, but that Rule XIX permitted Members to offer first- and second-degree amendments to perfect the original text of Section 2 which Dallinger proposed to replace. This would have been consistent with Rule XIX as it had been interpreted in 1880. Other Members offered more novel and idiosyncratic interpretations of the rule as they tried to convince Speaker Gillett what four kinds of amendments Rule XIX contemplated.[8]

Gillett listened attentively and at various times seemed to agree with mutually inconsistent interpretations of the rule. Jones of Texas cited "a little rule book here, Cannon's Book of Rules, page 7"[9] referring to Cannon's statement and diagram cited above. But Jones understood Sanders' amendment to be a first-degree perfecting amendment to the same text that Dallinger's first-degree amendment proposed to replace. According to Jones, "it is in order to offer an amendment to the amendment of the gentleman from Indiana. It is also in order to offer an amendment to the substitute offered by the gentleman from Massachusetts...."[10] The picture in Jones' head was of the rule as it was originally intended to be understood, so he saw in Cannon's diagram what he expected to see. Walsh of Massachusetts replied:[11]

> A substitute is always offered in place of an amendment which has been offered and not for the original text. The original amendment [Dallinger] was a motion to strike out and insert. Now, to that amendment one substitute could be offered [Raker], and there can be an amendment to that substitute [not offered]. But gentlemen get confused by calling the [Dallinger amendment] a substitute, which it is not. It is an amendment. A substitute can only be offered when an amendment has been offered.

When Jones and Walsh continued to disagree, the Speaker intervened by stating that Walsh "has stated substantially what the Chair has been attempting to state," an assertion that may have come as a surprise to all concerned.

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[8]For example, Sanders described his understanding of the amendment tree. With the Dallinger partial substitute pending, "you have a right to amend that substitute [which is what Sanders had done]. Another Member has the right to offer a substitute for the amendment to the substitute. Then another Member has a right to offer an amendment to that substitute, and there you have the four." *Ibid.*, p. 6399. In other words, Sanders envisioned a substitute for his second-degree perfecting amendment and an amendment to that substitute--an innovative interpretation that only added to the confusion.

[9]*Ibid.*, p. 6400.

[10]*Ibid.*

[11]*Ibid.*

We cite this case in support of two propositions. First, the publication of Cannon's manual did not produce immediate clarity and consistency; Members continued to have different pictures in their heads when they visualized what they thought Rule XIX meant. In fact, Cannon probably recognized that there continued to be inconsistencies in amending procedures, and later editions of his book clarified what he had written in 1920. Beginning in 1928 and thereafter, Cannon's *Procedure* explained that "[t]he substitute provided for in Rule XIX is a substitute for the amendment and not a substitute for the original text...." The first edition also carried the ambiguous statement that a "[s]ubstitute may be proposed before amendments to text are acted on but may not be voted on until amendments have been disposed of." Later editions continued to carry this assertion, but followed it immediately with what we take to be a clarification or elaboration: "A substitute *for an amendment* may be proposed before an amendment *to the amendment*, but may not be voted on until such amendment has been disposed of" (italics added).

Second, when disputes did arise, they were settled in conformity with the picture that Clarence Cannon drew in his manual. More important than what we make of the Jones-Walsh-Gillett incident is what Cannon thought of it. It was this muddle and Speaker Gillett's ruling to resolve it that Cannon cited in support of his later contention that "[u]nder the recent practice of the House the substitute provided for in Rule XIX has been construed as a substitute for the amendment and not a substitute for the text."[12] So Cannon wrote in his *Precedents*, published in 1936, and all the other incidents that Cannon cited as precedent likewise were consistent with what we are calling the "Cannon tree"--the modern interpretation of the rule.

We are prepared to accept at face value the clear implication of Cannon's statement of "the recent practice of the House": that by no later than 1921, the new amendment tree had displaced the old as the authoritative (i.e., correct) reading of the rule. Even if there continued to be occasional instances of aberrant practice--and we would be surprised if there were not--there was a clear, controlling, and readily available statement as to how Rule XIX was to be understood. However, Cannon does not claim that the 1921 ruling was innovative. So the next question to ask is when the process of reinterpretation began.

THE "HINDS TREE"

Our attempt to answer this question is complicated by the fact that, unlike Cannon, Hinds offered no graphic depiction of the rule as he understood it, nor did he differentiate between the two possible interpretations of the rule as Cannon did in the headnote just quoted on "the recent practice of the House."

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[12]U.S. Congress. House of Representatives. *Cannon's Precedents of the House of Representatives*. (Washington: U.S. Government Printing Office, 1936), v. 8, sec. 2883.

We are left to infer how Cannon's predecessor interpreted the rule from what the House did in the incidents Hinds chose to cite as precedent, and how he characterized them.

Our inspection of these incidents satisfies us that they are not consistent with the Cannon tree. Instead, to the extent that a pattern can be inferred from them, they are consistent with the alternate interpretation of the rule, which we shall denote the "Hinds tree." We give it this name because we believe that this is how Hinds understood the rule and thought the House should apply it.

Hinds published his first, one-volume, compilation of precedents in 1899; his later, five-volume, series appeared in 1907. All the relevant cases that appear in either collection, whether they occurred before or after the 1880 adoption of Rule XIX, are compatible with the Hinds tree. On the other hand, we know from our review, in the *Congressional Record* and its predecessors, of other incidents that took place on the floor before 1907 that the actual practice of the House was not so consistent. We found cases that cannot readily be accommodated under either interpretation of the rule, and still others that are evidence of confusion, uncertainty, or inconsistency. This variability in procedure is not reflected in Hinds' collections because of what we believe to have been his purpose in compiling and publishing the precedents of the House.

In the introduction to the 1907 *Precedents*, Hinds stressed how important it was for the House to enjoy "a system of procedure:"[13]

> It is manifestly desirable, on a floor where high interests and great passions strive daily, that the rules of action should be known definitely, not only by the older members, but by all. Not only will the Speaker be enabled to make his decisions with more confidence and less fear that he may be swayed by the interests of the moment, but the Members, understanding the rules of his action, will sustain with commendation what they might have criticised with asperity. Thus, good order and dignity will be preserved to the body.

Hinds' purpose, therefore, was not to record whatever the House had done. Instead, it was to select and present examples of correct procedure to guide the House in the future. No collection of precedents could be exhaustive, of course, unless it reproduced the House Journal *verbatim*. The compiler must select which incidents to record and which to ignore. It would have been incompatible with his purpose for Hinds to record amendment precedents which showed that the House had followed different practices in different cases. In order "that the rules of action should be known definitely," the House required published precedents that provided consistent and authoritative statements of its procedures and interpretations of its rules. In selecting and compiling the precedents, Hinds necessarily found himself in the position of creating clarity and order out of inconsistency and confusion. We can easily imagine him

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[13]*Hinds' Precedents*, v. 1, pp. iii, v.

deciding not to include what he considered aberrant cases for fear of appearing to encourage or legitimate practices that he thought were wrong.

We conclude that Hinds was presenting to the House what he understood to be the *correct* interpretation of the amendment rule. After all, he was using the same interpretation that had appeared in the House's manuals of parliamentary practice since 1860.[14] And once Hinds' collections were published and used by Members and Speakers alike, it became the *authoritative* interpretation.

