The Logic of Legislative Minority Rights

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Abstract

In this paper, we address three questions regarding minority party rights in legislatures. First, why does a majority allow for minority rights? Second, what motivates the use of the rights by legislative minorities? And third, given the majoritys self-interested motivation for the provision of minority rights, why do minority parties continue to use them? Prior research has attempted to answer these questions individually by focusing on either the role minority rights play in fulfilling legislatures normative system function or the isolated strategic calculations of legislative majorities and minorities. By considering actors strategies in isolation, these theories do not fully incorporate the interactions between majorities and minorities. Our approach unifies the multiple facets of minority rights through the use of a formal model. In our model, a majority party proposes a policy and a minority party decides to use their rights to bring the majority's proposal to the public's attention. Both parties are concerned with appeasing core supporters while simultaneously trying to improve their electoral prospects by catering to an undecided voter. Our model shows that given a level of uncertainty about the public's preferred policy, the minority will prefer to use rights to prevent the passage of extreme legislation. Additionally, the majority prefers to let the minority use its rights, which at times results in free publicity for a popular policy. Our conclusions suggest that legislative minorities can influence policy and that majorities need not be solely concerned with political insurance to provide for minority rights.

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Introduction

Do legislative majorities benefit from providing their parliamentary opposition with procedural rights?[1] If so, why do legislative minorities exercise these rights when doing so may be advantageous to their political opponents in government? In what circumstances will legislative minorities be motivated to use their rights despite this potential tradeoff? These questions are central to understanding the presence, implementation, and efficacy of minority rights in legislatures. These procedural rights, such as committee seats, agenda setting powers, and confidence motions, serve to promote democratic accountability of the government while also ensuring the proper representation of minority views in the lawmaking process (e.g. Powell 2000). As such, understanding not only the source of these rights, but also the motivation and impact of their use, is critical for addressing central normative questions about the quality of democratic government, responsiveness, and representation.

That the procedural rights afforded to legislative minorities factor into answering these questions is not, of course, a new argument. Indeed, scholars have examined both the impetus for the allocation of parliamentary rights (e.g. Binder 1997; Dion 1997) as well as opposition party strategies for their use (e.g. Williams 2011). While such studies provide compelling theoretical accounts for these individual questions regarding minority legislative rights, they do so without fully considering the theoretical and empirical implications of their arguments for other aspects of the larger puzzle of minority rights. The result of this piecemeal approach to studying minority legislative rights is a disjointed theoretical and empirical picture, in which scholars develop arguments that, while satisfying their initial question, lack the theoretical leverage necessary to address the possibility that the *why* and *when* of minority rights may be inherently related. Put another way, the strategic calculations carried out in the existing literature focuses on *either* the majority or the

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[1]As a matter of terminology, we use the terms "majority" and "government" interchangeably. Similarly, we use the terms "minority" and "opposition" interchangeably. This is a stylistic point, not a theoretical one.

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minority instead of the two simultaneously.

In this paper, we address this by presenting a theoretical account of minority legislative rights that incorporates the motivation for majorities to confer parliamentary rights to minorities, the motivation for minorities to use those rights, and the way in which these motivations interact to influence behavior. In particular, we argue that the public nature of many prominent minority rights has an immediate and direct effect on electoral prospects that drives the strategies of legislative majorities and minorities. We contend that legislative majorities agree to allowing opposition parties parliamentary rights because doing so makes it difficult for the opposition to balance its public image between appearing congruent with the mass electorate and maintaining the continued support of its core partisans. In making our argument, we draw on, and contribute to, an extensive literature that views the legislative process, and by extension legislative procedures, as inherently political in nature. (e.g. Binder 1997; Cox and McCubbins 2005; Dion 1997; Huber 1996; Martin and Vanberg 2005; Williams 2011; Groseclose and McCarty 2001; Crisp and Driscoll 2012). We diverge, however, from these existing theories' view of the provision of rights strictly as a short term loss by presenting an account of how majorities can *benefit* from the existence of minority rights (but see Park 2012). Specifically, we contend that minority rights can present an opportunity for the majority to credit claim for popular policy proposals and thus improve its chances of winning undecided voters.[2] We then further this account by extending its logic to the question of minority parties' strategies for the use of these rights. Borrowing from the literature on role of core party supporters (e.g., Schofield 2003; Aldrich 1995) and the proximity model of voting (see Adams and Grofman 2005), we identify a potential incentive for minority's to use their procedural rights *despite* the potential electoral benefits for the majority by doing so. To

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[2]We use the term undecided voter instead of the more common terms median or pivotal voter because the term "undecided voter" refers to a larger set of voters. In two party systems these terms generally mean the same thing, but in multi-party systems there may be undecided voters dispersed across the ideological spectrum. Furthermore, it is not viable for all parties to capture all undecided voters. For instance, a far left party and a center left party may compete for an undecided left wing voter, while parties on the right will not try to appease this voter, because they know they will never have any chance to win her vote.

preview the results of our theoretical model, we find that minority parties which are less concerned with the undecided voter, find themselves in politically favorable climates, and which have access to less costly rights, will make the most use of their rights. Additionally, from the majority's perspective, we find that majority parties will rarely alter their policy decisions in the face of opposition rights, and that in some cases, the majority actually prefers to have the opposition use its rights in order for the majority to claim credit with the undecided voter. From this account, we ultimately provide a more complete and logically consistent theory of minority parliamentary rights that answers the three critical questions posed at the outset of the paper.

The paper is organized as follows. In order to avoid confusion over what rights we are referring to in this paper, we provide in the next section a brief description and overview of the legislative procedures we have in mind when using the term "minority legislative rights." We then present the extant literature on minority legislative rights. The third section outlines our theoretical contribution. The fourth section then presents our formal model of the theory. We then conclude.

