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THE INSTITUTIONAL FOUNDATIONS OF COMMITTEE POWER

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ABSTRACT

Committees and their jurisdictions constitute a division-and-specialization-of-labor in a legislature. Committees are alleged to be powerful in their respective jurisdictions because they can (i) veto changes in the status quo (ex ante veto power) and (ii) initiate changes in the status quo (proposal power). The authors demonstrate that these are insufficient to sustain committee power because committee non-members have strategies available to mitigate ex ante veto power (e.g. discharge petition) and to alter committee proposals (e.g. amendments). What, then, accounts for committee power? Much of the traditional legislative literature alludes to the notion of "deference," viz., that legislators participate in an institutional bargain in which each defers to committee member judgments in exchange for reciprocal deference to his own judgments when he sits as a committee member. The authors inquire into what underlies this phenomenon. They emphasize explicit enforcement mechanisms that allow committee to discourage noncommittee members from employing strategies inimical to committee interests. Specifically, they point to conference committees as the institutional manifestation of ex post veto power which gives force to ex ante veto power and proposal power.

The Institutional Foundations  
of Committee Power

by Kenneth A. Shepsle and Barry R. Weingast

Legislative committees have fascinated scholars and reformers for more than a century. The early treatise-writers (Wilson, 1805; McConachie, 1898; Bryce, 1893), reformers early and modern (Norris, 1945; Boiling, 1965), and contemporary scholars (Eulau and McCluggage, 1984; Smith and Deering, 1984), all acknowledge the central strategic position of committees in legislatures. Normative 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 are undoubtedly others) describe or label committee power, but they do not explain it. In effect, these items are empirical

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regularities, the explanations of which require a theory. A theory is required to answer, in the case of each of the stylized facts, the question, "Why are things done this way?" In many cases it is insufficient to refer to institutional rules, since many of the practices alluded to above either are not embodied in them at all or have only slowly evolved from them. So it is necessary to begin the theoretical analysis from first principles.

There is an added bonus to a theory that begins with first principles. Although formulated to accommodate some stylized facts, such a theory will yield additional implications, so that it may be employed as a discovery procedure. Consider some anomalies which 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?
- Why are explicit procedures in the House of Representatives, which diminish the gatekeeping monopoly of committees (specifically the discharge petition) rarely employed; and even when 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 (Laver, 1981; Axelrod, 1981, 1984). Agreements and arrangements, therefore,

are subject to cheating, renegeing, 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 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 section 2. 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 sections 5 through 7 we provide both theoretical and empirical detail on the manner in which committees "manage" the legislative process. In the last section we pull our arguments together and address some extensions and applications.

#### 1. Theoretical Foundations of Committee Power

A number of ideas exist in the traditional legislative literature about the foundations 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, p. 69).<sup>2</sup> 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, p. 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, p. 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 (1811-1825). 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 which 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 alternatives? That is, why does the system of deference to committee veto judgments survive?

Likewise, the question of survival 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, and his power to create ad hoc and select committees for specific purposes. And the growth of the Congressional staff system, in combination with the external contributions to Information and expertise from the lobbyist denizens of Washington's "K Street Corridor," serves to mitigate the alleged informational advantages of committees.

Several reasons may be put forward to explain how a cooperative system of reciprocated deference is 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 business that anyone interested in a particular subject easily obtains membership on the committee that deals with it. In such a system, no member with substantial interest in a subject matter is excluded from the committee responsible for it. Under these circumstances, deference becomes self-enforcing since there are no incentives to upset the apple-cart. Needless to say, this explanation denies or ignores interdependence among policy areas, fiscal dependencies, and the prospect that some issues, e.g. military preparedness, tax legislation, health policy, 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 partitioning of business and of members, and the joining up of the former with the interests of the latter, are not perfect,

it nevertheless is sufficient to discourage violations of reciprocity.<sup>3</sup> This view, recently popularized in a more general setting by Axelrod (1984), conceives of the long-term advantages of deference outweighing the occasional short-term disappointments so that, despite the latter, individuals will not wish to jeopardize the former (see Calvert, 1984).

In sum, these arguments claim 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). In discussing the infrequency of successful challenges to committee actions, Bryce (1893, p. 158) makes precisely this point:

...these expedients [resuscitating or restoring a bill otherwise manhandled by a committee] rarely succeed, for few are the measures which excite sufficient interest to induce an impatient and over-burdened assembly to take additional work upon its own shoulders or to overrule the decision of a committee.

We believe these rationales are incomplete and that their 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 (Heingast and Marshall, 1985). The terms of deference to committees, secondly, are extremely vague. Third, the behavioral forms which 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 paradox of committee power remains. Empirically, committees are powerful ~ as veto groups, as repositories of expertise, as policy incubators and proposers. Self-enforcing reciprocity may account for some exercises of power by committees, but it is insufficient to the task of accounting for a more general deference to committees. Put differently, the idea of deference as a form of 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, then, deference, as a self-enforcing characteristic of committee power, must be joined with 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.

Committees may discourage opposition to their actions (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."<sup>4</sup> 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. He introduced fifty amendments striking a project from each of the fifty states. The Chairman of the Senate Public Works Committee supported, and the Senate approved, only one of these amendments -- the one striking a project from the state of New York! These anecdotes aside, it would appear that the capacity to punish, and the general use of a tit-for-tat strategy<sup>5</sup> by the committee, provides precisely the basis

for the emergence of cooperative relationships 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 following conditions are satisfied: (i) the committee's bills are of significance to a substantial number of legislators, (ii) they are disaggregatable by legislator, and (iii) they are introduced on a regular basis. The first condition requires that there be some prospect for punishing any given legislator on a dimension of salience to him and his district -- a condition violated by some highly specialized committees like Agriculture or Merchant Marines and Fisheries. The second requires that the means to punish are available so that threats are credible. The third requires that occasions to punish are readily available. While the "distributive tendency" (Stockman, 1975) is increasingly a property of congressional legislation, it is our sense that the punishment mechanism plays the most significant role in the affairs of committees like Appropriations, Hays and Means, Public Works, Interior, and Judiciary.<sup>6</sup> 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 to anticipate what will pass its chamber when putting a proposal together. 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 non-committee 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 which would expedite passage of a committee bill. In short, veto groups are pervasive in legislatures, with committees but one kind. 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 reciprocity and deference as explanations 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, either because the conditions for its use are not met in all circumstances or because it accommodates the interest 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, the most potent enforcement mechanism, is 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 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 they are nowhere part of the formal rules and appear to most observers to be the product of nothing more than informal reciprocity arrangements.

