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Unresolved Differences: Bicameral Negotiations in Congress, 1877-2002

The congressional conference committee is a remarkably successful institution. The House and Senate almost always disagree over the terms of major policy proposals; some argue such conflict is a necessary element of a bicameral system designed to promote conservative law-making and stability of outcomes (Hammond and Miller 1987; Riker 1992). Yet nearly all measures that pass both chambers arrive at the president’s desk. Why have the House and Senate been so successful in resolving their differences? Are there conditions under which the House and Senate are less likely to reach agreement?

In this paper, I address these questions in three ways. I begin by tracing the development of selected bicameral resolution mechanisms to demonstrate that the House and Senate created and adapted very flexible procedures that encourage agreement rather than stalemate. The history includes information on the emergence of two critical elements of congressional practice, partial conference committee reports and motions to instruct conferees, not reported elsewhere.

Second, I argue that the long record of successful resolution of differences between the chambers is due partially to legislators’ decisions about how best to expend their time and resources. Reaching bicameral agreement depends on the arrangement of legislators’ policy preferences in each chamber in relation to the status quo. Members of Congress know, with some uncertainty, whether a sufficient number of legislators in each chamber will prefer a policy change over current law. If it is improbable that the House and Senate can agree on the same legislation, policy makers are unlikely to spend the time and effort required to pursue a legislative initiative to passage in both chambers.

In the final section, I discuss electoral and institutional conditions expected to affect the likelihood that the chambers will successfully resolve their differences. Flexible bicameral resolution procedures and knowledge about preference arrangements do not guarantee that measures will clear the legislative branch; each Congress, a small proportion of measures die because the chambers failed to resolve their differences. I present new longitudinal data on the failure of chambers to resolve their differences since 1877. At this stage of my analysis, I can only discuss possible causes of the variation in the rates of successful bicameral resolution over time. My only conclusion is that the effects of institutional change and electoral dynamics deserve further exploration.

Institutional Effects on Bicameral Negotiations

When the House and Senate disagree over the terms of a policy proposal they often enter what economists term a distributional bargaining situation, where a gain for one side means a loss for the other.\(^1\) Although both sides may believe that a compromise policy exists that could gain sufficient support in both chambers, they do not know exactly what the other chamber will

\(^1\) It is worth emphasizing that this is a generalization about conference committee negotiations. Not all aspects of conference bargaining are “distributional,” meaning a gain for one side equals a loss for the other. Some aspects of bicameral bargaining are “efficient,” meaning a compromise can be found that is mutually profitable. Such situations receive less emphasis here because there is little doubt that the internal institutions of Congress are well-suited for reaching an agreement when all interested parties can win.
accept. Legislators naturally attempt to reach a compromise as close as possible to their version of the legislation. To reach an agreement, concessions must be made, but each side will concede only when it believes the other will not (Schelling 1956). Each chamber has an incentive to misrepresent to the other what it is willing to accept; in other words, both sides try to convince the other that it must concede or the bill will be lost.

Therefore, despite the fact that over ninety percent of bills and joint resolutions that pass both chambers make their way to the president’s desk, the threat of failure is an inherent element of bicameral negotiations. In conference committee, House managers tell Senate managers that their proposed compromise will never pass the House; Senate managers apologetically explain to House managers that a threatened filibuster means a favored provision cannot be cut. Conferees from both the House and Senate return to their respective parent chambers and regretfully report that they fought hard for their version of the measure, but the only other alternative to compromise was failure.

In short, both House and Senate negotiators try to capitalize on incomplete information about what will pass their chamber. Thomas Schelling (1956) identified and discussed several structures or institutions crucial to understanding outcomes in these kinds of bargaining situations. Essentially, he argued that the outcome can be heavily influenced by the existence of institutions that allow bargainers to credibly commit to a position. Negotiators can do this by reducing their power to do anything other than their preferred position. As Schelling explains, “in bargaining, weakness is often strength, freedom may be freedom to capitulate, and to burn bridges behind one may suffice to undo an opponent” (1956, 281).

While negotiators might create institutions to weaken their ability to concede in order to strengthen their bargaining position, such tactics carry a risk. If both sides commit to different positions, then agreement is not reached (Schelling 1956). Simultaneous commitment equals stalemate. The House and Senate therefore face a classic dilemma. Each chamber has an incentive to develop institutions that will allow it to credibly commit to a position in order to force the other chamber to concede. Yet if both chambers create these institutions, then both can credibly commit to different positions and cause stalemate, an undesirable result for both chambers.

The problem is not an easy one for the houses of Congress to solve, as evident from the evolving nature of bicameral resolution mechanisms (McCown 1927; Rybicki n.d.). Over time, the chambers have created and, more importantly, adapted procedures that reduce uncertainty about the position of the other chamber. Through the development of conference committee procedures, the chambers created a way that allows them to attempt to gain a bargaining advantage by communicating a position while minimizing the risk of stalemate.

In this paper, I describe the evolution of just two procedures, partial conference reports and motions to instruct conferees, to demonstrate how the chambers can adapt their institutions to facilitate communication and prevent stalemate. In the contentious decades following the Civil War, the chambers transformed conference committee delegations into what Schelling (1956) terms “bargaining agents.” By sending an agent to bargain, each chamber strategically weakened its ability to concede because agents can be forbidden to take certain actions. Both
motions to instruct conferees and conference reports in partial or full disagreement served this purpose starting in the second half of the nineteenth century. Furthermore, postfloor procedures also evolved to ensure both chambers could reverse, or undo, a commitment. Partial conference reports permitted each chamber to go on record supporting or resisting a particular proposal, but these votes in no way prohibited further compromise. By the end of the nineteenth century, motions to instruct conferees were not binding in either chamber.

The history of these procedures provided below differs from other accounts in several respects. As mentioned above, other historical studies of the conference committee system did not fully describe the emergence of these important features. Furthermore, the attention that has been given to conference reports in full or partial disagreement and motions to instruct conferees has focused on internal chamber dynamics, not the relationship between the chambers. Ada McCown (1927), for example, argues that “the device of a conference committee makes party control more effective” (11-12). McCown emphasizes the ineffectiveness of conferee instructions in controlling managers and treats partial reports simply as a means of reducing the power of managers to make decisions about Senate amendments that could not have been in order in the House. Keith Krehbiel (1991), relying largely on McCown (1927) and Hinds (1907), focused on the relationship between committees and the floor rather than on the relations between the chambers.

In contrast, I argue that many of the institutions understood in other works to be mechanisms for the median legislator to control conference committee delegations are actually means through which the chambers bargain. Partial reports and instructions are poor means to control conferees and, furthermore, seem to have been designed for the purposes presented here. Of course, institutions designed for one purpose are often used for many others. And it would be foolish to claim a single purpose for the evolution of any legislative institution; in fact, policy makers are likely to choose the rule or norm that best serves several goals. My primary goal is to explain the long history of successful resolution of bicameral differences. Regardless of what these institutions may also mean for party or committee power within each chamber, I seek to show how they evolved into devices that facilitated House and Senate agreement.