We cannot doubt that Hinds was perfectly well aware that his amendment precedents did not capture the variability of House practice. He was much too thorough and careful a student of the history and procedures of the House not to know that, both before and after 1880, the House's practices did not always conform to his implicit interpretation of the rule. And, in fact, his interpretation of Rule XIX is implicit. Unlike Cannon, Hinds does not note the existence of an alternate interpretation of the rule. Cannon clearly implies that "the recent practice of the House" once had been different. Hinds, on the other hand, does not acknowledge a different practice, even if only for the purpose of rejecting it as mistaken. The few pre-1880 precedents Hinds chose to include are consistent with the Rules Committee's claim that its proposed rule was merely a codification of existing practice. And his post-1880 precedents all are consistent with a single interpretation of that rule even though, as we shall argue, the actual practices of the House remained much less consistent.

The most reasonable inference, we believe, is that what we are calling the Hinds tree represented his understanding of Rule XIX, that the publication of his collected precedents confirmed this as the authoritative interpretation of the rule, and that it remained Hinds' and the House's understanding of the rule at least until sometime after 1907, when his multi-volume compilation was published.

Hinds was very much the protege and assistant of Speaker Reed until Reed retired from the House, and there is some evidence, albeit thin, that Reed also had the Hinds tree in mind when he thought about the meaning of Rule XIX. In his privately published *Reed's Rules, A Manual of General Parliamentary Law*, Reed wrote:[15]

> Amendment by way of substitute is a short and informal method of striking out and inserting usually applied to *whole paragraphs or*

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[14]For example, pp. 7-11 of "Barclay's Digest of the Rules of Proceeding in the House of Representatives of the United States, compiled by John M. Barclay, and furnished by him for the use of the House of Representatives," published as part of the *House Manual* for 1860-1861.

[15]Thomas B. Reed, *Reed's Rules, A Manual of General Parliamentary Law* (Chicago: Rand McNally & Company), pp. 100-101.

> *bills*, and is made by offering a new paragraph or bill as a substitute for the old, and upon adoption the old paragraph or bill is stricken out and the new one inserted. (Emphasis added.)

This is a workable definition of a first-degree complete or partial substitute, and nowhere does Reed refer to a substitute in the context of an amendment to an amendment. In fact, several pages later, Reed writes specifically of the practices of the House. He restates Rule XIX and then observes that:[16]

> Accordingly in the House the custom is not to move to strike out a paragraph, section, or bill and insert another, but to offer a substitute. The original is then perfected, and after that the substitute, and then the House decides which it will have.

So when Reed speaks of substitutes, he clearly has in mind complete and partial first-degree substitutes, not second-degree substitutes. Furthermore, he envisions Members offering first-degree perfecting amendments while such a partial or complete substitute is pending. In other words, he describes the Hinds amendment tree.

Now observe Reed presiding over the House during 1896. In February of that year, Hepburn of Iowa proposed to add a proviso to the first section of a bill. Rep. Lacey, the committee chairman and majority floor manager of the bill, offered an amendment to Hepburn's amendment. Lacey called his amendment a substitute, and in fact it was precisely what today we would call a second-degree substitute (more accurately, a substitute for the pending amendment). When the time came to vote, Reed announced that the previous question had been ordered on both "the amendment offered by the gentleman from Iowa [Mr. HEPBURN] and the amendment offered by the chairman of the Committee on Public Lands." When Rep. Tawney sought to clarify the situation by interjecting, "That is the substitute," Reed immediately replied: "It is an amendment to the amendment." While we acknowledge that this is a very weak reed upon which to rest a conclusion, it is easy to imagine an acerbic bite to Reed's voice as he corrected Tawney. To Reed, "substitute" did not refer to an amendment to an amendment; it only referred to a certain kind of amendment to the bill itself.

We have argued that the intent of the House in adopting Rule XIX in 1880 was to codify the amendment practices represented by what we call the Hinds tree. Absent any evidence to the contrary, we now argue that Hinds persisted in this interpretation of the rule, that Reed apparently shared this interpretation, and that this remained the official interpretation until sometime between 1907 (when Hinds' *Precedents* were published) and 1920 (when Cannon's manual first appeared).

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[16] *Ibid.*, p. 105.

This leaves two questions to be addressed. First, what were the actual practices of the House between 1880 and 1907? Were they consistent with each other and with the Hinds tree? And second, how and when did the House's practices change between 1907 and 1920?

CODIFICATION WITHOUT CONSISTENCY

If the purpose of Rule XIX was to codify the House's established amendment procedures, the expectation and intent of the Rules Committee evidently was to ensure consistency in the subsequent practices of the House. The way in which the rule was adopted, with very little explanation and no controversy, certainly gives us no reason to expect that it should have been followed by procedural innovations. Yet our limited research leads us to conclude that the adoption of Rule XIX was followed by less, not more, consistency in the House's amending practices. The pre-1880 episodes on which we reported in our 1996 paper revealed the use of procedures that were almost always consistent with each other and compatible with the Hinds tree. During the first twenty-five years after the House adopted Rule XIX, on the other hand, we find some cases that fit on the Hinds tree, some that rest more comfortably on the Cannon tree, and still others that cannot readily be explained under either interpretation of the rule.

Because we have only scattered cases on which to rest our conclusions, we cannot say with certainty which reading of the rule, if either, was most prevalent during this period. But our evidence is sufficient to reject the hypothesis that the adoption of Rule XIX led to (or even was followed by) the use of House amending practices that were consistent from case to case. The adoption of the rule failed to embed the Hinds tree more firmly in House procedures nor did it produce a transformation of those procedures--i.e., a jump from the Hinds tree to the new Cannon tree.

In 1882, we find evidence of the Hinds tree in the House's consideration of post office appropriations in Committee of the Whole.[17] Rep. Bingham offered a first-degree perfecting amendment to change the dollar amount in the pending paragraph of the bill, and Cannon of Illinois proposed to amend that amendment to make a different change in the dollar amount and to add a proviso governing the use of that sum. With both of these amendments pending, Upson of Texas offered a partial substitute to replace the entire paragraph, and Atkins of Tennessee moved to amend the Upson first-degree substitute. The Chairman then announced that:[18]

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[17]*Congressional Record*, February 2, 1882, pp. 852-855, and February 4, 1882, pp. 896-899.

[18]*Ibid.*, p. 898.

> The amendment offered by the gentleman from Pennsylvania [Mr. BINGHAM] and the amendment to the amendment of the gentleman from Illinois [Mr. CANNON] are to the original text of the bill, and the vote therefore will be taken first upon them and afterward upon the substitute of the gentleman from Texas [Mr. UPSON] and the amendment moved thereto by the gentleman from Tennessee [Mr. Atkins].

These are precisely the kinds of amendments, and the order for voting on them, that the Hinds tree contemplated.

Similarly, during consideration of a bill in the House several months later, three amendments were offered: Rep. Holman's first-degree perfecting amendment, Rep. House's complete substitute for the bill, and Rep. Thompson's second-degree perfecting amendment to the Holman amendment. When Rep. Dunn asked, "Is an amendment now in order?", the Speaker replied: "At this moment no further amendment is in order unless offered as an amendment to the substitute of the gentleman from Tennessee [Rep. House]."[19]

Yet several weeks earlier, during consideration of the army appropriations bill, there had developed most of what clearly was a modern, Cannon tree.[20] There were pending a Hiscock first-degree perfecting amendment to insert a proviso into the bill and Thompson's second-degree perfecting amendment to add language to the Hiscock proviso. Holman of Indiana then was recognized to offer a substitute for Hiscock's amendment, the Chair first having confirmed that Holman wanted "to offer a substitute for the two amendments"[21] (i.e., the Hiscock and Thompson amendments, not a partial substitute for the pending paragraph of the bill). So in this case, the Committee of the Whole recognized a difference between a second-degree perfecting amendment and a second-degree substitute and permitted both to be pending at the same time. This is consistent only with the Cannon tree.

