FROM SPECIAL ORDERS TO SPECIAL RULES: PICTURES OF HOUSE PROCEDURE IN TRANSITION

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The resolutions that were to become the special rules we know today originated in the 1880s as a new answer to a persistent problem. How could the House arrange for timely floor consideration of legislative business to which the majority party gave priority, whether for partisan or national reasons? The problem continued to arise because at that time there was no convenient and effective device by which a majority of the House could debate, perhaps amend, and then pass controversial bills when the majority wanted to consider them.[1]

The House already had given priority to certain categories of measures, especially tax and appropriations bills, by designating them in its standing rules as privileged, but the status of privileged business could not be extended too broadly.[2] If everything became privileged, this special status would become meaningless; additional rules then would be needed to establish priorities among privileged matters. The rule for the regular order of business also had been amended from time to time to make it easier for the House to conduct its business without resort to designations of privilege and other special devices.[3] In particular, the House had given higher priority in recent years to motions to resolve into Committee of the Whole to consider measures on the Union Calendar.[4] But these motions sometimes could be delayed or forestalled, and they could not be used to secure consideration of measures on the House Calendar. The House still needed some other way to permit individual measures that were not privileged to interrupt the regular order of business.

So what we now call special rules originated as resolutions that enabled the House to consider measures (or motions) it could not readily reach under its regular order of business, if it could reach them at all. These resolutions then were called "special orders" because they created a *special* order of business as an exception or interruption to the *regular* order of business. The House had relied on special orders almost from the time it first convened, creating them at first by unanimous consent and later by two-thirds votes on motions to suspend the rules. Now for the first time the House could designate individual bills as special orders for certain times by simple majority vote.[5]

This much we know. We also know that these special orders eventually took on a second and equally important function by including provisions governing how the measures they made in order were to be considered on the floor. During the 1950s and through the late 1960s, the form and provisions of special rules evidently were stable and predictable. The

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Rules Committee often was at the center of controversy during this time, but debate focused primarily on how the Committee acted as a "traffic cop"--which requests for rules it granted and which it did not. There also were occasional complaints about occasional closed rules, but no recurring disputes about the appropriate uses of special rules nor any apparent disagreement about the conventional provisions of conventional open rules. Changes in the Committee's size, party ratio, and appointment procedures largely eliminated controversy over its decisions to grant or withhold rules. And repeated controversy over the provisions of special rules began to emerge only at the end of the 1960s with the advent of complex rules restricting floor amendments.

What we do not know is how special orders became special rules. In 1883, when Reed called up the resolution that both Alexander and Hinds credit with being the first special order, "Sunset" Cox cried that "it outrages every principle of parliamentary procedure," while Carlisle contented himself with calling it "a monstrous proposition." Even Reed said that "[u]nless there was a great emergency, I should not be in favor of its passage." But it was passed. So, according to Alexander, the Committee "began to fill the public eye:" "[l]ike Pandora's box it seemed to conceal surprising possibilities."[6] What became of these possibilities? How, when and why did the innovation of the 1880s become transformed into the conventional form of open rule that Members recognized during the 1950s and thereafter, and that has remained essentially unchanged as the underlying framework within which the Committee has developed the adaptations and innovations that mark so many special rules today? That is the question which this paper addresses.

This study is based largely on an examination of what the *Congressional Record* reveals about the resolutions relating to the order of legislative business on the House floor that the Rules Committee reported and the House adopted during every third Congress from 1891 to 1929 and then during the Congresses beginning in 1937, 1947, and 1957.[7] This approach is practical but its limitations are obvious and severe.[8] It is akin to studying an immense and changing landscape by relying solely on a series of snapshots taken with a telephoto lens that provides little depth of field. Even if we can identify and describe procedural changes from these pictures, we will not necessarily be able to establish exactly when and why the changes occurred. Equally important, whatever this approach reveals about the changing effect of the Rules Committee on House floor action, it tells us very little about how and how often the House arranged and conducted its business without the Committee's involvement at different times during this extended period. Nonetheless, we shall learn something; in the process, we also will identify new or remaining questions for what appears to be a resurgent interest in the institutional history of Congress.

SPECIAL ORDERS AND SPECIAL RULES

Before proceeding, we first must detour through some procedural and analytical quicksand. What we will see in our pictures of House procedure will depend on what we think we know, or what we assume, about three issues. We shall have to confront these issues, and the procedural technicalities they involve, sooner or later so we may as well do so now. Discussing them also should illustrate just how much we do not know (or at least how much we cannot learn from readily available sources) about how the House actually conducted its legislative business during the forty year period on which most of this paper focuses.

In what follows, we shall be distinguishing between two kinds of resolutions to affect the order of business on the House floor. As the term will be used here, a *special order* proposes to make some measure or class of measures in order for initial floor consideration, but it includes no provisions governing how a measure it brings to the floor then is to be considered. It is useful, and important for our purposes, to distinguish this kind of resolution from a *special rule* which addresses both subjects: the measure to be considered *and* the procedures for considering it.[9]

Two of the three issues we must address concern the relationship between special orders and special rules. First, did the decision to adopt a special order for considering a measure have any effect on how the House then would consider it? And second, what procedural differences arose in considering a measure under a special order or under a special rule? The third issue involves changes during the past century in how the House has interpreted and used its procedures for considering measures, whether brought up by special order or special rule. In addition to changes in how the House reached decisions to act on legislation, have there also been significant changes in how the House proceeded once these decisions were made?

As already noted, the House had arranged special orders of business throughout almost all of its history, first only by unanimous consent and then often by suspension of the rules.[10] Now it could do so by simple majority vote. The first of the three issues we need to discuss concerns the meaning and effect of these special orders. What were the consequences of adopting a special order, and were these consequences affected in any way by how the special order was created? The issue arises because the House's published precedents, and the *Record* itself, reveal that creating a special order had procedural implications, and suggest that these implications may have been different for special orders created by unanimous consent or suspension than for those created by majority vote at the recommendation of the Rules Committee.

If a special order merely makes a bill in order for floor consideration, we might assume that, once called up, it then would be considered under the procedures generally applicable to that kind of measure under the House's standing rules. In other words, a bill on the House Calendar would be considered "in the House"--under the hour rule and subject to the previous question being ordered--and a bill on the Union Calendar would be considered in Committee of the Whole--being read for amendment section by section under the five-minute rule. According to Hinds, however, "[a] bill being made a special order, the requirement that it shall be considered in Committee of the Whole is waived."[11] In other words, this precedent suggests, any bill brought to the floor as a special order is considered in the House, even if it otherwise would have to be considered first in Committee of the Whole.[12] And in the House today, this difference would matter. Bills considered in Committee of the Whole are open to amendment, unless amendments are prohibited or restricted by special rule; bills considered in the House are not, except in the unlikely event that the previous question is not ordered.

If we simply accept Hinds' statement without qualification, we have to conclude that the distinction between special order and special rule is artificial and largely meaningless. If making a bill a special order requires that bill to be considered in the House, then the

special order actually has the same effect as a special rule (as the two phrases are used here), because it controls both *if and when* the measure will be considered on the floor and *how* it will be considered. On examination, however, each of the eight special orders Hinds cites in support of this precedent was created by unanimous consent or by suspension of the rules.[13] This leads us to ask whether the precedent applied with equal force to bills made special orders by resolutions reported by Rules.

The cases that Cannon cites in his *Precedents* suggest that it did not. He asserts that "[a] bill being under consideration *by unanimous consent*, the requirement that it shall be considered in the Committee of the Whole is waived."[14] And all three of the instances to which Cannon refers involved the call of what was then the "Unanimous Consent Calendar," which also tempts us to think that a special order created by resolution might not have the same procedural consequences. On the other hand, Cannon later wrote that, "[a] bill being made a special order *by resolution from Committee on Rules*, by unanimous consent...or otherwise, any requirement as to consideration in Committee of the Whole is waived."[15] In other words, the only direct statement in the House's published precedents tells us that a bill made a special order by resolution is then considered in the House; but this contention is not documented.

What, then, does the *Record* itself reveal? When we examine how the House considered each of the bills that came to the floor during the 52nd, 55th, and 58th Congresses under special orders created by resolution as well as by unanimous consent or suspension, we find that all these cases are consistent with two propositions. First, when bills were made special orders by unanimous consent or suspension of the rules, they then were considered in the House, even if some of them might otherwise have required consideration in Committee of the Whole.[16] But second, when bills were made special orders by resolution, some were then considered in the House and others in Committee of the Whole, presumably according to whether they had been (or would have been) on the House or Union Calendar.[17]

These conclusions are consistent with all the specific incidents that Hinds and Cannon discuss in their *Precedents*. And the two propositions also make sense--which is encouraging if neither necessary nor sufficient--in that they distinguish the effects of special orders that the House could impose by majority vote from the effects of those created only with higher levels of support, either unanimous consent or two-thirds vote. We might expect the House to be willing by unanimous consent or suspension to set aside the requirement for consideration in Committee of the Whole, but not to do so by simple majority vote. However, the propositions are inconsistent with the assertion quoted above from *Cannon's Procedure*, and with two precedents from the 61st Congress.

In 1910, the House suspended the rules to create a special order in favor of a bill on the Union Calendar, but then considered the bill in Committee of the Whole.[18] And early in the following year, after the House had adopted a resolution--a special order--providing for immediate consideration of a House bill, a point of order was made that the bill had to be considered in Committee of the Whole, "it being on the Union Calendar." Speaker Cannon disagreed: "[t]he rule provides for the consideration of the bill in the House, and the precedents are that on similar occasions the bill shall be considered in the House under a special order like unto this order."[19]

The 1910 precedent appears to have been reversed a decade later.[20] But the second of our two propositions remains challenged by Joe Cannon's 1911 ruling and Clarence Cannon's later statement to the effect that bills made special orders by whatever means were to be considered in the House, not in Committee of the Whole. This ruling remains unexplained and unrefuted but also unrepeated, so we shall ignore it here in favor of the evidence in the *Record* that some bills made special orders by resolutions reported by the Rules Committee then were considered in the House while others were, in fact, considered in Committee of the Whole.[21] And so we shall proceed on the basis of the two propositions offered above--essentially, that bills made special orders by unanimous consent or suspension then had to be considered in the House, but not bills made special orders created by resolutions the Rules Committee had reported.[22]

Before leaving this issue, its importance deserves re-emphasis. The assumption with which we began is that special orders and special rules proposed by the Rules Committee were different things--the former affecting only what bills were considered, the latter also controlling how they were considered. So a special rule might expand or contract Members' amending opportunities, depending on whether the rule was open, restrictive, or closed, and depending on whether the bill, if only made a special order, would have been considered in the House or in Committee of the Whole. But if making a bill a special order also determined that it would be considered in the House, then special rules could only expand amending opportunities on the floor, because such opportunities would be virtually non-existent under special orders.

The second issue we need to address also turns on the differences between a special order and a special rule--specifically, the procedural differences between (1) adopting a resolution to make a bill a special order and then considering it in Committee of the Whole, and (2) adopting a simple open rule for considering the same bill in Committee of the Whole, as the House might do today. If these are, in a sense, the "baseline" procedures of the House a century ago and the House today, the transition from one to the other may have been important, but we should not make the mistake of thinking that it also was revolutionary. The House meeting one hundred years ago could achieve essentially everything that a simple open rule does for the House today simply by agreeing to four non-debatable motions.

First, a simple open rule authorizes the Speaker to declare the House resolved into Committee of the Whole to consider the measure at issue; a special order does not. However, a motion to resolve, which the special order does authorize, is non-debatable.[23] Second, a simple open rule limits the length of general debate and allocates control over that time to two or more Members; a special order does not. However, the House could and did limit and allocate general debate by unanimous consent before anyone made the motion to resolve or before the House voted on it. In this fashion today, the Democratic floor manager of a general appropriations bill moves that the House resolve into Committee of the Whole to consider it, pending which he proposes a unanimous consent agreement governing general debate. Should no such agreement be possible at that time, general debate could begin under the hour rule. But the Committee of the Whole then could rise, and the House could agree to another non-debatable motion that would limit or prohibit additional general debate.[24]

Third, a simple open rule provides for the Committee of the Whole to rise and report automatically after disposing of the last amendment to the last part of the bill; a special order does not. At that stage of the proceedings, however, the majority floor manager may make a non-debatable motion to rise and report. Under clause 2 of Rule XXI, in fact, the majority manager of a general appropriations bill now makes that motion to prevent Members from offering limitation amendments. And fourth, a simple open rule states that, after the Committee rises and reports, the previous question then shall be considered as ordered on "the bill and amendments thereto to final passage without intervening motion except one motion to recommit;" a special order does not. But as soon as the Speaker receives the report from the Chairman of the Committee of the Whole, the majority floor manager can make still another non-debatable motion to the same effect.

In short, for bills requiring consideration in Committee of the Whole, the transition from special orders to special rules did simplify and streamline the procedures under which those bills would be considered, but it did not alter the procedures in any fundamental way. We would be well-advised to think of this transition as a consolidating change, not a transforming one.

The third and final issue deserving comment at the outset is the way in which the House used some of its procedures, then and now. In particular, we must exercise caution in characterizing the effects of special rules the House adopted decades ago, especially rules for considering measures "in the House" and "in the House as in Committee of the Whole."[25]

In current practice, we call a "closed rule" one that specifically prohibits all amendments (or all but committee amendments) to a bill in Committee of the Whole. But we also call a rule "closed" if it provides for the bill to be considered in the House. When we make this second assertion, we are assessing the procedures involved, but we also are making assumptions about how Members will use those procedures. Specifically, Members can offer amendments in the House just so long as the House does not agree to a motion to order the previous question. Today we assume with something approaching absolute confidence that motions to order the previous question will prevail. And we predict with equal assurance that the measure's majority floor manager will move the previous question without first having yielded to anyone else to propose an unwelcome amendment during the first hour of consideration.

In principle, the House could protect its opportunity to consider any amendment that enjoyed majority support simply by voting against the previous question. Or to put it differently, a bill considered in the House is fully open to amendment until a majority decides otherwise. The majority could just as well make this decision after a week of consideration as after an hour. But in fact, we know that this is not what happens. To consider a bill in the House is to consider it without floor amendments because Members will vote to make it so. Much the same argument applies to a measure considered in the House as in Committee of the Whole. It is open to amendment under the five-minute rule but the previous question can be moved at any time on the bill and all amendments thereto. So we think of a rule that specifies this procedure as being restrictive, because we assume that the previous question can and will be ordered to limit the length of the amending process and to foreclose particularly unwelcome amendments. In fact, when we see a bill

considered in this way, we assume that the amending process will be relatively brief and non-controversial so there will be no contest over ordering the previous question.

When we look backward in time, we must ask not only if the procedures worked the same way, but also if Members used them in the same way. Can we apply the same assumptions to the House then as we do now? A superficial and unsystematic look at the House at work during the decades we shall be examining suggests that the House's procedures--in the House, in the House as in Committee of the Whole, and in Committee of the Whole--have remained largely the same. However, this same glance at a complex reality also suggests that Members did not routinely *use* these procedures in the same way. Most important, Members sometimes did offer amendments to bills being considered in the House, and without having to convince a majority to vote against ordering the previous question so they could do so.[26] From this glance, it does not appear that we can assume that a decision--however it was made, by unanimous consent or majority vote--to consider a bill in the House was intended to protect the bill from all floor amendments.

This impression has two consequences. First, in the decades from 1890 to 1930, we should not treat a special rule for consideration in the House as almost the polar opposite of one for consideration in Committee of the Whole, as we would tend to do now. Then as now, the latter defined an open rule; but the former did not necessarily constitute a closed rule. So second, we cannot routinely apply today's categories of special rules to yesterday's practices. Although we shall refer to rules as open, restrictive, or closed, we also shall be more modest but also more precise during parts of the analysis to follow, and especially for the earlier Congresses examined, satisfying ourselves with distinguishing between rules providing for bills to be considered in Committee of the Whole and rules that made consideration of bills subject to the previous question, either in the House or in the House as in Committee of the Whole.[27] The distinction lies not in whether amendments could be offered or were offered, but whether the majority had it in its power at any time to prohibit further amendments.[28]

With this, we finally can turn from talking about our small album of pictures to begin looking at them, concentrating almost exclusively on what they reveal about the procedures of special orders and special rules, not on the issues of politics and policy that enveloped them. Our focus will be on reports of the Rules Committee, but other references in the *Record* index to special orders will help to place its activities in perspective.

UNDER CRISP AND REED

The first picture describes aspects of the House's procedures during the 52nd Congress of 1891-1893, with the Democrats in the majority and Charles Crisp of Georgia in the Speaker's chair, Crisp having replaced Republican Thomas B. Reed who had presided over the preceding Congress. The 52nd Congress is an appropriate starting point because it was after 1890, Hinds informs us, that "adopting a special order by majority vote after a report from the Committee on Rules" came into favor "as an efficient means of bringing up for consideration bills difficult to reach in the regular order and especially as a means for confining within specified limits the consideration of bills involving important policies for which the majority party in the House may be responsible."[29] Also, it was in February 1892

that the House adopted a new rule enhancing the Committee's ability to affect the order of business:[30]

> It shall always be in order to call up for consideration a report from the Committee on Rules, and, pending the consideration thereof, the Speaker may entertain one motion that the House adjourn; but after the result is announced he shall not entertain any other dilatory motion until the said report shall have been fully disposed of.

According to Robinson, Catchings of Mississippi, one of the newly appointed Democrats on Rules, defended the new rule as a necessary increase in the power of the Rules Committee to protect its reports from delaying tactics. Members need "to lodge somewhere the power which would enable this House, when a majority desired seriously to have a vote upon important business, to have that vote...."[31] If we are to take Catchings at his word, however, he did not anticipate the growth of special rules, as opposed to what we are calling special orders: "in perhaps ninety-nine cases out of a hundred [the Committee] will content themselves with fixing a day for the consideration of a bill, leaving the House to dispose of the measures, when they come up in its own way."[32]

Robinson emphasizes the Rules Committee's importance in the work of the 51st Congress, asserting that "[c]ontrol of business by the committee was rigorously exercised."[33] Similarly, Pickler of South Carolina asserted in 1893 that Rules "absolutely governs the House:"[34]

> The Calendars are crowded, and no motion, no bill, no measure can be gotten before the House if the Committee on Rules is not willing that it should be brought forward. You gentlemen know well how one measure after another crowds upon the Calendar, and how from time to time gentlemen are found transversing this House with petitions to the Committee on Rules, asking that some measure or other be considered.

