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## **Time in Parliaments and Parliaments in Time**

*The Evolution of Parliamentary Agenda Control in Western Europe*

### **Abstract**

This paper aims to comparatively explain the institutional evolution of parliaments since the initial intensification of political competition in the late 19th century. In doing so, it focuses on the ability to gain or prevent access to plenary time – parliamentary agenda control – as the sole institutional mechanism which ensures comparability of legislatures over time and space. Empirically, the paper presents two paired comparisons of successful and failed attempts to alter the procedural status quo in three European legislatures: the British House of Commons, where a centralisation of agenda control privileging the government occurred in 1887; the German Reichstag, where agenda control remained in the hands of parliamentary party groups despite attempts to centralise it in 1902 and 1922; and the French National Assembly, where the 1958 constitutional reform ensured a full centralisation of agenda control. Conceptually, the paper argues that only systematic obstruction by anti-system parties is able to shatter the establishment parties' proportional vision of democracy which characterises the 'legislative state of nature' of decentralised agenda control. The majoritarian vision of democracy evolving in the wake of episodes of systematic obstruction allows establishment parties to coordinate around proposals to centralise agenda control.

**Keywords:** Agenda control, obstruction, visions of democracy, framing, United Kingdom, Germany, France

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## Introduction

If elections are the most important instruments of democracy (Powell 2000: 4), parliaments can be regarded as the most important sites of democracy. This paper aims to comparatively explain the institutional evolution of parliaments since the initial intensification of political competition in the late 19th century. In doing so, it focuses on parliamentary agenda control as the sole institutional mechanism which ensures comparability of legislatures over time and space. Parliamentary agenda control refers to the ability to gain or prevent access to plenary time and constitutes 'the central source of power in democratic legislatures' (Cox & McCubbins 2011: 451). Government control of the agenda affects policies (Döring 2001) and fosters the cohesion of parties (Dewan & Spirling 2011) and governments (Huber 1996a; Heller 2001). Despite these noteworthy advantages, there are only few parliamentary democracies where governments enjoy crucial institutional privileges in agenda-setting (Döring 1995; Tsebelis & Rasch 2011). The two most important cases of a centralisation of agenda control in favour of governments are the British House of Commons and the French National Assembly.

In an initial attempt to explain why the centralisation of agenda control is a rare event despite its obvious advantages for government majorities, I focused on the crucial role of parliamentary obstruction by anti-system parties (Koß 2015). Such obstruction increases the procedural bargaining power of establishment parties, enabling them to argue that anti-system opposition to procedural reform is discardable since anti-system parties do not aim to ameliorate bills but rather to challenge the territorial or democratic integrity of the political system. This paper aims to elaborate on this explanation by enhancing its causal leverage in two respects: first, conceptually, by clarifying how establishment parties are able to coordinate their efforts to achieve procedural reforms in the face of anti-system obstruction; second, empirically, by extending the time period under investigation.

This paper looks at successful and failed attempts to alter the procedural status quo in three European legislatures. The legislatures chosen all suffered from substantial legislative obstruction but still are most different with respect to the outcome of procedural reform: first, the British House of Commons, where the anti-system Irish Nationalists systematically obstructed legislative business and where a centralisation of two of three dimensions of agenda control occurred; second, the German Reichstag, where both the anti-establishment Social Democrats and later on the anti-system Communists obstructed legislative business and where nonetheless no dimension of agenda control was centralised; and thirdly, the French National Assembly, where Communists also posed an anti-system threat but where, in contrast to the German Reichstag, all three dimensions of agenda control were successfully centralised. Arguably, the reason for these

different outcomes is that, apart from an anti-system threat, there is another necessary condition for the centralisation of agenda control: Establishment parties need to explicitly abandon the proportional vision of democracy (Powell 2000; Ganghof 2015) which characterises the 'legislative state of nature' (Cox 2006: 143) of decentralised agenda control and develop a majoritarian vision of democracy. Such a majoritarian vision allows establishment parties to coordinate around proposals to centralise agenda control. This explains why German establishment parties (which kept to the proportional vision) failed to centralise agenda control after 1922 whereas their French counterparts (which abandoned the proportional vision after 1954) succeeded to do so in 1958. This claim is corroborated in a framing analysis of the plenary debates on procedural reform in the three legislatures.

### **Parliamentary agenda control and its determinants**

Given that parliaments are exceptionally heterogeneous institutions, the concept of agenda control is virtually the only one allowing for systematic comparisons of legislative assemblies both over time and space.<sup>1</sup> Rasch (2014: 461–71) distinguishes three dimensions of agenda-setting rules: timetable, positive, and negative control.<sup>2</sup> Timetable control comprises decisions about which proposals enter the plenary agenda the length of debates. Positive agenda control encompasses opportunities to amend legislation. It comprises measures such as restrictive rules (which exclude certain kinds of amendments) or closed rules (which forbid all amendments). Finally, negative agenda control comprises measures which allow actors to terminate debates, most notably through closure procedures. According to the distribution of opportunities for timetable, positive, and negative agenda control, agenda-setting can either be centralised (i.e. dominated by the government and/or a parliamentary majority) or decentralised (i.e. providing equal access for all parliamentary actors, most likely in proportion to their seat share).

While there is a vast literature on the effects of the rules of agenda control, much less attention has been paid to the origins of these rules. Control of the parliamentary agenda is the single most important institutional determinant of parliamentary power. Every bill proposal needs to be placed on the plenary agenda; its sponsors then have to make sure the proposal is not 'wrecked' by any unwanted amendments or terminated altogether in the legislative process

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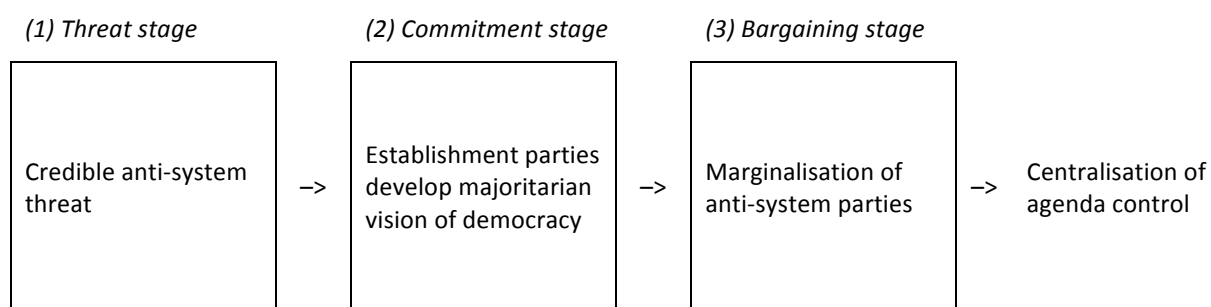
<sup>1</sup> Another mechanism allowing for long-term analyses of parliaments is the investiture vote (Cheibub, Martin & Rasch 2015). However, as opposed to agenda control, the investiture vote does not allow to study the period of democratisation since the analysis is per definition confined to democratic periods (in which investiture votes exclusively occur).

<sup>2</sup> A fourth dimension, sequencing (i.e. voting) rules, is of secondary importance as it has no systematic effect on policy outcomes (Rasch 2000).

(Döring 1995). Additionally, agenda-setting rules contain the danger of cyclical majorities (Shepsle 1979) and foster the cohesion of parties (Dewan & Spirling 2011) and governments (Heller 2001; Huber 1996b). Finally, control of the agenda has an effect on policies: governments controlling the agenda are more likely to introduce (and pass) more complex and more conflictive legislation, even though the general legislative output is lower (Döring 2004: 158–65).