A Brief Overview of Minority Legislative Rights

Legislatures are complex institutions replete with procedures, processes, rules and norms. How we determine which of these features are minority legislative rights in the sense that we mean, then, is central to our argument and accompanying theoretical model. The procedures we have in mind are not necessarily labeled as "minority rights." Some rules can be initiated by an opposition party but fail to have a substantive impact on the legislative process. Alternatively, some rules can be initiated by an opposition and have a substantive impact on the legislative process but that impact be unknown to voters. These concerns leave us to first develop a definition of minority rights and then identify the procedures that meet our criteria.

We are not, of course, the first scholars of minority rights to face this definitional issue. Binder (1997) recognized this concern in her study of the development of minority

rights in the U.S. Congress. To address the need for a consistent definition, she specified minority rights as "procedural advantages protected from arbitrary change that enable members of the minority party to amend, debate, or obstruct the majority agenda" (21).[3] We borrow this definition of minority rights, albeit with one critical modification. The goal of this paper is to provide as general a theory of minority rights as possible, particularly in terms of scope. As such, we view our theory as one independent of any individual legislature or political system. This approach has three major consequences for how we define minority rights. One such consequence is the need to account for the multiparty nature of many parliaments. To account for this, we view minority rights as rights accorded to *any* party not in government (which by definition would be a minority), regardless of the level of cooperation between these parties. The second consequence is that our conception of minority rights is at the *party* level instead of the individual member level Binder references. We specify this difference because we wish to include parliamentary procedures whose implementation requires the efforts of a recognized party group in the legislature, or at least a bloc of legislators. Such a view of minority rights accounts for the presence of strong party cohesion in many parliamentary systems where individual members have limited power or wield that power solely through the parliamentary party. This specification simply broadens the set of legislative procedures and rules that we can consider to be a minority right. Third, while we limit our definition to rights granted to legislative minorities, our view of minority legislative rights is not necessarily restricted to procedures implemented in the legislative arena. While the bulk of procedures and rules we are interested in are implemented during the legislative process, we wish to include those rules that grant minority parties the ability to affect legislation in non-legislative institutional venues through their capacity as legislative actors.

These modifications allow us to include a considerable number of institutional fea-

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[3]Binder goes on to specify a selection protocol based on two criteria: identification and effect. Our definition does not go into such specifics at this point, as we are not, at this point, focused on providing a scheme for identifying specific instances of rights for empirical analysis. That said, the modifications we make here map nicely onto her criteria and may serve a highly useful purpose for any future empirical work.

tures under our definition. First, our conceptualization captures the standard procedures identified by legislative politics scholars as core minority rights. This includes procedures that affect the majority's ability to control the agenda and conduct legislative business. Thus, we consider, for example, rules addressing the ability of a minority party to amend or rewrite a bill, obstruct the passage of a bill, and place a limit on the time a bill can remain on the agenda as minority rights. Additionally, we follow the example of past scholars in recognizing the influence minority parties can hold over the legislative process through committee systems (i.e. the distribution of committee chairmanships and committee powers) (e.g., Strom 1990; Döring 1995; Powell 2000).

We also grant an expansive view of the minority's debate rights by including procedures beyond those that dictate the rules of debate for specific individual bills. Several prominent features of parliamentary politics, particularly no-confidence motions, question time, and interpolations, are rights afforded to opposition parties that need not always be part of the formal process for passing a bill. These procedures do, however, allow opposition parties to make public statements regarding the government's legislation, and as such, we argue, they have the potential to affect the government's agenda. Similarly, we consider abstract judicial review to be a minority right due its public nature and obvious capacity to affect a government's legislative agenda (Vanberg 1998). Despite not taking place in the legislative arena, abstract judicial review is, in most instances, instigated by legislative opposition parties. Furthermore, such judicial review tends to bring media attention along with it, allowing the opposition the opportunity to highlight the government's legislation. Indeed, it is the ability to draw public attention to government policy that connects the various procedures and rules as minority rights as we have defined them.

Literature

In employing such an expansive definition of minority rights, we inevitably find ourselves in conversation with several substantive literatures on minority rights and their usage. Indeed, the very presence and persistence of the minority rights has presented leg-

islative scholars with one of the more puzzling phenomena of legislative politics. Similarly, attempts to understand the strategies opposition parties employ in the implementation of these procedures has yielded a substantial corpus of work focused on the consequences of this continued existence of minority rights. After all, if minority rights do in fact impact the legislative process, then developing a theoretical account of agenda control, broadly construed as we have done above, is necessary to construct an overall account of how policy is made (Laver and Shepsle 1994; Döring 1995).

A fundamental puzzle regarding minority rights is the question of why majorities allow for their existence and how this rationale explains variation in the level of rights across time and countries. A simplistic answer to this puzzle is that minority rights exist as a result of a belief on the part of the public in a democratic ideal that includes deliberation between minority and majority views. This story would suggest that rights exist in those societies where such a value is held, and further that variation in the amount of rights given to legislative minorities is a function of variation in the content and strength of those beliefs.

Such an account, however, fails from its first principles. It provides no explanation for how a majority can credibly commit to protecting the minority's rights. Its foundational assumptions speak only to an amorphous public without identifying the motivations of the actors charged with creating and perpetuating minority rights: legislators. Legislators may have many motivations for their actions, but one that is widely accepted throughout the study of legislative politics is that they have one primary goal: reelection (Mayhew 1974). And, yet, even from this basic assumption it is unclear how a public's democratic beliefs would lead to rights. Minority rights, as defined above, can take many forms, not all of which can be readily identified by citizens as serving to enhance a minority's ability to engage in the legislative process.

