How the Sausage Gets Made: Constitutions, Rules, and Party Conflict in State Legislatures

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Abstract

This dissertation proposal is concerned with the question of how inter- and intra-party conflict is expressed at the state level, not through policy, but rather through the development of these legislative institutional structures in which policy is constructed. It lays forth a theory as to when particular types of institutional changes might be adopted or maintained according to the goals of various factions, the nature of conflict within the states, and the political/cultural history within the states. It proposes a plan to examine the accuracy of these theories by conducting a survey of and analyzing the dynamics around changes in parliamentary and caucus rules within the state legislatures as well as the motivations behind these shifts.
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Introduction

Whether an organization is religious or worldly, familial or governmental, large or small, formal or informal, public or secret, the first decision which that organization has to make is, paradoxically, how to make decisions. Whenever a group of people of any size gathers together for a common purpose, there will be conflicts about the means of achieving that purpose and even about the precise parameters of that objective. No organization can survive for long without procedures and frameworks for action. Even in strictly hierarchical organizations in which decisions are made by a single person, and which are communicated as orders to everyone on the other levels of the hierarchy, there must be an initial decisions regarding how to select the individual in charge, the process for transmitting issues within the hierarchy, and the delegation of responsibilities within those hierarchical levels.

The necessity of rules for making decisions becomes even more obvious when the institution itself is constructed to decide the rules for a larger body politic. Rules within governments affect not only how legislation is proposed, but who has a say on the content of the proposal, whether it is taken seriously or allowed to die, and whether changes to legislation can be made at various points. The rules around the passage of policy are both a product of strategic decision making within the policy-making body as well as the creation of a stage upon which later strategic choices will be made. This means that these rules are instituted out of a specific vision of the way the process should work and as an avenue for legislators to attempt to institute their ideas of how the broader societal body should function.

This dissertation aims to examine the adoption of different institutional rules in the state legislatures of the United States. It proposes a plan to examine the methods by which different
institutional frameworks and policymaking rules are initially adopted and adapted over time within state legislatures. It will examine the points at which changes within institutional designs are proposed, developed, and justified, and the ways in which different state legislatures resemble (or distinguish themselves from) each other in terms of policy-making processes. This dissertation will examine these legislatures over time and take into account the historical development of the political and cultural context in which policy-makers operate. This analysis will incorporate debates around the drafting and ratification of state constitutions, as well as, wherever available, justifications for rules changes within state legislatures.

For this dissertation, it is essential to remember that even when a group an agree on the broad principles around decision making, i.e. that democratic processes ought to be followed in the institution of policy, they can disagree strongly as to what those broad principles actually mean. Additionally, as Schattschneider observed in 1942, ‘modern democracy is unthinkable except in terms of political parties.’ Rules cannot be changed or adopted by one individual in the legislature, even if only one person feels strongly about a rule and no one objects to the change, that one person still has to convince others to go along with their defense or opposition to that rule. Rulemaking, like policymaking, happens within the context of state power structures, culture, and partisanship. Thus, I predict that changes in institutional rules will generally arise out of conflict which can be linked to party conflict. This dissertation proposes to examine party conflict over time within the states through an examination of the coalitions and justifications around successful and unsuccessful adoptions of new legislative structures.

The primary avenues of conflict examined will be intra-party conflict (both ideological and structural) as well as inter-party conflict (primarily ideological). The implications of these different types of conflict for the type of rules which I accept to see individuals agitating for and
the implications of certain types of political contexts such as divided government, lengthy one-party rule, and increasing polarization will be expanded upon in the framework section of this proposal. The dissertation project will proceed in steps, first through the coding of particular institutional rules, then examination of stated justifications for those rules, and finally evaluation of the accuracy of those justifications. It will start with an in-depth analysis of state constitutions, parliamentary rules, and caucus rules within the states. This will lead to an examination of the spread of particular rules and the context in which these rules tend to change. This will then allow me to select a few instances of significant shifts in legislative procedures to examine for justifications and effects in order to test in greater depth my theories as to the types of conflict which will drive selections of particular rules.

This prospectus will start with a discussion of why I believe that an in-depth analysis of legislative rules will be beneficial to the story of inter- and intra-party conflict at the states level, including a brief overview of the types situations which will lead to particular changes in institutional structures. This will lead into a literature review examining the major works on party conflict in a legislative context, previous work on rulemaking in the states, the distinction between legislative rules and constitutional clauses, and a rationale for studying the question of party conflict among institutional rules in the states. This will set the stage for a detailed discussion of the methodology including the first steps that will need to be taken, the timeframe that will be studied, and potential roadblocks to the progress of this dissertation (as well as how these barriers might potentially be resolved). Finally, the prospectus will conclude with an outline of the overarching questions which drive this project as well as their associated primary hypotheses.
Framework

This dissertation restricts its focus to the adoption and development of rules within state legislatures rather than the overarching design of each and every governmental branch. While factors related to the executive branch will be included in the analysis of potential effects of rules changes (such as adjustments which may change the strategic legislative calculus regarding vetoes, legislative overrides, or responsibilities within the budgetary process), the key area of interest is the adoption of rules within the legislature itself. That said, the dissertation will examine both houses of the legislatures (where there is more than one chamber) since the strategic calculus for the development of the final bill within the legislative process does take into account the two-stage process in most states and thus rules changes in one chamber, while primarily affecting that chamber, have implications for a legislator or party’s overall ability to pass bills, thus potentially affecting the actions of the other chamber. This dissertation is also focused on the act of adopting new policy-making procedures, or maintaining existent processes in the face of pressure to adjust them. This means that, although it is apparent that as strategic actors, individuals are motivated to change rules in order to increase their ability to influence policy, I am not, ultimately, interested in measuring how the success or failure of these rules changes played out on policy except insofar as the results lead subsequent rules changes.

