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THE INSTITUTIONAL FOUNDATIONS OF COMMITTEE POWER

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Legislative committees have fascinated scholars and reformers for more than a century. All acknowledge the central strategic position of committees in legislatures. The consensus, however, centers on empirical regularities and stylized facts, not on explanations. We seek to explain why committees are powerful. We formulate an institutionally rich rational-choice model of legislative politics in which the sequence of the legislative process is given special prominence. Committees, as agenda setters in their respective jurisdictions, are able to enforce many of their policy wishes not only because they originate bills but also because they get a second chance after their chamber has worked its will. This occurs at the conference stage in which the two chambers of a bicameral legislature resolve differences between versions of a bill. A theory of conference politics is offered and some evidence from recent Congresses is provided.

Legislative committees have fascinated scholars and reformers for more than a century. The early treatise writers (Bryce 1893; McConachie 1898; Wilson 1885), reformers early and modern (Bolling 1965; Norris 1945), and contemporary scholars (Eulau and McCluggage 1984; Smith and Deering 1984) all acknowledge the central strategic position of committees in legislatures. Differences of opinion concerning the role of committees persist, but there is a substantial consensus on a number of stylized facts:

Committees are "gatekeepers" in their respective jurisdictions.

Committees are repositories of policy expertise.

Committees are policy incubators.

Committees possess disproportionate control over the agenda in their policy domains.

Committees are deferred to, and that deference is reciprocated.

There is, however, a troublesome quality to this consensus. The items in this list (and there could undoubtedly be more) describe or label committee power, but they do not explain it. Explanations of these empirical regularities require a theory. In the case of each of these stylized facts, that is, a theory is needed to determine why things are done this way. In many cases it is insufficient to refer to institutional rules because many of the practices alluded to above either are not embodied in the rules at all or have evolved from them only slowly. It is therefore necessary to begin the theoretical analysis from first principles.

There is an added advantage to a theory that begins with first principles: although formulated to accommodate some stylized facts, such a theory will

yield new implications so that it may be employed as a discovery procedure. Consider some anomalies that the theory we formulate below can explain:

In a bicameral system, how is it possible that change in the composition of a committee or a majority in one chamber is sufficient to lead to policy change (Weingast and Moran 1983)?

Why are explicit procedures in the House of Representatives to diminish the gatekeeping monopoly of committees (specifically the discharge petition) rarely employed; and when they are employed, why do they rarely result in law?

How is it that committees maintain their influence over policy change when, once they "open the gates" by bringing forth a proposal, majorities can work their will in ways potentially unacceptable to the proposing committee?

Why do members appear to defer to committees, even to the point of defeating amendments to committee proposals that have clear majority support?

Our explanation for these stylized facts and anomalies emphasizes the enforcement of agreements and arrangements. The legislative world is one in which agreements are forged among autonomous agents. But it is a world lacking instruments or institutions that exogenously enforce such agreements (Axelrod 1981, 1984; Laver 1981). Agreements and arrangements, therefore, are subject to cheating, reneging, and dissembling. When an arrangement persists over long periods—long enough to allow students to regard it as a relatively robust empirical regularity—then either it is cheat-proof and self-enforcing, in the sense that no one has any motive to depart from the arrangement, or there exists a, sometimes subtle, *endogenous* enforcement mechanism. Although the logic of self-

enforcement may apply, we believe that there is much to be learned from a theory incorporating explicit enforcement mechanisms.

In our view, the explanation of committee power resides in the rules governing the sequence of proposing, amending, and especially of vetoing in the legislative process. We demonstrate a surprisingly important role for the last stage of the legislative process, the conference procedure, in which bicameral differences are resolved. The *ex post* adjustment power conferred on committees in this forum provides them with subtle yet powerful means to affect the voting and proposing power of other members on the floor during the earlier legislative stages. Indeed, we show that the deference given committees on the floor is a natural consequence of the *ex post* adjustment powers wielded by committees in conference.

In the first section of this paper we briefly describe some alternative theoretical explanations of committee power. In each instance, we make explicit what we regard as the kernel of truth it contains, but we also point out crucial missing elements that ultimately render it incomplete. We provide the basic concepts of our own explanatory framework in the second section. In the next two sections, we develop the logic of committee enforcement emphasizing the importance of the manner in which the various stages of legislative deliberation are sequenced. In the fifth and sixth sections we provide both theoretical and empirical detail on the institutionalization of enforcement in the conference committee procedure. In the last section we pull our arguments together and address some extensions and applications.

Theoretical Foundations of Committee Power

A number of ideas exist in the traditional legislative literature about the foun-

dations of committee power; some of these are at least a century old. A young legislative scholar in 1885, for example, characterized the veto power of congressional committees by referring to them as "dim dungeons of silence" (Wilson 1885, 69). As Bryce described it a few years later, "a bill comes before its committee with no presumption in its favour but rather as a shivering ghost stands before Minos in the nether world" (Bryce 1893, 157). At about the same time, the minority leader and soon-to-be Speaker of the House, Thomas Brackett Reed, emphasized another aspect of committee power—the advantages of information and expertise. He referred to the typical House committee as "the eye, the ear, the hand, and very often the brain of the House. Freed from the very great inconvenience of numbers, it can study a question, obtain full information, and put the proposed legislation into shape for final action" (cited in MacNeil 1963, 149). A third important aspect of committee power is proposal power. Although employed only occasionally in the very first Congresses, the practice of referring bills to a standing committee and not debating them in the full House until reported by that committee evolved during the period of the Clay speakership (1811–25). By 1825 it had become standard operating procedure in the House; and in the twentieth century, with rare exception, bills originate in committee.

Taking some liberties, then, we may describe the foundation of committee power as consisting of gatekeeping, information advantage, and proposal power. Underlying these is a system of deference and reciprocity, according to which legislators defer to committee members by granting them extraordinary and differential powers in their respective policy jurisdictions.

What is amazing about these foundations of committee power is that nowhere are they carved in granite. Committees, as an empirical matter, are veto groups that

may choose to keep the gates closed on a particular bill. But parliamentary majorities have recourse to mechanisms by which to pry the gates open, the discharge petition being only the most obvious. Why, then, do parliamentary majorities only rarely resort to such mechanisms? That is, why does the system of deference to committee veto judgments survive?

The question of survival also arises concerning information advantage and proposal power. As empirical matters, these are robust regularities. Yet the Speaker of a contemporary Congress is relatively free to break any alleged monopoly of proposal power held by committees through his right of recognition in House proceedings, his referral powers, his control of the Rules Committee, and his power to create ad hoc and select committees for specific purposes. Likewise, the contributions to information and expertise from the lobbyist denizens of Washington's "K Street Corridor" and an expanded congressional staff system mitigate the alleged informational advantages of committees.

Several reasons may be put forward to explain how a cooperative system of reciprocated deference is nevertheless sustained. The first and least persuasive is that no one ever has any reason to challenge it. The committee system and its division of labor, it might be alleged, are so successful in parceling work that anyone interested in a particular subject easily obtains membership on the committee that deals with it. Under these circumstances, deference becomes self-enforcing because there are no incentives to upset the applecart. Needless to say, this explanation denies or ignores interdependence among policy areas, fiscal dependencies, and the prospect that some issues—trade, energy, and health, for example—are not amenable to a neat division-of-labor arrangement because their incidences are both substantial and pervasive.