And writing in 1895, Follett also stressed the Committee's pivotal place in the House:[35]

> What business shall be considered in the House of Representatives, and what measures shall be decided, depend largely, then, upon the committee on Rules. The fate of a bill is often affected by a change in its hour of consideration or by the time when debate must close. This controlling board can, moreover, transfer bills from the Committee of the Whole to the consideration of the House; thus bills which could not pass in the former body, where debate is freer and difficult to restrain, may pass in the House.

Yet in quantitative terms at least, we do not find evidence in the *Record* that the House of the early 1890s relied heavily and routinely on the Rules Committee to help it arrange its legislative work. The Committee's importance evidently derived from when and why it intervened in the order of business, not how often it did so. Rules reported and the House agreed to only 11 resolutions affecting the order of business, and all of them were special orders.[36] (See Table 1.) Under these resolutions, some measures then were considered in the House, others in Committee of the Whole. Typically, one of these special orders named a forthcoming day (or days) that it proposed to set aside for considering some legislative business. Three of them made particular measures in order, but twice as many set aside one or more days during which certain committees could call up any measures they had reported.[37] One resolution did both, stating in part:[38]

Resolved, That Thursday, the 19th instant, and Saturday, the 21st instant, beginning immediately after the second morning hour, be set apart for the consideration of bills reported from the Committee on Interstate and Foreign Commerce; bills to be considered in the order indicated by said committee.

Resolved, That Tuesday, the 24th, and Wednesday, the 25th instant, beginning immediately after the first morning hour, be set apart for the consideration of the bill (H.R. 9348) providing for a uniform system of bankruptcy. Nothing in this order to interfere with the right of the House to consider revenue and general appropriation bills.

Also unlike contemporary practice, Representatives did not routinely rely on the Rules Committee to take the initiative in developing a resolution on the order of business. More often than not, it acted on resolutions that Members had introduced for referral to the Committee which then reported them back to the House, usually with a substitute text.[39] In addition, questions remained about the privileged status of the Committee's proposed special orders. The one rollcall vote on adopting a resolution on the order of business was preceded by two other roll calls that sustained the Speaker's rulings on important questions affecting the priority that special orders were to receive on the floor: whether a resolution on the order of business could be called up even before the reading of the Journal, and whether the question of consideration could be raised against it.[40] In both cases, the House supported decisions that cleared away potential obstacles to prompt floor consideration of whatever special orders the Committee proposed.[41]

In addition, the *Record* documents that the House did not rely exclusively on the Rules Committee for arranging special orders. Members agreed by unanimous consent to consider and adopt two others, orders that were essentially comparable to the ones the Committee proposed but that were adopted without any action by or reference to it.[42] More important, the only two *special rules* that, according to the *Record* index, the House adopted during the Congress appear to have been developed and considered without any involvement by the Rules Committee.[43] As we discussed at length above, the effect of these special orders was to make bills in order in the House, subject to the previous question; the effect of the two special rules was to arrange for the House to consider bills by other procedures.

By unanimous consent, the House took up and agreed to a resolution fixing a day for acting on a certain bill under procedures identified as being essentially equivalent to those governing the House as in Committee of the Whole. The resolution evidently was proposed with the support of the committee which had reported the bill to be considered. Neither the Rules Committee nor its powers and prerogatives were mentioned during the brief debate.[44] Then, later in 1892, the House agreed to a resolution that more closely approximated a contemporary special rule than any other resolution of that Congress, but it did so under suspension of the rules, not by adopting a report of the Rules Committee.[45]

The second of these special rules documents that in 1892 the House was acquainted with the possibility that most of the elements of what today we would call a simple open rule could be packaged into a resolution adopted to expedite consideration of an individual bill. This resolution, which arranged for considering a bill appropriating funds for the World's

Fair to be held in Chicago, also provided for treating an amendment in the nature of a substitute as original text, for limiting time to consider it in Committee of the Whole, and for expediting subsequent House action to final passage.[46] But this rule was a procedural "sport." It was not a product of the Rules Committee, and it appears to have been the only one of its kind considered during the 52nd Congress. The effect of the Rules Committee on the order of business in 1891-1893 was limited to proposing special orders, and less than a dozen of them.[47]

By 1897 when the 55th Congress convened, the Republicans were back in the majority once more and "Czar" Reed was back in the Chair. Moreover, the change that had taken place in the House was not limited to political control; our picture of its procedures reveals a scene that also had changed. The Rules Committee had gotten into the business of proposing special rules. It still recommended special orders from time to time but, as Table 1 indicates, two-thirds of its resolutions affecting the order of business were what we are calling special rules. They addressed not merely what measure the House was being asked to consider, but also what procedures were being proposed for debating and amending it. The transition from special orders to special rules was well under way.

The first resolution from the Committee on the order of business that the House adopted illustrates how much had changed:[48]

> *Resolved*, That on and after Monday, March 22, 1897, and until the final vote on the bill hereinafter mentioned shall have taken place, the House shall meet on each legislative day at 10 o'clock a.m.; that on each of said days immediately after the reading of the Journal the House shall resolve itself into Committee of the Whole House on the state of the Union for the consideration of the bill (H.R. 379) to provide revenue for the Government and to encourage the industries of the United States; that general debate shall continue on said bill during each day until 5 o'clock p.m., and at evening sessions, to which a recess shall be taken, to be held from 8 o'clock till 11 o'clock p.m., until and including Thursday, the 25th day of March, unless sooner concluded; that from the conclusion of general debate until the 31st day of March there shall be debate upon the said bill by paragraphs, and during this time the bill shall be open to amendment as each paragraph is read, but committee amendments to any part of the bill shall be in order at any time; that not later than Wednesday, the 31st day of March, at 3 o'clock p.m., the said bill, with all amendments that shall have been recommended by the Committee of the Whole House on the state of the Union, shall be reported to the House, and the previous question shall be considered as ordered on said amendments and said bill to its engrossment, third reading, and final passage, and on a motion to reconsider and lay on the table.....

Almost all of the elements of the simple open rule can be found in this resolution, which Dalzell of the Rules Committee called a "rule":[49] it provided for the House to resolve into Committee of the Whole to consider the bill; it limited the time for general debate (though it did not allocate control of the time); it provided for the bill to be read for amendment sequentially; it also limited the time available for considering amendments (as contemporary special rules occasionally will do); and it expedited final action on the bill much as special rules do today. Also like so many contemporary rules on important bills, it was decided by rollcall vote, as Democrats complained that even the five days allotted for amendments could

be dominated to the exclusion of the minority by the Republicans on Ways and Means, who could offer their amendments to any part of the bill at any time.[50]

The debates on reports of the Rules Committee during the early months of 1897 demonstrate in another way just how important the Committee had become for arranging the order of business on behalf of the majority. As late as June 1st, as the House debated its seventh special rule for initial floor action on bills, Democrats were complaining vociferously that the Speaker had not yet appointed other standing committees of the House.[51] One result was that bills could not reach the floor as privileged measures because, then as now, bills such as appropriations bills were privileged only if and when reported by the Appropriations Committee--which did not yet exist. The appropriations measures the House had considered had reached the floor under special rules, one of which even provided for considering four such bills one after the other.

Richardson of Tennessee, who was soon to become one of the Democrats on Rules, argued that "[n]o measure can be considered except such as the Committee on Rules may prescribe,"[52] even though the House already had been in session on 77 days. "We can not consider a measure", he continued, "except by this unusual method of having the Committee on Rules bring us in a relief measure, an enabling resolution, so to speak, by which you gentlemen who have tied your own hands and ours can legislate."[53] When Democrat Simpson asked, "who is this Committee on Rules--that is the question--that we must go and supplicate from day to day under this new policy?", Republican Stone replied directly: "The committee is the majority of this House."[54] But Simpson emphasized the Speaker's control of the Committee, which Reed chaired as well as appointed: "So the Committee on Rules resolves itself into a one-man power. He says what bills shall pass and what shall not pass; he is the Congress to-day, and we stand around here awaiting his sweet will in order to get legislation for the country."[55] The Committee was at center stage.

Yet special rules remained very different then from what they were to become.[56] The simple open rule for considering a bill in Committee of the Whole had yet to develop. Like the 1892 rule on the Chicago World's Fair bill, the resolution quoted above was the only one of its kind that was brought to the floor during the 55th Congress. Of the nine other special rules the Committee reported, three were for disposing of Senate amendments,[57] and the remaining six made bills subject to the previous question, including some rules for acting on appropriations bills that normally would have been amendable in Committee of the Whole. Moreover, three of these six resolutions can be characterized without reservation as closed rules. In addition to making measures in order "in the House," they either provided that, after debate, the previous question was to be considered as ordered on the bill,[58] or took an even simpler and more direct approach:[59]

> *Resolved*, That upon the adoption of this resolution the House shall proceed to the consideration of Senate resolution 42, and at the end of the debate, which shall not exceed two hours, a vote shall be taken thereon to its final disposition.

The first closed rule the House adopted, providing for sequential action on four appropriations bills, suggests the kind of procedural transition that was taking place. Before the empowerment of the Rules Committee, the only way the House could take up a non-privileged bill, other than by unanimous consent, was by suspension of the rules--a

practice that had not yet been completely supplanted.[60] And if the suspension motion also proposed to pass the bill, the vote on passage would occur after only forty minutes of debate and with no floor amendments. So it is interesting to note that this rule provided for the previous question to be ordered on each of the four bills after no more than forty minutes for "general debate,"[61] instead of one hour for debate "in the House." In essence, this rule permitted the House to consider the bills under suspension of the rules but with only simple majority votes required for passing them.[62]

Also during the 55th Congress, as Table 1 indicates, Rules continued to report special orders as well as special rules. Four resolutions simply provided for taking up individual measures, either "under the rules"[63] or without comment on how they were to be considered.[64] With one exception, though, the measure itself then was considered "in the House," because of the nature of the measure and not, according to our interpretation of House precedents, because it was called up under a special order. Thus, the Committee and the House approved considering most of these bills under much the same procedures that were mandated by all but one of the Committee's special rules for initial floor consideration. The Rules Committee most often proposed *special orders* for bills that did not require consideration in Committee of the Whole and so could be protected against amendments by a majority vote on ordering the previous question. And it most often proposed *special rules* that either prevented, or enabled a majority to prevent, Members from proposing amendments they normally would have been able to offer, as when resolutions provided for the House to act on appropriations bills without considering them in Committee of the Whole.[65]

In both its special orders and its special rules, the Rules Committee was not creating or protecting amendment opportunities for Members, nor was it providing for orderly consideration of amendments. The number of resolutions the Rules Committee reported on the order of business remained small; but when the Committee did act, its resolutions usually worked to the disadvantage of Members who might have wanted to offer amendments, and presumably to the advantage of Speaker Reed and the Republican majority. Interestingly, though, the effect of its special orders and special rules on floor amendments did not provoke much controversy or criticism (except for the March 1897 rule on the revenue bill), even though seven of the Committee's ten special rules required division or rollcall votes.[66]

WITH CANNON IN THE CHAIR

Two features of the procedural landscape stand out most sharply when we look at the picture of Rules Committee activity during the 58th Congress (1903-1905), the first of four Congresses over which Speaker Cannon presided. First, special orders virtually disappeared from the Rules Committee's repertoire of resolutions. And second, all the special rules the Committee reported for initial floor action either prohibited floor amendments in advance or permitted a majority to prohibit them during consideration. Conventional open rules were still a thing of the future, but not partisan contention over Members being "gagged and tied" at the Rules Committee's recommendation.[67]

The Committee reported only 15 resolutions on the order of business, just as it had during the 52nd Congress;[68] this time, however, only one of them was a special order.

(Twelve of the 15 had been referred to the Committee and then reported, with amendments in every case but one.) The *Record* directs us to five special orders in all, but three of them were arranged by unanimous consent, including one requested by Dalzell, and one by suspension of the rules, just as the House had done before the Rules Committee began reporting resolutions on the order of business.[69] Of the 14 special rules, one was adopted to dispose of Senate amendments,[70] and two others protected legislative provisions in appropriations bills, much as the Rules Committee might do today.[71] The remaining eleven rules all were for initial floor action on measures; put differently, in only twelve instances was the Rules Committee instrumental in bringing measures to the floor for the House to consider. Special rules had become the primary way in which the Committee affected the order of business, but in quantitative terms at any rate, the order of business had not become heavily dependent on the Committee.

In light of future developments, what is most striking about the special rules of 1903-1905 is that none of the eleven resolutions for bringing measures to the House floor was what we now would call an open rule. Although the phrase "closed rule" was never used, only two rules even provided for bills to be considered in Committee of the Whole, and they effectively precluded all floor amendments. For example, a bill on U.S.-Cuban relations was considered in Committee of the Whole, but with the Committee to rise and report (and for the House to vote on passage) immediately after the completion of general debate.[72] The other bills were to be considered in the House or in the House as in Committee of the Whole, so that a majority was free to order the previous question to shut off amendments. In one instance, no such vote was necessary because the rule identified the three amendments to be considered as pending in the House as in Committee of the Whole before the vote on final passage.[73] Even the Committee's one special order resulted in a bill being considered in the House, Dalzell reminding Members that it would be "subject to the call of the previous question."[74]

In the most interesting case, the rule on a controversial regulatory bill not only permitted a vote on a Democratic substitute, it provided for the substitute to be "considered as pending."[75] Lest anyone credit the Republican majority with unusual generosity, however, the Democrats were quick to complain that this substitute no longer represented the minority's position. One of the two Democrats on Rules, De Armond of Missouri, charged that Republicans were attributing to Democrats a position they did not support and forcing a vote on it, while at the same time pretending to be fair as they prevented the House from considering the true Democratic alternative.[76] John Sharp Williams, De Armond's Democratic committee colleague, added that "[y]our object in this rule is to prevent your own men from amending your own bill with our assistance."[77] Dalzell responded (and Williams agreed) that he could cite "hundreds of instances, under both Democratic and Republican Administrations, where the right to offer a substitute at all has been denied."[78] Although Dalzell probably was not referring only to special rules, the less-than-open rules we have encountered during the 55th and 58th Congresses evidently were typical of the period.

The arguments and rhetorical flourishes against rules of this kind would not sound wholly out of place today. In November 1903, De Armond avowed that "the question now before us in the House is whether we are here to meet the responsibilities and to discharge the duties of free, independent, untrammeled representatives of a free, independent, and untrammeled people, or whether we are here to be gagged and tied."[79] Dalzell was not

impressed: "It is customary when a rule is brought into this House regulating procedure for the minority, whether that minority be a Republican or a Democratic minority, to complain against the drastic nature of the rule."[80] Five months later, De Armond spoke to the Republicans in a vain attempt to interest them in his charges that the House was being controlled by a committee that in turn was controlled by the Speaker:[81]

> It is not a question for you whether amendments should be offered or amendments should be considered; whether amendments should be adopted or rejected. You are relieved of all duties and all responsibilities and all mental worry and wear and tear in regard to such matters by the kind interposition of the Committee on Rules. That committee has determined that you need not think about it; that you need not frame any amendment; that you need not be put into any anxiety about being called upon to vote upon any amendment.
>
> Just simply look at the blackboard; notice the legend written there; follow the copy; obey the command of your present master, and your duty, according to the conception which now prevails here, shall have been fully performed. The fact that you were sent here by an independent constituency to represent that constituency, to be here free representative Members of this House, that fact is immaterial. The suggestion of it is irrelevant, if not impertinent....
>
> [The Speaker] has said this to you in kindness and benevolence--has thought this out for you: "I have determined what you should do, and to relieve you from any anxiety and prevent the possibility of any disturbance in the calm sea of your tranquil minds I will not give you an opportunity to vote upon anything!"

De Armond's eloquence seems to have made no more difference than did the corresponding arguments of minority Republicans during the 1970s and 1980s. But one of Dalzell's defenses of rules limiting Members' amendment rights would strike our political ear today as surprisingly direct and unvarnished. Less than a week after dismissing De Armond and his argument as "entertaining and amusing,"[82] Dalzell offered an unabashedly partisan explanation for another highly restrictive rule:[83]

> We expect that this bill will take its course as a party measure. It is before the House to-day as a party measure, carefully considered by the Republican majority of the Committee on the Territories, submitted to a party caucus, and brought into this House to-day pursuant to a rule recommended by that party caucus.

Perhaps such unapologetic partisanship accounts for the marked increase in division and rollcall votes on special rules. In clear contrast to the 55th Congress, Members were satisfied only 40 percent of the time with voice votes on ordering the previous question and then on adopting the rule under debate.[84]

The resolutions the Rules Committee reported during the 58th Congress also demonstrate a variability in their terms that is uncharacteristic of special rules today. Although rules now include a wide array of provisions, there is almost complete stability and predictability in the phrasing and vocabulary used for standard provisions. In the early years of the century, by contrast, the language of special rules evidently was very much still in the

process of development. Resolutions seemingly designed to reach the same end were phrased in different ways, but with no explanation of their meaning. In fact, one of the most striking (and frustrating) characteristics of the debates on special rules during this period is how uninformative they are--how little Members told each other (and now us) about precisely what the provisions of a rule were intended to do and how they were expected to work. Either Members were not concerned enough to offer or insist on explanations, or so many Members were so knowledgeable about subtle differences in House procedures that explanations on the *Record* were unnecessary. Although both explanations are unsatisfying, the former is more plausible. Perhaps most Members did not follow floor proceedings carefully; and perhaps special rules were still so unusual that most Members were not sensitive to all the potential consequences of procedure for policy choice.

The dearth of discussion on the House floor about the meaning and implications of special rules is a persistent problem throughout the Congresses covered by this analysis. On the other hand, procedural issues were never far from Members' minds during the 61st Congress, the last Congress over which Cannon presided and which witnessed the legendary "revolution" of 1910. Perhaps the key charge against Cannon was that he used his control of the Rules Committee to dominate the floor agenda in ways that thwarted the will of a majority of Members. And the key results were his removal from the Committee and its chairmanship and his loss of the authority to appoint committees. There is no need to recapitulate that story here. Our interest is not so much in what resolutions on the order of business the Committee reported, but in what those resolutions provided. Nonetheless, our picture of the 61st Congress necessarily is a "double exposure," looking at the Rules Committee on the floor both before and after March 1910 when the Committee was reconstituted with an expanded membership and now with Dalzell replacing Cannon as Chairman.

