The Pivotal Politics of Bicameralism

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Abstract

In this paper we study the interplay of rules, rule enforcement, and credibility in conflict over bicameral legislation. Using a simple spatial model, we explore the conditions under which conflict occurs *between* legislative chambers or *among* chambers and their agents in the respective conference committee delegations. We rationalize the presence of a "scope of the differences" rule which seeks to constrain chamber agents by curtailing their latitude to alter bills in conference. However, as we show, this rule never binds unless the parent chambers possess the ability to commit ex ante to its enforcement. We explore outcomes with and without the credible enforcement of scope, and we discuss how welfare is maximized when this scope rule is flexibly enforced, i.e., when the chambers are able to permit violations of scope in certain circumstances while still committing to its enforcement in others. Using data on U.S. House appropriations subcommittees in the 95th–104th Congresses, we establish the presence of both inter- and intra-chamber conflict, suggesting the importance of understanding these two forms of strategic conflict and of examining the ability of our legislatures to constrain the actions of their agents through the writing and—crucially—the enforcement of procedural rules.

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1 Introduction

The bicameral arrangements of the US Congress (and nearly all the state legislatures) necessitate inter-chamber agreement on legislation. In the US national case this requirement follows from the presentment clause of the Constitution—each chamber must pass a bill in precisely the same form before it may be presented to the president for his signature (or veto). The rules of the respective chambers outline several different paths by which inter-chamber agreement may be reached. The first and most obvious is for both chambers to pass an identically worded bill in the first instance. For example, after the House passes a bill, the Senate may take it up and pass it directly without amendment or, after receiving the House bill, the Senate might take one of its own bills, strike everything after the enacting clause, and then substitute and pass the House bill just received intact ("cut and paste," as it were).

A second approach is known as messaging between the chambers. The Senate might amend a House bill and return it to the House for the latter's consideration. The House could recede from its original version and accept the Senate version outright in which case agreement is reached; or it could recede and accept, but with additional amendments of its own, and return it to the Senate. The practice of receding from one's own version and accepting an alternative, but with amendments, can proceed for a limited number of iterations ("ping-ponging") before one chamber either recedes from its own latest version and concurs in the one proposed by the other chamber, insists on its own version and requests a conference (the third approach—see below), or the process breaks down.

The third approach, common for major legislation, is the conference procedure. Each chamber insists on its own version of the bill and one requests of the other (and the other accepts) the creation of a conference between the chambers. The conference procedure will be described in detail in the next section. For now we want to point out that each chamber, via the conferees it appoints to represent its position (sometimes called managers), treats the conference as an opportunity to resolve differences through bargaining by appointed delegates, a mechanism less cumbersome than messaging when complex issues need to be sorted out. It does, however, come with all the advantages and disadvantages of any principal-agent relationship. Here, each chamber must contend not only with the other chamber, but also with its own agents. A successful conference

results in a conference report—one approved by a majority of each conference delegation—that is taken back to each chamber for an up-or-down vote (that is, consideration in which no amendments are permitted).

The agency relationship between each chamber and its respective conferees, combined with the fact that the finished product will constitute a take-it-or-leave-it offer for each chamber, gives chamber agents considerable latitude. In effect, their handiwork cannot be revised by either parent chamber; it constitutes a *fait accompli* that must be accepted or rejected. This "who will guard the guardians?" problem is neither innocuous nor unvarying. We will distinguish among different conference settings and suggest how the importance of controlling agents varies across these settings.

Each chamber's up-or-down say on the final disposition of a conference report does constrain the exercise of discretion by chamber agents in the preparation of that report. It is not the only source of agent constraint (their effectiveness a matter we examine shortly). A body of rules known as *Cleaves Manual*, named after Senate Appropriations Clerk Thomas P. Cleaves who collated scattered rules in 1900, (nominally) imposes specific constraints on conferees. Thus, the "scope of the differences" requirement (hereafter "scope"), to take one prominent example, states that, topic by topic, title by title, the outcome bargained by House and Senate conferees must lie "between" the two versions of the bill brought to conference. No topics on which the bills are in agreement may be undone; no new topics may be introduced; and topics on which there is disagreement must be resolved as a compromise between the two versions.

A violation of this (or any other) rule subjects the conference report to a point of order in either chamber. If the point is sustained then the report is rejected, but the first-acting chamber has the option of returning it to conference for renegotiation; if the first-acting chamber has already approved the report and a point is successfully lodged against it in the second-acting chamber, then the latter's only recourse is to reject the report. This is because in accepting the report the first-acting chamber dismisses its agents, thus terminating the conference; there is no conference to which the second-acting chamber might return the flawed measure.

But rules like the scope requirement are not self-enforcing. The important take-away point is that chambers must *enforce* these rules: they have the means (the rules are "on the books"), so the issue is whether they have the will (or the incentives) to follow their own rules. The present paper is a study of rules, rules enforcement, and credibility. In the next section we provide a

much more detailed description of the conference procedure and the scope restriction on conference reports. In section 3 we employ a simple spatial model and the logic of pivotal politics (Krehbiel 1998) to explore, in terms of a small number of parameters, the equilibrium outcomes of bicameral principal-agent strategic interaction. We will provide the conditions under which scope actually constrains conferees.

Here we will also highlight the heterogeneity of conference contexts. We will see that the standard House-versus-Senate interpretation of conferences is overly simple. In some settings this is indeed the case, with each chamber and its agents unified in opposition to the other chamber and its agents. In other settings the relevant strategic interaction is between agents of the two chambers in relative agreement with each other but standing in opposition to the preferences of their chambers. In some settings agent preferences exacerbate House-Senate conflict, while in other settings agent preferences are aligned in a manner that mitigates inter-chamber conflict and facilitates compromise. In short, in some circumstances it is "us against them" inter-chamber conflict (the standard story), in others it is chambers versus conferees, and in still others it is a mix of the two. The strategic context of a conference is a variable that needs to be taken on board in analyzing the resolution of inter-chamber disagreements.

In section 4 we bring data to bear on various features of our formulation. Specifically, we determine how frequently the various kinds of conferences we theorize about actually occur in practice. In section 5 we consider a counterfactual world in which scope is automatically enforced. Comparing the equilibrium results in this world with those in the previous analysis shows the importance of enforcement credibility. In sections 6 and 7 we discuss our results, derive some "quasi" comparative statics, and develop some intuition on broader issues. Finally, in section 8 we conclude.