If it is not the public that drives demand for minority rights, then who does? Scholars working from the rational choice framework, which posits that legislators are goal ori-

ented actors whose actions are taken in pursuit of those goals[4], have suggested that it is legislators themselves that have the incentive to create and maintain these procedures. As the most famous (and studied) legislative institution, the U.S. Congress has been at the focus of these theories. Binder (1997) proposes an argument based on party strength and cohesion. According to her partisan theory, minority rights are created only under certain conditions, specifically when the majority is too weak and lacks the necessary cohesion to pass a strictly restrictive set of rules. As a result, minority rights are "packaged" in a larger set of rules. Otherwise, strong majorities have the capacity to push through their own preferred rules, resulting in a few rights for the minority party. In contrast, Dion (1997) posits that smaller majorities have little room for error in maintaining their winning coalition, and, as a result, enact rules that restrict the ability of the opposition to hinder the majority's pursuit of its agenda.

In addition to these explanations for the ebb and flow of minority rights in the U.S. House, other scholars have focused on the most famous minority right of the U.S. Senate, the filibuster. Although the filibuster has undergone some change over the Senate's history (especially in recent history), its persistence has presented a puzzle to scholars. Just as those concerned with the presence of minority rights in the House of Representatives asked, the question of why majorities allow for the continued existence of obstructionist procedures such as the filibuster remains a point of debate. On the one hand, Binder (1997) argues that the procedure has become institutionalized, and, as a result, it is too costly for the majority to attempt to curtail it (see, e.g., Binder 1995). On the other hand, Wawro and Schickler (2006) argue that the majority retains the filibuster because the threat of doing away with it is sufficient to keep the minority in check.

Such theories, however, focus on the "supply" side of minority rights; that is, they speak only to the rationale for a majority to provide rights and maintain (or curtail) them. In doing so, they lack a proper account for the "demand" side of rights; that is, they do

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[4]Such an approach makes no claims about the source(s) of these aims; rather it assumes that they exist and then proceeds to provide a theoretical account of behavior in light of those goals.

not provide an internally consistent explanation for when minorities opt to exercise these rights. This is, of course, problematic, as one of two dynamics is likely the case. It may be that the majority is simply stuck with the rules and retains them as a form of insurance against future electoral defeat. Alternatively, majorities have some immediate reasoning for giving their opposition rights and this reasoning effects the minority's strategy.

Consider the first account, that majorities are effectively given little choice about allowing minority rights to exist. If majorities can do little to remove rights and are constrained in doing what they can by the strength and cohesion of their own party, then it is unclear what constrains the minority from effectively attempting to engage in perpetual obstruction. It may be the case that at some unknown level of obstruction the majority will be able to respond by curtailing rights, but extant theories are silent to what such a level would be or what a minority party's strategy would be to maximize their use of rights without crossing the threshold. While repeated prisoners' dilemma models have been used to illustrate the tradeoff of long term benefits for short term costs (e.g., Fudenberg and Maskin 1986; Calvert 1995), such an approach still faces the same shortcoming of lacking a theoretically compelling explanation for the inherent interplay between the decision to give, retain, and ultimately implement rights. If majorities provide and keep rights because they view them as a long term benefit, then what clear incentive is there for the minority to not use them at every available turn?[5]

This concern is not be problematic if legislative minorities are not strategic in using their rights. If they use their rights for some nonstrategic purpose, such as a belief in fulfilling some normative function[6], then there is no need for the theories of the provision and maintenance of minority rights to be extendable to the question of their implementation.

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[5]This theoretical concern is a feature of many political insurance theories meant to address commitment issues faced by those in power (legislative majorities, governments, etc.). For example, scholars have used a similar argument for the creation and perpetuation of independent judiciaries. The issue with such theories is that, while they provide an intuitive explanation for the creation of the institutions, they lack a compelling argument for when those judicial institutions are able to effectively exercise their authority. Similarly, theories of minority rights face the challenge of explaining not only why the rights exist, but also how, and under what circumstances, they can be exercised.

[6]Here we have in mind what Huber (1996) referred to as "system functions," such as legitimizing policy.

The strategic nature of minority rights would be limited to their provision. Considerable scholarship, however, has presented compelling accounts to the contrary. Indeed, scholars have found strong evidence of legislative oppositions/minorities acting strategically in a variety of capacities, not least of which is their use of procedural rights (e.g., Dewan and Spirling 2011). For example, consider one of the most prominent minority rights in parliamentary politics, the no-confidence motion. Scholars of parliamentary systems have shown the no-confidence procedure to have a strategic nature beyond its original normative intent. Williams (2011) uses a formal signaling model to identify how opposition parties can use the procedure to improve their own electoral prospects. Similarly, Somer-Topcu and Williams (N.d.) find that opposition parties use no-confidence motions as sources of information about their electoral prospects and adjust their positions accordingly. It is not surprising that opposition parties might use their rights strategically; there is no clear theoretical basis for considering the majority party to be strategic and yet its opposition counterparts not to be.

An alternative possibility is that legislative majorities create and sustain minority rights for some immediate purpose instead of a long term, political insurance purpose. In such an account, minority rights, or at least some minority rights, could be construed as being beneficial to the majority. As a result of this benefit, there is an incentive for the majority to create and sustain such rights. The literature, however, has, with few exceptions, portrayed minority rights as being strictly a loss for the majority. In other words, most theories make the assumption that, ceteris paribus, a majority would always prefer to give no rights whatsoever to their opposition. While on one level an intuitive assumption, especially given the strategies employed by minority parties to use rights for their own benefit, it is also questionable given the degree of discretion and control the majority has in designing the rights. Indeed, this is in part the point Wawro and Schickler (2006) regarding the filibuster, specifically that the majority has at its disposal the ability to effectively remove the filibuster via the "nuclear option," and yet it does not do so. Their work, along with the lion's share of scholarship on minority rights, has not, however,

followed up on this point to consider how the majority might benefit from such rights. To our knowledge, the most recent argument to this effect is Park (2012), which considers why the majority party in a parliament would allow minority party members to sit on committees. Park (2012) suggests that the majority can gain valuable information about policy outcomes that ultimately aids the majority in crafting its preferred policy. The result of this informational benefit is that the majority party actually has an incentive to allow for minority party representation on the committee.

