AN EVOLVING END GAME: THE PARTISAN USE OF CONFERENCE COMMITTEES
IN THE POST-REFORM CONGRESS

Robert Parks Van Houweling
rpvh@umich.edu

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Note to Panelists: This paper is in the form of a chapter. I include this abstract of the overall project to help situate the paper.

LEGISLATORS’ PERSONAL POLICY PREFERENCES AND PARTISAN LEGISLATIVE ORGANIZATION

I develop and test an account of why members of Congress have, since the 1970s, increasingly relied on political party organizations to perform important legislative tasks. My theoretical claim is that legislators have an incentive to cede agenda and organizational power to party organizations when their personal preferences are more extreme than those they wish to reveal to their constituents. When vested with procedural control, parties are able to structure legislative agendas that produce policies in accord with their members’ extreme preferences, while allowing the members to conceal those preferences from moderate constituencies. This logic suggests that growth in party-related activity in Congress over the past few decades is due to a widening gulf between the personal preferences of members of Congress—which I argue have become more bi-polar, extreme, and cohesive since the 1960s—and the still moderate preferences of their constituents. In short, legislators have increased their reliance on political parties as it has become more difficult for them simultaneously to achieve the policy outcomes they desire and remain in office.

I develop a formal model of legislative rule choice that allows for divergence between legislators’ personal preferences and those of their constituents. I find that over the last three decades, lawmakers have expressed increasingly extreme and polarized preferences on legislative rules in a fashion consistent with the model. I also find that restrictive procedures produce extreme policy outcomes as predicted. I then extend the basic model to incorporate procedures for resolving differences between legislative chambers. My empirical analysis suggests that the House and Senate regularly use the conference procedure to achieve extreme policies and providing cover to majority party senators that is not typically available on the Senate floor.

By accounting for the consequences of legislators’ personal preferences, my research contributes important new insights into the politics of the modern Congress and enhances our understanding of legislative organization more generally. It also raises concerns about the growing rift between the actions of representatives and senators and the preferences of those they represent.
To this point I have argued that policy consequences and voting patterns associated with agenda restrictions in the modern House of Representatives are consistent with what we should expect if its members increasingly prefer policies that are more extreme than those favored by the majority of voters in their districts. Chapter 2 introduced a model of special rules that is unique in allowing for a divergence between public and private preferences. It holds that when a preference divergence develops, parties will offer agenda restrictions that enable their members to approve policies they want without having explicitly to reject alternatives favored by their constituents. It is the growing use of this strategy, I contend, that has left today’s House members with split political personalities visible only to sophisticated observers: they are extreme on agenda-structuring procedural votes for which it is difficult to hold them accountable, yet more moderate otherwise. The practical consequence is that legislation that reaches the House agenda under restrictive rules tends to generate outcomes nearer the House’s ideological pole than is otherwise the case.

However, as with many studies of Congress, these chamber-specific findings leave the story incomplete. The majority party in the Senate does not have access to similar procedures that would allow it to prevent consideration of unsavory policy alternatives. Thus, even when senators in the majority party are unified in their personal support for an extreme policy, they often cannot avoid considering—and have little choice but to approve—moderate alternatives favored by their constituents. The conference committee process that the House and Senate can employ to resolve their legislative differences offers a solution to senators in this predicament. When the two chambers sort out legislative particulars in conference, the resulting agreement returns to
both chambers in unamendable form. This allows majority party senators to benefit from
cover typically unavailable on the Senate floor. They can freely vote for constituency-
pleasing amendments when they first pass legislation—trusting that their actions will be
reversed in conference. The alternative procedure for sorting out House-Senate
differences is passing amendments between the chambers. It does not afford cover to
Senators because under this procedure a measure is amendable in the Senate at every step
along the way.

With these institutional details in mind, this chapter builds on the model of rule
choice in the House to generate expectations about when the House and Senate will
choose conference to resolve legislative differences, and what policy consequences will
follow. The basic model in Chapter 2 formalized the mechanics of using restrictive rules
in the House to avoid consideration of moderate legislative alternatives that majority
party legislators oppose but their constituents favor. The extension suggests that the use
of this strategy in the House will often coincide with pent-up demand for similar agenda
restrictions among majority party senators that can be met with a conference. I derive
two hypotheses from the model and test them using data primarily from the 104th
Congress: 1) The chambers will choose the protective conference procedure to resolve
their differences when the House has passed a more extreme initial bill than the Senate,
especially one governed by a restrictive rule. 2) Conference outcomes will be more likely
to favor the majority party in the same circumstances.

This chapter has five sections. The first section provides a motivating example of
the partisan use of conference, integrated with a discussion of institutional details about
the procedure and its alternatives. The second section builds these institutional details
into a semi-formal extension of the model first presented in Chapter 2. This exercise
generates expectations about when the chambers will choose conference to resolve their
differences and when conference agreements will favor the majority party. The next two
sections offer empirical tests of these implications using data from the 104\textsuperscript{th} Congress.
The final section takes a step back to look at conference politics on important legislation
in four congresses over the past thirty years. It provides tentative support for the views I
advance about the evolving role of conferences and their partisan uses.

I. An Example and Institutional Details

A. The End Game for the 2001 Tax-cut

The tax cut legislation passed at the beginning of the 107\textsuperscript{th} Congress and
discussed in Chapter 2 provides a convenient running example. For the purposes of this
exposition, adopt once again the assumption that all Republicans in the House, and now
in the Senate as well, were personally in favor of a tax cut nearly as large as the one
proposed by President Bush. The House used a restrictive rule to pass a package that was
largely in line with the President’s proposal. Some moderate representatives voiced
distress at the up-or-down vote as mentioned in Chapter 2, but in the end they voted for
the rule that restricted their options and supported the large tax cut. The electoral danger
accompanying the vote was minimized by making sure that the only other option was a
very limited tax cut—or at least that is the spin offered by my model.

However, the Senate passed a compromise that was around 15\% smaller than the
measure adopted by the House. While Republican leaders were unhappy with this
compromise, they were unable to secure the votes of Republican senators from relatively
liberal states on key amendments offered by moderate Democrats. Even if Republican senators from liberal states thought a large tax cut was the best policy, as we are assuming for this example, they did not buck their constituents on amendments that trimmed the cut. Conference was their only hope for salvation; if things went well it would produce a bill with a bigger tax cut than they could safely vote for in the Senate the first time around.

Conference delivered. While the nominal figures hewed to the Senate line, creative accounting allowed the President to achieve nearly all of the cuts he desired. Most notable was a provision that key elements of the tax cut expired one year before the end of the 10 year budget window to keep its apparent costs down—a ruse so successful that it has now become standard operating procedure.¹ When the conference report returned to the Senate in unamendable form, senators faced the same up or down vote that their co-partisans in the House used for cover on initial passage.² In response to any doubting constituents they were able to respond, “it was this cut or no cut and the

¹Consider the 2003 tax cut, which provides another example of the general strategy and particular tactics. The House passed a much larger cut than the Senate— in this case twice as large. In an apparent concession to Republican moderates in the Senate the total cost of the legislation the President eventually signed was held to half the cost of the bill he proposed and the House passed. It turns out that this loss for the President, though widely reported, was not really a loss at all. The measure that emerged from conference actually had a higher cost over the next few years than the cuts Bush had proposed, and contained the central elements of his plan. The key was once again in the reported but very complicated sunsets: The child tax credit, for example, grew to $1000 in 2003, but is scheduled to drop to $700 in 2005, rise again to $1000 in 2010 and drop to $500 in 2011. Similarly, reflecting one of the President’s highest priorities, the tax on dividends and capital gains will drop in steps to zero in 2008 but return to current levels thereafter. Likewise the marriage penalty will come and go before the end of the decade. Another “blow” to Senate “moderates,” who did after all vote for the conference agreement, was the failure of the legislation to extend the child tax credit to poor people as the Senate version had. This was perhaps a tactical misstep hard to justify or conceal, though it has yet to be restored. “A Tax Cut of Varied Proportions,” Washington Post, May 25, 2003, p. A1.

