The Motion to Recommit in the U.S. House of Representatives

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Abstract

Studies of agenda control in the US House of Representatives focus increasingly on the role of House rules and procedures. Recent work on one such procedure, the motion to recommit, suggests that this motion empowers the minority party to undermine majority party agenda control. In this paper, we reassess this finding, and conclude that there is little basis for believing that recommitals either undermine the majority party, or substantially empower the minority party. The crux of our argument is that House rules and practice constrain use of recommital motions to a far greater extent than has been recognized. Using data on recommital motions and other legislative behavior, we provide evidence that is inconsistent with claims that the minority party gains substantial policy influence via the motion to recommit.

Recent work on the role of parties in the US House of Representatives has focused increasingly on whether or not the majority party plays an important agenda-setting role. This in turn has directed scholarly attention to how much the rules and procedures of the legislative process facilitate majority party agenda control (Sinclair 1983, 1989, 1997, 2002; Bach and Smith 1988; Smith 1989; Kiewiet and McCubbins 1991; Rohde 1991; Krehbiel 1991, 1993, 1998; Cox and McCubbins 1993, 2002; Aldrich 1995; Binder 1997; Lawrence, Smith, and Maltzman 1999; Aldrich and Rohde 2000).

One such procedure, the motion to recommit (MTR), has become the subject of debate due to a recent paper by Krehbiel and Meirowitz (2002—henceforth, KM).[1] They model the motion to recommit within a multidimensional spatial model of the legislative process, arriving at the provocative conclusion that the motion to recommit undermines the majority party's agenda control and allows the minority party to exert substantial influence over legislative outcomes. The purpose of this paper is to evaluate, both theoretically and empirically, the use and effects of the recommital motion. In contrast to the finding just discussed, we argue that the recommital motion does not give the minority party a weapon for exerting substantial influence over legislative outcomes.

Conventionally, the recommital motion has been seen as a procedure of limited significance (Bach 1998a; Kiewiet 1998; Johnson 2000; Oleszek 2001, 2004; Roberts 2003; Kiewiet and Roust 2003). Oleszek, for example, says that the MTR "gives opponents one last chance to obtain a recorded vote on their own proposals" (2001, p. 173). Wolfensberger (1991) echoes this sentiment, calling the ability of the minority party to "get a final recorded vote on a direct amendment…the main purpose of the [motion to recommit]" (1). However, the title of Wolfensberger's report—"The Motion

to Recommit in the House: The Rape of a Minority Right"—belies the fact that the motion does not always grant the minority even that limited ability.

Krehbiel and Meirowitz argue otherwise. The key to their conclusion is the premise that the recommital motion is essentially a right, held by the minority party, to propose a *final* take-it-or-leave-it amendment (or substitute) just before the final passage vote on a bill. They model the proposal, moreover, as unrestricted—that is, the minority party can propose any alternative that it likes via a motion to recommit. In other words, in KM's model the motion to recommit is analogous to the right of a school board in the original Romer and Rosenthal (1978) setter model—or of a conference committee in Shepsle and Weingast's model of committee power (1987a,b)—to make a final, unrestricted, and unamendable offer.

We argue that the motion to recommit is *not* analogous to the final proposal rights in the Romer-Rosenthal and Shepsle-Weingast models. That is, it is not tantamount to an unrestricted opportunity to make a final take-it-or-leave-it proposal. Thus, it does not allow the minority to regularly undermine the majority party's agenda control, as presented by KM.

We make two main points in arguing for our position. First, we build the case against treating the motion to recommit as the analog of the final proposals in the other models. There are three main problems with this analogy: (1) by rule, the recommital motion *cannot be offered* in the case of most bills that reach the House floor; (2) even when the motion is in order, the alternative proposals that can be made via recommital motion can in principle always be restricted (and in practice often have been); and, (3) even after recommital motions have been made, the majority is not defenseless, as it has

on numerous occasions raised and sustained points of order against these motions, effectively killing them

Second, KM's model makes a number of empirical predictions (some of which they state explicitly, and some of which follow directly from their claims) about the incidence of recommital motions, and which party should and should not support such motions. We shall show that these predictions are at sharp odds with observed behavior, suggesting again that KM's model does not adequately capture the role of the recommital motion within the legislative process.

In the remainder of the paper, we flesh out these points as follows. For readers unfamiliar with either the motion to recommit or the KM model, the next section provides a brief overview of each. In the third section, we elaborate on our claim that the recommital motion is not tantamount to a minority-party final proposal opportunity. In section four we perform a number of tests of the KM model.

Recommital motions in the U.S. House of Representatives

In this section, we present a short summary of how the motion to recommit works,[2] as well as a brief overview of KM's model. After the Committee of the Whole considers a bill and reports it back to the House, debate, amendments, and most other motions regarding the bill end when the House orders the "previous question," which it does by majority vote.[3] Since 1811, the previous question has been the main instrument by which the majority party puts a stop to debate in the House and forces a vote on the motion at hand (Tiefer 1989, p. 369). The standing rules of the House grant opponents of a bill the right to make a motion, after the previous question has been ordered and just before the final passage vote on the bill, to recommit the bill to a committee of the House.