The major motivating puzzle for this dissertation is the question of when groups within the policy-making process choose to push for changes in the way things are done, and the political, cultural, and strategic contexts which need to be present in order for these efforts to be successful. Related to this is the secondary question of how rationales for adopting new policies are presented and how those rationales shift according to the makeup of the coalitions which agitate for institutional changes. These rationales are important for what they communicate
about the acceptable arguments of the time, the understanding of both the public and the leadership as to what the boundaries of debate are and what a democratic legislative process means, and where the boundaries are for balancing the preservation of norms and the pursuit of strategic advantages in policymaking.

As previously mentioned, within a democratic system, it is impossible to pass policy without at least the weak support (or lack of true objections) of other legislators. Additionally, while it is possible for one person to hold up the passage of policy (through a filibuster or the addition of an unpopular amendment as a legislator, or a veto as an executive) these holdups are, at least theoretically, able to be overcome by the actions of a group (a vote for cloture to end a filibuster, the proposal of a new version of the bill without the objectionable amendment, or a veto override). Thus, legislators must band together. Within the American system of government, the primary groupings that have arisen to combat this problem are political parties. However, these are not the only groupings that are possible, and which, this dissertation proposes, can agitate for and successfully achieve major changes to the policy-making process (although even within these groups the partisan context remains important). While day to day operations can change with the evolution of norms, this dissertation is concerned with the adoption of formal rules rather than informal norms both because it is easier to find evidence for and study the formal rules changes, but also because as this dissertation is concerned with consistent substantive shifts in the balance of power and the way in which policies are proposed in the legislature. Thus, if these new rules have a substantive effect on the policy-making process, I would predict that they will ultimately have to be formally adopted as there would be, or would develop, internal resistance either from factions or important figures within the
legislature to change the way that things are done and potentially, limit the amount of power and control over legislation that these groups and figures previously had.

As previously mentioned, there are three types of conflict which I am interested in measuring the effects of on changes in the rules around making policy. The first of these is ideological conflict within parties. I expect that this will become a significant driver of adaptation within institutional structures in those states where there is consistent long-term single party dominance, such as states like the South or California or Hawaii. These states have a single party so dominant that ideological factions within a party can arise and be maintained over a long enough period of time to attempt to change the way things are done to give their faction an advantage within the policymaking process. Thus, I expect that the rules which will develop as a result of this conflict (or be proposed and fail depending on the strength of the faction) will be centered around the actual crafting of policy and the ability to bring particular policies up for a vote. These policies should include quorum requirements, ability to propose or limit amendments, process for introducing bills, methods of ending a filibuster, and ways to force a vote on a bill. The key point of all of these methods is that they are all avenues which, depending on the specifics of their structure, could serve as ways to either prevent or allow a vote on a bill which the dominant ideological faction within the party (represented by party leadership) does not want to be considered on the floor. Additionally, for several of these rules, such as rules around filibusters, debate, amendments, and consideration of bills, they require a legislator to actually take advantage of them rather than operate constantly behind the scenes.

The second major source of conflict leading to rules changes would be ideological conflict between the parties. This would likely lead to the pursuit of similar types of rules as the previous type of conflict, but within a very different political context. This is because, in a one-
party majority state like the one described above, it is likely that the rules in place would already advantage the majority party, and thus successful or extended pursuits of new rules by the minority party would be unlikely to happen. I expect to see more conflict around rules between parties in states where the parties themselves are fairly equally divided, as gaining the majority would allow people the ability to change rules. I expect that these rules will change at the start of the session after a change in party control of a particular chamber, and that the types of rules which are pursued will be affected by whether the chambers are held by the same or opposite parties and if the overall government is itself divided or unified.

The final conflict which I expect will lead to conflict over rules is internal party conflict either between the “old blood” and the “new blood” or between the leadership and the rank-and-file. This conflict will largely be around the general structure of powers and distribution of authority within the legislature rather than the particularities of constructing policy as expanded upon in the previous sections. The conflict over rules which will arise out of this conflict will largely center around issues such as committee appointments and responsibilities, allocations of particular powers or privileges to the party leadership or as general abilities of each legislator, and the privileges or relative importance of seniority. Thus, in contrast to the types of rules changes which I expect to arise due to ideological conflict, these changes shift the balance of power throughout the legislative session and operate without a legislator having to make a conscious choice to take advantage of them. These changes will be most likely to arise during the ascension of a new party leader to power (as the result of or prelude to internal conflict) or if there is a large influx of new legislators into the chamber. The next section will first focus on some of the historical scholarship within the states and the benefit of examining states in order to
do research on these questions before moving onto a more generalized literature review about the types of theories which this dissertation project will draw upon.

Why the States?

Historically, the majority of American political research into the institutions and legislatures has been focused upon the national level. In turn, a significant subset of state politics research has used the states as a testing ground for theories developed at the national level. Scholars have long used state legislatures to test theories of congressional action which were first designed to apply at the national level (Anzia & Jackman, 2012). More frequently, scholars choose to study aspects of politics and policy-making which are only, or are primarily, related to the state level. Thus, the arena of state politics has become an ever-developing and expanding arena for research within political science. Ultimately, within the United States federal system, there is a built-in framework for comparative research. Yet, oftentimes, the intricacies of state politics are swept aside when doing research within the states, as the focus on one part of the political sphere leads scholars to, necessarily, simplify other aspects of the arena in order to concentrate on the area of interest.