²In an interesting side note, Senator Jeffords announced his switch in party affiliation before the conference completed its work, but promised the President he would delay his official transition until after the conference report was filed. If he had switched before the Senate conferees were appointed, the product of the conference might well have been different because there would have been a Democratic majority in the Senate delegation instead of a Republican majority. Although the power sharing agreement in the Senate
economy needed a jump-start.” And, in a bonus unavailable to their counterparts in the House, they were even able to say “of course we all preferred a more moderate cut and I voted for it when I had the choice.” Whether this was an intentional strategy with regard to the tax cut is an open question; whether there is evidence that legislators use it more regularly I begin to explore below after considering the technical aspects of resolving differences between the chambers.

**Methods for resolving differences**

There are three ways to reconcile differences between the House and Senate and send legislation to the president for his signature. When there is disagreement the chamber that acts second either passes a set of specific amendments to the bill passed by the first chamber or strikes everything but the enacting clause of the bill and replaces it with a substitute. In both of these cases, the chamber that acted first has three options: 1) Insist on its bill, formally disagree with the amendment of the second chamber, and by majority vote proceed to conference. 2) Concur in the amendment of the second chamber but offer a further amendment of its own. 3) Concur in the amendment of the second chamber, end the process, and send the bill to the president.

If the chambers formally disagree and choose conference, then each appoints a set of conferees. It is typical practice in the House for the Speaker to appoint conferees with the advice of the Chair of the committee(s) that considered the legislation. In the Senate the conferees are usually appointed by unanimous consent on the advice of the bill manager(s), although the Senate can vote to elect conferees on an individual basis by majority vote if it chooses. In any case, by Senate and House rules the majority party

provided Democrats and Republicans with equal representation on standing committees, it maintained the
holds a majority on conference delegations as it does on substantive standing committees. In conference, each chamber has a vote (dictated by majority rule within its delegation) on disputed provisions and the two chambers must agree on every provision they include in a conference agreement. Conferees are supposed to decide issues within the “scope of the differences” between the bills of the two chambers, although they have some flexibility on this when the legislation is qualitative instead of quantitative. Each chamber can instruct its conferees by majority vote. Only the chamber that considers the conference agreement first can move to recommit a bill to conference with or without instructions. However, instructions to conferees are not binding and are not grounds for a point of order in either chamber. As I have already mentioned, in both chambers conference reports are considered under what amounts to a closed rule with no amendments in order. While this is not an unusual procedure for the House, it is rare for the Senate, and can offer the senators the type of restricted choices that closed and modified closed rules regularly create in the House (Bach, 1996). To continue the tax cut example from above, this procedure offered senators the protection from moderate amendments that they lacked when they initially considered the legislation.

Passing amendments between the chambers does not offer the same protection to senators. When the chambers disagree concerning legislation they have both passed, the chamber that acted first can choose to amend the bill passed by the chamber that acted second and send it back to the other side of the Capitol. Only two degrees of amending are allowed in this procedure, so the second chamber has the choice of agreeing and ending the process or sending one more amendment back to the first chamber. If agreement is still not reached at this point (or at any other stage of the process) either
chamber can move to the stage of formal disagreement and request a conference (Bach, 1996; Saturno, 1999).

Amendments from the other chamber are considered under different rules in the House and Senate. In the House, the deck is stacked in favor of conference. Motions to disagree with the Senate amendment and go to conference take precedence over motions to consider or amend the Senate amendment. To get around this rule the House managers can either ask unanimous consent to consider the Senate amendment or the amendment can be considered under suspension of the rules or under a special rule. However, each of these procedures requires at least a majority, thus a majority will always have an opportunity to move to conference without ever entertaining the Senate amendment or being forced to explicitly cast a vote against it. If the House chooses to entertain a Senate amendment under a special rule it usually restricts the alternatives available to its members (Saturno, 1999). If we apply these procedures to the tax cut example from above, we see that they allowed Republican members of the House from liberal districts to avoid an explicit vote against the moderate alternative that the Senate passed back to the House. The procedures instead allowed a quick move to conference.

In the Senate the procedure is more open and favors passing amendments between the chambers. Motions to consider House amendments are privileged and decided without debate. A motion to concur with the House amendments has the highest precedence, followed by a motion to concur and add an amendment, followed by a motion to reach the stage of disagreement and request a conference. Moreover, when the Senate debates whether to agree to an amendment passed from the House, amendments are always in order unless barred by a unanimous consent agreement (Saturno, 1999). To
return to the tax cut example one last time, this means that if the Senate had tried to reach consensus with the House by passing amendments between the chambers, Republican senators from liberal states would likely have faced additional votes on amendments to moderate the size of the cut. Consequently, they would have once again found themselves unable to secure the larger cut they preferred without explicitly violating the wishes of their constituents. In sum, passing amendments between the chambers would have provided little cover and they selected conference instead.3

II. Returning to the Model for Guidance

When integrated into my basic model, these institutional details generate hypotheses about when the House and Senate will choose to resolve their difference through conference and how legislation will be altered in conference. The basic intuitions behind these hypotheses are seen by re-examining the prototypical situation in which the House majority proposes and adopts a restrictive rule in order to manipulate policy outcomes. To this end, the panels below compare the House and Senate when they are controlled by the same party and public and private preferences of members of that party are arrayed

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3 One potential question is why the minority Democrats in the Senate went along with resolving differences through conference if they were going to get rolled there, even though they had advantages when considering legislation on the floor under open procedures. In this case the answer is easy: They couldn’t filibuster the motion to proceed to conference because filibusters are not allowed on this sort of tax bill authorized by a budget resolution. On other measures, however, a filibuster of the motion to proceed to conference is in order, making it possible for minority party Senators to forestall a conference. Typically the initial Senate version of legislation is passed as an amendment to the House version and it is passed straight back to the House. The House can immediately request a conference instead of considering the Senate amendment. Senators in the minority could, at this point, filibuster. However, this tactic, though technically possible, would be highly visible and unpopular. The Senators would, after all, be preventing further progress on legislation that they already endorsed and will have one more chance to reject after conference if it is modified to the point that their constituents would prefer the status quo.
such that the House will use a restrictive rule. This illustration allows for the added and potentially relevant complication of the minority party filibuster pivot in the Senate.

First, consider the legislative process in the House (top panel) given the disparity between the median legislator’s public and private ideal points, $H_{pub}$ and $H_{priv}$, the extreme ideal point of the proposer, $HP_{pub\&priv}$, and a status quo policy located at $q$. This a case in which the proposer will offer a closed rule, protecting a policy like $h^*$ that diverges substantially from the median legislator’s public ideal point. The median legislator will accept this rule and approve the new policy as long as he privately prefers it to the open rule policy equilibrium, which by assumption is at his public ideal point, $H_{pub}$. He is able to do this because his rule vote and its implications are not visible to his constituents. Thus, in the House, the equilibrium outcome is $h^*$.

The equilibrium outcome in the Senate is different given a median legislator with the same preferences, $S_{pub}$ and $S_{priv}$, and the same status quo policy. It is located at $s^*$, the public ideal point of the median member. While this pivotal senator would like to
support a more extreme outcome he cannot diverge from his public ideal point on final passage votes by assumption of the model. The proposer is not pictured in the Senate panel because he plays no pivotal role. However, the public ideal point of the minority filibuster pivot, $F_{pub}$, is added and will become a limiting factor for the conferees. On passage he does not filibuster because he publicly prefers $s^*$ to $q$.\(^4\)

These outcomes, $s^*$ and $h^*$, leave the House and Senate with differences to resolve. Without the conference procedure the resolution would proceed as follows. After the Senate passed its bill, which it would typically accomplish by amending the House bill, it would message the House with the modified measure. The House would then vote on whether to accept the Senate amendment to its bill. The amendment, aligned with the public ideal point of the median Representative, $H_{pub}$, would succeed and the agenda manipulation at initial passage in the House would come to naught.