Only in a few parliamentary democracies – most notably France, the United Kingdom, Ireland, and Spain – do governments enjoy institutional privileges in at least two of the three dimensions of agenda control (Döring 1995; Tsebelis & Rasch 2011). Existing cross-case research on the origins of agenda-setting rules identifies the fragmentation and ideological polarisation of party systems as the major causes for a centralisation of agenda control (Carroll, Cox & Pachón 2006; Zubek 2011; Diermeier & Vlaicu 2011). The smaller the number of parties represented in parliament and the less polarised these parties are, so the argument goes, the more likely a centralisation of agenda control becomes. From a probabilistic perspective, this correlation is certainly observable; however, what is lacking is a causal mechanism linking political parties and agenda control. This is also suggested by several empirical outliers from this correlation, the two most important of which are analysed in this paper: France, where agenda control was fully centralised in 1958 despite a considerable fragmentation and polarisation of the party system; and Germany, where the decentralised rules of agenda control were maintained between 1949 and 1983 despite ever-decreasing levels of fragmentation and polarisation.

*Figure 1: The causal mechanism underlying successful attempts to centralise agenda control*



My causal mechanism starts from the assumption that any departure from decentralised agenda-setting is necessarily linked to the existence of the leaderships of at least two parties who are willing to centralise agenda control at the expense of third parties. This commitment stage is expected to occur against the background of a conflict over procedural rules, most likely the (alleged) obstruction of parliamentary business. During the following bargaining stage, legislators

face the choice to delegate agenda-setting powers to governments or to continue to participate in plenary proceedings proportionally to their seat share (see Koß 2015). The three stages – each of which constitutes an individually insufficient but necessary part of the whole (Beach & Pedersen 2013: 29–32) – of the causal mechanism underlying successful attempts to centralise agenda control are depicted in figure 1. The successful centralisation of agenda control is only possible when reform proponents are able to mutually assure themselves of their commitment to reform. Such successful coordination is linked to two necessary conditions. First, a credible threat posed by anti-system parties which, second, allows leaders of establishment parties to call for abandoning the previously dominant proportional vision of democracy.

According to Abedi (2002: 555), establishment parties share at least one of three common properties (see also Sartori 1976: 122–3, 300–1): they either already formed government coalitions, are considered as potential coalition partners by government parties, or are willing to enter (legislative) coalitions. Anti-establishment parties characteristically oppose those parties. For a party to qualify as anti-establishment, three criteria must be met (Abedi 2004: 12–17). First, anti-establishment parties challenge the status quo in terms of major policy issues. Second, they also challenge establishment parties, which they denounce as being similar and self-interested. From this follows, third, the assertion of a fundamental alienation between the establishment and the people. However, anti-establishment parties attack the establishment on democratic grounds and can be regarded as a semi-loyal opposition (Schedler 1996: 303). This is the difference between anti-establishment and anti-system parties: only the latter oppose the political system as such, be it relationally or ideologically.

*Table 1: The ‘systemness’ of political parties*

Acceptance of	Establishment parties	Anti-establishment parties	Anti-system parties
Other parties	Yes, due to interest in government participation	No, condemnation of competitors as self-interested and detached from ‘the people’	
The political system	Yes, acceptance of democratic rule and the territorial integrity of the political system		No, challenge to democratic rule and/or territorial integrity
Obstruction	Tactical		<b>Systematic</b>

This is the difference between anti-establishment and anti-system parties: only the latter oppose the political system as such, be it relationally or ideologically. The 'most important characteristic' of relational anti-system parties is the 'distant spatial location of its electorate from that of neighbouring parties' (Capoccia 2002: 15). This implies that relational anti-system parties question the territorial integrity of the system from which they try to break away. Ideological anti-system parties oppose the 'legitimacy, stability or consolidation of the system of democracy as such' (Capoccia 2002: 19). Table 1 illustrates these differences between establishment, anti-establishment, and anti-system parties. Since anti-system parties neither accept other parties nor the political system as such, they are the only ones willing to engage in systematic (i.e., unconditional or principal) obstruction (see Bücker 1989). Both establishment and anti-establishment parties use obstruction merely as a tactical means to delay specific bills, but not the legislative process as such.

Anti-system parties' irresponsible opposition (as expressed by the threat of unconditional obstruction) allows a majoritarian vision of democracy to become the focal point of all 'system' parties (i.e. the establishment and the anti-establishment ones alike). In doing so, a majoritarian vision of democracy helps these parties to mutually assure each other of the need of procedural reform in order to ensure the continued passage of legislation. A credible anti-system threat enables reform proponents to convincingly argue that legislators of established parties need to delegate agenda-setting powers to the government. To summarize, anti-system parties not only allow establishment parties to coordinate around a majoritarian vision of democracy, they can also be marginalised in a procedural bargaining.

Whether parties promote a proportional or majoritarian vision of democracy will be assessed in a framing analysis. The core assumption underlying framing analyses is that the problem definition has an impact on the initiation, process and outcome of (here: procedural) reform because it legitimates some solutions rather than others (see Weiss 1989: 98). To reap these rewards, participants in the policy process seek to impose their preferred definitions on problems: 'Framing essentially involves selection and salience. To frame is to select some aspects of a perceived reality and make them more salient in a communicating text [...]' (Entman 1993: 52). In this paper, I am less interested in analysing the whole process of procedural reform, but primarily in the arguments legislators chose to justify their positions in order to establish their support for / rejection of the proposed centralisation of agenda control as a focal point during the initial stage of procedural reform (see also Helbling, Hoeglinger & Wüest 2010). Basically, legislators can frame procedural reform in two distinct ways each of which corresponds with a different vision of democracy.

The starting point for identifying the distinct ways in which actors can frame procedural reforms are their procedural preferences stemming from the factual alternatives they face: legislators can either prefer to delegate agenda-setting powers to the majority or insist on continuing to participate in plenary proceedings under decentralised rules of agenda control. As table 2 illustrates, these two choices are linked to the two ideal-typical visions of democracy. Despite being initially developed for differentiating electoral rules (Powell 2000), these visions are also appropriate to distinguish patterns of democratic rule at large (Ganghof 2015). The proportional vision of democracy emphasizes the equality of legislators. Given that all voters bear equal rights, their input should be equally considered (somewhat) independent of government or opposition status. Accordingly, parliamentary procedures should ensure the accommodation of majority and minority interests. As for the outcome of the legislative process, the proportional vision of democracy stresses the flexibility of policy-solutions. Different majorities for different issues are desirable from this perspective. As a result, the normative priority from the perspective of a proportional vision of democracy is to ensure the *representation* of all voters' and, accordingly, legislators' preferences. From a majoritarian perspective, a delegation of agenda powers is desirable because it serves the normative priority to ensure the *efficiency* of parliamentary procedures. For this reason, the dominance of majorities in the legislative process is acceptable, not least because it guarantees the clarity of the majority's responsibility vis-à-vis the electorate. From this perspective, efficient and majority-dominated legislation has the additional advantage to ensure stability, in terms of the cohesion of both majorities and the policies these pursue.

*Table 2: Frames underlying procedural reforms*

Dominant vision of democracy	Proportional	Majoritarian
Procedural preference	Participation	Delegation
Input	Equality	Responsibility
Process	Accommodation	Domination of majority
Output	Flexibility	Stability
Normative priority	<i>Representation</i>	<i>Efficiency</i>

The empirical sections of this paper aim to investigate which frames legislators use to justify their position on procedural reform, which is expected to be prompted by anti-system threats. In doing so, the analysis will focus on the plenary debates and, if appropriate, committee reports (House of Commons, Reichstag, Assemblée nationale) as well as the official documentation of

the drafting process of the Constitution of the Fifth French Republic (Comité National 1987, 1988, 1991) about reforms of timetable, positive, or negative control over the agenda of the legislative process. Focusing on plenary debates and committee reports (which will be triangulated with both the contemporary and recent literature) ensures that the results are systematically comparable over time and space.