Consider gatekeeping first and suppose 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 ensures that nothing disapproved of by a decisive committee majority will obtain 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.

Consider now proposal power and, in particular, 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 a consideration of even its most ardent proponents would be whether the amendment were so distasteful to the committee that it triggered 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.

The ex post veto may take several different forms which are more or less discriminating. Among the least discriminating is veto-by-withdrawal. Some legislatures permit a committee to withdraw or recommit a bill with which it

is displeased. Whether this is an automatic prerogative of a committee, or requires unanimous consent, majority approval, or the permission of the presiding officer, it is a relatively crude form of veto because it sinks the entire bill. A more discriminating form of veto is veto-by-dismemberment. Here a committee may veto the offending portion of a bill, leaving the remainder intact or possibly even restoring the amended portion to its original state. An approximation of this latter form of ex post veto is, we believe, institutionalized in the way the chambers of a bicameral legislature resolve differences -- the conference committee process.

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. We believe it clarifies and explains in a compelling fashion why various forms of cooperation work in legislatures such as the U.S. Congress despite their transparent fragility and vulnerability.

## 2. 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 quasi-convex) 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 committees, 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 preferences are representable by strictly convex indifference contours.<sup>7</sup> For any  $x \in X$ , agent  $i$ 's preferred-to set is defined as

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

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

$$\begin{aligned} W(x) &= \{x' \mid x' \succ_i x \text{ for all } i \in A \text{ for some } A \in D\} \\ &= \bigcup_{A \in D} \bigcap_{i \in A} P_i(x). \end{aligned}$$

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 insures 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.<sup>8</sup> That is,  $C$  has ex ante veto power.

$C$  is said to have monopoly proposal power if and only if:

- (1) Changes in  $x^0$  must first be proposed by  $C$ , and
- (2) No modifications in (amendments of) a proposal from  $C$  are in order.

Monopoly proposal power is proposal power under a closed rule, so that  $C$  may present the full legislature with "take-it-or-leave-it" proposals. A weaker



form of proposal power is initiation power. C is said to have monopoly initiation power if and only if:

- (1) Changes in  $x^0$  must first be proposed by C (as in monopoly proposal power), 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 which may withdraw one of its proposals after it has undergone modification on the floor, or which 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. Initially,  $x^0$  is the state of the world. If, for some  $x \in X$ , it is the case that  $x \notin P_C(x^0)$ ,<sup>9</sup> then C may exercise its ex ante veto and keep the gates closed, i.e., not propose  $x$ . If C possesses monopoly proposal power, then it may propose an  $x \in P_C(x^0)$ , constrained only by what will pass the entire chamber, i.e.,  $W(x^0)$ . Indeed, under the closed rule, it will ordinarily propose an  $x$  possessing the property that, for no other  $x' \in P_C(x^0) \cap W(x^0)$ , is it the case that  $x' \in P_C(x)$ . That is, under the condition of "take-it-or-leave-it" offers, C will pick the  $x$  that is a maximal element of  $P_C(x^0) \cap W(x^0)$ .

If, on the other hand, C possesses only monopoly initiation power, it finds itself in an ambiguous situation. Of course, it can always keep the gates closed, maintaining  $x^0$ . Should it open the gates by proposing some  $x \in P_C(x^0) \cap W(x^0)$ , however, 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 made worse off than it would have been had it kept the gates closed (Denzau and Mackay, 1983). If, however, C has an ex post veto, then it could protect itself from getting rolled on the floor (or restore the status quo if it should happen) and it 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,<sup>10</sup> 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.

### 3. Rolling the Committee: Limitations of Gatekeeping and Initiation Power

To provide more precise intuition, we develop an example which 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 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" which are composed of the points preferred to  $x^0$  by (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 set-up 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  $A_1 \in W(x^0)$  can be denied access to the agenda by the committee (thereby frustrating the preferences of a majority). Should the committee not exercise its ex ante veto on a motion like B (since  $B \in P_C(x^0)$ ), it foregoes any future influence on the course of events. In particular, the point  $A_1$  could now very easily be the final outcome. 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 is a defensive tool and, while it might be valuable to the committee because of its potential threat value, it cannot assure committees very much.

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 (but see section 5). 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.<sup>11</sup>

Thus, neither gatekeeping nor monopoly initiation power confers much control over its jurisdiction to a committee. Of course, if a committee possessed monopoly proposal power, then it could control the future course of events in its jurisdiction. Under these circumstances, in which a take-it-or-leave-it proposal may be made, the only time a proposal would not be forthcoming is if the status quo were the committee's most-preferred policy, i.e., no proposal if and only if  $P_C(x^0) = \emptyset$ . In all other instances, the committee will propose the most-preferred element of  $W(x^0)$ .

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. Inasmuch as we rarely encounter legislatures, empirically, that prohibit modifications of committee proposals, we are left with the conclusion that committee power is essentially negative. Any attempt by the committee to promote positive changes in the status quo 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  $W(B) \cap W(x^0) \not\subseteq P_C(x^0)$ , amended committee bills may leave the committee worse off. In short, once the committee opens the gates, it risks getting rolled on the floor.

Before jumping to the conclusion that it is inevitable that a committee will get rolled if it opens the gates, it is necessary to make some finer distinctions. Except under very unusual circumstances, it will be the case that  $W(B) \cap W(x^0) \neq \emptyset$ . That is, 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 there are agents with the incentive to do so.

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 which 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 (since  $A_4 \notin P_C(B)$ ) 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 monopoly proposal power. 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.