![Diagram](image)

A conference like the one displayed in the third panel and again directly above can prevent this outcome. The conference would be reached by the House requesting one after receiving the Senate amendment and the Senate assenting to this request. Conference proceedings are difficult to follow, therefore I assume the median private ideal points of each chamber’s delegation are pivotal in determining the conference

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\(^4\) The private ideal point of the filibuster pivot is also not depicted because it is not relevant. However, if private preferences are polarized then it might well be the case that this legislator would have a private ideal point very close to the status quo. If this were the case, he would prefer to filibuster the $s^*$. 
outcome.\textsuperscript{5} House and Senate rules dictate that these will be members of the majority party, and I have assumed for the purposes of this example that they will have identical and relatively extreme private ideal points, denoted $C_{pri}$. The only limit placed on them by the chamber rules is that they must select a policy within the “scope of the differences” of those approved by the two chambers.\textsuperscript{6} However, they can also be constrained by pivotal actors on the floor of either chamber, as is the case in the example illustrated. The conferees would like to adopt a proposal at the limit of the scope of the differences and identical to the one passed in the House. However, the public ideal point of the filibuster pivot in the Senate, $F_{pub}$, dictates that, without fear of electoral consequence, he would reject such a policy.\textsuperscript{7} Thus, the conferees would settle for $c^*$ the reflection of the status quo policy, $q$, over $F_{pub}$. This proposal would then return to both chambers un-amendable and pass with a comfortable majority. The final consequence is a policy shifted away from the one that would have resulted without a conference, but, due to the super-majoritarian rules of the Senate, less extreme than the one the House was able to pass initially. This gives rise to two hypotheses that I will discuss in turn:

1) \textit{When legislation is considered under restrictive rules in the House the chambers are more likely to use conference to resolve their differences.}

\textsuperscript{5} This assumption is not crucial. If one were to assume that the conferees can be held accountable for their conference actions, then the majority party could simply take care to appoint members to the committees who can publicly take the positions the caucus privately favors.

\textsuperscript{6} This rule is often interpreted loosely as a point of order because it needs a majority to be sustained in either chamber.

\textsuperscript{7} In this case the filibuster pivot places limits on the conference. Of course it could also face limits defined by other actors. For example, it could not enact a policy more extreme than the reflection of the status quo over the public ideal point of the median member of either chambers (though this would rarely bind due to the presence of the minority filibuster pivot).
The example above illustrates why a like-minded majority in the House and Senate would have an incentive to use conference when the House used a restrictive rule. On the other hand, when the House does not use a restrictive rule the incentives for conference should be weaker. By the terms of the model, the failure of the House to use a restrictive rule is a sign that there is no systematic and exploitable divergence between the private and public preferences of majority party members on the matter under consideration. If no exploitable divergence exists, the rationale for conference disappears. In testing this hypothesis there are, of course, a number of possible confounding factors. I will address these in the first empirical section of this chapter.

2) When both chambers are controlled by the same party, the majority should “win” in conference, and this tendency should grow when the House uses restrictive rules and/or reaches an outcome nearer the majority party pole than the Senate.

The supporting logic is the similar to that for the first hypothesis. Restrictive rules allow the majority to pass a non-median policy in House and signal that there is pent-up demand for such a policy in the Senate. This pent-up demand should be met with conferences that the majority party “wins” in at least two ways that I operationalize in the second empirical section of this chapter.

III. Choosing How to Resolve Differences in the 104th Congress

To conduct an initial test of the first hypothesis, I examine how the House and Senate chose to resolve their differences over the major public laws passed in the 104th Congress.
as identified by the Congressional Research Service. Analysis presented in earlier chapters tends to confirm that the majority Republicans in the House used restrictive procedures to attain non-median outcomes in this Congress. Given that Republicans also held the majority in the Senate, the hypotheses outlined above should hold. The focus on major legislation not only reduces data collection difficulties, but makes sense because minor legislation tends to be consensual and does not spark disagreement between the chambers that needs to be resolved (Shepsle and Weingast, 1987).

A. The Variables

There were one hundred public laws in the sample. For each law I collected information about whether the chambers resolved their differences through a conference or by passing amendments back and forth. This forms the dichotomous dependent variable analyzed in this section. I also collected information about what procedure governed consideration of the initial measure on the floor of the House, which is one of the primary independent variables of interests. I also constructed measures of the partisanship of the votes on the initial bills approved by the House and Senate and the absolute differences in the margins by which they passed the two chambers. These variables serve to control for plausible theoretical alternatives and to test some ancillary predictions of my theory. Finally, I recorded the size of the GPO version of the enrolled bill as a measure of its complexity. I discuss each of these variables in turn.

8 “Major bills are those which are the focus of floor action, debate, hearings and/or media attention—only about 10% of all bills introduced are considered ‘Major Legislation.’” (http://www.loc.gov/global/legislative/bill.html)
9 If this sample creates any selection bias, it deflates the importance of rule type, because most of the measures that are excluded were not considered under closed rules and did not go to conference.
Conference is not a foregone conclusion, not even for significant legislation. Fifty-three of the measures in my sample were resolved by passing amendments between the chambers or by the second chamber passing a bill identical to the one passed by the first chamber. In twenty-seven of these cases the Senate accepted a bill or an amendment in the nature of a substitute passed by the House, in twenty-six the House did vice-versa. In four cases the chambers passed multiple amendments before coming to a resolution. The remaining forty-seven measures were resolved using a conference.¹⁰

There were four ways that the House considered bills in the sample: under a rule, under suspension of the rules, by unanimous consent, or from the corrections calendar. Forty-seven were considered under the auspices of a rule proposed by the Rules Committee and passed by the House. The minority staff of the rules committee classified twenty-eight of these rules as restrictive and the rest as open. Thirty-two of the remaining bills were considered under suspension of the rules, which does not allow for any amendments but requires a 2/3 supermajority to pass. Although suspension does not allow for amendments, I treated it as if it were a consensual or open rule because measures considered under this procedure tend not to be the source of partisan controversy.¹¹ Eighteen were considered by unanimous consent and the remaining five were considered from the Corrections Calendar. I also treat these procedures the same as other open rule or consensual procedures for the purposes of analysis. My expectation that restrictive rules will be associated with conference is apparent in examining the

¹⁰ The policies fell into three dominant types. Nine of the laws were continuing resolutions, eighteen of the laws were yearly appropriations bills, sixty-eight of the laws were some type of policy bill (e.g., securities litigation reform), and the remaining nine were miscellaneous other legislation (e.g., emergency supplemental appropriations).

¹¹ One alternative is to code suspension votes as if they were votes on a rule, and treat suspension votes on which 1/2 or 2/3 of each party voted against 1/2 or 2/3 of the other party as closed rules. This is rare and coding suspension votes this way does not change the conclusion of my analysis.
bivariate cross-tabulation between resolution procedure and rule type. Sixty-five percent of the bills considered under a restrictive rule went to a conference while only thirty-five percent of the bills that were considered under an open rule went to conference.\textsuperscript{12} This finding could mislead, however, because it fails to account for other factors that we might expect will lead the chambers to choose conference to resolve their differences.

Principal among these is legislative complexity. Other theories of restrictive rules (Krehbiel 1991, 1993, 1997; Bach and Smith) and the literature on conference committees (Longley and Oleszek; Van Beek; Vogler 1971) suggest that both procedures are more likely when bills are complex, thus it is important to control for this factor.\textsuperscript{13} To gauge the complexity of each bill, I recorded the size of the text file of the enrolled bill available online from the GPO. This corresponds directly to page numbers. The smallest bill was less than a page long, the average bill was 53 pages long, and the largest was 750 pages long. Around 10\% of bills were over 150 pages. The correlation between this indicator of complexity and the use of a restrictive rule by the House is only .15 and fails to reach traditional levels of statistical significance. Thus, it probably does not account for the relationship between closed rules and conference. However, the correlation between complexity and conference itself is a substantial and significant .38, confirming theoretical expectations about the importance of incorporating this variable in the model.