I selected partial reports and motions to instruct conferees as examples of the chambers’ ability to adapt resolution mechanisms for several reasons. They are the most significant procedures to develop in the critical era following the Civil War. Before 1850, the chambers sent measures to conference committees far less frequently, and resolution procedures did not involve a delegation of decision-making authority to an agent (Rybicki 2003). After the Civil War, conference delegations took on important characteristics of “bargaining agents.” While it was common in the antebellum period to select conferees from the standing committee of jurisdiction, by the 1870s nearly three-quarters of the managers came from the standing committee and by 1890 nearly all managers came from the committee (Table 1). The gradual increase in the percentage of conferees appointed from the committee of jurisdiction coincided with the decrease in turnover in committee membership. In the decades following the war we also see systematic evidence of loyal partisans be rewarded, in both chambers, with better committee assignments (Stewart and Canon 2002). Furthermore, by the mid-1870s, both chambers were no longer appointing new conferees to a second or further committee of conference. Instead, if a conference committee reported in partial or full disagreement, or even if
a chamber rejected a conference report, the chambers frequently appointed the same managers to a further conference. In these decades, in short, conferees developed their own incentives to reach agreement—incentives different than those of the parent chamber that nevertheless helped the chambers reach their goal of agreement. Conferees had incentives to preserve their reputation in expected future negotiations and to reap rewards for reaching a favorable agreement.

It addition, partial reports and motions to instruct conferees were not arcane procedures to members of Congress in this era. In the nineteenth century and indeed for most of the twentieth century it was not at all uncommon for bargaining between the chambers to involve both the “ping-pong” of amendments between the houses and the return of a measure to conference multiple times. Indeed, multiple conferences were held, on average, on 20 percent of measures sent to conference between 1867 and 1921. As will be explained in full below, motions to instruct and partial conference reports were crucial elements of these lengthy bargaining negotiations. In sum, this is a study of the first major changes in bicameral resolution procedures after the development of the conference committee system.

Finally, before turning to the historical discussion, I must remind the readers that these pages describe the emergence of nineteenth-century resolution mechanisms. Both partial reports and motions to instruct conferees are in order in the modern Congress, but contemporary Congress watchers may not recognize them as they are presented in these pages. Partial reports evolved in the twentieth century, as McCown (1927) and Bach (1981) demonstrate, into tools for allowing full chamber action on amendments to appropriation bills that would not have been in order if offered on the House floor. In the House, motions to instruct conferees underwent considerable procedural evolution, and sometime after 1936 they became one of the few methods by which the minority party can secure floor time for debate. These developments are covered in greater detail elsewhere (Rybicki n.d.).

Emergence of Partial Reports, 1879-1895

After the Civil War, the chambers gradually began to rely on partial conference reports to communicate their policy positions to each other. A partial conference report recommends action on some amendments in disagreement but leaves other amendments before the chambers for separate action. For example, if the Senate amends a House bill in ten places, the managers might compromise on eight of those amendments but report the other two in disagreement. The House and Senate each then take action on the amendments, and they may request a further conference be held on unresolved differences.

Partial conference reports had been in order in both chambers long before they began to be used regularly in the 1880s. The 1860 edition of the House Digest cited an 1846 precedent as support for the assertion that conference committees “may report agreement as to some of the matters of difference, but unable to agree as to others” (Barclay 1860, 66; House Journal, 29

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2 Figure is based on data from the 40th (1867-1869), 43rd (1873-1875) and 45th through 66th Congresses (1877-1921).
3 In the modern Congress, the Speaker will first recognize a minority party member to offer a motions to instruct conferees offered after the House agrees to go to conference but prior to the appointment of conferees. The motion was not a minority party prerogative at the time Cannon’s Precedents was published in 1936.
Partial reports likely emerged at this time for several reasons. The first is that the chambers needed to replace an older, more time-consuming method of communicating their positions. Conference committees began to report in partial disagreement just as the House and Senate were moving away from floor consideration of second-acting chamber amendments. For most of the nineteenth century, the House and Senate considered the amendments of the second-acting chamber on the floor. In other words, legislators debated the amendments of the other chamber, sometimes agreeing with, sometimes disagreeing with, and sometimes amending the changes of the other body. But by the second half of the nineteenth century, amendment exchanges both prior to and instead of sending a bill to conference committee had disappeared. The chambers were requesting and agreeing to meet in conference committee without any floor consideration of the second-acting chamber amendments (McCown 1927; Rybicki 2003).

While moving directly to conference saved the time of the chamber, it also prevented the full membership from communicating their position through separate votes on second-chamber amendments. As a result, the chamber delegations in conference lacked information about what a majority in each chamber would accept. Partial reports allowed the chambers to send bills quickly to conference while preserving the possibility that a separate vote could be held later on amendments in disagreement in order to establish a position of the chamber on the issue. Conferees from both chambers, when reporting back amendments in disagreement, sometimes explained that they were seeking “some expression of the sense of the House” (Record, 46 Cong., 2, June 9, 1880, 4336) or “to obtain the vote of the Senate upon the question” (Record, 44 Cong., 2, March 3, 1877, 2151). The purpose of a partial report, according to one chair of a Senate delegation “was to come back to those who were competent to instruct us to learn whether or not they desired to still further insist” (Record, 46 Cong., 2, June 8, 1880, 4283).

Partial reports were not simply a more efficient method of bicameral communication. Allowing conferees to report back to the parent chamber portions of the legislation in disagreement became a mechanism through which the House and Senate could gain leverage in negotiations without increasing the risk of stalemate. If a parent chamber did not grant the conferees permission to concede, the bargaining agents, the conferees, could credibly claim to be restricted by the chamber vote. In other words, if the parent chamber voted to insist on its amendment (or on its disagreement to the amendment of the other chamber), the conference delegation could return to further negotiations armed with majority or even unanimous support for their chambers’ position. The conferees could tell their counterparts from the other chamber
that they could not possibly concede. Their parent chamber, as evident from the vote cast on an amendment in disagreement, would never agree to the proposed compromise.

If, on the other hand, the chamber granted the conference delegation the authority to back down, then the conferees retained their ability in future conferences to credibly claim they did not have the authority to back down (at least not without receiving explicit directions again). In several cases, the chambers made the very concessions the conferees felt they had not had the authority to make in committee. Sometimes the remaining differences were resolved through a further exchange of amendments, perhaps with one chamber receding from one amendment and the other receding from its disagreement to another amendment (*House Journal*, 29 Cong., 1, August 10, 1846, 1302; *Senate Journal*, 29 Cong., 1, August 10, 1846, 523-4). In at least one instance, the House passed a sense of the House resolution that the House conferees yield to the wishes of the Senate conferees (*House Journal*, 46 Cong., 2, June 9, 1880, 1436; *Record*, 46 Cong., 2, June 9, 1880, 4338).