### **The cases under investigation**

Independently of time and space, plenary time is a potentially 'scarce resource' (Döring 1995) in legislatures under one condition: there must at least be rudimentary electoral competition between legislators. The reason for this is that electoral competition serves as an important incentive for legislators to consume plenary time with the aim to ensure re-election (Cox 1987). For this reason, the analysis of this paper focuses on the period of the initial intensification of political competition in Western Europe after 1870 (see Caramani 2004: 81). More specifically, the empirical analysis focuses on two paired comparison of two successful centralisations of agenda control (Britain 1887 and France 1958), which are assessed against the background of two failed reforms under similar circumstances. These failed reforms were also caused by, first, legislative obstruction (Germany 1906) and, second, an anti-system threat (Germany 1922).

Both paired comparisons of attempted procedural reforms follow a similar structure. Each case studies begins with a brief overview of the respective polity and then discusses the party system, most importantly with respect to the role of anti-system, anti-establishment, and establishment parties. Subsequently, the procedural status quo at the beginning of the intensification of political competition are presented as well as the most important later attempts (both failed and successful) to alter the distribution of legislative agenda-setting powers.<sup>3</sup> The final subsections of each case study deal with the major actors of obstruction, the role obstruction played for attempts to alter the distribution of agenda-setting powers and the visions of democracy according to which legislators framed their position on procedural reform in the major reform attempts. Against the background of the causal mechanism outlined in the penultimate section, distinct expectations underlie each of the case studies: In the British House of Commons (1887) as well as the French National Assembly (1958), anti-system obstruction is expected to enable establishment parties to coordinate around a majoritarian vision of democracy, which in turn facilitated the path change in the distribution of agenda-setting powers. In the Imperial German Reichstag, however, anti-establishment (1906) and anti-system (1922) obstruction pre-

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<sup>3</sup> This does not only exclude agenda control with respect to questions, interpellations, and petitions, but also the budget procedure.



sumably also prompted reform efforts, but merely allowed for the development of mixed frames which ultimately failed to facilitate a centralisation of agenda control.

### **The successful British 1887 reform and the failed German 1906 reform**

#### *When the majority begins to mean the House of Commons*

Parliamentary government is a British invention. Governments have relied on parliamentary support since 1832, when the House of Commons managed to substitute the executive as the ‘most important element of the constitution’ (Ertman 2010: 1010). However, in the wake of two electoral reforms after which 36 (1867) and then 64 (1884) per cent of the male population were entitled to vote, the House of Commons gradually lost many of its legislative privileges to the government. Additionally, the second chamber, the House of Lords, could veto all legislation until 1911. Two parties dominated British politics at the outset of the 1880s: the Liberals and the Conservatives, both of which were unquestionably members of the establishment as they alternated in government. However, anti-system sentiments were channelled through the so-called Third Party, the Irish Nationalists, which united revolutionary and legal sentiments. The Nationalists were able to secure majorities throughout Ireland in the wake of the suffrage extensions and, more importantly, the introduction of secret voting in 1872 (Redlich 1908: 135). The Irish Nationalists are regarded as anti-system since their call for regionalisation (‘devolution’) ultimately challenged the territorial integrity of the United Kingdom.<sup>4</sup> The ‘Irish question’ altered the balance of power between the (previously dominant) Liberals and the Conservatives. In 1887, it prompted a split of the Liberals and caused the anti-Home Rule Liberal Unionists to leave the party. Additionally, the Irish question allowed the Conservatives to strengthen its previously loose cohesion by reinventing itself as the ‘national’ party (Ostrogorski 1964 [1902]: 134, 160).

In the House of Commons, timetable control was formally already centralised in the 1850s when opportunities for individual MPs to introduce legislation were minimised (Cox 1987: 46–51). However, even though opportunities for private members’ legislation were continuously restricted, all MPs remained free to exert positive agenda control as they could raise topics through motions of adjournment and so prolong plenary debates. Therefore, the rule that ‘the day’s programme should be fixed in favour of the Government and protected against the free initiative of members’ was only factually consolidated after 1882 (Redlich 1908: 115). The priority of government proposals was ultimately established in 1888 (Redlich 1908: 182). Up to 1882/87, the government could exert no negative agenda control in order to counter MPs’ positive control

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<sup>4</sup> The anti-system label includes no normative statement about the legitimacy of the Nationalists’ demands.

of the agenda. Only a series of reforms started in 1882 and accomplished in 1902 ensured thorough government dominance of the plenary agenda which, with the exception of 10 days for the opposition and, since 2010, another 20 days for backbench business per year, continued up to today (Qvortrup 2011).

The introduction of a closure procedure can be regarded as the single most important reform of agenda control in the United Kingdom because it gave rise to a series of reforms which ensured that agenda control was fully centralised by 1902 (Eggers & Spirling 2014). Investigating the introduction of the closure procedure has the additional advantage of resembling a natural experiment: the measure was originally introduced in 1882, but only applied twice. For this reason, it was re-introduced again in 1887 (and since then applied on a regular basis). The closure required a simple majority consisting of more than 200 MPs to terminate debates.

Even though establishment parties also obstructed legislative business occasionally in the House of Commons, it was primarily the anti-system Irish Nationalist Party which committed itself to systematic obstruction. Irish obstruction became endemic by 1877 (Redlich 1908: 142–62). When the Conservative majority in the House of Lords had vetoed a Land Bill for Ireland in 1880, this gave rise to rebellions which subsequently caused the passage of a coercion bill for Ireland. To prevent the passage of this bill, the Irish Nationalists fervently obstructed parliamentary business. In January 1881, delays caused a single sitting of the House of Commons to last for 41,5 hours (Porrit 1908: 523). Consequently, the establishment parties were only able to terminate Irish obstruction with help of rules of urgency, a de facto state of emergency suspending parliamentary debate for three weeks in February 1881 (Redlich 1908: 152–68).

Establishment parties clearly committed themselves to procedural reform against the background of Irish legislative obstruction. The Liberal government tabled its closure proposal in the 1882 session to render future episodes of unconditional obstruction impossible (House of Commons, 23 March 1882: 1751; see also 20 February 1882: 1140). In 1887, the closure proposal was re-introduced by the Conservative government at exactly the time when the coercion bill for Ireland had to be renewed and the threat of another series of obstruction loomed large (House of Commons, 22 February 1887: 377–9; 384). However, Irish obstruction persisted after 1887. This does not only explain why the Irish Nationalists rejected all reform proposals under investigation here (see Eggers & Spirling 2014: 4), but also why in 1902, too, '[t]he object of the Government is – I know it is, and it ought to be – to discourage and prevent obstruction', as the Liberal leader of the opposition put it (House of Commons, 6 February 1902: 559).

The crucial difference between the 1882 reform attempt and all others under consideration here was that initially, only one of the establishment parties, the Liberals, framed their posi-

tion in line with a majoritarian vision of democracy. The central value of British parliamentary procedure from the very first memorandum on procedural reform by the nestor of parliamentary law, Erskine May, was ‘freedom of debate’ (Erskine May 1848; 7, 36). In 1882, the Conservatives, just like the Irish Nationalists, argued that the closure procedure would destroy freedom of debate (House of Commons, 20 February 1882: 1154). However, even in this early stage, the debate was clearly rooted in the majoritarian vision of democracy, because its core question was whether the closure would increase or decrease the responsibility of governments. For liberal MPs, the closure was justified because it followed from the principle of governmental responsibility: According to the Secretary of State for India, the Marquis of Hartington,

‘[t]he Government are responsible to the House and to the country for the conduct of Business. They come before you to tell you that under the existing Rules of Procedure in this House they cannot undertake responsibility. If they cannot conduct the Business of the country, they are not fit to remain in Office. They have laid before you proposals which, in their opinion, will enable them, and other Governments after them, to conduct with dignity and efficiency the Business of the country, and by these proposals they are prepared to stand. If there are others who think they can, without these changes, conduct the necessary affairs of the country, and if they can persuade the House of their capability to do so, we shall cheerfully resign our functions; but, Sir, so long as we are responsible for the conduct of the necessary Business of the country, we must appeal to the House to give us those powers by which alone, as we think, our work can be effectually performed.’ (House of Commons, 20 March 1882: 1337–8).