Recommital motions may (but need not) include instructions, and also may (but need not) include an order that the committee report the bill forthwith. The meaning of these terms is as follows: *recommit* means simply to send a bill back to a committee. *Instructions* direct the given committee to take certain actions regarding the given bill; usually, these instructions specify that the committee must amend the bill in a particular manner, though instructions are sometimes less specific. When the committee is ordered to report *forthwith*, which can only be done if the recommital motion includes specific instructions, then the bill automatically returns to the floor immediately, with whatever amendments were mandated by the motion to recommit.

Under House rules there are thus three possible types of recommital motions: without instructions (also known as a "straight" motion to recommit), with instructions, and with instructions to report forthwith. A successful motion to recommit without instructions is tantamount to killing the bill. A motion to recommit with instructions but without a directive to report forthwith typically occurs when the instructions are not specific; if adopted, such a motion returns the bill to committee, and the subsequent fate of the bill is uncertain. As noted, when the House adopts a motion that instructs a committee to adopt particular amendments and return the bill to the floor forthwith, the bill does not actually return to the committee for hearings; rather, it is immediately returned to the floor in the amended form ordered by the motion. A vote is then taken to choose between the original version of the bill and the version produced by the motion to recommit. Whichever version wins then faces the status quo in a final passage vote. It is this version of the recommital motion that is the basis of KM's model.

KM argue that this motion potentially has a profound effect upon outcomes of the legislative process. We will describe the formal aspect of their model in the fifth section, when we test some of its predictions. For now, however, to give readers the intuition of the model, we present KM's characterization of the legislative process and the role of the motion to recommit:

> To understand the importance of the motion to recommit with instructions to report forthwith, consider the following sequence:
>
> 1. A preference-outlying majority-party-stacked standing committee proposes a non-centrist bill.
> 2. The committee testifies before the Rules Committee of its need to protect its legislation from amendments and requests a pure closed rule.
> 3. The majority-party-stacked Rules Committee accedes to the request and drafts a resolution to put the procedural matter before the House.
> 4. Majority party leaders effectively pressure their members to support the rule, so the procedural majority is cohesive a la Jones (1968).
> 5. The bill is debated but, in accordance with the rule, not amended.
>
> The bill seems destined to pass, given the first-mover status of the standing committee and procedural protection afforded by the rule. Opponents (as precedents have it, minority party members) are entitled, however, to offer the motion to recommit and, at the recognized member's discretion, to recommit with instructions to report forthwith. (193-4)

The punchline of KM's model is that, given this last-mover advantage, the minority party proposes an amended bill that it prefers to the majority's bill. This proposal splits the majority party in such a way that the minority party joins with part of the majority party to choose the minority substitute over the original version, and to then pass the minority substitute on final passage.

Are recommitals analogous to a take-it-or-leave-it substitute proposal?

KM assume that the recommital motion is akin to the right to make a final take-it-or-leave-it substitute amendment, claiming that "[t]he codified motion to recommit, when embedded in a simple legislative bargaining model, is tantamount to allocating the last-proposer right to the minority party or opponent of a bill" (211).

We argue, however, that there are crucial caveats that must be added to their claim. First, the motion is not in order for most bills that get final passage votes. Though most bills that are reported from committee eventually pass the House, bills can reach the floor in a variety of ways (see appendix). Figure 1, which shows the proportion of bills that garnered floor consideration via each method across the six Congresses from 1983-1994, shows that roughly two-thirds of all bills that reached the floor did so via suspension of the rules or unanimous consent. This proportion, moreover, has grown since 1994 (Wolfensberger 2002).[4] When bills reach the floor under suspension of the rules, the motion to recommit is not in order; rather, after forty minutes of debate in which no amendments may be offered, "a single vote occurs on suspending the rules and passing the bill" (Bach 2001, p. 7). Similarly, approval of most unanimous consent motions entails passage of a bill and therefore leaves no opportunity for a recommital

motion (Saturno 2001, p. 6). So, for most bills the minority cannot offer a motion to recommit.

Figure 1 here

Of the remaining bills, almost all reach the floor by privilege or a special rule. Figure 1 shows that, from 1983-1994, roughly twenty percent of bills reaching the floor did so by some form of privilege. Most privileged bills are reported from one of the few committees with the privilege to report to the floor at any time.[5] Of these, most privileged bills come from the Appropriations and Budget Committees (though Republican majorities since 1995 have increasingly granted special rules to appropriations bills that would otherwise be privileged). Bills reaching the floor in this manner *are* subject to a motion to recommit. To get an idea of how often such bills actually are recommitted, we counted the number of final passage votes on bills dealing with appropriations, taxes, or the budget from 1953-1998, then counted the number of instances in which bills dealing with these topics were recommitted.[6] There were 942 final passage votes on such bills, and only 46 (4.9%) passing recommitals. Thus, of the roughly twenty percent of bills reaching the floor via privilege, only a small fraction are recommitted.

This leaves special rules as the final means by which a substantial number of bills, including most controversial legislation, gets floor consideration. Such rules can modify floor consideration by waiving points of order, limiting debate, or restricting the amendment process. Most studies of special rules have focused on the use of rules to restrict amendments, by such means as limiting the number of amendments that can be offered, specifying who can offer an amendment, or specifying that only particular amendments (or types of amendments) can be offered (Krehbiel 1997a,b; Schickler and

Rich 1997; Sinclair 2002). Figure 1 shows that roughly eight percent of bills reach the floor via special rules. It is worth noting that even privileged bills often reach the floor under special rules (Saturno 2001).