Partial reports facilitated agreement even as they allowed the chambers to communicate their positions, they reduced the risk of simultaneous commitment because the positions taken on amendments in disagreement could always be undone. Just because a chamber has insisted on its disagreement (and requested a second conference) does not mean that it can not reverse this position (by agreeing to a recommendation from the second conference committee that it recede from its disagreement and agree to the amendment—perhaps with an amendment). From 1879 to 1919, conference committees reported in partial disagreement at least once on 136 measures. On 110 of these measures, the chambers sent the bill back to conference after taking opposing actions on the amendments—yet the chambers ultimately reached agreement in 99 percent of these cases. Communicating a position in this fashion clearly did not irrevocably commit either chamber. The partial reports facilitate communication of chamber positions while minimizing the risk of stalemate.

Because they facilitated agreement, partial reports became an important element of bargaining strategies—particularly on the most contentious issues between the chambers. Many of the early reports in partial disagreement concerned not just policy disagreement but issues of chamber rights. The conferees began to utilize this previously unfamiliar procedure perhaps because agreement through the regular process seemed unlikely. For example, the chambers fought throughout the 1870s and into the 1880s over the payment of congressional employees. The Senate sometimes recommended higher wages for the clerks than the House did or proposed additional clerks for the Senate. Members of the House found it insulting that Senate proposed that its clerks be paid more than House clerks, or that the Senate have more clerks than the House; senators found it insulting that the House interfered with administrative matters of the Senate. The controversy arose regularly over the approval of the legislative, executive, and judicial branch appropriation bill. In both the 46th (1879-1881) and the 48th (1883-1885) Congresses, the conference committees on this appropriation bill reported amendments concerning employees of the chambers in disagreement.

The continuing conflict between the chambers over the separation of funding and policy decisions in the 1870s, 80s, and 90s also played out in the use of partial reports. During a time when Senate rules concerning the separation were stricter than House rules, conference
committees often reported in disagreement the Senate amendments that struck out legislative provisions in the House bill. Reporting in disagreement allowed the Senate to discuss the legislative proposals and even suggest modifications that the conferees could propose as compromises in further negotiations (Record, 48, Cong, 2, March 2, 1885, 2385). When further institutional changes left the House with stricter procedures concerning legislation on appropriation bills, partial conference reports allowed the same consideration privileges to representatives (Bach 1981).

**Motions to Instruct Conferees, 1863-1895**

The emergence of the motion to instruct conferees in the same era contrasts with the development of partial reports. A comparison of the evolution of these two similar procedures illustrates the challenge to the chambers to independently adapt institutions to reduce the risk of stalemate. In some ways, motions to instruct seemed well-suited to serve the same purpose as partial reports; in fact, at times members referred to directions on amendments left in disagreement as “instructions.” Yet the content of motions to instruct and the ability of one chamber to instruct unilaterally led the chambers to use motions to instruct rarely and reluctantly in these decades, at least in comparison to partial reports. By the turn of the century, motions to instruct neither effectively communicated chamber positions to each other nor increased the risk of stalemate.

In the 1860s, motions to instruct conferees were in order in both chambers. These motions were generally offered on the floor of the House or Senate after a conference committee had met and reported.4 The motions directed a chamber’s conference delegation to take some action on amendments in disagreement, in some cases suggesting a policy compromise.

In the first decade following the Civil War, presiding officers of both chambers ruled instructions in order. In response to a point of order, Speaker Schuyler Colfax (R-IN) ruled the House had to power to instruct conferees, because “otherwise the whole power would be in the hands of a Speaker in appointing the committee” (Globe, 38 Cong., 1, March 1, 1864, 893). In the Senate, the Vice President, Hannibal Hamlin, also ruled in order a motion to instruct the conferees. In addition, the 1867 edition of Barclay’s Digest stated that “a committee of conference may be instructed like any other committee, but the instructions can only be moved when the papers are before the House” (Barclay 1867, 69).

Motions to instruct conferees, like partial reports, provided a new way for the full membership to vote on issues in disagreement and their emergence coincided with the trend away from considering amendments of the other chamber on the floor prior to conference. Those in favor of passing instructions sometimes pointed out that the chamber had never directly voted on certain matters embraced in the amendments of the other chamber because the

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4 In contrast to modern practice, early motions to instruct seem to have only been offered after a conference committee reported disagreement, but the practice varied as to whether the chambers formally passed a motion to recommit the report with instructions or passed the instructions and appointed a new conference committee. Although members sometimes, but inconsistently, objected when a motion to recommit was offered after one chamber had acted on a conference report and the conference committee was technically no longer in existence, whether the motion agreed to was to recommit or to re-appoint the same managers to a new conference, the effect would be the same.
amendments had been disagreed to en bloc prior to conference (Record, 49 Cong., 1, July 23, 1886, 7404).

As in the case of partial reports, the House and Senate also used motions to instruct to increase the bargaining power of their conference delegation—either by restricting their ability to concede or by protecting their reputations in future negotiations by explicitly granting permitting them to concede. The Senate instructed its conferees three times in the 1860s, each time because the managers from a conference that failed to reach agreement requested guidance from the parent chamber. In two of these instances, the instructions directed the Senate delegation to concede. In March of 1865, the conference committee on the legislative, executive, and judicial appropriation bill reported an inability to agree, and the Senate recommitted the bill and instructed the committee to agree to one provision still in disagreement. The instructions directed the Senate managers to agree to the House position. The chair of the Senate delegation said the conference committee “did not feel themselves at liberty to depart from the action of the Senate” and desired “the instruction of the Senate” (Globe, 38 Cong., 2, March 1, 1865, 1225). Without the instructions, the conferees and most senators present on the floor seemed to agree, the delegation would not have had the authority to agree to the House provision. In 1866, the Senate instructed its conferees, once again because, as the chair of the delegation claimed, the conferees did not feel “at liberty to accept” a compromise proposed by the House delegation (Globe, 39 Cong., 1, July 27, 1866, 4246).

There were important differences between motions to instruct and partial reports, however, and these differences had the potential to exacerbate conflict between the chambers rather than facilitate agreement. One problem was that instructions, unlike the motions in order following a partial report, could contain specific policy suggestions. For example, in 1864, after two conference committees had failed to reach agreement on an internal revenue bill, the House instructed its conferees to agree to an additional duty on liquor between twenty and forty cents a gallon (Globe, 38 Cong., 1, March 1, 1864, 892). When the partial report arrived in the other body, a senator moved that the Senate delegation be instructed to agree to a tax not exceeding twenty cents a gallon. The situation illustrates the problem of binding instructions. After some discussion, the full Senate rejected the motion to instruct and instead agreed to meet the House only in a further free conference. The House agreed to hold a free conference and the managers met without instructions from their chambers.