Thus, we observe evidence of both interpretations of the rule during 1882. More of the cases we have analyzed were more compatible with the Hinds tree than with the Cannon tree, but this may be nothing more than an artifact of the small number of cases we discovered. Furthermore, we are not prepared to assume that there always was some considered basis for the procedures the House followed. In June, during consideration of a naval appropriations bill, there clearly was pending a substitute for a second-degree perfecting amendment.[22] No one questioned whether that amendment was in order, but

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[19]*Congressional Record*, April 21, 1882, p. 3147; April 22, 1882, p. 3194.

[20]*Congressional Record*, April 5, 1882, pp. 2619-2623.

[21]*Ibid.*, p. 2620.

[22]*Congressional Record*, June 5, 1882, pp. 5656-5660.

we know of no House practice or interpretation of Rule XIX that would make it in order, then or now.

In the 1890s as well, we observe the House engaged in practices that, at different times, are consistent with both interpretations of the rule. Although we did not encounter a case in which Members actually offered all four of the amendments that fit on the Hinds tree, we did find several incidents that are consistent with the House's pre-1880 amendment practices, but not with the amendment tree as we understand it today.

In May of 1896, for example, Rep. Corliss' first-degree perfecting amendment was pending when Rep. Stone offered an amendment in the nature of a substitute--something that is consistent with the Hinds tree but not with the Cannon tree. Members then proceeded to propose amendments to both the Corliss amendment and the Stone complete substitute. Although the Speaker ruled that both second-degree amendments were not germane, no one suggested that such amendments, if germane, would not have been in order. In other words, Members proposed to fill all four branches of the Hinds tree.[23]

On January 30, 1896, before final passage of a pensions bill, Rep. Poole offered a complete substitute for the bill while a first-degree perfecting amendment to it was pending.[24] And much the same thing occurred in February of the following year, when Terry of Arkansas proposed an amendment in the nature of a substitute before the House had voted on Rep. Bell's first-degree perfecting amendment.[25]

On the other hand, we also discovered cases that are largely or fully consistent with the contemporary interpretation of Rule XIX. In January 1890, the Committee of the Whole was considering Rep. Culberson's first-degree perfecting amendment and Rep. McRae's second-degree perfecting amendment to it when Rep. Tarsney offered a substitute for both. McRae later withdrew his amendment but others offered their own second-degree perfecting amendments while Tarsney's second-degree substitute remained pending.[26] All this is consistent with Cannon's tree and the modern practices of the House, and there was no confusion or controversy over having a second-degree perfecting

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[23]*Congressional Record*, May 16, 1896, pp. 5418-5421. It is worth noting that one of the Members actively involved in this episode was Dingley of Maine, an associate of Reed's, the Chairman of the Ways and Means Committee, and, therefore, presumably someone who should have understood the House's procedures.

[24]*Congressional Record*, January 30, 1896, pp. 1120-1121.

[25]*Congressional Record*, February 17, 1897, pp. 1947-1949.

[26]*Congressional Record*, January 17, 1890, pp. 665-681.

amendment and a second-degree substitute both pending to the same first-degree amendment.

We encounter another Cannon tree among the sometimes confusing events of February 17-18, 1896, when the House was considering the agriculture appropriations bill.[27] In Committee of the Whole, with Rep. Skinner's first-degree perfecting amendment and Rep. Ray's second-degree perfecting amendment pending, Rep. Tracey sought to offer an amendment:

> THE CHAIRMAN. Does the gentleman offer his amendment as a substitute for the two amendments?
>
> Mr. TRACEY. I offer it as a substitute for the two amendments.
>
> THE CHAIRMAN. It is in order then.

And Tracey's amendment was, in fact, well-drafted as a substitute. When Rep. MacRae later asked whether another amendment would be in order, the Chairman confirmed that he was following the modern interpretation of the rule:

> THE CHAIRMAN. An amendment to the substitute would be in order. The gentleman from New York [Mr. RAY] offered an amendment to the amendment offered by the gentleman from North Carolina [Mr. SKINNER] --not a substitute for it, but an amendment. The gentleman from Missouri [Mr. TRACEY] has offered a substitute for the two amendments.

Moments later, the Chairman and Rep. Dingley of Maine referred to the still-unfilled fourth branch of the Cannon tree:

> Mr. DINGLEY. There is an amendment pending to the original text and an amendment to the amendment, and then a substitute for it. Now, is there any amendment offered to the substitute?
>
> The CHAIRMAN. No amendment to the substitute has yet been offered.

All this clearly is evidence of modern practice.

Although we encountered a number of second-degree substitutes during the 1890s, the notion of what constituted such an amendment was much less precise than it is today, even among presumably serious legislators. In January 1896, for example, the House was considering amendments to its rules. Rep. Walker offered a first-degree perfecting amendment to insert language granting privilege to certain bills reported by the Committee on Banking and Currency, and Rep. Bailey proposed a second-degree perfecting amendment to extend the same "leave

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[27]*Congressional Record*, February 17-18, 1896, pp. 1819-1821, 1888-1891.

to report at any time" to the Committee on Coinage, Weights, and Measures, on bills relating to coinage. Frank Mondell of Wyoming, who was to become the Republican floor leader, then offered, as a substitute, an amendment to strike the privilege granted to rivers and harbors bills from the committee of the same name. Mondell's amendment would not qualify today as a second-degree substitute, nor should it have been in order then. When another Member pointed this out during debate on the Mondell amendment, the Chairman concurred that it would have been subject to a timely point of order.[28]

We also begin to observe a subtle shift in the House's consideration of first-degree partial and complete substitutes that Members sought to offer when a first-degree perfecting amendment already was pending. Under the Hinds tree, such a substitute was in order and it was amendable, although the first votes would occur on any first-degree perfecting amendments and any amendments to them. By 1890, however, the Speaker or Chairman sometimes announced that the substitute would only be read for information at the time its sponsor sought to offer it, and that its actual consideration would be deferred until after disposition of perfecting amendments. In other cases, the Chair stated that the substitute would be pending, but the *Record* suggests that the substitute was not actually before the House (or Committee of the Whole) at that time for consideration. Instead, the Chair seemed to be saying that the substitute was presented for consideration, that it would be considered at the appropriate time, and that time would arise after the bill (or section, in Committee of the Whole) had been perfected. By presenting the substitute, therefore, its sponsor was assuring that it would receive priority (sometimes, it seems, automatic) consideration when there were no more perfecting amendments to be considered.[29]

In January 1890, for example, a first-degree perfecting amendment had been offered in Committee of the Whole to the pending section of the bill when Rep. Holman rose to propose a substitute for the entire section. The Chairman directed the Clerk to read Holman's amendment, but stated that "[t]he substitute will be offered and will not be voted on until the amendments to the section have been disposed of." This statement is consistent with the Hinds tree, but not the Chair's later clarification that the Holman substitute "was read for the information of the committee and will not be considered until the paragraph is concluded." The Chair even asserted that the Holman substitute was not debatable at that time. Only after Members voted on the first-degree perfecting amendment and several others like it did the Chair state that "[i]f there are no other amendments, the Chair will submit the substitute offered by the gentleman from Indiana...."[30]

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[28]*Congressional Record*, January 10, 1896, pp. 567-572

[29]See the discussion in *Congressional Record*, April 11, 1896, pp. 3869-3870.