A second, related rationale to explain deference is not so sweeping. It suggests that while the matching up of work with interested members through committee assignments is not perfect, it is nevertheless sufficient to discourage violations of reciprocity (Shepsle 1978). This view, recently popularized in more general setting by Axelrod (1984), argues that the long-term advantages of deference outweigh the occasional short-term disappointments and so serve to maintain the system.

To sum up, the argument for deference to committees claims that the benefits to be secured by violating deference and challenging a committee are either small (as in the first rationale) or not worth the costs (as in the second rationale). We believe this argument is incomplete and that its premises are not always plausible. There are, first of all, too many opportunities in which it *is* worthwhile to oppose (or to be seen to oppose) committee positions (Weingast and Marshall 1986). Second, the terms of deference to committees are extremely vague. Third, the behavioral forms violations may take range from minor opposition (say, going on record as having some doubts about a committee bill) to major revolt (introducing a "killer" amendment or initiating a discharge petition). In short, the concepts of reciprocity and deference are at best convenient terms of discourse. Their very vagueness, combined with what we believe are frequent and compelling occasions in which a legislator will not wish to honor them, greatly reduces the power of self-enforcement as an explanation of committee power.

The puzzle of committee power remains. The idea of deference as a form of self-enforcing *ex ante* institutional bargain among legislators cannot account for the disproportionate influence of committees in their respective jurisdictions because it cannot explain away the temptations to defect from the bargain. To be persuasive,

deference must be sustained by more explicit enforcement mechanisms. We discuss three such mechanisms that committees employ to bolster their institutional influence: (1) punishment, (2) *ex ante* defensive behavior, and (3) *ex post* defensive behavior.

A committee may discourage opposition to its actions (or nonactions) by developing a reputation for punishing those who oppose it. The current chairman of the House Ways and Means Committee, a Chicago machine Democrat who knows how to keep score, was once reported to have said of a particularly obstructionist colleague, "I wouldn't support anything he wanted, even if the deal was for everlasting happiness" (personal interview). There is also the now classic story of the efforts by Senator James Buckley of New York to reduce the scale of the nefarious Omnibus Rivers and Harbors Bill. With the "help" of the Chairman of the Senate Public Works Committee, Buckley's assault on the pork barrel produced only one result—the striking of a project for the state of New York (Reeves 1974). These anecdotes aside, it would appear that the capacity to punish and the general use of a tit-for-tat strategy by the committee provide precisely the basis for the emergence of the cooperative relationship between a committee and the rest of the parent chamber so elegantly described by Axelrod (1981, 1984).

This explanation, in our view, is most convincing in the distributive politics realm in which the committee's bills are (1) of significance to a substantial number of legislators, (2) disaggregatable by legislator, and (3) introduced on a regular basis. The first condition requires that there be some prospect for punishing any given legislator in a manner that the legislator and his or her district cannot ignore—a condition not met by some highly specialized committees like Agriculture or Merchant Marines and Fisheries. The second requires that the means to punish

be available so that threats are credible. The third requires that occasions to punish be readily available. For many committees, punishment of this sort is available only in blunt form, if it is available at all.

A committee may induce cooperative, deferential behavior not only by (threats of) *ex post* punishment but also by *ex ante* accommodation. Surely a committee tries, when putting a proposal together, to anticipate what will pass in the parent chamber. Similarly, it will weigh reactions to its killing a bill before actually doing so. Such anticipatory behavior, however, is hardly a basis for committee power but rather is an indication of its limitations. There are other noncommittee groups that share veto power with a committee and may use that power against committee proposals. Majorities may "veto" committee bills by voting them down. The Rules Committee in the House may refuse to grant a rule for a committee bill, thereby scuttling it. The Speaker may use his power to schedule legislation and to control debate in ways detrimental to the prospects of a committee bill. A small group of senators in the U.S. Senate may engage in filibuster and other forms of obstruction. Any individual senator may refuse unanimous consent to procedures that would expedite passage of a committee bill. In short, veto groups are pervasive in legislatures; committees are but one example. Consequently, *ex ante* defensive behavior by committees, necessary though it may be owing to the existence of other veto groups, cannot be regarded as an influence mechanism; rather it constitutes a recognition of the influence of others.

Having greatly qualified the significance of self-enforcing reciprocity as an explanation of committee power, we have sought more explicit enforcement mechanisms. We acknowledge a role for *ex post* punishment and *ex ante* defensive behavior. But neither strikes us as an

entirely satisfactory enforcement mechanism because the conditions for the use of punishment are not met in all circumstances and *ex ante* defensive behavior accommodates the interests of others rather than enforcing a committee's own desires. There is, however, a third mechanism with which a committee maintains its dominance as veto group and primary policy proposer in its jurisdiction: *ex post* defensive behavior. We believe this to be the most potent enforcement mechanism and the least understood or appreciated.

Suppose a committee possessed an *ex post veto*. Suppose that, having molded a bill and reported it to its chamber and having allowed its chamber to "work its will," a committee could then determine whether or not to allow the bill (as amended, if amended) to become law (or, in a bicameral setting, to be transmitted to the other chamber). *The ex post veto, we assert, is sufficient to make gatekeeping and proposal power effective, even though their effectiveness appears to most observers to be the product of nothing more than informal reciprocity arrangements.*

Consider gatekeeping first. Suppose that some legislative majority could, by a discharge petition or some other bullyboy tactic, threaten to pry the gates open. If there were an *ex post* committee veto, then (aside from symbolic position taking) there would be little point to this sort of exercise. The *ex post* veto would ensure that changes in the status quo adverse to the interests of a decisive committee majority could be denied final passage. Indeed, the history of the discharge petition suggests precisely this. Even on those relatively rare occasions when a discharge petition obtained the necessary support (218 signatories), the bill of which the committee was discharged almost never became law.

Now consider proposal power. Imagine a major amendment to a committee proposal favored by a chamber majority but

opposed by a committee majority. The amendment might or might not pass, but surely even its most ardent proponents would have to consider whether the amendment were distasteful enough to the committee to trigger an ex post veto. The existence of an ex post veto would encourage the amendment proponents to work out a deal in advance with the committee, would lead to a pattern in which most successful amendments were supported by a committee majority as well as a chamber majority and, in those few instances where anticipation did not discourage amendments obnoxious to the committee, would trigger such a veto.

In the remainder of this paper, we explore in an analytical fashion the ex post veto as the enforcement mechanism that allows reciprocity and deference to work smoothly. Although our model is abstract and thus is consistent with any number of different operational forms of an ex post veto, we argue that the conference procedure, in which differences in legislation between the chambers of a bicameral legislature are resolved, provides the kind of forum in which committees get a "second crack" at a bill. We believe this kind of ex post enforcement mechanism clarifies and explains why various forms of cooperation work in legislatures such as the U.S. Congress despite their transparent fragility and vulnerability.