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5 Reporting in partial disagreement leaves the amendments before the chambers just as they were when sent to conference. Therefore it is possible that specific policy “instructions” could be given after a conference committee reported in partial disagreement. A chamber could theoretically recede from its disagreement to an amendment and concur in the amendment with an amendment. In these decades, however, I saw no instances of this. The chambers chose, rather, to reassert their original motions and return to conference.

6 The purpose of the instructions, urged by conferees from both chambers, was to bring before the conference an amendment that had been resolved prior to conference. The House had agreed to an amendment of the Senate concerning duties on liquor. Two conference committees could not reach agreement on the remaining amendments in disagreement, and it was hoped that by revisiting this issue a compromise could be reached. While the Speaker ruled the conference committee could do anything “if the matter be referred to them,” a majority of senators objected to allowing the conference committee to consider an amendment that had been agreed to (Globe, 38 Cong., 1, March 1, 1864, 893).
Furthermore, motions to instruct conferees were problematic because a chamber could act unilaterally. In the case of partial conference reports, both chambers are given the opportunity to make motions on the remaining amendments in disagreement. Motions to instruct, on the other hand, could be offered after the other chamber had acted on the first conference report. If they were made by the chamber that acted first on a conference report, then the other chamber had an incentive to either instruct its conferees in an opposing manner or to refuse to meet in conference at all. When conference committees report in partial disagreement, if the chambers want to send the measure back to conference they must take opposing actions on an amendment; one chamber disagrees and the other insists. Because they are choosing to send the bill to conference, however, it is understood that both want chambers want to reach agreement and one, or both, will have to “back down” from the motions taken to return the bill to conference. It was not at all clear in the 1870s, however, that managers need not follow motions to instruct.

Both the House and Senate recognized the disadvantage of motions to instruct and took actions accordingly. In 1864, the House instructed its managers appointed to a further conference on the Montana Territory bill to adhere to the House position. In response, the Senate declined to agree to a committee of conference under the terms of the House. Because there was only one item in disagreement, and the House had instructed its conferees to adhere to the House position, holding a committee of conference, according to some senators, would be absurd (Globe, 38 Cong., 1, April 15, 1864, 1640).

In 1868, the Senate instructed its delegation to recede from the Senate amendments except those relating to imported cotton (Globe, 40 Cong., 2, January 22, 1868, 675). When the House managers reported that the Senate managers “were unwilling to do anything except according to the instructions which had been given them by the Senate,” the House rejected the conference report (Globe, 40 Cong., 2, January 24, 1868, 742-3). A manager moved that the House ask for a further conference and instruct the delegation to adhere to the House position. Speaker Schuyler Colfax (R-IN) said, however, that the practice had been against instructions and the House followed his guidance.

The motion to instruct continued to be controversial into the 1880s and early 1890s. When the House passed what the Senate viewed as particularly egregious instructions in 1883, the Senate agreed by voice vote to a resolution “That it is the opinion of the Senate that the conference on House bill No. 5538 should be full and free, and that if the Senate conferees become advised that any limitation has been placed by the House upon the action of their conferees, the Senate conferees shall retire and report to the Senate for its consideration” (Record, 47 Cong., 2, February 27, 1883, 3376; McCown 1927).

In their early history, motions to instruct failed as a means of communication that would assist the chambers in reaching agreement. Yet neither chamber wanted to give up the right to instruct its own conferees because it would be putting itself in a weaker bargaining position. Instructions were ruled out of order in the Senate in 1873 not because of they had the potential to cause stalemate, but because a particular motion to instruct put senators in an awkward political situation.
In 1873, a majority of senators reversed a ruling of the presiding officer and made instructions out of order to avoid a direct vote on a congressional pay raise. The conference committee on the Legislative, Executive, and Judicial Branch appropriation bill had reported in agreement. Senator George Wright (R-IA) moved that the report be recommitted and the conference committee be instructed to strike out the congressional pay raise. Senator Lyman Trumbull (R-IL) made the point of order that the instructions were not in order. The presiding officer, George Edmunds (R-VT), overruled the point of order, relying on Barclay’s Digest which stated that a committee of conference could be instructed. Trumbull appealed the ruling, and the Senate debated the case. While many senators raised procedural issues, the main concern was the always politically sensitive issue of the congressional pay raise. If the instructions were in order, then senators would have to vote on whether or not the conference committee should strike out the pay raise. Senator John Sherman (R-OH) asked senators to consider the pure question of order and “lay aside for the present consideration of the merits of the proposition, and only look to the question of order, because we are about to set a precedent which may bother us hereafter” (Record, 42 Cong., 3, March 3, 1873, 2173). The Senate instead overturned the ruling of the chair 47 to 11, deeming instructions to be out of order.

The initial reversal of a ruling was probably motivated by the desire to avoid a difficult vote, but the Senate continued to follow this precedent into the 1880s. At times, senators did wish to communicate their goals to conferees from both chambers and they relied on other procedures to do so. In 1874, after the presiding officer said instructions would be out of order, a senator claimed he had received assurances from a manager that if they recommitted the conference report, the next report would be satisfactory (Record, 43 Cong., 1, June 22, 1874, 5369). In 1876, the Senate recommitted a conference report “upon such definitive ideas,” as Senator Lot Morrill (R-ME) said, “as that the committee might understand that they were in the way of instructions when they came to consider the question” (Record, 44 Cong., 1, February 17, 1876)

Although the Speaker never ruled the motion to instruct out of order in the House, representatives continued to express misgivings about the procedure and passed other kinds of motions in lieu of instructions. For example, in 1878, the House, after a conference committee failed to reach an agreement, adopted a resolution that “It is the opinion of this House that its conferees. . .should under the circumstances yield to the conferees on the part of the Senate” (Record, 45 Cong., 2, June 15, 1878, 4689). The following Congress, in 1880, Speaker Samuel Randall (D-PA) guided a representative “to change his resolution, so that it shall express an opinion on the part of the House, rather than be in the form of an instruction to the committee” (Record, 46 Cong., 2, June 9, 1880, 4337). Randall said he was aware of the assertion in Barclay’s Manual but he had “always doubted the propriety, in fact the power, to instruct, because it is an interference with the full and free conference of the two Houses. But the Chair admits there have been occasions when after various conferences the House has asserted the right

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7 The amendment in disagreement between the chambers contained the pay raise, so the instructions directed the conferees to strike out that portion of the amendment.
8 Some procedural issues raised include the fact that the conference committee had reported in agreement, and generally instructions had been offered only after a conference committee reported an inability to agree. Others raised difficulties with motions to instruct conferees in general, such as what would happen if one chamber instructed the conferees one way and the other chamber instructed them the other way. The result would be a pointless meeting of the conference, or simultaneous commitment.
to instruct conferees." In both of these examples, a majority agreed to pass resolutions short of actually instructing its managers.