Special rules have sometimes precluded the offering of recommital motions, and have at other times allowed the offering of recommital motions. The standing rules of the House have long stipulated that a special rule may not eliminate the right to offer a motion to recommit.[7] As KM note, however, across the long period of postwar Democratic hegemony, the Democrats violated this rule repeatedly by issuing special rules that *did* prevent recommital motions from including instructions, and that restricted the set of amendments that could be offered via recommital.[8] Thus, when the majority Democrats decided whether or not to restrict floor amendments to a bill via a special rule, they also had the option of restricting what types of amendments, if any, could be offered via a recommital motion.[9]

When the Republicans became the majority party in 1995, they immediately changed the House's standing rules so as to bar special rules that prevent a motion to recommit. Nonetheless, the majority party retains the ability to reinterpret or change the standing rules so as to reimpose such restrictions if it so desires, just as Democratic majorities did in the past.

If one chooses to be nit-picky, this fact has interesting implications for the KM model. KM assume implicitly that majority sponsored committee proposals receive a closed rule for House consideration.[10] But, by this assumption, any motion to recommit would also be barred from including instructions under the pre-1995 rules. Thus, for most of the period that they examine empirically (they offer data covering the period from

1947 to 1996), their own assumptions preclude the very activity they wish to highlight.[11] *Only under the rules adopted in 1995 is this not a problem for their model*.

In addition to the four methods just discussed, there are five other ways by which a small number of bills reach the floor. The first three, shown in Figure 1, are the Private Calendar, the D.C. Calendar, and the Consent Calendar.[12] The few bills that fall into these categories are minor, uncontroversial bills. The final two ways for bills to reach the floor are the discharge petition and Calendar Wednesday. Both are prohibitively costly,[13] and thus are virtually never used (Oleszek 2001; Beth 2001).

Another restriction on use of recommital motions stems from the budget process created by the Congressional Budget Act of 1974. Under this process, at the beginning of the appropriations process for each fiscal year, the House and Senate pass a concurrent resolution, known as the *budget resolution*, that constrains subsequent appropriations legislation. Annual budget resolutions set upper limits on appropriations within each spending category, as well as limits on overall spending, revenues, and the debt limit. Any subsequent legislation or amendment that violates a limit imposed by the budget resolution is not in order (Streeter 1999; Hennif 2001a,b). Since any amendment offered by instructions in a motion to recommit must be an amendment that would otherwise be in order during House floor consideration (see footnote 10 above), budget resolution restrictions apply to instructions included in motions to recommit. Budget resolutions are highly privileged on the floor, are usually considered under restrictive rules, and are passed by majority vote in each house (Hennif 2001b). Moreover, since they are concurrent resolutions rather than bills or joint resolutions, they are not themselves subject to recommital motions (Bach 1998a). Budget resolutions, therefore, are an avenue

by which a House majority (in conjunction with a Senate majority) can restrict recommital amendments even when a recommital motion is in order.

Furthermore, even when the minority party is able to make an unrestricted motion to recommit, the majority party retains the ability to block the motion before it comes to a vote. It can do so by raising and sustaining a point of order against the motion. Generally, a point of order is a challenge to the validity of the preceding action in the House (i.e., is an assertion that the previous action does not conform with House rules and precedents). When a point of order is raised, the Speaker (or Chair) rules whether or not to sustain the point of order, in much the same way that we see judges ruling on objections raised by lawyers in courtroom dramas. Members of the House can challenge rulings by the Chair on points of order; in which case the House decides by majority vote whether to uphold or overturn the Chair's ruling.

We sometimes see majority party members raise points of order against recommital motions (as soon as these motions are offered, and before they are voted on), and then see the Chair sustain these points of order—in essence, ruling that the motion to recommit offered by the minority is not valid. We have not gathered extensive data on use of this tactic. But, in a quick check of the four Congresses (102^{nd}-105^{th}) from 1991-1998,[14] we found 18 instances, shown in Table 1, in which a point of order was raised against a motion to recommit. In all 18 cases, a minority party member offered a recommital motion, a member of the majority party then raised a point of order against it (usually on grounds that amendments included in the motion's instructions were not germane), the Chair ruled the recommital out of order (usually on grounds of non-germaneness). In every case, the Chair's ruling either stood unchallenged, or was

challenged by a minority party member but was sustained by the House, usually on a party-line vote.[15] Therefore, in each of the 18 cases, the House never voted on the motion to recommit.

