Procedural Cartels in Texas: A Note

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1. Introduction

In this work, we test the Procedural Cartel Thesis of Cox and McCubbins (2002, 2005). In this model, one may view agenda control as a natural monopoly or naturally subject to cartelization. While voting power in the world's democratic legislatures is always distributed equally (one legislator, one vote), the power to determine the order of business and other matters of procedure tends to be concentrated in the hands of a relatively small group of "senior partners" in the governing coalition.

As originally stated, this thesis presumes (1) an assembly that has full control over its internal organization and does not face constitutional or other entrenched provisions that seriously hamper its ability to delegate agenda powers; and (2) a majority coalition or party that uses the rule-making power of the legislature to cartelize the agenda. The Texas state legislature is interesting in that it violates both assumptions. First, Texas' constitution endows the Lt. Governor with extensive agenda-setting powers. Thus, as in Brazil (cf. Amorim Neto, Cox and McCubbins 2003), agenda cartels cannot be easily formed without the active leadership of an external actor (the Lt. Governor in Texas, the president in Brazil). Second, because the Lt. Governor has exogenously entrenched power, and because the Lt. Governor is separately elected, the majority in the Texas Senate may or may not be of the same party as the Lt. Governor. Thus, majority status

and agenda power can be separated in Texas (and other similar cases, such as Brazil), in a way that they cannot in the U.S. House of Representatives (and other similar cases, such as the British Parliament).

To test for the existence of agenda cartels, we usually examine the majority (and minority) party's roll rate: the percentage of bills that pass contrary to the expressed preferences of a majority of the majority party. In Texas, we have collected legislative roll call votes from both chambers of the legislature for the years 1981 through 1999. In particular, we sampled every roll call vote on the third reading of every bill during the 67th through the 76th regular sessions in each chamber.[1] In addition to reporting roll rates by majority status, we also consider how "divided government" (e.g., a Lt. Governor of a party different than that of the majority in the Senate) affects party roll rates.

2. Agenda Power in the Texas Legislature

The Texas legislature includes a House of Representatives and a Senate. The House of Representatives is composed of one hundred and fifty members who are popularly elected from single-member districts. The Senate includes thirty-one members who are also elected from single-member districts (Texas Constitution Art 3, sec 3&4).

The Texas legislative session is brief and, more importantly, biennial. Sessions are called only in odd numbered years, and run for no more than 140 days. Additional sessions of no longer than thirty days may be called, but only at the request of the

[1] The data was collected as part of a 2000 UCSD Political Science Honors Thesis by Kara P. Keating-Stuart, entitled, "Agenda Control in the Texas Legislature," supervised by Mathew D. McCubbins. This project was sponsored by the NSF through grant number SES XXX. A redacted version of Keating-Stuart's honors thesis can be found at www.settingtheagenda.com. The results and analysis described here, however, are new.

Governor and only to deal with specific emergency legislation (Texas Constitution Art. 3).

The Texas Constitution also spells out business calendars for each chamber, although ". . . either House may … determine its order of business by an affirmative vote of four-fifths of its membership" (Art 3, sec.5). Members vote regularly to suspend the order of business; and during the last two weeks of each session a blizzard of bills (numbering in the hundreds) usually encompasses each house (Benton 1972, p. 108; Mladenka and Hill 1986, p. 117; Tucker 1989, p. 631).

Each house has a single, very powerful leader as established by the Constitution and applicable rules. At the beginning of each legislative session the House of Representatives selects its Speaker by a simple majority of the membership using a secret ballot (McCleskey 1969, p. 132; Barnes 1970, pp. 186-7).[2] The Texas Constitution ensures that the Speaker wields significant power over the floor. He has sole power to schedule legislative floor action, recognize members for amendments, points of order, and debates, and interpret the procedural rules whenever a conflict arises (Barnes 1970, pp. 186-7). Moreover, all bills and joint resolutions passed by the legislature must bear his signature. He also has the right to vote on any and all bills that come before the House (Rule 1. Sec. 13).