#### 4. 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 committee bill B stimulates the floor amendment  $A_1$ . As noted earlier,  $A_1 \in W(B) \cap W(x^0)$ , with Mr. 1 and Mr. 2 preferring it both

to B and to  $x^0$ . However,  $A_1 \notin P_C(x^0)$  so with the ex post veto, if  $A_1$  passes then the committee will reinstate  $x^0$ . A vote for  $A_1$ , then, is in reality a vote to maintain the status quo. But both 2 and 3 prefer B to  $x^0$ . Thus, despite his nominal preference for  $A_1$  over B, Mr. 2 finds the prospect of an ex post veto a credible threat and joins with 3 in defeating all such 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 2 to depart from his nominal preference for  $A_1$  and vote against it.

The ex post veto insures 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. Thus, some amendments (like  $A_4$ ) will pass despite committee opposition, and others (like  $A_5$ ) will pass with committee support. That these amendments turn out to be nonproblematical for committees in practice depends on a broader interpretation of ex post veto power. We discuss this further in section 6.

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. According to this view, noncommittee

members defer to committee preferences in the latter's jurisdiction in exchange for reciprocated deference in other jurisdictions. Empirically there is much to justify this view. Yet it is an indiscriminating view lacking in any explanatory features. Is deference unqualified and honored always and everywhere? Why is deference practiced at all? Our predictions are more discriminating and more adequately explain this particular aspect of deference (or its appearance). In the case of an amendment like  $A_1$ , Mr. 2 may appear to defer to the committee by voting against the amendment despite a sincere preference for it; indeed, Mr. 2 may rationalize his 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 Mr. 2; rather, if the committee opened the gates in the first place, we would expect to see 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 Mr. 2's counterintuitive, 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 Mr. 1 in moving  $A_1$ , but this is surely not a very deep explanation. A more promising view incorporates the fact that agents, like Mr. 2, may not

always be in a position to vote strategically (Denzau, Riker, and Shepsle, 1985). In moving  $A_1$ , Mr. 1 seeks to defeat B with a "killer amendment" that he knows will ultimately trigger a veto and the reinstatement of  $x^0$ . He exploits Mr. 2's inability to cast a strategic (read: "deferential") vote. In any event, 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. Imagine a bill like  $A_1$  assigned to the committee of Figure 1B. Clearly, its disposition is to keep the gates closed and not report  $A_1$ . Since  $A_1 \in W(x^0)$ , a majority might seek to "discharge" the committee of its jurisdiction over this bill. Assemblies like the House of Representatives have mechanisms of this sort in their rules. But they are rarely resorted to, and even when they are employed, they rarely result in law. The ex post veto provides an explanation. Discharge petitions are rarely 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.<sup>12</sup>

We describe the manner in which the ex post veto is institutionalized in many legislatures in section 6. First, however, we examine how that veto and the general sequence of decision-making provide the committee with strategic management opportunities.

##### 5. Committee Management of the Amendment Process

The various forms of the open rule which govern most committee bills allow non-committee members opportunities to alter committee proposals, often in significant ways. As we have shown, there are nearly always amendments

that beat the committee bill, beat the status quo, and avoid the committee's ex post veto. That is, the condition

$$W(B) \cap W(x^0) \cap P_C(x^0) \neq \emptyset \quad (*)$$

is almost always satisfied. The amendment process, therefore, appears to provide ample opportunities for non-committee members to alter committee proposals and, in so doing, to extract considerable advantage at the committee's expense. Actual practice in Congress is in accord with these opportunities: most proposals brought to the floor under the open rule are amended [see, for example, Bach, 1985].

It may appear to some that committee power is compromised precisely because committee proposals are subjected to so much alteration. From our standpoint, this judgment is inappropriate. While non-committee members have much to gain from amending committee proposals, so do committee members! To understand this we must take the view that, from the committee's standpoint, a bill brought to the floor is an instrument toward a desired policy end, not an end in itself. Hence, the simple observation that proposed bills are amended tells us nothing about whether committees are made worse off by the process.

Starting with the premise of a bill as an instrument, we provide an example of a committee using its proposal power in combination with its management of the amendment process to further its own interests. To see this, we reproduce in Figure 2 the situation portrayed in Figure 1. Here, the committee has brought its proposal, B, to the floor. To simplify the situation, suppose that the major opposition to the committee arises from Mr. 2. Now, if the committee offers no amendments, Mr. 2 will devise a substitute bill, S, proposing the best alternative according to his own interests, subject to being an element of the set given in condition (\*). The end result is the outcome labeled S in Figure 2. Notice that this substitute

(which defeats the bill, replaces the status quo, and will not trigger an ex post veto) is less preferred by the committee than its own proposal, B. More importantly, it leaves the committee just barely indifferent between S and  $x^0$ . Mr. 2, on the other hand, is considerably better off with S than with either B or  $x^0$ . Paradoxically, Mr. 2 has extracted all the rents from the situation, leaving none for the committee. This is hardly an instance of committee dominance in the legislative process.

But now suppose that, instead of opening the floor to amendments from others, the committee is permitted to manage the flow of amendments on the floor, perhaps offering some of its own. In Figure 3, we begin with the same status quo,  $x^0$ , and proposed bill, B, as in Figure 2. Notice what happens if the committee, itself, seeks to perfect its proposal before allowing Mr. 2 to move his substitute. In particular, suppose the committee offers the amendment A, which it prefers both to the bill and to the status quo. Mr. 2 must now find a substitute amendment that, in addition to belonging to the set in condition (\*), also beats A. The new region of feasible amendments is depicted as the small, boldly outlined shaded area in Figure 3. Notice even before we know Mr. 2's choice, that every possible amendment in this region is preferred by the committee to both the original bill, B, and to the status quo. After the committee moves amendment A, the best Mr. 2 can do is propose S'. Hence, the power to bring forth both proposals and amendments, and to affect the order in which they are considered, can be of considerable strategic advantage to committees.

To see this advantage from another perspective, suppose instead that the committee simply moves A as its original bill (labeled B' in Figure 4). What happens now? Mr. 2's best response is to move S, his most preferred alternative among those feasible. But once again, he has extracted all the

rents: the committee is just indifferent between S and x°.