Table 1 here

Of course, it is possible that the minority's amendments actually *were* non-germane in each of these cases, and that these rulings were not motivated by partisanship. There is no bright-line definition of germaneness, however; in fact, germaneness is a notoriously slippery concept, as evidenced by the nearly *two thousand pages* given over to discussion and rulings concerning germaneness in *Deschler's Precedents.* Ultimately, amendments are germane or non-germane based on rulings of the Chair, and whether or not the House upholds those rulings. In practice, the House virtually *always* upholds rulings of the Chair; as of 1998, it had not overruled a Chair's decision on a point of order since 1928 (Siff and Weil 1975, p. 47; Bach 1998b). This *could* be because the Chair always makes the "correct" decision; indeed, it is sometimes argued that, in ruling on points of order, the Chair relies heavily on the House Parliamentarian, who decides the question of order on technical, rather than political, grounds (King 1997). We find it unlikely, however, that this would produce the phenomenon that we mentioned above, in which Chairs sustained majority-offered points of order against motions to recommit, and the House repeatedly upheld the Chairs' rulings on party-line votes. We find it even more unlikely that, if decisions were purely technical, Democrats would always be the "winners" when they were the majority party (i.e., 1991-1994) and the "losers" when they were the minority party (1995-1998), and that this pattern would be reversed for the Republicans. Yet, this is exactly what we see in the data. Moreover, questions of order

are often complex and, like many court cases, involve competing precedents that are not necessarily consistent with each other, and that do not necessarily point to a unique, technically "correct" decision. Indeed, Siff and Weil (1975) recount that, when a point of order was raised, long-time House Parliamentarian Louis Deschler would often offer the Chair various interpretations of precedents, and let the Chair decide which to use in deciding the question of order.

In sum, the motion to recommit *does not* empower the minority to make take-it-or-leave-it final substitute proposals, as modeled by KM. For most bills reaching final passage, the motion is not even in order. When it is in order and the bill is subject to a special rule, then restrictions on amendment activity specified in the rule have often applied to the motion to recommit as well—and the majority party decides if it does. Under pre-1995 rules, with a closed rule for House floor consideration, as assumed implicitly by KM, a motion to recommit with instructions would not be in order and thus the minority party would again be precluded from offering a take-it-or-leave-it final substitute to the committee bill, given the KM specification. And even if the minority manages to propose a recommital motion with undesirable amendment instructions, the majority can and often does rule the motion out of order.

How should we think about the motion to recommit?

As a benchmark for understanding the MTR, we now turn to an empirical evaluation of the MTR's role in the House. In what follows, we evaluate various hypotheses regarding the ability of the minority party to use the MTR as a tool for undermining majority party agenda control. Some of these hypotheses (*Hypotheses 1-3*) are implied by the KM model. Others, as noted below, are predictions in the spirit of the

KM model, that we believe help us to evaluate the role of recommitals; that is, they are predictions about what we would expect to observe if the minority party uses recommitals to undermine majority party agenda control. Our analysis also sheds light on whether there were significant changes regarding the usage or impact of the MTR before and after the 1995 rules change that prohibited the majority party from using special rules to eliminate the minority party's right to offer recommital motions.

We begin with an overview of the KM model. It is a straightforward spatial model with complete and perfect information, the basics of which are as follows: there are three players, M_1, M_2, and m, with Euclidean preferences. M_1 and M_2 are members of the majority party; M_1 is the majority party agenda setter, and M_2 is the sole majority backbencher.[16] The third player, m, is the minority party.

The sequence of play is as follows: **"**As is consistent with a voluminous literature in legislative studies focusing on parties and agenda setting, the first mover is M_1, who, as agenda setter, proposes any bill b …. Next, in a manner consistent with the motion to recommit as codified in the House of Representatives, the last mover m proposes an amendment a" (196). The three-member legislature then votes on the recommital motion, which is tantamount to choosing whether b or a will be pitted against the exogenously-given status quo in the final stage of the game, in which the legislature votes on final passage.

KM examine the properties of the game in a two dimensional space. The equilibrium outcome depends on the exogenous parameters of the game, which are the locations of the three players' ideal points and the status quo. For each parameterization

that KM discuss, however, there is a unique equilibrium in which a number of properties hold. We describe each property, as well as hypotheses drawn from each:

Property (1) M_1 proposes a bill b^* and m counters with a recommital motion proposing $a^* \neq b^*$. This implies:

> *H1: Every final passage vote is preceded not just by a motion to recommit, but by a motion to recommit with instructions to amend and report forthwith.*

The reasoning is straightforward. A recommital motion that does not include instructions is merely a motion to kill the bill. It therefore pits b against q, which is exactly what would happen without the motion. Similarly, if the recommital motion does not order the committee to report forthwith, then the committee is not bound take any particular action on the bill, and the motion does not pit a^* against b^*.

Property (2) The recommital motion passes, with M_1 and m voting in favor. From this we get:

> *H2: Every motion to recommit passes.* And,
>
> *H3: The minority party never votes against a recommital motion.*

We primarily use Rohde's (2003; see also Rohde 1991) extensive House roll call data to evaluate these hypotheses. We begin with *Hypothesis 1*.[17] Before turning to evidence from the Rohde dataset, however, we note that KM themselves present evidence that contradicts this hypothesis. They coded all recommital motions that got roll call votes in Congresses 80-104, and whether or not each included instructions or ordered that the bill be returned forthwith.[18] They report that there were 932 motions in this period, 695 of which included instructions. Of this 695, 503 included an order to report

forthwith. Thus, only 54 percent of the recommital motions that KM report are the type of recommital motion on which their model relies. KM do not tell us how many bills got roll call final passage votes in this period, but we can estimate a ballpark figure using Rohde's data, which covers the slightly different, but mostly overlapping, period from the 83rd through 105th Congresses (1953-1998).[19] In this data, we find that there were only 27 percent (848/3139) as many recommital motions as final passage votes in Congresses 83-105. This gives us a rough estimate that only about one-eighth of all final passage votes in the House are actually preceded by the type of recommital motion that KM's model predicts will be universal. This does not seem to support their model, and raises questions about how we should think about the recommital motion.