It is a cliché at this point to refer to the states as “laboratories of democracy.” Scholars are accustomed to thinking about the United States system as a federal system with all associated implications about the distribution of power and structure. However, despite this nominal awareness, scholars can and have fallen into the traps of utilizing easy measures of demographics, partisanship, or regionalism while ignoring much of the variation within the state – which can actually be what drives state politics. Instead, states are either additional settings to study questions which have been asked nationally, or as the only location in which a study can be done. There is a potential problem which has been addressed to lesser or greater extent in these
works wherein the same issues that make a state interesting to study, can also make it unique so that there is a question of whether or not the conclusions can be extended to other states, or, alternatively, certain assumptions are made, and proxy measurements are utilized in order to allow for results to be generalized, without truly examining these measurements. (One easy example is the utilization of the “South” as a proxy measurement, without unpacking what, especially in different periods, actually drives the “South” to be necessary as a regional control variable.) Another issue which arises in this measurement is, in the context of general categorizations like Elezar’s three political cultures, there is little unpacking of the way these measures can shift over time and what the precise meaning of these labels are from time A to time B.

However, there are analyses of state politics which have attempted to utilize this diversity in order to present more nuanced analyses of the states. One instance when scholars have acknowledged this distinctiveness is the utilization of measures of legislature professionalism in studies of state politics. The Squire Index of legislative professionalism rates professionalism as a combination of various factors, such as whether the legislature is full-time or part-time, the amount of salary/benefits provided to state legislators, and the degree of bureaucratization of state government/staff afforded to each legislator (Squire, 2007). Over the years, scholars have shown that legislatures with different levels of professionalism have markedly different political dynamics with which politicians, interest groups, lobbyists, and voters must contend (See Squire & Hamm (2005) for an expansive summary of the work which has been done on various aspects development, organization, and legislative careers).
Literature Review

This dissertation looks primarily at formal legislative rules which will generally be decided by the legislature itself each session as the constitutions generally give legislatures a significant amount of freedom to determine their rules. However, I will also examine state constitutions themselves in order to locate those states where this is not the case, or where there are a few rules that are included in the constitution, that in other states appear in the session rules. This is because the choice to have something enshrined into a Constitution, rather than affirmed as a part of the formal rules, is itself an important one for examining the dynamics of conflict around institutional structures. And examination of the adoption of these structures into legislative rules or constitutions would contribute to the literature as, to date, the majority of academic analyses of state constitutions have been law reviews. Historically, lawyers have been concerned with a very different set of issues than political scientists, and their research methodology is distinct as well. Nevertheless, there are useful articles, lines of thinking, data, and questions to be drawn from the law literature.

Ultimately, these law reviews have been focused upon the application of constitutional structures rather than the broader implications of what these constitutions do and do not allow in terms of policy-creation, which means that their treatments of state constitutions remain largely theoretical. Even when they do address state constitutions in a less philosophical manner, these treatments tend to be historical tallies of content (such as Calabrasi & Agudo’s 2008 historical analysis of what rights were included within state constitutions at the time of the 14th Amendment’s ratification, or Dowlut and Knoop’s 1982 review of the types and number of protections of the right to bear arms that were included within state constitutions) or very in-depth descriptive treatments of a single type of clause or amendment (such as Jonathon
Hoffman’s 1995 examination of the “open court clauses” in state constitutions or Toby Heyten’s 2000 examination of the constitutionality of Blaine Amendments against direct government aid to religious educational institutions).

While this literature would thus be most useful to help ground my analysis in the historical and legal context in which different constitutions were adopted, developed, and incorporated, there have been a few efforts to address state constitutions in a more precise/systematic manner. One work which takes a more quantitative look at constitutions is Burden’s (2005) examination of the relationship between particular institutional designs, here the existence of an initiative process for policy and the specifics of committee discharge procedures, and the linkages between policy and public opinion in the states. Similarly, Miller, Hamm, and Hedlund (2014 working paper), codify constitutional provisions which limit legislative action and determine that the wide variation in restrictions in constitutions is largely due to the moment in which they were adopted. Both of these papers will be useful for structuring the theoretical basis of my dissertation as well as providing methodological models for how to acquire and codify the relevant documents which will form the basis for my analysis.

In addition to these more analytical examinations of state constitutions and their content, there are a few articles devoted to the analysis of specific clauses within state constitutions which demonstrate the ways in which the inclusions of these sections, beyond simply the interpretation and reinterpretation of normative statements of rights, can affect the types of policies that are passed and the way that the state government itself operates. The most written-upon topic seems to be state budgets and the ways in which certain constitutional clauses restrict or dictate legislative action on them. For example, Bails and Tieslau (2000) examined various clauses within state constitutions, including balanced budget requirements, supermajority voting
requirements, term limits, the length of the budget cycle, the initiative procedure, and the state referendum, in relation to the growth of spending at the state and local level in order to make a normative judgement as to what types of constitutional clauses lead to less spending. In the same vein, Robert Krol (2007) examined the types of rules and institutions which lead to less spending, placing particular emphasis on role of balanced budget rules and the citizen initiative process for preventing spending and borrowing.

In a different vein, Bryan Page examined the history of Washington state’s emergency clause which exempts legislation from popular referendum if it is labelled as, “necessary for the immediate preservation of the public peace, health or safety, [or] support of the state government and its existing public institutions,” which has recently been used as a method to circumvent the relative ease with which citizens can, through direct democracy, oppose legislation (Page 2008, 222). This article points to the need to examine rules within their proper context, rather than divorced from the rest of the institutional designs of the state. If one did not know that the referendum was a popular political tool within the state of Washington, then it might be easy to disregard the utilization of the emergency clause within statutes as simply a strategy that legislators utilized when attempting to make their bills seem important, along with the tendency of governors to utilize their line-item veto as a way to get rid of this language in legislation as a frustration with this tendency of legislators. Once examined in its proper context, however, it becomes obvious that the legislators, the governor, and the people are all operating within the boundaries proscribed by the constitution and acting strategically using the tools provided. The politics of the state of Washington is dictated by the structures imposed by the constitution. Thus, this points to the need for the type of holistic examination of state constitutional and legislative institutional structures which I intend to pursue.
Within the American politics literature, there have been a wide array of works surveying the institutional design of the national Congress and how these institutions lead to particular political contexts and methods of passing legislation. From Mayhew’s (1974) classic text arguing that the national congress is optimally designed to address incumbents’ reelectio ns, to Cox and McCubbin’s (2005) argument that institutions in Congress are designed to allow parties to pursue their legislative goals with a minimum of negative results for their members, to Krehbiel’s (1998) argument that the key to understanding the policy-making process is the existence of pivotal legislators at various veto points, Congress scholars have long examined the relationship between formal and informal policy structures and the way in which they affect policy. More specifically, scholars have also examined particular tools (both formal and informal) of legislative policy-making, such as Kroger’s (2010) and Wawro’s (2006) book-length treatments on the use and development of the filibuster as a tool. This is in addition to works such as Primo, Bender, and Maltzman’s (2008) analysis of when and how presidents consider home-state senators’ recommendations for judicial appointments in addition to when, and which, pivot points within the Senate matter in this selection process.