Thus, management of the amendment process, heretofore rarely studied, appears to be an important strategic device. Combined with using the original bill as an instrument, management of the amendment process appears to allow committees to manipulate the agenda process to their advantage. In so doing, committee members are better off than if they act sincerely or naively by proposing their most desired alternative and then allowing amendments.

This argument suggests a number of empirical possibilities. First, committee bills, under the open rule, will often be amended, and the committee, itself, will participate in the process by offering its own amendments. Second, committees may not seek to protect their bills by fighting off amendments of others. As the abstract example of this setting demonstrates, there are situations in which a committee both anticipates and supports amendments proposed by others.

He have not collected data on how committee bills fare on the floor. However, data provided by Hall and Evans (1985) on how subcommittee bills fare at the committee level indicate the type of effects our perspective suggests and, further, the kind of data necessary for a more appropriate investigation. Table 1 summarizes the amending action in the full committee meetings of subcommittee bills for three different House committees. Agriculture, Banking and Urban Affairs, and Education and Labor. Amendments are proposed for the typical bill, with a successful rate of passage varying from 56.8% (BSUA) to 79.21 (ESL). More important, however, is the evidence in Table 2 clearly showing that "subcommittee members themselves are responsible for most of the amending that takes place at the full committee" (Hall and Evans, p. 5). Moreover, the success rate of amendments offered by subcommittee members is consistently higher than that for amendments offered by non-members.

Another aspect of (sub)committee dominance of the amendment process is revealed by the data from Bach's (1985) study of amendments to appropriations bills. In Table 3, we summarize his data for 1973-82 on the fate of amendments to appropriations measures on the floor of the House depending upon whether they were supported or opposed by the subcommittee chairman. Amendments supported by the chairman had a chance of passing that is over three times greater than amendments he opposed. Those he supported passed 81% of the time while those he opposed passed only 26% of the time.

From these two studies we conclude that: (1) committee and subcommittee members are active in managing the amendment process, both in committee and on the floor; (2) their success rates are higher than non-(sub)committee members; and, consequently, (3) the amount of amendment activity should not be taken as evidence of committees getting rolled because it may instead represent the successful strategic management of the legislative process in an open-rule environment. These conclusions are tentative. Unlike the results in the preceding and the following section, we do not know whether the results from the abstract example explored in this section are representative. Similarly, the empirical studies of Bach and of Hall and Evans constitute only a modest beginning toward testing our hypotheses. Nonetheless, the analysis is sufficiently plausible to challenge the view that the proliferation of floor amendments necessarily signals a decline in committee power.<sup>13</sup>

#### 6. Institutionalization of the Ex Post Veto: Conference Committees

As we have just seen, in the presence of an ex post veto committees are able to manage their bills on the floor, making strategic use of the amendment process. This is not, however, the only effect of the ex post veto. To see how it enlarges the strategic possibilities of a committee, we turn now to the Institution of the conference.

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.<sup>14</sup> After the second chamber has acted on a bill, the first chamber may "recede" from its version and "concur" in the version that passed the second chamber. If, instead, the first chamber "insists" on its original version (or "recedes and concurs" with an additional amendment), the second chamber may then recede and concur (either in the first chamber's original bill or in the first chamber's subsequently amended version of the second chamber's version). Or it may, in turn, recede and concur with still additional amendments, putting the ball back in the first chamber's court. This process, known as "messaging between the chambers," can continue indefinitely. However, once a stage of disagreement is reached in which each chamber "insists" on a different version of the bill, then one chamber petitions for a conference and the other chamber agrees to the petition. 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.<sup>15</sup> Conferees of each chamber (also called "managers") are appointed by the presiding officer; virtually without exception these appointments come from the committees of jurisdiction at the suggestion of those committees' chairmen (some evidence is provided below). Occasionally an additional conferee is appointed to represent a particular amendment that the presiding officer believes will not otherwise be fairly represented (like A1

in Figure 1); but even in this exceptional case, the views of the committee chairmen are dominant. The conferees from each chamber seek to resolve differences in the respective bills, and an agreement is said to be reached when a majority of each delegation signs the conference report.<sup>16</sup> If a majority of either refuses, an ex post veto will be said to have been exercised. 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.

The conference procedure, described in simplified fashion in the preceding paragraph, 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 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:

- i.  $W_H(x^0)$ : win set of  $x^0$  in House
- ii.  $W_S(x^0)$ : win set of  $x^0$  in Senate
- iii.  $P_H(x^0)$ : preferred-to set of  $x^0$  of House committee
- iv.  $P_S(x^0)$ : 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

either be an element of  $F(x^0) = W_H(x^0) \cap W_S(x^0)$ , or, failing any agreement,  $x^0$  itself. The latter 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  $P_H(x^0)$  or  $P_S(x^0)$ , respectively. Thus, we have, as a necessary condition for a change in  $x^0$ , the following set inequality:

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

This condition may be violated, in which case  $x^0$  is an equilibrium, in a number of obvious ways (some of which are more plausible than others). First,  $F(x^0)$  may be empty in which case no House and Senate majorities share points in common preferred to the status quo. Second,  $P_H(x^0)$  or  $P_S(x^0)$  may be empty, indicating that  $x^0$  is a committee Condorcet winner (or ideal point). Neither of these circumstances strikes us as a serious possibility. Third, the intersection of  $F(x^0)$  with one of the committee preferred-to sets may be empty, a somewhat more likely prospect. Fourth, and considerably more interesting,  $x^0$  may lie on the contract locus between the two committees, implying  $P_H(x^0) \cap P_S(x^0) = \emptyset$ . Finally, points commonly preferred to  $x^0$  by the two committees may fail to intersect with those commonly preferred by both chambers.