The political temperature on the House floor became evident as early as three days after the first session convened, when Dalzell called up a resolution to create a special order for considering a bill "under the rules of the House." After Members had objected to taking the bill up by unanimous consent, either in Committee of the Whole or the House as in Committee of the Whole, the House recessed for half an hour after which Dalzell called up the resolution which the Committee evidently had just reported. (There was not yet any requirement for its resolutions to lay over for a day unless considered by a two-thirds vote.) He explained that "the proposition under the rule is that the House shall proceed to a consideration of that bill under the rules. In other words, that the House shall resolve itself into Committee of the Whole House on the state of the Union and consider the bill by general debate and by paragraph. That is all there is to it."[85] De Armond responded not by opposing the rule or the bill, but by criticizing the Speaker's control of Rules:[86]

> This shows the readiness with which the Committee on Rules is operated. Whenever anything may be a little difficult, whenever there may be a little obstruction anywhere, apply to the Committee on Rules! In other words, when the Speaker has decided to have something done, this Committee on Rules, of his own creation, is the orderly and very expeditious means resorted to for accomplishment in the House.

This was one of only three special orders documented in the *Record* index. A second one was created at the Committee's recommendation, but the third was made by a suspension

motion at direction of the committee that had reported the bill at issue, with Dalzell's support and without any reference to Rules.[87] Evidently special orders remained an available and accepted device, and one over which the Rules Committee did not exercise monopoly control, but also one which was fast disappearing from the House's practices.

On the other hand, there was no increase in the number of special rules the Committee reported.[88] The House adopted only 13 special rules, two to act on Senate amendments, one to waive a point of order against a conference report, and another to protect legislative language in an appropriations bill.[89] The provisions of these four rules did not appear to surprise or confuse Members, though Democrats used some of them as opportunities to continue venting their spleen against Rules and Cannon.[90] For example, the waiver rule provoked this diatribe from A. Mitchell Palmer, who was later to become Wilson's controversial Attorney General:[91]

> Why, if we could muster sufficient votes in this House to approve such old-fashioned doctrine, we might embody in these rules the Ten Commandments and the Sermon on the Mount, and the Committee on Rules could wipe them all out of existence by bringing in a little special rule....I repeat, it is not so much what is in this book of the House rules that we object to, but what we do object to, and, in my opinion, what the country objects to upon the question of these rules, is that we can not know what the rules of the House are by studying this book, no matter how deep into it we may dig, or how earnestly we may study the interesting pages of the Digest; but we must wait, to know the rules and the law of the House, until we hear it while listening with bated breath to the words that fall from the lips of the distinguished gentleman from Pennsylvania [Mr. DALZELL], or his eloquent and ferocious substitute, the gentleman from Iowa [Mr. SMITH], who brings in the report of the Committee on Rules.

Less than a year later came the momentous events of March 1910. One effect was to redirect Democratic ire from the Speaker to the Republican caucus. The first rule the House considered after the revolt made in order a minority substitute but no other amendments,[92] leading Underwood to complain that the House had voted less than two months earlier to elect "a Rules Committee to be responsive to this House..., but their first effort is to cut off the opportunity for real consideration of the measure as much so as the old Rules Committee."[93] Perhaps the gentleman from Alabama had been provoked by Dalzell's demonstration that the Republican vision of party responsibility remained undimmed:[94]

> It is a matter of common knowledge that the bill as reported by the Committee on the Post-Office and Post-Roads was framed by a Republican caucus. The members of the Republican party in caucus debated that bill as they would debate it under the five-minute rule in the House. Gentlemen who had amendments to offer had the opportunity to offer them. Compromises were made, and the bill as it will come before the House is a bill agreed upon as a Republican bill in a Republican caucus. Even if an opportunity were offered by the rule to submit amendments, they could not be adopted by the Members on this side of the House if in conflict with the amendments adopted in the caucus....As this is a Republican bill, so it is only fair that the other side should have an opportunity to have the House vote upon a Democratic bill, and for that reason the provision is that when the general debate is concluded, a substitute may be offered and voted upon.

Dalzell's argument convinced Boutell of Illinois, one of his new Republican colleagues on Rules, who thought this "the most extraordinary rule that was ever brought in here by a political majority, most extraordinary in its fairness and magnanimity."[95] Not surprisingly, though, the Democrats were unmoved.

Of the nine special rules the House adopted for initial floor action, we would describe one of them today as closed and all the rest as restrictive to greater or lesser degrees, no matter what procedures they prescribed. And eight of the nine came to the floor after March 1910, so changing the Committee's membership did not have an immediate and dramatic effect on its decisions.[96] Only three rules provided for considering bills in Committee of the Whole, and they also limited the time available for offering amendments under the five-minute rule. The others directed that bills be considered in the House or the House as in Committee of the Whole, sometimes for a specified period of time during which some amendments might be offered, but then with the previous question considered as ordered to final passage.

In the case of the Payne-Aldrich tariff bill, for example, the rule ended general debate, which already had consumed two weeks, and fixed a time four days later for concluding the amending process in Committee of the Whole. This may seem to have been ample time, but Underwood and Clark were unhappy because the rule also made committee amendments in order at any time and gave precedence to amendments relating to certain commodities. The Democrats clearly feared that these amendments would consume most or all of the four days, leaving little if any time for other floor amendments.[97] Later in the Congress, Boutell brought up the equivalent of a closed rule for considering a Canadian trade bill on which there already had been ten hours of general debate in Committee of the Whole. The resolution required that the bill then be considered in the House and that "the vote upon the pending amendments and final passage of the bill shall be immediately taken without intervening motion, except a motion to recommit."[98] Nor did Boutell think it necessary to construct any elaborate defense of the resolution: "This rule is based simply upon a recognition of the existing condition of things, namely, that a great majority of the Republican Members of the House are in favor of this bill and wish to vote on it without delay."[99]

Clearly, then, a new day of bipartisanship had not dawned over Capitol Hill.[100] All the Committee's special rules limited opportunities for floor amendments, frequently in ways that provoked protests from the minority side. But some did so only by limiting the time for considering amendments in Committee of the Whole to two or three hours. So there did gradually begin to emerge during the second and third sessions of the 61st Congress intimations of what were to become open rules. The House adopted two such rules in June 1910. Like contemporary rules, each also limited general debate to an hour or two and even divided control of the time between the committee chairman and "the senior minority member thereof."[101] In addition, each provided for the Committee of the Whole to rise and report and then for the previous question to be considered as ordered to final passage, in terms very similar to contemporary form.[102]

Although we cannot yet speak of open rules written in a standard form, we can recognize their precursors in these rules. In biological terms, they would be classified in the same genus as contemporary open rules, though not the same species. As we have seen, there had

been a very few rules in earlier Congresses that contained many of the same elements, but these three resolutions were treated more routinely on the floor. On the other hand, it would be a mistake to see in these resolutions, following so soon after the Ides of March 1910, evidence of a Rules Committee and partisan majority in the House now committed to full and open deliberation. The two closed rules of the 61st Congress were adopted in 1911.[103]

AFTER THE REVOLUTION

By the time our next picture of the Committee and the House begins to develop at the end of 1915, Members had become less concerned with the aftermath of upheaval in the House than with the prospect of upheaval in the world. Democrats had been back in control of government since the 1912 election.[104] Wilson now was in the White House, Clark was in his third term as Speaker, and Congress was confronting controversial legislation to address the prospects of American involvement in a world war. In a sense, the 64th Congress began a fundamental shift in America's perspective on the world. And of much less cosmic significance but of considerable importance for this analysis, the 64th Congress also witnessed the emergence of open rules on the House floor.

The total number of special rules for all purposes almost doubled from the 61st Congress, but remained very small by the standards of later decades. (See Table 3, which reflects an attempt to cobble together data from various sources on the number of resolutions from the Rules Committee on the order of business; we have no assurance, however, nor even any reason to assume, that these data are equally reliable or based on the same criteria.) Of the 15 special rules the Committee proposed and the House adopted for bringing measures to the floor for initial consideration, seven of them contained all the essential elements of today's simple open rule.[105] Moreover, four others differed only in imposing a time limit on an amending process in Committee of the Whole that otherwise was unrestricted. As we have seen, such rules, even with time restrictions, had been unusual in the four earlier Congresses we have examined. Taken together, they now constituted almost three-quarters of the total, although the phrase "open rule" had not yet entered the House's legislative vocabulary.[106]

The first of these rules brought an army reorganization bill to the floor on March 16, 1916:[107]

> *Resolved*, That immediately upon the adoption of this resolution the House shall resolve itself into the Committee of the Whole House on the state of the Union for the consideration of H.R. 12766; that the first reading of the bill shall be dispensed with; that there shall be not exceeding 10 hours' general debate, the time to be controlled one-half by the gentleman from Virginia [Mr. HAY] and one-half by the gentleman from California [Mr. KAHN]; that all debate shall be confined to the subject matter of the bill; that while the bill is under consideration the House shall meet at 11 o'clock a.m., and during general debate on this bill the House shall each day take a recess at 5 o'clock p.m.; that the bill shall be in order on all legislative days except Wednesdays. At the expiration of general debate the bill shall be considered under the five-minute rule, and the Committee of the Whole House on the state of the Union shall perfect

> and report the bill to the House, whereupon the previous question shall be considered as ordered upon the bill and all amendments thereto to final passage without intervening motions, except one motion to recommit.

If this resolution were to be called up in 1990, Members would recognize and understand all its provisions, though they might notice that some of the "boilerplate" is cast in unfamiliar terms.[108] In fact, the specific language and terms of these resolutions had not yet reached a stable form. The second simple open rule, for example, which the House adopted barely a week later, was essentially comparable except that it divided control of general debate only between "those favoring and those opposing the bill," and did not require that the debate be germane.[109] The floor debate on the resolutions offers no explanation for these differences, nor for the similarly minor variations that characterized other simple open rules the House adopted during this Congress.

Also in 1916, the House adopted two open rules for considering Senate bills that House committees had reported with amendments in the nature of substitutes.[110] Today when the Senate passes a bill before the House acts on one of its own, we still normally expect the House committee to report its bill for floor action, after which the House replaces the text of the Senate bill with the text of the House bill it has just passed. In the 64th Congress, however, the House's legislative committees evidently followed a different practice, reporting Senate bills with complete substitutes. In May 1916, when the House was discussing a simple open rule for considering one of these Senate bills, the Rules Committee's majority floor manager, Garrett of Tennessee, proposed an uncontested amendment that, after general debate, "the committee amendment shall be read in lieu of the Senate bill and considered section by section."[111] And two months later, Garrett brought another resolution to the floor for acting on a bill "reported by substitute," the rule already providing that "the substitute for the bill shall be first read and considered under the five-minute rule...."[112] These are our first encounters with what became the conventional manner for acting on committee substitutes.

For the most part, floor action was routine on these open rules, even the ones providing for committee substitutes; they provoked very little uncertainty or controversy. Some clarifications were sought and given, but none that suggest Members were to any significant degree unfamiliar with what the resolutions sought to do or concerned about what their effects would be. The Republican minority floor managers were more likely to question the Committee's judgment about the bills for which it proposed rules. Here, for example, is Lenroot speaking in May 1916:[113]

> The only criticism that could be made of this rule and of the Democratic majority is that they are bringing in a rule for the consideration of this bill at this time, when great and important appropriation bills are pending, which should have been considered before this bill is brought up for consideration....

And Lenroot again in January of the following year:[114]

> Mr. Speaker, I am opposed to this bill; but even though I were in favor of it, I would be opposed to this rule, which brings up this bill for consideration at this time, for the reason that there are bills now pending before this House, and applications now

pending before the Committee on Rules, for the consideration of bills of very much greater importance to the country than is this bill.

The major point of contention was what rules the Committee would grant, not what those rules would provide. It was the Committee's decisions as "traffic cop" that Lenroot was criticizing, just as Republicans and liberal Democrats sometimes would do in later decades.

The only provisions of these open rules that would strike today's Members as strange are those concerning the House's daily floor schedule, provisions which were inspired by the length of general debate.[115] For instance, the first open rule of the Congress, quoted above, set aside 24 hours for general debate until Garrett proposed an amendment reducing the time to ten hours.[116] Some rules did limit general debate to an hour, but many more provided for as little as two or as much as seven hours of debate, or even provided for general debate to continue until a fixed date and time.[117] Of greater concern to Members were the provisions in four rules that also imposed time limits on the amending process in Committee of the Whole.[118] Only in this way were these rules restrictive; in all other respects they were open rules.

The importance of these time limits should not be under-estimated, however; they could generate considerable heat among Members of the 64th Congress who feared that there would be no time remaining for their amendments. Illustrative was the July 1916 rule for considering a major revenue bill. It set two days for general debate and two more days for the amending process, during which the bill was to be open to amendment at any point. Nonetheless, Bennet of the Republican minority on Rules argued that by adopting such rules, Members "persist in limiting our own power to offer amendments until we bind, shackle, and deliver ourselves helpless and hopeless to the body at the other end of the Capitol. The record of this session of the Sixty-fourth Congress is that it has reported more special rules than any similar session of Congress in over 20 years, despite the protestations of gentlemen on the other side out of power when they claimed that we had fallen into the habit of reporting special rules."[119]

A second rule fixed the time at which the Clerk was to complete his reading of another bill, after which Members apparently could continue to offer amendments but not explain them. Miller of Pennsylvania pointed out that the rule permitted five hours for general debate and at least nine hours for amendments under the five-minute rule, but Lenroot and Mann still contended that the true purpose of this "gag rule" was to impede amendments to the later parts of the bill.[120] Even if we grant that this was an intended effect of the rule, the record of the 64th Congress contrasts sharply with the prevalence of closed and much more restrictive rules in earlier years.[121] (The one resolution in 1915-1917 creating a special order also left the bill open to amendment, unlike most special orders we encountered previously.[122]) The Committee continued to report some restrictive and closed rules, which could provoke harsh criticism,[123] but these rules had become more the exception than the norm, even for bills of obvious urgency and importance such as the March 1917 bill to authorize the arming of American merchant ships.[124]

Our second picture of this period depicts the 67th Congress, which convened in April 1921, when anticipations of world war had given way to its aftermath and party control of the House had changed hands once again. Republican Frederick Gillett of Massachusetts

was beginning his second term as Speaker, Philip Campbell of Kansas was the sophomore chairman of the Rules Committee, and, according to Campbell, the Rules Committee was coming to play an even more prominent part in the work of the House:[125]

> The business now coming to the Committee on Rules practically covers the business of the House. Even the Committee on Ways and Means, the Committee on Appropriations, committees that report privileged business, now come to the Committee on Rules for rules governing the consideration of matters that they have reported out. Practically, every resolution, every bill from every committee of the House, is referred to the Committee on Rules and a special rule asked for its consideration.

And if Campbell wanted to convince the House that he really did not want to carry such a heavy burden, some Democrats such as Garner of Texas would have been happy to oblige him:[126]

> I remarked to the venerable gentleman from Illinois [Mr. CANNON] this morning something which I think all will recognize as a truism. I said, "Uncle Joe, in the days of yourself and John Dalzell you were pikers compared with what they do to-day with reference to special rules." I remember when the gentleman from Illinois occupied the chair and he and the gentleman from Pennsylvania, Mr. Dalzell, would resolve to do so and so and bring in a special rule, but I venture the assertion now that he did not bring in 25 per cent of the number of special rules in order to consider legislation that you do to-day. Why can you not consider legislation under the general rules of the House? Most of the legislation here is considered either by unanimous consent or under a special rule.

We need to discount these statements for partisan hyperbole, of course, but Table 1 does document a remarkable change since the 64th Congress: the number of special rules that were reported and adopted increased by 250 percent. And of equal importance for our purposes is the prevalence of open rules.[127] Bills were made subject to the previous question by only two rules, both of which effectively prohibited all floor amendments.[128] This continued a downward trend in such rules from the 58th through the 61st and 64th Congresses. (There was a modest increase in the rules reported for purposes other than initial consideration; seven of these twelve resolutions dealt with Senate amendments, usually on their way to conference.[129]) On the other hand, the number of bills to be considered under special rules in Committee of the Whole jumped from 11 to 40, and only three of the 40 can be considered restrictive for imposing limits on the time for offering and considering amendments.[130] Of the 42 complete special rules (a qualifier to which we shall return shortly), 88.1 percent were what we now would call open rules, even though that phrase still was not used.[131]

Rules for considering bills in Committee of the Whole without restriction on amendments had become commonplace, usually taking the following form:[132]

> *Resolved*, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the state of the Union for the purpose of considering H.R. 9548, being a bill for the relief of distressed and starving people of Russia. There shall be not to exceed two hours of

general debate on the said bill, the time for such general debate to be controlled one-half by those favoring the bill and one-half by those opposing it. Thereupon the bill shall be read for amendment under the five-minute rule. Upon the conclusion of the consideration of the bill for amendment the bill shall be reported to the House with such amendments as may have been agreed to; whereupon the previous question shall be considered as ordered on the bill and on all amendments thereto, to final passage, without intervening motion, except one motion to recommit.