From this (majoritarian) point of view, alternation in government, and not freedom of debate, ensured the (future) protection of minority rights (see also House of Commons March 30 1882: 319–20). The Conservative as well as dissident Liberal reform opponents in 1882 agreed that government responsibility needed to be secured. However, according to them, this was linked to opportunities to criticise the government during plenary debates: ‘If a measure is brought into this House which they [members of the opposition, MK] consider it is right to criticize, and yet the Government say ‘We must pass this measure, not with your consent, but by placing this like a pistol at your head,’ they will be justified in obstructing as much as they can’ (House of Commons, 20 February 1882: 1174; see also 20 March 1882: 1390; 23 March 1882: 1719). This explains why reform opponents complained that ‘[i]n the countries where the clôtüre exists, Ministerial responsibility does not exist.’ (House of Commons, 20 March 1882: 134; 20 February 1882: 1157; see also 20 February 1882: 1165–6, 1338, 1341, 1349, 1379; 23 March 1882: 1746).

However, according to the Liberal proponents of reform, the government simply needed to dominate the legislative process since its legislative record would inform voters’ choice at the

next election. Prime Minister Gladstone argued ‘that these interests of the majority are, after all, the principal interests of Parliament, because it is the majority that governs the proceedings and acts by which the Members of Parliament will be judged when they come before their constituents upon the next Dissolution.’ (House of Commons, 31 October 1882: 503; see also 6 November 1882: 929). The Home Secretary Harcourt put it more simply: ‘the majority does mean the House of Commons’ (House of Commons, 6 November 1882: 929).

In 1887, all three establishment parties agreed on – and, accordingly, were able to coordinate around – majoritarian frames of procedural reform. By this time, even Conservative MPs expressed their ‘desire to fit the House to carry on its constantly increasing work with dignity and efficiency. There is now a general feeling in the country that the no-work tactics, which have some time prevailed, should be firmly repressed’ (House of Commons, 22 February 1887: 321; see also 371). Apart from the Irish Nationalists, only some dissenting radical Liberals argued that parliament primarily was a place for representation and participation:

‘If they [members of the government majority, MK] think they cannot get a sufficient number of Acts of Parliament worked out, I would inquire, is it the sole business of Parliament to manufacture Acts of Parliament. After all, that is merely a secondary business. This House is the Grand Inquest of the nation, to vindicate popular claims, to assert popular liberties, to guard against corruption, to save the public purse, and also to remove grievances; and Acts of Parliament as such are only means to an end, and so long as the end is attained, the means are of secondary importance. The number of Acts of Parliament that may have been passed within the last five or six years is not a fair measure of the serviceable character of the work of Parliament.’ (House of Commons, 21 February 1887: 238).

However, once opposition to reform was basically confined to the Irish Nationalists, the closure proposal could effectively be passed in 1887 with a large majority consisting of virtually all voting Conservative and Liberals.<sup>5</sup>

### *Being afraid of responsible politics: Procedural reform in Imperial Germany*

Compared to the United Kingdom, the relationship between parliament and government in Imperial Germany was uneasy. The executive was appointed by the Emperor and not responsible to parliament. Through its fusion with the Prussian executive, the national government dominated the Second Chamber, the Bundesrat, which, just like the Reichstag, had to agree to all legislation. This constitutional setting was deliberately confusing in order to inhibit the parliamentarisation of the polity (Loewenberg 1969: 32).

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<sup>5</sup> Among the 41 MPs who opposed the closure against 262 proponents, only five were (radical) Liberals (House of Commons, 18 March 1887: 798–800).

In combination with the virtually universal male suffrage introduced in 1867, pronounced territorial–cultural cleavages caused a fragmentation of the party system. The major parties were the Conservatives, the catholic Centre, National and Left Liberals, and the Social Democratic SPD. Additionally, there were regional minority parties, most notably Poles and a party representing the annexed Alsace-Lorraine. With the exception of the SPD, all major German parties could be regarded as belonging to the establishment because, albeit being less pragmatic than their British counterparts, they all were basically willing to cooperate with the government and engage in legislative log-rolling (Nipperdey 1992: 572–6). In contrast, the SPD was often portrayed (and fought) as anti-system. However, the Social Democrats primarily opposed the establishment, which they dismissed as ‘bourgeois’ and, accordingly, detached from ‘the people’, i.e. the working class (Nipperdey 1992: 557, 561–9). The most important indicator of the SPD’s lack of anti-system sentiment was its call for incremental democratic reform: rather than supporting fully fledged parliamentarisation of government, the SPD demanded that ministers initially become responsible vis-à-vis a constitutional court (Pracht 1990: 321–3).

In Germany, agenda control was only very partially centralised during the Imperial period since parliamentary groups (linked to a threshold of 15 of 397 legislators) were the major actors rather than individual MPs (who enjoyed no procedural privileges, see Hatschek 1915: 54). A consensual decision-making consisting of all parliamentary groups, the Council of Seniors, exerted timetable control (Franke 1987: 40–7). A plenary majority could take items off the agenda, but a single legislator was able to veto the inclusion of new items. Therefore, timetable control effectively rested with party groups (Loewenberg 2003: 19–20). So did positive agenda control: when legislative minority rights – such as the right to initiate and amend bills – were inserted into the parliamentary standing orders in 1868, these were linked to membership in party groups and accordingly required 15 MPs (Hatschek 1915: 181).<sup>6</sup> Negative agenda control was formally centralised, but any use of the existing closure procedure was prevented by the minority rights introduced in 1868 and, in particular, the quorum. Even though the German parliament only received the power to elect or dismiss the executive in 1918, agenda-setting rules were subject to a degree of continuity similar to the United Kingdom (Loewenberg 2003: 24).

Between 1868 and 1918, there was only one attempt to significantly alter the distribution of agenda-setting powers. In 1906, the government launched a proposal to render the (existing) closure procedure more effective by lowering the constitutional quorum of half of all legislators (i.e. 199 out of 399) for decisions on parliamentary procedures and ‘especially closing the de-

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<sup>6</sup> In the Prussian diet (from which the Reichstag took its standing orders and which consisted of only 350 legislators), private member’s bills and amendments needed the support of 30 MPs (Fischer 1849: 11–2).

bate' (Reichstag, Annex 353/1906: 3846). However, this reform proposal was killed during the committee stage between the first and second reading; the Reichstag only passed reimbursements for legislators, which were initially devised to render the lowering of the closure quorum proposed in 1906 more acceptable.