For an account based on the argument that the majority benefits from the exercising of minority rights to be plausible, however, it must address the issue of the minority's implementation of those rights that aid the majority. The issue, in fact, is fairly straight-forward: if the use of some right or procedure helps the majority, why would the minority ever exercise those rights? In other words, a theory based on the majority's benefit from rights must also account for why the minority helps them gain said benefit. For example, in Park's (2012) model, the minority makes a speech, from which the majority can update its beliefs about the state of the world. One could, however, back the model up one step further and ask why, given the possibility of helping the majority, the minority makes a speech at all or even agrees to a bipartisan committee instead of a majoritarian one.[7] When considering other potential majority-beneficial rights, the same theoretical implications remains: why does the minority help the majority?

It is clearly not the case that scholars have ignored the puzzles presented by minority legislative rights; the topic has generated a great deal of research. The issue with much of the extant research, however, is that it does not effectively study minority rights in a holistic manner. Rather, individual pieces of the puzzle (why give rights, when to use rights, etc.) are studied without considering the implications of the argument for other aspects of the puzzle. As a result, the literature suggests explanations for why rights exist and are maintained, but these explanations lack a compelling account for how those

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[7]This is not meant to be a critique of Park (2012) per se, but rather an attempt to point out possible implications of the way in which he frames the presence of minority rights.

rights are used. Similarly, theories on the strategies employed by minority parties take the existence of those rights as exogenous despite the substantial literature pointing to rights being endogenous to their respective institutions (but see, e.g., *Procedural Choice in Majoritarian Organizations* 2013). In the following sections, we present a theory and subsequent formal model of minority rights that seeks to address these shortcomings.

Theory

For a theory to overcome these concerns, it must provide logical, internally consistent answers to three questions. First, why does the majority provide minority rights? Second, what is the minority's strategy for their use? And, finally, why does the minority use its rights given the majority's rationale for granting them? In answering these three questions, we present a theory that yields implications for several puzzles regarding minority rights while simultaneously providing a unified account that ties those puzzles together.

To this end, we focus on the public nature of minority rights as we have defined them.[8] Many procedural rights at minority parties' disposal can have mechanistic effects on the legislative process. We, however, argue that their ability to increase public attention is the key feature of minority rights that motivates both their provision and implementation. Thus, we contend that the primary effect, or at least intended effect, of minority rights (as presented here) is to inform the public about the policy proposals of the majority. Previewing our argument, we posit that majority and minority parties face electoral incentives from two entities, the median voter (the public) and their respective core supporters. The result of this dual principal relationship is that the parties face a tradeoff between catering to the median voter, who we contend is concerned with policy matching the state of the world, and to the core voter, who is concerned with policy matching her ideology. To fully explicate our theory, we consider each of the three questions posed at the outset of this section in turn. Doing so will demonstrate how the combination of the

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[8]Recall that we specified the minority rights we are interested earlier in the paper. In this definition, we consider the ability to affect the majority's agenda in an inclusive manner, meaning that we include actions that influence public attention and (potentially) opinion as characteristics of minority rights.

public nature of minority rights and the dual principal relationship between parties, the public, and core voters creates an environment in which the majority can benefit from minority rights and the minority can be incentivized into exercising those rights despite the majority's benefit.

A theory on the use and effect of minority rights requires some fundamental account for the provision of those rights in the first place. Although the formal model we will present in the next section takes the existence of rights as exogenous, it is imperative that we provide a clear, theoretical reasoning for why we do so that is consistent with the remainder of our theory. Put another way, we make assumptions in our model about the existence of rights, and by doing so, we need a theoretically compelling account for why those assumptions are justified.

As minority rights make the majority's policy proposals public (or at least do so with some probability), our account must consider why and when a majority would prefer greater public attention to its policy proposals. A considerable literature dating back to the Median Voter Theorem (e.g., Downs 1957) has argued that electoral success comes to the party with the policy closest to the pivotal voter. This proximity model argues that parties win votes by choosing the policies that most closely match the preferences of voters (for a review, see, e.g., Adams and Grofman 2005; Alvarez 1997). For policy choices to translate into votes, however, voters must be aware of the choice; in terms of Mayhew (1974), the legislator(s) must be able to credit claim. It is here that the publicity of minority rights comes into play. Actions such as committee speeches, filibusters, abstract judicial review cases, and so on all bring the governing majority's policy choice to the public's attention. Put another way, minority rights can be a source of free publicity for the majority. Thus, we essentially are arguing that minority rights serve as a mechanism by which a legislative majority can gain an opportunity to more effectively credit claim for policies preferred by the public.

Of course, how beneficial a system of minority rights can be for such a purpose is dependent on the strategy employed by the actor(s) employing them, the minority party

or parties. What's more, those parties have an obvious incentive to use their rights for their own electoral gain; that is, to hamper the majority's reelection prospects. This presents us with the two questions specifically address by our formal model. First, what motivates the use of minority rights? And second, why would a minority party use its rights if doing so might give the majority an opportunity to effectively credit claim? To answer these questions, we consider the electoral demands placed on an opposition party and its effect on the usefulness of minority rights.