There is also research studying how the formal rules which govern the day-to-day workings of the legislatures dictate which policies actually make it to the floor for a vote. This agenda-setting theory asserts that the majority party in Congress, through setting the rules attached to each bill, committee leadership, and other powers, has the ability to effectively prevent a vote on legislation that the majority of the party does not support. This does not mean that bills proposed by the other party will not get a vote, only that generally those bills where the other party could gain a majority through a bipartisan coalition would not reach the floor (Cox & McCubbins 2005 for the national level; Anzia & Jackman 2012 for the state level). This theory
suggests that the formal rules and informal norms matter as much as, or more than, institutional structures at the national level. This leads me to many of my hypotheses about party strength, unity, and competitiveness and their impact on the way that rules are pursued and adopted.

These theories also build upon scholarship of institutional development within the U.S. Congress more generally, most notably Eric Schickler’s (2001) work examining the development of the United States Congress from the late 1890s to the 1990s, showing the dynamic ways that groups special interest, important figures, and figureheads all worked together and against each other to bring about what we would call the modern Congress. While Schickler’s work is a good model for how to do an in depth survey on a particular legislature and the complications therein of doing research in this level of detail, the differences between what the style of research that he has performed at the national level (as well as the types of data which are available at the national level vs. the states) and the research which I intend to do mean that his work will solve primarily as a resource for comparisons of what was happening at the national level in Congress with the trajectory of the states i.e. to examine whether there is a tendency for the states to adapt similar changes in rules in Congress both temporally and during similar situations.

Related to this question, scholars have also studied the passage of particular policies and the likelihood of neighboring states to adopt those policies, a literature that is helpful for this project for the theoretical justifications for when, how, and why a neighboring state may decide to adopt particular types of institutions that its neighbors have already adopted. The foundational articles in this literature are the series of analyses on the adoption of various types of taxes within the states by Berry and Berry which used event history analyses for various time frames to indicate that the adoption of new tax policies are more likely to happen when similar taxes have been passed in neighboring states – if there exists a favorable environment which can include but
is not limited to an a contemporary fiscal crisis and a long time before the next election (1990, 1992, 1994). On the other hand Mooney (2001) utilized a different model in order to examine Notably Frederick Boehmke and Richard Witmer (2004) have found that when it comes to the adoption of Indian gaming in states, both economic and social learning affect the adoption of policy but the expansion of the program after adoption is only driven by economic competition, as states become more familiar with how gaming works in their state rather than looking for other states for models. This shows how even when states are inspired to adopt particular policies or institutional designs it does not necessarily mean that those institutional designs will evolve in the same manner after their adoption.

There are numerous points at which the rules associated with policy-making can affect the type of bill which passes and the way that political negotiations occur within the government. For example, whether the governor has a veto will affect the number of votes that majority pleaders will want to have for bills, dependent on whether or not the governor is a member of, or a political ally, to the party in the majority. Additionally, what constitutes a majority will be affected by whether there is unlimited debate on a bill and, if so, how much support is needed to end debate. Similarly, opposition strategies will change dependent on both the possibility of a governor’s veto and a filibuster as well as whether there is a committee system in place, who is on the committee, whether there is a culture of acceding to the desires of party leadership, and whether there is the possibility of adding poison pill amendments to a bill. The calculus also changes if there is a possibility that the public could then object to and repeal the bill through a referendum process, as we can see by the Washington state legislature’s heavy use of language which allows them to avoid this possibility, or if the bill contains constitutionally dictated
obligations such as the budget, funding for particular programs, or plans for addressing state debt.

Institutional formation can also influence the power of legislators in the rank and file or leadership in unanticipated ways as Anderson, Butler and Harbridge (2014) have shown that legislators under term limits, and in legislatures that are more professional, are less likely to bow to party leadership's preference on the gas tax. What is notable about this is that the results come about for non-overlapping reasons, in particular that legislators under term limits do not have to anticipate a significant period of time under a particular leader and thus are not as concerned about acting contrary to party leadership. On the other hand, the more professionalized a legislature, the more staff, resources, and time that a legislator has and thus the less dependent she is on the preferences of leadership as a guide. This is interesting because having term limits does not necessarily lead to having a professional legislature (or vice versa) and so the adoptions of different types of institutions can ultimately, unintentionally lead to a similar results. On the participatory side of things David Fortunato and Tessa Provins (2017) have shown that longer legislative sessions decrease nonresponses during voting and that an increase in informational resources increase nonresponse rates, contrary to what may be expected but in line with the previous articles findings about the effect of resources on a legislators willingness to simple vote with the party leaders.