In the German Reichstag, obstructionist tactics were primarily adopted by the anti-establishment Social Democrats. Their major weapon of obstruction was the constitutional quorum for the passage of bills. Given the chronically low attendance rate of legislators,<sup>7</sup> leaving the plenary was an effective means of obstruction, especially as the SPD's electoral strength rose throughout the Imperial period. The most important incident of SPD obstruction occurred during the passage of the 1902 tariff bill. Here, the majority could only pass the bill against filibusters of up to eight hours (the all-time German record, not even beaten by Communists or National Socialists during the Weimar Republic) through was putting the bill to the vote as a whole without discussion of all its paragraphs – a contradiction to the stipulations of the standing orders (Butzer 1999: 233). However, the Social Democrats deliberately abstained from unconditional obstruction. The protocols of the SPD parliamentary group reveal that the other parties regularly asked the Social Democrats to ignore the lack of a quorum during debates. More often than not, the SPD decided to do so and against calling for roll call votes (Matthias & Pikart 1968: 16, 83, 209). According to one leading Social Democratic ideologists, procedural reform in the House of Commons was 'comprehensible' given the level of Irish obstruction (Bernstein 1903: 37). This illustrates that informal coordination of all party groups ensured the co-existence of majority rule necessary for the passage of bills and far-reaching minority rights protected by the standing orders. The reason for this was that all parties with group status (which the Social Democrats obtained in 1884) could veto procedural decisions. Nevertheless, in 1906, the government as well as most establishment parties (with the notable exception of the Left Liberals) explicitly committed themselves to procedural reform against the background of the SPD's obstruction, in particular against the 1902 tariff bill (Reichstag, 26 April 1906: 2701–2, 2710, 2711, 2724–5; 15 May 1906: 3196, 3200–4).

The framing of the 1906 procedural reform in the German Reichstag reveals a difference to the British House of Commons: German legislators abstained from using majoritarian frames of democracy. Against this background, it comes as no surprise that the proposal to facilitate the closure procedure came from the government and not one of the party groups on which it rested it at the time (the National Liberals and the Centre). Remarkably, even those parties supporting

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<sup>7</sup> Molt (1963: 312) estimates that between 1895 and 1911, the quorum was missed in at least half of all sittings.

the government proposal used mixed frames to do so. A National Liberal MP called the proposal 'quite good' because it helped to speed up business (Reichstag, 26 April 1906: 2716). This could be regarded as a statement in favour of a more efficient dispatch of legislation. However, the legislator called deviations from the quorum requirement even in further-reaching procedural questions 'dubious' (Reichstag, 26 April 1906: 2716) and later referred to 'previous experiences of procedural debates and conflicts' (Reichstag, 26 April 1906: 2727). This was an obvious hint to the 1902 tariff bill standoff, which the centre-right majority formally decided in its favour (as the bill was passed) but from which the Social Democrats gained substantially at the 1903 election (Fairbairn 1997: 67). A Centre MP only referred to the closure proposal in passing, calling the envisaged reform 'relatively marginal' (Reichstag, 26 April 1906: 2711).

The only parties clearly rooting their position towards procedural reform in a vision of democracy were the Social Democrats. Their leader Bebel almost ideal-typically referred to the proportional frame when condemning the reform:

'There cannot be any doubt that the proposal aims to cut deliberations in the Reichstag, and I am sure that it is the intention of the proposal to restrict the activities of the Social Democrats. [...] We are an opposition party, and we call for far-reaching changes in political life. Due to our status as an opposition party, we are subject of various prosecutions, and we have every reason to bring our grievances stemming from these prosecutions before this House. In order to justify our reform proposals, we need far more plenary time than those legislators who basically agree with the government' (Reichstag, 12 May 1906: 3163–4; for a similar statement from a Left Liberal MP see 26 April: 2725).

In the face of these allegations (and as it became clear that the government would introduce the reimbursements for MPs anyways), the establishment parties (with the exception of the Conservatives) dropped their lukewarm support for procedural reform. This change of position was explicitly mentioned in the second reading and openly admitted by the Centre (Reichstag, 12 May 1906: 3151, 3161). To conclude, the exclusively proportional vision of democracy unilaterally emphasising the representative function of the Reichstag at the expense of its capacity to render the (extra-parliamentary) government responsible resonated with the verdict of a dominance of 'minority politicians' (Sombart 1906: 55) in Germany. Obviously, their major aim was to represent the will of the public vis-à-vis the monarch (who appointed the government) (see also Schönberger 1997: 10–4). Given that no systematic obstruction forced establishment parties to develop a majoritarian vision of democracy, legislators preferred to bargaining with the executive about legislation.

### **The successful French 1958 reform and the failed German 1922 reform**

#### *The Communist threat and the only full centralisation of all dimensions of agenda control*

The National Assembly was the most important element of the constitution of the Fourth French Republic (Lidderdale 1951: 43–6). The indirectly elected second chamber, the Council of the State, only had a suspensive veto and was not able to initiate legislation. The major reason for the Assembly's dominance even vis-à-vis the government was the fully decentralised control of the agenda which rested with individual MPs, i.e. the plenary. The timetable was prepared in a steering committee, the Presidents' Conference (*Conférence des Présidents*) consisting of the chairs of parliamentary groups and committees, but could be overthrown on the floor and, more importantly, be obstructed by committees failing to present their reports (a necessary condition for the beginning of plenary debates about legislation). Even during sittings, 50 MPs could propose to alter the agenda (Cotteret 1961: 818). Apart from calling for an urgency procedure (causing every other item on the agenda to be postponed), the government had no means of positive agenda control since all MPs could propose amendments at any time (Lidderdale 1951: 193–200). Therefore, the urgency procedure could itself be subject to obstruction. As for negative agenda control, a closure procedure existed, but did not allow majorities to terminate legislative debates for good. Any MP could propose a new amendment once a debate on another one was closed (Lidderdale 1951: 137). To conclude, agenda control in the Assembly basically rested with individual MPs.

The most important anti-system party of the Fourth Republic was the Communist PCF. The PCF had submitted itself to the rule of its Moscow counterpart as early as 1920 and since then committed itself to vanquishing parliamentarism (Georgel 1959: 226). However, once the major establishment parties – most notably, the Radicals, the Socialist SFIO, and the Christian Democrat MRP – were compromised by their involvement into collaboration with Nazi Germany during the occupation, the PCF participated in the de Gaulle government created in 1944 (which it eventually left once the Cold War began in 1947). Despite clearly being the most Stalinised communist party in Europe (Cole 1998: 171), the PCF polled about 25 per cent of the vote throughout the Fourth Republic. The PCF not only ideologically but also behaviourally aimed to overcome the democratic system of the Fourth Republic, most notably through obstruction of parliamentary business: 'Communists might not filibuster as systematically as Irish nationalists [in late 19<sup>th</sup> century Britain, MK] or as freely as southern senators [in the post-civil war USA, MK], but they exploited procedural loopholes with persistence and ingenuity' (Williams 1964: 218; see also McRae 1967: 55). The Communists used a variety of procedural opportunities for obstruc-



tion, most notably ad hoc proposals and demands for their urgent discussion as well as dilatory motions (Lidderdale 1951: 135–9, 273).

Apart from the Communists, there also was an anti-system right going back to the Bonapartist movement of the Third Republic (Georgel 1959: 226). Most virulent was the right-wing Poujadist UFF which polled 12 per cent in the 1956 election and outright rejected democracy (Williams 1964: 218). Apart from these anti-system parties, there also were the anti-establishment Gaullists which did not reject democracy as such, but all established parties for their failure to roll back what the Communist subversion. The Gaullist RPF disassembled after a 1951 electoral reform directed against them and the PCF. Many of its former MPs somewhat paradoxically joined other parties, its leading figures, however, focused on extra-parliamentary means to overcome the institutional setting of the Fourth Republic (Williams 1964: 38–9, 54).