2 Background

In this section we depict the conference procedure in more detail as well as the rules governing conference reports. We also describe some of the norms and other empirical patterns that have grown up around these procedures and rules. Along the way we refer to some of the political science literature on this topic.

We focus on a typical situation in which the House and Senate have passed differing versions of a bill and have exhausted pre-conference options (such as the shuttling back-and-forth of a limited number of amendments). Once the chambers have formalized their disagreement (by insisting on their respective versions), they form a conference committee and appoint members (on which we have more to say later). Conferees are charged with resolving disagreements between the two bills, but are not permitted *de jure* to do anything more. Senate Rule XXVIII governing conference committees, for example, states: "Conferees shall not insert in their report matter not committed to them by either House, nor shall they strike from the bill matter agreed to by both Houses." Conferees may only resolve disagreements within the "scope of the differences" between the two bills (Rybicki 2013: 6), as anything outside of this scope is considered "matter not committed to them by either House." These rules are formulated to rein in the conferees in case they are wont to enact policy that their parent chambers find undesirable.

But, "in practice, these restrictions are not as stringent as they may seem on their face" (Rybicki 2007: 3). To bite, rules must be enforced, and in many situations the chambers may be loath to do so. Prior to conference report consideration, the House often passes a special rule waiving objections to scope violations, and the Senate often votes to waive all points of order (Rybicki 2013). And even when the chambers wish to permit these points of order, detecting scope violations is often not straightforward. In many cases differences are subjective rather than quantitative—e.g., the definition of a policy rather than the amount of money appropriated for a specific purpose—making the scope of the differences between them vague. Many bills that reach conference, moreover, do not line up title-by-title, especially if one chamber's bill is an amendment in the nature of a substitute to the other's bill.[1] "The two versions of the bill can take very different approaches to the same subject, making it difficult for the conferees...to identify the scope of each disagreement" (Rybicki 2013: 6). Thus, while chambers possess written authority to regulate their conferees, in practice they seem reluctant—and perhaps unable—to do so.

The treatment of conference reports, once sent back to their parent chambers, makes this interaction important. Neither chamber may amend the final conference report (Rybicki 2013), making the report a "final offer" of sorts. Any alternative bill would have to start the whole

[1] An amendment in the nature of a substitute is one in which everything after the enacting clause ("Be it enacted that") is struck and entirely new language is inserted in its place.

process anew, at the cost of significant time and effort. The privileged nature of the conference report thus makes the actions of the conferees, and the ability for the parent chambers to police these actions, central. The conferees are subject to their parent chambers in the sense that both parent chambers must agree to the final conferenced bill. The conferees must thus ensure that their finished product successfully resolves the *inter-chamber* conflict that catalyzed the conference committee in the first place. But beyond that requirement, the conference members' privileged position gives them significant discretionary power, perhaps enough to countermand the procedural structure the chambers have created in an attempt to police their agents.

Who are these conferees, and why might they act at odds with their appointing chambers? Crucial for our purposes, "Most conferees are Members of the committee that reported the bill" (Rybicki 2013: 4).[2] This is relevant because the reporting committees are likely to be composed of members with particular interest in the issue area at hand, meaning that committee members are likely to have different (and more intense) preferences than the chamber as a whole in a given issue area (Shepsle 1978; Londregan and Snyder 1994). Even if members are not systematically preference outliers on all issues (e.g., Krehbiel 1990), there is still the likelihood that chambers and their committees will differ, if by chance if not because of the systematic incentives for such sorting. This produces an *intra-chamber* conflict of interest between the chamber membership as a whole and its often more extreme committee members. This conflict helps justify the procedural structure, including the scope-of-the-differences rule, that is meant to rein in conferees. But as this discussion has previewed (and as the next section will make formal), the efficacy of this procedure is limited by the power of conferees to deliver take-it-or-leave-it offers.

We are not the first to consider the role of procedure in constraining (or not constraining) conference committees. Steiner (1951: 2-3) asks: "to what extent, if at all, have committees of conference gone beyond the bounds of compromise?" To answer such a question, "formal restrictions on the power of conferees must be considered." In her path-breaking research, McCown (1927) likewise traces the history of conference committees with an eye towards their procedural structure. We build on this longstanding literature but do not take the procedural structure at face value, considering instead the circumstances in which procedures credibly constrain outcomes..

[2]This norm lies at the heart of previous scholarship on the ex post influence that standing committees possess (e.g., Shepsle and Weingast 1987).

3 Model

A simple spatial model allows us to capture the basic structure of inter-chamber negotiation over the shape of a piece of legislation. To articulate our argument clearly we assume a single policy dimension on which there are heterogeneous preferences among legislators. As a reduced form we describe this heterogeneity in terms of a small number of parameters. Let H and S represent the median legislator ideal point in the House and Senate, respectively. Let h and s represent the median ideal point in the relevant legislative committee of the House and Senate, respectively. As we make explicit below, these committees serve not only as ex ante jurisdictional agenda setters for their chambers but also as ex post conferees. We focus our discussion on appropriations measures so that what is at stake is relatively clear.[3] This also allows us to set the status quo—the reversion if no bill becomes law—at zero ($SQ = 0$). Finally, we define the point for which the House median, the Senate median, and the House committee median are indifferent to the status quo as cut_H, cut_S, and cut_h, respectively. Our assumptions below do not require us to define this for the Senate committee. These definitions are summarized in Table 1.

Table 1 – Notation

H	House median
S	Senate median
h	House (sub)committee median
s	Senate (sub)committee median
SQ	Status quo
cut_H	House median cut-point
cut_S	Senate median cut-point
cut_h	House (sub)committee median cut-point

Legislators are assumed to possess symmetric, single-peaked preferences on the spatial dimension. Imagine this dimension to be a spending level for a particular program. If no appropriation passes, then spending reverts to the status quo, $SQ = 0$. A number of cases are generated depending upon the locations of the parameters in Table 1. Many cases are simply mirror images of other cases, reducing the number to consider; our assumptions below further reduce the number we need to analyze. Table 2 contains these assumptions.

[3] In the context of appropriations, h and s are taken to be the medians of the House and Senate Appropriations subcommittees with jurisdiction, inasmuch as these subcommittee members typically serve as conferees in conference proceedings.