General Framework

We employ the well-known spatial model of committee decisions, so let us here briefly review its central ingredients. The legislature consists of n agents ($N = \{1, \dots, n\}$), each possessing well-defined preferences (continuous and strictly quasiconvex) over the points of an m -dimensional Euclidean space. We assume the space is partitioned into *policy jurisdictions*: X , a k -dimensional subspace of R^m , is a typical jurisdiction. Similarly, we assume N is partitioned into *commit-*

tees, with $C \subset N$ the committee whose jurisdiction is X . We shall assume that agent preferences are *separable by jurisdiction* so that we may focus exclusively on X . Thus, in X , agent i has ideal point x_i and his or her preferences are representable by strictly convex indifference contours.¹ For any $x \in X$, agent i 's *preferred to set* is defined as

$$P_i(x) = \{x' \in X | x' \succ_i x\},$$

where \succ_i is i 's preference relation. $P_i(x)$ is simply the convex set bounded by i 's indifference curve through x ; it contains all the points preferred by i to x . If D is the class of decisive majority coalitions so that $A \in D$ means $|A| > n/2$, then we may define the *win set* of x as

$$W(x) = \{x' | x' \succ_i x \text{ for all } i \in A \text{ for some } A \in D\} = \bigcup_{A \in D} \bigcap_{i \in A} P_i(x).$$

In words, $W(x)$ is the set of alternatives in X that command majority support over x . Finally, we denote a distinguished point, $x^0 \in X$, as the *status quo*.

We note in passing the best known characteristic of the spatial pure majority rule model we have just described: for almost every configuration of preferences and any $x \in X$, $W(x) \neq \emptyset$. That is, except under highly unusual circumstances, no alternative is unbeatable. This property of win sets ensures that certain sets we describe below are nonempty.

We endow the committee C in jurisdiction X with certain agenda powers. Throughout we assume that C is a *monopoly gatekeeper* in X . No change in x^0 may transpire unless C comes forth with a proposal.² That is, C has *ex ante veto power*. Second, C has *monopoly initiation power*: (1) changes in x^0 in jurisdiction X must first be proposed by C ; but, (2) once a proposal is made by C , competing proposals (normally in the form of amendments to C 's proposal) may be offered by others. Monopoly initiation power is proposal power under an *open rule*.

Finally, a committee that may withdraw one of its proposals after it has undergone modification on the floor or that is empowered to modify further or reject such proposals in some other forum (say, in a conference proceeding with its counterpart in the other chamber of a bicameral legislature) is said to possess *ex post veto power*.

In describing the various agenda powers of committees, we have in mind a specific sequence of decision making in X . Committee C may initiate the legislative process by proposing a bill to alter the status quo, x^0 . Some potential proposal, x , may make a decisive committee majority worse off compared to x^0 , that is, $x \notin P_c(x^0)$.³ In this case the committee will *not* bring forth the proposal but instead will exercise its *ex ante* veto power by keeping the gates closed.

If, on the other hand, there is a proposal $x \in P_c(x^0)$, which also passes on the floor, that is, $x \in W(x^0)$, then the committee might wish to bring forth a proposal. However, it is confronted with an ambiguous prospect. Should it open the gates by proposing $x \in P_c(x^0) \cap W(x^0)$, it is entirely possible that x will be amended and that the final outcome $x' \in W(x^0)$ will have the property that $x' \notin P_c(x^0)$. Thus, by opening the gates the committee could get "rolled" on the floor and left worse off than it would have been had it kept the gates closed (Denzau and Mackay 1983). If, however, C has a second move in the sequence, that is, C has an *ex post* veto, then it can protect itself from getting rolled on the floor (or restore the status quo if it does get rolled) and can influence the strategic moves of agents at earlier stages of the process.

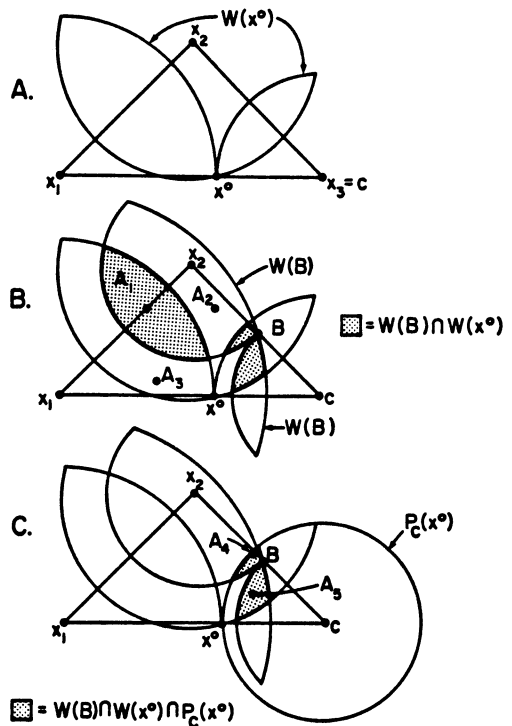
In our thinking about the institutional foundations of committee power, we place great weight on the implications of sequencing. A committee with only the power to move first—by opening the gates or keeping them closed—essentially possesses only blocking power. Once it

opens the gates almost anything can happen,⁴ and the committee is virtually powerless to alter the subsequent path. In contrast, a committee with powers at subsequent stages, especially the penultimate stage, not only affects the subsequent outcome but also influences the antecedent actions of others by conditioning their beliefs and expectations.

Rolling the Committee: Limitations of Gatekeeping and Initiation Power

To provide more precise intuition, we develop an example that illustrates committee power under various proposal and veto conditions. Figure 1a presents a three-person legislature, operating in a two-dimensional jurisdiction by majority rule. Agent 3 has various committee

Figure 1. Effect of Ex Post Veto



powers. The points x_1 , x_2 , and x_3 are agent ideal points and, to simplify the figure, we place the status quo, x^0 , on the 1-3 contract locus; our argument does not depend on this feature. The set $W(x^0)$ consists of two "petals" that are composed of the points preferred to x^0 by the floor majorities $\{1,2\}$ and $\{2,3\}$, respectively.

Ex ante veto power alone is strictly a defensive tool. If x^0 lies close to x_3 , then the committee can prevent subsequent change by blocking any proposal. Figure 1b has the same setup as in Figure 1a, along with various motions— B , A_1 , A_2 , A_3 . We have also identified both $W(x^0)$ and $W(B)$. At x^0 a motion like $A_1 \in W(x^0)$ will be vetoed by the committee (thereby frustrating the preferences of a majority) since A_1 is less preferred than x^0 . Should the committee bring forth a motion like B (since $B \in P_c(x^0)$), it foregoes any future influence on the course of events. Once the gates are opened with the motion B , amendments like A_1 are in order and, in this example, $A_1 \in W(B) \cap W(x^0)$. Thus, any point in the shaded region of Figure 1b, like A_1 , could result since all such points defeat both B and x^0 in majority contests. (We assume here the *amendment procedure*, according to which an agenda consisting of x^0 , some bill B , and amendments A_1, \dots, A_t are voted in pairwise fashion in reverse order with the losing alternative deleted.) In sum, the ex ante veto—the power to bring motions to the floor or bottle them up—is a defensive tool and, while it might be valuable to the committee because of its potential threat value, it cannot assure very much for the committee.