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 committee, for instance, fail to intersect either with its Senate counterpart ( $P_H(x^0) \cap P_S(x^0) = \emptyset$ ) or with majoritarian constraints ( $P_H(x^0) \cap F(x^0) = \emptyset$ ), then it will veto any change and maintain  $x^0$ .<sup>17</sup>

We are not yet in a position to model conference proceedings explicitly but on the basis of (\*\*), there are some additional points to be made about

the opportunities the conference mechanism presents to committees. So, assume (\*\*) holds. In Figure 5 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.<sup>18</sup>

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 5, 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 5 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 nonconvexity 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 5,  $B^*$  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 6,  $B^*$  is the negotiated conference agreement (from Figure 5) 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 6. 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), condition (\*\*) 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, i.e., a status quo point for which condition (\*\*) 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 6, 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 and Horan (1983) discovered about the FTC, 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 FTC.

#### 7. 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.<sup>19</sup> 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 Index Service for 1981, 1982, and 1983. The frequencies are given in Table 4 and represent those conferences that reached successful conclusion (i.e., conferees came to agreement and transmitted a report to their respective chambers).<sup>20</sup>

One last point needs to be made before reporting our evidence. A consequence of 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.<sup>21</sup> 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 mark-up according to their respective jurisdictions. Again, conferees from all relevant committees rake up the delegation.<sup>22</sup>

In Table 5 we present evidence on conference committee composition for the conferences given in Table 4. 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 commerce for an appropriations bill. On only a handful of occasions (fewer than 1% of the time in the House; about 1% of the time 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 Tables 4 and 5 are based yields additional impressions, though we will not attach any quantitative weight to them here. First, it is almost always the case that the chairman 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 gentlemen are not signatories; it 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 that Fenno (1966) described twenty years ago within each appropriations committee is clearly evident at the conference stage as well. In Table 6 we display the evidence for this claim for all appropriations measures (omnibus bills accepted) in 1981, 1982, and 1983. Subcommittee autonomy is said to be complete in conference if their entire membership (and only their membership) serves 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. 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 7. Of the 71 legislative committee conferences from the 1981-83 period (see last row of Table 4), we examined the composition of 27 to see the extent to which the subcommittee of jurisdiction dominated the conference delegation.

Since the year-to-year variations appear small, we report only the three year totals. The evidence of subcommittee influence here, while not as overwhelming as in the appropriations realm, is nevertheless considerable. 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.

Having made a theoretical case for the importance of the ex post veto in the main sections of this paper, and for the conference committee as the institutional manifestation of this power, we have sought here to provide some empirical evidence for committee and subcommittee dominance in contemporary conferences of the U.S. Congress. The composition of conferences is almost universally committee-dominated (Table 5). Further, the decentralization to subcommittees that has been observed more generally in the Congress extends to the conference as well: subcommittees of the appropriations committees universally dominate spending conferences (Table 6) and legislative subcommittees are only slightly less significant in conferences on their bills (Table 7).

## 8. Discussion

We have sought in this paper to offer a more discriminating notion of committee veto power, to embed it 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 cooperation, and deference that have constituted traditional stock-in-trade explanations for committee power. Surely, all of these operate. We wish to qualify these traditional explanations, however, in several respects. First, we point out that the domain over which mechanisms like implicit cooperation operate may not be as wide as is often claimed, especially in a body with fluid participation.

Second, the difficulty in implementing a pattern of implicit cooperation, even when all the actors might desire it, should not be underestimated. The simple Prisoners' Dilemma game is but one example of how the structure of incentives may frustrate such collective desires. In a legislature, actors often are cross-pressured — interested, in principle, in cooperating in a system of mutual deference, but inclined to avoid the occasional cost of such behavior if the opportunity presents itself.

Third, 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." He 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. He

have, in effect, sought to give deference a rational basis by embedding it in the strategic realities produced by the sequence of decision making.

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 mark-up vehicle that a committee takes to the floor?<sup>23</sup> 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 non-committee 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 on some aspects of the problems we have presented in this paper. But most of it is not tied to a theoretical framework and does not illuminate the matters that have been of central concern to us. As we pointed out earlier, we are not convinced that the issue of who wins in conference is an appropriate question inasmuch as conferees are constrained by what will pass their respective chambers and this, in turn, determines the feasible set of agreements conferees might 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 decisionmaking in terms of who may make proposals (motions, amendments), 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 elsewhere by others 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 the Congress. In this regard, we would conjecture that unicameral legislatures lacking some alternative form of ex post veto (or other basis on which deference might be founded) will also lack a powerful committee system. Similarly, 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, pp. 301-302) 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 obviate 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 her ministers because they owe their positions to her rather than to an independent property rights system conveyed by seniority. Third, we conjecture that, because of the cabinet institution, a system of standing committees in the British Parliament would 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 American 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.

FOOTNOTES

1. Weingast and Moran (1983) have documented the change that transpired in the policies of the Federal Trade Commission during the 1970s and have traced it to changes in the oversight subcommittee of the Senate Commerce Committee. The puzzle, which our theory addresses, is why this singular change, with no concomitant change on the House side, produced a major redirection in FTC policies.
2. The full quotation is: "As a rule, a bill committed is a bill doomed. When it goes from the clerk's desk to a committee room it crosses a parliamentary bridge of sighs to dim dungeons of silence whence it will never return. The means and time of its death are unknown, but its friends never see it again."
3. Some evidence for this view derived from a study of committee assignments in the House is found in Shepsle (1978).
4. Personal interview.
5. A tit-for-tat strategy is one in which the committee takes care of a particular member if that member otherwise supports the committee on the floor, but punishes the member (by denying him projects he wants, for example) if he opposes the committee.
6. Appropriations produces thirteen annual bills, broadly significant, and easily disaggregatable. Ways and Means, too, produces legislation of broad significance on a regular basis. In addition, it processes many private-member bills. Public Works produces water project bills. Interior and Judiciary process an enormous number of private member bills (especially dealing with public lands and immigration, respectively).
7. The assumption of jurisdictional separability does not preclude nonseparabilities within jurisdictions. In most of our examples, we draw indifference curves as circles, but our arguments extend more generally to any convex level sets.
8. 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.
9. 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.
10. 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 over which the committee is unable to exercise subsequent control (and hence whether the outcome is in  $P_C(x^0)$ ). See Shepsle and Weingast (1984).
11. We assume here and throughout the paper that all agents vote strategically (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 ( $A_2 \succ B$ ). But, since it would subsequently lose to  $x^0$  ( $A_2 \not\succ x^0$ ), voters 2 and 3 vote against it since 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  $A_3 \not\succ B$ .
12. 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  $A_1$ , a discharge petition would work since the threat of an ex post veto is incredible.
13. Undoubtedly, a good deal of floor amendment activity by committee members consists of proposed changes in the bill which initially fail in the committee mark-up and are subsequently taken to the full chamber "on appeal." In the context of full committee consideration of subcommittee mark-ups, for example, Hall and Evans (1985) point out that one of the more active subcommittee members in this respect is the subcommittee's ranking minority member (whose amendments lost in subcommittee). Hall and Evans also point out, however, that he is not very successful at the full committee level either. In the absence of a systematic empirical inquiry, we cannot say in what proportions committee participation in the amendment process in the full chamber consists of (i) "management of the amendment process" and (ii) an "appeals process" for committee losers in the committee mark-up. Hence, our claim in the text is only that we have provided some analytical plausibility for the first alternative.
14. What follows is based on the masterful essay by Bach (1984) on conference procedures.
15. 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.
16. Thus, even if a proponent of an amendment opposed by the committee is a member of the conference delegation, his views are decidedly in the minority.
17. While (\*\*) is clearly a necessary condition for change in  $x^0$ , we cannot claim sufficiency for it. Even if (\*\*) holds, a variety of circumstances could produce conference deadlock.
18. In the figure, both bills are elements of  $F(x^0)$ , i.e., 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 5 does not affect the points we make in the text.