[30]*Congressional Record*, January 17, 1890, pp. 658-662. See also *Congressional Record*, January 5, 1905, p. 493; January 10, 1905, pp. 658.

The distinguishing feature of the Hinds tree is that a first-degree perfecting amendment and a first-degree partial or complete substitute could be pending at the same time, meaning that both amendments were before the body in the same way at the same time and each was subject to debate and amendment. We have been referring to an amendment as "pending" when it was actually being considered, and the best evidence would be the right of a Member to offer a second-degree amendment to it. So if Holman's substitute was not even debatable, much less amendable, until after disposition of all perfecting amendments, the Chair's 1890 ruling is not really compatible with the Hinds tree. To be consistent with the Cannon tree, on the other hand, the Chair would have had to advise Holman that he could offer his first-degree partial substitute whenever a first-degree perfecting amendment was not pending. What we now know permits us only to view this 1890 case, and others similar to it, as a kind of transitional form.

Although Reed left the House in 1899, Hinds remained as "clerk at the Speaker's table" until 1911. Yet even with Hinds' continued presence on the floor and the publication of his one volume of precedents in 1899, the House entered the 20th Century without a consistent interpretation and application of Rule XIX. That even experienced Members operated under conflicting interpretations of the rule is well illustrated by the exchange on April 19, 1900, between two of the most experienced and powerful members of the House: Joe Cannon, then Chairman of the Appropriations Committee, and Sereno Payne, who was Chairman of the Ways and Means Committee and also serving that day as Chairman of the Committee of the Whole.

During consideration of a naval appropriations bill, Joe Cannon offered a first-degree perfecting amendment and then proposed a second-degree perfecting amendment to his own amendment.[31] When he later sought to withdraw his amendments and offer a different one in their place and Rep. Mudd objected, Cannon explained that he wanted to offer his new amendment "as a substitute for the section." Payne rightly pointed out, however, that this amendment also was drafted as a perfecting amendment, not a substitute. Payne continued:

> The difficulty is that the gentleman [Cannon] first offered an amendment to the text of the paragraph....Then he offered an amendment to that amendment, adding certain words to the paragraph as well as amending the text of the paragraph, so that there are two amendments now pending, and *nothing is in order except a substitute for the entire paragraph.* (Italics added.)

As the end of Payne's statement clearly indicates, he had Hinds' tree in mind. But not Cannon:

> Mr. CANNON. Then there is an amendment to the amendment. Now, a substitute for the amendment is in order.

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[31]*Congressional Record*, April 19, 1900, pp. 4444-4447.

The CHAIRMAN. No, a substitute for the paragraph is in order.

Joe Cannon evidently is picturing his namesake's tree, by asserting that a second-degree substitute--"a substitute for the amendment"--is in order. But Payne persists in applying Hinds' original interpretation of the rule. So Cannon ultimately redrafts his new amendment as a substitute for the entire paragraph and offers it with his first- and second-degree perfecting amendments still pending. In other words, Cannon acquiesces in Payne's interpretation, perhaps because Cannon himself was uncertain about what amendments were in order. First he had tried to offer a substitute for the paragraph while his perfecting amendments were pending; then he asserted that the substitute that was in order was a substitute for his perfecting amendments. No wonder that other Members exhibited similar uncertainties during the opening years of the century.

It might be tempting to conclude that Payne was being guided by Hinds' advice on the floor. However, two years later, Payne's ruling was contradicted by another influential Chairman of the Committee of the Whole, Tawney of Minnesota, who then was Majority Whip and later would succeed Joe Cannon as Chairman of the Appropriations Committee.[32] Former Speaker Galusha Grow, then in his last term in the House, had offered a first-degree perfecting amendment to a silver coinage bill. After Rep. Newlands proposed a second-degree perfecting amendment, Lanham of Texas inquired if "it would be in order to offer a substitute for the amendment offered by the gentleman from Pennsylvania [Mr. GROW] and the amendment to that amendment proposed by the gentleman from Nevada [Mr. NEWLANDS]." Tawney responded that it would. Though Tawney subsequently ruled (correctly) that Lanham's amendment was not properly drafted as a substitute, what is important for our purposes is that Tawney evidently had Cannon's tree in mind because he was prepared to entertain a second-degree substitute while first- and second-degree perfecting amendments were pending.[33]

The distinction between second-degree perfecting and substitute amendments is fundamental to the Cannon tree, and these last episodes indicate that this distinction was becoming recognized. But there remained uncertainty as to exactly what the distinction was and how it was to be applied. In June 1902, after Rep. Jones of Virginia had offered a second-degree perfecting amendment, the Chair allowed Rep. Cochran of Missouri to offer what he

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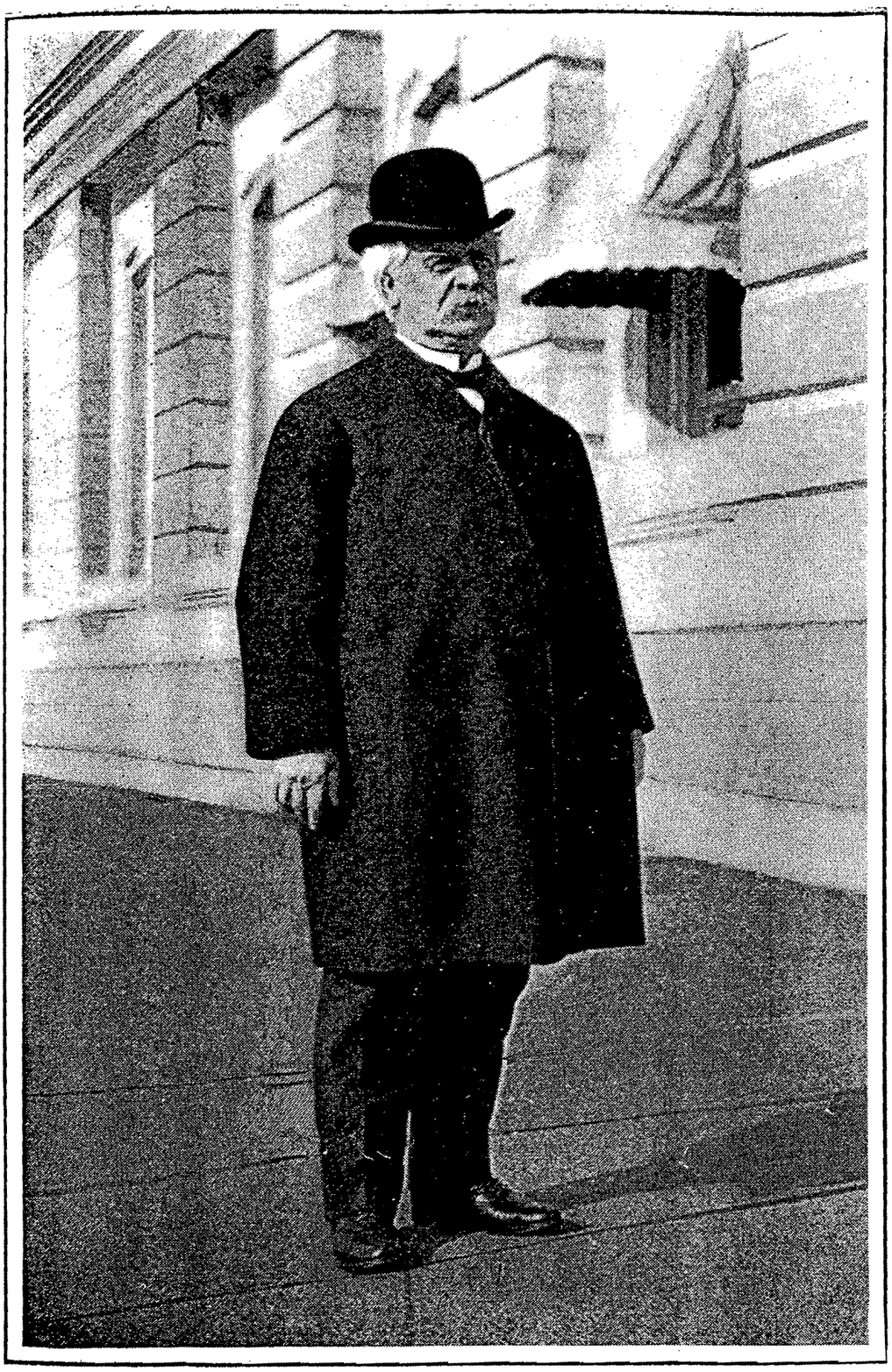
[32]*Congressional Record*, May 28-29, 1902, pp. 6052, 6070, 6111-6114.