Political parties face more than just the general electorate when pursuing reelection. The pivotal voter is clearly important for victory, but parties also require a core of supporters to provide volunteers, candidates, financial support, and so on. As such, these core supporters play a critical role in campaigns and have a substantive effect on policy choices (e.g., Miller and Schofield 2003; Schofield 2006). Furthermore, such supporters tend to be considerably more politically aware and engaged than the average voter (e.g., Campbell et al. 1960), as well as being less concerned with winning elections than maintaining the ideological purity of the party (see, e.g., Aldrich 1983, 1995). This combination of political awareness, importance for electoral success, and strong ideological policy preferences can present a powerful influence on parties' behavior.

The public nature of minority rights gives minority parties an avenue for appeasing these core supporters. Although the efficacy of such rights on actual policy outcomes may either be minimal or difficult for the party to take credit for[9], they do present an opportunity to publicly represent their core supporters' views. Given their strong ideological beliefs and investment in the party, it is reasonable to expect that core supporters expect a return on their investment from their party and representatives. That is, party activists, i.e. the core, expect their party to fight in the legislature for their preferred policies. Minority parties, then, can use their procedural rights as public platforms, from which they can communicate to their core that they are actively pursuing their preferred

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[9]We will address the effect of rights on policy outcomes briefly in the next section and conclusion. Although this paper does not directly consider this question, our model produces results suggestive of the conditions under which rights will affect policy outcomes.

policies. A failure to use those rights, however, would make the party (and its contingent of legislators) appear weak willed or otherwise incompetent in the eyes of the core. As core supporters are more likely than average voters to be aware of the procedures at the party's disposal, a failure to act may be construed as a form of tacit agreement with the majority's proposed policy. In short, a minority party can use its rights to demonstrate its competence to its core and consequently improve its valence with these critical constituents.

To this point, we have identified both a rationale for a majority to provide minority rights and strategy for the minority to use those rights. We argue that a majority can benefit from minority rights because they increase public attention, and as such can improve the majority's ability to credit claim popular policy choices. We further argued that a minority party can use their procedural rights to increase their valence with their electorally-critical core supporters. What is left, then, is to consider why the minority would would engage in an attempt to improve its valence with core supporters when doing so would improve the majority's ability to credit claim. To answer this question, we consider the relative importance of the median (undecided) and core voters.

The legislators constituting the opposition or minority party need the continued support of their core supporters; otherwise, they may lose the financial and material support of the core and risk not be selected to represent the party in the next election.[10] This constraint poses a dilemma for the minority party. On the one hand, they can ignore the core to deprive the majority of an opportunity to credit claim, but risk the electoral backlash of their primary supporters. On the other hand, they can appease their core supporters by engaging in obstructionism or using other procedural rights, but in so doing grant the majority publicity. We argue that this tradeoff will lead minority parties to strategically moderate their use of procedural rights.

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[10]An obvious recent example of this dynamic is the Tea Party and the Republican Party in the United States. Tea Party activists have often produced and backed candidates to challenge incumbent Republican legislators they view as not having been sufficiently conservative. It is this dynamic that we are referencing here.

To summarize our theory, we contend that minority rights serve as a form of public credit claiming for the majority and a source of valence for the minority. What makes this system incentive compatible, however, is that the minority is hamstrung by its core supporters. That is, the majority creates a system in which the minority is effectively "given just enough rope to hang itself." In giving the minority some rights, the majority places the minority in a difficult position between appearing incompetent or complicit to its core constituency and providing the majority essentially free publicity for its policy proposals. The following section will present a analytical model of incomplete information to formalize this tradeoff and identify the conditions under which the dynamic we have identified will occur. Of course, there will also be instances in which the majority would prefer its policy choice *not* be publicized. Our model will account for these conditions and demonstrate the ways in which both actors account for their respective core supporters and the undecided voter. Ultimately, the model will give insights into how the interaction of majority and minority party strategies can yield a system of minority rights that is both beneficial to the majority and, unexpectedly, consequential for policy outcomes.

Formal Model

In modeling the motivation for the use of minority rights we face a difficult challenge. We aim to provide a general model that captures rights available to opposition parties in both congressional and parliamentary systems as well as two-party and multiparty settings. This requires that we narrow our focus to only those players, decisions, and motivations that are general across all democratic systems. Consider a legislature with two parties: Party A and Party B.[11] Party A is the government, or majority party, and as such, gets to pick a policy. We assume, for the sake a simplicity and to emphasize the important elements of our model, that policy can take one of three values on the real

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[11]In the model we refer to these as single parties. However, Parties A and B could be thought of to represent a coalition of parties which make up the government, a single party in the government, a single party in the opposition, or a group of parties in the opposition working together; our model aims to capture the interactions between any set of legislators with access to policy making authority and another set of legislators without policy making authority.

number line: 0, 1, or 2.[12] Party B is the opposition, or minority party, and it chooses between using or not using whatever procedural rights are available to it. Thus, we are assuming for the sake of this model that opposition rights are an all or nothing endeavor. In reality, parties can choose to use their rights at various levels, and there might be a random element to when the use of rights garners significant attention by the media and public to make legislative proceedings salient. Nevertheless, we choose to model them as a binary choice, assuming that if parties decide to use their rights at all, they will do so at a level which is sufficient to garner public attention. Further, we assume that opposition parties must pay some cost to using their rights. This cost represents the opportunity costs of using minority rights instead of pursuing other activities, such as interacting with constituents, fundraising, scrutinizing the actions of the bureaucracy, etc. Also, increases or decreases in the cost can be thought to represent variations in the level of rights used by minority parties: the cost of proposing an amendment to a bill in a committee is lower than the cost of filibustering or proposing a motion of no-confidence.