The next variable in the model is the absolute differences between the margins of initial passage in the House and Senate. This serves as a rough measure of relative

\textsuperscript{12} The resulting Chi-squared statistic is 7.2 with an associated p-value < .007. The relationship becomes somewhat weaker but remains statistically significant if the sample is restricted to only those bills pertaining to a policy issue or only those bills passed under the auspices of some type of rule.
differences between the measures passed by the House and Senate, and it should increase the probability of conference for at least two reasons. The first is that the chambers may be more likely to use conference when there are substantial, and presumably more complex, disagreements to sort out. However, my theory also suggests another motive tapped by this variable. In short, large discrepancies between vote margins in the House and Senate are a secondary indicator that the majority party has an incentive to resolve differences through conference to secure an outcome untenable at passage in the Senate. The use of a restrictive rule should capture this same effect more directly, but a finding that the discrepancy between passage margins also increases the probability of conference could be interpreted as providing additional support for the model.14

The final variables are intended to measure levels of partisan controversy in each chamber. They are defined as the proportion of the Republican caucus supporting a bill at initial passage minus the proportion of Democrats. This difference averaged .05 in the Senate and .15 in the House.15 The regular disparity in levels of partisan controversy in the chambers could result either from House majority manipulating outcomes with restrictive rules or the supermajority procedures in the Senate or both. However, the variables are included to serve as indicators of whether the underlying issue inspires partisan divisions in a particular chamber. Once the effects of the other variables in the model are accounted for, the level of partisan controversy serves as an additional indicator of whether the majority would prefer to manipulate outcomes. This expectation is weaker for the House-specific measure because the theory suggests that restrictive rule

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13 I plan to include other measures of bill complexity in future analyses, including the number of committees that considered the provision in the House and the number of laws cited in the legislation.
use and the absolute difference in House and Senate passage should be strongly associated with levels of controversy in the House. A glance at simple correlations bears this out: the measure of partisan controversy in the House is correlated with restrictive rules at .56 and with the absolute difference between chamber margins at .66. However, the theory does not make such strong predictions about the correlates of partisan controversy in the Senate, and the correlations of this variable with the same factors are only .12 and .03, respectively. Thus, the level of partisan controversy in the Senate serves as a separate indicator of whether majority party senators prefer an outcome different from minority party senators, an indicator that is independent from and in addition to the indicators of partisan preference divergence implied by House action. It should be positively related to the decision to resolve differences through conference.

B. Model and Results

Table 4.1 present the results from a logistic regression. All of the variables in the model are in the expected direction with the exception of the measure of partisan conflict on passage in the House, which falls far short of statistical significance. This unexpected

14 The mean of this variable was .076 and it ranged from 0 to .49. In 45 cases the margin of victory at initial passage in the Senate surpassed that in the House, in 46 it was identical, and in 9 the bill passed by a larger margin in the Senate.

15 This measure ranged from -.16 to .91 in the House and from -.47 to .62 in the Senate.

16 The restrictive rules and extreme outcomes in the House are motivated by the unmeasured public vs. private preference divergence of majority party member. In most instances such preference divergence in the House probably implies a similar divergence in the Senate, but there may be issues on which this is not the case. This measure is meant to capture those cases. If, for example, the House manipulates its agenda, leading to an extreme policy outcome and close vote, but there is not any evidence of a partisan division in the Senate, then one might suspect that majority senators simply don’t share the extreme private preferences of House members on the matter. On the other hand, if there is evidence of nascent partisan divergence in the Senate, then it becomes more plausible that majority party senators share the interests of their House counterparts and came up short in achieving the outcome they desired at initial passage. Of course, it is possible for a status quo policy to be located in a position so extreme that a median outcome in the Senate would generate no controversy even though senators have sharply divergent preferences on the issue. Therefore this measure, though the best available, remains imperfect.
result is not particularly surprising because of the high correlation of this variable with the use of restrictive rules and with the difference in chamber passage margins discussed above. My theory suggests that these other two variables provide more direct measures of when the House has manipulated the agenda with partisan consequences creating conditions that favor resolving differences by conference.

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<th>Table 4.1. Logit Model of Decision to Resolve Differences with a Conference on Significant Legislation in the 104th Congress</th>
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<tr>
<td>Bill Size (logged)                                            0.97***</td>
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<td>Restrictive Rule                                              1.30*</td>
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<td>Difference in Chamber Passage Margins                         4.10</td>
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<td>Partisan Conflict on Passage in Senate                        3.77**</td>
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<td>Partisan Conflict on Passage in House                         -1.28</td>
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<td>Constant                                                       -11.39</td>
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<td><strong>Pseudo R-squared</strong>                                          .39</td>
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Note: The dependent variable is coded as 1 when differences were resolved in a conference and 0 when they were resolved by other means. The model was estimated with robust standard errors. The difference in chamber passage margins is the absolute value of the House margin minus the Senate margin. Partisan conflict is the proportion of Republicans voting for final passage minus the proportion of Democrats.

*** p < .01
** p < .05
* p < .10

Otherwise the results confirm expectations. Bill size, which is a proxy for complexity, but might also serve as a proxy for importance, is strongly and positively related to resolving differences through conference. The use of restrictive rules in the House also makes conference more likely as do larger differences between House and Senate passage margins, although we cannot be as certain of the latter estimate. One reason for the uncertainty surrounding these individual coefficients is that the two variables are correlated at .44, consistent with what one would expect if the House is using closed rules
to achieve extreme outcomes.\footnote{A \textit{t}-test for their joint significance provides similar results, \(p<.05\).} When either variable is excluded the other becomes statistically significant at the .05 level. Finally, as expected, the measure of partisan conflict in the Senate is strongly and positively related to using conference to resolve differences.

Figure 4.1 displays the effects of the key variables on the probability of conference. The dots are point estimates of the probability of a conference when the independent variables takes a particular value and all others are held at their means. The wings span simulated 95% confidence intervals. Bill size has the largest effect. The estimates indicate that a bill one standard deviation smaller than the mean is around 70 percentage points less likely to be resolved by conference than a bill one standard deviation larger.
than the mean. However, the other estimated effects are substantial as well. The probability of conferences doubles when the House considers a measure under a restrictive rule, growing from .31 to .61. And there are easily perceptible increases in the probability of conference as party conflict in the Senate and the difference in chamber margins grows. The latter effect is the only case in which the 95% confidence interval of the higher value overlaps the point estimate for the lower value and vice-versa.

In sum, the findings are consistent with my hypotheses about when the two chambers, controlled by the same majority party, will choose to resolve their differences through conference in order to provide the cover unavailable to senators on initial passage. Most notably, the use of a closed rule in the House makes conference more likely controlling for bill complexity and the measure of the distance between the House and Senate outcomes. In addition to confirming this central expectation, the analysis also provides ancillary support for my claim that the chambers are more likely to adopt the procedure when there is evidence that there are partisan gains to be had.

There are, however, a number of plausible alternative explanations of the findings. At the root of one is the possibility that bill size is an inadequate control for the complexity of issues. If complexity causes closed rules and conferences, then the failure of this control variable would lead to the false conclusion that closed rules themselves cause conferences. The positive relationship between the discrepancy in House-Senate passage margins and conference is also consistent with a very simple alternative: maybe the chambers are more likely to choose conference when they have larger disagreements. Finally, the relationship between conference and the partisanship of the initial vote in the Senate is the least direct consequence of my model and could exist for a variety of other
reasons. Thus, the results presented in this section do not provide conclusive evidence in favor of my account of why the chambers choose to resolve their differences through conference. It would be easier to interpret them in my favor if the majority party actually succeeded in achieving gains in conference, and particularly if majority success was related to some of the same variables that lead the chambers to choose conference. The next section directly investigates these possibilities.