In addition to his constitutional powers the House Rules of Procedure grant the Speaker extensive control over the House. The Speaker has the power to appoint a minimum of fifty percent of members to all committees, except those classified by the House Rules as "procedural." On these latter appointments the Speaker has sole

[2] Vote trading and promises of committee appointments appear relatively common as components of each candidate's platform (Benton 1972, p. 117; Kraemer 1975, p. 74).

appointment power (Mladenka and Hill 1986, p. 115). Procedural committees include the Committee on Calendars, the Committee on Local and Consent Calendars, the Committee on Rules and Resolutions, the General Investigating Committee, the Committee on House Administration, and the Committee on Redistricting. Moreover, the Speaker, alone, selects—from among the membership—a chairman for each House committee. The Speaker also interprets the jurisdiction of all committees as set out in the House Rules (Rule 4, sec. 1-5; Barnes 1970, p. 186-7). The House Rules further empower the Speaker to establish and staff all necessary conference and special committees and to direct committees to conduct interim studies when the legislature is out of session (Rule 4).

The Texas Constitution establishes the Lt. Governor as the presiding officer of the Senate. Interestingly, the Texas Lt. Governor runs on a ticket independent of the governor. This electoral rule allows for the possibility of a divided executive, a divided senate, or both—an event which has happened recently.

The Senate Rules of Procedure empower the Lt. Governor to *appoint all* committee memberships and leadership positions; to *establish* jurisdiction for each committee; and to refer bills to them as he sees fit (Senate Rules 11.01-04). The Rules further enable the Lt. Governor to manage floor action during debates, to rule on matters of procedure, and to recognize members who wish to speak. This last ability is of significant importance since, by recognizing members, the Lt. Governor determines the order in which bills will be considered on the floor (Rule 11).[3]

[3] The Lt. Governor may only vote to decide a tie (Texas Online).

The Texas Legislature has coordinating institutions much like those seen in European parliaments: the Legislative Council and the Legislative Budget Board. The Legislative Council is composed of five senate members appointed by the Lt. Governor and ten representatives appointed by the Speaker. The Lt. Governor sits as chairman of the council, while the Speaker fulfills the duties of the vice-chair. The Council coordinates the drafting of legislation across the two chambers (Benton 1972, p. 102; Kraemer et al 1975, p. 79).

The Legislative Budget Board produces its own budget, independent of the Texas Executive's budget. This board is comprised of members from both houses. The Speaker and four of his appointees (two of whom must be the chairmen of the Appropriations and Revenue and Taxation committees) represent the House. The Lt. Governor, who also serves on the board, designates four members from the Senate (these must include the chairmen of the Finance and State Affairs committees). The Budget Board selects a director from its membership. Again, acting much more like a parliament than a presidential system, the legislature typically adopts the budget prepared by the Legislative Budget Board, making the Governor's budget somewhat superfluous (Benton 1972, p. 103; Kraemer et al 1975, p. 79).

The Texas Constitution requires that every bill to be considered on the floor of either house must first be referred to and reported out of a committee (McCleskey 1969, p. 135). It does not, however, require that every bill referred to committee be reported out, and indeed, most bills die in committee (McCleskey 1969, p. 136; Tucker 1989, p. 631). In addition, once a bill has been killed in committee, it or its content may not be

reintroduced until a subsequent session. Committees, therefore, have unquestioned gatekeeping powers.

Procedure

The first reading of a bill in the Texas Senate coincides with its introduction. The Lt. Governor must then refer all bills to standing committees. Once in committee, a bill is typically assigned to a subcommittee of the chair's choosing. Here the bill receives its first significant markup and amendments. If the subcommittee does not pigeonhole the bill it reports the bill back to committee with its recommendations. At this point the committee can further amend the bill. The committee may then report the bill favorably to the Senate, or unfavorably, which kills the bill (only a minority report can save it at this point), or they may chose not to report the bill at all (Benton 1972, p. 109).