The Gaullists achieved their aim. Even though in 1951, government control of the agenda was ‘found unacceptable except to a very small extent’ (Lidderdale 1951: 115), a full centralisation of agenda control was ensured by the 1958 constitutional reform. In May 1958, de Gaulle was elected Prime Minister under the condition that he could govern without need for parliamentary consent for six months and draft a new constitution (Knapp & Wright 2006: 52). The new constitution adopted in a referendum in September 1958 granted full control over the legislative agenda to the government. Article 48 stipulated full control over the legislative timetable with only one day per week reserved for questions. Individual MPs could only table bills with government consent. Article 44.3 allowed governments to put legislative proposals to the vote with admitting only those amendments accepted by it (and, accordingly, without any other) (the so-called *vote bloqué*). Finally, Article 49.3 provided the most important privilege of governments: any legislative text could be linked to a vote of confidence. If so, the bill is passed without discussion of the confidence vote was not successful, i.e. if no absolute majority of legislators voted against the government. This article contains the most important government privilege as it allows even minority governments to pass legislation as long as they are pivotal, i.e. able to split the opposition (Huber 1996a). Even though the use of Article 49.3 was restricted and opposition parties received more say concerning the parliamentary timetable in the 2009 constitutional reform (Brouard 2011), French governments enjoy full control of the legislative agenda up to today.

The standard account of the 1958 procedural reform in France implies that this path change was the result of a critical juncture, i.e. a short period during which high levels of uncertainty ensured that far-reaching decisions could be reached (see Capoccia & Kelemen 2007). Under the existential threat posed by the Algerian crisis, so this account goes, drafting authority

over the new constitution was delegated to a small group around de Gaulle, which then imposed its majoritarian procedural rules on the establishment parties (Huber 1996b: 59–60; see also Comité National 1988: VIII). These establishment parties are regarded as unable to agree on any reform throughout the Fourth Republic given that they valued the individual freedom of MPs higher than any delegation of agenda-setting powers to governments (Williams 1964: 207–9). This section, however, will argue that the ‘division of purpose within the majority’ (Williams 1964: 221) was overcome already by the mid-1950s when the establishment parties adopted a majoritarian vision of democracy against the threat posed by the Communist PCF. Therefore, the full centralisation of agenda control in 1958 was the result of a gradual change primarily aiming at excluding the anti-system PCF. The main impact of the Algerian crisis was that it shifted the balance of power within the ‘system’-camp from the establishment parties towards the anti-establishment Gaullists.

During the early years of the Fourth Republic, the establishment parties were clearly not committed to a centralisation of legislative agenda-setting. In 1952, a Gaullist proposal to centralise timetable control by weighing votes in the steering body, the *Conférence des Présidents*, was not supported by any party but – surprisingly, the Communists. The idea behind this proposal was to strengthen the Conference and align it closer to majorities on the floor in order to ensure that individual MPs lost their ability to obstruct the plenary timetable. However, both the Socialist reporter of the proposal and an MRP legislator regarded exactly this effect as the biggest flaw of the proposed reform depriving individual legislators of their privileges with respect to the timetable (Assemblée nationale, 27 March 1952: 1542–3). This indicates that the establishment parties stuck to proportional frames in 1952, regarding individual freedom of MPs more important than collective efficiency of procedures.

This picture changed within two years. Against the background of sustained Communist attempts to overthrow the plenary agenda (Williams 1964: 218–9), the establishment parties now proposed to introduce weighted voting in the Presidents’ Conference. According to the Socialist reporter of the proposal (remarkably the same person who outright rejected the same proposal in 1952), only the weighting of votes could prevent that only items appeared on the agenda which were directed towards the public rather than efficient decision-making (Assemblée nationale, 21 May 1954: 2642; for MRP legislators arguing similarly see 2644, 2647). This illustrates the growing importance of majoritarian frames. Some Radical legislators even went further and called for exclusive agenda-setting rights for the government over one half of plenary time as the only means to ensure that the ‘divisions’ of the chamber would stop to privilege minorities (Assemblée nationale, 21 May 1954: 2643, 2646). Explicit minority frames were only

used by small parties, most notably the Gaullist split-off ARS, which warned against the procedural marginalisation of minorities (Assemblée nationale, 21 May 1954: 2644).

Weighted voting in the Conference indeed reduced the rejection rate of the timetable agreed in the Conference (Buniet 1967: 79), however, balance of power between the chamber and the government remained virtually unaltered since committees failing to produce reports could still obstruct legislative business (Cotteret 1961: 819–20). Governments aiming to ensure that ‘their’ agenda was debated now increasingly began to link the timetable to votes of confidence. In 1955, the first government fell over the agenda (Williams 1964: 220). Against this background, efforts to achieve procedural reform focused on constitutional reform rather than the standing orders since 1955. Already during the 1954 debate, the Socialist reporter had admitted that the standing orders could not overcome obstruction for good (Assemblée nationale, 21 May 1954: 2642). To avoid Communist obstruction in constitution-making, reform efforts of establishment parties focused on the procedure for constitutional change envisaging a 2/3-majority requirement (Assemblée nationale, Annex 10737/1955). However, during the plenary debate, the Christian Democrat legislator Lecourt proposed to link this reform to a revision of the vote of confidence procedure aiming to enable governments to link bills to a vote of confidence in which abstentions were impossible (Assemblée nationale, 24 May 1955: 2939–40). This proposal was accepted by a large majority despite Communist attempts to relegate the proposal to the committee.

The second reading of this constitutional reform only took place when the Algerian crisis was shaking the foundations of the Fourth Republic in March 1958. Now, a joint proposal by Conservatives, Radicals, Socialists, and Christian Democrats envisaged the link between the confidence procedure and government bills which later would become Article 49.3 of the constitution of the Fifth Republic. As a Communist legislator rightly remarked, this reform rendered amendments superfluous and ensured that the government dominated the agenda (Assemblée nationale, 20 March 1958: 1772). Put differently, this reform anticipated the full centralisation of the agenda achieved in the constitution of the Fifth Republic. The frames used to justify support for this reform illustrate the importance of the anti-system threat and a majoritarian vision of democracy. Next to the Algerian crisis and the neo-fascist threat<sup>8</sup> (Assemblée nationale, 18 March 1958: 1616, 1618, 1624, 1631–5), legislators referred to the need to enhance the stability of governments (Assemblée nationale, 18 March 1958: 1625, 1635). The only real controversy surrounding the debate about the envisaged link between legislative texts and the confidence

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<sup>8</sup> In March 1958, the Paris police engaged in an antiparliamentary and anti-Semitic demonstration outside the National Assembly (Williams 1964: 52).

procedure was whether prohibiting abstentions would enhance or reduce governmental stability and authority (Assemblée nationale, 20 March 1958: 1775–7). According to the justice minister, the reform aimed to ‘create an opposition which serves as the majority of tomorrow’ (Assemblée nationale, 21 March 1958: 1839). This illustrates that all establishment parties framed the debate according to the majoritarian vision of democracy even before de Gaulle presided over the constitutional reform.

Once de Gaulle had become Prime Minister, the bargaining about the new constitution took place in three steps. During June and July, a working group drafted the constitution in accordance with an ‘inter-ministerial committee’ consisting of de Gaulle and four ministers from the establishment parties, most of which were prior Prime Ministers: Jacquinot of the Conservative Independent Republicans, Mollet of the Socialist SFIO, Pflimlin of the Christian-Democratic MRP, and Houphouët-Boigny representing the Democratic African Rally. In a second step, a Constitutional Consultative Committee (CCC) could present its opinion on the constitutional draft. The PCF was not invited to join de Gaulle’s government or to provide comments. Next, the constitution was examined by the Council of State, the highest administrative body which checked all legislation for constitutionality (but, just like the CCC, had no veto). Finally, the constitution was to be approved in a referendum on September 28 1958. The exclusion of the PCF and the majoritarian vision of democracy among the establishment parties implied that there were only limited conflicts over the three major reforms ensuring the centralisation of timetable, positive, and negative agenda control. Far from unilaterally dominating the bargaining, the Gaullists struck compromises with the establishment parties, most notably with respect to the insertion of the 49.3-procedure.