IV. The Consequences of Conference in the 104th Congress

This section offers two methods for examining the partisan consequences of conference committees in the 104th Congress. First, I analyze the votes on legislation as it initially passed each chamber and again after it emerged from conference. The amount that support from the majority and minority party contingent in each chamber rose or fell as a result of conferences provides a rough gauge of their partisan effects. Consistent with my expectations, the difference between pre-and post-conference votes suggests that the minority party in the Senate lost ground in conference. There are, however, a couple of fundamental ambiguities in this regularity that I attempt to resolve based on accounts of conference outcomes in the 104th Congress in the Congressional Quarterly Weekly Report. Content analysis of these accounts further confirms the conclusion that the majority party tends to “win” in conference. Additional multivariate analysis, moreover, suggests that majority victories in conference are in fact related to the same factors that make conference more likely in the first place.
A. Conferences According to the Numbers

There were sixty-one measures for which conference committees filed reports in the 104th Congress. Fifty-eight of these conference reports eventually received votes and passed in the House, while only fifty-five did so in the Senate. To facilitate comparison, I narrowed the dataset to include only the fifty-five that received votes in both chambers. For each measure, I coded the proportion of the members of each party voting “yea” on initial passage from their chamber as well as the proportion voting “yea” on passage of the conference report. Table 4.2 summarizes these numbers and their pre-to post-conference changes.

<table>
<thead>
<tr>
<th></th>
<th>Passage</th>
<th>Conference</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senate Democrats</td>
<td>.79</td>
<td>.71</td>
<td>-.08*</td>
</tr>
<tr>
<td>Senate Republicans</td>
<td>.96</td>
<td>.94</td>
<td>-.02</td>
</tr>
<tr>
<td>House Democrats</td>
<td>.59</td>
<td>.65</td>
<td>.07*</td>
</tr>
<tr>
<td>House Republicans</td>
<td>.95</td>
<td>.94</td>
<td>-.01</td>
</tr>
</tbody>
</table>

*N = 55
* p < .10 (two-sided)

There are two crucial things to note in this table. The first is that Senate Democrats do indeed seem to lose ground in conference. On average, about 8% less of the caucus supported legislation after conference than on initial passage. A one-tailed t-test for the difference of means indicates that this difference is significant at the .05 level. The second thing to note is that about 7% more of the House Democratic caucus supported legislation after conference than on initial passage. Republican support does not vary.

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18 The t-ratio is -1.75 for the Senate Democratic loss and 1.71 for the House Democratic gain. Conferences in the 103rd and 105th Congresses confirm that this is a regular pattern. In the 105th Congress, 5 percent less of the Senate Democratic caucus supported conference agreements than the bill the Senate initially passes and 8 percent more of the House Democratic caucus did the same. In the 103rd Congress the 7 percent more of the minority House Republican caucus supported conference agreements than the bill initially
much in either chamber between passage and conference. At first glance, then, it seems contestable whether the Democratic minority lost or the Republican majority gained through the use of conference in the 104th Congress. The conclusion depends on whether one focuses on the House or Senate. This does not, however, account for the effects of the Senate filibuster, which dictates that the majority party in the House should regularly be required to cede some ground to meet the higher 3/5 threshold necessary for legislation to succeed in the Senate. Given this super-majoritarian hurdle in the Senate, it is not surprising that House members from the minority party were on average more pleased with conference outcomes than with the legislation that originally passed their chamber. On the other hand, there is no comparable structural reason to expect that members of the Senate minority will favor conference outcomes less than the initial legislation their chamber endorsed. On the contrary, because of the filibuster hurdle, the legislation the Senate approves will almost always be acceptable to a majority in the House without alteration and could form the basis of a conference agreement capable of passing both chambers. Thus, when members of the Senate minority lose ground in conference proceedings, majority party manipulation of the procedure is one possible cause.

Further evidence in favor of the hypothesis that Senate Democrats were disadvantaged by conference proceedings in the 104th Congress is provided by narrowing passed by the House and 5% less of the Senate Republican caucus supported conference agreements than the bill initially passed by the Senate. All of these differences are significant at the p<.10 (one-sided) level or lower. The votes from the 103rd Congress expose a problem that makes it difficult to extend this analysis to earlier congresses: sometimes the Republicans in the Senate minority simply let a conference agreement sail through by unanimous consent even when it clearly disadvantaged them. Analysis of contemporaneous accounts of the conferences confirms this although it is also apparent simply from the votes. Unless these cases are excluded it biases against finding that the Senate minority lost ground. Choosing which conference votes to exclude is difficult, but one conservative way to do so is to eliminate votes on which
the range of cases to only those for which it was possible that the Senate minority would lose in conference. In short, Senate Democrats were only at risk of losing ground in conference when the House had passed a more conservative bill than the Senate. In cases where the opposite was true, the scope of the differences rule would have prevented the conference from adopting a measure to the right of the Senate measure, thereby protecting Senate Democrats from conference loses. Thus, one can make a case for examining only conferences in which the Senate endorsed a more liberal measure than the House.

One rough way to accomplish this is to identify cases in which an identical or lower proportion of House Democrats than Senate Democrats approved the bill originating from their chamber. Filtering out all other conferences should eliminate most legislative measures on which the House adopted a more liberal position than the Senate. Applying this standard indicates that the Senate minority was at risk in only forty-five of the fifty-five conferences in the 104th Congress. In these cases 9.7% more on average of the Democratic caucus voted for the original Senate proposals than for the measures that emerged from conference. Moreover, a difference of means test suggests that we can be relatively confident in this result (t-ratio -2.00, one-tailed p < .26).

To sum up, differences in pre-and-post conference vote margins in the 104th Congress are consistent with the expectation that the majority party used the procedure to reach policy outcomes more conservative than those initially endorsed by the Senate. However, it is very difficult to rule out a simple non-partisan alternative explanation that would flow from the possibility that the median voter in the House is more conservative than more than 25% of the minority party dissented in the House but the measure passed unanimously in the Senate.
than the median voter in the Senate. This would lead the axis of dispute to be inter-
chamber, not inter-party. A simple compromise between the ideal points of the medians
in the two chambers would lead to losses for the minority party in the Senate and gains
for the minority party in the House. This outcome would turn on the particulars of
conference bargaining where a majority of each delegation must assent to any agreement,
and the procedure would probably favor a victory for the more liberal Senate rather than
a compromise. Nevertheless, this non-partisan explanation points to a fundamental
ambiguity in interpreting these vote margin results.

B. Conferences According to the Reporters

For the analysis in this section, I gathered every article written in CQ about the
outcomes of each of the fifty-five conference agreements that received a vote in the 104th
Congress. Content analysis of these articles suggests party lines were regularly the axis
of dispute, and conference outcomes tended to favor the Republican majority. After
describing the content analysis scheme, I will present the frequencies of various
conference outcomes and test whether my theory is helpful in predicting them.

In total, there were 188 articles in CQ that summarized the outcomes of the fifty-
five conferences. Each conference was summarized by at least one article and some by
as many as seven. Research assistants unaware of the hypotheses being tested performed
content analysis on each article to determine five things: 1) Did the article mention a
partisan dispute? 2) If so, did it indicate an overall conference winner? 3) Did the article

19 Because the status quo policies that were the subject of legislation in the 104th Congress were on
the liberal side of the spectrum, it seems likely that, if more liberal, the Senate would hold the upper hand by
threatening not to reach an agreement if the House did not cave in. However, this might not be the case
given distance of the status-quo, the ability of the chambers to credibly commit to certain actions, etc.
mention the president? 4) If so, did it indicate whether he won or lost in the conference? 5) Did the article indicate which chamber won in conference?\textsuperscript{20} In the case of multiple articles, I based the summary coding on the articles that identified winners rather than those that failed to mention particular actors or did not clearly indicate the outcome. Fortunately, in no case did two articles about the same conference conflict on who won. Table 4.3 presents the frequencies of each of the coded outcomes.