Thus, it can easily be seen how different types of legislative rules affect the way that policy is created, and the types of policy which are eventually viable in that particular political context. However, the exact manner in which rules will operate within certain systems cannot be perfectly apparent before those rules go into effect. As mentioned previously, the states can be distinct enough for historical reasons and by the political culture which has developed within the
states that the actual operation of the rules may develop very differently despite the texts being the same. Thus, a natural question is whether the rules were adopted for accurate reasons i.e. are the arguments which were used to ensure the adoption of a particular change in institutional structure can be perceived as accurate based on the actual effects of the laws. Since this dissertation is focused on the actual adaptation of rule-making procedures, the effect of the rules will, in most cases become relevant only due to their impact on future debates over rules changes.

This project will contribute to this literature in numerous ways. It will provide a more detailed knowledge of the historical development of state institutions and provide necessary context for future studies in state politics that analyze within-state differences and patterns of development. Additionally, it will contribute to theoretical knowledge of constitutional and institutional development within the states, an arena which has gained more and more interest in the last few years. Finally, it will allow individuals a greater scope to test assumptions made about the effect of particular institutions and rules which have arisen from the overwhelming attention paid to national governmental institutions, through examination of institutional changes and designs that have parallel frameworks at the national level and those which are unique to the states. In order to pursue a more holistic understanding of the ways in which formal structures of institutions within the state can vary in their adoption, development, and evolution (often independent of other explanations such as need, culture, or partisanship), this project will utilize as sources state constitutions and accounts of rules and committee structures within the state legislatures.

A consideration of the different political contexts within each state will help me concisely analyze the ways in which political culture and history matter in the adoption of different
institutional structures and how much the process of adoption of earlier institutions affects the type of possible institutional changes which are proposed in the future. States that have similar strategic political adoptions might adopt distinct institutions and rules, but I would expect that, more often than not, in the future they begin to operate in similar manners and that the proposed institutions will parallel each other, while at the same time remaining distinct as the experience of acting within different contexts affects the detailed development of norms among political actors. Thus, similar institutions may operate differently in distinct political contexts and states, and the developmental path of new institutions and rules will not be identical even in similar states. Essentially, the operation of institutions and rules should be interrelated with the political norms which are affected by the political culture, and in order to understand the nature of this interaction, we need to study all of them over an extensive period of time in order to ensure that our conclusions are not simply driven by a particular political moment, or exceptional set of circumstances.

This is compounded by the fact that in addition to the recurrent pattern of invention, subversion, and revision of institutions and rules of which I expect to see evidence in the states, it is also reasonable to expect that there will be specific recurrent arguments over these institutions. These arguments are likely to include, but not be restricted to, debates over legislative or executive supremacy, debates over the importance of the party leaders versus the rank and file, debates over the extent to which the governmental structures should facilitate or limit public influence on representatives, and debates over whether institutions should be more or less friendly to the interests of political minorities. All of these debates should impact both revisions of rules and shifts in institutional/constitutional structures. However, the extent to which each division is the driving influence during a particular debate, and the particular
coalitions of interests which might develop around institutional changes are again, likely to be a product of both the institutional change proposed, and the manner in which political forces operate within the states under the existing, unreformed institutional structures.

Thus, the debates over these institutions will also depend on which philosophical conflicts over the nature of government are important at the time of the revision of an institution. If a political movement is more dominant in one state than another, then the rationales that might be presented in first state will likely align with the issues proposed within that political movement, rather than those proposed in another state even if both states are debating similar rules changes. Therefore, it is important to examine not just the rules proposed by a particular group, but also the rationales that are presented at the time and how debates over new constitutional structures and changes to internal rules are presented to the public.

Methodology

The major question that this dissertation intends to explore is how the institutional structures within the states are the product of group dynamics and conflicts. To that end it will look at both the text of the rules, the times of adoptions, the similarity of adopting times and texts to other states, and various aspects of political culture. As has previously been illustrated, there are three main dynamics which I predict are potential drivers of strategic conflict around state legislative institutional framework – intra-party conflict over authority, and inter- and intra-party ideological conflict. One issue which makes it necessary to tease out the effects of majority vs. minority parties and strong vs. weak leadership, is that I predict the latter two types of conflict will arise over the same types of rules.

As mentioned previously, I predict that there will be two basic types of rules which different groups will pursue and that they can be divided into policy-motivated and seniority-
based rules. Policy-motivated rules are not rules which give an advantage to a certain ideology or party. Instead they are those rules which allow legislators to have specific influence over policy that can be used for ideological purposes. These rules would be designed to give individual and groups of legislators greater maneuverability in passing policy, limiting the ability of leadership or the majority faction to prevent the advancement of bills, rather than focused around curtailing the current powers of the leadership they are not attempting to rework the process or to leapfrog ahead of others in a queue or gain power for everyone in their generation or ideological grouping. This would include adjustments on the ability to bring legislation to the floor through alternative paths, to force a vote on or move the calendar date up for the consideration of the bill, to amend legislation in various ways or override a chair’s restrictions on amendments, the ability to or limitations on filibusters, and quorum requirements for particular bills and associated definitions of the categorization of these bills. While it could be possible that the use of these powers would become frequent within an ideological faction or political negotiations, the key point of all of these rules changes is that they would require a specific legislator or coalition to decide to use these powers. Both of these would be aspects that inter and intra party ideological factions would pursue in the course of their efforts for a strategic advantage in pursuing policy.

The second type of rules that will be pursued will be entirely centered on intra-party conflicts about the distribution of power within the majority power. These rules include rights and privileges of the majority party, the makeup of committees both the total number, the percentage of each party created and the distribution of powers within the committee, the importance of seniority, and the selection processes for leadership positions. The key point about these rules is that That they are designed to fundamentally shift the balance of power and
the day to day operations in a way that becomes the new normal. Rather than giving options which can be invoked for particular policies by individual representatives they instead alter who has power at different stages of the process that already exists. For this reason, the negotiations around this should happen primarily, if not entirely, in the majority party through different groups who seek major influence in all aspects of the policy-making process, rather than a specific advantage for their ideological coalition over particular bills.