We turn now to *Hypothesis 2*, the hypothesis that all recommital motions pass. KM include no information about the frequency with which recommital motions do or do not pass. We therefore turn again to Rohde's data, where we find that, of the 848 recommital motions, only 13 percent (109) passed. There is nothing in their model that can account for failed recommital motions.[20]

To evaluate *Hypothesis 3*, we use Rohde's data to calculate the rate at which the minority party opposes recommital motions. To do so, we simply tabulate the proportion of votes on recommital motions for which a majority of the minority party members who voted actually vote against the motion. Of the 848 motions, a majority of the minority party opposes the motion 160 times (19 percent). It is difficult for a model in which the MTR is a tool of minority party agenda control to explain why a majority of the minority party opposes nearly one out of five recommital motions.[21]

Further examination of the motion to recommit

We can also address the question of whether recommitals produce outcomes that the majority party dislikes. Strictly speaking, the KM model does not predict that the majority party will oppose or support a bill on final passage after a motion to recommit. But the spirit of their model, and of their claims, is that the minority party uses the recommital motion to undermine majority party agenda control. We now examine the extent to which this is the case; if the recommital motion is really a significant weapon for the minority party, we might reasonably expect to see a number of instances in which a passing recommital motion leads to passage of a bill that a majority of the majority party dislikes.

To determine whether this is in fact the case, we gathered additional data about each of the 109 passing recommital motions in Rohde's data. For each, we used the ICPSR roll call vote manuals to identify the measure that was recommitted by each motion. Using the manuals and House Calendars, we then determined whether each measure received a final passage vote after the recommital motion. For those that received roll call votes on final passage, we coded whether a majority of majority party members opposed the bill on final passage.

We found that, of the 109 passed recommital motions, 60 were motions to recommit House bills, 29 were motions to recommit conference reports,[22] seven were motions to recommit House resolutions, 9 were motions to recommit House joint resolutions, two were motions to recommit House concurrent resolutions, and one was a motion to recommit a Senate joint resolution. Of the 70 recommital motions on House bills or joint resolutions, 18 did not include instructions, three included instructions but did not order the measure returned forthwith, and 49 included instructions and an order to

report forthwith. Of these 49 passing recommital motions, *none* led to final passage roll call votes on which a majority of the majority party opposed passage of the amended bill. Given this, we find it particularly hard to believe that the motion to recommit is a tool that the minority party uses to undermine the majority party.

Recent practice regarding the motion to recommit

To illustrate the limits of the recommital motion as practiced, we consider an example from the first months of 1995 when the new Republican majority first took over, and just after they changed the rules regarding restrictions on motions to recommit.[23] We look at the legislative history of H.R. 4, the Welfare Reform bill that the Republicans pushed as one of the key components of the Contract With America—and which the Democrats stridently opposed. We choose this bill for two reasons. First, it is clearly an instance in which the two parties were at odds, and on which the minority party would surely have liked to use its last-mover advantage, if it had one. Second, the example occurred just after, according to KM, the Republicans strengthened the motion to recommit by prohibiting special rules from denying the minority the right to make a recommital motion.

On March 16, the Rules Committee reported H.Res. 117, a rule allowing the Speaker to call up H.R. 4 at his discretion, and providing for five hours of debate without amendment restrictions. The rule passed on a voice vote, and H.R. 4 was called up in Committee of the Whole on March 21. After 5 hours, the committee rose and left H.R. 4 as unfinished business. The Rules Committee then reported an additional rule for H.R. 4, H.Res. 119, this time restricting amendments to a narrow and carefully defined set of options.

The next morning, the House passed H.Res. 119 on a roll call vote, with Republicans voting 214-15 in favor and Democrats voting 3-195 against. After three days of consideration in which various amendments were adopted, the Committee of the Whole reported the bill, the previous question was ordered, and Democrat Sam Gibbons of Florida offered a motion to recommit with instructions. The motion was defeated 205-228, with Republicans opposed 3-227 and Democrats in favor 201-1. The House then passed the bill 234-199; Republicans voted 225-5 in support, while Democrats voted 9-193 against. So, though they united in strong opposition to the bill and badly wanted to keep it from passing, the Democrats were unable to use the motion to recommit to gain any advantage.

In sum, the predictions of the KM model are not supported at all when tested. There is little evidence in support of the model and a great deal of evidence that contradicts it. There is also little basis for believing that the minority party successfully uses the motion to recommit to achieve its desired outcomes at the expense of the majority party.

Conclusion

The question that KM focus our attention on is, who gets to make the last proposal in the legislative process? KM differ from previous models that address this question (e.g., Weingast 1992; Heller 1999) in terms of who they believe possesses the last move. This is also the point at which we disagree with KM's model: we do not believe that the minority party in fact has the last move under the rules of the House. We agree with previous scholars who have concluded that the motion is of limited importance.