[33]By no means were Chairmen always so careful in determining whether an amendment was well-drafted as a second-degree substitute. See, for example, *Congressional Record*, March 29, 1906, p. 4466, 4469.



SERENO E. PAYNE.

"That kindly smile is something that Sereno cannot help."

characterized as a "substitute" for Jones' amendment. Rep. Crumpacker made a point of order against Cochran's amendment:[34]

> Mr. CRUMPACKER. Mr. Chairman, I desire to make a point of order against the amendment submitted by the gentleman from Missouri....[T]he gentleman from Virginia has properly offered an amendment to an amendment. Now, the gentleman from Missouri offers what is in effect an amendment to an amendment to an amendment.

In other words, Crumpacker was arguing, correctly, that Cochran was trying to offer an impermissible third-degree amendment. But the Chairman rejected this argument:

> The CHAIRMAN. The gentleman from Missouri offers this as a substitute to the amendment, not as an amendment to the amendment. There is some question whether that is permissible or not, but the Chair is inclined to rule that a substitute is admissible.

After Cochran's "substitute" was rejected, Rep. Sulzer asked if he could offer an amendment to Jones' second-degree perfecting amendment. The Chair responded that "[a]n amendment to the [second-degree perfecting] amendment is not admissible." So the Chair understood that a substitute for an amendment sometimes could be offered when a perfecting amendment to it could not. But the most reasonable inference is that he simply was mistaken in thinking that this was such a situation. The Chair, for what it is worth, was Frederick Gillett of Massachusetts, who would become Speaker in 1919.

An incident that occurred early in the following year also indicates that at least some Members recognized a distinction between second-degree perfecting and substitute amendments, a distinction that is important in the context of the Cannon tree.[35] The Committee of the Whole had risen and reported to the House an amendment in the nature of a substitute. Rep. Hepburn, Chairman of the Committee on Interstate and Foreign Commerce that had reported the bill, immediately proposed to replace the entire text of the complete substitute except for the first word, so that it would not be a substitute in form even though it was a substitute in content.

Hepburn acknowledged that his amendment made only a few changes in the amendment in the nature of a substitute, indicating that there was no need for him to have drafted such a sweeping perfecting amendment in order to put his proposals before the House. When Members sought to amend Hepburn's amendment, the Speaker pro tempore (Dalzell of Pennsylvania) told them that

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[34]This episode and the quotations taken from it is found in *Congressional Record*, June 26, 1902, pp. 7443-7445.

[35]*Congressional Record*, January 17, 1903, pp. 924-927.

they could not do so because they would be offering third-degree amendments to a second-degree perfecting amendment. No one quite said that Hepburn's amendment would have been amendable if it had been drafted as a substitute (which would be the case in modern practice). Still, it is difficult to imagine why Hepburn would have carefully drafted his amendment as he did if it were not an example of tactical drafting to protect his amendment against amendments. And if so, his ploy must have been predicated on his understanding that Dalzell, following Cannon's tree, would have permitted amendments to a second-degree substitute if Hepburn had offered his amendment in that form.

An unambiguous example of modern amending practice occurred in June 1906, during floor action on the sundry civil appropriations bill.[36] Rep. Sullivan proposed to insert into the bill a limitation on how certain funds could be spent. One right after the other, Rep. Olmsted offered a second-degree substitute, Sullivan responded by amending Olmsted's amendment, and Rep. Wanger followed with a second-degree perfecting amendment to Sullivan's original amendment. This was, in other words, a simple and complete modern tree, and such a clean example of one that it could be used today to illustrate the opportunities that Rule XIX provides. It also clearly embodies an interpretation of the rule that we cannot reconcile with the interpretation that Hinds derived from the precedents that he was about to publish.

FROM HINDS TO CANNON

In the quality and the quantity of information they made available, Hinds' five volumes of *Precedents* marked a dramatic improvement over the digests that had been printed in each published edition of the House's rules. Whenever the Speaker, the Chairman of the Committee of the Whole, or any other Member had any doubt about the meaning and application of the rules, there now was an authoritative source to which they could turn. Furthermore, this source was readily available. The sundry civil appropriations bill enacted on March 4, 1907, authorized the printing of 2,500 sets of the *Precedents*, with each Representative, Delegate, and Senator to receive three of them, and with additional sets to be available in the rooms of each committee and at the House and Senate libraries and the Library of Congress.[37]

We might expect, therefore, that whatever uncertainties had existed in the minds of Members since 1880 about the correct interpretation of Rule XIX now would give way to a consistent pattern of practice. We also would expect that this pattern would reflect the Hinds tree--the interpretation of the rule that is implicit in the chapter of *Hinds' Precedents* that deals with amendments. Not so, however. Our limited research, especially on House practice during 1912 and

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[36]*Congressional Record*, June 15, 1906, pp. 8601-8605.

[37]*Statutes at Large*, v. XXXIV, part 1, 59th Congress, 2nd Session, 1907, p. 1365. The same act appropriated $20,000 to pay Hinds for his efforts.

1916, reveals evidence of continuing inconsistency and recurring confusion or uncertainty. Some episodes are much more consistent with the Hinds tree and others with the Cannon tree. Without examining *every* instance of amending activity, we cannot conclude whether either reading of the rule was followed so much more often than the other to justify characterizing it as the prevailing or dominant interpretation during part or all of the decade or so following 1907. We can say, however, that the House did not follow either interpretation to the exclusion of the other.