Surviving bills then move to the Senate calendar. Bills are numbered and scheduled on the Senate's one calendar as they emerge from committee. In practice, however this order is rarely followed. Instead, a bill's sponsor typically moves to suspend the rules and consider the bill out of sequence. This motion requires two things: first, recognition in the plenum by the Lt. Governor; and second, a two-thirds majority in favor. Typically, both requirements are arranged prior to the motion being offered (Benton 1972, p. 117).

Once in plenary session, the Senate recognizes no limits on debate; therefore, filibusters are possible (Benton 1972, p. 110). Typically though, if a bill succeeds in reaching the floor it has passed the significant hurdles in its way—committee reports, recognition by the Lt. Governor, and the two-thirds majority needed for consideration—and will be passed in some form. Nevertheless, floor amendments are common. The bill

is then read a second time and amendments are considered. Typically, the bill's sponsor then again calls to suspend the rules to bring up a third reading on the bill. If successful, the bill is then read a final time and, if no amendments are made, it may be passed by a simple majority. If amendments are proposed at the third reading they must be upheld by a two-thirds vote of the members before a simple majority can pass the bill (Benton 1972, p. 111).

House consideration is similar. One important difference, however, is that in the House, the rules allow for a two-thirds vote of the membership in the first seventy-six days to discharge a committee of its jurisdiction over a bill, and for a simple majority to do so thereafter. Although this happens rarely (McCleskey 1969, p. 136), the equilibrium consequences of this discharge procedure are important.

If a bill survives in committee it is handed over to the House Clerk for assignment to one of two calendar committees. One, the Committee on Local and Consent Calendars handles all bills deemed minor by the House Rules.[4]

The Committee on Calendars handles all bills classified as major. The Committee on Calendars places each major bill on one of two calendars: the Daily House Calendar or the Supplemental House Calendar (Texas Online).[5] A last calendar used by the House is the Congratulatory and Memorial Calendar, which is managed by the Committee on

[4] Minor bills affect limited populations; must be reported unanimously out of committee; have shortened debate schedules; and are deemed minor by all but four of the members present. In other words, five members can remove a bill to the major bill calendars (Tucker 1989, p. 633).

[5] The Committee on Calendars maintains the Supplemental Calendar to address last minute motions. This calendar must be distributed to members at least two hours before the House convenes for the day. In actuality this is the calendar most often used by the Calendars Committee when scheduling floor action (Texas Online).

Rules and Resolutions.[6] Bills originating in the Senate must be delineated from those originating in the House and are typically dealt with on "Senate bill days" which are Wednesday and Thursday (McCleskey 1969, p. 140; Texas Online).

The House calendar committees have the ability to refuse to place bills on any calendar (Mladenka and Hill 1986, p. 118; Tucker 1989, p. 634). In fact less than one-third of all bills make it to calendar (Tucker, p. 642). Calendar committees maintain almost total control over which bills are heard on the floor, and the Speaker holds the exclusive power to appoint both calendar committees' entire membership.

If a bill makes it to calendar, it is then read for a second time, at which time it is debated. A strict structuring of debating prevents filibustering. The House Rules afford the sponsor of each bill twenty minutes of introduction and twenty minutes of concluding remarks (McCleskey 1969, p. 142; Benton 1972, p. 110). In between those opening and closing remarks the Speaker may recognize whomever he pleases. Each speaker may speak for no more than ten minutes. Therefore, the Speaker, by his selection of speakers, can control debate (Barnes 1970, pp. 186-7).

At the conclusion of the second reading, members may vote to table the motion until a later date (usually the next day) or to move the bill to engrossment. If the bill achieves engrossment it will be placed on the Supplemental Calendar for the following day. At its third reading a bill needs only a simple majority to pass. As in the Senate, however, any amendments posed at this stage must first be passed by a two-thirds vote (Benton 1972, p. 111).

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[6] House Rules establish the following order on and among calendars for consideration of bills in the House: emergency, major state, constitutional amendments, general state; local, consent; resolutions; and (last) congratulatory and memorial.