This conclusion rests on the following factors. First, the motion to recommit is not in order for most bills that reach the House floor. Second, amendments that can be included as part of recommital instructions have often been restricted by special rules, and could be restricted again at any time if the majority party so desired. Third, amendments via recommital are often restricted by budget resolutions, which are passed by majority vote and are not themselves subject to motions to recommit. Fourth, the majority party has an *ex post* veto over recommital motions, in the form of points of order and rulings of the Chair. Finally, a broad range of empirical evidence and tests show that actual legislative outcomes do not comport with the model's predictions, suggesting that the analogy suggested by KM, between the motion to recommit and a final take-it-or-leave-it substitute bill, is not a good fit with actual behavior.

In addition, we are not troubled by the mere existence of a procedure that grants the minority party an opportunity to influence outcomes, or by the fact that motions to recommit sometimes succeed. In all legislatures, minority parties retain prerogatives that allow them to engage in debate, voice their positions, and so forth. This is part and parcel of democratic governance. Having such prerogatives, however, does not imply that they grant large advantages to minority parties; nor does it imply that the advantage granted is the ability to significantly affect policy outcomes.

It seems clear that, as KM state, the minority party *does* value the right to make recommital motions. This seemingly implies that they see recommitals as being valuable in some way. We have argued that, whatever the value is, it is *not* policy influence—but we have left open the question of why the motion is valuable to the minority party. We make no attempt here to provide a definitive answer to this question. However, we are

inclined to believe the explanation suggested by Wolfensberger (1991) and Bach (1998a), which is that the motion is valuable to the minority for position-taking reasons. That is, it allows the minority party an opportunity to put forth its own alternative on the floor, and to force a recorded vote on the minority proposal.

We conclude by considering two directions for future research on the motion to recommit. The first is the relationship between the motion and the Conditional Party Government model (Rohde 1991; Aldrich and Rohde 2000). Roberts (2003) shows that motions to recommit are more successful when the majority party is more heterogeneous, suggesting that there is still more to learn about recommitals. The second direction is a comparative analysis of recommitals. In the Senate, for example, the motion to recommit is an important prerogative of the majority party (Tiefer 1989; Oleszek 2001), as it was in the House until early in the Twentieth century. This indicates that recommital motions can play different roles in different legislatures, and suggests the importance of studying these motions in their broader contexts.

Appendix: How bills reach the floor

There are four main methods by which bills garner floor consideration, and a number of infrequently-used minor methods. For more details, see Oleszek 1996, 2001; Beth 2001; Bach 2001; Saturno 2001.

The major methods are:

Privileged matters: This category consists primarily of bills from one of the small number of committees which the standing rules grant the privilege to report bills directly to the floor at any time. Such bills therefore bypass the calendars.

Suspension of the rules: The House often votes to suspend the rules in order to consider a bill from one of the calendars. Suspension requires the approval of two-thirds of the House.

Unanimous consent: Like suspension of the rules, the House sometimes takes bills from a calendar by unanimous consent. This method requires that no member object.

Special rule: Most major legislation reaches the floor via a special rule from the Rules Committee. The committee reports resolutions, or *rules*, specifying that a particular bill will be considered on the floor at a particular time. Such rules are adopted by simple majority vote.

The minor methods are:

Private Calendar: On certain days, it is in order to take private bills from this calendar and consider them on the floor. If there is objection to considering a bill from this calendar, bills can easily be blocked.

D.C. Calendar: Similarly, on certain days it is in order to take bills dealing with Washington, D.C. from this calendar and consider them on the floor.

Corrections Calendar: On certain days, the Speaker may expedite consideration of bills aimed at rectifying past government "mistakes."

Discharge petition: If a bill is stalled in committee, a member may circulate a petition to order that the bill be discharged from committee and considered on the floor. The procedure is cumbersome and rarely succeeds (Beth 2001).

Calendar Wednesday: In theory, this procedure allows members the opportunity to take bills that have not been granted special rules from the calendars and consider them on the floor. In practice, however, the procedure is virtually never used (Oleszek 2001, p. 141).

Endnotes

[1] Other recent papers on the motion to recommit include Roberts (2003), Kiewiet and Roust (2003), and Wolfensberger (2003). Others who study House rules and procedures, such as Binder (1997), also study the importance of the motion to recommit—but do so as part of a broader consideration of procedures and rules changes.

[2] The description here summarizes the discussion of the recommital motion that appears on the House Rules Committee's webpage, at http://www.house.gov/rules/recommit_mot.htm.

[3] For bills that reach the floor via suspension of the rules or unanimous consent, the final vote follows automatically without the previous question being ordered. Hence, use of the previous question comes mainly on bills that reach the floor via privilege or special rules. It is standard for special rules to specify that the previous question automatically be considered to be ordered when the Committee of the Whole reports bills.

[4] Figure 1 is derived from Table 5-3 of Oleszek 1996, p. 136. See Wolfensberger 2002 for comparable data from recent Congresses. Wolfensberger argues that increased use of suspension motions is a strategy by which the majority party passes particularistic bills—which allow individual members to claim credit—in order to both buy members' support, and to free up plenary time for pursuing policies that are important to the party.

[5] The Appropriations, Budget, House Administration, Rules, and Standards of Official Conduct committees were the only privileged committees in the 107th Congress. In fact, privileged committees have privilege to report only for certain types of bills and resolutions within their jurisdictions, as stipulated by Rule XIII, Section 5(a) of the standing rules.

[6] Tax bills from the Ways and Means Committee were privileged until 1974.