Consider the December 1911 debate on an urgent deficiency appropriations bill.[38] After Rep. Palmer offered an amendment to cut in half the amount provided to reimburse Senators for their travel costs to and from Washington, Rep. Byrnes offered a well-drafted second-degree substitute which the Chairman refused to entertain. Although he did not explain his reason, perhaps the Chairman was uncomfortable with the notion of a second-degree substitute because he was perfectly willing to allow Byrnes to offer his amendment after he re-drafted it as a second-degree perfecting amendment. After Members rejected Byrnes' amendment, the Chairman did entertain Rep. Sherley's amendment which also was drafted as a second-degree substitute. However, the Chairman seemed to think that it was a partial substitute instead.

When the Chairman began to put Palmer's first-degree perfecting amendment to a vote, Rep. Mann interrupted to say that the first vote should be on the Sherley substitute. The Chair disagreed: "The bill should be perfected before the substitute is in order." But that statement only makes sense if the Sherley amendment was thought to be a partial substitute which had been offered with Palmer's first-degree perfecting amendment pending--which would be consistent with the Hinds tree. Rep. Mann disagreed with the Chairman's interpretation of Sherley's amendment: "This is not a substitute for the paragraph of the bill. It is a substitute for the amendment, and neither one covers the entire paragraph." In other words, Sherley's amendment was not drafted to qualify as a partial substitute, so the next vote should be on Sherley's amendment as a substitute for the Palmer amendment. The Chairman then agreed with Mann, so Members voted on the Sherley and Palmer amendments in that order.

It seems to us that the best--actually the only--way to make sense of this episode is to accept that the Chairman was trying to fit the amendments onto the branches of the Hinds tree, whereas Mann was placing them on the Cannon tree instead. Ultimately, the Chairman allowed himself to be convinced to employ the modern interpretation of the rule.

Other episodes during the following year are unambiguous. In April, there were pending a partial substitute and a second-degree substitute for it.[39] When

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[38]*Congressional Record*, December 16, 1911, pp. 435441.

[39]*Congressional Record*, April 16, 1912, pp. 5640-5648.

Rep. Sulzer tried to offer a perfecting amendment, the Chairman thought Sulzer's amendment was a second-degree perfecting amendment and said that "the gentleman can not offer it. There is already one amendment pending to the substitute, and there can be only one." This statement describes the Hinds tree, of course, but not the contemporary Cannon tree. When Sulzer responded that he was proposing to perfect the text of the bill, the Chairman entertained the amendment even though the partial substitute was pending--again, a ruling consistent with the original interpretation of the rule. Rep. Anderson then offered a second-degree perfecting amendment to the Sulzer amendment, filling the Hinds tree. The Chair observed that "[n]o amendment is now in order until some amendment is disposed of. There are four amendments now pending, and no more can be offered at this time." All of this was perfectly compatible with the Hinds tree as was the order in which Members voted on the amendments.

Several months later, the House was considering a short bill to which there was a committee amendment.[40] With this amendment pending, Rep. Willis offered a complete substitute for the entire text of the bill, and Rep. Roddenbery offered a perfecting amendment to the Willis substitute. This too was an unambiguous example of a Hinds tree. Five days later, however, we find evidence of a Cannon tree.[41] The Committee of the Whole was presented with an amendment to insert a new section in the bill that was being considered. Rep. Wilson offered a second-degree substitute for the committee amendment and Rep. Fitzgerald then proposed an amendment to Wilson's substitute. Such an amendment to a second-degree amendment is in order under Rule XIX as we know it today, but not under any circumstances under the earlier interpretation of the rule. Similarly, in January 1912, there were pending at the same time a second-degree perfecting amendment and a second-degree substitute to the same first-degree amendment--another situation explicable by the Cannon tree, but not the Hinds tree.[42]

During 1916 also, neither interpretation of Rule XIX was applied to the exclusion of the other. Although we discovered only seven instances of complex amendment activity during the course of the year, several of these episodes lend support to each reading of the rule.

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[40]*Congressional Record*, July 12, 1912, pp. 8962-8964.

[41]*Congressional Record*, July 17, 1912, p. 9207.

[42]*Congressional Record*, January 8, 1912, pp. 724-725. After the vote on the second-degree perfecting amendment, the Chair was about to put the second-degree substitute to a vote when a Member asked if the next vote should occur instead on the first-degree perfecting amendment. That Member would have been correct if the substitute had been a first-degree partial substitute on a Hinds tree (and perhaps this is what he had in mind), but not when the substitute actually was a second-degree substitute on a Cannon tree.

We find evidence of the modern interpretation of Rule XIX, the Cannon tree, in the events of January 25, when Rep. Haugen proposed a second-degree substitute for an amendment to the bill that Rep. Byrnes had offered.[43] After some debate, the Chairman permitted Rep. Rogers to offer a second-degree perfecting amendment to the Byrnes amendment. When another member objected that the Haugen substitute already was pending, the Chairman responded that it was "a substitute for the entire amendment" and by implication, therefore, it did not preclude consideration of Rogers' amendment. After rejecting the Rogers amendment, the Committee considered and voted on several other second-degree perfecting amendments before finally acting on the Haugen substitute and then on Byrnes' first-degree amendment. All this was consistent with modern practice in that there was a second-degree perfecting amendment and a second-degree substitute pending at the same time, even if the amendments were not always drafted and presented in technically correct fashion. Roughly a week later, the Committee of the Whole again had pending at the same time a second-degree perfecting amendment and a second-degree substitute to the same amendment to the bill, and voted on them in accordance with our current understanding of Rule XIX.[44]

In April 1916, however, the Chairman ruled in a manner consistent with the Hinds tree. After Rep. Borland of Missouri offered a first-degree partial substitute, Rep. Smith of Idaho sought to offer an amendment to the paragraph Borland wanted to replace. When Smith mischaracterized his amendment as a substitute for Borland's, the Chairman replied:[45]

> The gentleman from Idaho will observe that the motion of the gentleman from Missouri is to strike out the entire paragraph and substitute another provision. The amendment of the gentleman from Idaho is to perfect the text of the paragraph. The substitute of the gentleman from Idaho, being a motion to perfect the text, would take precedence over the motion of the gentleman from Missouri to strike out.

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[43]*Congressional Record*, January 25, 1916, pp. 1521-1523. The Haugen amendment was not well-drafted as a substitute in that it left a small portion of Byrnes' amendment unaffected. Nonetheless, it was intended and understood to be a substitute.

[44]*Congressional Record*, February 2, 1916, p. 2029. Similarly, a full, four-branch modern tree emerged on July 15 (*Congressional Record*, pp. 11124-11128), but not without significant confusion concerning what kinds of amendments had been offered, which ones were in order, and when the Committee of the Whole was to vote on each of them. Although this episode reveals a very imprecise notion of how an amendment had to be drafted in order to qualify as a second-degree substitute, we can see a modern tree in the ultimate result even if it appears through a rather cloudy lens.

[45]For these events, see *Congressional Record*, April 26, 1912, pp. 6867-6872.

In other words, the Chairman correctly understood Smith's amendment to be a first-degree perfecting amendment (even though he incorrectly referred to it as a substitute), and he allowed Smith to offer it while Borland's partial substitute remained pending. Today, Smith would have to wait until after the vote on Borland's amendment before being able to offer his own first-degree amendment to the bill.