If a bill passes in both houses, all that remains is enrollment and disbursement to the Governor.[7] Differences between the House and Senate are resolved in a conference in which each house has one vote and the two chambers must concur (Benton 1972, pp. 111-12). Conference committees are powerful tools in the legislature—specifically for the house leaders—for the following reasons. They are created wholly by the two presiding officers in the House and Senate and their decisions must be voted up or down, with no amendments. Those who the Speaker and Lt. Governor appoint to conference committees have a direct effect on the outcome. Moreover, the fact that a bill makes it to conference indicates its importance to the Legislature, almost guaranteeing its approval. Since there is no amending of conference reports on the floor, it is possible for a conference committee to attach riders (germane or not) to any bill it reports (Benton 1972, p. 112). Thus, conference committees provide a perfect place to control legislative action.

3. Testing the Procedural Cartel Thesis

Hypotheses

Cox and McCubbins (2002, 2005) derive the following hypotheses related to majority party agenda control.[8]

[7] The Governor has a number of options. He can sign the bill making it law, veto it, or ignore it. If he ignores it, the bill becomes law after ten days. This in effect means that the Texas Governor has no "pocket veto." If a bill comes before the Governor within the last ten days of the legislative session, he has twenty days to choose from the same three options. Any veto, except those declared after the conclusion of the legislative session, may be overridden by a two-thirds vote in both houses. Overrides are exceptional (Benton 1972, pp. 112-13; Tucker 1989, p. 641).

[8] For readers who wish to see formal proofs of these hypotheses we refer them to Cox and McCubbins (2005).

H1) With complete information and costless gatekeeping, no bill opposed by a majority of the majority party's membership ever passes and hence the majority party is never rolled.[9]

H2) The roll rate of the minority party should be higher than the roll rate of the majority party, all else constant.

H3) Because the majority party does not allow any bill that a majority of the majority party opposes to reach the plenary session (that is, the majority will block all bills that seek to change status quo points in the range [2M-F, F] in Figure 1), the distance between the majority party median, M_j, and the floor median, F_j, should not affect the majority party's roll rate.

H4) The roll rate of the minority party should increase the farther its median ideal point is from the floor median, i.e., the greater is |m-F|, the greater is a minority party's roll zone (the area [F, 2m-F] in Figure 1) and therefore, its roll rate, all else constant

Consider by contrast the standard spatial model without any form of agenda control. Cox and McCubbins (2002, 2005) call this the Floor Agenda Model. Without

[9] We should hasten to note that these "the majority party never gets rolled" predictions are similar in analytic status to other predictions drawn from complete information models, such as "there is never any war" or "there are never any vetoes" (cf. Cameron 2000). These sorts of results should be viewed as baselines illustrating the extreme case of zero uncertainty and no costs to acting. Add any measure of uncertainty into these models, and it is well known that one begins to get "mistakes"—in the present context, mistakes are when the agenda setter schedules a bill that a majority of the majority party dislikes (because, for example, the status quo point turns out not to be where it was most likely to be). We explore a model with costly action in Chapter 6 of Setting the Agenda (2005) and one with incomplete information in Chapters 8 and 9 of that book, showing that the main results derived here are largely preserved.

agenda control, all status quos are subject to change, and can be brought to the floor and considered. The result in each case will be an outcome at the floor median, F in Figure 1 (Black, Downs). Under such circumstances, a majority of the majority party will vote against any bill pertaining to dimension *j* on final passage (but will lose) when the status quo (SQ_j) is closer to the majority party median (M_j) than it is to the floor median (F_j). This implies that in the floor agenda model the distance between M_j and F_j will be positively related to the majority party's roll rate. In Figure 2 the majority party median at M would prefer Q1 to F and would vote against the proposal to change the status quo Q1. But, without any agenda control, a bill will be brought to the floor on this issue and enacted at F. Thus, under the Floor Agenda Model, roll rates both to the right and left of F will be monotonically increasing in the distance of the party median, M or m, from F.