With respect to timetable control, the first draft in the Gaullist working group envisaged maximal control for the government. The original version of Article 48 foresaw not even the day reserved for parliamentary questions which made it into the final constitution (Comité National 1987: 331). Remarkably, it was not a politician, but a law professor on whose initiative the day for questions was inserted (Comité National 1987: 331, 348). Neither the inter-ministerial council nor de Gaulle’s cabinet voiced any concerns about Article 48 (Comité National 1987: 367, 484). When the CCC called for at least leaving open the opportunity that individual MPs tabled not only questions but also bills once a week and without explicit government consent (see Comité National 1988: 297), it were again de Gaulle’s ministers who vetoed this relaxation and ensured that the original version of Article 48 was passed (Comité National 1988: 650).

The *vote bloqué* ensuring positive governmental agenda control envisaged in Article 44.3 was the only stipulation which the CCC rejected upon request of a Socialist representative. He

and several Christian Democratic representatives criticised the constitutional suppression of the right of amendments. However, the Radical Triboulet supported the stipulation which ensured that governments would need to use the confidence procedure for legislation less often (Comité National 1988: 295). This implies, however, that it was not the ultimate priority of government authority and efficient legislation which was disputed in the CCC, but the way this was to be achieved: the Christian Democrats and the Socialists were the most fervent advocates of the 49.3-procedure (see below). Given that neither the inter-ministerial council (Comité National 1987: 367) nor the cabinet (Comité National 1987: 484) had any objections, the original Article 44.3 was reinserted in the constitution (Comité National 1988: 629, 649). The reporter in the Council of State subsequently praised the *vote bloqué* as the appropriate measure against sustained 'obstruction' (Comité National 1991: 140, 345).

Remarkably, even the Gaullists were reluctant to include the 49.3-procedure allowing governments to link bills to confidence motions (and hence exert full negative control over the agenda) in the draft constitution. The initial draft envisaged no such clause (Comité National 1987: 292–3). Obviously, it was the former MRP Prime Minister Pfmilin who inserted the 49.3-procedure into the draft constitution submitted to the CCC (Goguel 1959: 76; Wahl 1959: 368). This comes as no surprise since it was Pfmilin's government which had passed a similar constitutional reform back in March 1958. What comes as a surprise is that the major Gaullist negotiator, Debré, not only accepted Pfmilin's request, but even defended the article eloquently in speeches before the CCC (Comité National 1988: 506) and the Council of State (Debré 1959: 27–8).

Remarkably, the 49.3-procedure caused more controversy in the CCC than any other discussed here. The CCC finally accepted it even though a significant minority deemed the article undemocratic. According to the CCC's chair, not even in the Soviet Union, bills were passed without a vote (Comité National 1988: 494). The major alternative to the original procedure was proposed by the Radical Triboulet who called for the automatic dissolution of the Assembly if the government lost the vote over the budget at the beginning of the autumn session (Comité National 1988: 495). Debré admitted prior to the CCC discussion that he held similar preferences (Comité National 1988: 700–1, 709). The fact that Debré nonetheless publicly defended the 49.3 procedure illustrates that the Gaullists were far from imposing their will upon the establishment parties with respect to procedural reform. This also explains why the concerns of the Council of State – which called for also establishing governmental confidence towards the second chamber (Comité National 1991: 361, 478) – were discarded in the cabinet (Comité National 1991: 517, 545).

To summarise, the new rules of agenda control were not at all imposed by the Gaullists. Rather, the establishment parties had great influence on the outcome. The shared majoritarian vision also explains why Gaullists ‘vastly overestimated’ the amount of dissent to be raised in the CCC (Wahl 1959: 371).

*The Communist threat and the failed centralisation of agenda control*

In the German 1919 Weimar constitution, the question which institution was to be most important was left more open than in the French Republic. On the one hand, governments became parliamentary responsible for the first time in 1918. On the other hand, the President served as a check upon parliamentary rule, most importantly by his ability to rule by decree. The idea underlying the constitution was that Parliament and President would treat each other with ‘mutual respect’ (Loewenberg 1969: 43). However, due to the continuity of ‘minority parliamentarism’ (Ritter 1962: 46), the President was able to absorb power. Parliamentary rule effectively ended prior to the National Socialists’ coming into power in 1933. In 1931, there were only 41, in 1932, only 13 sittings of the Reichstag. Even though these facts are well established, the reasons underlying the continuity of ‘minority parliamentarism’ are not.

Just like in the French case, the Communist KPD (also strictly subordinated to Moscow rule) were the major anti-system party in Weimar Germany. In 1921, a coup by the KPD failed (Neumann 1932: 89, 92–3). Electorally, the Communists were not very successful. Up to 1929, establishment parties – most notably the Social Democratic SPD, the Left Liberal DDP, the Right Liberal DVP, and the Conservative DNVP – secured large electoral majorities up to 1929. In the 1920 election, the Communists polled only two per cent of the vote. However, in the same year, the KPD merged with the left wing SPD-split-off USPD which had received 18 per cent of the vote in 1920. In later elections, the Communists polled around 12 per cent of the vote. The right-wing anti-system party, the NSDAP, a strictly antidemocratic (and in particular antiparliamentary) and leader-oriented movement (Neumann 1932: 76, 84), initially played a less important role in Weimar Germany. Only in the wake of the 1929 Depression, the NSDAP grew electorally and received more than 18 per cent of the vote in 1930 and took power in 1933, polling more than 30 per cent of the vote.

The only attempt to centralise legislative agenda control during the Weimar Republic failed in 1922 in an attempt to alter the standing orders inherited from the Imperial Reichstag. The original proposal envisaged both a modest centralisation of timetable and positive agenda control. As for the timetable, a limit for speeches of 45 minutes was envisaged. However, this check upon filibustering of the minority was softened, when a limit of 60 minutes (which subse-

quently was less often enforced than not) was agreed (Mergel 2002: 187). More importantly, the envisaged threshold of 30 MPs for positive agenda control, most notably proposals, amendments, and the veto against the urgency procedure, was lowered to 15, effectively leaving agenda control in the hands of party groups. After 1922, no proposals to alter the distribution of legislative agenda-setting rights entered the floor of the Reichstag<sup>9</sup> and even the Bundestag (Loewenberg 2003).

Of course the French 1958 reform occurred under circumstances different from the German 1922 one which render a comparison difficult. Most notably, the experience of the Second World War and the Cold War most likely created a higher sensitivity to the Communist threat in the 1950s. However, the German 1922 reform still is the best real-world case to compare the French reform to for two reasons: first, because only here establishment parties initially committed themselves to procedural reform under fully decentralised rules of agenda control. For this reason, second, the true comparison is with the French 1952 and 1954 reform attempts analysed above. As this sections shows, the commitment of establishment parties to the majoritarian vision of democracy which occurred in France after 1952 failed to appear in Germany. For this reason, the 1922 reform was unable to trigger subsequent and further-reaching reforms (as the 1954 French reform succeeded to do).

Even though the most intransigent obstruction in the German Reichstag only occurred in the wake of the economic depressions of 1924 (Communists) and 1930–33 (Communists and National Socialists), the 1922 reform of the standing orders also took place against the background of Communist obstruction (Mergel 2002: 168, 438–9; Loewenberg 1969: 43). By the end of 1920, the President of the Reichstag, the Social Democrat Löbe, publicly called for procedural reform, most notably reducing the length of plenary speeches in order to ensure the swifter passage of legislation (Mergel 2002: 157). When Löbe introduced the 1922 reform in the Reichstag, he explicitly referred to the Communists' 'overproduction of speeches' which 'damaged the image of the Reichstag' (Reichstag, 14 November 1922: 8969) and denounced the fact that the Communist MPs talked ten times longer than those of any other party (Reichstag, 14 November 1922: 8970). In June 1921, open fighting broke out in the plenary of the Reichstag after an Right Liberal MP's interjection during a Communist speech (Mergel 2002: 158). This incident was even mentioned in the parliamentary committee report preparing the reform of the standing orders

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<sup>9</sup> The sole exception was the 1931 reform which essentially rendered financial bills subject to admission by the Council of Elders (Reichstag, Annex 698/1931). However, this reform occurred once parliamentarism in Germany had effectively ceased to exist. For this reason, it is not analysed here.