We assume that each party has a preferred policy. Party A, the government, prefers policy to be set at 0, while Party B, the opposition, prefers policy to be set at 2. Thus, we are assuming that the government will never set a policy more radical than its ideal point and also no more radical than the ideal point of the opposition (see also Martin and Vanberg, 2005). This conceptualization of policy space allows us to focus on some of our key questions. First, we can investigate how the policy divergence between the opposition's ideal and the government's policy impacts the use of rights. Second, it allows us to focus on the position taking consequences of opposition rights, which is our main focus, as opposed to how parties obtain their most preferred policy. In fact, we assume that opposition rights have no direct impact on the final policy adopted other than through the government anticipating the use of rights and this causing the government

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[12]We acknowledge that this is a simplification, and of course that a continuous unidimensional policy space is may be a better representation of political conflict in modern democracies. Furthermore, we acknowledge that the dynamics of position taking and emphasizing policy selectively to undecided voters and core voters should apply equally to multi-dimensional policy spaces. We leave these more complex models to future work.

to moderate policy in order to avoid a public backlash.

As stated above, our focus is on how opposition rights can be used to make both the government and opposition parties' actions publicly visible. We consider three groups of the public: the core supporters of each of the two parties and an undecided, or median, group. The core supporter of each party has the same ideal point as her party, and this is common knowledge. The core supporters of each party, however, respond differently to the actions of their party. We assume that core supporters care about being represented, but because the nature of choices available to parties differ, so will their ability to represent their core supporter. The core supporter of the majority party cares only about the policy chosen. In contrast, the core supporter of the opposition party cares about having her views represented in the legislature, which is accomplished when the opposition party makes use of its rights.[13] The opposition core supporter punishes her party more when rights are not used and the policy chosen by the majority is more distant.

In contrast, the ideal point of the undecided voter is a random variable. The parties do not find out what the ideal point of this voter is until the end of the game, but they are informed about the probabilities of the undecided voter having each of the three policy preferences. Aside from the distinction we make in ideal points, we further assume that the core supporters and undecided voters vary in their information about the legislative process. We assume that core supporters are always informed about the actions of their representatives. In contrast, the undecided voter is unaware of what is happening in the legislature unless the opposition uses its rights to publicize legislative proceedings. The public, both core and undecided groups, are, however, not players in our model: they enter into the utility functions of the parties.

Thus, we see what motivates the parties in our model: maximizing the balance of support from the core supporter against support from the undecided. To capture the fact that appealing to these two groups is not equally valuable for some parties, we include a weight, $M > 0$, on the portion of the utility function accounted for by the undecided voter

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[13]This can be thought of as being akin to the types of representation described in Pitkin (1967).

for each party. This weight reflects multiple potential situations. It could represent the way legislators value their activities when they expect to face a difficult primary battle, or it could represent parties which feel they have no chance of ever swaying the undecided voter, because their policy position is likely far from the undecided voters position, and as such, focus only on appeasing their core supporters. Alternatively, a large value of M represents a party that feels it has a good chance at swaying the undecided voter, or a party which feels that its core supporters are certain to be motivated, regardless of its actions in the legislature. We now present the following simple game which includes the features described above:

1. Chance chooses the undecided voter's ideal policy, $\omega \in \{0, 1, 2\}$ with probabilities $Pr(\omega = 0) = q$, $Pr(\omega = 1) = r$, and $Pr(\omega = 2) = 1 - q - r$. Neither Party A nor Party B observes this choice, but they do know the values of q and r.

2. Party A chooses a policy, $b \in \{0, 1, 2\}$.

3. Party B chooses to use or not use their rights, $\rho \in \{0, 1\}$. If they use their rights they pay a cost $\kappa > 0$.

4. The game ends. The final policy adopted is b, and parties receive payoffs based on how their core supporter and the undecided voter respond to the policy proposed in the legislature as well as any costs incurred in the legislative process.

We specify the utility functions for Party A, the government or majority party, as follows:

$$U_A = M_A \rho (2 - |\omega - b|) - |b|$$

As can be seen, there are two sections to the utility of the government. First, when the opposition makes use of its rights, the government gains utility based on how close their policy is to the public's preferred policy. When ω and b are the same then Party A gains $2M_A$ units of utility, but when the public's preferred policy is opposite the government's policy, then the government gains 0 utility from having its policy made public. Second,

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Party A loses utility the further their chosen policy is from their core supporter's ideal policy of zero. This reflects another assumption we make: that core supporters' preferences are not effected by what the undecided voter prefers, and that core supporters do not care about doing everything possible for the party to win elections; instead, core supporters are solely policy driven. Now, we turn to the utility function for the other player, Party B.

$$U_B = -M_B \rho(2 - |\omega - b|) - (1 - \rho)(2 - b) - \rho\kappa$$

In contrast to Party A, there are three elements to the utility function of Party B. First, as with the government, part of Party B's utility depends on how the undecided voter reacts when opposition rights are used to make policy outcomes salient. However, Party B can only lose utility from the undecided voter, as opposed to Party A, which gains utility from the undecided voter. We can think of this contrast as representing the potential for credit-claiming: the opposition cannot claim credit for the government's policy.[14] This represents part of a trade-off that opposition parties face when they make use of their rights. If the undecided voter's policy preference matches the bill chosen by the government, then the opposition has only succeeded in increasing the governments support among undecided voters, and hence, a loss of utility. Note, that this loss of utility is less when the government's policy choice is different from the undecided voter's. When Party A chooses policy 0 and the undecided voter's preference is 2 (or vice versa), Party B suffers no loss of utility at all in the eyes of the median voter. In this case, Party A is unable to claim any credit for good policy, and as such, does not look any better in the eyes of the undecided voter (meaning that the opposition will not look any worse). As with Party A's utility, this is again weighed by the parameter M_B, which captures how important the undecided voter is to Party B.