Joining monopoly initiation powers to the ex ante veto does not improve matters much for the committee. Initiation power allows the committee to propose points like $B \in P_c(x^0)$. But such bills, once proposed, take on a life of their own over which the committee has little subsequent control. Indeed, as we have just seen, B is vulnerable to an amendment like A_1 since

A_1 can beat $B(A_1 \in W(B))$, and then it can defeat the status quo ($A_1 \in W(x^0)$). Since $A_1 \notin P_c(x^0)$, a committee proposal can lead to a decline in committee welfare precisely because the committee has no future control once it opens the gates.⁵

We have shown how limited gatekeeping and initiation power are as instruments of committee control. The former is essentially negative and the latter provides no guarantees unless expanded to proscribe all amendments to or modifications of committee proposals (closed-rule environment). Inasmuch as we rarely encounter legislatures, empirically, that prohibit modifications of committee proposals altogether, we are left with the conclusion that committee power is essentially negative. Any attempt by the committee to promote positive changes in an open-rule environment invariably results in the possibility of a decline in committee welfare. For any committee bill, B , that is, it is almost always the case that $W(B) \cap W(x^0) \neq \emptyset$ (i.e., committee bills are vulnerable to amendment); however, because $W(B) \cap W(x^0) \not\subset P_c(x^0)$, amended committee bills may leave the committee worse off. In short, once the committee opens the gates, it risks getting rolled on the floor.

Rather than jumping to the conclusion that it is inevitable that a committee will get rolled if it opens the gates, let us make some finer distinctions. It is almost always the case that no matter what proposal (B) a committee offers, there are successful modifications to it that may be offered and agents with the incentive to do so ($W(B) \cap W(x^0) \neq \emptyset$). However, such modifications need not harm the committee. In Figure 1c it may be seen that $[W(B) \cap W(x^0)] \cap P_c(x^0)$ is nonempty. The two shaded regions comprise the locus of modifications in B that both pass the legislature and leave the committee better off than with x^0 . An amendment like A_4 will still be opposed by the committee (because $A_4 \notin P_c(B)$) but

is nevertheless an improvement over x^0 in the committee's preferences ($A_4 \in P_c(x^0)$). An amendment like A_5 will actually be supported by the committee ($A_5 \in P_c(B) \cap P_c(x^0)$). Thus, it is entirely possible for a committee with gatekeeping and initiation powers to enhance its welfare, even in the absence of a closed rule. But there is nothing inevitable about it: while a committee might actively promote and support modifications like A_5 , and ultimately accept modifications like A_4 , there is nothing to prevent amendments like A_1 , and there are strong incentives on the part of majority coalitions like $\{1,2\}$ to push for them.

Ex Post Veto Power

Suppose now that a committee possessed ex post veto power in addition to gatekeeping and initiation powers. Once it has opened the gates and made a proposal and after the legislature has worked its will, either accepting the proposal or modifying it in some germane fashion, the committee now may either sanction the final product or restore the status quo, x^0 . A committee with an ex post veto possesses the power to protect itself against welfare-reducing changes in the status quo. The ex post veto shares with the ex ante veto this defensive property. But because of its position in the sequence of decision making, the ex post veto confers offensive capabilities as well. Coming last in the sequence, it affects prior beliefs and behavior of other agents.

In Figure 1b suppose that committee bill B stimulates the floor amendment A_1 . As noted earlier, $A_1 \in W(B) \cap W(x^0)$, with Member 1 and Member 2 preferring it both to B and to x^0 . However, $A_1 \notin P_c(x^0)$ so that, with the ex post veto, if A_1 passes, then the committee will veto it and reinstate x^0 . A vote for A_1 , then, is in reality a vote to maintain the status quo. But both members 2 and 3 prefer B to x^0 . Thus, despite a nominal preference for A_1 over B , Member 2 finds the prospect of an ex

post veto a credible threat and joins with Member 3 in defeating all amendments like A_1 . In short, while an agent like 1 has every incentive to move an amendment like A_1 against B , sophisticated calculation induced by ex post veto power leads Member 2 to depart from a nominal preference for A_1 and vote against it.

The ex post veto ensures that the final outcome will either be x^0 or an element of $P_c(x^0)$. It therefore protects a committee from being rolled on the floor. One would expect, as a consequence of ex post veto power, that many amendments nominally supported by legislative majorities will not pass on the floor if they are opposed by a committee majority. Such is the case for all amendments in the one shaded petal of Figure 1b containing A_1 . Opposed by the committee, such amendments will be voted down by sophisticated majorities.

The ex post veto does not protect against amendments in the shaded regions containing A_4 and A_5 (see Figure 1c) because the veto threat is no longer credible there. In these instances, the final outcome is still superior to x^0 in the committee's preferences. The committee may bluster, but it will not veto. Thus, some amendments (like A_4) will pass despite committee opposition, and others (like A_5) will pass with committee support. These amendments turn out to be non-problematical for committees, as we show in the next section.

There is one aspect of behavior induced by credible threats of ex post veto (such as the case of A_1) that bears further discussion. As we related in the introductory section, much is made in the congressional literature of a system of reciprocated deference. But why is deference practiced at all? Is deference unqualified and honored always and everywhere? Our predictions provide a more discriminating explanation of this aspect of deference (or the appearance of it) than does the more traditional lore. In the case of an amendment like A_1 , Member 2 may

appear to defer to the committee by voting against the amendment despite a sincere preference for it; indeed, Member 2 may rationalize his or her own behavior in this way. Thus, one might wish to label this behavior *deference*. But it should be clear that it is deference to the *ex post veto* power of the committee, not deference to expertise or an instance of reciprocal cooperation. In the absence of an *ex post veto*, we would not always expect to see deference by Member 2; rather, if the committee opened the gates in the first place, we would expect to see members 1 and 2 support an amendment like A_1 . Likewise, even with an *ex post veto*, there are some amendments to a committee bill (even some opposed by the committee) for which no deference at all will be observed. An amendment like A_4 , for example, will find majority support and no deference because the veto threat is not credible here. In our view deference is endogenous, is not everywhere applicable, and is most usefully thought of as a reflection of the strategic character of a situation. It is a property of a sequential equilibrium (Kreps and Wilson 1982).

In this light, the anomaly begging for explanation is not Member 2's counter-intuitive, seemingly deferential behavior but rather why motions like A_1 are ever made in the first place. We can allude to the symbolic position taking of Member 1 in moving A_1 , but this is surely not a very deep explanation. A more promising view incorporates the fact that agents, like Member 2, may not always be in a position to vote strategically (Denzau, Riker, and Shepsle 1985). In moving A_1 , Member 1 seeks to defeat B with a "killer amendment" that he or she knows will ultimately trigger a veto and the reinstatement of x^0 . Member 1 exploits Member 2's inability to cast a strategic (read: "deferential") vote. If Member 2 is not disabled in this way, then when A_1 is moved and defeated, we believe strategic recognition of the *ex post veto* is an explanation

superior to arguments about deference.