Most of these rules stimulated very little discussion or explanation. And yet some qualms, doubts, and inconsistencies continued to arise from time to time. Just nine days after the Congress began, for example, Garner of Texas challenged Campbell on the need for acting hastily by bringing up an immigration bill under an open rule. "Under the rules of the House the gentleman from Washington could have called the bill up under a call of the calendar. Why not consider this bill under the general rules of the House?"[133] And Longworth thought it worthwhile to defend the Republicans against what he took to be Garner's insinuation that "it is the purpose of the majority of this House to pass all of its program under a special rule," the gentleman from Ohio going on to observe that "we passed a very important part of our program the other day, a tariff bill and an antidumping bill, without any special rule whatever."[134]

The following year, another Democrat even doubted the Rules Committee's authority to report a resolution on the order of business that had not been referred to it. In fact, in only one instance does the *Record* indicate conclusively that the Committee had acted on a resolution that a Member had introduced for referral.[135] Mondell confirmed that Rules now routinely originated its resolutions; if the Speaker sustained the point of order, he contended, "then the Committee on Rules has been reporting rules here from time immemorial contrary to the rules of the House."[136] And in supporting Mondell's position, Gillett said that, "even if there were no precedents, the Chair would be inclined to overrule the point of order, because the Committee on Rules is the executive organ of the majority of the House."[137]

This issue arose only once, but what appeared regularly in the Committee's handiwork were minor inconsistencies in language and sometimes the absence of certain provisions we would expect to find in similar rules today. For example, three rules provided for complete substitutes to be read for amendment, but only one permitted separate votes in the House and none protected recommittal instructions.[138] There are various other, less consequential, examples. Most rules made a motion to resolve in order for any Member to offer, but a few provided for the motion to be made by the committee of jurisdiction.[139] The rule adopted one day required general debate to be germane while another, considered the very next day, did not.[140] During the course of the same year, rules divided control of general debate between those favoring and opposing it, or between Members identified by name, or between a committee's chairman and ranking member, or did not divide and allocate control of the time in any way, or failed to provide for any general debate at all.[141] One rule stated that a bill was to be "considered by sections;" another, adopted only five days later, provided instead for reading a bill "for amendment under the five-minute rule."[142] A resolution adopted in February 1923 failed to protect the motion to recommit, but another open rule, considered minutes later, did so.[143] These variations apparently made little if any difference in practice; at any rate, Members rarely even mentioned them, so they remain unexplained

and immune from all but the most far-fetched speculation. We probably should view them simply as recurring bits and pieces of evidence that the language of special rules, even the simple rules the House was adopting in far greater numbers than before, had not yet fully stabilized.[144]

What did generate heat and occasional glimmers of light, not surprisingly, were the few rules that restricted amendments--not by subject, sponsor, or number, but by time.[145] The prevalence of open rules is important, of course. But then as now, both Members and observers were more likely to focus on the rules that limited or denied amendment opportunities, both because of these procedural effects and because of the importance of the bills at issue. Here, for example, is the way Lindsay Rogers characterized the House in an article published several months before the 67th Congress convened:[146]

> Rules of procedure in legislative bodies, once a matter of convenience, have now become weapons of political and personal warfare. Nowhere is this more evident than in the American Congress. In the house of representatives individual members are ready to seize every opportunity afforded by the rules to make themselves prominent and embarrass those who have the pending measure in charge; and when action is to be taken by the house, guillotine is almost always used. The proposed program is reported by the committee on rules and the house proceeds to a cut and dried decision determined upon by the leaders. There is no real deliberation.

One of the most controversial rules of the 67th provided for further consideration of the Fordney tariff bill. It made committee amendments and amendments to five different provisions (on hides, dyestuffs, oil, cotton, and asphalt) in order at any time and limited the time for considering all amendments in Committee of the Whole to roughly one week.[147] The Democrats considered the rule far more restrictive than it might appear on its face. "Ostensibly it leaves the bill open to amendment," Garrett explained, "but by reason of the limitation of time and by reason of the preference conferred on the Ways and Means Committee there will never be a chance for an ordinary Member of this House to offer an amendment to any of the schedules."[148]

> We know how these rules are administered. This is practically the same as the one under which the Payne bill was passed, the Dingley bill was passed, and the McKinley bill was passed. What is going to happen is that the seven days from next Thursday until the following Thursday, on which the bill is to be considered for amendment, will be taken up by the offering of committee amendments and the few schedules specifically mentioned, and the gentleman from Ohio [Burton of Ohio, who had raised a question moments earlier] will never hear...anything that will approach a complete reading of the bill under the 5-minute rule.

In reply, Snell did not really dispute this interpretation; instead, he contended, as Garrett himself had suggested, that this rule was typical and no more restrictive than other rules adopted for considering tariff bills under both Republican and Democratic majorities, and that passage of a tariff bill was a party responsibility: "Mr. Speaker, at various times during the history of the Republic it has become the purpose and duty of the majority party to pass a tariff measure....and as a member of the majority I accept my share of the responsibility and propose to do all I can to give the country a protective tariff at the earliest possible

moment." Moments later he added that "every man here with an ounce of brain in his head well knows that if we did not consider this bill under special rule, by caucus agreement, or some other means just as limiting, that we could not pass it before Christmas."[149] The date was July 12th.

With the exception of this resolution and a handful of others, the procedural effects and consequences of special rules generated little controversy and frustratingly little explanation. When Members did criticize the Rules Committee, it was more often for how the Committee had acted as "traffic cop" in selecting some bills for floor action in preference to others that Members thought more urgent and important. But it would be too simple to conclude that the Committee and the House now had settled into a procedural routine that it would follow for decades to come, just as it would be unrealistic for us to expect to find a smooth and unvarying progression throughout this period from special orders to special rules and from largely closed rules to open rules in fairly standardized form. How surprising it would be in an institution as complicated as the House to discover such a simple pattern of change.

And naturally enough we do not, for the 67th Congress also witnessed an unexpected revival of special orders from the Rules Committee. Eight different resolutions made one or more measures in order for floor consideration (as did two unanimous consent agreements) without saying anything about how they were to be considered, and not once did Members explain or complain about the Committee's decision not to report a special rule instead. Some of the bills then were debated in the House, others in Committee of the Whole. One of them even came to the floor accompanied by a committee substitute, which we might have expected to make a special rule clearly preferable to a special order. The only special order provoking controversy was the one in favor of a committee, not a bill. It assigned three days for considering bills the Agriculture Committee had reported, inspiring one Member to characterize it as "a very peculiar rule....an unusual method of bringing matters before the House," even though this had been the original form and purpose of the Committee's resolutions on the order of business.[150]

Even more perplexing is the appearance in the 67th Congress of resolutions we have not encountered before, "semi-rules" that are shown in Table 1 as special rules with incomplete provisions. Each of these six resolutions provided for the House to go into Committee of the Whole to consider one or more bills, but either said nothing more or only provided for the bills then to be considered under the general rules of the House. Had Rules brought such resolutions to the floor in the 1890s, we could have seen in them a fitting "missing link"--a transitional form between special order and special rule. But why they should appear instead during the 1920s, as special rules were becoming routinized, is a question for which Members' comments in the *Record* provide no answer. The debates over these resolutions reveal no controversy over their merits nor any uncertainty over their meaning.[151]

In thinking about the significance of these "semi-rules," we must bear in mind a point made toward the beginning of this study: that there are no fundamental procedural differences between considering a bill from the Union Calendar under a special order or one of these resolutions and considering it instead under a fully specified open rule. The procedures are essentially the same; the differences lie primarily in whether some of them occur by motion or under the terms of the rule itself. In either way, for instance, general

debate can be limited, the Committee of the Whole rises and reports, and additional amendments in the House are foreclosed by operation of the previous question. So these incomplete special rules, whatever the reasons for them, had the same effect as open rules on Members' amending opportunities in Committee of the Whole. And from this perspective, we can say that the 67th Congress adopted 48 resolutions for initial floor action, of which almost 90 percent (all but five) left measures fully open to amendment.

"Semi-rules" had disappeared from the procedural scene by the end of the 1920s, when we take our next look at the House floor, but the prevalence of open rules continued. During the 70th Congress, the Republicans were still in control, though Longworth had replaced Gillett in the Speaker's Chair, and, under Snell's chairmanship of Rules, its "productivity" dropped by more than half from the 67th Congress. The Committee brought to the floor 32 special rules and only one special order; the resurgence of special orders during the 67th had been temporary.[152] And the *Record* index does not point to any special orders or special rules that reached the floor by unanimous consent or suspension. Of the 32 special rules the Committee called up, 30 were for initial consideration, and only one of them was not an open rule in almost exactly the same form we know today.[153] (See Tables 1 and 2, as we now can classify special rules with confidence as being open or closed.) The one exception called for a minor bill to be considered in the House as in Committee of the Whole, quite probably to avoid devoting any time at all to general debate.[154]

Not only were the Committee's resolutions open rules, they were drafted in virtually the same terms, even though Members still did not refer to "open rules." (Snell said of one open rule, for example, that it "simply provides for the consideration of the bill under the general rules of the House with three hours' general debate."[155]) In the 70th Congress, the open rule had achieved a standardized form. The Rules Committee apparently had become so accustomed to proposing them that it had developed a fixed and predictable text.[156] Most of its open rules were interchangeable, except for the length of general debate and, of course, the measure each rule made in order. Any of the simple open rules the Committee reported in 1927-1929 could have been called up at any time until 1983, and no one on the House floor would have been surprised or confused. The following rule, H.Res. 208, for example, brought to the floor a bill to construct Boulder Dam:[157]

> Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of H.R. 5773, a bill to provide for the construction of works for the protection and development of the lower Colorado River Basin, for the approval of the Colorado River compact, and for other purposes. That after general debate, which shall be confined to the bill and shall continue not to exceed eight hours, to be equally divided and controlled by those favoring and opposing the bill, the bill shall be read for amendment under the five-minute rule. At the conclusion of the reading of the bill for amendment the committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and the amendments thereto to final passage without intervening motion except one motion to recommit.

This resolution would appear unusual today in only two respects, both concerning general debate. First, H.Res. 208, like other rules of the same Congress, continued to provide much

more time for general debate than the House is accustomed to using today. Sometimes the Committee proposed only an hour for debate, but not nearly as often as it now does. And when Snell called up the rule for a flood control bill, he thought it necessary to explain why it limited general debate to *only* 12 hours.[158] Second, all the special rules of this period divided the general debate between "those favoring and opposing" the bill, leaving it to Members on the floor to assign control of the time by unanimous consent either before or after voting to resolve into Committee of the Whole. Especially when the chairman and ranking member of the reporting committee both supported the bill, this process could require negotiation and even provoke disagreement.[159] No wonder that Rules eventually decided to include time allocations in the text of its resolutions. In all other respects, simple open rules of 1927-1928 were indistinguishable from those the House adopted fifty years later.

On three occasions, rules brought up Senate measures and then arranged for House committee substitutes to be treated as original text. The contemporary practice of passing a House bill before amending the companion Senate bill still had not emerged. Nor had the Rules Committee fully perfected the provisions of rules providing for complete substitutes, at least by today's standards. None of the three rules protected recommittal instructions. And only one of them authorized separate votes in the House on amendments to the substitute; the rule on the McNary-Haugen farm bill did so, but in a way that assumed, or almost required, that the substitute be approved:[160]

> At the conclusion of [the amendment process in Committee of the Whole] the committee shall rise and report the bill to the House with the committee substitute, as amended, and any Member may demand a separate vote in the House on any of the amendments adopted in the Committee of the Whole to the committee substitute.

These provisions would become meaningless if the House committee's substitute had been defeated in Committee of the Whole--an unlikely possibility, to be sure, but one for which contemporary rules provide. And this provision was not even standard for its time; another committee substitute rule, adopted little more than a week later, contained no provision at all for separate votes in the House.[161]

Two other resolutions deserve brief mention because they were, in a sense, exceptions that proved the rule (or perhaps more aptly, proved the open rule). Each combined several rules in one resolution in a manner somewhat reminiscent of special orders of the 1890s, and applied the provisions of an open rule to each of the bills. Snell described one of these rules, bringing four bills to the floor from the Judiciary Committee to create additional Federal judgeships, as being "practically the same rule that is presented for the consideration of all bills except that this provides for four separate measures to be presented by the Judiciary Committee", and no one else commented that it was unusual in any way.[162] The second rule provided one legislative day for considering three bills reported by the Committee on Immigration and Naturalization, with each bill to be considered under an open rule. It even made a committee substitute for one of the three in order as original text, waiving the germaneness rule, but, strangely enough, it made no provision for the House to go into Committee of the Whole even though it provided for the Committee to rise and report each bill after amending it.[163] Yet once again, and to the detriment of analysis,

no one expressed opposition or surprise, and the House adopted this rule, like its four-bill counterpart, by voice vote.

Even taking account of these exceptions, it bears emphasizing how routinized the process of drafting and adopting special rules was becoming. With few exceptions, special rules were open rules. With few exceptions, they were standard in form and content. And with few exceptions, they were adopted without much discussion or opposition. As Table 2 indicates, only one in eight of the rules for the 70th Congress required a division or rollcall vote either on the previous question or on adoption. In fact, Members sometimes stated that they would support a rule even though they opposed the bill it would make it order because they thought the bill was important enough or enjoyed enough support to deserve consideration. For example, Ramseyer on a bill dealing with the reapportionment of House seats:[164]

> I am opposed to the bill, but I am in favor of the rule. The bill comes from one of the great committees of the House; a committee which has given a perplexing proposition careful consideration and has tried to meet a practical situation and solve a difficult problem. I think they are entitled to have their bill considered, and I hope there is no one here who is opposed to the principles of the bill who will vote not to give it consideration.

If we would be surprised to hear such a statement today from a member of the majority, how much more startled would we be by a similar comment made by Bankhead, one of the Democrats on Rules, during the same debate? After announcing that he was "opposed to the principles and provisions of this bill", he nonetheless concluded that "it is probably fair, in view of the importance of this proposition," that the bill be considered."[165]

Two months earlier, the House had considered a constitutional amendment under an open rule.[166] By the end of the 1920s, the transition from special orders to special rules was essentially complete.

RULES UNDER COALITION RULE

Galloway informs us that during the 73rd Congress of 1933-1934, the Rules Committee departed from its practice of reporting open rules: "almost all the economic recovery measures of the New Deal reached the House floor under closed rules restricting debate and amendments. Mr. Bankhead of Alabama justified this procedure, stating that 'the Committee on Rules is the political and policy vehicle of the House of Representatives to effectuate the party program and the party policy.'"[167] According to Galloway, Rules reported twelve closed rules; the House adopted eleven of them.[168]

> Many of the most crucial tests of party loyalty took place on the votes to accept or reject the special rules reported by the Committee on Rules for the consideration of the legislative measures of the Administration....The House leadership justified their use on grounds of the emergency conditions of the times, the necessity of protecting the coherence of complex bills from confusing amendments, and the requirements of party control over the legislative program....This record led Lewis Lapham to conclude that: "In the Seventy-third Congress it appears to be a valid conclusion that a sympathetic

> and cooperative Rules Committee was an instrument by which the leadership of the House exercised a measure of control over the proceedings of the House and the content of legislative measures....The Rules Committee in the Seventy-third Congress operated very definitely as an arm of the leadership and the House generally approved that kind of working relationship."

In the 74th Congress, O'Connor of New York, who chaired Rules until the otherwise abortive purge of 1938, described the committee as "an arm of the leadership of this House:" "[s]ome people have also referred to it as the 'political committee,' or the committee which shapes or brings before the House the policies of the leadership of the House and the administration."[169] But not many referred to it that way for much longer. The convening of the 75th Congress in 1937 is probably the best marker for the emergence of the conservative coalition; sure control of Rules passed from the Democratic leadership's hands, not to return until well after the House voted narrowly in 1961 to expand the Committee's membership. We know that Judge Smith and his allies could and did exercise their power by refusing to grant rules and by drafting rules that served their interests, but by itself this does not imply anything about the terms of the rules it reported in the regular, continuing flow of business.[170] Were there any significant reversals or redirections during the next 25 years in the developments we have observed?

For a preliminary answer to this question, we can look briefly at three more recent pictures of House floor activity that document a pattern of continuity. When we examine all the rules the House considered during 1937-1938, 1947-1948, and 1957-1958 (the 75th, 80th, and 85th Congresses), we find that they increased in number but with no fundamental changes in their purposes or provisions.[171] (See Table 2.) Twenty-five years after the first of these Congresses, the House would amend Rule XXIII so that special rules no longer provide for the House to resolve into Committee of the Whole by motion. With this exception, and one other attributable to a 1965 rules change, all the provisions and effects of the special rules the House considered during these three Congresses would be familiar to Members today. Compared to the earlier period we have been studying, the 1930-1960 period was a time of procedural stability in special rules.

Of the 55 special rules the House considered in 1937-1938, with the Democrats back in the majority, all but three made measures in order for initial floor consideration and established procedures for considering them. None were what we have defined as special orders.[172] Forty-five (or 81.8 percent) essentially were simple open rules, and six more were open rules providing for a committee substitute to be considered as original text.[173] (The other rule for initial floor action provided for considering a measure in the House as in Committee of the Whole.)[174] Of the remaining three resolutions, two waived points of order against conference reports,[175] and the third provided for the House to disagree to the Senate amendments to a House bill and agree to go to conference.

Ten years later, Republican control of the House left the conservative coalition in control of Rules but re-established a more supportive relationship between the Committee and the majority party leadership.[176] During the 80th Congress, the House voted on almost twice as many rules as it had in the 75th. More than 80 percent left measures fully open to amendment;[177] 77 of them were simple open rules cast in what were essentially contemporary terms, and 11 others were open rules with committee substitutes as original text.[178]

Nine resolutions were closed rules. Of the rest, nine waived points of order during consideration of general appropriations measures, much as they do today, and the remaining two disposed of Senate amendments by agreeing to them or by going to conference.[179]

Galloway places importance on the closed rules and waiver rules the Committee reported: "[j]ust as the Democrats in the Seventy-third Congress had relied on closed rules to avoid internal dissension and expedite passage of their measures, so now in the Eightieth Congress the Republicans did likewise."[180] The total of nine closed rules the House adopted during this Congress "was the highest in any Congress since the 73rd when ten closed rules were granted, eight of which came during the famous first hundred days of the Roosevelt presidency. In the intervening period there had been an average of only three closed rules per Congress."[181] As had the Democrats before them, Republicans usually defended closed rules and waiver rules as being necessary and in keeping with practices the Democrats had developed since taking control of the House in 1933, and Democrats sometimes attacked them as being unprecedented and unfair.[182] In February 1947, for instance, the former Democratic Chairman of Rules, Adolph Sabath of Illinois, denounced a closed rule as being "beyond doubt the most drastic gag rule ever submitted to the House since the days of Uncle Joe Cannon's czaristic control of Congress."[183] Then, barely three months later, he characterized a rule waiving points of order against legislative provisions in an appropriations bill as "the most ruthless and rigid, yes, the most outrageous, ever reported in the 40 years of my service in Congress."[184] The rhetoric was as familiar as its targets.[185]

By the late 1950s, there again had been a significant increase in the number of special rules but not in their purposes and provisions.[186] More than 85 percent of the 145 resolutions were open rules, only 12 providing for committee substitutes.[187] This is not to say, of course, that the Committee's work was non-controversial; the fight to expand its membership and change its political complexion was soon to follow. But controversy centered on a fraction of the rules the Committee granted and even more on the ones it withheld. The relatively few rules that were not open sought the same ends as had comparable rules ten and twenty years earlier and as they would ten, twenty, and thirty years later--and they were subject to the same attacks and defenses.[188] The one exception was a rule by which the House disagreed to Senate amendments to a House bill and agreed to go to conference. Such resolutions soon would become unnecessary. In January 1965, the House amended Rule XX to create a privileged motion for this purpose when made by direction of the committee of jurisdiction.[189] The effect of this rules change was to reduce the power of the Rules Committee because the supporters of a controversial bill no longer needed to secure a special rule in order to send the bill to conference.