The second element of Party B's utility is how their core supporter responds to their actions. Here we see again that the core supporter does not care about the preference of

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[14]For another example with zero-sum credit claiming utility see Groseclose and McCarty (2001).

the undecided voter - the utility garnered by Party B from its core supporter comes from the government's policy choice and the choice to use rights. When rights are not used, the the core supporter punishes Party B according to how far away the government's policy is from the her ideal. To avoid this cost, however, Party B can use its rights, which turns this section of the utility function to zero. This can be viewed as the opposition actively representing their constituents in the legislative process, ensuring that their core supporters' ideas and beliefs are at least voiced in the legislature. This is the tradeoff mentioned above: Party B must weigh the cost of using rights to appease their core supporter against potential backlash they will suffer in the eyes of the undecided voter for making public the government's policy. The third element of Party B's utility is the cost they pay for using their rights, which is described above. They pay this cost when rights are used, and not otherwise.

Theoretical Results

The solution concept for this game is Perfect Bayesian Equilibrium, considering only pure strategies[15]. To begin explaining the behavior of the parties, we examine under what circumstances Party B will use its rights. First, consider the case of bills such that $b = 0$. In this case, Party B will use its rights when the following inequality holds:

$$M_B(-2q - r) - \kappa + 2 > 0$$

Looking at the above inequality, we see the conditions which are necessary for the use of rights. First, it will be easier for the opposition to use its rights when it puts less weight on the undecided voter (when M_B is small). Second, when it is less likely that the undecided voter's preferred policy will be 0 or 1, the opposition will also be more likely to use their rights. Thus, opposition parties should use their rights more in politically favorable situations. Third, we see that as the cost of using rights increases it becomes less likely that the opposition will use their rights. A similar inequality exists for bills

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[15]Furthermore, for simplicity and clarity, we discuss only equilibrium path behavior and strategies in this section

such that $b = 1$. It is as follows:

$$M_B(-r-1) - \kappa + 1 > 0$$

This intuition behind this inequality is similar to the above inequality. The less the Party B weights the undecided voter's support, the more likely it will be to use rights. However, in terms of the undecided voter's preferences, we now see that the opposition is most likely to use its rights in situations where it is highly unlikely that $\omega = 1$. Again, increases in the cost of using rights are associated with decreases in the use of rights.

Finally, we consider the case in which Party A proposes $b = 2$. In this case, Party B will never make use of its rights. This is intuitive: we would not expect to see an opposition party trying to change the government's policy or obstruct it if the opposition was getting everything they wanted. Formally, $\rho = 1$ given $b = 2$ is a strictly dominated strategy.

Putting these three cases together, we see the development of some trends. The further Party A's policy choice (b) is from the opposition's ideal point, the less strict the conditions become for the use of opposition rights. These are the situations in which the opposition has the most to gain by using its rights to show their core supporter that her views are being represented in the legislature. We also see that as the likelihood of the undecided voter's ideal policy being 2 (i.e as $1 - q - r$ increases), the conditions for the use of rights becomes less strict. This is intuitive: the more the opposition expects that the public will be on their side, the more the conditions necessary for them to use their rights becomes less strict.

We now turn to the decision of Party A, given their anticipation of when Party B will choose to use their rights. First, we consider the case in which Party B will not obstruct any proposal: in this case the dominant strategy for Party B is simply to propose their ideal point, $b = 0$. Next, we consider the case in which the only bill that will trigger the use of opposition rights is $b = 0$. Here as well there is a dominant strategy: Party A will always do best to propose their ideal policy, regardless of how they weight the undecided

voter and the probabilities of the undecided voter's ideal point. This is because staying at $b = 0$ will cause no loss of utility from the core, and at worst, will result in a gain of no utility from the undecided voter. In contrast, switching to $b = 1$ will cause Party A to lose support for their core and not to get and credit-claiming benefits from the undecided voter.

However, when Party B will use their rights on bills of both $b = 0$ and $b = 1$, we see that Party A's choice of policy depends on whether the following inequality holds:

$$M_A(2q - 1) + 1 > 0$$

When this inequality holds, Party A will propose its ideal point, $b = 0$; otherwise, it should propose $b = 1$. This threshold depends primarily on how heavily Party A weighs support from the undecided voter. When $M_A < 1$ then this inequality will always hold; in other words, the less that Party A cares about the undecided voter, the more often they will choose $b = 0$. The threshold also depends on the probabilities of the undecided voters preferred policy. We see that as it becomes increasingly likely that the undecided voter's preferred policy is zero (in other words, as q increases), the conditions for this inequality to hold become less strict. In fact, once $q \geq .5$ then Party A will choose $b = 0$ regardless of how the weight given to the undecided voter.

Both of the players in our model are similarly informed about the probabilities relating to the undecided voter's ideal policy. Furthermore, neither of them learn any information about the undecided voter's ideal point until payoffs are realized. As such, their beliefs are the same at every information set, namely that: $Pr(\omega = 0) = q$, $Pr(\omega = 1) = r$, and $Pr(\omega = 2) = 1 - q - r$.

Thus, we now present the equilibrium strategies:

Party A: When either no bills or only bills of $b = 0$ will trigger the use of opposition rights, set $b = 0$. When bills of $b = 0$ and $b = 1$ trigger the use of rights, set $b = 0$ if $M_A(2q - 1) + 1 > 0$; else set $b = 1$.

Party B: When $M_B(-2q - r) - \kappa + 2 > 0$ set $\rho = 1$ for bills of $b = 0$. When $M_b(-r - 1) - \kappa + 1 > 0$ set $\rho = 1$ for bills of $b = 1$. Always set $\rho = 0$ for bills of $b = 2$.