The discharge petition may be thought of in very similar terms. Suppose the original bill were A_1 and assigned to the committee of Figure 1b. Clearly, the committee's disposition is to keep the gates closed and not report A_1 . Since $A_1 \in W(x^0)$, a majority has an incentive to discharge the committee of its jurisdiction over this bill. Why, then, is the discharge mechanism rarely resorted to? And when it is employed, why does it rarely result in law? The *ex post veto* provides an explanation. Discharge petitions are often not worth the effort because of the strategic realities. While they get around the *ex ante veto*, they do not affect the *ex post veto*. So long as the committee gets to take a crack at the bill *after* its chamber has worked its will, it is in a strong position to affect the course of its chamber's deliberations. Once again, it is strategic calculation, not deference, that provides the more compelling explanation.⁶

Institutionalization of the Ex Post Veto: Conference Committees

In the United States Congress, as in most state legislatures, a bill must pass both chambers of the legislature in precisely the same form before it may be sent to the chief executive for his signature. Should a bill pass in different forms in the two chambers, a process is set in motion to reconcile differences.⁷ After the second chamber has acted on a bill, the first chamber may "concur" in the second chamber's amendments. If, instead, the first chamber "disagrees" with the second chamber's amendments (or concurs in those amendments with further amendments of its own), then the second chamber may "recede" from its original amendments (or concur in the first chamber's new amendments). Or it may, in turn, concur in the first chamber's new amend-

ments with its own new amendments, putting the ball back in the first chamber's court. Although this process, known as *messaging between the chambers*, cannot continue indefinitely, the bill can be sent back and forth several more times in the hope that one of the chambers will accept the final position of the other. However, once a stage of disagreement is reached in which one chamber "insists" on its version of the bill and the other chamber disagrees, then one chamber requests a conference, and the other chamber accepts. While as many as three-fourths of all public laws manage to avoid the conference stage, nearly all major bills—appropriations, revenue, and important authorizations—end up in conference.

There is now a considerable body of rules and commentary on conference proceedings.⁸ Conferees of each chamber (also called *managers*) are appointed by the presiding officer; these appointments come principally from the committees of jurisdiction at the suggestion of those committees' chairpersons (some evidence is provided below). Occasionally an additional conferee is appointed to represent a particular amendment that the presiding officer (in the House) believes will not otherwise be fairly represented (like A_1 in Figure 1); but even in this exceptional case, the views of the committee chairpersons are dominant.⁹ The conferees from each chamber seek to resolve differences in the respective versions of the bill, and an agreement is said to be reached when a majority of *each* delegation signs the conference report.¹⁰ If both sign, the report and accompanying bill containing the agreement are brought back to each chamber to be voted up or down (no amendments are in order). That is, the conference report is considered under a closed rule as a take-it-or-leave-it proposal.¹¹

The conference procedure, described in simplified fashion in the preceding two paragraphs, thus does two things. First, it

institutionalizes the ex post veto and, as described in the previous sections, gives credibility to the committee during floor deliberations in its chamber. Second, to the extent that there is some discretion on the part of conferees on the terms to which they may agree (see below), the take-it-or-leave-it treatment of conference reports confers additional ex post adjustment power on the committee. It is to this latter consideration that we now proceed.

We begin with the jurisdiction X , which we assume is common to both the House and the Senate, and the status quo $x^0 \in X$. Four sets in X are of interest:

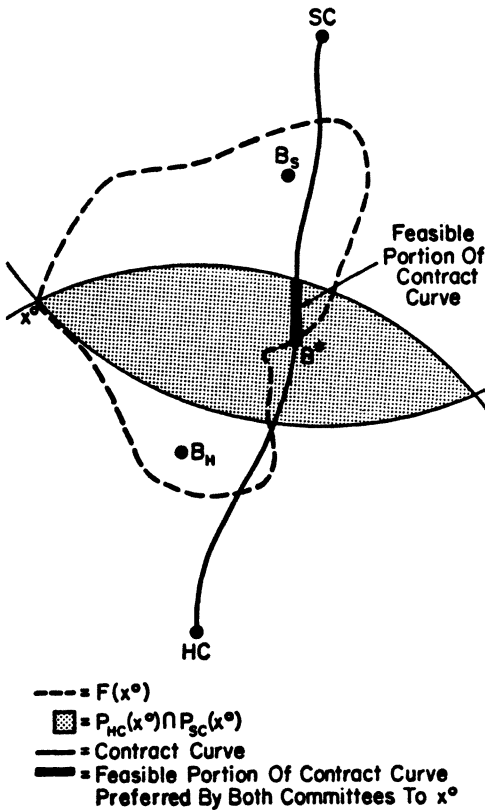
1. $W_H(x^0)$: win set of x^0 in House
2. $W_S(x^0)$: win set of x^0 in Senate
3. $P_H(x^0)$: preferred-to set of x^0 of House committee
4. $P_S(x^0)$: preferred-to set of x^0 of Senate committee

We have already seen from Figure 1 that the final outcome must be an element of $W_H(x^0)$. House majorities constrain changes in x^0 . Likewise, in the Senate $W_S(x^0)$ is a constraint set. To pass, therefore, the conference outcome must be an element of $F(x^0) = W_H(x^0) \cap W_S(x^0)$. The status quo, x^0 , may be imposed by either conference delegation (which we assume to be the relevant legislative committee in each chamber) if a proposed settlement is not an element of one of their preferred-to sets, that is, $P_H(x^0)$ or $P_S(x^0)$, respectively. Thus, we have as a necessary condition for a change in x^0 the following set inequality:

$$F(x^0) \cap P_H(x^0) \cap P_S(x^0) \neq \emptyset.$$

The ex post veto power of a committee follows from the fact that it represents its chamber in conference proceedings and may refuse to agree to a conference settlement. If the preferences for change of the House and Senate committees, for instance, fail to intersect ($P_H(x^0) \cap P_S(x^0) = \emptyset$), then any proposed change will be

Figure 2. Conference Committee Bargaining



vetoed by one of them. Similarly, if changes preferred in common by the two delegations fail to intersect the feasible set, $F(x^0)$, then no alteration of x^0 is possible.

We are not yet in a position to model conference proceedings explicitly, but on the basis of the set inequality above, there are some additional points to be made about the opportunities the conference mechanism presents to committees. Assume, then, that the set inequality holds. In Figure 2 we depict x^0 , $F(x^0)$, House and Senate committee ideal points (HC and SC, respectively), and the committee contract locus ($P_H[x] \cap P_S[x] = \emptyset$).

The latter curve is heavily shaded where it has common intersection with $F(x^0) \cap P_H(x^0) \cap P_S(x^0)$. Also, we have indicated the bills, B_H and B_S , that have passed the respective chambers in different forms, necessitating the conference.¹²

The respective conferees take $F(x^0)$ as a constraint and seek a negotiated settlement, say B^* , consistent with that constraint. This normally requires a compromise in which the preferences of each chamber (as reflected in B_H and B_S respectively) are to some degree sacrificed. Indeed, in Figure 2, the committees sacrifice as well, agreeing on an outcome less preferred to them than their respective chamber's bills. Different configurations of preferences, however, need not have this property.