Table 2 – Assumptions

A1	$H < S$
A2	$0 < h < s$
A3	$SQ = 0$
A4	Non-strategic open-rule environment.
A5	There is only one chance to vote on a conference report. After that it is gone forever.

The first assumption (A1) arbitrarily sets the House median to the left of the Senate median. A2 does the same for the relevant House and Senate committee medians, though we explicitly assume that committee majorities prefer positive spending levels. A3, as already noted, sets the reversion level at zero; if no bill passes then there is no spending.

These first three assumptions set a context within which the locations of committee median ideals relative to chamber median ideals and a fixed status quo may be varied (with conclusions invariant to mirror-image assumptions).[4] There are six distinct cases, displayed in figures below.

Assumption A4 treats the politics within each chamber as open and non-strategic. By this we mean that a committee, in its agenda-setting role, makes a proposal (since its median prefers positive spending) and the chamber, via amendments, moves the proposal to the chamber median's ideal spending level.[5] Thus, after each chamber has worked its will, there are two versions of the bill, represented by H and S. Since $H \neq S$ almost always, differences must be resolved. The scope of the differences is given by $|S-H|$, the Euclidean distance between the locations of the two bills.[6] This is the context in which conferees meet. The scope rule requires the final negotiated spending level to lie in the interval $[H, S]$. But the rule must be *enforced*, and the chambers have the option of waiving the rule. In practice they may do this in either of two ways: by a blanket procedural motion waiving all points of order, or by tabling each specific point of order raised against the conference report. The opportunity for either of these practices arises after a conference report is

[4] A3 gives the location for the status quo for appropriations measures. In other substantive contexts it is no longer reasonable to assume $SQ = 0$. We examine this possibility after developing the $SQ = 0$ case and show that our results continue to hold.

[5] The reader may wonder whether there aren't occasions when a committee, anticipating amendments in the open-rule environment, might choose to keep the gates closed and not make a proposal. In our baseline model this will not matter. But in variations in this model, it may.

[6] It should be clear that this is a highly abstracted notion of the "scope of the differences." We do not mean to suggest that real bills, in practice, have a single difference in ideology that can be calculated as a scalar measure of distance. However, this abstraction is useful for considering the differing incentives of the chambers and their conferees when a rule exists that is intended to prevent them from moving policy too far away from the original bills.

received by the chambers. In this section we assume neither chamber can commit ex ante to enforce the scope rule ex post (that is, after the report has been received by the chambers). In section 5 we consider the (counterfactual) situation of credible ex ante commitment. Finally, to eliminate the option (for the first-acting chamber at least) of sending a flawed measure back to conference, A5 assumes that the chambers get one crack at a conference report. If either chamber defeats it (or sustains a point of order against it), then SQ is imposed.

We imagine the following sequence of play. In each chamber the relevant agenda-setting committee brings a proposal to the floor. That proposal is amended (if necessary) so that the final bills produced by each chamber are H and S. By A2 proposals will be forthcoming; by A4 the "open-rule" environment facilitates amendments to the proposals; and, again by A4, non-strategic actions in the chambers produce a bill in the first place and then convergence to the respective chamber medians. A conference is convened with h and s decisive in determining the preferences of each conference delegation. Majorities of both delegations must approve a negotiated conference report. Their decisions about the content of that report are conditioned on expectations about what will happen when chamber legislators are presented with a take-it-or-leave-it proposal.[7]

Before proceeding to the cases implied by this formulation, let us briefly discuss the cut-point logic associated with the pivotal-politics approach. In our reduced form there are four active agents—the House median, Senate median, and the medians of the two relevant committees. Conference medians from each chamber (and thus a majority of their delegation) will agree on a conference report only if they prefer it to SQ; and, likewise, chamber majorities will approve this (take-it-or-leave-it) report only if they prefer it to SQ. The set of reports satisfying these requirements are defined by the intervals $[SQ, cut_i], i = H, S, h, s$. With symmetric, Euclidean preferences, cut_i is simply the reflection of SQ through i's ideal point.[8]

There are six cases to consider, depending on where h and s are slotted relative to H and S. Each case has subcases defined by the relative location of cut_H or cut_h. In every case the scope of

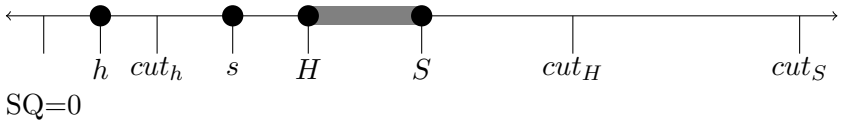
[7] In its focus on the medians of the four main bodies (the two parent chambers and their respective committees), our model follows directly in the spirit of Krehbiel (1998), though with a different focus. In modeling the interactions between chambers and their conferees, the model is perhaps closest to that sketched in Vander Wielen (2010), though different in its focus on the "scope" requirement, the credible commitment of the parent chambers, and the possibility of rule violations.

[8] By A2, cut_s is never binding; so, while we have defined it here, we will have no need to consider it.

the differences is the interval $[H, S]$, represented in the figures below by the shaded grey rectangle. Results are collected in Table 3 at the end of the analysis.

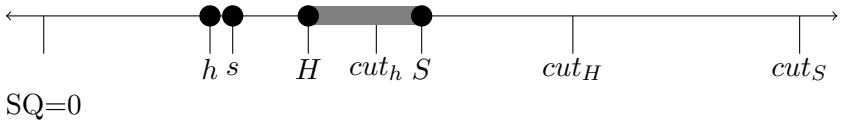
3.1 Case 1: $h < s < H < S$

Figure 1 – Case 1a: $h < \frac{H}{2}$



This is a case of committee outliers. Majorities of both conference committee delegations prefer a lower spending level than majorities in either chamber, reminiscent of the mid-20th century Congresses under the Cannon-Taber norm (Fenno 1966).[9] In the first subcase (Figure 1) the House conference delegation is so extreme ($h < \frac{H}{2}$) that it prefers no outcome lying within the scope of the differences to SQ.[10] No conference report greater than cut_h will survive the conference process. Thus, no conference report will comply with the scope requirement. Since the enforcement of the scope rule is, in fact, not credible, the conferees can force the result by reporting a "compromise" in $[h, \min(cut_h, s)]$.