Table 2 also documents an even greater stability in the consistently high levels of success that special rules enjoyed on the floor during all three Congresses, stretching over twenty years. In each Congress, more than 80 percent of the rules were adopted without challenge in the form of a rollcall or even a division vote on the previous question or on adoption.[190] Members rarely sought to amend rules, none of the attempts were successful, and only five of the 308 rules were rejected. This is consistent with Van Hollen's finding that only eleven rules were defeated between 1933 and 1948, and Robinson's finding that only 24 were defeated between 1937 and 1960.[191] These data should not be taken to indicate that the overwhelming majority of special rules provoked no opposition at all; during decades past, Members were much less prone to demand rollcall votes, even when they opposed the matter

being considered. Nonetheless, the record of the 75th, 80th, and 85th Congresses is clear and consistent. Not only was there little change or controversy during these years regarding the purposes for which the Rules Committee proposed special rules, there also was no notable change in the impressive degree to which Members were willing to accept the Committee's proposals by voice vote.

For more than 25 years the House was far more concerned with what special rules the Rules Committee reported than with what those resolutions provided. By the same token, Members were much less likely to complain about the rules the Committee did report than about the ones it did not. From roughly the mid-1930s until sometime after the Committee's expansion in 1961, the "story" of the Rules Committee was the extent to which it was dominated by the conservative coalition shaped by such Democrats as Cox, Smith, and Colmer. It was largely complaints about an unrepresentative Committee keeping legislation from the floor, and fears that it would do the same to the legislative agenda of the incoming Kennedy administration, that led to the 1961 battle. The eventual consequences of that episode created the political and institutional conditions that led Rules to develop the repertoire of variations in special rules that have created so much controversy in recent years. But however important these adaptations and innovations may be, we should not lose sight of the theme underlying these variations--a theme that developed gradually between the 1890s and 1920s and that Members had come to know well during the next three decades.

A CONCLUDING THOUGHT

An effort like this inspires humility. Perhaps we now know a bit more than we did before about the history of the House's legislative procedures. But we know even more about our ignorance, about how much remains to be studied and explained. What has been presented here supports no weighty claims for explanation or theory; the more modest goal of accurate description has proven difficult enough. We have been able to trace a general trend, a process of procedural change that led eventually to a result that we can define with precision. But exactly how and why, and even when, the changes occurred remain to be explored. Of course, part of the reason lies in the limits of this study. If we had data about special orders and special rules during *every* Congress from the early 1890s to the late 1920s, or if we had information about how the House transacted *all* its legislative business during the Congresses we have studied, we undoubtedly would be able to describe the process of change with greater completeness and confidence. But we might still have to rely heavily on inference to explain the reasons for change, much less theorize about its causes and consequences, because the Members themselves tell us so little about what inspired or provoked them.

Nonetheless, the potential benefits of studying the history of Congress more than compensate for its problems and frustrations. There is so much that we know about the House of recent times. We continue to develop new research methods and disagree over the relative merits of different analytical approaches and competing theoretical models. But the empirical research of the last thirty years or more has accumulated to create a picture, to continue the metaphor, that all students of Congress recognize and most accept as being fundamentally in focus. Now if only we would take some of what we know about Congress

today, and our approaches to studying it, and look backward. One of the obstacles to really "explaining" Congress or any social institution is that we cannot experiment with it. We can only argue and theorize about causes and effects, however plausibly, because we cannot adjust endogenous or exogenous forces, independent or dependent variables, in order to study what happens. But what we can do is to ask the same questions about Congress at different times during its history. We can identify differences between then and now in the electoral and partisan context and in the rules and characteristics of internal organization and procedures. Especially if we focus on the past one hundred years, we may find that enough has remained the same so that we can hold many variables constant or at least control for variability, but also that enough has changed so that we can concentrate on a limited number of possibilities as we try to account for the differences.

But for those of us who continue to be fascinated by Congress, this argument may be little more than a justification for the much simpler desire to satisfy our curiosity as we ask, "How did it get to be this way?"

Table 1
Special Orders and Special Rules:
52nd, 55th, 58th, 61st, 64th, 67th, and 70th Congresses

	Congress						
	52nd	55th	58th	61st	64th	67th	70th
Reported by Rules Committee and adopted by the House:							
Special orders							
For specific measures	3	4	1	2	1	8	1
For committees or subjects	7	1	0	0	0	1	0
Combination	1	0	0	0	0	0	0
Total	11	5	1	2	1	9	1
Special rules							
In Committee of the Whole	0	1	2	3	11	40	29
Subject to previous question	0	6	9	6	4	2	1
Incomplete provisions	0	0	0	0	0	6	0
For other purposes	0	3	3	4	9	12	2
Total	0	10	14	13	24	60	32
Total	11	15	15	15	24	69	33
Adopted by suspension or unanimous consent*:							
Special orders	2	2	4	1	0	2	0
Special rules	2	0	0	0	1	0	0
Total	4	2	4	1	1	2	0

* Includes only *resolutions* creating special orders; the House may have acted less formally to create other special orders by unanimous consent.

Table 2
Special Rules Considered on the House Floor:
70th, 75th, 80th, and 85th Congresses

	Congress			
	70th	75th	80th	85th
Provisions or Purposes				
Simple open rules	81.3%	81.8%	71.3%	79.3%
Open rules with substitutes	9.4%	10.9%	10.2%	8.3%
Closed rules	0	0	8.3%	7.6%
Appropriations waiver rules	3.1%	0	8.3%	1.4%
Conference report waiver rules	0	3.6%	0	0.7%
Rules to act on Senate amendments	3.1%	1.8%	1.8%	2.8%
Others	3.1%	1.8%	0	0
Disposition				
Adopted without challenge*	87.5%	83.6%	86.1%	87.6%
Adopted after unsuccessful challenge*				
On previous question	6.2%	1.8%	1.8%	0.7%
On adoption	6.2%	10.9%	10.2%	7.6%
On both votes	0	1.8%	1.8%	1.4%
Amended	0	0	0	0
Rejected	0	1.8%	0	2.8%
N =	32	55	108	145

* A challenge takes the form of a division or rollcall vote.

Table 3
Data on Resolutions from the Rules Committee on the Order of Business

Congress	Resolutions Reported	Resolutions Adopted	
58 (1903-1905)	13		
59	19		
60	9	9	
61 (1909-1911)	17	16	
62	23	18	
63	26	28	
64	30	25	
65	37	40	
66 (1919-1921)	43	49	
67	69	68	
68	28[1]	22	(26)[2]
69	41	35	(25)[3]
70		39	(32)[4]
71 (1929-1931)		38	(31)[5]
72		45	
73		58	
74		81	
75		51	
76 (1939-1941)		78	

[1] Rogers reports a total of 27 special orders reported. (Lindsay Rogers, *The American Senate*. New York: Alfred A. Knopf, 1926; pp. 272-273.)

[2] *American Political Science Review*: Rogers, v. 19, n. 4, November 1925, pp. 764-765; Macmahon, v. 20, n. 3, August 1926, p. 610.

[3] *American Political Science Review*: Macmahon, v. 20, n. 3, August 1926, p. 610..

[4] *American Political Science Review*: Macmahon, v. 22, n. 3, August 1928, p. 657 ("With the exception of the revenue bill and the measure for Muscle Shoals (S. Jt. Res. 46), the major bills of the session moved under special rules; so too did one that changed the rank of the President's physician." [Ibid.]); Macmahon, v. 23, n. 2, May 1929 ("Dependence on the device, having grown relatively in recent years, shows no sign of lessening." [Ibid.]).

[5] *American Political Science Review*: Macmahon, v. 24, n. 1, February 1930, pp. 44-47; Macmahon, v. 24, n. 4, November 1930, p. 916 ("A measure of the extent of the House's confirmed sense of dependence on special rules for the consideration of measures was afforded by the fact that as early as the end of January the committee on rules made public a list of sixty requests for aid through special orders which had been made to it." [Ibid.]); Macmahon, v. 25, n. 4, November 1931, pp. 934-935.

Table 3
Data on Resolutions from the Rules Committee on the Order of Business
--Continued

Congress	Resolutions Reported	Resolutions Adopted
77	110	99 (89)[6]
78	112	89 (86)
79	167	121 (119)
80	143	114 (106)
81 (1949-1951)	180	156
82	100	84
83	175	154
84	174	147
85	156	141
86 (1959-1960)	136	128
87	172	164
88	162	153

Note: This table does not include the data developed for this study and summarized in Tables 1 and 2. There are inconsistencies between the data presented in those tables and the data presented here. There also are inconsistencies within this table, inconsistencies that undoubtedly derive from the different sources from which they are drawn and perhaps as well from the different criteria on which they are based. Excluded when possible are resolutions that the House considered under the discharge or 21-day rule.

Sources: Data on resolutions reported, 58th-69th Congresses, from Chiu, p. 155; data on resolutions adopted, 60th-72nd Congresses, from *Hinds and Cannon*, v. 7, sec. 762; data in parentheses on resolutions adopted, 68th-71st Congresses, from review articles on congressional activities, written variously by Lindsay Rogers, Arthur W. Macmahon, and Pendleton Herring, and Floyd M. Riddick, in issues of the *American Political Science Review*; data on resolutions adopted, 73rd-76th Congresses and, in parentheses, 77th-80th Congresses, from Van Hollen, pp. 58-59; data on resolutions reported and adopted, 77th-80th Congresses, from review articles on congressional activities, written by Floyd M. Riddick, in issues of the *American Political Science Review*; and data on resolutions reported and adopted, 81st-88th Congresses, from review articles on congressional activities, written by Floyd M. Riddick by himself or in collaboration with Murray Zweben or Robert B. Dove, in issues of the *Western Political Quarterly*.

[6] The parenthetical data for the 77th-80th Congresses are from Van Hollen, p. 59.

NOTES

1. According to Hinds, "[i]t was in the second session of the forty-seventh Congress, in 1883, that the method of adopting a special order by majority vote after a report from the Committee on Rules was first used." (Asher Hinds and Clarence Cannon, *Hinds' and Cannon's Precedents of the House of Representatives*. Washington: Government Printing Office, 1907 and 1936; v. 4, sec. 3152; hereafter cited as *Hinds and Cannon*.) Specifically, Hinds cites the resolution Reed presented on February 26, 1883, permitting the House to agree to suspend the rules, by majority vote, and disagree to a Senate amendment and request a conference. Speaker Keifer overruled the point of order that the resolution was not a rule or an amendment to the rules. "It was in the power of the committee", Keifer held, "to report a rule to suspend the whole of Rule XX, which would require an amendment of the Senate, on the point of order being made, to go to the Committee of the Whole House on the state of the Union. It is in the power of the committee to report to the House a proposition to suspend the rule that authorizes the suspension of the rules by a two-thirds vote. In other words, a rule might have been reported from the committee, and properly, which would suspend or repeal or annul or set aside every rule of this House, standing or special; and if the House so decided to affirm that report by a majority vote it could do so. In this case, though it may apply to a single great and important measure now pending before Congress, it seems perfectly clear to the Chair that it would be a rule to the extent that it goes; and perhaps gentlemen, on consideration, may see that in this particular case it goes far enough." (*Hinds and Cannon*, v. 4, sec. 3160.) Note that the resolution did not dispose of the Senate amendment directly or make such a motion in order; instead, it built on the familiar device of a suspension motion, though one that would require only a simple majority vote for adoption. Note also that House rules had not yet made explicit the Rules Committee's jurisdiction over measures affecting the order of business. (See note 41.) On this incident and the history of the Rules Committee generally, see the Committee's published history: U.S. Congress, House of Representatives, *A History of the Committee on Rules*. Committee Print; 97th Congress, 2d Session, 1983 (hereafter cited as *Committee on Rules*). Also see DeAlva Stanwood Alexander, *History and Procedure of the House of Representatives*. Boston: Houghton Mifflin Company, 1916; pp. 202-204. Alexander also describes an 1841 precedent that had no lasting effect. (Ibid., pp. 191-192.)

2. *Hinds and Cannon*, v. 4, sec. 3072-3077, and especially sec. 4621 on the privilege attached to the authority "to report at any time."

3. On the history of the rule governing the regular order of business, see *Hinds and Cannon*, v. 4, sec. 3056. More generally, see Alexander, pp. 213-225.

4. *Hinds and Cannon*, v. 4, sec. 3072.

5. On the history of special orders, see *Hinds and Cannon*, v. 4, ch. 88, *passim*; and Stanley Bach, "Suspension of the Rules, the Order of Business, and the Development of Congressional Procedure," *Legislative Studies Quarterly*, v. XV, n. 1, February 1990, pp. 49-63.

6. Alexander, pp. 203-204.

7. For an interesting analysis of the political and institutional context in which most of this analysis must be embedded, see Thomas W. Wolf, *Congressional Sea Change: Conflict and Organizational Accommodation in the House of Representatives, 1878-1921.* Doctoral dissertation, Massachusetts Institute of Technology, 1981.

8. The resolutions were identified under entries for the Rules Committee and for special orders in the appropriate index volumes of the *Congressional Record.* Excluded are resolutions proposing changes in House standing rules, creating select or special committees, or authorizing committee investigations, as well as others such as those changing the regular meeting time of the House, creating a special suspension day, or designating times for eulogies on a deceased Member. The approach taken here was the best one available, but it leaves some uncertainty about the completeness of the information on which this analysis is based. For example, some resolutions of the Rules Committee on the order of business appeared under one heading but not the other.

9. A resolution from the Rules Committee affecting the order of business still may be called a "special order," but this nomenclature has largely disappeared from daily practice. The phrase "special order" now is used commonly to refer to the speech that a Member may make, by unanimous consent, after the House completes its legislative business for the day.

10. See *Hinds and Cannon*, v. 4, sec. 3155.

11. *Hinds and Cannon*, v. 4, sec. 3217; see also sec. 3199.

12. The clearest ruling that Hinds quotes to this effect was one made by Speaker Keifer in 1882. The special order in question "allows the consideration of everything in the House, even though under other circumstances it might be subject to the point of order that its first consideration must be in the Committee of the Whole. That has been frequently decided, not only during this session of Congress but in former Congresses." (*Hinds and Cannon*, v. 4, sec. 3199, quoting *Congressional Record*, June 26, 1882, p. 5350.) It is worth observing that all the cases Hinds cites on this point arose between 1879 and 1902. If the same precedent had been controlling during all the preceding decades that the House had relied on special orders created by unanimous consent or suspension motions, it is difficult to imagine that this issue never had arisen before. Perhaps this precedent was not established until 1879 or shortly before then.

13. *Hinds and Cannon*, v. 4, secs. 3199, 3218-3224. Actually, Hinds cites nine instances, but the ninth was not what we would call a special order. In our terms, it was a special rule in that it provided for consideration of a bill but also for the previous question to be considered as ordered at a certain time "on the three amendments proposed by the minority and on the bill to its passage." (Ibid., sec. 3217.) Thus, the language of this resolution made it clear that the bill was not to be considered in Committee of the Whole.

14. *Hinds and Cannon*, v. 7, sec. 788 (emphasis added). See also *Hinds and Cannon*, v. 8, secs. 2393-2394. In 1921, the House had agreed by unanimous consent, for example, to take up a special appropriations measure. In response to a point of order that the bill should be considered in Committee of the Whole, Speaker Gillett ruled that "[i]t will be

considered in the House. The Chair ruled once before that unanimous consent having been given for consideration a bill could be considered in the House." (Ibid.)

15. Clarence Cannon, *Cannon's Procedure in the House of Representatives*. House Document No. 610; 87th Congress, 2d Session, 1963; p. 416 (emphasis added). Cannon refers to the same citations in *Hinds and Cannon* that we already have discussed.

16. In the 55th Congress, for instance, the House agreed to a special order for acting on Senate amendments to a House appropriations bill, and then proceeded to consider them in the House even though they normally would have required consideration in Committee of the Whole. (*Congressional Record*, June 7, 1898, p. 5602.) There was one bill that had been made a special order by unanimous consent but then was not considered in the House. However, it was a private bill that was called up after the House had resolved into the "Committee of the Whole House on the Private Calendar" and already had acted on other private bills. (*Congressional Record*, February 4, 1904, pp. 1529, 1542.)

17. See, for example, Congressional Record, June 28, 1892, pp. 5572, 5574.

18. *Congressional Record*, January 17, 1910, pp. 714-717; *Congressional Record*, January 25, 1910, p. 971.

19. *Congressional Record*, January 30, 1911, p. 1676. The Republican floor manager, Dalzell of Pennsylvania, had stated that "[t]he rule provides that this bill shall be taken up and, of course, when a bill is taken up, it is considered under the rules of the House. If this bill belongs on the Union Calendar, we will go into Committee of the Whole." (Ibid., p. 1672.) This assertion was consistent with what we would expect to have happened. But Democrats disagreed, arguing that the effect of the special order was to provide for the bill's consideration in the House, even though this special order was to be created by resolution. "Under the precedents," Fitzgerald contended, "if this bill be made a special order it obviates the necessity of considering it in Committee of the Whole." (Ibid.) Mann of Illinois, the Democratic floor leader, agreed: "The ruling has been under a rule like this, stating that the House shall proceed to the consideration of a bill, that it means the House, and that is to discharge the Committee of the Whole House on the state of the Union." (Ibid.) The Democratic position and Cannon's ruling apparently were at odds with what we now think we know about House practices during the three earlier Congresses, but it was consistent with (and even may have been the basis for) Clarence Cannon's assertion in his *Procedure*. (It is at least possible that this ruling was based on a mis-reading of the resolution. According to Speaker Cannon, the rule provided for "the consideration of the bill *in the House*" (emphasis added), when in fact, it only provided that "the House shall proceed to consider" the bill. Note however that Cannon ruled against the position that Dalzell, his long-time ally and colleague on Rules, had taken during debate on the resolution, which is something the Speaker was unlikely to do thoughtlessly.)

20. During discussion of a point of order in 1920, Mann of Illinois commented on House procedures under Democrat Champ Clark, Cannon's successor as Speaker, confirming that a change in procedure had taken place, although Mann suggests that the change occurred during Clark's tenure. "Mr. Speaker, for a great many years it was the practice of the House, where a bill was on the Union Calendar and unanimous consent was given for its

consideration, to consider the bill in the House. For some years after that, when Mr. Clark was Speaker, he held that it still required unanimous consent to dispense with the consideration of the bill by the Committee of the Whole House on the state of the Union." (*Hinds and Cannon*, v. 8, sec. 2393.) In making his ruling, Speaker Gillett evidently chose to return to the earlier precedents that governed the 52nd-58th Congresses: "The Chair has been considering the precedents, and he finds that it was held some years ago that when the House gave unanimous consent for the consideration of a bill it thereby dispensed with consideration of it under the Union Calendar. The Chair is disposed to follow that precedent." (Ibid.)