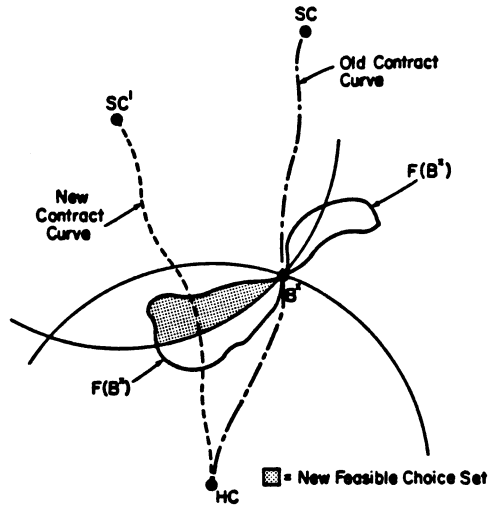
In the empirical literature on conference committees, much is made of who "wins" in conference (Fenno 1966; Ferejohn 1975; Strom and Rundquist 1977; Vogler 1970). Sometimes the outcome is closer to the House position, sometimes closer to the Senate position, and sometimes it entails splitting the differences between the chamber positions. From Figure 2 it is clear that such outcomes cannot be attributed entirely to relative bargaining skills or to which chamber acted first (explanations common in the literature). The non-convexity of $F(x^0)$ means that some compromises are infeasible (they may lie outside $F[x^0]$). Moreover, the ultimate compromise, B^* , may well lie closer to one bill than to the other, or closer to one committee's ideal than to the other's. But once again this cannot be attributed entirely to relative bargaining advantages since the relative locations of $F(x^0)$, $P_H(x^0)$, and $P_S(x^0)$ will restrict the feasible set of agreements. In Figure 2, B^* is about equidistant from the Senate committee's and the House committee's ideal. But it constitutes the best the House committee could hope for, given the constraints, whereas the Senate might have done better. In general, the configuration of chamber

preferences and of conferee preferences will determine the feasible bargaining range.

While the task of modeling conference proceedings falls under the rubric of future research, there are two more insights we can offer, one on equilibrium and the other on comparative statics. In Figure 3, B^* is the negotiated conference agreement (from Figure 2) between HC and SC . It lies on their contract locus and is an element of $F(x^0)$ (not pictured). There is no reason, however, to believe that chamber majorities are content with B^* . Since $B^* \in F(x^0)$ and since it comes back to each chamber under a closed rule, it will pass. But it is entirely possible that $F(B^*) \neq \emptyset$, as shown in Figure 3. Nonetheless, in these circumstances B^* is now an equilibrium. Since $P_H(B^*) \cap P_S(B^*) = \emptyset$ (i.e., B^* is on the HC - SC contract locus), the set inequality is violated so that despite clamoring from both chambers for change, none will be forthcoming. For every proposed change in B^* , at least one of the conference delegations will exercise its ex post veto. Any such proposal will die in conference.

Our model also yields important comparative statics results. An equilibrium point, that is, a status quo point for which the set inequality is violated, will be upset by exogenous changes in committee composition (but not by changes in chamber composition not affecting committee composition as well). In Figure 3, if the Senate committee's ideal shifts from SC to SC' , an entirely new contract locus is traced out, and B^* is no longer in equilibrium. This suggests two nonobvious comparative statics implications. First, the ex ante and ex post vetoes of committees may neutralize even dramatic changes in chamber composition, slowing if not blunting altogether the tracking of policy with popular preferences. Second, committee composition changes, even if restricted to only one chamber, have a disequilibrating effect. Thus, as Weingast

Figure 3. Conference Committee Comparative Statics



and Moran (1983) discovered about the Federal Trade Commission, dramatic changes in the composition of the Senate oversight committee (with no concomitant changes on the House side) in the 1970s were sufficient to set into motion a major change in policy direction at the Federal Trade Commission.

Committee Dominance of the Conference

In order for committees of jurisdiction to possess an ex post veto, they must dominate conference committee delegations. On the basis of the reports of early students of the subject (unfortunately, without much in the way of supporting evidence), such dominance has been the case for more than a century (Rogers 1922; McCown 1927). We do not present a full-blown empirical analysis here, but in order to give some veracity to our claims we have examined all conferences listed in the Congressional Information Service's Annual Abstracts of Congress-

Table 1. Conference Committee Composition

Type of Conference	Number of Conferees Not on Germane Committee							
	1981		1982		1983			
	House	Senate	House	Senate	House	Senate	House	Senate
Budget ^a	0 (15)	0 (12)	0 (15)	0 (10)	0 (15)	0 (15)	0 (8)	0 (8)
		[2]		[3]		[1]		
Appropriations ^b	0 (168)	0 (187)	0 (155)	0 (187)	0 (225)	0 (225)	1 (219)	1 (219)
		[12]		[11]		[8]		
All others	2 (190)	3 (155)	3 (399)	3 (276)	2 (206)	2 (206)	0 (126)	0 (126)
		[17]		[38]		[16]		

Source: Congressional Index Service, 1981-83.

Note: Cell entries give total number of conferees *not* from the committee of jurisdiction for each conference type. In parentheses are the total number of conferees. In brackets are the number of conferences.

^aNeither the Omnibus Budget Reconciliation Act of 1981 nor the Omnibus Budget Reconciliation Act of 1982 is included here. Each was an exceptional situation involving an unusually large number of conferees.

^bDoes not include omnibus supplemental appropriations or continuing resolutions.

sional Records and Legislative Histories for 1981, 1982, and 1983 (Congressional Information Service, Bethesda, MD).

Before reporting our evidence we note that a consequence of the 1970s reforms in the House and of the loose germaneness restrictions in the Senate is that many pieces of legislation are the handiwork of several committees in each chamber. A House bill, for example, might be amended in a nongermane manner by the Senate. Conferees are drawn from the committees of original jurisdiction plus additional conferees to deal (only) with the nongermane Senate amendment.¹³ Alternatively, it is occasionally the case in the House that the Speaker partitions a bill into parts and commits these to different committees for hearings and markup according to their respective jurisdictions; in the Senate, multiple referral may occur by unanimous consent. Again, conferees from all relevant committees make up the delegation.¹⁴

In Table 1 we present evidence on conference committee composition for the conferences held from 1981 through 1983.

For each year, by chamber and type of legislation, we report the number of conferees who were *not* members of the committee(s) of jurisdiction. The data are crystal clear in their message. On only one occasion in the three years, was a member—not sitting on the Appropriations Committee of either chamber—a conferee for an appropriations bill. On only a handful of occasions (fewer than 1% in the House; about 1% in the Senate) were noncommittee members conferees for legislative committee bills. And finally, on budget resolutions only members of the two budget committees were conferees.

A further perusal of the data on which Table 1 is based yields additional impressions, though we will not attach any quantitative weight to them here. First, it is almost always the case that the chairperson and the ranking minority member of the full committee from which the bill originated serve on the conference. Second, it is extremely rare for a conference to produce an agreement to which these two persons are not signatories; it

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Table 2. Subcommittee Autonomy in Conference: Appropriations Committees

House Autonomy	Senate Autonomy		
	Complete	Dominant	Partial
Complete	18	3	2
Dominant	2	1	0
Partial	0	0	0

Key:

Complete: The conference delegation was identical to the subcommittee membership.