Figure 2 – Case 1b: $h > \frac{H}{2}$

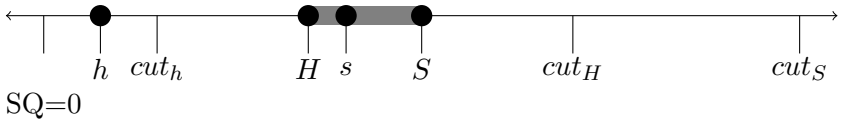


The second subcase (Figure 2) portrays a less extreme House conference delegation ($h > \frac{H}{2}$). There are now conference reports preferred to SQ by both conference delegations that do lie within the scope of the differences. If the chambers could enforce scope, then an outcome at H would prevail. That's the best result the two conference delegations could achieve subject to satisfying scope. But the chambers will not enforce scope if faced with a fait accompli outside $[H, S]$. So, in this subcase as well, scope will be violated and a conference report in [h, s] will be passed by both chambers (since $s < H < cut_h$ in this case).

[9]The Cannon-Taber norm, named after the chair and ranking member of the House Appropriations Committee, saw the appropriations committees as "guardians of the Treasury" from the predations of the authorizing committees.
[10]$h < \frac{H}{2}$ implies $cut_h < H$.

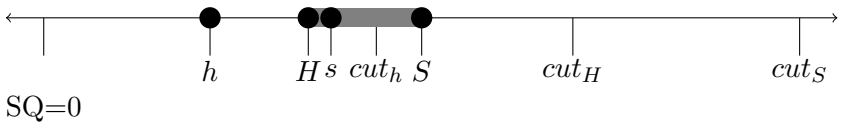
3.2 Case 2: $h < H < s < S$

Figure 3 – Case 2a: $h < \frac{H}{2}$



In this second case the median of the Senate conference delegation is to the right of the House chamber median. Once again there are two subcases. When $h < \frac{H}{2}$ (Figure 3), cut_h is constraining. No report that would clear conference—a point in $[h, cut_h]$—lies within the scope of the differences. Conferees can anticipate that the rule will not be enforced, so they will produce a report in $[h, cut_h]$, and this will be approved by both chambers. The same obtains in the second subcase ($h > \frac{H}{2}$), shown in Figure 4. Even though there are outcomes preferred by the conferees to SQ that are elements of $[H, S]$, the conferees will not feel compelled to produce such a report. A scope restriction is not credible, so any report in $[h, min(s, cut_h)]$ is preferred by the conferees to SQ and can pass both chambers. As in case 1, the lack of credibility of the scope rule liberates conferees to produce any conference report that can attract majority support in both chambers.

Figure 4 – Case 2b: $h > \frac{H}{2}$



3.3 Case 3: $h < H < S < s$

A similar analysis applies to the two subcases in which the House committee median is to the left of H and the Senate committee median is to the right of S (Figures 5 and 6). In both cut_h is binding. In the former no report that can clear conference lies within the scope of the differences. In the latter some reports do satisfy the scope restriction. But in neither case is enforcement of that restriction credible, so conferees are free to choose any report in $[h, min(cut_h, s)]$.

Figure 5 – Case 3a: $h < \frac{H}{2}$

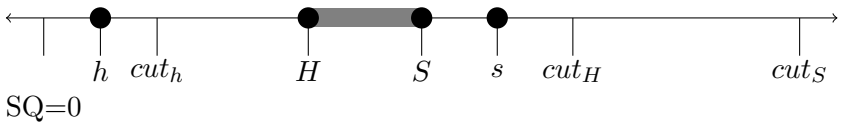
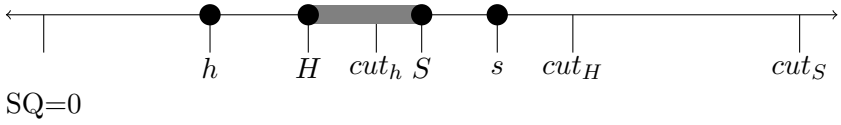


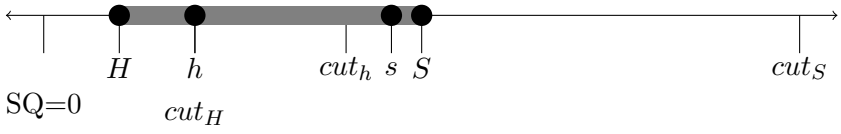
Figure 6 – Case 3b: $h > \frac{H}{2}$



3.4 Case 4: $H < h < s < S$

In this case (Figure 7) preferences between principals and their respective agents are nicely aligned. Both principals and agents are inclined to produce a result that satisfies scope of the differences. The exact location of the bargained outcome will depend on the relation between cut_H and h. If $cut_H < h$ then the outcome will be cut_H—the best that the two conference delegations can secure for themselves. If, on the other hand, $cut_H > h$, then the outcome will be in $[h, \min(cut_H, s)]$. In either case scope will be satisfied, because of preference alignment not the force of a scope rule.

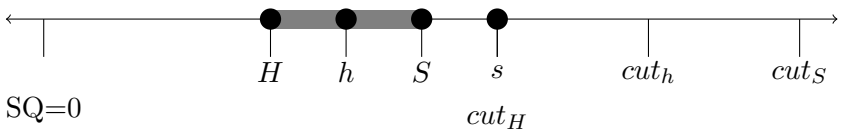
Figure 7 – Case 4: $H < h < s < S$



3.5 Case 5: $H < h < S < s$

In this case (Figure 8) the result again depends on the relation between h and cut_H. Since a scope restriction is not credible, a point in $[h, \min(cut_H, s)]$ will emerge from conference and pass both chambers if $h < cut_H$; if the inequality is reversed, then cut_H is the outcome. What the House chamber is willing to tolerate may be constraining, but the scope-of-the-differences will not be.

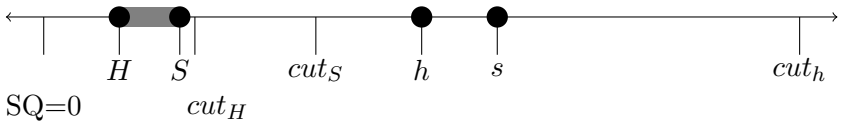
Figure 8 – Case 5: $H < h < S < s$



3.6 Case 6: $H < S < h < s$

Finally, when both conferee medians are high-spending extremists (Figure 9), the scope of the differences, as such, does not constrain, but chamber preferences do restrict what conferees can do. If $cut_H < h$, then the conferees will report cut_H and this will be approved by both chambers. If $cut_H \in [h, s]$, then any report in $[h, cut_H]$ is available to the conferees. If $cut_H > s$, then conferees are free to choose any report in $[h, s]$. The actual scope of the differences between the two original bills is irrelevant.