The interrelated nature of these particular questions means that the optimal way to study these issues is to go straight to the source of the legislative frameworks and institutional rules which construct the policymaking process. This means examining both the constitutions, legislative rules, debates about each, and conflicts over the application in a wide variety of states and contexts to see what aspects are unique to the state and what are negotiation processes that might be replicated elsewhere. The decision to examine institutional structures themselves in an across-time and multi-state manner will allow me to compare the major theoretical ways of evaluating institutions as following a path dependent process and only moderately, if at all, changing to react to external events, or a story of rational actors adjusting the rules as soon as it becomes optimal, and politically expedient, for them to do so in order to acquire particular policy results. Thus, by examining the institutional structures themselves I can compare the rationales of different figures in a manner which is somewhat (although not completely) insulated from the precise content of policies that the ideological groups which will be examined in part of this dissertation.

This project will thus encompass three sources of structures which will have an effect on policy. The first are the constitutional structures which form the framework within which rules are passed. These constitutional provisions include general rules such as the makeup of the
chamber, rules about quorums, and specifics of powers vis-a-vis the executive and the judiciary. However, state constitutions also tend to have a medley of more specific rules such as pre-filing deadlines, rules about amendments, and distinctions between the process of passing everyday bills and budgetary bills. This diversity within the latter structures is what this dissertation will largely focus on, although the diversity of ways in expressing and framing the former set of rules will also be taken into account. The second and third (interrelated) sources which will be examined are the legislative rules which are passed within each legislature, are generally granted to the legislature to decide each session according to the structure of the constitution, and which administer the more day to day functions of the legislature and the caucus rules which dictate the operations within the parties that I predict will serve as the stage for much of the conflict around these institutional frameworks. These rules will include things like the powers of the speaker, the power of the party leaders versus the rank and file, the importance of seniority, the relevance of the committee more specific rules around amendments, the calendar, and the wording of bills, among others.

The research into the legislative frameworks will actually encompass two different time periods for the two key sources, with associated supplemental sources. The first source is of course state constitutions, which will be evaluated in their entirety for the last century including the constitutions and the amendments (those states who did not adopt a new amendment in the last century will have their most recent constitution examined). After these have been analyzed, failed amendments will be examined to see when amendments failed which are similar to those which were passed either later in the same states or in other states in the same time period.

The sections pertaining to the legislative and caucus rules, however, are a bit trickier. The time period which can reasonably be encompassed given the focus on both the rules and the
constitutional structures is turn of the century until the present as demonstrated by Hamm, Hedlund, and Post’s (2011) examination of over 20 state’s legislative rules in ten-year periods from the early 1900s until the turn of the century. However, given that I will need to also examine newspapers for hints as to broad ideological coalitions in states with single party rule this dissertation will begin the examination of legislative and caucus rules in 1968. While this is a reasonable time period to encompass, and the fact that the authors were able to access information for this time period bodes well for my ability to acquire the same information, the choice of evaluating states in ten year periods does not allow for the type of research that I aim to do, as the ten year gap between the adoption of rules schemas allows for unexamined adoptions and reversals of rules. Thus, what I aim to do is to acquire the legislative rules every six years. This should typically encompass three sessions of voting behavior. This will then allow me to find the points at which there is a shift in the rules adopted, and then retroactively examine the rules past in the sessions which were not collected in order to ensure that I note the precise year in which changes were made to these rules.

As mentioned above the rules which will be examined will be in six-year periods starting from 1968 until the present. This will allow me to view the way that the ideological alignment of the parties in the states in the post-Civil Rights era, as well as the rise of movements such as the Tea Party in order to examine the effect of changing partisan power in the states on the legislative structures that people attempt to enact. The ideal world would be one in which I would be able to obtain the rules for every legislature over this period. However, limitations of time and data availability mean that this is extremely unlikely. I expect that I will be able to obtain the formal legislative and caucus rules for each state over the past decade fairly easily, however, as I continue to go back in time, I expect that states will drop out of my research design
due to a lack of available data. Ultimately, I expect to be able to gather a full set of the caucus and legislative rules for around half of the states that I sample at the beginning. This is in line with Hamm, Hedlund, and Nartorano’s (2006) analysis of committee rules, where they were able to obtain analyzable data over the last legislative session in each decade from 1909-1999 for 33 states and Nartorano’s (2004) examination of minority procedural rules within legislative lower houses where she obtained data from 23 states for sessions spanning 1955–95. Both of these works, given the partial overlap in time periods over analysis will also serve as checks/models on my initial coding of institutional and caucus rules.

These rules will be categorized in the same manner as the constitutional rules. Particular attention will be paid to when there are parallel institutions in rules and constitutions across different states in order to see when some states adopted new institutions into rules which other states incorporated into their constitutions. On the flip side, it will also be important to note when rules are adopted within a particular state which seem to minimize or adjust the impact of particular constitutional structures, especially in the context of potential difficulties in changing constitutional provisions within that state. These changing rules will be examined for similarities in wording, a strategy which will also be utilized for the examination of constitutional structures. It is important to note that legislative rules themselves are left up to the legislator alone to determine and generally have few restrictions on what they can encompass designated – and those limitations tend to be constitutionally proscribed.

These examinations of the constitutional statutes and rules will be supplemented through public statements on the justifications for the adoption or change of these structures. These will be acquired in a few different ways. The first (and easiest to acquire) will be the records of state constitutional conventions. These are generally available online or have been published in some
form and so I expect to be able to acquire them through interlibrary loan for the majority of states for which there were public convention records. For those states which do not have the records, and indeed to supplement even those states which do have records, I will select the most relevant state newspaper during the time period and examine these publications for statements of delegates about the conventions and the documents which were eventually put forth for adoption. For legislative and caucus rules, it will not be possible to do a complete survey of newspapers for each state whenever the rules are changed. Thus, after the survey of the literature has been included a period of time with both shifts in legislative structures and persistent institutions will be selected and states selected for comparative purposes to review the news for information about how/if public statements were made about these changes. These rules changes will then be examined and case studies selected in order to examine in more depth. Finally, a significant portion of the relevant data for the pairing of these legislative procedures to the partisan makeup of these state legislators has already been collected and is available through the IPPSR’s Correlates of State Policy dataset, including: proportion of Democratic and Nondemocratic members of both houses, partisan control of the government, whether the government is divided or not, whether it is an election year and if so how many seats are up for election, the percentage of “safe seats” and he percentage uncontested seats in a year..