Dominant: Either one subcommittee member was deleted, or one nonsubcommittee member was added to the conference delegation.

Partial: Subcommittee representation was neither complete nor dominant.

Note: Table includes Appropriations conferences in 1981, 1982, and 1983 exclusive of omnibus supplemental appropriations or continuing resolutions.

happens on occasion (for example, Chairman Hatfield did not sign several Appropriations conference reports), but we hesitate to draw any conclusions from these events for they are likely to involve contextual details that are not available without in-depth study of the particular cases. Third, there is considerable evidence that, in addition to full committee chair and ranking minority member, the subcommittees responsible for the bill dominate the conference delegation (see below for some additional details).

Committee dominance at the conference stage is perhaps the most complete and certainly the most obvious in our data in the area of appropriations. Moreover, the decentralization to the subcommittee level within each appropriations committee that Fenno (1966) described twenty years ago is clearly evident at the conference stage as well. In Table 2 we display the evidence for this claim for all appropriations measures (omnibus bills excepted) in 1981, 1982, and 1983. Subcommittee autonomy is said to be complete in conference if all the members (and only all the members) serve as managers. Subcommittees are dominant when either one subcommittee member was excluded from the conference or a nonsubcommittee member was included. Since the former circumstance may often

arise with no political weight attached (e.g., a Senator is out of town; a Representative is ill) and the latter occurred on only a single occasion, most of the dominant autonomy occurrences are hardly different from their complete autonomy counterparts. Finally, partial autonomy arises when more than one subcommittee member is deleted from conference. As the evidence suggests, subcommittees of both appropriations committees not only take full responsibility within their respective chambers for marking up appropriations measures and managing them on the floor but the same (relatively small) group of legislators meets year after year to hammer out a final compromise.

As a final bit of empirical corroboration, we have taken a sample of conferences by legislative committees from the 1981-83 period to see the extent to which the subcommittee autonomy evidenced in the appropriations realm carries over to other types of legislation. The results appear in Table 3. Of the 71 legislative committee conferences from the 1981-83 period, we examined the composition of 27 to see the extent to which the subcommittee of jurisdiction dominated the conference delegation. The evidence of subcommittee influence here, while not as overwhelming as in the appropriations realm, is nevertheless con-

Table 3. Subcommittee Autonomy in Conference: Legislative Committees

House and Subcommittee Membership	On Conference	Off Conference
House Members		
On subcommittee	210	248
Off subcommittee	25	720
Senators		
On subcommittee	136	72
Off subcommittee	35	204

Note: The populations are the committees of jurisdiction. The first row of each panel gives the number of subcommittee members on and off the conference delegation. The second row gives the number of non-subcommittee members (but on the full committee) on and off the conference delegation.

siderable. In both chambers subcommittee members dominate the conference delegations. In the House they constitute about 90% of the conferees; in the Senate, nearly 80% of the conferees. More importantly, the median case is one in which the conference delegation is drawn entirely from the subcommittee of jurisdiction.

Discussion

We have sought to offer a more discriminating notion of committee veto power, to embed in in a decision making sequence, and thereby to provide a firmer explanatory foundation for committee power than has been provided heretofore. Our theoretical examples and the accompanying figures illustrate the methodological tools and suggest the lines of what is a fairly general argument. Of central importance is the role of sequence. It matters, for example, whether veto power comes first (as in gatekeeping) or at the penultimate stage (as in conference proceedings). An indiscriminating treatment of committee agenda power that fails to distinguish between different sequential properties of that power is often misleading.

In emphasizing sequence and explicit enforcement arrangements, we do not intend to deprecate the ideas of self-enforcing agreements, implicit coopera-

tion, and deference that have constituted traditional stock-in-trade explanations for committee power. Surely, all of these operate. Moreover, our focus on ex post enforcement is in no way inconsistent with the fact that many participants might themselves explain their behavior as essentially deferential. It would not surprise us to find most legislators saying, "Sure, I let those people over on Education and Labor do pretty much what they think is reasonable. And they do the same for us on Armed Services. That's the way things are done around here." We would only claim that "deference" labels a behavioral regularity; it does not explain it. The theoretical question of interest is why that behavior is an equilibrium. We have, in effect, sought to give deference a rational basis by embedding it in the strategic realities produced by the sequence of decision making.¹⁵

Much work, both theoretical and empirical, remains to be done. In the body of this paper, we have only hinted at the broader generality of our argument. A first-order priority is to specify theoretical conditions more explicitly and generally. Second, we need to understand committee strategies better. What is the optimal markup vehicle that a committee takes to the floor (see Shepsle and Weingast 1981)? What amendments will committee members themselves seek to offer on the floor?

To what extent do committees (party leaders, backbenchers) anticipate the conference stage, and how do these expectations and forecasts affect their prior floor behavior? Third, we have given little attention to the strategic opportunities available to noncommittee members. Given the partial control by committees, what strategies may noncommittee members pursue to influence committee legislation? Finally, how might we properly model the conference itself, the objectives of the participants, and the constraints imposed upon them? These are all theoretical questions upon which our methodology may be brought to bear.

Empirically, there is a good deal of qualitative description and quantitative work in the legislative literature on some aspects of the problems we have presented in this paper. Most of it, however, is not tied to a theoretical framework; and, as we pointed out earlier, it is not at all obvious to us that the main preoccupation of this literature—namely, the question, who wins in conference?—is at all illuminating. Conferees are constrained by what will pass their respective chambers and this in turn determines the feasible set of agreements conferees may reach. The evidence presented in the previous section on committee (subcommittee) autonomy suggests an even more persuasive reason for doubting the relevance of this question. The conference may be less an arena for bicameral conflict than one in which kindred spirits from the two chambers get together to hammer out a mutually acceptable deal. Surely on some (many?) subjects—for example, commodity price supports—the members of the House and Senate (sub)committees who control the conference have more in common with one another than either may have with fellow chamber members.

In our analytical approach to legislative institutions, we have focused on the locus and sequence of agenda power. In characterizing legislative decision making in

terms of who may make proposals (motions, amendments), and in what order, and who may exercise veto power and in what order, we wish to emphasize that these features are not merely the minutiae of parliamentarians. Rather, they provide the building blocks from which legislative institutions are constructed. The results presented here and by others elsewhere show that different mixes of these institutional building blocks lead to different outcomes and, correspondingly, to significantly different political behavior.

In the context of the committee system in the U.S. Congress, we showed that proposal power and ex ante veto power are insufficient to the task of institutionalizing an effective division-of-labor arrangement. In the absence of some form of ex post veto power, committee proposals are vulnerable to alteration and, because of this, committees have agenda control in only a very truncated form. It is unlikely, in our view, that such a shaky foundation would induce individuals to invest institutional careers in the committees on which they serve.

Although our analysis focused on the U.S. Congress and the manner in which the ex post veto is institutionalized there, it should be clear that our approach is more general. Because it can, in principle, be used to study any sequence of agenda control, it can be applied to institutions that differ significantly from Congress. Thus, we would conjecture more generally that bicameral legislatures in which committees are not the central actors in resolving differences between the chambers will not possess strong committees, *ceteris paribus*.