19. Lindsay Rogers, writing in 1922, reports that early in the 19th century the Speaker of the House often ignored party lines and selected managers who would be "specially fitted to uphold the position of the House \_\_\_\_\_. But the present system is automatic. The chairman, next ranking majority member, and ranking minority member of the committee having the bill in charge are invariably selected in each branch, although, in the case of important bills, the number of conferees may be increased to ten, or even more." (Rogers, 1922, p. 302). Similarly, McCown (1927) observes that by the 1850s the general custom was "that of appointing the senior majority and minority members of the committee having the bill in charge. It is this which makes it so easy for the press to print the names of managers before they are appointed." (McCown, 1927, p. 153). Thus, it could be written in CLEAVES MANUAL (see note 15) that "it has long been the invariable practice to select managers from the members of the committee which considered the bill." In the Senate, the practice of appointing committee members to the conference is also observed, though there has apparently been more emphasis placed on the requirement that conferees "represent the views of the Senate." There is, however, considerable ambiguity as to what this means since there are often many votes on any particular piece of legislation. In practice, the representation requirement has come to mean that conferees are chosen from among those who supported the Senate bill on final passage, a not very discriminating criterion (Oleszek, 1977, p. 39).
20. We have collected no data on failed conferences. Thus, we are unable to determine whether failures are related to the potentially disruptive influence of representation on a delegation by noncommittee members. He conjecture that even in failed conferences, the amount of noncommittee representation is slight.
21. 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.
22. 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.
23. See the discussion of the LC-RC game in Shepsle and Weingast, 1981.

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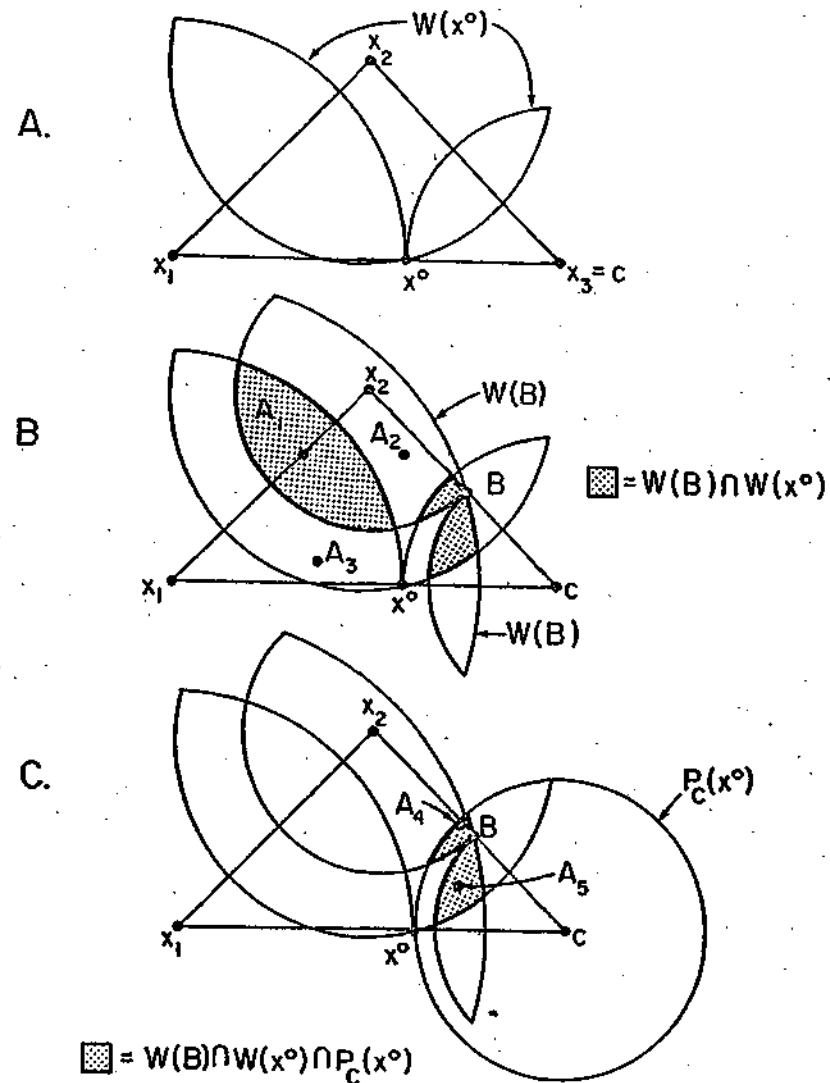