Figure 1: Relationship between distance and roll rates

in the Cartel Agenda Model

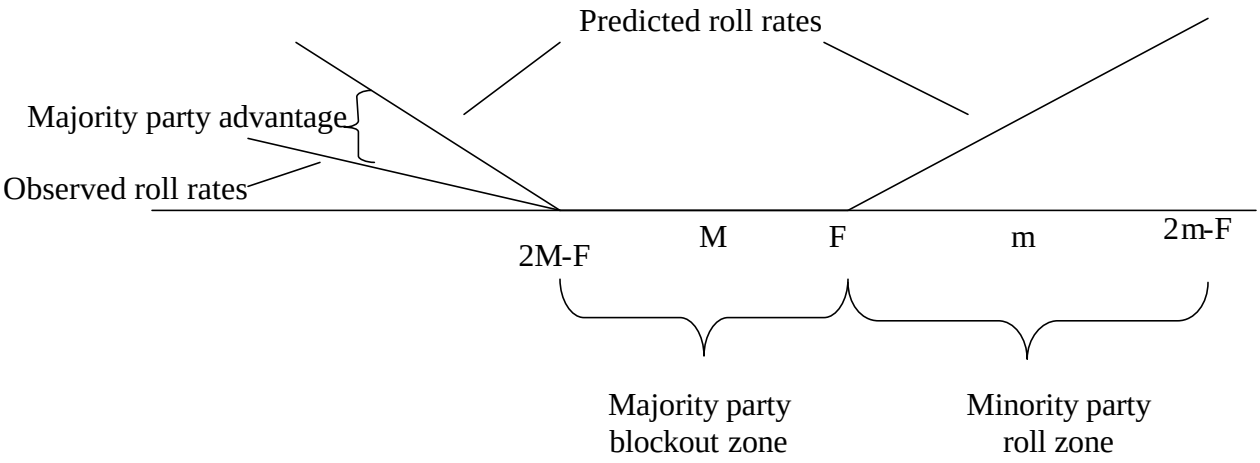
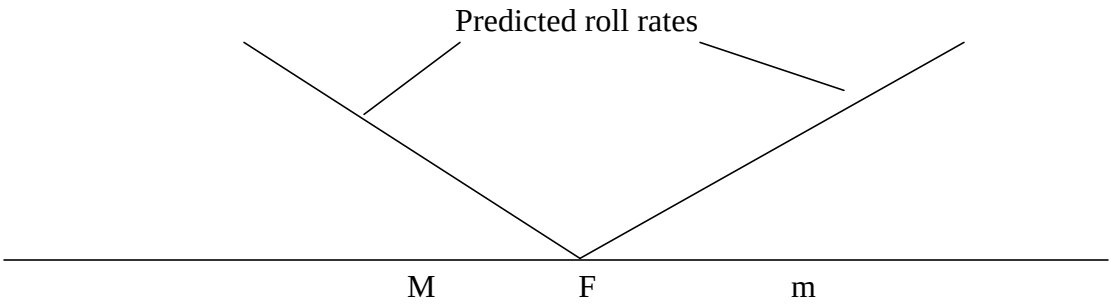


Figure 2: Relationship between distance and roll rates

under the Floor Agenda Model



Data and Test

Stuart (2000) collected information on all third reading roll call votes from the 67th to 76th legislatures for both the House and Senate. We used this data to create the dependent and independent variables specified in Cox and McCubbins's predictions. We define out key dependent variable, a roll, as a vote on which a majority of a party votes against a bill that nonetheless passes. A party's roll rate is the proportion of all final passage votes on which a party is rolled, as defined above. We derive a measure of distance from a sample of votes containing all third-reading roll calls in which twenty-five percent or more of each house membership voted nay. The point for each legislator that most accurately predicts their yea and nay votes was then calculated. From those

calculations the necessary medians—floor, majority party, and minority party—were determined for each session.[10]

Tables 1 and 2 below show that while neither the majority nor the minority parties are often rolled during this period, the modal number of rolls for the majority party, in both the House and Senate, is *zero,* and the average roll rate for the majority in both house is less than one-half of one percent (specifically in the House it is .45%, while it is .39% in the Senate). Minority roll rates are almost an order of magnitude greater, averaging 3.1% in the House and 4.4% in the Senate. These results validate our first two hypotheses.