(Reichstag, Annex 4411/1922: 4869). This suggests that the Communist KPD posed a credible anti-system threat for the establishment parties.

With respect to legislative agenda control, the committee report preceding the plenary debate about the 1922 reform of the standing orders proposed two reforms (Reichstag, Annex 4411/1922). Regarding timetable control, the committee suggested to limit plenary speeches to 45 minutes. This limit was subject to adaptations in the Council of Elders, which should also receive the right to determine the overall length of debates. With respect to positive agenda control, the committee proposed to raise the threshold for legislative amendments, proposals, and other procedural initiatives (such as the veto against the application of the urgency procedure) from 15 to 30 MPs (out of 459, i.e. at 15.3 per cent). The obvious bone of contention of this reform was that the Communist group in the Reichstag comprised of 15 legislators.

During the plenary debates, legislators remarkably justified this proposal without reference to majoritarian frame or, at best, using mixed frames. The SPD reporter referred to the need to adapt the quorums to the bigger size of the Reichstag which grew from 397 to 459 MPs (Reichstag, 17 November 1922: 9050). This was an astonishingly weak argument given that the legislature grew by 15 per cent while the threshold was doubled. Löbe used a mixed frame and, on the one hand, asserted that shorter speeches were 'beneficial for our work' but, on the other hand, also pointed out that, given that all speeches were addressed at the public at large, they had to ensure that 'interest for the work of parliament' did not decline (Reichstag, 14 November 1922: 8970; for similar mixed frames by Centre and Conservative MPs see 8971, 8971). Exclusively majoritarian frames were only adopted by Liberal legislators. For them, the fact that speeches were primarily directed towards the public was not contradicting but rather justifying restrictions upon them since the central task of the Reichstag was to 'carry out national business' (Reichstag, 14 November 1922: 8975; see also 8976).

The most important reason why the establishment parties and in particular the SPD failed to adopt to a majoritarian vision of democracy was the legacy of irresponsible 'minority parliamentarism' during the Imperial period. This allowed a Communist speaker to explicitly remind the Social Democrats of the repressions the SPD was subjected to (and had protested fervently against) prior to 1918. The Communist speaker, himself a former Social Democrat, referred to the 1902 tariff trade bill conflict and the 'gagging' of the Social Democratic minority (see above, p. 13). In a similar vein, a Conservative speaker also reminded the SPD of its history of exploiting procedural loopholes (Reichstag, 14 November 1922: 8972). Since the SPD had indeed called for proportionalism in legislative procedures throughout the Imperial period, this criticism prompted the SPD's left wing to change its mind. In September 1922, the SPD re-united with the USPD's



right wing (the USPD Left having joined the Communists). Even though the SPD formerly supported the first committee report on procedural reform drafted in May 1922, the newly united VSPD did not unanimously support procedural reform any more. Rather, it called for lowering the threshold for positive agenda control (Reichstag, 14 November 1922: 8979), which meant that only the party's right wing still was in favour of procedural reform.

Accordingly, a new committee report was commissioned, which, upon its delivery in late November 1922, suggested to leave the 15 MP threshold valid throughout the Imperial period unaltered (Reichstag, Annex 5349/1922). The majority of the SPD now called for informal agreements in the Council of Elders, especially with regard to restrictions of the length of debates and speeches (Reichstag, 4 December 1922: 9180–1), a proposal the SPD's right wing opposed (Reichstag, 4 December 1922: 9181). Once the SPD shied away from supporting the procedural reform, even the modest centralisation of agenda control initially envisaged could not be achieved. The threshold for positive agenda control remained unaltered at 15 MPs (Reichstag, 20 November 1922: 9076–7, 9081). Regarding the limitations of the length of speeches and debates, a compromise was found upon an SPD proposal (Reichstag, 4 December 1922: 9200): speeches were to be limited at 60 minutes (the Communists were against any restrictions), but debates could only informally (and hence consensually) limited in the Council of Elders. The reform was finally adopted by a 'large majority', only the Communists voted against it (Reichstag, 12 December 1922: 9278).

The preference for consensual and informal decision-making with respect to legislative agenda-setting expressed in the 1922 reform of the standing orders was bound to fail in two respects. Firstly, consensual decisions proved to be impossible to achieve against anti-system obstruction. This, secondly, increased the propensity of the establishment parties to declare the 'state of emergency' and rule by decree in the wake of the 1922 non-reform (see Geyer 2014: 364–7). This, in turn, undermined the democratic legitimacy of decision-making. The persistence of the proportional framing of procedural reform explains why any rationalisation of parliamentary procedures after 1922 (as triggered by the French 1954 reform) was always sacrificed once 'the ability of the Reichstag to mirror of the electorate was called into question' (Mergel 2002: 190). The establishment parties failed to commit themselves to procedural reform through showing support for a majoritarian vision of democracy. This explains why the second general reform of the standing orders remained stuck in the committee stage for good (see Reichstag, 11 De-

ember 1929: 3512).<sup>10</sup> Rather, the establishment parties' ongoing formal preference for the proportional vision of democracy and their informal preference for bypassing parliamentary procedures altogether could easily be exploited by anti-system parties committed to overthrow democracy altogether.

## Conclusion

The analysis presented in this paper addressed the desideratum to more closely look into the role of norms for changes in legislatures (Dion 2011: 753). It suggests that parties are indeed able to create 'procedural cartels' (Cox & McCubbins 1993, 2005, 2011), but only if opposition to the creation of these cartels is confined to anti-system parties and if the members of the cartel share a proportional vision of democracy. Only a coordination around a majoritarian framing of procedural reform enhances the bargaining power of reform proponents and minimises the risk of defections. This explains why the full centralisation of agenda control is a rare event. This result resonates with a core assumption of the literature on parliamentary minority rights, namely that power relations in parliament (i.e., partisan interests) explain the distribution of procedural privileges (Binder 1997; Dion 1997). Against the background of anti-system obstruction, majoritarian frames of procedural reform mutually reassure establishment parties supporting a centralisation of agenda control that none of them will defect during the reform process.

The causal mechanism also explains why procedural rules in old democracies are more majoritarian than in newer ones (Carroll, Cox & Pachón 2006: 154, 164). In older democracies, the probability of anti-system obstruction triggering a centralisation of agenda control is simply higher, especially since anti-system sentiments are severely constrained by the disappearance of alternatives to democratic rule such as fascism and communism. The German case studies illustrate that neither tactical obstruction (1906) nor an anti-system threat not accompanied by support for a majoritarian vision of democracy (1922) is not sufficient to trigger substantial procedural reforms.

From a normative perspective, the paired comparisons presented here suggest that government dominance of the agenda as achieved in the United Kingdom and France should not be mistaken as evidence of de-parliamentarisation but rather indicates that a parliamentary system was able to successfully overcome an anti-system threat. However, this normative claim needs to be further corroborated by empirical analyses.

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<sup>10</sup> The only later reform of legislative agenda-setting achieved in 1931 remained partial (as it concerned only financial bills) and came too late given that parliamentary democracy in Germany ceased to exist already in 1930 (Ritter 1962: 31).

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