21. This question did not arise during floor debate on any of the special orders that Rules had proposed during the earlier Congresses studied. This would be surprising, to say the least, if Members understood that creating a special order promised to make it much more difficult for the minority party to offer amendments.

22. Regarding special orders created by resolution, no other position makes sense for the three earlier Congresses studied, because we know from the *Record* that some of the measures brought to the floor in this way actually were considered in Committee of the Whole without generating any procedural controversy. On the other hand, it does not matter very much to this analysis if Cannon's 1911 ruling was an anomaly or if it reflected a new line of precedent because, as we shall see, by that time the Committee had just about stopped proposing any special orders at all.

23. In fact, until the House added clause 1(b) to Rule XXIII in 1983, at the beginning of the 98th Congress, special rules typically began by stating that "at any time after the adoption of this resolution, it shall be in order to move that the House resolve" into Committee of the Whole to consider a measure.

24. *Hinds and Cannon*, v. 5, secs. 5203-5217. On the other hand, such a motion may not allocate control of any remaining debate, nor may it require that general debate be germane.

25. On these procedures and their use in recent years, see Stanley Bach, "Patterns of Floor Consideration in the House of Representatives." Paper presented at the Center for American Political Studies, Harvard University, December 1988.

26. For example, see *Congressional Record*, June 17, 1902, pp. 6937-6958.

27. On such distinctions, see Stanley Bach and Steven S. Smith, *Managing Uncertainty in the House of Representatives*. Washington: The Brookings Institution, 1988.

28. We might be able to be more precise if we looked at what happened to each bill on the floor--not only if amendments were offered, but if the amendments were opposed, especially by the majority floor manager. However, that must await a far more ambitious re-examination of this period in the House's history.

29. *Hinds and Cannon*, v. 4, sec. 3152. "In 1887 it was still regarded as a proceeding of doubtful validity." (Ibid.)

30. *Hinds and Cannon*, v. 4, sec. 4621; see also Mary P. Follett, *The Speaker of the House of Representatives*. New York: Burt Franklin Reprints, 1974 reprint of the 1902 edition; p. 276. In amended form, this rule remains as clause 4(b) of Rule XI. As already noted, though, Rules already had been exercising the authority to report at any time (see note 1). Hinds quotes Speaker Carlisle in 1889: "While there is nothing in the rules themselves giving to the Committee on Rules the privilege of reporting at any time, either for consideration or otherwise, the uniform practice of the House has been to receive reports of that committee for immediate consideration if they related to changes of the rules." Hinds adds that this practice did not pre-date 1836. (Ibid.; see also secs. 4650, 6774, and 6775.) Follett concludes that "[t]he Fifty-first Congress undoubtedly accomplished a large amount of important business, and it was able to do so through the increased power of the committee on Rules." (Follett, p. 280.)

31. William A. Robinson, *Thomas B. Reed, Parliamentarian*. New York: Dodd, Mead & Company, 1930; p. 275. Robinson also quotes Reed as defending the practice, now disregarded by Crisp, of appointing the Chairmen of Appropriations and Ways and Means to serve with the Speaker on Rules: "[t]hey know the great legislation which is to come before the House, and they are in a better position to pass on the order of business than are chairmen or members of other committees. Despite the great outcry which was raised against us in the last Congress, there must be a "steering" committee to arrange the order of business and decide how and in what way certain measures shall be considered." (Quoted in Robinson, p. 274.)

32. Quoted in *Committee on Rules*, pp. 75-76.

33. He quotes the recollections of Benton McMillin of Tennessee, then the second Democrat on Rules, about how Reed, McKinley, and Cannon would meet privately. "Then the Speaker would send for me and say: 'Well, Mac, Joe and McKinley and I have decided to perpetrate the following outrage of which we all desire you to have due notice.' Whereupon he would read and give me a copy of whatever special order had been adopted by the majority of the committee." (Quoted in Robinson, p. 238.) Some years later, Nelson of Wisconsin outlined the reasons Reed could exude such confidence that the House would support him: "[b]ecause this committee, with the Speaker as chairman, has in its power, in many ways, to induce Members to vote that way. It controls the appointment of committees. It controls their right of recognition. It controls the fate of measures upon which the legislative fortunes of Members largely depend. Naturally, under such circumstances, the committee is sustained as a matter of course, except, perhaps, in extraordinary times, when the people bring pressure to bear upon the Members." (Quoted in Chang-Wei Chiu, *The Speaker of the House of Representatives Since 1896*. New York: AMS Press, 1968 reprint of 1928 edition; p. 132.)

34. Quoted in *Committee on Rules*, p. 77.

35. Follett, p. 277. Damon too reached the same conclusion: "Through this committee all decisions as to the order of business came to be made, and the powers of the Rules Committee were made virtually complete as to the end of controlling the agenda, when an additional rule was adopted in September, 1893, granting it permission to meet while the

House was sitting." (Richard E. Damon, *The Standing Rules of the United States House of Representatives*. Doctoral dissertation, Columbia University, 1971; p. 76.)

36. And this total may be considered an overstatement. The Committee reported one substitute for four resolutions that had been referred to it. The substitute would have been adopted by a single vote if a Member had not demanded that it be divided and considered as four separate resolutions. (*Congressional Record*, December 15, 1892, p. 170.)

37. In one case, a special order set aside certain hours on a fixed day for considering pension business, without making any reference to a specific committee or specific measures.

38. *Congressional Record*, January 17, 1893, p. 641. Note the provision protecting the priority given to tax and appropriations bills. "When a bill has been made a special order its consideration has precedence over reports made privileged by the rules." (*Hinds and Cannon*, v. 4, sec. 3174.)

39. There were no floor votes on these substitutes as amendments--i.e., the House did not vote first on a Committee amendment in the nature of a substitute for the text of a resolution, and then on the resolution as amended. So the substitutes appear to have been treated as alternative resolutions, not amendments to resolutions previously submitted and referred to the Committee. See *Congressional Record*, August 8, 1890, pp. 8352.

40. Then as now, it is difficult to separate controversy over the Rules Committee's resolutions from controversy over the measures to which they relate. In this case, the bill at issue concerned free coinage of gold and silver. (*Congressional Record*, March 7, 1892, pp. 1819-1832.) For earlier, contrary rulings to the effect that the question of consideration could be raised, see *Hinds and Cannon*, v. 5, secs. 4953-4963.

41. Follett reports that "twice in the Fifty-third Congress the committee on Rules was beaten in the House, but that the victory was usually with the committee is well known by the members of that Congress." (Follett, p. 277.)

42. "During the Forty-eighth and Forty-ninth Congresses numerous "special orders" were reported from other committees, such as Agriculture, Naval, Foreign, Military, and Indian Affairs, Labor, Public Lands, Claims, etc. On the 15th of February, 1887 (second session Forty-ninth Congress), Speaker CARLISLE ruled that all propositions making special orders must go to the Committee on Rules....On the 14th of February the House adopted the present code of rules, and in clause 45, Rule XI, inserted the words "and order of business," so that the Committee on Rules now has, for the first time by rule, exclusive jurisdiction of "all proposed action touching the rules, joint rules, and order of business." (*Congressional Record*, August 8, 1890, p. 8350.)

43. This is not to say that the Rules Committee never yet had reported any special rules. Robinson describes the effect of two important rules on Federal elections and silver purchase that the House adopted in June 1890. (Robinson, pp. 239, 242-243.)

44. *Congressional Record*, January 13, 1892, pp. 302-303.

45. *Congressional Record*, August 4, 1892, pp. 7037-7040.

46. Ibid. Because the resolution required the Committee of the Whole to report by no later than a fixed date and time, Democrats described it as a "cloture resolution." (Ibid., p. 7037.) But if the resolution merely had made the bill a special order, it apparently would have been considered in the House instead.

47. In 1890, Cannon inserted in the *Record* a summary of special orders the Rules Committee had reported and the House adopted during the 48th-51st Congresses. According to Cannon, two resolutions of the 48th Congress designated times for considering measures reported by certain committees, as did seven resolutions of the 49th Congress. Two other special orders of the 49th provided for floor action on specific bills. Of the six special orders Cannon lists for the 50th Congress, three were in favor of certain committees and two in favor of individual bills. Another, extraordinary resolution of that Congress laid out a daily schedule for 16 days during one month and parts of two others. Finally, Cannon's list shows nine special orders in the 51st Congress for specific bills, compared with only three for measures reported by named committees. The list also identifies three resolutions the House adopted during the 51st that qualify in our terms as special rules. (*Congressional Record*, August 8, 1890, pp. 8349-8350.) Cannon does not identify the origins of his summary, which he inserted as a defense against Democratic criticism of a resolution to send an appropriations bill directly to conference without first considering the Senate's amendments in Committee of the Whole.

48. *Congressional Record*, March 19, 1897, p. 72.

49. Ibid.

50. Ibid., p. 74.

51. This was not the only time committee assignments were withheld. "The Sixty-first Congress, for example, met on March 15, 1909. On the following day, Speaker Cannon appointed the members of the Rules and the Ways and Means Committees, but he held up most of the appointments until August 5, the last day of the session, after the Payne-Aldrich tariff bill had passed the conference stage. Similarly Speaker Reed, in 1897, postponed his appointments until after the Dingley tariff had become law. These precedents were followed, in turn, by the Democrats in 1913, who did not name most of their committees until June 3, after the Underwood tariff bill had passed the House. The hope of good committee assignments was, of course, expected to keep Members 'regular'." (Paul D. Hasbrouck, *Party Government in The House of Representatives*. New York: The Macmillan Company, 1927; p. 37.)

52. *Congressional Record*, June 1, 1897, p. 1387.

53. Ibid.

54. Ibid., p. 1389. Compare this with Speaker Randall's assertion in 1879 that "[t]he present Committee on Rules have never, so far as the Chair recollects, been divided politically on any subject, and almost every report made by them, except in two instances (the report on the liquor traffic and that on the woman's rights question) has been unanimous." (Quoted

in *Hinds and Cannon*, v. 4, sec. 3152, n. 5.) Hinds observes: "[t]his, however, was before the system of special orders for consideration of particular bills." (Ibid.)

55. *Congressional Record*, June 1, 1897, p. 1389.

56. Another interesting difference that is not directly related to the focus of this paper is the way in which the House debated special orders and special rules. When a special rule is called up today, it is routinely debated under the hour rule. The Speaker recognizes the majority floor manager to control an hour for debate, half of which he customarily yields to the minority manager "for purposes of debate only." By no later than the end of this hour, the majority manager then moves the previous question to foreclose amendments and end debate. The practice of the House during 1897-1899 was quite different, and turned on a provision that remains in House rules today but is very rarely invoked. Clause 3 of Rule XXVII, which provides for 40 minutes of debate, equally divided between a proponent and an opponent, on each motion to suspend the rules, goes on to allow "the same right of debate...whenever the previous question has been ordered on any proposition on which there has been no debate." (For a recent attempt by the Minority Leader to invoke this rule, see *Congressional Record*, March 22, 1990, pp. H1022-H1023.) During the 55th Congress, the Republican floor manager sometimes moved the previous question immediately upon calling up a resolution from the Rules Committee, thereby triggering this rule, limiting debate to 40 minutes and preventing amendments, but guaranteeing minority party control of half the time. Sometimes Democrats became concerned if the majority manager did not do so and instead began commenting on the rule. The minority party feared that the majority manager then would move the previous question after some debate had taken place, and so deny the minority time to explain or argue its position. (See, for example, *Congressional Record*, June 1, 1897, pp. 1386-1387.) Robinson quotes Catchings, Democrat of Mississippi, on how this procedure was used under Reed, during the 51st Congress: "We all know how the Committee on Rules would bring in a report fixing the time at which a vote should be taken on a pending measure, and at that time, before any gentleman could be recognized, Mr. McKinley, speaking for that committee, would demand the previous question upon the adoption of the report. Instantly by a partisan vote the previous question would be ordered, no debate beyond forty minutes would be allowed, the report would be adopted, and the measure would be put upon its passage at the time named and voted through." (Robinson, p. 238.)

57. When a special rule proposed that the House disagree to the Senate's amendments to the revenue bill the House had considered in March 1897 and agree to go to conference, Bailey and other Democrats objected. These actions, which would be routine today, were thought to be a "denial on the part of the majority of the opportunity and the right of the minority to vote upon these amendments in their order," as would be possible if the 213 Senate amendments were to be referred to committee, reported, and then considered individually in Committee of the Whole. Dingley replied for the Republicans that "the rule which has been reported by the Committee on Rules is identically the same as that which was reported in the case of the tariff bill of 1897, and substantially the same as that reported in the case of the tariff bill of 1894. It has been found by experience that with a large number of amendments upon a complicated bill like a tariff bill or a war revenue measure the best results are obtained by sending the bill immediately to conference, and this practice has prevailed even with reference to appropriation bills." (*Congressional Record*,

June 6, 1898, pp. 5566-5568.) A year earlier, however, the House had adopted the Rules Committee's recommendation that "the House in Committee of the Whole proceed to consider the Senate amendments to the sundry civil [appropriations] bill until finished...." (*Congressional Record*, May 10, 1897, p. 958.) For other examples of special rules in 1897-1906 sending bills to conference, see *Hinds and Cannon*, v. 4, secs. 3243-3250.

58. *Congressional Record*, March 19, 1897, p. 77.

59. *Congressional Record*, May 20, 1897, p. 1187. For other examples from 1895 to 1906, see *Hinds and Cannon*, v. 4, secs. 3231-3236.

60. In 1898, the House agreed to suspend the rules and agree to a resolution creating a special order by fixing a day for the House to consider a particular bill. The discussion continued just long enough for Bailey, the senior Democrat on Rules, to say that he did not object. (*Congressional Record*, June 6, 1898, p. 5565.)

61. *Congressional Record*, March 19, 1897, p. 77.

62. Recall that these appropriations bills were not privileged because they had not been reported by the Appropriations Committee which had yet to be appointed.

63. *Congressional Record*, January 9, 1899, p. 505.

64. The fifth resolution was much like most of the special orders the Committee had reported during the 52nd Congress; it set aside the two following days for the House to consider business reported by one of its committees. (*Congressional Record*, June 28, 1898, p. 6439.) Another resolution was a hybrid, in that it set aside a day for considering certain kinds of bills reported from a certain committee, as would a special order, but also provided for the bills to be considered in the House, as would a special rule. (*Congressional Record*, February 27, 1899, p. 2489.)

65. Hinds cites an 1898 special rule, arranged by unanimous consent, for calling up a major war revenue bill and allowing no more than a day for considering amendments to it. (*Hinds and Cannon*, v. 4, sec. 3166.)

66. All its special orders were adopted by voice vote. Individual Members continued to propose resolutions for Rules to consider. The *Record* clearly indicates that nine of the ten special rules the Committee called up had been referred to it for consideration; it reported five with substitutes of its own devising.

67. *Congressional Record*, November 16, 1903, p. 255. The procedures for debating special rules were in transition and still differed from current practice. For instance, Grosvenor of the Rules Committee referred to ordering the previous question at the outset of debate as "the regular course." (*Congressional Record*, April 7, 1904, p. 4440.) Some rules were debated under the hour rule, with the Republican manager yielding time to his Democratic counterpart, but this had not yet become a stable and expected practice.

68. In his volumes of precedents published in 1907, Hinds writes that "[i]n the present practice of the House the Committee on Rules officiates as to the consideration of bills only when, for some reason, the ordinary method prescribed by the rules for the order of business is not satisfactory or produces delay. The number of bills in relation to which it officiates by reporting special orders is relatively few." He then presents supporting data for the 59th Congress: "a total of 7,423 bills passed the House, of which 799 were bills on public matters and 6,624 were private bills; that is, bills for the relief of individuals or corporations and largely pension bills. The Committee on Rules reported special orders as to 26 public bills, providing special or extraordinary methods for their consideration...." (*Hinds and Cannon*, v. 4, sec. 3152, n. 5.) Hinds refers here to what we are calling "special rules" as well as "special orders."

69. By now, the practice of creating special orders under suspension of the rules was becoming unfamiliar. Hinds cites an incident in 1906 in which Dalzell moved to suspend the rules and make a bill in order for consideration at any time. In this connection, Hinds paraphrases De Armond's contention "that this proposition ought to go to the Committee on Rules [on which De Armond served], because it provided for precisely the same condition of things that existed when a measure was reported from the Committee on Rules. Suspension day was to dispose of things, not to provide for their disposal at some other time, and this was really in effect a special rule without having been referred to the Committee on Rules." Cannon overruled the point of order. (*Hinds and Cannon*, v. 4, sec. 3154.)

70. The minority again complained because this rule precluded the House from acting separately in Committee of the Whole on each amendment. (*Congressional Record*, February 17, 1905, pp. 2785-2789.) Such a complaint would be extraordinary today, although the procedural situation remains basically the same.

71. Unlike current practice, however, the Rules Committee acted only after each provision had been stricken on a point of order made while the bill was being considered in Committee of the Whole. The effect of each rule was to reinsert the legislative provision. For examples of waiver rules in 1903-1906, see *Hinds and Cannon*, v. 4, secs. 3260-3263. On this practice, see Chiu, pp. 121-123, 129.

72. *Congressional Record*, November 16, 1903, p. 254.

73. *Congressional Record*, April 19, 1904, p. 5094.

74. *Congressional Record*, April 8, 1904, p. 4501.

75. *Congressional Record*, February 6, 1905, p. 1947. For the first and only time to date, this resolution also divided the time for general debate between two Members identified by name.

76. Ibid., pp. 1948-1949.

77. Ibid., p. 1950. This led Hinds to conclude that, "[i]n other words, the special order is

sometimes used, apparently, as a substitute for caucus restraint on the Members of the majority party." (*Hinds and Cannon*, v. 4, sec. 3265, n. 4.)

78. Ibid., p. 1952.

79. *Congressional Record*, November 16, 1903, p. 255.

80. Ibid. p. 256.

81. *Congressional Record*, April 13, 1904, p. 4770.

82. Ibid., p. 4771.

83. *Congressional Record*, April 19, 1904, p. 5100.

84. Members also debated the recurring question of whether a resolution reported by the Rules Committee was subject to a recommittal motion, which would give the minority a recourse other than trying to defeat a rule. Cannon noted that there had been conflicting opinions on this question in the past, but cited rulings by Crisp and Henderson in holding that the motion to recommit was not in order. (*Congressional Record*, February 2, 1904, pp. 1523-1525.)