The results in Tables 1 and 2 also suggests that the Lt. Governor, while powerful, does not exercise the same tremendous agenda control in the Texas Senate as does the president in Brazil (see Amorim Neto, Cox and McCubbins 2003 for a discussion of the Brazilian case). Having a presiding officer from the other party did cause the Republicans to endure seven final passage rolls in the 75th legislature compared to zero in the following legislature when the presiding officer was from the majority party, but the roll rate is still barely 3%. We have yet to determine whether or not these rolls were consequential (i.e., enacted) or important.

[10] This is an inferior technology to using Poole and Rosenthal's (1997) NOMINATE program or Poole's (2005) Optimal Classification program. We plan to re-estimate distance using those measures once we collect more individual level votes. However, we believe this measure of distance still captures the underlying spatial dimension in the Texas legislature.

Table 1: House Rolls and FPVs

Legis-	Dem rolls	Rep rolls	Total FPV
67	2	11	241
68	5	9	232
69	0	8	244
70	3	3	355
71	0	9	183
72	0	14	311
73	0	9	254
74	0	5	331
75	0	11	380
76	3	3	406

Table 2: Senate Rolls and FPVs

Legislature	Majority Rolls	Minority Rolls	Total FPV	Lt Gov – in Min
67	0	2	86	0
68	0	11	143	0
69	0	4	109	0
70	0	6	56	0
71	0	5	78	0
72	0	6	161	0
73	0	1	186	0
74	1	1	168	0
75	7	13	204	1
76	0	9	367	0

To test our third and fourth hypotheses we must estimate the following equation:

(1) Roll Rate$_{jk}$ = α + β_1DISTANCE$_{jk}$ + ε,

We estimated the regressions using the extended beta binomial method (EBB)[11] recommended by King (1989) and Palmquist (1999) for cases such as ours, in which the

[11] . Extended beta binomial (EBB) is an estimation technique used originally in toxicology studies in which there are both individual and litter effects of a treatment. In studies of Congress we believe EBB is an appropriate technique because there are both individual and Congress-level factors that influence the probability of being rolled (for

dependent variable is an aggregation of individual binary choices that are likely not independent of one another. In this case, there are party-level effects on roll rates and also effects that occur within each legislative session, likely as a result of the majority party's ability to control the agenda. This implies that each party's vote on a bill is not independent of its vote on other bills in the session and that the votes of each party are not independent of the votes of the other parties in that session. EBB allows us to take into account these two types of non-independence.

We are limited in our specification and tests by the brevity of our time series; we have only 10 sessions with which to estimate the effect of the independent variables and test our hypotheses. The results are given in Tables 3 and 4 below for the House and Senate respectively. The results validate our hypotheses. Admittedly, we do not have great power in these tests; however, the results show that distance significantly affects the minority party's roll rate, but has no effect on the majority party. Given the level of significance of the results regarding distance (the effect on minority roll rates is significant at greater than the .01 level and the coefficient for distance on majority roll rates never approaches significance) the Floor Agenda Model lacks conclusion validity for the Texas Legislature.

The results in Tables 3 and 4 strongly suggest that the majority parties in these chambers, not an external agent, such as the Lt. Governor, sets the agenda. The effect of a simple dummy variable for split agenda control in the Senate for the 75th legislature, when a Democrat held the Lt. Governorship whilst a Republican majority ran the Senate, shows what we found in Table 2—that the Republicans under these circumstance

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more on EBB see Haseman and Kupper 1979, Kupper and Haseman 1978, and Williams 1975).

incurred an increase in rolls (and roll rate); but we do not find, as a result, that the distance of the majority party median from the floor median affects the majority party's roll rates. Thus, the partisan division between the Senate and the Lt. Governor does not break the majority party's agenda control nor does it induce behavior or observations consistent with the Floor Agenda Model. It does, however, weaken agenda control to the extent that the majority was rolled seven times in this legislature.