Controversy over the motion to instruct conferees lasted until the motion ceased to be a method through which the chambers could reach simultaneous commitment. In 1886, in response to a point of order against a report containing a recommendation contrary to instructions from the House, Speaker Carlisle ruled that while the House could instruct its conferees, these instructions were not binding. As Carlisle explained, “while it is competent under the recent practice of the House to instruct conference committees, still the House in that case, as in the other, may ultimately recede from its disagreement to the very amendment in regard to which it had instructed its conferees to insist on a disagreement” (Record, 49 Cong., 1, July 23, 1886). After this ruling, the Journal Clerk of the House, Henry H. Smith, noted in the Digest and Manual that the decision “in relation to an alleged departure from instructions by the House by its conferees is so important, that it, together with the question raised, is given in full” (Smith 1887, 337).

It may be just as important that by the turn of the century, it was established in House precedents that motions to instruct conferees should not be formally communicated to the other chamber. In other words, they would pass in one chamber and be printed in the Congressional Record, but the other chamber would not receive an “official” message of instruction.

As these precedents and practices were established, motions to instruct ceased to be mechanisms that increased the chances of stalemate. By the 1890s, motions to instruct were no longer controversial in the House. Speaker Thomas Reed wrote in his parliamentary handbook in 1894 that if a chamber wished to amend a conference report, its only recourse was to “reject the report, ask for another conference, and then instruct the committee to ask the conferees of the other body to agree to the proposed amendment to the report” (Reed 1952, 164).

Also by the mid-1890s, presiding officers were again ruling motions to instruct in order in the Senate. In 1887, the President pro tempore, John Sherman (R-OH), said he felt bound by the 1873 ruling of the Senate “and therefore is compelled to hold that the instructions are not in order” (Record, 49 Cong., 2, January 21, 1887, 663). Yet the following year, the Senate passed a motion to instruct its conferees. John Sherman, no longer presiding, argued that “As a matter of course, either house can instruct its committees of conference as it can instruct any other committee at any time” (Record, 50 Cong., 1, September 21, 1888, 8824). Senator George Edmunds (R-VT), who had ruled against instructions in 1873, in this case also spoke in favor of instructions. The Senate voted on a motion to instruct its delegation again in 1890, the President

9 The Speaker ultimately ruled this particular motion to instruct out of order because it instructed the delegation to change a provision upon which the two houses had already agreed. It had long been established that only matters in disagreement were before the conference, although this ruling is inconsistent with the ruling of the Speaker in 1864 (See footnote 39). In 1891 the Speaker ruled again that the chamber cannot instruct the conferees to change text both houses had already agreed (Record, 51 Cong., 2, February 28, 1891, 3610-11).

10 A 1903 precedent is cited by Hinds (1907), V §6399.
pro tempore stating in response to a question that “It is within the power of the Senate to make the order” (*Record*, 51 Cong., 1, July 1, 1890, 6827).\(^{11}\)

In sum, motions to instruct conferees emerged in both chambers at a time when the House and Senate no longer considered and voted separately on the amendments of the other body. While instructions served, in part, to allow the full chamber to express its opinion on individual amendments or compromise proposals, they also interfered with the full and free nature of conference committees. As a result, both chambers passed motions to instruct between 1861 and the mid-1890s amid controversy. Instructions were out of order entirely in the Senate for a time, and only became non-controversial after crucial House precedents established that they were non-binding and would not be formally messaged to the other chamber.

**Anticipating the Arrangement of Policy Preferences**

The evolution of selected bicameral resolution mechanisms described above demonstrates how, over time, the House and Senate have adapted procedures to help them resolve their legislative differences. But institutions alone do not explain the high rate of success in bicameral negotiations. Legislative outcomes, congressional scholars generally agree, depend on the interaction of institutional structures and legislators’ goals. We therefore turn now to explanations for the outcomes of bicameral negotiations that focus on the policy goals of legislators.

Theories of legislative politics centered on preference arrangements and institutions predict legislators will reach agreement whenever both chambers prefer a compromise proposal over the status quo (Smith 1988; Riker 1992). In a unidimensional space, this means they will enact a policy whenever the ideal points of the chambers are on the same side as the status quo point. The conclusion has been generalized to apply to multiple dimensions (Tsebelis 1995).

Because the farther apart the ideal points of the chambers, the more likely it is that the status quo point lies between them, scholars generally claim that reaching a compromise agreement is more difficult when the House and Senate have distinct and distant positions on a legislative issue (Tsebelis and Money 1997; Binder 2003). The simple explanation of irreconcilable policy differences has also been suggested in case studies and contemporary accounts of bicameral disagreement (Paletz 1970, 408-9).

Theories emphasizing the policy preferences of key political actors often point to the possibility of a presidential veto or a filibuster as causes of legislative stalemate. Legislation successfully passed by a majority in each chamber may never make it to the President’s desk because of these threats. Keith Krehbiel’s (1998) pivotal politics theory of lawmaking attributes policy “gridlock” to the policy preferences of key political actors. Gridlock is strictly defined to be any instance in which legislation preferred by a majority of legislators to the status quo does not become law. In the pivotal politics theory, the legislature is unicameral, but the basic premise can be extended to theories about bicameral resolution. According to the pivotal politics

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\(^{11}\) Legislative practices change slowly. Four years after this ruling, the President pro tempore ruled specific instructions out of order but declined to rule on “the broad question of the power of the Senate to instruct its conferees.” Confusion over whether motions to instruct conferees were in order disappeared over time.
theory, the median legislators could send a bill to conference but could reach no compromise satisfactory to the filibuster pivot and either the president or the veto override pivot.

Empirical studies support the key conclusions of the pivotal politics theory. Clearly, the policy preferences of the chief executive affect the outcome, and the success, of bicameral negotiations (Longley and Oleszek 1989; Cameron 2000, 137-139). At the very least, legislators are aware of the potential of a presidential veto. The involvement of the executive branch often goes far beyond the negative power of a veto threat. In the modern Congress, administration officials meet with conferees on major measures and take part in crafting the compromise and trading policy provisions. Some historical evidence suggests the White House has played an active role in some conference negotiations since the first Congress. For this reason, it is likely that at times bills fail to be presented to the president because the House and Senate could not reach a compromise that could also satisfy the executive (or two-thirds of the legislators in both houses). The chambers might decide not to force the president to actually veto the bill for political or practical reasons, or they might run out of time trying to find a position that is acceptable to all players in the negotiations.