This episode is much more consistent with the amendment practices Hinds described: a first-degree perfecting amendment was in order while a first-degree partial substitute was pending. Yet at one point, the Chairman agreed that a substitute for an amendment was in order and he correctly judged that Smith's amendment did not constitute such a substitute. So "substitute" was recognized as having two possible meanings--either the first-degree substitute of the Hinds' tree or the second-degree substitute of the Cannon tree--but uncertainty remained about when each could be offered. On another occasion in 1916, the Chairman was reluctant to entertain a second-degree substitute because the first-degree amendment was a partial substitute that proposed to replace the entire pending section of the bill. There was doubt about whether it was possible to have two alternatives to the section pending at the same time, one as a substitute for the other. Ultimately, however, the second-degree substitute was allowed.[46]

Finally, in May of the same year, Rep. Jones of Virginia proposed a partial substitute to strike out the entire text of the pending section and insert a different text in its place.[47] Rep. Mann then offered a second-degree perfecting amendment to Jones' amendment as well as a first-degree perfecting amendment to the section that Jones proposed to replace. That Mann could offer the latter amendment while Jones' partial substitute was pending clearly is consistent with the Hinds tree. Although the Chairman was confused about the order in which Members were to vote on Mann's two amendments, he was confident that a third Member could not offer a substitute amendment at that time, even though it is equally clear that a second-degree substitute for Jones' amendment would have been in order under modern practice.

These few cases suggest that House amending practices remained inconsistent as late as 1916. We cannot infer from the episodes just described any single interpretation of the rule that accounts satisfactorily for all of them. Two other observations deserve mention. First, in none of these procedural discussions and disagreements was there even a single reference to Hinds' published *Precedents*. And second, the various Members presiding as Chairman of the Committee of the Whole were at least as likely to be confused or confusing about the pending procedural situation and what amendments were in order at what points as the Members making inquiries from the floor. The latter observation leads us to suspect that there was no House official on the

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[46]*Congressional Record*, March 21, 1916, pp. 4567-4568.

[47]*Congressional Record*, May 22, 1916, pp. 8464-8473.

floor at all times to advise the Chair as the House Parliamentarian and his assistants do today. Unfortunately, we have found no description of precisely how Hinds and Cannon actually spent their time.

By contrast with the evident inconsistencies in House practice before and during 1916, the available evidence indicates that the House's amending practices had become more regular two years later. All the cases of complex amending activity that we discovered in 1918 are consistent with modern practice; we found no episodes that we can explain only in terms of the interpretation of Rule XIX embodied in the Hinds tree.[48]

In April 1918, for example, Rep. Sanders proposed an amendment:[49]

> Page 9, line 8, after the word "who," insert the words "in order to enhance the price of necessaries."

Rep. Wood offered a second-degree substitute, proposing to insert something different at the same place in the bill:

> Page 9, line 8, after the word "who," insert the word "unlawfully."

And Rep. McKeown proposed to perfect Sanders' amendment:

> Add to the amendment the words "or for the purpose of impeding the Government in carrying on the war," so that it will read, "in order to enhance the price of necessaries or for the purpose of impeding the Government in carrying on the war."

When questions later arose whether additional amendments were in order at that time, the Chairman twice described the parliamentary situation and confirmed that an amendment to Wood's substitute still would have been in

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[48]This is not to say that amendments were drafted and that amendment procedures were followed with as much precision as they are today. Members continued to offer amendments that they characterized, and that the House considered, as second-degree substitutes, even though they would not be considered properly drafted as such today because they did not touch the same language in the bill as the first-degree perfecting amendments to which they were offered. For example, *Congressional Record*, April 16, 1918, pp. 5168-5169. In two instances, the Chairman entertained what were described as "substitutes" for second-degree perfecting amendments, even though the amendments in question were not substitutes and, in any case, were proscribed third-degree amendments. *Congressional Record*, March 11, 1918, pp. 3340, 3348-3350; March 15, 1918, pp. 3560-3562.

[49]*Congressional Record*, April 27, 1918, pp. 5722-5726.

order.[50] In the previous month, an amendment to a second-degree substitute had been offered.[51]

Less than two months later, the Committee of the Whole was reading a bill concerning the conduct of the 1920 census when Jeannette Rankin of Montana offered a first-degree amendment to provide that "wherever practicable women shall be employed in the positions herein provided for." To this, Rep. Good proposed as a second-degree perfecting amendment to insert "and disabled soldiers" after "women." Harrison of Mississippi then offered a second-degree substitute to provide that "wherever practicable disabled soldiers and sailors shall be employed in the positions herein provided for."[52] In other words, Good wanted to extend the preference to disabled soldiers as well as women, whereas Harrison wanted a preference for disabled soldiers and sailors instead of women. Using modern amendment procedures, Good and Harrison presented the Committee with two alternatives to Rankin's proposal.

Finally, toward the end of the year, the Chairman replied to a parliamentary inquiry by stating unambiguously that:[53]

> The rules provide that you can have an amendment and a substitute to the amendment and then there can be an amendment to the original amendment and an amendment to the substitute all pending at one time.

This is about as clear a statement as one could want of the Cannon tree--the modern interpretation of Rule XIX.[54]

In addition to such examples of the Cannon tree in practice, we also encounter in 1918 a ruling that rejected the fundamental characteristic of the alternative and earlier interpretation of the rule. Readers will recall that the

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[50]*Congressional Record*, April 29, 1918, p. 5779.

[51]*Congressional Record*, March 22, 1918, pp. 3922-3923.

[52]*Congressional Record*, June 25, 1918, pp. 8276-8278.

[53]*Congressional Record*, December 4, 1918, pp. 109, 113. In this case, Members had offered a second-degree substitute and an amendment to it. Unfortunately, the underlying first-degree amendment took the form of a motion to strike. Today that amendment would not be amendable, though it would be in order to perfect the language in the bill that is proposed to be stricken.

[54]A simple and complete modern tree developed in December 1920. The Chairman put the various amendments to a vote in the wrong order, but later acknowledged his mistake "so that it will not hereafter be considered as a precedent. *Congressional Record*, December 10, 1920, pp. 188-194.

original intent of Rule XIX was to allow a Member to propose a first-degree partial or complete substitute while a first-degree perfecting amendment was pending, and for each of the first-degree amendments to be subject to one second-degree amendment. Beginning as early as the 1890s, as we also have noted, there were instances in which a first-degree partial substitute would be presented and read, but the vote on it would be deferred until after disposition of first-degree perfecting amendments. Still, by implication, the House continued to hold that there was a procedurally significant distinction between a first-degree perfecting amendment and a first-degree partial substitute.

In February 1918, a ruling in Committee of the Whole had the effect of rejecting the importance of that distinction.[55] After Walsh of Massachusetts offered an amendment to replace all of Section 1 of the bill being considered, Rep. Borland rose to a point of order, arguing that "[a]n amendment to perfect the existing section is in order before an amendment to strike out and insert," and that he wanted to offer just such "an amendment to perfect the section." Borland persisted that "a motion to amend the existing section takes precedence over a motion to strike out and insert." The Chair disagreed:

> If this [Walsh's amendment] were simply a motion to strike out, that would be correct; but this is a motion to strike out and insert, which is offered for the purpose of perfecting the section.

In other words, the Chair was explaining, if Walsh simply had proposed to strike out Section 1, Borland could have offered a preferential amendment to perfect the section. That remains true today as the sole instance in which two first-degree amendments can be pending at the same time. But Borland's amendment did not take precedence over Walsh's amendment to strike out and insert--his partial substitute. Future Speaker Bankhead, then in his first term, later rose to ask "whether or not an amendment which proposes to perfect the subject matter of the section which the gentleman's [Walsh] proposes to strike out entirely, would not be in order before the consideration of the substitute?" The Chairman reiterated his position:

> There is no doubt that an amendment that proposes to perfect the section is in order before an amendment to strike out is in order. The amendment pending is to strike out and insert.