Figure 9 – Case 6: $H < S < h < s$



We have established in this baseline model, summarized in Table 3, that the role of the scope-of-the-differences rule is minimal. Chamber agents are only constrained by what will pass in each chamber. And in most instances this is hardly a constraint at all. When the equilibrium conference report satisfies the scope restriction, it is not because the restriction is constraining but rather because the preferences of the principals and agents happen to align. When they don't, the scope restriction in non-binding, but chamber preferences are. And the reason is clear: enforcement of scope is not credible, but enforcement of chamber majority preferences is.

We have, without much defense, set the location of the bills in each chamber at H and S, respectively, appealing to an open-rule amendment logic. But it should be evident that the form of our argument goes through *wherever the chamber bills are located.* The bills, say H^* and S^*, define a scope-of-the-differences range $[H^*, S^*]$. But the relevant strategic parameters remain h, s, H, and S, even if $H^* \neq H$ and/or $S^* \neq S$. The results summarized in Table 3 continue to hold.

Table 3 – Equilibrium Without a Credible Scope Restriction

Case	Equilibrium
1. $h < s < H < S$	$[h, \min(cut_h, s)$ if $h < \frac{H}{2}$ $[h, s]$ if $h > \frac{H}{2}$
2. $h < H < s < S$	$[h, cut_h]$ if $h < \frac{H}{2}$ $[h, \min(cut_h, s)]$ if $h > \frac{H}{2}$
3. $h < H < S < s$	$[h, cut_h]$ if $h < \frac{H}{2}$ $[h, \min(cut_h, s)]$ if $h > \frac{H}{2}$
4. $H < h < s < S$	$[h, \min(cut_H, s)]$ if $h < cut_H$ cut_H if $cut_H < h$
5. $H < h < S < s$	$[h, \min(cut_H, s)]$ if $h < cut_H$ cut_H if $cut_H < h$
6. $H < S < h < s$	cut_H if $cut_H < h$ $[h, cut_H]$ if $cut_H \in [h, s]$ $[h, s]$ if $s < cut_H$

4 Some Empirical Patterns

The results in Table 3 show how conferees pull policy towards their preferred position, and away from those of their parent chambers, when the enforcement of scope is not credible. In this model, the actors are still constrained by the usual logic of pivotal politics—i.e., the final equilibrium outcomes depend on how the four actors' preferences are arrayed. In this section, we pause briefly to consider empirical evidence for the distribution of preferences. How common are each of the six cases laid out in the previous section, in practice? Answering this question is relevant for understanding the implications of the model and will prove important for investigating the changes to the model we undertake in subsequent sections.

To examine these case frequencies, we combine two datasets: the well-known dataset of historical DW-NOMINATE ideal points (Poole and Rosenthal 1985) from voteview.com, and a dataset of appropriations subcommittee membership in the House and Senate for the 95th–104th Congress

of our own making.[11] We focus on appropriations to stay in line with our hypothesized decisions over spending outcomes. Unlike other cases, in which we may not have a good understanding of where the status quo lies, the status quo for any appropriations bill is, in theory, zero; if no appropriations bill is passed, no spending is forthcoming. We focus on appropriations subcommittees because, as discussed before, the members of the subcommittees typically compromise the conference committee.

We merge the subcommittee membership information with the DW-NOMINATE scores and we use the median subcommittee member's DW-NOMINATE score as the location for the House and Senate subcommittees, h and s, respectively. Likewise, we take the median DW-NOMINATE score of each chamber as H and S, respectively. For each Congress, H and S are fixed but h and s vary by subcommittee.[12] Finally, we determine which of the six cases from Table 3 each subcommittee-Congress pair falls into. To do so, we must tackle two nuances. First, the above model arbitrarily fixes $h < s$ and $H < S$, but in practice these vary. For summary purposes, we thus consider either ordering of these to be the same case. So for example, in the data, Case 1 will include any situations with $h < s < H < S$, as in Table 3 above, but also situations with $s < h < H < S$, or $h < s < S < H$, or $s < h < S < H$, and likewise for the other cases. Second, because we imagined a "leftward" status quo meaning 0 in the model, we reflect the DW-NOMINATE scores, by multiplying them by -1, so that "left" on the scale means conservative—typically associated with support for lower levels of spending.

Table 4 presents the frequencies of each of the six cases in the data. As the table shows, there is significant variation in the ideological arrangement of the actors. Roughly 35% of the cases feature a subcommittee closer to the status quo than any of the other actors (Cases 1-3), while the remaining observations (approximately 65% of all cases) feature at least one subcommittee outside of scope to the "right"—farther from the status quo and more liberal, since the scale has been reversed. Interestingly, there are no cases in which both subcommittees are inside the scope of the House and the Senate.

[11] Information on Senate appropriations subcommittee membership is hand-entered from historical CQ Press Almanacs. Information on House appropriations subcommittee membership was generously provided by Jim Snyder.

[12] We calculate one median for each chamber and Congress, for simplicity. This ignores small changes in the median that can occur from special elections and appointments, but causes no bias to our conclusions.

Table 4 – Frequency of Observed Cases, 95th–104th Congress

Case	**# Instances**	Percentage of Cases
1	0	0%
2	3	2.7%
3	36	32.1%
4	0	0%
5	24	21.4%
6	49	43.8%

Our baseline model uncovers important strategic considerations in drafting final legislation that vary with the underlying arrangement of the ideology of the chambers and their agents, the subcommittees. As it turns out, this variance is relevant in the real world. The actual chambers and their subcommittees vary considerably in their positions relative to each other; the differing strategic considerations we have identified thus have the potential to matter for real-world legislation.