85. *Congressional Record*, March 18, 1909, p. 79. Note Dalzell's contention that this special order would permit the bill to be considered in Committee of the Whole as, in fact, it was. By contrast, the other special order the Committee proposed later during this Congress gave rise to the anomalous ruling discussed in an earlier section.

86. Ibid.

87. Chiu cites two resolutions on the order of business, that the House adopted in 1908 by unanimous consent, which had been reported from committees other than Rules. (Chiu, p. 119.)

88. Cannon presents data on the number of special orders adopted during the 60th-72nd Congresses. (See Table 3.) The totals for Cannon's data and those presented here for the sum of special orders and special rules agree exactly for the 61st and 64th Congresses. On the other hand, the data for this study include three more resolutions for the 67th Congress but six fewer for the 70th Congress. Cannon only characterizes the special orders in his tabulation as "providing for consideration of business." (*Hinds and Cannon*, v. 7, sec. 762.) However, we can be confident that he also includes what we are calling "special rules," because Cannon includes many of them in the 21 pages that he later devotes to the texts of what he calls special orders that the House adopted for various purposes between 1908 and 1930. He identifies the primary purpose of each but does not offer any further analysis or assessment. (Ibid., v. 7, secs. 797-845.)

89. Writing at this time, McCall of Massachusetts described what a special rule might do, including limiting debate and the right of amendment, but then went on to say that "it must be remembered that, important as these powers are, they are for use in emergencies.

Sometimes for months in succession this committee has been entirely inactive." (Samuel W. McCall, *The Business of Congress*. New York: Columbia University Press, 1911; p. 135.)

90. If contemporary usages such as motions to concur with amendments seem awkward and confusing today, the House has come some distance since 1909. Today the House will vote to "disagree" to Senate amendments as a prelude to going to conference; then the House voted instead to "nonconcur." In this instance, some Democrats preferred (or claimed to prefer), as they had in earlier Congresses, that the Senate amendments should first be considered in Committee of the Whole, even though there were 847 of them. (*Congressional Record*, July 9, 1909, pp. 4364-4365.)

91. Actually, the effect of the rule was to protect a provision in the bill. After the rule was adopted and the House went into Committee of the Whole, a point of order was sustained against the provision, after which a Member offered the protected amendment, which had been quoted in the rule and which apparently was identical to the stricken provision. (*Congressional Record*, July 20, 1909, pp. 4554-4557.) During this era, the *Record* notes when a speech like Palmer's provoked "applause and laughter" from one side of the aisle or both. Members apparently enjoyed such rhetorical excesses then as much as we can enjoy reading them now.

92. *Congressional Record*, June 7, 1910, p. 7578.

93. Ibid., p. 7580.

94. Ibid., p. 7578.

95. Ibid., p. 7582.

96. Nor did reconstituting the Committee have any clear effect on the procedures for developing, debating, and disposing of resolutions on the order of business. Both before and after, roughly half the resolutions had antecedents in resolutions that had been referred to the Committee. Sometimes the Republican manager moved the previous question as soon as he called up a resolution; more often he did not, so it was debated under the hour rule, though time was not yielded routinely to the minority manager. And most of the resolutions provoked one or more division or rollcall votes.

97. *Congressional Record*, April 5, 1909, pp. 1112-1116.

98. *Congressional Record*, February 14, 1911, p. 2552. This marks the first reference to a recommittal motion during the Congresses being examined.

99. Ibid., p. 2557.

100. In 1908, according to Cannon, "following prolonged obstruction," the House adopted a resolution from Rules permitting the House to suspend the rules by simple majority vote for the duration of that session. "Thereafter during that session all legislation was enacted under suspension of the rules, even a resolution authorizing a general extension of remarks in the Record being passed under suspension of the rules by majority vote." (*Hinds and Cannon*, v. 8, sec. 3393.) On this episode, see Alexander, pp. 207-210.

101. One of the two rules providing for consideration in Committee of the Whole required for the first time that general debate be germane; for no apparent reason, however, the other did not. (No such provision was needed in the third rule because of the standing requirement that debate in the House be germane.)

102. *Congressional Record*, June 21, 1910, p. 8673; and June 24, 1910, p. 8957. Under a third resolution adopted during the same four day period, a bill was to be considered in the House as in Committee of the Whole with three hours "for consideration of the bill as under the five-minute rule." (*Congressional Record*, June 23, 1910, p. 8860.)

103. Two other rules adopted in 1911 deserve mention. One was akin to a contemporary restrictive rule in that it appears to have precluded all but the six amendments that were quoted in the rule itself. (*Congressional Record*, February 28, 1911, p. 3688.) The other would be as remarkable now as it was then. Different committees had reported two measures, one authorizing a Panama Canal exposition in San Francisco, the other authorizing such an exposition in New Orleans. Dalzell explained the problem the Rules Committee confronted. "Each of the parties having this legislation in charge invoked the help of the Committee on Rules to secure consideration of their bill, in one case a joint resolution and in the other case a House bill. Each of them was willing that the case should be so presented to the House that it might make choice between them if means could be devised to that end. It was first suggested to the Committee on Rules that one proposition might be reported with leave to offer the other as a substitute, but neither party was willing to have its proposition serve as a substitute. Thereupon the committee decided upon the form of the rule which has just been read to the House." That resolution provided for one hour of debate, following which the House chose between the two measures. "At the end of an hour, in order to determine which measure shall be considered, the roll shall be called and each Member shall respond, naming "San Francisco" if he votes for House joint resolution 213, and "New Orleans" if he votes for H.R. 29362." The selected measure then was considered, under the rule, in the House with the previous question ordered at a fixed time. Members asked whether or how they could vote against either city or any exposition, but no one questioned such an extraordinary procedure. The problem Rules faced was similar to that posed today by a multiply-referred bill on which the two committees of jurisdiction cannot compromise. Rather than appear to give some procedural advantage to one committee or the other, Rules settled on a method vaguely reminiscent of contemporary "king of the mountain" rules. The result was what may be a unique tally in congressional history: when the roll was called, San Francisco received 188 votes and New Orleans 159, with one vote each being cast for Washington, DC and Milwaukee. (*Congressional Record*, January 31, 1911, pp. 1737-1747.)

104. "After the Democrats gained control in 1911, their leadership was less strongly entrenched because of the changes which they themselves had helped to bring about in the organization of the House. They sought a counterpoise through increased discipline of the caucus, which debated the details of such important legislation as the Glass currency bill of 1913 (the Federal Reserve Act), and the Clayton anti-trust act. The Committee on Rules, divorced from the Speaker, now came under the direct control of the caucus." (Hasbrouck, p. 28). The Democrats also had to depend on a newly-appointed delegation on Rules. "It was later revealed that the Rules Democrats were so inexperienced during the 62nd Congress

that they often went to Dalzell, the ranking Republican, for help in drafting rules." (*Committee on Rules*, p. 101.)

105. Also for the first time, we find the House rejecting a rule the Committee proposed. This resolution would have discharged the committee of jurisdiction and brought a measure directly to the House floor. Mann criticized the extraction: "That is assuming a power which the Committee on Rules has no right to arrogate to itself. A Member of the House introduces a proposition of legislation. It goes to the appropriate committee, and he ought not to expect to get consideration in the House through the Committee on Rules, and not through the committee to which the matter is referred. The Committee on Rules may be a useful adjunct, but here it tries to be the whole thing." (*Congressional Record*, January 4, 1917, p. 844.) Bennet charged more succinctly that the rule "performs a Caesarean operation on the Committee on Interstate and Foreign Commerce...." (Ibid., p. 845.)

106. Of the Committee's nine other special rules, seven waived points of order against provisions of or amendments to appropriations bills, as did the one special rule the House considered by unanimous consent. (*Congressional Record*, June 10, 1916, p. 9448.)

107. *Congressional Record*, March 16, 1916, p. 4252.

108. Before this time, special orders typically made measures in order for floor action at some specific future date. On the other hand, today's special rules usually make bills in order at any time after their adoption, so that the actual scheduling decisions rest with the majority party and committee leaders. By contrast, the special rules of this period most often provided for immediate consideration of the bills they made in order.

109. *Congressional Record*, March 24, 1916, p. 4768.

110. These evidently were not the first rules of their kind. Hinds cites comparable rules that the House adopted for considering Senate bills and House committee substitutes in 1902-1907. (*Hinds and Cannon*, v. 4, secs. 3238-3240.)

111. *Congressional Record*, May 6, 1916, pp. 7530-7532.

112. *Congressional Record*, July 5, 1916, p. 10446. The rule also waived all points of order against provisions of the bill; presumably, however, the waiver actually was intended to protect provisions of the committee substitute. Neither of these two committee substitute rules included the two compensatory provisions we now consider standard, one permitting separate votes in the House on amendments adopted in Committee of the Whole to the substitute as well as to the original text of the bill, and the other permitting a motion to recommit with instructions even after the House has fully amended the bill by agreeing to the committee substitute (perhaps as amended). A 1906 rule does seem to have provided for separate votes in the House by stating that, after the Committee of the Whole rises and reports, "the vote shall be taken on the substitute, *the amendments thereto*, and on the bill to final passage without intervening motion or appeal...." (*Hinds and Cannon*, v. 4, sec. 3239; emphasis added.)

113. *Congressional Record*, May 6, 1916, p. 7532.

114. *Congressional Record*, January 16, 1917, p. 1495.

115. On the time for debate during this period, See George E. Connor and Bruce I. Oppenheimer, "The Changing Use of Time in Congress: The Decline of Deliberation." Paper presented at the Carl Albert Congressional Research and Studies Center, University of Oklahoma, April 1990.

116. *Congressional Record*, May 16, 1916, p. 4252-4253. The provision in this and other rules that the bill was to be in order on all legislative days except Wednesdays was to protect the opportunity for committees to invoke the still relatively new Calendar Wednesday procedure. Writing in the same year, Alexander observes that "[s]o zealously have the prerogatives of this day been observed that it has come to be spoken of as 'Holy Wednesday'." (Alexander, p. 224.)

117. "The objection that I have to this rule," said Morgan of Oklahoma on one occasion, "is that it provides for only six hours' general debate upon this great measure....In my judgment, if the time for general debate was limited at all, there ought to be at least several days." (*Congressional Record*, May 6, 1916, p. 7533.)

118. Note that such provisions can increase the importance of whatever discretion the Chairman enjoys in recognizing Members to offer amendments in Committee of the Whole.

119. *Congressional Record*, July 6, 1916, pp. 10508-10509. Bennet also claimed that the revenue bill was privileged; so, he argued, the only point of the rule was to limit opportunities for amendment and to set aside the normal procedure of amending it section by section. Fitzgerald of the Appropriations Committee challenged this contention, suggesting that because the bill contained provision for a tariff commission, it was tainted by non-privileged matter. (Ibid., p. 10509.) In response to Mann's criticisms, Harrison recalled the rule the Republicans had proposed in the 61st Congress for the Payne-Aldrich tariff bill: "you allowed discussion in general debate for two weeks, and then, under the rule that you adopted, you allowed only five amendments to be offered and specified what amendments they should be. So it comes with poor grace now for the gentleman from Illinois, the leader of the Republicans, to criticize a Democratic rule that allows freedom of amendment and most reasonable time for discussion, so to speak, when his party when it was in power restricted us to offering only five amendments to that bill, which contained every imaginable item." (Ibid., p. 10512.)

120. *Congressional Record*, May 16, 1916, pp. 8070-8074. In arguing for this rule, Kitchin expressed the same kind of open partisanship we heard before from Republicans when they were in the majority: "I want to say to my fellow Democrats here that we are responsible for the legislation in this House. The vote on this rule will show whether or not we have the patriotism and courage to assume that responsibility. We have a majority. We Democrats can run this House and manage its procedure, provided we want to do it...." (Ibid., p. 8075.) See also *Congressional Record*, May 26, 1916, pp. 8749-8752.

121. This Congress also marks a change in how rules were developed and considered. The *Record* documents only two cases in which the Committee reported resolutions that had been referred to it. Twenty of its 24 special rules also were debated under the hour rule,

although the time for debate frequently was limited at the outset by unanimous consent, sometimes with the previous question then to be considered as ordered. In several instances, the majority floor manager moved the previous question before debate began only after having tried and failed to secure such a unanimous consent agreement. Like the 61st Congress, on the other hand, most of the resolutions resulted in at least one division or rollcall vote.

122. The Rules Committee initially proposed a rule for considering "in the House" a bill on the Union Calendar. After being questioned by Mann about the resolution's effect, Pou amended the rule to strike "in the House," leaving the bill to be considered under the general rules of the House--i.e., in Committee of the Whole. (*Congressional Record*, August 31, 1916, pp. 13532-13533.) We cannot be sure whether Rules really wanted to foreclose amendments or whether its resolution simply had not been drafted with forethought and precision. Take, for example, the resolution adopted about four months later, providing for an hour of general debate before the previous question would be considered as ordered, and stating that "[d]uring the general debate any Member may be recognized by the Chair to offer germane amendments to the resolution." (*Congressional Record*, January 9, 1917, p. 1084.) It was only after the House adopted the rule that uncertainty developed over how Members could be recognized to offer amendments during a time for general debate to be divided between "those favoring and those opposing the resolution." (Ibid., pp. 1084-1088.)

123. One of the appropriations waiver rules also limited the time for debating each of the three amendments it protected, provoking this reaction from Bennet: "I served in the Fifty-ninth, the Sixtieth, and the Sixty-first Congresses, when nearly every day some gentleman on the Democratic side of the aisle rose and talked about gag rules and Cannonism, and depriving the individual of his rights. Well, here we are. There never was anything attempted in those three Congresses like passing a rule 45 pages long embodying three bills, attaching them to an appropriation act, so that the only way the President can veto the bills if he wants to is to veto one of the great appropriation acts." (*Congressional Record*, April 28, 1916, p. 6982.) Pou's defense was one of policy, not procedure. "We did have a good deal to say about gag rule, but we charged that your party, while it had control of this House, used the gag rule for the purpose of suppressing good legislation rather than for the purpose of putting good legislation through." (Ibid. p. 6983.) Harrison also recited a litany of similar waiver rules for appropriations bills and restrictive or closed rules for other bills, all reported by Republican-controlled Rules Committees from the 52nd through the 61st Congresses. "And yet you say the resolution under discussion is drastic and without precedent. You had better read the record of your party." (Ibid. p. 6988.)

124. *Congressional Record*, March 1, 1917, p. 4636.

125. *Congressional Record*, June 2, 1922, p. 8051. On special rules for privileged appropriations and revenue measures, see Chiu, pp. 159161. Campbell made his statement in response to charges that he was deliberately delaying House action on some rules the Committee had reported, instead keeping them in "his hip pocket or his coat pocket." (Ibid.) "If the work of the Committee on Rules continues to grow as it has been growing in the past seven or eight years," he argued, "there will have to be a calendar for the Committee on Rules instead of a place in the pockets of the chairman for the rules that are reported." (Ibid.) The House evidently was not convinced. In January 1924, it adopted what became

clause 4(c) of Rule XI, permitting any member of Rules to call up a special rule after it has been on the House Calendar for seven days. (At the beginning of the 100th Congress in 1987, a proviso was added requiring one day's notice of a member's intention to invoke this right.) The House also "protected itself from 'snap' tactics by providing that the Committee on Rules could not call up a report for consideration on the same day it was presented to the House, unless by a two-thirds vote." (Hasbrouck, p. 97; see also Chiu, pp. 146-148; *Committee on Rules*, pp. 111-118; and George B. Galloway, *History of the House of Representatives*. New York: Thomas Y. Crowell Company, 1961; pp. 142-144.)

126. *Congressional Record*, May 13, 1921, p. 1431.

127. Rogers appears to agree in part and disagree in part: "By the Sixty-seventh Congress...the great bulk of the important business was regulated by special orders imposing a rigorous form of cloture." (Lindsay Rogers, "Record of Political Events: Congress," *Political Science Quarterly*, v. 40, n. 1, March 1925, p. 69.)

128. One of these rules, for a bill proposing a formal end to World War I, was the only one providing explicitly for considering a measure in the House with the previous question considered as ordered. The arguments against this closed rule are familiar, though perhaps expressed somewhat more felicitously than we usually hear today. Campbell, speaking for the Committee: "The resolution declaring that the state of war is at an end has been carefully prepared in the Committee on Foreign Affairs, with particular emphasis placed by the members of that committee upon the importance of the phraseology they have adopted in the resolution. Every right, every interest, and every concern of the country has been in the minds of those who have prepared the phraseology of the resolution. And I doubt if upon the floor a single word could be changed that would advance the interests of the country or the welfare of the Republic." Cockran of New York, in opposition: "[W]hile I am willing to concede that the gentleman from Kansas [Campbell] is wiser than anybody in this House, I can not concede that he is wiser than everybody in this House." (*Congressional Record*, June 11, 1921, p. 2438.) And Pou, also for the Democrats: "They [the Republican majority on Rules] sent for us, we were notified that this was the thing that was going to be done, and it was done...." (Ibid., p. 2445.) During a later debate, Garrett echoed Pou's sentiments, referring to the Democrats on Rules as "innocent bystanders". (*Congressional Record*, May 5, 1922, p. 6405.)

129. Controversy continued to arise over this process. Garrett criticized a 1921 rule for sending a House bill with Senate amendments directly to conference instead of to the Ways and Means Committee: "This Senate amendment deals in part with subjects entirely new, not mentioned in the House bill when it passed the House. Now it is proposed to send the bill to conference instead of to the Committee on Ways and Means. The conferees will meet. They will make up a conference report which will be returned to the House. The House will have to act upon it in advance of the Senate, and gentlemen will be confronted with the proposition of having to vote the conference report up or down as a whole, without the slightest opportunity of giving any independent consideration whatever to these new subjects that have been placed in the bill by the Senate." (*Congressional Record*, May 13, 1921, p. 1430.) Less than two months later, Mondell argued that going directly to conference was "[t]he usual practice, the wise practice, the sensible practice": "Now, what is the proposition before us? It is to send this bill to conference in the way in which nine-tenths--and I do not

know but I might properly say ninety-nine one-hundredths--of the bills that come before the House go to conference. It is the most extraordinary and unusual thing for a bill coming back to the House with Senate amendments to go to a committee." (*Congressional Record*, June 7, 1921, p. 2203.) Yet barely two months later, the House easily adopted an open rule for considering, in Committee of the Whole, Senate amendments to a House bill amending the Volstead Act. (*Congressional Record*, August 16, 1921, p. 5067.) The problem was non-germane Senate amendments. So long as the House referred these amendments to committee and then considered them in Committee of the Whole, it could respond to them individually. But the practice of going directly to conference created the problem that concerned Garrett and that continued to bedevil the House until the 1970s when it developed and perfected procedures for removing non-germane Senate amendments from conference reports by majority vote. See Stanley Bach, "Germaneness Rules and Bicameral Relations in the U.S. Congress," *Legislative Studies Quarterly*, v. 7, n. 3, August 1982, pp. 341-357.