<table>
<thead>
<tr>
<th>Party</th>
<th>N</th>
<th>%</th>
<th>Pres.</th>
<th>N</th>
<th>%</th>
<th>Cham.</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Repub.</td>
<td>20</td>
<td>36.3</td>
<td>Loss</td>
<td>17</td>
<td>30.9</td>
<td>House</td>
<td>9</td>
<td>14.5</td>
</tr>
<tr>
<td>Dem.</td>
<td>3</td>
<td>5.4</td>
<td>Win</td>
<td>11</td>
<td>20.0</td>
<td>Senate</td>
<td>7</td>
<td>12.7</td>
</tr>
<tr>
<td>Mix</td>
<td>17</td>
<td>30.9</td>
<td>Mix</td>
<td>15</td>
<td>27.2</td>
<td>Mix</td>
<td>40</td>
<td>72.7</td>
</tr>
<tr>
<td>NA</td>
<td>15</td>
<td>27.7</td>
<td>NA</td>
<td>12</td>
<td>21.8</td>
<td>NA</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: There were 55 conferences committees that filed reports which received votes in both chambers. The \textit{Congressional Quarterly Weekly Report} contained between one and seven articles on the outcome of each conference written after the conference had concluded (118 articles in total).

The reports indicated that Republicans succeeded in conference much more often than the Democrats—twenty to three when an overall winner was clear—as anticipated by the theory and consistent with the vote margin analysis presented above. This is true despite the fact that President Clinton was often mentioned as having a stake in conference outcomes. One might expect that his entry into the legislative process would give the minority Democrats an edge, but it turns out that he met with very limited success, losing in 17 of the 28 cases in which his fate was clear.\textsuperscript{21} In most cases the

\textsuperscript{20} The articles always mention the chambers regardless of whether they were the axis of dispute so the frequency of such mentions is not informative.

\textsuperscript{21} One potentially confusing point is that the president is coded as winning in eight cases when the Democratic party is not. This sometimes resulted from the president taking a position not aligned with his party and sometimes from the article focusing on him as a proxy for the party without explicitly acknowledging it. Thus, 11 is the upper limit on Democratic victories, still half that of the 20 clear victories achieved by Republicans.
articles did not indicate that either chamber was a clear winner, often because they focused on partisan implications. However, the House did have a very slight edge when a winner was clearly identified. On the whole then, conferences seemed to revolve around partisan concerns and the majority seems to get the better of them.

In the previous section, I contended that the regular decline in Senate minority party support for conference agreement is a sign of a tendency of the majority party to gain ground in conference. Some confirmation is provided by examining the relationship of this measure to the conference outcomes drawn from *CQ*. Conferences coded as Republican wins based on the content analysis were associated with a fifteen percentage point average decline in the pre-to-post-conference level of support from Democratic senators. Those coded as Democratic wins, in contrast, were associated with a six percentage point increase in the same. Conferences coded as presidential losses were met with a seventeen percentage point decline in support from minority party senators, while those coded as presidential wins only a six percentage point decline. This suggests that although the fate of the president in conference is related to the fate of his party, it may sometimes diverge. Overall, the agreement between the vote margins and the journalistic accounts add confidence that both measures are tapping into the true partisan consequences of conference, although the vote margin measure continues to have somewhat ambiguous meaning for the reasons discussed above.

C. Predicting Conference Outcomes

In this section, I examine whether the majority party is more likely to succeed in conference when there are indications that it manipulated the agenda to achieve an
extreme outcome in the House. These are the circumstances in which my theory suggests that members of the Senate majority are likely to have settled for a constituency pleasing compromises at initial passage rather than a policy that satisfies their personal preferences. When conference is entered under these circumstances it should, therefore, increase the probability the majority party will win. The dependent variable is derived from a content analysis based measure of conference outcomes. The independent variables are very similar to the ones included in my model of the decision to use conference to resolve differences.

The dependent variable is a trichotomous measure coded -1 for minority party conference victories, 0 conferences where the victor is unclear, and 1 for majority party victories. It not obvious how to incorporate the information about presidential victories and losses into this measure because their partisan consequences can vary. For the basic specifications, I have coded presidential victories as Democratic victories on the assumption that reporters might use this category as shorthand for partisan victories. However, to be conservative, I have not coded presidential losses as Republican wins, instead requiring positive confirmation of such wins. The result is seventeen Republican wins, nine Democratic wins, and twenty-nine mixed outcomes. 22

The first independent variable is whether the House passed the initial measure under a restrictive rule, which it did in twenty-seven of the fifty-five cases. My expectation is that this will be positively related to Republican success in conference because it should signal pent-up demand for agenda manipulation among Republicans in

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22 There are several cases in which the partisan variable indicated a Republican win and the Presidential variable indicated a presidential win. I coded these as having mixed partisan implications although it does not affect the results, it does explain why there are fewer Republican and Presidential wins than indicated in Table 4.3.
the Senate. The next independent variable is the Senate passage margin minus the House passage margin.\textsuperscript{23} The larger this gap, the more reason we have to expect that the House has passed a more conservative measure than the Senate managed to pass, giving Senate Republicans both the opportunity and incentive to agree with their co-partisans from the House at conference. The final two independent variables are the measures of partisan conflict at passage in the House and Senate.\textsuperscript{24} These variables are intended to capture when the issue evokes partisan dispute. Once again, this measure for the House was correlated at around .5 with both the difference in Senate and House passage margins and the use of a restrictive rule in the House. Both of these other variables seem to be better indications of the partisan stakes in the House (as implied by the theory), diminishing expectation for the independent consequence of the House partisan controversy variable. The measure of partisan controversy in the Senate is not as highly correlated with other independent variables that tap into partisan stakes.\textsuperscript{25} Thus it serves as a somewhat independent way to judge whether an issue caused the sort of nascent partisan dispute in the Senate that might have been kept partly under wraps by the open agenda. If there are indications of this axis of dispute, we might expect it to lead to a partisan conference dominated by Republicans from both chambers and leading to a Republican victory.

\textsuperscript{23} This variable’s mean is .09, its minimum is -.25 and its maximum is .495. The model of the decision to resolve difference through conference used the absolute value of this measure, because in that case the variable’s purpose was to gauge the size of the difference between the two chambers. However, the difference in passage margins in that dataset was usually caused by the Senate passing the measure with a larger margin than the House.

\textsuperscript{24} In the House this variable’s mean is .36 and it ranges from -.13 to .96. In the Senate this variable’s mean is .17 and it ranges from -.47 to 1.

\textsuperscript{25} Its correlation with the use of restrictive rule in the House is .20 and with the difference in House and Senate passage is -.28.
Table 4.4. Ordered Logit Model Conference Outcomes in the 104th Congress

<table>
<thead>
<tr>
<th></th>
<th>B</th>
<th>z-ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restrictive Rule</td>
<td>1.18*</td>
<td>1.69</td>
</tr>
<tr>
<td>Difference in Chamber Passage Margins</td>
<td>9.21**</td>
<td>2.18</td>
</tr>
<tr>
<td>Partisan Conflict on Passage in Senate</td>
<td>5.68***</td>
<td>2.49</td>
</tr>
<tr>
<td>Partisan Conflict on Passage in House</td>
<td>1.69</td>
<td>-0.78</td>
</tr>
<tr>
<td>Cut 1(s.e.)</td>
<td>-0.51</td>
<td>(0.46)</td>
</tr>
<tr>
<td>Cut 2(s.e.)</td>
<td>3.05</td>
<td>(0.68)</td>
</tr>
<tr>
<td>Pseudo r-squared</td>
<td>0.25</td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>55</td>
<td></td>
</tr>
</tbody>
</table>

Note: The dependent variable was coded based on a content analysis of CQ articles on every conference that filed a report in the 104th Congress. It is coded as 1 for Republican victories, -1 for Democratic or Presidential victories, and 0 otherwise. The difference in chamber margins is calculated by subtracting the House margin from the Senate margin. It assumes a positive value for measures that passed by a larger margin in the Senate than the House. Senate party conflict is calculated by subtracting the proportion of the Democratic caucus supporting a measure from the proportion of the Republican caucus supporting the same measure. It assumes a positive value when a bill received more support from Senate Republicans than Democrats.