5 A Variation on the Baseline Model: Credible Enforcement

In the baseline model developed in section 3, we treated the politics of getting to conference entirely non-strategically. The jurisdictionally relevant (sub)committee with agenda power in each chamber makes a proposal; each chamber amends the respective proposal to its chamber median ideal policy, defining the scope of differences; a conference commences with the agenda (sub)committee serving its respective chamber as a conference delegation. The conferees bargain under the shadow of *Cleaves Manual*, knowing that there is a scope-of-the-differences restriction, but also knowing that the parent chambers cannot credibly commit to enforce it. Indeed, we demonstrated that this strategic perspective leads conferees to fashion a conference report to *their* liking, ignoring any scope restriction and subjecting the report only to the necessity of satisfying chamber majorities in final up-or-down votes. There are rules on the books, so to speak, but these rules are readily broken because chamber majorities lack instruments of credible commitment. We now assume that chamber majorities possess the capacity to tie their hands in advance and this is known by conference delegations.

We do not need to be specific here about the instrument, but we can illustrate some possibilities. Imagine at least one chamber believes that its failure to enforce any particular rule undermines

all its rules. So, even if enforcing a rule is disadvantageous to a decisive coalition in a particular instance, this coalition will nevertheless enforce its rules in this instance to preserve the integrity of its rules over a wide range of situations. That is, it is able to overcome the temptation to permit a rule to be violated by way of a broader cost-benefit calculus.

Alternatively, in a repeat-play context, where a given conference delegation expects repeatedly to find itself bargaining with the other chamber, a chamber majority may credibly threaten to alter the composition of conference delegations in the future if conferees (repeatedly or egregiously) fail to comply with the scope restriction.[13] This threat may be sufficiently likely and sufficiently costly as to induce conferee compliance with the scope rule.

Without providing a blow-by-blow analysis of the model under the assumption of credible commitment, we invite the reader to revisit Figures 1-9 to confirm the conclusions we now report in Table 5. In some cases (the first subcases of 1, 2, and 3) a commitment to scope is Pareto-worsening for chamber majorities and conferees. If conferees could anticipate a waiver motion of the scope requirement, or could be confident that a point of order against a violation of scope would be tabled, and acted on this expectation ex ante, then all parties would be better off. A comparison of the commitment and no-commitment circumstance in the other cases (except case 4 where the outcome is identical regardless) is complicated by the fact that the model does not always make point predictions. Nevertheless, it is relatively straightforward in most of these cases to see that the points in the interval predicted in the commitment circumstance (Table 5) are at least as close to H and S as the points in the predicted interval for the no-commitment circumstance (Table 3). So, the outcome constitutes an improvement for House and Senate majorities (and sometimes majorities of one or the other conference delegation) when the chambers can credibly impose a scope restriction.

The best of all worlds for chamber majorities is one in which an instrument is available to be put in place in advance of conference proceedings, but tailored to the context of each particular instance. Suppose such an instrument were available when the motion to proceed to conference is made. Then a chamber could move to proceed and allow point-of-order waivers against breaches

[13]The members of a conference delegation in the House are appointed by the Speaker, but this may be challenged on the floor. Under House rules for the last several decades the Speaker is implored to add conferees who support House positions that had been opposed by bill sponsors. In the Senate, the composition of a conference delegation must be approved by a floor majority.

Table 5 – Equilibrium With a Credible Scope Restriction

Case	Equilibrium
1. $h < s < H < S$	$SQ = 0$ if $h < \frac{H}{2}$ H if $h > \frac{H}{2}$
2. $h < H < s < S$	$SQ = 0$ if $h < \frac{H}{2}$ $[H, \min(cut_h, s)]$ if $h > \frac{H}{2}$
3. $h < H < S < s$	$SQ = 0$ if $h < \frac{H}{2}$ $[H, \min(cut_h, S)]$ if $h > \frac{H}{2}$
4. $H < h < s < S$	$[h, \min(cut_H, s)]$ if $h < cut_H$ cut_H if $cut_H < h$
5. $H < h < S < s$	$[h, \min(cut_H, S)]$ if $h < cut_H$ cut_H if $cut_H < h$
6. $H < S < h < s$	$\min(cut_H, S)$

of scope when the circumstance is described by the first subcase of cases 1, 2, or 3, thus avoiding Pareto-worsening situations, but explicitly prohibit such waivers otherwise.

At the end of the day, the optimal flexible scope rule (from the perspective of H and S) will depend on true parameter values. Given the empirical patterns presented in Section 4, this flexibility is likely to matter. As Table 3 showed, appropriations bills often occur with the chambers and their agents situated such that scope enforcement is a relevant concern. It is not the case, empirically, that subcommittees are always outliers closer to the status quo; nor is it the case that they are typically outliers pushing for more spending. And moreover, there are no cases in which both subcommittees are located within the scope of the chambers. As a result, a flexible rule is likely to matter in practice.

6 Comparative Statics

In this section, we consider movements of both the status quo and of committee positions.

Moving the Status Quo

The conclusions drawn from the model thus far speak to the salient situation in which Congress is faced with an extreme reversion. In such cases, outlier committees more comfortable than their parent chambers with this reversion—the first subcase of cases 1, 2, and 3 of Table 3—gain significant leverage. In these sub-cases, where the House conferees are "more comfortable" with $SQ = 0$ than are chamber majorities, the House conference delegation is in a very strong bargaining position. If one or both chambers credibly insist on enforcing the scope requirement, the House conferees will reject any conference agreement whatsoever (as reported in Table 5). On the other hand, even if the chambers either lack an instrument to enforce procedural rules or are simply flexible about rules enforcement, these outlier committees are still able to impose their will.

In the other cases covered in Tables 3 and 5 in which the House conference delegation is extreme relative to the reversion and the preferences of chamber majorities (the second subcase of cases 1, 2, and 3), we again see the bargaining advantage it enjoys. It is not quite as manifest as in the cases mentioned in the previous paragraph, because the House chamber median is now positioned potentially to constrain the conference outcome. What is clear is that the extreme status quo is a special case providing advantage to conference delegations willing to settle for it rather than comply with chamber rules.

In the present section we discuss changes in these conclusions when the reversion is *not* extreme.[14] As the reversion moves closer to the median ideal points in the chambers, i.e., as it moves to the right in Figures 1-9, the leverage of outlier committees weakens. As it moves closer to the scope of the differences, the committee's threat to "sink" the bill and allow the reversion policy to be implemented is less and less problematic from the point of view of the chamber medians. The committees now must confront the growing possibility that, while scope itself may not be credible, the power of the parent chambers to kill a conference report is absolute and grows increasingly credible as the reversion policy becomes more to the liking of chamber majorities. Committees will therefore be far less able to exploit their ex post power as chamber conferees. But this is *not* because of rules enforcement generally, and certainly not because of scope of the differences; it is because chamber preferences enable majorities to work their will.