Some properties of the equilibrium strategies are noteworthy. Considering the opposition party's decision, we see that the conditions become less strict for the use of rights as bills increase in distance from the opposition's ideal point. Also, we see that the less opposition parties care about appeasing the undecided voter, the less strict the conditions become for the use of rights. This implies that we should see that most obstructive and publicizing behavior from parties that have little interest or little belief that they could be the overall winners in the next election or among parties in which keeping the core voter engaged is most important. Furthermore, we see that as its becomes increasingly likely that the undecided voter's preferred policy is the same as the opposition party's, the more likely it is that the conditions for the use of rights will be met. This supports the finding of Williams (2011), who finds that no-confidence motions, an important minority right, will be more common when the opposition party feels like it is a better government option than the current governing party, as having a policy similar to that of the undecided voter is similar to being a better potential government than the current government.

Turning to the majority party, Party A, an interesting feature of the equilibrium is that the majority not only prefers to propose its ideal bill when that is the only bill that will trigger the use of opposition rights, but that it actually gets more utility when its ideal bill is subject to opposition rights than not. This is the case in which the majority not only gets its most preferred policy option, but also, thanks to the opposition, it garners approval from the undecided voter.

An unexpected result we see in the model involves which policy the government chooses: despite modeling opposition rights as having no effect on policy outcomes, under certain conditions, the anticipated use of rights will moderate policy choices by the government. This occurs when the conditions are met for the opposition party to use its

rights on bills of $b = 0$ and $b = 1$ and when the inequality $M_A(2q - 1) + 1 > 0$ does not hold. Under these conditions, the anticipation of the opposition rights makes the majority moderate its policy in order to earn the favor of the undecided voter. However, if conditions changed, such as the cost (κ) of opposition rights increasing, and the opposition would no longer use their rights on bills of $b = 1$, then we would see Party A returning to proposing $b = 0$. This hints that being able to commit to using rights will help the opposition party achieve its policy goals, albeit it at a cost to its electoral goals. Furthermore, this moderating effect of opposition rights hints at the desirability of opposition rights from the perspective of the undecided voter. Not only do opposition rights help the undecided voter accumulate information about the quality of her representation, but in this case, they allow an undecided voter with an ideal point of either $\omega = 1$ or $\omega = 2$ to obtain better policy that she would otherwise. Thus, opposition rights can in this case serve to benefit not only the majority party and minority party, but also a range a voters.

Conclusion

This paper set out to address the allocation and use of legislative procedural rights in a holistic framework which accounts for the strategies and motivations of both halves of the legislature: the minority and majority parties. We ask why would a majority party ever give rights to the minority in the first place, if as is generally thought, the use of these rights only ever prohibits the majority from accomplishing its goals? Our answer is that majority parties allow for the opposition rights because the use of these rights will often increase the salience of politically popular policies of the majority. This answer, however, only led us to another question: why, despite the majority receiving free publicity, would a minority party still use the rights available to it? Our answer for this question is that parties are interested in winning the support of multiple groups of citizens. First, they are interested in winning the support of median, or undecided, voters. Second, parties are concerned with maintaining the support and engagement of their core supporters. Winning adequate support from both groups is essential for any party to win an election

outright, but in multi-party and primary election situations, as well as in some political climates, parties might be relatively more interested in appeasing one of these groups of citizens over another.

Answering this question led us to yet another question: under what conditions will minority parties make use of their rights in order to garner credit in the eyes of their core supporters as well as undecided voters? To get at all three of these questions, we created a general model of the use of parliamentary rights by minorities which incorporates these position taking considerations for both parties. Leaving the availability of rights and the efficacy of opposition rights in raising the salience of legislative proceedings to the side for the time being, our model provides insights into how opposition rights effect the majority's decision to set policy and the conditions under which the minority party will choose to make use of their rights. Importantly, we find that minority parties which are less concerned with the undecided voter, find themselves in politically favorable climates, and which have access to less costly rights, will make the most use of their rights. On the majority party side we find that majority parties will rarely alter their policy decisions in the face of opposition rights, and that in some cases, the majority actually prefers to have the opposition use its rights, so that the majority can claim credit with the undecided voter.

There remain several interesting avenues for further work on this topic. We briefly discussed the logic behind majority parties allocating rights to minority parties, but excluded it from our model. A more complete model will begin with the decision on the level of rights to allocate to the minority party. This model will help us to understand the great variety in procedural rights available to opposition parties across democratic systems. Additionally, our model unexpectedly led to a situation in which the majority moderates its policy choice when opposition rights are used, resulting in a policy closer to the preference of the undecided voter. If we conceptualize of the undecided voter as the median voter, than this suggests that opposition rights might lead to policy outcomes closer to the median voter, a normatively desirable outcome. Furthermore, it suggests

that over time the public might become aware of this policy moderating effect, and in turn, come to value the continuing provision of minority rights within legislatures. Finally, an important future development will involve empirical tests of the implications of our model. Specifically, our model has implications for how public opinion, issue divisiveness, the size of parties (as a representation of how important the undecided voter is), and the presence of contested primary elections (which increase the important of keeping the core supporters engaged) will impact the use of minority rights.

The argument presented in this paper is important because it incorporates several aspects of the use of procedural rules to more fully account for the usage of these rights. Previous literature has focused on either the majority party or minority party in exclusion. Our argument considers the motivations and decisions of both parties simultaneously, allowing us to understand their interaction. We argue that the usage of minority rights is not always a net loss for majority parties, and that there are situations in which the majority can gain from the usage of minority rights. However, the ultimate decision to use opposition rights belongs to opposition parties, and here, we argue that this is the result of a tradeoff between keeping core supporters engaged and minimizing the credit-claiming the government can do for legislative proposals that are in line with the general public's preferences. In doing so, we have taken a step towards answering the questions of *why* and *when* regarding minority rights.

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