It is in this regard that the British Parliament is of some interest. The method of resolving differences between two chambers of a bicameral legislature is of British invention. The earliest recorded evidence of its practice comes from fourteenth century England. But in England, as Rogers (1922, 301–2) observes,

It had fallen into desuetude even before the Parliament Act of 1911 so attenuated the powers of the House of Lords. Controversies between the two chambers are not serious, or, except in rare instances prolonged. . . . Since the Government stands sponsor for practically all legislation, a conference between the Ministers and leading Peers in Opposition is able to compose the differences and, indeed, ministerial responsibility is ordinarily sufficient to prevent conflicts between the chambers or the necessity for a conference.

The institutions of cabinet government reduce the need for representatives of the two chambers to meet in conference to resolve differences. The centralized leadership of the cabinet confers agenda power in *both* chambers on the same single group of ministers. They possess proposal power and they control (either explicitly or through bargaining) the amendment process. There is no need for ex post reconciliation since the cabinet may choose policies that will survive both chambers ex ante.

A detailed application of our approach to this institution is beyond the scope of this paper. However, the outline above suggests three implications. First, centralized agenda power in the Parliament implies that policy across different areas is likely to be more coordinated than in the committee-based Congress. Because the committee system in the Congress delegates agenda power area by area to different individuals with not necessarily compatible goals, coordination across policy areas is more difficult. Second, the Speaker in the House of Representatives is structurally disadvantaged in comparison to the Prime Minister in Parliament. Because the Speaker holds few of the critical elements of agenda power, he must depend extensively on persuasion to induce others to pursue his own objectives. On the other hand, the Prime Minister holds important powers over the ministers because they owe their positions to the Prime Minister rather than to an independent property rights system conveyed by seniority.¹⁶ Third, we conjecture that, because of the cabinet institution, a

system of standing committees in the British Parliament would most likely lack the sort of ex post veto with which congressional committees are blessed. By the argument of this paper it would be surprising if a full-blown committee system of the U.S. type were ever to develop. This is but another way of saying that institutions of ex post enforcement confer power on committees. In their absence, we doubt committees would play the consequential role they do in the U.S. Congress.

Notes

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1. The assumption of jurisdictional separability does not preclude inseparabilities within jurisdictions. In most of our examples, we draw indifference curves as circles, but our arguments extend more generally to any convex level sets.

2. In later discussion, we relax this requirement in order to determine what might happen if other legislators have the capacity to pry open the gates.

3. For committee C , by $P_c(x)$ we shall mean the set of points preferred to x by a *decisive committee majority*. We do not here dwell on the characteristics of such decisive sets.

4. Formal rules governing amendments and requirements like voting the status quo last do place restrictions on final outcomes. Nevertheless, this set typically contains a range of alternatives (some not in $P_c(x^*)$) over which the committee is unable to exercise subsequent control. See Shepsle and Weingast 1984.

5. We assume here and throughout the paper that all agents vote sophisticatedly (Farquharson 1969) and are able to anticipate the strategic moves

of others. Thus, amendments to B like A_2 and A_3 will fail. The former actually beats B ($A_2 \in W[B]$). But since it would subsequently lose to x^0 ($A_2 \notin W[x^0]$), voters 2 and 3 vote against it because they prefer B to x^0 (even though 2 prefers A_2 to B). A_3 fails even though a majority prefers it to x^0 since $A_3 \notin W[B]$.

6. Notice that our explanation does not assert that discharge petitions will never be used or never work, only that they are unlikely to be used or used successfully for bills like A_1 or A_3 . If, for whatever reasons, the gates were kept closed on a bill like A_4 , a discharge petition *would* work because the threat of an ex post veto is incredible. Moreover, the discharge petition may be used strategically in this case to force a committee to report a bill in a form or at a time that is less than ideal from the committee's perspective.

7. What follows is based on the masterful essay by Bach (1984) on conference procedures.

8. The interested reader may consult the rules of the House and Senate, the *Senate Manual*, *Deschler's Procedure in the House of Representatives*, and *Jefferson's Manual*. At the turn of the century, the House and Senate codified procedures. The codification, conducted by Thomas P. Cleaves, clerk of the Senate Appropriations Committee, bears his name and is known as *Cleaves' Manual of Conferences and Conference Reports*.

9. Dr. Stanley Bach of the Congressional Reference Service informs us that while the presiding officer in each chamber *appoints* the conferees, their *selection* differs in each chamber. In the Senate, appointment is by unanimous consent so that the presiding officer exercises no discretion in selection; in practice, he proposes the list submitted by the chairperson of the committee managing the bill. In practice, the Speaker of the House does the same. But the standing rules in this chamber give the Speaker discretion (and instruction) so that the final outcome is the result of bargaining between the Speaker and the relevant committee chairperson.

10. Thus, even if a proponent of an amendment opposed by the committee is a member of the conference delegation, his or her views are decidedly in the minority.

11. Technically, the first chamber to vote on a conference report has a third option—to recommit it to conference (sometimes with nonbinding instructions). Given the press of business, this often has the same effect as voting the report down. If the first chamber does pass the report, then the second chamber is left to take it or leave it (since the conference committee is disbanded after the first chamber's action). Finally, as a technical matter, if either an ex post veto is exercised or one of the chambers defeats a conference report, the bill is not necessarily dead since the chambers may return to messaging or may appoint new conferees. Again, however, the practical effect is to harm, often irreparably, the search for a House-Senate reconciliation.

12. In the figure, both bills are elements of $F(x^0)$, that is, either is preferred to x^0 by *both* chambers. Of course, this need not be the case inasmuch as the common circumstance is one in which one bill, say B_H , could not pass in the other chamber. The particular depiction in Figure 2 does not affect the points we make in the text.

13. An instance of this (and there are many) occurred in the Cash Discount Act of 1981, a bill managed by the House and Senate Banking Committees. The principal managers for each chamber were drawn from these committees. But one part of the bill (section 303) fell into the jurisdiction of Energy and Commerce on the House side and Labor and Human Resources on the Senate side. Additional conferees from these two panels were appointed to resolve differences in this section of the bill.

14. Thus, the Department of Defense Authorization Act of 1982 was marked up principally by the House Armed Services Committee, but sections of it were considered by the Select Committee on Intelligence and the Committee on Judiciary. Each of these panels was represented on the conference delegation with specific responsibility for those sections of the bill falling in their jurisdiction.

15. Throughout we have emphasized explicit enforcement institutions as the glue holding agreements together. In the story we tell about conference committees, however, there is a key feature for which we cite no explicit enforcement: Why does the Speaker, in his discretion, appoint committee members to the conference delegation? Without this move on the Speaker's part, committees would lose their post-floor deliberation role. Space precludes an extensive discussion here, but we think the Speaker's observance of this norm is a key to understanding what leaders must do to stay in office.

16. In this sense, there is an apt parallel between the agenda powers of a contemporary Prime Minister and a turn-of-the-century Speaker of the House.

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