Given the scope of potential conflict and the possibility that I will find it extremely difficult to show a causal argument that distinguishes between the two types of ideological conflict above, I will first focus on an examination of those structures which I have categorized as addressing the issue of intra-party conflict over the distribution of general powers. This has the advantage of restricting the potential negotiating groups to individuals within the party. However, I will also record those rules which I have defined as primarily tools of ideological
factions at the same time that I collect information about power distribution issues. This way, if it seems as if there is not an interesting or productive story to be told about those rules, I can shift my focus to the issue of ideological policy-centered institutional frameworks. Both of these avenues, however, will likely be productive paths for research, with additional projects arising out of them given the current ideological partisanship at most levels of politics, and both will contribute to our understanding of the current manner in which policies are pursued at the state level and the nature of conflict at a point where both major parties are being forced to address changing demographics, shifting views, new policy challenges, and inter-party splits around all of these issues.

_Overarching Questions & Hypotheses_

One of the primary questions which this dissertation will seek to answer is the question of why particular rules are adopted. The adoption of particular rules, or continuation of institutional structures in the form that they currently exist in is a choice of the groups within the legislature. However, these groups all have their own motivation for pursuing particular rules, and it is possible for these motivations to contradict each other. As laid out previously, there are two types of ideological conflict that I am interested in which could lead particular groups to desire rules changes which make it easier for them to affect or force votes on policy. While modern partisan and self-interest makes it unlikely that in the instance of interparty conflict members of the majority party would go against their leadership and push for rules which could give the minority party greater legislating ability in instances where the parties are electorally competitive, the opposite might happen in instances of intraparty conflict.

I have hypothesized that this type of conflict over rules would be more likely to occur in instances of persistent one party dominance of the legislature, meaning that a minority
ideological faction could more easily create a bipartisan coalition for the changing of rules without risking that these rules would be effectively used by the minority party to push policy consistently enough to counter whatever benefit the faction in the majority party thinks it will gain from the rules change. For this reason, the minority faction in the party would not need to be ideologically close to the minority party that it is allying with. However, due to this, and to the diversity within different types of conflict which can lead to rules changes, we can theorize that the types of statements and claims made about the rationales for adopting new rules or maintaining others will vary not just with the rule which is being adopted, but with the political context within the state and the coalitions which are pursuing these changes. While public statements are not guaranteed to tell the whole story about the situation, or even guaranteed to touch on the most important parts of the rationales around changing particular rules, it is important to see how the conflict is framed for the public especially given the lack of interest that the average citizen has about the minutiae of the policy-making process. How these differ or are adopted by different states in similar and divergent situations will vary according to how legislators publicly present their case to outside observers and to other members of the government, which may also be affected by who they are attempting to convince to join or support their efforts.

Another question which this dissertation will seek to ask is when precisely policies are adopted. In the previous section I laid out that there are different types of conflict within the legislature that are likely to lead to different types of rules being adopted. However, it is also important to note that these rules changes are not likely to arise in the absence of a precipitating event or longstanding conflict. Powerful partisan groups do not arise overnight, and while novel rules or strategic moves are to be expected, if they were successful then the likelihood of other
legislatures with similar goals to attempt to replicate them becomes likely (and even if unsuccessful, the group may try again with an adjusted strategy, or another group may decide that they could do it better than the initial failed group). Thus, tracing the types of justifications that are used and the rules which are proposed is necessary to see how the terms of conflict about the policy-making process are defined and redefined by different groups. This is also related to the question of who is pushing or opposing changes in the institutional structure, and who stays silent, as well as who votes for or against the policy change. This is a question which will gain importance if the nature of the conflict means that similar changes to policy are made over a long enough period of time that the same people will vote on that policy multiple times, in order to track the way that changes in the political environment, the framing of the issue, and the relative seniority of a particular legislator all affect the decisions that they make to either support or oppose a rules change.

Finally, there is the question of how precisely these institutional changes are adopted. Most changes will go through normal votes in the legislatures, given that most constitutions afford the chambers a great deal of freedom in how they handle their own affairs. However, there will be other changes which, because the constitution is more precise, or the changes that a group wishes to make more sweeping, where they necessarily have to go through the procedures to amend the constitution (this might also occur if the opposing group signals or begins to file a constitutional challenge against the case in the courts). More interesting is the potential for groups to push for constitutional change even when it is not necessary to do so, given the content of the rules pushed forth. I would hypothesize that this would happen primarily in situations of interparty ideological conflict where the majority party wins a surprising, or surprisingly large victory and intends to attempt to enshrine their changes in a more permanent way in anticipation
of a potential loss of power in the next election. This is of course, something that will be limited by the legislator’s ability to propose particular amendments to the constitution as well as differing vote thresholds to do so, or the potential necessity of having proposed amendments approved by the voters.