Similarly, there is no question that actual or threatened filibusters have killed measures after they passed both chambers. For most of congressional history, Senators rarely mounted filibusters against conference reports (Paletz 1970; Longley and Oleszek 1989). Scholars attributed the infrequency of filibusters in the mid-twentieth century partially to the risk that an end-of-session filibuster would kill more than that single bill (Paletz 1970, 383-4). Others claim that Senate norms of comity precluded filibusters in the final stages of the legislative process, but Binder and Smith (1997) argue convincingly that the distribution of power in the Senate during the conservative coalition era explains the infrequency of filibusters in general (89-90).

This does not mean, of course, that threatened filibusters did not prevent conference reports from coming to the Senate floor at all. Although it is difficult to assess the effects of threatened filibusters over time, political scientists generally agree that in recent decades both actual and threatened filibuster have increased (Binder and Smith 1997; Sinclair 1989). Senator Robert Byrd could claim without risk of ridicule in 1980 that “I do not recall a successful filibuster on a conference report since I have been in the Senate” (Congressional Record, 96th Cong., 2nd sess., April 30, 1980, S4358, quoted by Longley and Oleszek 1989). In the last five Congresses (1993-2002), in contrast, the press blamed the threat of a filibuster for the death of six out of 20 measures that went to conference but did not clear the Congress (Congressional Quarterly Weekly).

If the arrangement of policy preferences of key political actors determines whether or not legislation is enacted, how can we explain the successful record of bicameral resolution? Few would argue the historically low rates of bicameral disagreement are due to the consistent

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12 A filibuster could also be mounted post-passage but prior to going to conference. Such a filibuster, if made on each of the three motions necessary to go to conference and any number of motions to instruct conferees, is arguably insurmountable because cloture would need to be filed on each motion (Bach 2001). The possibility that a single Senator could prevent the resolution of differences in this way is not considered separately here because despite the fact that such a filibuster is possible procedurally does not mean it is likely politically. For a discussion of reasons for why we do not see senators taking full advantage of their parliamentary rights, see Binder and Smith (1997, 111-115).
election of key senators, key representatives, and presidents (or again two-thirds of the legislators in each chamber) with policy preferences on the same side of the status quo on most issues.

It is far more likely that political actors have the ability to predict, given the structure of the political system, what issues stand a chance of becoming law. High rates of successful bicameral resolution are due in part to legislators’ reluctance to embark on a major policy initiative if it is unlikely the House and Senate could ever agree on the same bill. Generally speaking, if the arrangement of member preferences on an issue precludes bicameral agreement, a bill on the issue is unlikely to reach the post-passage stage.

As a reminder, the historically high rates of bicameral resolution alluded to thus far are measured by the number of public measures that passed both chambers that were not presented to the president. A great number of measures die after passing just one chamber. Before 1945, approximately 20 percent of House public measures did not pass the Senate, and 44 percent of Senate public measures did not pass the House. Since 1945, the percentages of House and Senate public bills that pass only one chamber have been higher, partially because of changes in the legislative process such as the increased use of omnibus bills and the practice of passing companion bills. Approximately 31 percent of House measures and 60 percent of Senate measures did not pass the other chamber between 1946 and 2000.13 It seems likely that at least some of these bills did not pass the second-acting chamber because a sufficient number of legislators did not prefer the proposal—in any form acceptable to the other chamber—to the status quo.

A recent book by Sarah Binder (2003) provides circumstantial evidence for the argument that legislators know the preference arrangements of key actors and will abandon the pursuit of a hopeless major policy initiative early in the legislative process. Binder examined newspaper editorials from 1945 to 2000 to identify the most salient public policy issues each Congress. She was primarily interested in explaining the inability of the president and Congress to pass legislation on matters of national importance. One element of this study involved identifying at what stage of the legislative process measures die. She found that major issues rarely die because of post-passage bicameral disagreement (Binder 2003, 48-9). In 13 out of the 27 Congresses examined, no major measure died because the chambers could not resolve their differences. In other words, in nearly half of the Congresses under study none of the measures she identified as salient died after passing both chambers, in conference committee or at any other stage in the post-floor process. In the other Congresses, the percentage was generally low; in seven additional Congresses it was less than five percent.

Additional support for the notion that only measures on which some zone of agreement exists among political actors pass both chambers can also be found in the observations of congressional scholars. Legislators do not go to conference looking to disagree; they believe some policy compromise is possible and they want to reach agreement (Fenno 1966; Pressman

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13 Percentages are based only on data from the following Congresses: the 10th (1807-1809), 13th (1813-1815), 19th (1825-1827), 25th (1837-1839), 28th (1843-1845), 30th (1847-1849) and every third Congress between the 34th (1855-1857) and the 106th (1999-2000) Congresses.
Conference negotiations have been described by congressional scholar and advisor Walter Oleszek as taking place in an “agreement-orientated context.”

In sum, an important reason few measures die after capturing majority support in both chambers is that few bills get to that stage if preference arrangements do not favor final enactment. Legislators have a number of information gathering tools at their disposal, and not infrequently they abandon serious pursuit of an issue because they are fairly certain preference arrangements and institutional structures—including the veto and the filibuster—are working against them.

**Unresolved Differences: Uncertainty, Institutions, and Strategic Disagreement**

I have argued that much of the success of bicameral negotiations can be accounted for by flexible resolution mechanisms and the ability of legislators to anticipate what will clear both chambers. Yet each Congress the chambers fail to resolve their differences on some the legislation pending before them. In other words, a small proportion of measures that a majority of legislators in each house supported do not become law. Sometimes one chamber amends a bill of the other chamber and action stops there; sometimes a bill dies after protracted negotiations in conference committee. Why do some bills fail late in the legislative process? Are there conditions under which failure is more likely?

Although I contend above that legislators predict with a high degree of accuracy what proposals can pass both chambers, some uncertainty still exists about the policy preferences of key actors, and this uncertainty can lead to unresolved differences. Legislators might sometimes mistakenly attempt to reach agreement on measures even when preference arrangements guarantee defeat.

It is more likely, however, that legislators might accurately predict that some compromise is possible yet be unable, because of uncertainty about the ideal points of legislators, to arrive at the compromise position. I argued above that over time the chambers have created and adapted bicameral resolution procedures that help to reduce uncertainty about the position of the other chamber without increasing the risk of stalemate. But the historical studies presented above should have also made clear that the bargaining institutions are not perfect. Simultaneous commitment remains possible.

There is another important element of bicameral negotiations we have not yet discussed: the pursuit of goals other than the enactment of good public policy. Failure to resolve differences might not always be caused by the lack of a policy position acceptable to all political actors, or even to the inability, because of miscalculated posturing or poor negotiating skills, to arrive at the compromise position. Members of Congress sometimes choose to leave their differences unresolved to serve goals other than the enactment of the best possible public policy, such as the goal to put, or keep, a party in power. John Gilmour (1995) calls it “strategic

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14 Dr. Oleszek, in addition to advising members of Congress on conference politics, regularly gives lectures to their staff on bargaining strategies and legislative procedures. This quote is taken from his outline distributed at one of these lectures.
disagreement” whenever politicians choose political advantage over a policy compromise that would be an improvement over the status quo.