*** p < .025  
** p < .05  
* p < .10

Table 4.4 presents the results of an ordered logit model of conference outcomes. The pseudo r-squared of .25 indicates that the pre-conference variables provide substantial help in predicting conference outcomes. The most direct predictions of the
model gain support. Restrictive rules in the House as well as relatively conservative House measures make Republican victories in conference more likely.\textsuperscript{26} The relationship between majority wins and restrictive rules is not highly certain, although this again is partly because the model controls the logical consequence of the partisan use of restrictive rules, namely larger gaps in House and Senate passage margins and higher levels of partisan controversy in the House. Confirming this is the stronger bivariate relationship between Republican victories or losses in conference and restrictive rules. This variable is significant at \(p<.025\) (two-tailed) if it is the only regressor in the model.\textsuperscript{27} The relationship between partisan controversy in the Senate and conference outcomes is positive and statistically significant as expected, although the same is not true for partisan controversy in the House. As discussed above, this result is not surprising given the high correlation of this variable with other variables more directly implicated by the theoretical model.

Based on the estimate one can conclude that all of the statistically significant variables have important substantive consequences. Figure 4.2 displays their simulated effects.

\textsuperscript{26} The results are very similar if the dependent variable is created entirely on the basis of the partisan outcome leaving out the additional information provided by the presidential outcome variable. Although my theoretical approach recommends a focus on partisan conference outcomes, it also implies hypotheses about when the House is more likely to win in conference. In short, the same things that predict majority party victories, like agenda restrictions in the House, should also predict House victories. Although the content analysis of the articles yielded sparse information on the chamber-specific consequences of conference, an ordered logit model with the victorious chamber (1= House, 0 = Mixed, -1=Senate) as the dependent variable confirms the general expectations. All of the relationships are estimated to be in the same direction as in the partisan outcome model, and all are significant at the \(p<.10\) level or lower. Thus, the theoretical model also helps understand when the House and Senate will be advantaged in conference.

\textsuperscript{27} In fact, when the model is run independently with any of the independent variables the relationships are in the expected direction with associated \(p\)-values of less than .025.
Restrictive rules have the smallest estimated independent effect on conference outcomes, yet their use more than doubles the probability of a Republican victory holding other variables to their means. When the difference between the passage margins in the Senate and the passage margin in the House falls one standard deviation below its mean, the model estimates that the Democrats are more likely to win in conference that the Republicans. The opposite is true when the difference in chamber margins is one standard deviation above its mean, in which case the GOP contingent has a 57% chance of winning in conference. The level of partisan conflict is estimated to be quite influential as well, leading the majority to have a 64% chance of winning at conference when it rises to one standard deviation above its mean. Altogether, these findings suggest that majority success and minority failure in conference are positively related to the level
V. Conferences Outcomes over the Post-Reform Era

In this section, I examine how conference politics have changed since the early 1970s. My theoretical account implies that both the nature of conference disputes and the consequences of conference agreements for parties and chambers should have evolved substantially over the period. Below I briefly develop my expectations, and examine conferences on important legislative enactments in four congresses over the post-reform era to see whether they are consistent with my perspective.

A. Changing Axis of Dispute

My first expectation is that conference committee deliberations will be increasingly defined by partisan conflict rather than inter-chamber conflict. My theoretical account suggests that the partisan use of conference committees should have become more common as legislators have developed more polarized and extreme personal policy preferences over the past three decades. As I contend in previous chapters, the majority party in the House uses agenda restrictions to allow its members to secure the increasingly extreme policies they personally desire without having to explicitly reject policies favored by their more moderate constituents. The majority party in the Senate cannot rely on agenda restrictions at initial passage, and presumably settles for more moderate policies even when its members might personally prefer more extreme policies.

28 Important legislative enactments are identified by David Mayhew in Divided We Govern. A list is available at http://pantheon.yale.edu/~dmayhew/datasets.html.
ones. Thus, the frequent use of agenda restrictions in the House should create substantial (presumably even growing) discrepancies between the measures the two chambers initially pass. One might expect this to provide fodder for traditional inter-chamber disputes with each chamber defending its position. Instead, I anticipate it will cause cross-chamber partisan cleavages in conference committees. My contention is that in recent congresses majority party members from each chamber tend to collude to produce conference agreements that tilt in the direction of majority party—agreements that are protected from amendments that watered down the versions initially passed by the Senate. This tendency should have become more pronounced over the past three decades.

To assess whether the axis of dispute has become more inter-party and less inter-chamber in recent years, I used a content analysis of CQ articles on conferences for each important legislative enactment identified by David Mayhew for the 93rd, 97th, 101st, 104th Congresses. The method of content analysis is described in the previous section. Table 4.5 summarizes the partisan implications of conferences.

<table>
<thead>
<tr>
<th></th>
<th>93rd</th>
<th>97th</th>
<th>101st</th>
<th>104th</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not Mentioned</td>
<td>90%</td>
<td>29%</td>
<td>13%</td>
<td>0%</td>
</tr>
<tr>
<td>Not Clear/Mixed</td>
<td>10%</td>
<td>57%</td>
<td>62%</td>
<td>27%</td>
</tr>
<tr>
<td>Democrats</td>
<td>0%</td>
<td>0%</td>
<td>25%</td>
<td>18%</td>
</tr>
<tr>
<td>Republicans</td>
<td>0%</td>
<td>14%</td>
<td>0%</td>
<td>55%</td>
</tr>
</tbody>
</table>

Table 4.5. Partisan Winners in Conference on Important Enactments over the Post-Reform Era (CQ)

Note: Significant enactments are identified by David Mayhew and available at his website (http://pantheon.yale.edu/~dmayhew/datasets.html). The table is based on content analysis of Congressional Quarterly Weekly Report accounts of conference outcomes. There were between one and five articles on the outcome of each conference. In cases of multiple articles, I relied on ones that mentioned partisan conflict and/or specified one party as a winner. Two articles on the same conference never identified different parties as winners.
Over these four congresses spanning more than two decades, \textit{CQ} post-conference articles have become increasingly likely to mention partisan disputes and identify partisan winners and losers. In the 93\textsuperscript{rd} Congress the partisan cleavages were either non-existent or not apparent to the reporters in 90\% of conferences on important enactments. By the 104\textsuperscript{th} Congress, the reporters always identified a partisan dispute in conferences and identified a partisan winner in almost three-quarters of cases. The middle two congresses fall in between on these dimensions; although partisan dispute is mentioned in a growing majority of conferences, the reporters do not identify partisan winners as often as in the 104\textsuperscript{th} Congress. Note that the axis of dispute is difficult to identify in the 97\textsuperscript{th} Congress because the chambers are controlled by different parties. Thus inter-party disagreements could appear as inter-chamber disagreements and vice-versa. I will return to consider the implications of split control of Congress later. Before doing so, however, it is worth considering evolution in the inter-chamber dimension of conference disagreements.

<table>
<thead>
<tr>
<th>Table 4.6. Chamber Winners in Conference on Important Enactments over the Post-Reform Era (CQ)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not Clear/Mixed</td>
</tr>
<tr>
<td>House</td>
</tr>
<tr>
<td>Senate</td>
</tr>
<tr>
<td>(N)</td>
</tr>
</tbody>
</table>

Note: Significant enactments are identified by David Mayhew and available at his website (http://pantheon.yale.edu/~dmayhew/datasets.html). The table is based on content analysis of \textit{Congressional Quarterly Weekly Report} accounts of conference outcomes. There were between one and five articles on the outcome of each conference. In cases of multiple articles, I relied on ones that mentioned specified one chamber as a winner. Two articles on the same conference never identified different chambers as winners.

Table 4.6 summarizes how reporters characterized the inter-chamber disputes and consequences of conferences. \textit{CQ} articles on conferences always mention the House and
Senate, if only in a pro-forma way. This eliminates one way to assess of the prominence of inter-chamber disputes that was very informative with regard to the prominence of partisan disputes. If anything, however, it appears that CQ became less likely to identify a single chamber as victorious in conferences over the period, perhaps suggesting that this dimension has become less salient.\textsuperscript{29} On its own the meaning of the weak tendency is ambiguous. For example, it could be due to the increase of complicated omnibus legislation in recent years with its varied winners and losers. When combined with the fact that CQ reporters have become more likely to identify partisan victors over the same period, however, the increasingly foggy chamber-specific implications of conferences suggests that the axis of conference dispute may have shifted to party lines.