The next question is what precisely is the effect of one-party rule on the dynamics around the institutional design of the policy-making process? In this situation, I hypothesize that, changes in policy-related structures (those structures such as ability to propose amendments, end a filibuster, or force a vote) will occur when there is a significant calcification of the leadership in the majority party around a particular agenda that is not held by all of the party, this can be either a persistent or emerging issue. The minority faction which does not hold the views of the majority would also have to be fairly large and unified – they would have to agree on the importance of the issue and large enough to push through a change, while at the same time not quite large enough that they could address the policy and then fade back into the rest of the party. It would have to be around a distinct agenda where they could gain support by the other party, enough support that the majority party feels it is better to give these individuals recourse to exceptional policy-making processes rather than risk defections, a shift in the balance of power, or effective governmental collapse which could lead to a reversal of fortunes in the next election. It would have to not be around a particular policy, at that point the majority would want to simply address the policy even if they lose on it rather than risk the institution of exceptional measures that could then be used against them by the minority party. Thus, we can see that the dynamics around the advocation for and adoption of policy-centered institutional rules under single-party domination of state legislatures are distinct from those around conflicts around rules
pertaining to the internal balance of power despite the similar political context in which I expect efforts at institutional changes to arise.

In addition to the implications of the overarching questions listed previously, there are a few other particular situations which I think will have important effects on the type of conflict which occurs as well as the types of rules changes which are pursued and adopted. The first of these is the question of when in particular will institutional changes around the overall distribution of powers within the chamber occur. By this I mean those rules changes which fundamentally shift the overall balance of power within the chamber. I hypothesize that these types of rules changes will occur as a result of a few potential, measurable situations. The first would be when there is a significant difference in the makeup of the people coming into the next session as compared to the previous sessions. This will largely be due to a significant influx of inexperienced legislators providing an influx of new blood to the legislator, who would be more inclined to question the rationale behind doing things one way because that’s the way things are done.

This can also happen in conjunction with the influx of a particular ideological group, (for example, an influx of conservative legislators after 2008 with the rise of the tea party) but the key point here is that the makeup of the legislature will have changed. Another source of this could be when there is a calcification of the leadership where people over time, lose trust in the leadership itself and wish to have more of a say than they currently do, the flip side of this is that a leadership cadre who has been able to stay in power for a long period of time, has a high degree of support within their own party, or is presiding over an extremely factionalized and split party could believe itself to be optimally positioned to expand on the rules that grant them abilities outside those of the normal legislature. Finally, it is possible that an external shock like
the imposition of term limits, redistricting, or a particular scandal could lead to a group feeling that they have the ability to agitate for change, but I would expect that, when this occurs, these groups would be more focused on policy rather than on changing the rules surrounding the powers of the leadership vs. the rank and file members of the legislature.

The major exogenous shock which I would expect to have a long term and significant effect on the attitudes of legislators to the formal rules that govern the everyday process of passing policy would be the imposition of term limits to a state which did not previously have them (but not simply changing the length of the term limits) or the removal of term limits from a state that previously had them. This is because the existence or absence of term limits will have a major impact on the strategic calculus of legislators that have to plan for them. Potentially, term limits could all but eliminate the quibbling over seniority although other points of concern around the division of power might become more virulent giving the short time that members have to make a name for themselves/achieve their goals. This would be especially true if there are term limits in only one legislature as many would want the ability to “graduate” to the chamber without limits or with longer terms. It could also potentially calcify the other aspects of the policy making process as the build-up of knowledge around how to manipulate rules vanish, a sustained movement to change them cannot arise, on the other hand, the short length of time in which people are in the legislator means that conservative defenders of “the way we do things” probably don’t exist either. The other point that this could potentially interact with is legislatures that meet very rarely and for short periods of time, as there is not a lot of time for quibbling over rules, especially with everything else which needs to be completed. This points to the need to examine several legislatures over a significant period of time, rather than all legislatures over one or two sections, as the effects of situations related to these can be examined.
The final question is what would occur in the situation in which the parties are electorally competitive against each other within the states. By electorally competitive I do not mean that there is frequent turnover in the identity of the majority party. Rather I define this as states where there is a reasonable possibility that the party in the majority could lose power, and thus the party rank and file and leadership have to plan for the possibility of, or rather to prevent, an election loss. The side effect of a genuinely competitive two-party system means that I would hypothesize that they will be resistant to changes in policymaking, because they do not want to risk losing power and giving the opposing party a new advantage after that party has gained power, while at the same time necessarily tempted by the possibility that changing the institutional structures of policy-making might give them an advantage in passing their agenda which in addition to having an ideological appeal might lead to support in the next election as they are viewed as capable legislators. These contrary impulses will largely arise within the policy-related aspects of institutional design rather than the distribution of powers rules. This is because, while ironically in this situation it would be easier for a minority faction or an less powerful rank and file to push for rules changes that would advantage them, the political context in which this comes about makes it unlikely that they would do so as this would risk an extended fight which could potentially lead to frustration with the party and a legislative loss in the next election (one exception might be with situations like the Tea Party where the individuals were elected already opposing the majority party’s choices and leadership).

Given this context, I would expect that the majority of the time changes in institutional structures will be left avoided due to concerns of setting a precedent or instituting new policy-making structures that the opposing party could take advantage of after the next election. However, once something has been changed there will be efforts to change it back or to
minimize the ability of the other party to take advantage of it after the elections. This means that new structures will be pursued in particular ways and challenged in ways different from how they would be under majority rule. It also means that the lame-duck sessions before the placement of a new governor or a new legislature led by the opposite party would be an important time for debates over the particular meaning of rules and new or frequently replaced structure. I would thus expect that the quibbling over rules in legislatures with competitive parties to be more virulent, but less lasting.

Conclusion

As has been seen in this prospectus, the dynamics according to which rules are adopted and institutional designs shift in the states opens up an interesting new avenue for studying inter and intra party conflicts within the states. This is especially useful in an era in which the parties are increasingly polarized and conflict within the states will become amplified and extended to new avenues. The over-time and within states design of the study will allow me to gain leverage of many potential complicating factors that could influence the effect, justifications, and resistance to changes in particular institutional rules. It will also better prepare me to extend my results from what can be observed through studies of the previous institutional rules to making predictions about potential future behaviors of state legislatures.
Citations