It is much easier to describe the factors expected to cause the breakdown of bicameral relations than to design a test of their effects. The status quo, the policy preferences of legislators, the political goals of legislators, and legislators’ knowledge of their colleagues’ preferences are all of course largely unobservable. But it may be possible to identify factors expected to increase uncertainty about policy preference arrangements, such as the newness or complexity of an issue. Other issue-level factors, such as the results of public opinion polls, might be expected to increase the likelihood of strategic disagreement. In this way, it may be possible to model at the level of the individual issue the likelihood that the chambers would resolve their differences.

In this paper, I am far less ambitious. I examine aggregate level data and discuss some Congress-level electoral and institutional factors expected to influence rates of bicameral disagreement over time. I first present the aggregate-level data on the percentage of public measures that passed both chambers on which the chambers failed to resolve their differences. I offer some conjectures about the conditions expected to increase uncertainty about policy preferences and the conditions expected to favor strategic disagreement. I leave the challenges of measuring these conditions and constructing a multivariate test to future work.

The Frequency of Failure to Resolve Differences

In order to study bicameral resolution success rates over most of congressional history, I collected two kinds of data. The first set of data sacrifices breadth for depth; I collected data on every public measure that passed at least one chamber but only for every third Congress, or approximately every five years, since the 34th Congress (1855-1857). Figure 1 presents the data on the percentage of all measures passed that cleared only one chamber. Figure 2 presents the data on the percentage of measures passed both chambers and died without going to conference, as well as on the number that went to conference but died either in conference or after the conference committee reported.

The second set of data has more breadth but less depth. For every Congress, I collected data on public measures the chambers sent to conference committee. Figure 3 shows the percentage of measures sent to conference that were not sent to the president for his signature. This data excludes measures that died on their way to conference or during an amendment exchange. I am confident, however, that focusing on measures sent to conference is an appropriate measure of bicameral disagreement. In the first data set, there is some correlation between the number (.71) and the percent (.63) of measures that fail in conference and those that fail without ever being sent to conference (Figure 2). Some of the same factors affecting success rates of measures sent to conference seem to affect those that never make it to conference.

One other observation is necessary before proceeding to the analysis of the data. I am interested in the rates of failure of legislation, not necessarily the failure of individual legislative vehicles. The dotted line in Figure 3 shows the percentage of bills and joint resolutions that went
to conference but never made it to the president. The solid line, however, is more indicative of the failure of legislation because excluded from these numbers are measures that became law through some other means. For example, in the 100th Congress (1987-1988), 16 individual bills died in conference. However, all but six of these bills were general appropriation measures that were rolled into a single continuing resolution at the end of the session. The provisions of two other measures were likewise included in other omnibus bills. These instances of vehicle failure should be separated from, for example, the airline consumer protection bill of that Congress that according to press reports died when House and Senate conferees disagreed over requirements for random drug testing of transportation workers.

To identify instances where agreements reached in conference were ultimately rolled into alternative vehicles I relied on both official congressional documents and press reports. Both the House Final Calendar and the index to the Congressional Record direct users to related bills. The Calendar and Record index, however, do not describe how the measures are related and they furthermore do not identify all instances where vehicles died but the legislation survived. I therefore also used press reports, largely from Congressional Quarterly but also from the National Journal and the Washington Post, to identify when measures that appeared to fail were actually added to other bills.

To be sure, the process of identifying failure was somewhat subjective. Sometimes the incorporation of measures into single vehicles is done precisely because as single measures they would fail to become law. Such instances were nevertheless categorized as a successful resolution of differences. Similarly, if the chambers chose to write and pass a new bill or joint resolution rather than report an old measure from the conference committee, this was not coded as an instance of bicameral disagreement. We are fundamentally interested in measures on which the differences were not resolved through any means. At this point, I have only researched secondary sources for the post-reform (1957-2002) era. The use of such packaging and other creative means to build coalitions increased considerably in the 1980s, and I extended the analysis farther back to confirm this well-reported characteristic of the post-reform Congress.

**Conditions for High Uncertainty about Policy Preferences**

As Figure 3 illustrates, fewer than ten percent of all public measures sent to conference fail to make their way to the president’s desk. I argued above that the chambers resolve their differences on most measures that go to conference because the only measures that reach that stage are ones on which legislators are fairly certain agreement can be reached. When measures fail, one possible explanation is that it is because legislators were uncertain about preference arrangements.

I also argued above that bicameral resolution mechanisms reduced uncertainty about the chambers’ positions. We might expect, therefore, that under certain institutional arrangements uncertainty about preference arrangements will be higher. The data presented in Figures 2 and 3 seem to offer some tentative support for this notion. We see some patterns in the data of change over time that correspond with known changes in the role of the standing committee system in the legislative process. In the middle of the twentieth century, at least compared to the preceding era, there appears to be a reduction in the percentage of public measures on which differences
were not resolved. Through the 1930s and 1950s, in only two Congresses did the percentage of failed measures rise above five percent. The era encompasses the “text book Congress,” generally dated from the 1930s to the twentieth-century reforms, in which strong norms of deference to the expertise of committee members prevailed in both houses of Congress.

Uncertainty about policy preference arrangements might have been low in the mid-twentieth century for several reasons. With high deference to committees, resolution of differences became an agreement between a select few engaged in a repeated game. Communication of true preferences would be easier, both because conferees could be confident the other side “spoke for” their chamber and because the incentive to gain an advantage by misrepresenting ones position would be lessened by the prospect of meeting the same members in future negotiations. Another argument could be that this was a politically conservative era. New policy proposals, on which there is likely greater uncertainty about policy preferences, were likely to be stifled early in the legislative process.

The reforms of the 1970s brought an increase of measures on which the chambers did not resolve their differences. The rise in the number of measures left unresolved is only partially a byproduct of the increased use of omnibus measures, as the solid line is consistently above five percent after 1975. The data confirms the work of others who have shown the effect of the reforms on bicameral relations (Smith 1989; Longley and Oleszek 1989). Again, a number of factors could arguably have contributed to a rise in uncertainty about preference arrangements. First, there were major changes in the composition of conference committees. Larger conference delegations, including junior and even some non-committee members, made reaching agreement more difficult (Longley and Oleszek 1989; Deering and Smith 1997). As more members got involved, there was less certainty that conferees could accurately speak for the full chamber and less of an incentive to preserve good relationships for future negotiations. Of course, changes in the agenda, including the introduction of new and highly controversial issues, could also increase uncertainty and complicate the resolution of differences between the chambers. Finally, the rise in the use of filibusters and filibuster-threats in the Senate, identified by Binder and Smith (1997), Smith (1989), and Sinclair (1989), could have made reaching agreement less certain than it was in Congress at mid-century.