\textbf{B. Divided Chamber Control and Conference Outcomes}

The split partisan control of the 97\textsuperscript{th} Congress complicates the above analysis, but also offers opportunities to evaluate additional implications of my perspective. My basic argument is that when the same party controls both chambers conference agreements will tend to favor that party, and that this tendency should have strengthened over time. When there is split control of the chambers, on the other hand, conferences should not systematically favor either party. This is generally consistent with the data presented in Table 4.5. In the 93\textsuperscript{rd} Congress there do not appear to be partisan stakes in conferences. In the 101\textsuperscript{st} Congress, however, the Democratic majority makes clear gains in 25% of conferences on important legislation while the Republican minority never makes clear

\textsuperscript{29} The average for the first two congresses is a little over 50\% and for the second two a little over 70\%. Analysis of additional conferences will be very helpful in determining whether this actually represents a trend or just the particulars of the selected Congresses. Again, the split partisan control of the 97\textsuperscript{th} congress makes inferences difficult.
gains. In the 104th Congress, the Republican majority makes clear gains in more than half of conferences, while the Democratic minority only makes headway in 18% of cases. It is interesting that the relative success of the congressional majorities in the congresses persists despite the fact that the opposite party holds the White House. As expected, the 97th Congress does not fit this pattern. In the only conference for which CQ identifies a partisan victor it is the Republicans, who hold the Senate and have the additional support of a president from their party. More data is clearly needed to confidently draw general inferences, but the evidence presented suggests that parties holding both chambers of Congress have increasingly used conferences to their advantage over the last few decades, even if the face of opposition from the executive branch.

A final implication of my perspective is that the House position should generally fare better than the Senate in conference when both chambers are controlled by the same party. This advantage should disappear when partisan control of the chambers is split. The logic behind this claim is that when control of Congress is unified, the majority of the Senate conference delegation will tend to personally to favor the outcome their co-partisans achieved in the House, but will have been unable to achieve a similar outcome at passage without agenda restrictions. As a result, they will be more likely to yield to the House position in conference to regain their losses. The content analysis is consistent with this expectation. When chambers are controlled by the same party the House does seem to fare slightly better than the Senate (30% to 10%, 25% to 13%, and 18% to 0%).

When the chambers are controlled by different parties, collusion between conference delegations dominated by co-partisans is impossible and the advantage for the House should disappear. This is what happened in the 97th Congress when the Senate
“won” a majority of conferences and the House “won” none. The dominance of the Senate in this exceptional case is a little surprising, but also understandable. The traditional literature on conferences, mostly focused the late pre-reform and early post-reform periods, finds that the Senate tends to succeed more often than the House and offers a variety of explanations for this finding (see Ferejohn 1975, Volger 1970, 1971). Any of these accounts, crafted to explain conferences in less partisan times, might hold in this context in which partisan collusion in conference is not possible because of split control of the chambers. Moreover, the bargaining advantage of having a co-partisan as president (Reagan) may have been particularly large when control of Congress was split.

Although the analysis in this section is based on very limited data, it suggests that conference committees have increasingly become centers of partisan dispute and tools for partisan collusion and gain when partisan control of Congress is unified.

VI. Conclusion

This chapter applies my theoretical account of the partisan use of legislative procedure in the House to the resolution of inter-chamber differences. I present empirical tests using data from the 104th congress that buttress my claim that the majority party uses the conference procedure to provide cover for majority senators who favor extreme policies but were unable to vote for them under the bright light of the Senate’s open floor procedures. Underlying these tests is an extension of my theoretical model, which implies that agenda manipulation by majority party representatives should signal a pent-up demand for such manipulation by senators, a demand that can only be met through conference.
In the first test of this proposition, I find that theoretically derived indicators of agenda manipulation in the House—the use of a restrictive rule and a large gap in House and Senate vote margins at initial passage—are positively related to the decision to use conference to resolve differences as opposed to other procedures that cannot afford agenda protection to senators. A measure of nascent partisan conflict in the Senate predicts conference as well, providing ancillary support for the theoretical model. Other theories could offer explanations for these findings but further analysis adds some weight to my interpretation. In particular, I find strong evidence that this strategy pays off with conference outcomes more favorable to the majority party than those initially approved by the Senate. Not only do minority party senators appear regularly to prefer pre-conference legislation to post-conference legislation in the 104th Congress (as well as the 103rd and 105th), but contemporaneous reporting by CQ suggests that majority party wins are common in conference. More importantly, the likelihood of majority party victory in conference appears to be related to the same indicators of agenda manipulation in the House that make choosing the conference procedure to resolve differences more likely in the first place. Altogether these findings suggest that conference has partisan policy consequences that my perspective makes predictable and understandable.

However, because this analysis is based on a single congress, there is reason to question the generality of the conclusions. The context of the 104th Congress is relevant when considering the import of the findings. On the one hand, the congressional majority faced a president of the opposite party who could attempt to limit their post-passage gains in conference. When he did make attempts they met with limited success, but his efforts were nevertheless responsible for a large share of Democratic conference successes. It is
likely that a congressional majority with a president of the same party would meet even more success in using conference to recuperate from Senate losses. This expectation is, for example, consistent with the motivating anecdotes provided by the Bush tax cuts that occurred before the defection of Senator Jeffords in 2001 and after Republicans regained their Senate majority in 2003. On the other hand, while the new Republican majority that arrived in the 104th Congress promised to cut down on agenda manipulation, there is reason to believe they were particularly vigorous in pursuing partisan ends. Thus one might argue that partisan causes and consequences of conferences similar to ones evident in the 104th Congress will only exist when there is a very determined partisan majority. The limited evidence from the 103rd and 105th Congresses partly eases these concerns.

It is clear, however, that the theory is best tested by examining trends over time and the consequences of changes in partisan control of the chambers and branches for the uses and outcomes of conferences. This is particularly true given my more general claim that partisan use of all types of legislative procedures has grown over the past three decades because of the polarization of legislators’ personal preferences. I take the initial steps in this research by considering the outcomes of conferences on important legislation as identified by David Mayhew in four congresses over the past thirty years. I tentatively find that trends over this period are consistent with my theory. In short, the axis of conference dispute is increasingly between the parties, not between the chambers; and parties that control both chambers are increasingly likely to “win” in conference.

Finally, it is important to consider the implications of these findings for other perspectives on legislative organization. An informational perspective provides a plausible alternative explanation for the relationship of restrictive rules and large
chamber discrepancies to the decision to use conference. These could be seen as signs of the sort of complexity that would make the use of a deliberative body of legislative specialists from both chambers more useful. The distributive perspective also offers a rationale for why closed rules might be related to the decision to use conferences—these are the only procedures in which preference outliers have an “ex-post veto.” Neither of these perspectives, however, offers a ready explanation for tendency of the majority party to win in conference, nor for the particular factors that make majority wins more likely.

Accounts based on partisan discipline could almost certainly offer rationales for these findings. These rationales, however, would have to explain why moderates in the Senate majority fail to toe the party line on initial passage yet allow the party to have its way in conference. As with restrictive rules in the House, the remote majority is not very remote. Although Senate conferees are suggested by party leaders, in the end they are chosen by a majority vote on the floor of the chamber. Therefore majority party members from moderate states could always place themselves in the pivotal position in this post-passage procedure if they wanted to dictate moderate policy. The conference outcomes examined in this chapter suggest that they either fail to insist on taking this role or adopt less moderate positions when they do.30 My perspective provides a logically consistent explanation for why they would exhibit seemingly contradictory behavior.

REFERENCES


30 I am gathering evidence on the composition of conference committees, but it is not yet complete enough to analyze.