130. Not a single rule provided for action by the House as in Committee of the Whole. That procedure, used regularly during the previous Congresses we have studied, evidently was en route to the procedural obscurity in which it continues to rest.

131. For example, Snell referred to an open rule as providing for a measure to be considered "under the general rules of the House," emphasizing, as we already have discussed, the limited differences between considering a bill under an open rule and considering it in Committee of the Whole without benefit of a rule. (*Congressional Record*, December 19, 1922, p. 705.)

132. *Congressional Record*, December 15, 1921, p. 428.

133. *Congressional Record*, April 20, 1921, p. 493. Sabath of Illinois, a future Democratic Chairman of Rules, also criticized the rule as a premature and precipitate development: "I have at all times opposed legislation by special rule....I think this legislation should not be considered so hastily." (Ibid., p. 495.)

134. Ibid., p. 494.

135. The process for considering rules continued to vary. In some cases, the majority floor manager for a rule moved the previous question immediately, creating 40 minutes for debate. In others, he would begin debate and then yield some time to his Democratic counterpart, sometimes without being prompted to do so.

136. *Congressional Record*, June 28, 1922, p. 9576.

137. Ibid., p. 9577. Cramton of Michigan had made his point of order against a Rules' proposal because "[n]o resolution or petition or anything else relating to this bill that it is now sought to make in order has been referred to that committee by the House." (Ibid., p. 9576.) He quoted subdivision 56 of Rule XI, granting the Rules Committee and others "leave to report at any time" on certain matters within their jurisdictions, which now is universally accepted as the basis for the authority of these committees to report original measures. But,

he continued, "[t]here is nothing in that subdivision to give them authority to initiate legislation...." (Ibid.)

138. Garner pointed out one of these deficiencies during debate on the rule for considering a Senate bill with a House committee substitute: "when we go back to the House after we have been in the Committee of the Whole and perfected this one amendment, we must vote on that one amendment alone....I want to suggest to [the Rules Committee] that in considering rules in the future, when you authorize a bill to be substituted for another bill, if it is possible to do so, you ought to so draw the rule that the Committee of the Whole, having adopted an amendment to the original bill that you authorize to be substituted, you ought to give the House an opportunity to have a separate vote on those amendments." (*Congressional Record*, May 3, 1921, p. 975.) This bill may have become the Budget and Accounting Act of 1921. Separate votes were permitted in a rule adopted two years later; see *Congressional Record*, February 15, 1923, p. 3703.

139. *Congressional Record*, March 10, 1922, p. 3671.

140. *Congressional Record*, June 21, 1922, p. 9112; *Congressional Record*, June 22, 1922, p. 9175.

141. *Congressional Record*, February 21, 1922, p. 2851; May 16, 1922, p. 7060; December 19, 1922, p. 704; June 2, 1922, p. 8051; March 10, 1922, p. 3671.

142. *Congressional Record*, June 22, 1922, p. 9175; *Congressional Record*, June 27, 1922, p. 9532.

143. *Congressional Record*, February 13, 1923, pp. 3567; *Congressional Record*, February 13, 1923, p. 3582-3583.

144. One open rule stated that "it shall be in order to consider H. R. 13 (House Calendar No. 98) in the Committee of the Whole House on the state of the Union as though the bill were on the Union Calendar." The rule did not require that general debate be germane, and Campbell's comments suggest that the omission was deliberate. (*Congressional Record*, December 19, 1921, pp. 541-542.)

145. Although these rules were few in number, the minority evidently expected Rules to report them for the most important bills. Pou of North Carolina, for example, looked forward to the rule on a tax bill that Ways and Means was marking up: "[o]f course, when it is reported out by the Ways and Means Committee we will go through the usual routine; the Rules Committee will be called together and a special rule will be framed which will fix the time for a vote, which will cut off amendments, and which will put the framing of the bill as well as all amendments into the hands of the chairman of the Committee on Ways and Means and the majority members of his committee." (*Congressional Record*, July 25, 1921, p. 4269.)

146. Lindsay Rogers, "Notes on Congressional Procedure," *American Political Science Review*, v. 15, n. 1, February 1921, p. 71. Rogers wrote four years later in a successor article that "special orders may be reported by the rules committee at any time; they usually limit both

amendments and debate and they make it certain that the House will take action at a time and in a way determined upon by the leaders." Lindsay Rogers, "American Government and Politics: First and Second Sessions of the Sixty-Eighth Congress," *American Political Science Review*, v. 19, n. 4, November 1925, p. 764.

147. The resolution also required the House to vote on amendments "in gross," except that the Ways and Means Committee could request a separate vote on any amendment "offered by said committee," and except that Members could demand separate votes in the House on amendments *either adopted or rejected* to the five specially designated provisions. (*Congressional Record*, July 12, 1921, pp. 3607-3608.)

148. Ibid., pp. 3608-3609. Days later, Garrett asserted that he had correctly anticipated what would happen. "The tariff measure, which finally passed the House last Thursday, was considered under a rule and a practice that prevented the House from ever reaching any amendments except amendments that were offered by Republican members of the Committee on Ways and Means. The only opportunity that any other Member of the House ever had to offer an amendment was when he could offer an amendment to one of those amendments." (*Congressional Record*, July 25, 1921, p. 4270.)

149. *Congressional Record*, July 12, 1921, pp. 3609-3610. When Campbell began debate in the following year on a similar rule that allowed more than two days for amendments, he tried to anticipate similar skepticism and criticism: "in order to make it possible that the House itself shall have the greatest opportunity for considering the bill for amendment, the Committee on the Merchant Marine and Fisheries took the bill into the committee and inserted as a part of the bill many amendments that they had intended offering from the floor. This was done in order to save the time for the Members of the House to offer such amendments as they might deem proper." (*Congressional Record*, November 22, 1922, p. 37.)

150. *Congressional Record*, May 24, 1922, pp. 7577-7578. Campbell replied that "[d]uring the period of the war we brought in rules here giving the Agricultural Committee, the Committee on Military Affairs, the Committee on Naval Affairs, the Committee on Banking and Currency, or any other committee that had accumulated a great deal of business on the calendars, days on which to transact their business. Therefore that part of the rule is not at all unusual." (Ibid., p. 7580.)

151. In one sense, most special rules of this Congress resembled special orders in that they made measures in order for floor action at some unspecified time in the future, but did not provide for the House to take them up immediately. Of course, when the Speaker chaired the Committee, it made more sense for special orders and special rules to provide for immediate consideration of a bill, because the Committee would only report its resolution at the time the Speaker thought suitable for considering the bill.

152. The one special order set aside a legislative day for considering three measures, all on the House Calendar, from the Committee on Immigration and Naturalization, "this rule not to interfere with privileged business." The *Record* offers no explanation, but we can infer that this special order was an alternative to special rules for considering the bills in the House. As we have seen, the Committee had reported such rules in the past but none during the 67th or 70th Congresses. (*Congressional Record*, March 29, 1928, p. 5574.)

153. Referring to special rules, Hasbrouck remarks that, "since the Sixty-Seventh Congress, their terms have become less arbitrary. There have been more reasonable allowance for debate and less restriction of amendment. This increase in the number of special rules results from the growing demand on all sides for certainty of the legislative timetable, and would be more pronounced if it were not for the fact that the Floor Leader whenever possible uses the simple, less overbearing expedient of unanimous consent." (Hasbrouck, p. 96.)

154. Members presumably were familiar with the procedure because there was no controversy over the Rules Committee resorting to it. *Congressional Record*, May 12, 1928, p. 8556. The bill temporarily increased the rank and pay of the President's personal physician.

155. *Congressional Record*, May 14, 1928, p. 8636.

156. But there was not an equally fixed and predictable way for debating them. Sometimes the majority floor manager yielded some time to Democrats at their request; in other cases, he did so without being asked. Occasionally he moved the previous question at the outset. But never did he begin the debate by yielding half of his hour "for purposes of debate only" as has become customary.

157. *Congressional Record*, May 22, 1928, p. 9486.

158. *Congressional Record*, April 17, 1928, p. 6640.

159. For example, see *Congressional Record*, March 13, 1928, p. 4647.

160. *Congressional Record*, April 25, 1929, p. 7223.

161. *Congressional Record*, May 4, 1928, p. 7826. Ramseyer of Indiana, managing the rule for the Republicans, told his colleagues that "[t]he rule is in the usual form", but we are offered no explanation for the discrepancy. (Ibid., p. 7826.)

162. Snell also commented that each bill "when called up is to be considered under the general rules of the House." *Congressional Record* January 15, 1929, p. 1742.

163. *Congressional Record*, February 15, 1929, p. 3525.

164. *Congressional Record*, May 17, 1928, p. 9001.

165. Ibid., p. 9002.

166. *Congressional Record*, March 6, 1928, pp. 4193-4194.

167. Galloway, op. cit., p. 146.

168. Galloway, p. 146; see also *Committee on Rules*, pp. 127-130.

169. Ibid.

170. On the Committee and its activities during this period, including the 21-day rule and the expansion fight, see Galloway, pp. 147-155.

171. On the politics of the Committee during this period, see *Committee on Rules*, pp. 133-177; and Christopher Van Hollen, *The House Committee on Rules (1933-1951): Agent of Party and Agent of Opposition.* Doctoral dissertation, Johns Hopkins University, 1951. Van Hollen reports that, between 1933 and 1948, the Committee reported 854 "special orders for consideration of regular legislation," of which 187 were not considered on the floor. Only 11 were defeated. "The House adopted 668 special orders or an average of 42 each regular session." (Van Hollen, p. 41.)

172. In one instance, the House voted to discharge the Rules Committee from further consideration of a simple open rule. The rule's provisions were conventional but they were preceded by the statement that "a special order be, and is hereby, created by the House of Representatives, for the consideration" of a controversial anti-lynching bill. (*Congressional Record*, April 12, 1937, p. 3387.) This was the only reference in any of the resolutions to a "special order."

173. None of the six committee substitute rules protected separate votes in the House on amendments adopted in Committee of the Whole. On the other hand, and for the first time we have observed, each of these rules did explicitly protect the minority's right to include instructions in its recommittal motion, but then so too did eleven simple open rules. These missing provisions would be noteworthy and anomalous today, but they provoked no comment at the time. Several of the bills considered under simple open rules providing for a motion to recommit "with or without instructions" were subject to amendments in the nature of substitutes offered on the floor as first degree amendments, so the rules may have been drafted with this prospect in mind; see, for example, *Congressional Record*, August 12, 1937, pp. 8778-8786. But other bills considered under comparable rules did not provoke such a substitute or any discussion of one (e.g., *Congressional Record*, December 18, 1937, pp. 1842-1897), so this explanation does not suffice. For exceptions to open rules during this period, especially on labor legislation, see Van Hollen, pp. 189-216. Van Hollen reports that, during 1933-1948, 72.6 percent of the special rules granted provided for one or two hours of general debate; 4.7 percent permitted one or more days for debate. Writing in 1951, he concluded that "there has not been much criticism directed at the Committee on Rules on the grounds that it has limited general debate. Members, recognizing that debate in the House must be budgeted, usually seem willing to permit the Committee on Rules to allocate the necessary time." (Van Hollen, pp. 56-57.)

174. However, the rule provided for general debate and for the bill to be read for amendment under the five-minute rule, indicating that this procedure still differed in these respects from its contemporary form.

175. Chairman O'Connor of the Rules Committee defended one of these rules by arguing that the House had adopted such rules when the Republicans were in the majority: "I served on the Rules Committee for 8 years at the feet of the distinguished minority leader, the gentleman from New York [Mr. Snell], and I saw him bring in rules just like this for the consideration of conference reports." (*Congressional Record*, February 8, 1938, p. 1651.)

176. On the Committee during this Congress, see *Committee on Rules*, pp. 155-158.

177. Van Hollen finds "that in the Seventy-ninth and Eightieth congresses an average of only six per cent of regular legislation passed the House with the assistance of a special order. But most of the key bills in each of these four sessions were included in this six per cent." The number of special rules adopted per session ranged from 49 to 57. (Van Hollen, pp. 41-42.) Throughout the 16 year period from 1933 to 1948, he reports, the House adopted 575 rules of which 86.1 percent were open rules. (Van Hollen, pp. 58-59.)

178. No longer did any simple open rules explicitly provide for instructions in motions to recommit. Conversely, the committee substitute rules had not quite attained their present form; none of these rules protected recommittal with instructions and three of them also failed to protect separate votes on amendments in the House.

179. Between 1939 and 1956, according to Robinson, the House agreed to 47 waiver resolutions for appropriations measures; Rules reported 18 more rules of this kind in 1957-1960. None was rejected. Also during 1939-1960, the House considered 23 rules relating to House-Senate differences, and rejected only one of them. (James A. Robinson, *The House Rules Committee*. Indianapolis: The Bobbs-Merrill Company, Inc., 1963; pp. 47-53.)

180. Galloway, pp. 151-152.

181. *Committee on Rules*, p. 156. (Note the discrepancy between the Committee's figures and Galloway's, cited earlier.) According to Van Hollen, "only 34 [closed rules] were adopted from 1933 through 1948, and 50 per cent of these were passed in two Congresses, the Seventy-third and the Eightieth when a new party for the first time had a working majority in the House and the leaders were able to exercise a greater degree of control." (Van Hollen, pp. 61-62.) And Robinson finds that "[i]n the eleven Congresses between 1939 and 1960, the House adopted eighty-seven closed rules and 1,128 open rules." (Robinson, p. 44.) However, we should treat these assertions with caution because, by Van Hollen's definition, closed rules include those that "restrict amendments to specified parts of a bill (Van Hollen, p. 55), and by Robinson's, they include those that allow only certain amendments, in addition to committee amendments (Robinson, p. 44)--in other words, what we are more likely today to call restrictive rules.

182. In defending one closed rule, Chairman Leo Allen of the Rules Committee recalled that "when I first came to Congress back in 1933 we had many closed rules. I believe the Record will disclose that the Democratic leadership during those many years brought in many closed rules, and the Democratic leaders, without exception, voted solidly for those closed rules." (*Congressional Record*, February 20, 1947, p. 1199.) Allen inserted in the *Record* descriptions of 26 rules adopted during the period 1933-1946 which Allen described as closed. Though some of them did not preclude all but committee amendments to measures during their initial floor consideration, which is the criterion for closed rules used here, it remains interesting to note that eight of Allen's 26 rules were brought to the floor during 1933. Republican Clarence Brown of Ohio came to Allen's support by enumerating a series of non-revenue bills which, he contended, had been considered under closed rules during the years of Democratic control. (Ibid., p. 1201). Later that year, Clark of North Carolina, a Democratic member of Rules, sought to explain his party's record: "I know that the

Democrats have in times past, brought in some closed rules and maybe some bills that were a little damp, but that occurred...following some 12 or 14 years of Republican rule after which the situation in this country was pretty desperate and something had to be done in a hurry." (*Congressional Record*, December 19, 1947, p. 11724; quoted in *Committee on Rules*, p. 157.)

183. *Congressional Record*, February 20, 1947, p. 1200. On closed rules, see also the debates on January 29, 1948 (*Congressional Record*, pp. 688-692), and May 26, 1948 (*Congressional Record*, pp. 6493-6499).

184. *Congressional Record*, May 27, 1947, p. 5872. Also see Estes Kefauver's attack on another such rule (*Congressional Record*, June 11, 1947, pp. 6799-6800).

185. And Members sometimes recognized the rhetoric for what it was. Van Hollen quotes Speaker Bankhead's speech to the House in January 1937 upon becoming Speaker. Having been introduced by Minority Leader Snell, who had served with him on Rules, Bankhead reminisced, to laughter and appluase from his colleagues: "When Mr. Snell was chairman of the Republican Rules Committee and brought upon the floor of this House so-called gag rules which it appeared to me, stripped minority Members of every vestige of constitutional and parliamentary power, I was one of the foremost to pour out upon him and his associates the vial of my wrath, and almost felt justified not only in criticizing the rule but holding him up to the execration of mankind. The tide of political fortune changed, ... and I become chairman of the Committee on Rules. In order to expedite what we conceived to be some legitimate party programs, I occasionally brought in as chairman of that committee, some innocent little rules of the same nature. Thereafter, the distinguished gentleman from New York, in almost apoplectic frame of mind, would absolutely tear to pieces that rapine of every parliamentary decency. So I am reminded of the old Latin maxim, 'Tempora mutantur, et nos mutamur in illis'--Times change and we change with them." (*Congressional Record*, January 5, 1937, p. 12; quoted in Van Hollen, pp. 63-64.)

186. Conflict between the Committee and the Democratic leadership also re-emerged, of course. One immediate but short-lived result was the 21-day rule by which eight measures came to the floor for passage during the 81st Congress. (Galloway, pp. 152-153.)

187. As during the 75th and 80th Congresses, the committee substitute rules did not yet explicitly protect both separate votes in the House and instructions in recommittal motions.

188. In urging rejection of the previous question on a closed rule, Clarence Brown of Ohio made the classic argument against such rules: "It is now entirely up to the membership of the House to determine what it wishes to do: whether it wishes to gag itself, and to say to the country and to the world that this body is impotent, and all wisdom rests in the Committee on Foreign Affairs of our House of Representatives, or in the other body across the way." (*Congressional Record*, January 29, 1957, p. 1152.)

189. Clause 1 of Rule XX. H.Res. 8, 89th Congress; *Congressional Record*, January 4, 1965, p. 21.

190. Similarly, Van Hollen reports that there were rollcall votes on 14 percent of the special rules brought to a vote between 1933 and 1948. "Opponents recognized that a roll call would simply delay proceedings because the leaders are usually assured of enough votes to pass the rule." (Van Hollen, p. 67.) He does not distinguish between roll calls on the previous question and on adoption.

191. Van Hollen, p. 68. Robinson adds: "With two exceptions, they were voted down not because the House thought the rules unfair or inadequate, but because it was opposed to the bills that they would have brought to the floor." (Robinson, pp. 37-41.)