[14] An extreme status quo to the right is a mirror image and so leads to identical conclusions (though of course "H" and "S" change places in the results).

Second, if the reversion policy falls within the scope of the differences, gridlock obtains. A House majority prefers a move to the left while the Senate majority prefers a move to the right. Scope thus becomes a non-issue since the committees are unable to produce any conference bill that will pass both parent chambers.

Finally, if the reversion policy falls to the right of the right-most chamber median (S in the figures above), we have a mirror-image situation of the cases depicted in Figures 1-9. With appropriate switching of parameters the earlier results are obtained.

We conducted the formal analysis of sections 3 and 4 under the assumption that $SQ = 0$, realizing this is extreme but also one that simplifies the analysis. From the discussion of this section, it appears that $SQ = 0$ is an extreme case mainly because it undermines the willingness of the chambers to discipline their conference delegates by rejecting unsatisfactory reports. As the reversion becomes more acceptable to chamber majorities, the conferees' ability to exploit their respective chambers declines because the latter are now more willing to reject conference reports. But, as noted, it is not because of a scope-of-the-differences constraint.

It is also worth noting, as a comparative matter, that the situations most conducive to agent exploitation of their principals are those in which agents are more comfortable with the status quo than their respective principals. This is a case nicely characterized by the mid-twentieth century conservative House appropriations subcommittees and their more spending-oriented chambers that Fenno described.

Changing Committees

We can also imagine changes in the relative positions of the committees and their parent chambers. We think of these as occurring when an election brings new members, with new committee assignments, into Congress – the effects of which are to alter the locations of chamber and committee medians.

Suppose, as in the main analyses, that the status quo is extreme relative to the chambers. The election of more (or less) extreme legislators may not move the median of a chamber's preference distribution in a given policy area much, in general. There are, after all, a large number of incumbents in both the House and the Senate, and most win reelection most of the time. The median, as an order statistic, is not sensitive to small perturbations among a large number of individuals.

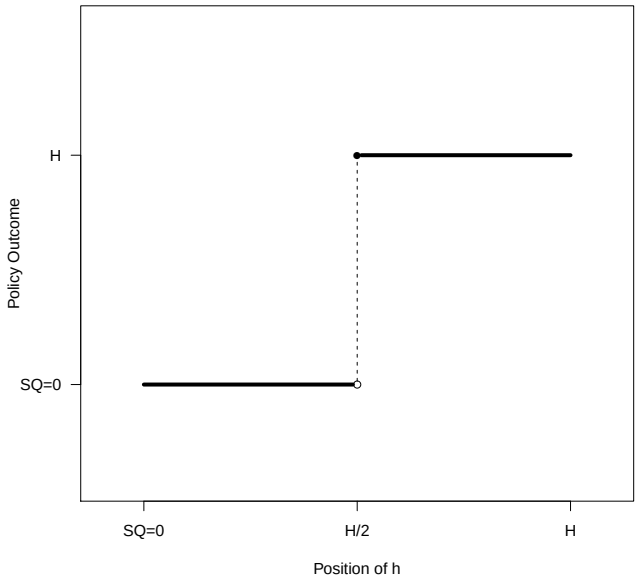
But electoral turnover can change the composition of the relevant committee quite a bit through two different channels. First, even one or two membership changes on a small subcommittee could move it from a relatively centrist position to the extreme or from the extreme towards the center. Second, electoral change, while not necessarily changing the chamber median dramatically, can switch majority party control which, in turn, affects committee composition.

So, if the election moves a committee towards the extreme status quo and away from the medians of the parent chambers, policy may or may not change. For many possible positions with outlier committees, nothing will change as a result of the election: the outcome will continue to be the outer edge of the scope of the differences, if the scope threat is a valid one, or else will continue to fall within the relevant bargaining range defined by the committee medians if scope is not a credible constraint. However, the moment one of the committees formerly not extreme becomes an extreme outlier, its cut-point to the left of the House median's ideal, the outcome will change discontinuously. At this point policy either reverts to the status quo, if the committees anticipate the credible scope threat, or to the bargaining range between the committees, if scope is not credible. With extreme status quos, then, electoral turnover can provide leverage to committees if it produces extreme outliers.

To make this idea clear, Figure 10 presents the comparative static for moving h from the status quo all the way to H, holding all other locations fixed and assuming the presence of a credible threat to enforce scope. Until h crosses the midpoint between 0 and H, the resulting policy is the status quo; faced with the choice between moving policy to the leftmost point of the scope of the differences or "sinking" the bill, the extreme House conferees choose to revert to the status quo. The moment the subcommittee becomes less extreme than $\frac{H}{2}$, it prefers accepting the compromise at H, the leftmost point of the scope of the differences, to the status quo, and policy discontinuously shifts from 0 to H.

For brevity's sake we do not walk through the comparative statics for each of the six cases presented earlier. But all have a similar flavor. Many changes in positioning produce no observed change in outcome (under a fixed regime of either credible or non-credible scope enforcement). When changes do come, they do so discontinuously when a committee "jumps" from one of the six cases to another.

Figure 10 – Comparative static for h with credible scope.



7 Discussion and Extensions

We have explored how bicameral legislatures produce policy through the conference procedure, taking into account the varying preferences of the four main acting bodies: the two chambers and their respective conference delegations. When there is an extreme reversion point, the chambers are somewhat at the mercy of their conferees if conferee preferences diverge from their own. The scope requirement represents one attempt to solve this problem by nominally outlawing conference reports that stray too far from the policy goals of the parent chambers.