The clear implication of this ruling is that a first-degree perfecting amendment and a first-degree partial substitute no longer could be pending at the same time. The Hinds tree no longer could grow.[56]

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[55]*Congressional Record*, February 6, 1918, pp. 1786-1787.

[56]It remained (and remains) true that it is in order to offer first-degree perfecting amendments to the underlying bill when there already is pending a motion to strike out or a complete substitute.

In summary, the House's amending practices in 1918 were consistently modern.[57] Furthermore, the ruling in February of that year is the closest thing we have to a "smoking gun," invalidating the Hinds tree and the original interpretation of Rule XIX. What we do not know about this episode is whether the Chairman was breaking new procedural ground and, if so, whether that was his intent. Because we have not been able to examine every amendment situation in every year, we cannot say with certainty that the 1918 ruling itself was decisive; it may only have reflected a clarification or re-definition of the rule's reference to a "further amendment by way of substitute" that took place earlier that year or the previous year. In either case, the ruling reflected the modern interpretation of the rule and it was that interpretation which Cannon depicted shortly thereafter in the first edition of his *Procedure*. Additions to the 1939 edition would eliminate any residual uncertainty as to whether it was in order to offer a perfecting amendment while a motion to strike out and insert was pending.[58]

We believe, then, that by 1918, the process of reinterpreting Rule XIX was essentially complete. If so, we should expect to find nothing in the House's amending practices during 1920 that were inconsistent with modern practice, and in fact, that is the case. Although we discovered no cases in that year that can be explained only by reference to the Cannon tree--i.e., second-degree perfecting and substitute amendments pending at the same time--Cannon's interpretation of the rule suffices to explain everything that we did find.

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[57]Not all Members always understood or agreed with this interpretation of the rule, but not necessarily because they continued to have the Hinds tree in mind instead. In 1920, for example, Rep. Wingo became indignant when the Chair ruled "that you can not offer a substitute for an amendment to the amendment." And moments later, the Chair entertained an amendment to perfect language in a first-degree amendment that a second-degree perfecting amendment proposed to strike. *Congressional Record*, May 26, 1920, pp. 7695-7696.

[58]Under the heading, "STRIKE OUT - STRIKE OUT AND INSERT," Cannon stated in 1920 that "[m]atter must be perfected before motion to strike out and insert can be voted on..., and if made before the amendment is offered it is held in abeyance until amendments to perfect subsequently offered have been acted on." This could be interpreted to mean that motions to strike out and insert could be held in abeyance, although the precedents Cannon cites in support of his assertion were concerned solely with motions to strike. To completely clarify that partial substitutes and first-degree perfecting amendments could not be pending at the same time, the 1939 edition revised this passage to read: "Motion to strike out and insert not in order while amendments are pending. It is in order to perfect words proposed to be stricken out and a perfecting amendment is admissible after debate on the motion to strike out has begun..., and if motion to strike out is made before the amendment is offered it is held in abeyance until amendments to perfect subsequently offered have been acted on...."

We did continue to encounter Members using "substitute" in ways that their successors would not use today. On one occasion in Committee of the Whole, for example, the Chairman entertained a second-degree "substitute" for a motion to strike out. (Today that "substitute" would be in order, but as a first-degree amendment to replace all of the matter proposed to be stricken.) And during consideration of the same bill, Reps. Mann and Saunders discussed partial substitutes as a form of amendment distinct from first-degree perfecting amendments to strike out and insert.[59] Interestingly, however, neither referred to Rule XIX in support of his position. At other times during the same year, the Chairman of the Committee of the Whole was careful and, by today's standards, correct in determining whether or not an amendment was properly drafted to qualify as a second-degree substitute. It seems most likely to us that these differences reflected differences in the care and competence of the chairmen, not true differences in their understandings of what amendments were in order under what circumstances. We are content with our basic conclusion that the House's amending practices in 1920, though still less precise and consistent than we would expect today, reflected the Cannon tree and not the Hinds tree.

Naturally enough, all the amendment precedents in Cannon's three-volume compilation, published in 1936, also are consistent with our modern reading of the rule. We would not expect Cannon, any more than Hinds, to include incidents that did not support and exemplify the procedures he believed the House should have been following and should follow in the future. So the internal consistency of the published precedents is not sufficient evidence to demonstrate that House practices became any more consistent after the publication of his 1920 manual than they did after the appearance of Hinds' compilations of 1899 and 1907. Finally, therefore, to examine this question, we looked at House amending practices during 1928 and found them to be consistent from case to case as well as with Cannon's depiction of the amendment tree. This does not prove, of course, that House procedures were equally consistent throughout the period from 1920 to date, but that question is beyond the task that we set for ourselves in this paper.

CONCLUDING THOUGHTS

One of the happier developments in the recent study of Congress is the perceptibly greater interest in examining its institutional history and in seeking explanations for the many changes that took place, gradually or suddenly, over more than two centuries. We may not know so much about Congress today that we have reached a point of diminishing returns in our research, but it is unquestionably true that we know so much less about Congress in earlier eras. Also, it is certainly plausible to expect that we can gain purchase on the history

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[59]*Congressional Record*, February 24, 1920, pp. 3420-3423, 3468-3469. Another "substitute" for a motion to strike was entertained several weeks later, during consideration of an Army reorganization bill. *Congressional Record*, March 11, 1920, p. 4189.

Today, there are approximately 25 volumes in which we can find answers to all but the most obscure questions about the House's procedures. Throughout the 19th Century, by contrast, the only official reference was the digest that was printed with the standing rules. In part as a result, it was not as clear then as it is now that the House is governed only by its own rules and precedents, and that any other principle of parliamentary law is inapplicable unless codified in the House's own corpus of procedures. Regularly in the late 19th Century, Representatives would cite tenets of an undefined body of parliamentary law. They also would rely on provisions of Jefferson's *Manual* that Members rarely if ever cite today. For example, the belief that one could amend what was proposed to be stricken, even by a motion to strike out and insert, was based not on the language of Rule XIX, but on statements in Jefferson's *Manual*. Similarly, Members would use the term "substitute" to refer to a number of different forms of amendments, to the point that occasionally we found Members defining "substitute" to be any alternative proposition. In short, the lack of any single, authoritative, and codified body of procedure, until the publication of *Hinds' Precedents* in 1899 and 1907, makes it much easier to understand why House practices would be inconsistent and likely to give rise to misunderstandings, especially when the procedures in question were relatively unusual, such as amendment trees.

For the operations of the House, the transition from the Hinds tree to the Cannon tree was significant. For our understanding of the House, however, what may be more significant was the change that seemed to occur between 1880 and 1920 in Members' attitudes toward their own rules, or perhaps it was a change in the rules that Members considered to be most important. Even though the process of reinterpreting the amendment rule was accompanied by recurring confusion and uncertainty, it did not provoke controversy. We encountered only a handful of instances in which Members discussed the question at any length, and never with any accusations of Members deliberately misapplying the rule for personal or partisan advantage. At the same time, however, we know that other aspects of the House's proceedings, especially those involving quorum requirements and the order of business, were controversial then but not now. This tells us that, for future research on the history of Congress, selecting the question will be every bit as important as finding the answer.