Figure I. Effect of Ex-Post Veto



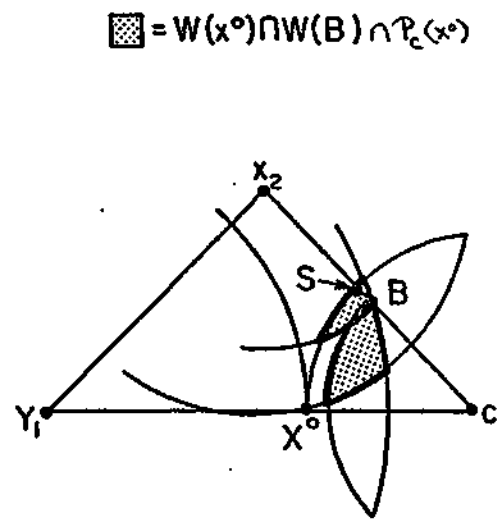


Figure 2. Set Of Feasible Amendments

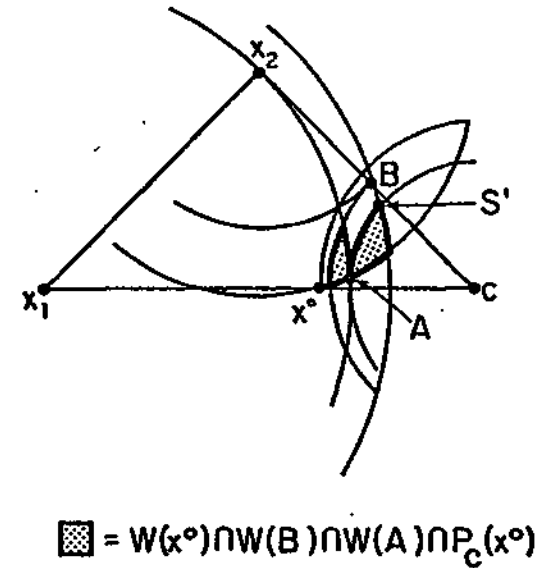
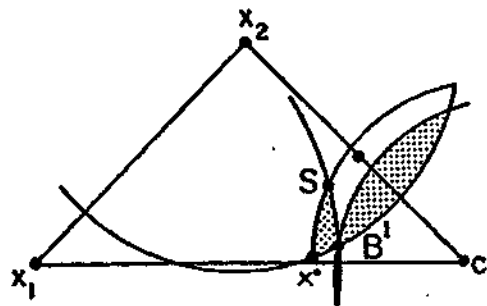
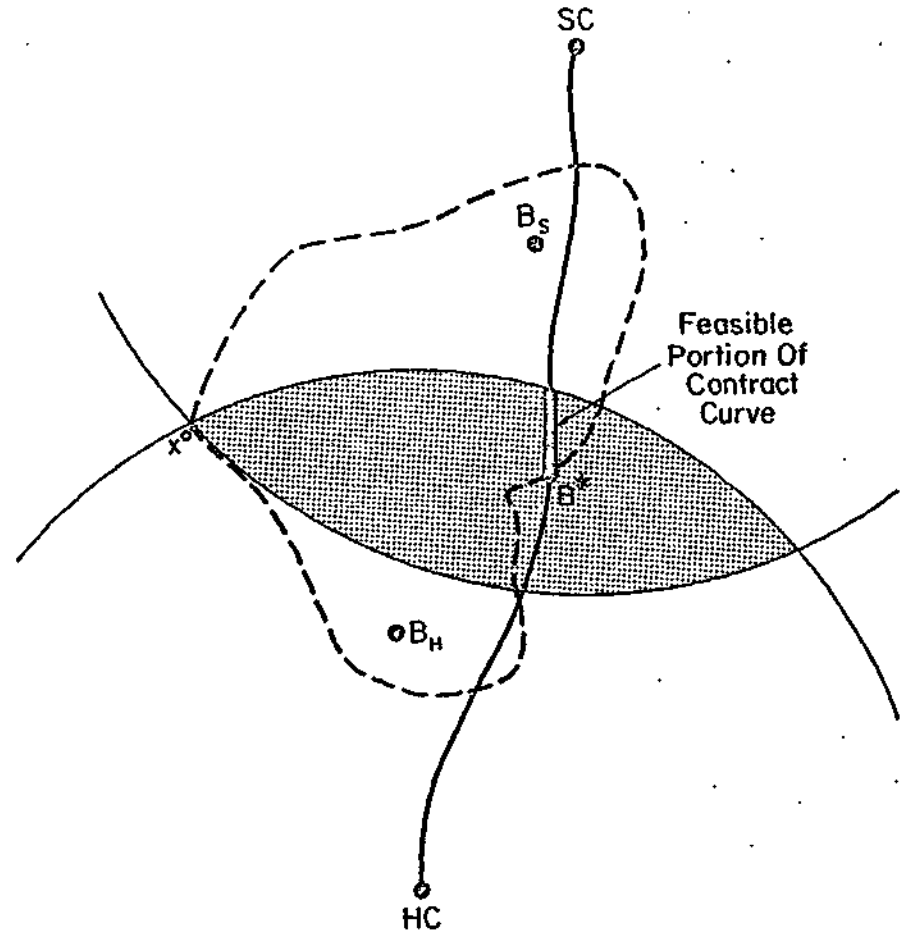


Figure 3. Set Of Feasible Substitute Bills When Committee Manages & Participates In Flow Of Amendments



$\square = W(x^0) \cap W(B^1) = \text{Set Of Feasible Substitutes}$

Figure 4. Set Of Feasible Substitute Bills If Committee Offers  $B^1$  Instead Of  $B$



- - - =  $F(x^0)$   
 $\square$  =  $P_{HC}(x^0) \cap P_{SC}(x^0)$   
 — = Contract Curve  
 — = Feasible Portion Of Contract Curve Preferred By Both Committees To  $x^0$