Table 3: MAJORITY ROLL RATES IN THE HOUSE

				Prob > chi2	=	0.0614
Log likelihood = -79.756486				Pseudo R2	=	0.0441

	Coef.	Std. Err.	z	P>|z|	[95% Conf.	Interval]
beta						
ddist	-4.296208	6.072594	-0.71	0.479	-16.19827	7.605857
sdemmaj	-.5908993	1.139902	-0.52	0.604	-2.825067	1.643268
_cons	-4.746256	1.09373	-4.34	0.000	-6.889927	-2.602585
gamma						
_cons	.0109199	.0111815	0.98	0.329	-.0109954	.0328352
=> phi	.010802	.0109412	0.99	0.324	-.0111176	.0317913

Likelihood ratio test of phi=0: chi2(1) = 7.21 Prob > chi2 = 0.0073

MINORITY ROLL RATES IN THE HOUSE

Prob > chi2 = 0.0059

Log likelihood = -368.04001 Pseudo R2 = 0.0167

	Coef.	Std. Err.	z	P>|z|	[95% Conf.	Interval]
beta						
rdist	1.815103	.879462	2.06	0.039	.091389	3.538817
sdemmaj	.8040834	.4035625	1.99	0.046	.0131156	1.595051
_cons	-4.590958	.4937696	-9.30	0.000	-5.558729	-3.623187
gamma						
_cons	.0019291	.002597	0.74	0.458	-.003161	.0070193
=> phi	.0019254	.0025871	0.74	0.457	-.003171	.0069703

Likelihood ratio test of phi=0: chi2(1) = 0.97 Prob > chi2 = 0.3247

Table 4: SENATE MAJORITY ROLLS

				Prob > chi2	= 0.0000
Log likelihood = -37.270845				Pseudo R2	= 0.2569

	Coef.	Std. Err.	z	P>|z|	[95% Conf.	Interval]
beta						
smajdist	-404.3404	.	.	.	.	.
ltdivgv	18.40694	1.037011	17.75	0.000	16.37444	20.43944
_cons	-6.808465	1.002238	-6.79	0.000	-8.772816	-4.844114
gamma						
_cons	-.0027322	.0003591	-7.61	0.000	-.0034361	-.0020284
=> phi	-.0027397	.0003611	-7.59	0.000	-.0034479	-.0020325

Likelihood ratio test of phi=0: chi2(1) = 1.59 Prob > chi2 = 0.2071

SENATE MINORITY ROLLS

				Prob > chi2	= 0.0011
Log likelihood = -239.71924				Pseudo R2	= 0.0325

	Coef.	Std. Err.	z	P>|z|	[95% Conf.	Interval]
beta						
smindist	3.492573	1.344115	2.60	0.009	.8581553	6.126991
ltdivgv	.963393	.4712703	2.04	0.041	.0397202	1.887066
_cons	-3.938556	.3659126	-10.76	0.000	-4.655732	-3.22138
gamma						
_cons	.0049897	.0064195	0.78	0.437	-.0075922	.0175716
=> phi	.0049649	.0063559	0.78	0.435	-.0076503	.0172682

Likelihood ratio test of phi=0: chi2(1) = 1.15 Prob > chi2 = 0.2828

4. Conclusion

In this paper we tested the Cartel Agenda Model against the Floor Agenda Model using hypotheses derived in Cox and McCubbins (2002, 2005). We find that the majority party has a significantly lower roll rate than the minority party, and that as the minority party moves farther from the floor median roll rates increase significantly, but the distance between the floor median and majority party median has no effect on roll rates. These results strongly suggest that majority party in the Texas Legislature controls agenda power in a way consistent with the predictions of the Cartel Agenda Model. Further, we examined the effect of powerful external actors who control the agenda. We found this effect to be significant, but concluded that the majority party still maintains control of the agenda in the Texas Senate.

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