Conditions for Strategic Disagreement

Scholarly studies suggest that much more is involved in bicameral relations than structure and policy (Longley and Oleszek 1989; Pressman 1966; Fenno 1966). While uncertainty about acceptable policy positions might explain some instances of bicameral breakdown, it is also likely that in some situations legislators choose disagreement over compromise. As stated above, John Gilmour (1995) defines “strategic disagreement” as any instance where politicians choose political advantage over a policy compromise that would be an improvement over the status quo. The advantages to be gained from not compromising are varied (Gilmour 1995, 24-47). Members of Congress sometimes find it difficult to explain to constituents why they voted for a policy far more moderate than they had supported on the campaign trail. It is also often advantageous to maintain a position of the party that attracts votes and is clearly different than that of your opponent—even if the position is unlikely to ever become law. Policy makers might
also strategically disagree because they believe holding out will ultimately improve the final policy outcome of future negotiations.

Strategic disagreement might be expected to be more common under certain electoral conditions. For example, political actors can expect to gain more from strategic disagreement when they can blame the other party for the failure to enact a favored policy. Therefore, bicameral disagreement may be more likely under split party control of Congress. Similarly, we may expect party control of the presidency and Congress to affect incentives to compromise, although it is difficult to say how divided party control would affect bicameral agreement. On the one hand, the key actors might choose to kill a bill in conference in order to prevent the president from achieving a legislative accomplishment; on the other hand, they might deliberately send the measure to the president as “veto bait” (Gilmour 1995). The effect of divided party control also likely depends on the proximity of the next presidential election.

Finally, I believe that the possible effects of partisanship, or party polarization, on incentives for strategic disagreement deserve further study. When the parties are cohesive and polarized, and, under the conditional party government thesis of Aldrich and Rohde (2000), party leaders are strong, strategic disagreement may be more likely. Under these conditions, decisions about compromise with the other chamber might be more likely to be made for electoral rather than policy reasons.

Because at this stage I am offering this only as a conjecture, a recent example might help to clarify why I suspect variation in levels partisanship might affect bicameral agreement over time. In the 104th Congress (1995-1996), Barbara Sinclair (1997) reports the House and Senate had considerable difficulty resolving their differences (See also Figure 3). Majority party members of the House, having been swept into office on a reform agenda, were strongly committed to the version of the Contract with America legislation that passed the House. The Senate, being what Joseph Cooper and Garry Young (1997) term “crosspartisan,” or dependent on coalitions of legislators from both parties to form voting majorities, had significantly altered the Contract legislation. Reaching agreement was difficult in the 104th Congress (1995-1996) because “the differences between the two chambers’ legislation were vast and the positions on both sides strongly held” (Sinclair, 1997, 58).

One could simply argue that this is simply a restatement of the policy preference hypotheses. Reaching agreement was more difficult because the ideal point of the House was on the opposite side of the status quo than the ideal point of the Senate. Indeed, it would be very difficult if not impossible to make the case that the House Republicans chose to disagree for electoral reasons, not because the Senate alternative was less desirable to them than the status quo. I contend, however, that defining policy preferences in this way risks assuming away precisely those elements of bicameral negotiations in which we are most interested. The effect of electoral dynamics on bicameral agreement is at least worth further study.
Table 1: Managers from Standing Committees of Jurisdiction, Selected Congresses, 1847-1911

<table>
<thead>
<tr>
<th>Congress (Years)</th>
<th>% House Managers on Committee</th>
<th>% Senate Managers on Committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 (1847-1849)</td>
<td>51.28</td>
<td>69.23</td>
</tr>
<tr>
<td>34 (1855-1857)</td>
<td>40.74</td>
<td>40.74</td>
</tr>
<tr>
<td>37 (1861-1863)</td>
<td>54.42</td>
<td>60.38</td>
</tr>
<tr>
<td>40 (1867-1869)</td>
<td>65.83</td>
<td>62.41</td>
</tr>
<tr>
<td>43 (1873-1875)</td>
<td>71.17</td>
<td>79.28</td>
</tr>
<tr>
<td>46 (1879-1881)</td>
<td>87.80</td>
<td>94.57</td>
</tr>
<tr>
<td>49 (1885-1887)</td>
<td>93.48</td>
<td>86.60</td>
</tr>
<tr>
<td>52 (1891-1893)</td>
<td>95.17</td>
<td>81.02</td>
</tr>
<tr>
<td>55 (1897-1899)</td>
<td>94.12</td>
<td>91.94</td>
</tr>
<tr>
<td>58 (1903-1905)</td>
<td>93.85</td>
<td>96.47</td>
</tr>
<tr>
<td>61 (1909-1911)</td>
<td>97.84</td>
<td>98.31</td>
</tr>
</tbody>
</table>

Note: Data is based on public bills sent to conference that were referred to standing committees. Excluding bills which were not referred could have eliminated instances where the chambers deliberately sought to exclude certain committee members from the process. Therefore, where possible, a committee of jurisdiction was determined based on the referral of the bill in the other chamber and the percentage of managers from committees of jurisdiction recalculated. The results were only slightly different, always less than 1%, from those presented in columns one and two.

Source: The Congressional Record
Figure 1: Percentage of Public Measures That Passed Only One Chamber, Selected Congresses 1855-2000

Figure 2: Percentage of Public Measures That Passed Both Chambers in Different Forms and Were Not Sent to the President, Selected Congresses 1855-2000

Note: Figures 1 and 2 include data only on bills and joint resolutions that I coded as public, based solely on their titles. I defined as private measures for the relief of named individuals or of a parish, city, county or other locality, measures granting registers to ships or granting patents, measures changing names of ships or companies, and all other measures that appeared to be for the benefit of a particular person or persons. My coding was consistent over time although the designation of private measures by the House, and in all likelihood the Senate as well, has not been consistent (Hinds 1907, §3285).

Figure 3: Percentage of Public Measures Sent to Conference that Were Not Sent to the President, 1877-2002

Notes:
The dotted line, labeled “vehicle,” includes all measures that were not sent to the president regardless of whether or not the provisions of the measure were sent to the president in some other form, such as an omnibus bill. The solid line, labeled “legislation,” excludes measures that were sent to the president in another form.

The figure includes data only on bills and joint resolutions that I coded as public, based solely on their titles. I defined as private measures for the relief of named individuals or of a parish, city, county or other locality, measures granting registers to ships or granting patents, measures changing names of ships or companies, and all other measures that appeared to be for the benefit of a particular person or persons. My coding was consistent over time although the designation of private measures by the House, and in all likelihood the Senate as well, has not been consistent (Hinds 1907, §3285).

Sources:
House Journals, Senate Journals, The Congressional Record, and House Final Calendars.
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