Figure 5. Conference Committee Bargaining

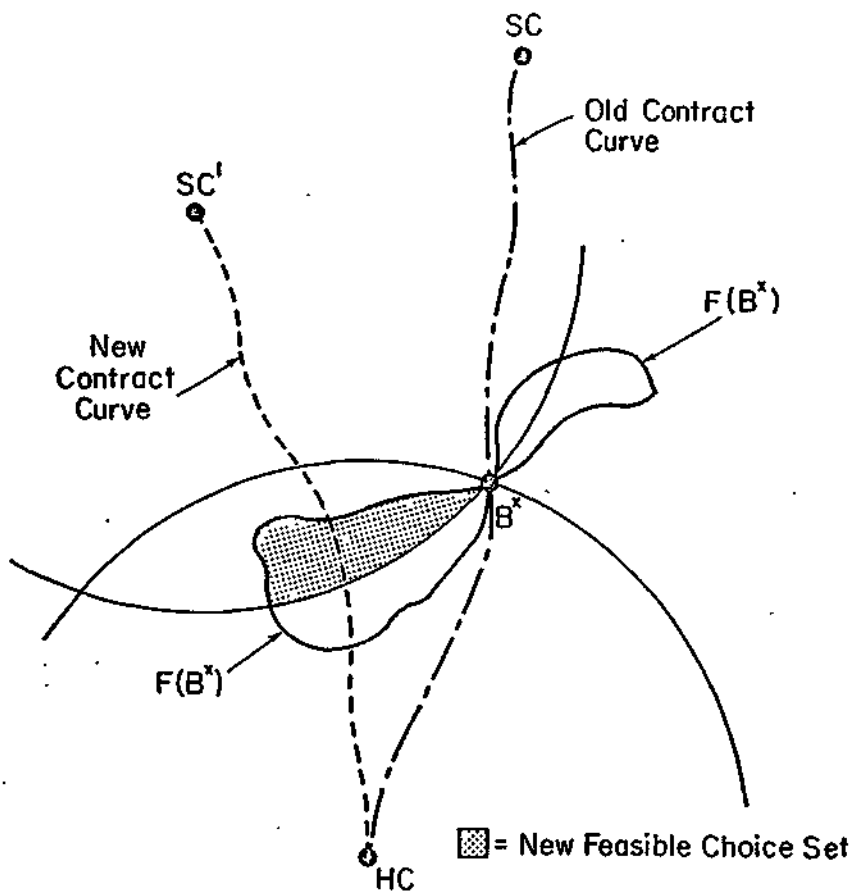


Figure 6. Conference Committee Comparative Statics

TABLE 1  
AMENDMENTS TO SUBCOMMITTEE BILLS  
IN FULL COMMITTEE MARKUPS

Committee	No. of Bills	No. of Amendments Offered (N)	No. of Amendments Passed (P)	Success Rate (P/N)
Agriculture	21	230	143	62.2%
Banking and Urban Affairs	14	125	71	56.8%
Education and Labor	16	120	95	79.2%

Source: Evans and Hall (1985), Table 1. All bills in the 98th Congress for Banking and 75% of bills in the 97th Congress for Agriculture and Education constitute their sample. See their footnote 3 for further details.

TABLE 2  
 AMENDMENTS AND SUCCESS BY SUBCOMMITTEE  
 MEMBERS AND NONMEMBERS IN COMMITTEE MARKUPS

Committee	% of All Amendments Offered	% of All Successful Amendments Offered	Success Rate*
<b>Agriculture (N=230)</b>			
subcommittee members	77.4	82.5	66.3
subcommittee nonmembers	22.6	17.5	48.0
<b>Banking (N=125)</b>			
subcommittee members	84.0	85.9	58.1
subcommittee nonmembers	16.0	14.1	50.0
<b>Education and Labor (N=120)</b>			
subcommittee members	65.8	69.5	83.5
subcommittee nonmembers	34.2	30.5	70.7

Source: Hall and Evans (1985), Tables 2A, 2B, 2C. Numbers in parenthesis are given in Table 1.

\*Percentage of amendments offered that pass.

TABLE 3  
 SUCCESS OF AMENDMENTS TO APPROPRIATIONS BILLS, 1973-82

Chairman's Position	Amendment Fate		Proportion Winning
	Win	Lose	
Support	305	70	.81
Oppose	137	386	.26

n = 898

Source: Bach (1985, Tables 1 and 3).

TABLE 4  
CONFERENCES, 1981-83

TYPE OF CONFERENCE	Number of Conferences			
	1981	1982	1983	All
Budget	2	3	1	6
Appropriations	12	11	8	31
All Others	17	38	16	71

Source: Congressional Index Service, 1981, 1982, 1983.

TABLE 5  
CONFERENCE COMMITTEE COMPOSITION<sup>1</sup>

TYPE OF CONFERENCE	Conferees Not on Germane Committee (Number of Conferees)					
	1981		1982		1983	
	House	Senate	House	Senate	House	Senate
Budget <sup>2</sup>	0 (15)	0 (12)	0 (15)	0 (10)	0 (15)	0 (8)
Appropriations <sup>3</sup>	0 (168)	0 (187)	0 (155)	0 (187)	0 (225)	1 (219)
All others	2 (190)	3 (155)	3 (399)	3 (276)	2 (206)	0 (126)

<sup>1</sup>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.

<sup>2</sup>Neither 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.

<sup>3</sup>Does not include omnibus supplemental appropriations or continuing resolutions.

Source: Congressional Index Service, 1981-83.

TABLE 6  
 SUBCOMMITTEE AUTONOMY IN CONFERENCE:  
 APPROPRIATIONS COMMITTEES\*

		Senate Autonomy		
		Complete	Dominant	Partial
House Autonomy	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 non-subcommittee member was added to the conference delegation.
- Partial:** Subcommittee representation was neither complete nor dominant.

\*Appropriations conferences in 1981, 1982, and 1983 exclusive of omnibus supplemental appropriations or continuing resolutions.

TABLE 7  
 SUBCOMMITTEE AUTONOMY IN CONFERENCE:  
 LEGISLATIVE COMMITTEES

	HOUSE*	
	On Conference	Off Conference
On Subcommittee	210	248
Off Subcommittee	25	720

	SENATE*	
	On Conference	Off Conference
On Subcommittee	136	72
Off Subcommittee	35	204

\*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.

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