[7] It is also worth noting, as a separate matter, that special rules reported from the Rules Committee cannot be recommitted (Deschler Ch. 23, Part E, Section 25.11.

[8] See Wolfensberger (1991) for a detailed history this practice, as well as a thorough history of the motion to recommit.

[9] House rules and precedents dictate that the set of amendments that can be proposed via recommital is restricted to the set of amendments that were in order when the bill was considered *on the floor of the House*—though amendment restrictions that apply when bills are considered in Committee of the Whole do not apply to recommital instructions (Deschler, Ch 23 Section E; Wolfensberger 1991; Bach 1998a). This has had important implications for the use of motions to recommit. Prior to 1995, Democratic majorities often reported special rules that restricted amendments not only in Committee of the Whole, but also on the floor. The effect of this was to apply these same restrictions to amendments that could be offered via recommital instructions.

[10] In KM's model, the majority proposer proposes a bill, the minority then proposes an alternative, and the legislature then chooses between the two proposals. Hence, the Committee of the Whole does not come into play, and there is no opportunity for amendments to the original majority proposal—which we take as being tantamount to assuming a closed rule on the floor. Recall also that the passage from KM that we quoted earlier *explicitly* treats a closed rule as part of the process. It is thus clear that KM mean their model to apply to the closed-rule case, whether or not they mean to restrict it to that case.

[11] Since for most bills the motion to recommit is not in order, and since most of the remaining bills receive a special rule for floor consideration, the model as stated by KM applied to very few House bills prior to 1995. There are really only two cases in which KM's model seemingly might have applied: to privileged bills that do not receive special rules; and to discharged bills. In such cases, however, the bill *might* have received a special rule but the Rules Committee chose not to grant one, presumably because it saw no need to do so.

[12] The Consent Calendar was replaced by the Corrections Calendar in 1995.

[13] For a theory on how transactions costs affect equilibrium behavior, see Sloss 1973.

[14] We examined the section of the *House Journal* appendix that lists Questions of Order decided during the given session, for Congresses 103-105. We used the versions of the *Journal* available from the GPO at http://www.access.gpo.gov/congress/cong018.html. Questions of Order decided in the second session of the 104th Congress are not available at the GPO site and are not included in our discussion.

[15] More specifically, we repeatedly observe the following sequence (see, for example, paragraph 165.19 of the Questions of Order decided in the first session of the 104th Congress):

1. A minority party member makes a motion to recommit with instructions.
2. A majority party member raises a point of order against the motion (usually on grounds that the amendment is not germane).
3. The Chair rules that the motion to recommit is out of order (usually on grounds that it is not germane).
4. A minority party member appeals the Chair's ruling.

5. A majority party member moves to table the appeal.

6. The House agrees to the motion to table (i.e., it sustains the Chair's decision) by voice vote.

7. The minority party forces a recorded vote on the motion to table.

8. The House votes, *along party lines*, to table the appeal of the Chair's ruling, thereby killing the motion to recommit.

[16] M_1 can be interpreted as the majority party leader, or as a majority-controlled committee that acts as a faithful agent of the party.

[17] KM argue that, "[even if the recommital motion's] use were uncommon, it would not follow that it was unimportant. In other words, regularity of use of the motion may be sufficient, but not necessary, for importance" (214, fn. 6). They also claim that "the minority party is powerful because it can construct—or credibly *threaten* to construct—an amendment that attracts bipartisan support over the status quo" (211). In other words, just as is the case when Congress anticipates presidential vetoes (Romer and Rosenthal 1978; Kiewiet and McCubbins 1988; Krehbiel 1998; Cameron 2000), the House anticipates conference committee actions (Shepsle and Weingast 1987a,b), or members of Congress anticipate seniority violations in committee appointments (Cox and McCubbins 1993), KM suggest that the majority party makes proposals that avoid bringing a "sanction," in the form of a motion to recommit, from the minority party.

But KM's claim regarding threats of recommital is inconsistent with their model. The reason is simple: their model predicts that *every* final passage vote will be preceded by a successful motion to recommit with instructions; the majority party cannot avoid recommitals in equilibrium.[17]

What in fact is the incidence of recommitals? We have already noted that the number of recommital motions from 1953-1998 is only 27 percent (848/3139) of the number of final passage votes on bills and resolutions. Thus, it is clear that most bills were *not* preceded by recommital motions, in sharp contrast with KM's model's implication.

[18] It is unclear whether KM include motions to recommit conference reports in their data, though it appears that they do. They count 932 recommital motions in Congresses 80-104, which is in line with the 848 found in Rohde's data for Congresses 83-105. As noted, the total of 848 recommital motions in Rohde's data does include motions to recommit conference reports.

[19] In the 104th and 105th Congresses, after Republicans supposedly bolstered the minority's right to offer a recommital motion, the ratio of recommital motions to final passage votes was 111/263 (42 percent).

[20] In the 104th and 105th Congresses, the percent of recommital that passed dropped to only 4.5 percent (5/111).

[21] In Congresses 104 and 105, the percent of recommital motion opposed by a majority of the minority party drops to six percent (7/111).