But rules are difficult to enforce. Senate minority leader Mitch McConnell (R-KY) recently complained bitterly about the means by which the majority had altered the rule governing debate of presidential nominations, observing that "if the majority can't be expected to follow the rules, then there aren't any rules" (New York Times 11 December 2013, A18). With sufficiently extreme conferees, chambers are left with the unpleasant choice between accepting an extreme final bill that improves slightly on the reversion policy and enforcing a rule that, at least on the policy currently at issue, will produce the undesirable reversion as the outcome. This provides an explanation for a commonly observed occurrence: the routine waiving of many of the chambers' own rules, including those governing the scope of conference committee discretion. The difficulty of reining

in extreme committees may also help explain the use of non-conference methods for resolving bicameral differences (see for example Vander Wielen 2012). We can speculate that the recent growth in the use of "ping-ponging" (Oleszek 2008)—repeated messaging between the chambers in place of the conference procedure—may be the result, in part, of an ideological drift towards the extremes by committees. The informational advantages of committee members and conferees (e.g., Krehbiel 1991; Vander Wielen 2012), as well as the concentrated political benefits for committee members whose constituents have a particular interest in the legislation at hand, make it unlikely, in our view, that such procedures can ever remove the central strategic problem: namely, that the legislature as a whole is beholden, in crafting a final piece of legislation, on the potential outlier committee members most invested in its passage.

What is the president's role in our conception? To focus on the inter- and intra-chamber conflicts of bicameralism, we have omitted the president from our model, but it is easy to speculate about the inclusion of this veto point. If the president is farther from the reversion than is the interval of chamber medians, then he is a non-binding constraint on appropriations negotiations. Even if the president's preferred policy lies within the scope of the differences, he will have little or no effect on the outcome, and in particular will be just as subject as are the parent chambers to extreme committees. When does the president "matter" in this model? The president obtains leverage when his preferred policy is close to the reversion, such that his cut-point prevents policy from moving too far towards the chambers and their committees. This is a somewhat limited—and entirely negative—form of agenda power, similar to that in Cox and McCubbins (2005) as well as Krehbiel (1998).

What about the majority party? Parties play no direct role in our model, which is entirely based on a "pivotal politics" view of legislatures governed by the preferences of various medians. However, parties and their leaders may play a vital role in assigning conferees. We have operated under the assumption that legislatures follow the norm of assigning members of the originating committee to the conference committee. This provides the most obvious justification for the presence of "outlier" committees, which are those who make the "scope of the differences" an issue. Strong parties might choose to violate this norm, or credibly threaten to punish conferees for producing renegade reports. Both, or either, could be alternate mechanisms to the scope requirement for reining in committees. However, neither is an easy route. Picking party loyalists over members

of the originating committee is likely to exclude those legislators with the most relevant policy knowledge in the jurisdiction under consideration. This loss of expertise may produce less effective legislation, a welfare loss to the entire legislature (e.g., Gilligan and Krehbiel 1987, Krehbiel 1991). Punishing members for producing non-median conference reports may be non-credible, too. Though the party might like to produce less extreme policy, it also wants the reelection of its members. This might mean allowing outlier members to produce policy through the conference procedure that satisfies their local constituents on issues of particular local salience.

The disproportionate influence of outlier conferees also speaks to the power of the majority party to maintain cohesion and prevent being "rolled" on roll-call votes. The lack of control over conferees, paired with the privileged nature of conference reports, means that the party may need to act well in advance to prevent such outcomes. Following the "Hastert Rule" requires not merely preventing floor action on bills that directly roll the party, but also preventing votes on any bill that a majority of the party in the legislature supports in its current form, but will roll the party once conferees take their turn with it. In any event, any such prophylactic actions are all the more difficult in the realm of appropriations.

A host of studies (e.g., Fenno 1966; Strom and Rundquist 1977; Vogler 1970) joins Ferejohn (1975) in asking: "Who wins in conference?" Specifically, which chamber obtains the more preferred final outcome after a conference? Our model provides a theoretical foundation for answering this question. With an extreme reversion and extreme conference delegations, the chamber closer to the reversion point is the clear "winner" in our model (the House in the examples we presented, but the situation is generic). But if the reversion is extreme and the committees are not (i.e., if the committee medians exceed those of the parent chamber medians), then the chamber farther from the reversion gains. *That is to say, in general, the chamber closer to the conferees "wins."* But there is also room for skill in bargaining, rather than only the convenience of ideological positioning. Many of the equilibria in our model are bargaining ranges, with the exact policy outcome determined by the two conference committees. Here, then, is an opportunity for one chamber or the other to "win" if its respective conferees are able to pull policy towards toward themselves (in the case where the chambers are more aligned with their own conferees than those of the other chamber).

As a final discussion point, note that the six cases or configurations identified in our pivotal-politics model suggest that the "who wins in conference?" question is overly narrow. Each chamber

interacts strategically not only with the other chamber, but also with the chamber agents. For a chamber, winning depends as much upon prevailing over one's own agents as over "them" (the other chamber). For conferees, it depends upon the relative bargaining skills of each conference delegation and on how long a shadow the scope-of-the-differences requirement casts.

8 Conclusion

We have proposed a simple bicameral model of legislation. The model illuminates the desire for both chambers to create rules to constrain the range of policies their conference delegations produce during negotiation, but it also takes seriously the notion that rules cannot be enforced simply by virtue of existing. Indeed, the only time the "scope of the differences" rule clearly is satisfied in our model is when the originating committees' medians are aligned, more or less, with the medians of their parent chambers. That is, the rule is satisfied when it isn't required.

Although the parent committees may benefit from the ability to threaten the enforcement of the scope requirement credibly, this ability is not always a boon. With a sufficiently extreme committee involved in the conference procedure, the anticipated enforcement of scope can lead conferees to fail to produce a report and thus to the imposition of an undesirable reversion policy. This points to the value of *flexible* enforcement. Rigid enforcement constrains actors and, in the present context, surely can help solve the principal-agent problem between chambers and their committees. But the anticipation of rigid enforcement can also lead, in some circumstances, to suboptimal results. A lack of enforcement altogether, on the other hand, lets strategic actors run amok. The best solution, if feasible, is to constrain actors selectively, with knowledge of when the constraint produces outcomes closer to those desired. A flexible rules regime is consistent with the observed practice of our legislatures, which possess clearly written sets of rules yet often operate in a middle ground, following some of their own rules, bending some, breaking others, and writing new ones as they go.

Our treatment of the "scope of the differences" and its role in bicameral legislation is, of course, abstract. We cannot really locate a multifaceted bill on a single ideological dimension, and we cannot identify the "ideological" scope between each chamber's version. This does not diminish the insights of our model, however. "Scope" in our model is a stand-in for the many differences that

conferees are charged with resolving. Our study of the conflicts that arise in the course of resolving these differences speaks to some of the important strategic considerations legislators confront, both as makers of the law and of their own procedural rules, when they craft policy in a bicameral legislature.

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