[22] To this point, we have not discussed recommital of conference reports. Conference reports *can* be recommitted with instructions. Such instructions, however, *are not binding upon conferees*; a conference committee, moreover, cannot be ordered to report back forthwith. KM acknowledge these limitations, and conclude that "…the model almost surely has less bite in the context of postconference procedures" (207). We make a

stronger claim: there is no reason to think that the recommital motion gives the minority party a last-amendment-proposal right when it comes to passage of conference reports.

In addition, when the Senate passes amendments to a House-passed bill, a motion to concur with the Senate amendments *with* an additional amendment is not subject to a recommital motion. We thank Don Wolfensberger for pointing this out to us.

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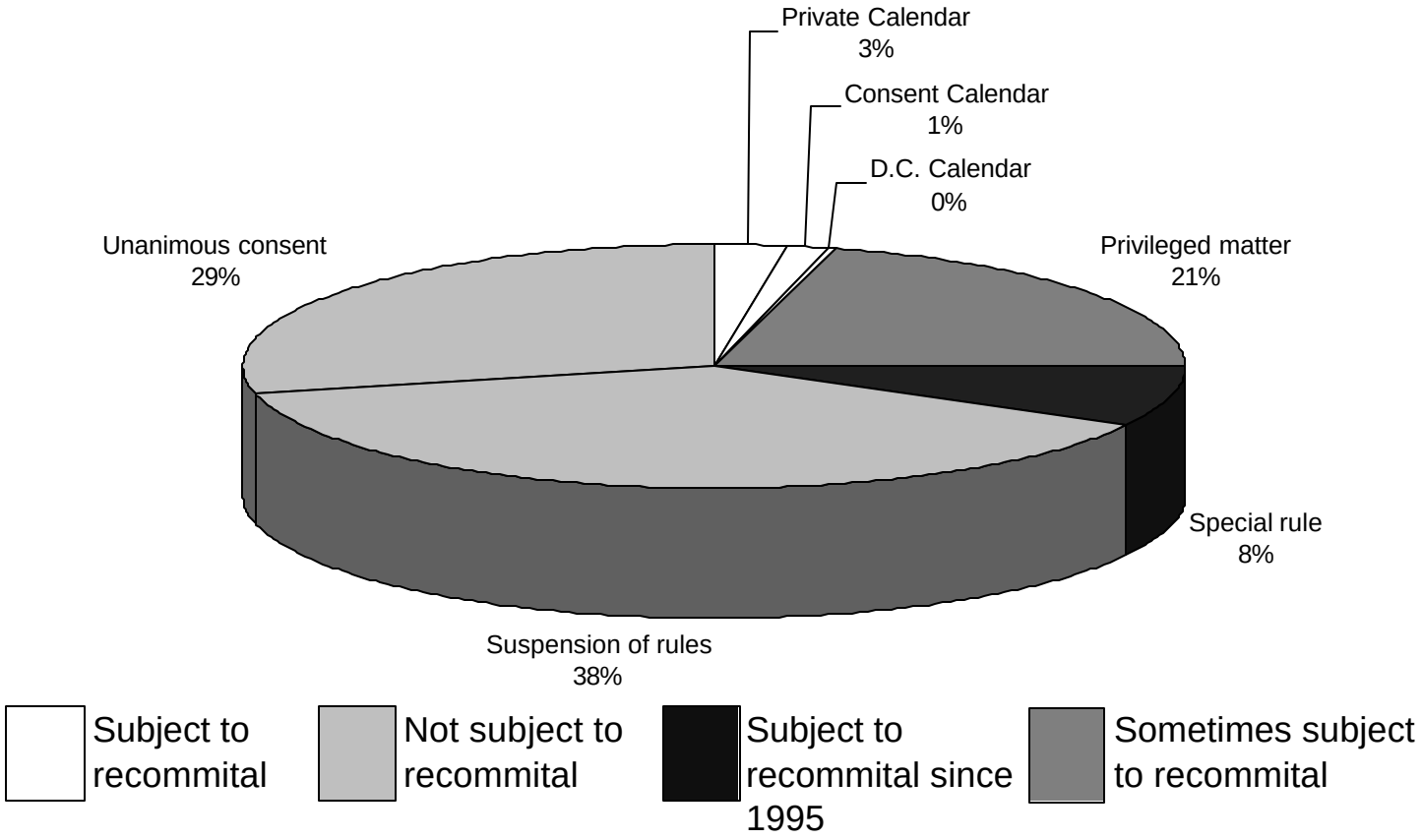
Table 1. Questions of Order involving a point of order against a motion to recommit, 1991-1998

Congress	Date	House Journal Paragraph
102	7/16/1991	93.6
102	9/17/1991	109.6
102	2/27/1992	19.7
102	4/1/1992	38.9
102	7/1/1992	81.15
102	9/23/1992	111.7
103	11/19/1993[a]	137.12
103	11/19/1993[a]	137.12
103	11/19/1993[a]	137.12
103	4/28/1994	40.7
104	6/22/1995	85.20
104	12/20/1995	165.19
104	12/20/1995	165.21
105	3/20/1997	26.11
105	11/5/1997	126.36
105	11/6/1997	127.40
105	7/24/1998	74.8
105	12/19/1998	119.5

[a] On November 11, 1993, Republican Bill McCollum of Florida offered three consecutive motions to recommit, only to see a point of order raised and sustained against each.

Figure 1. Proportion of bills called up by each method, 1983-1994



Source: Table 5-3 from Oleszek (1996).