
Bicameral Politics

*Conference Committees in
Congress*

LAWRENCE D. LONGLEY *and*
WALTER J. OLESZEK

With a Foreword by

Richard F. Fenno, Jr.

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Contents

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sented colonial or popular interests, while the upper house represented the views of the colony's owners or those of the king of England.¹⁰ McCown noted that in "records of many of the colonies may be found evidence to show the general employment of the conference committee as a means of reconciling differences between the two Houses," for example in Maryland, Massachusetts, New Jersey, Virginia, and North Carolina.¹¹ New York provided for public conferences even in its initial state constitution of 1777: the Assembly and Senate of New York were to select their conferees by ballot, after which they would meet in the presence of both bodies.

This broad experience with conference committees in the colonies—and subsequently in the early years of the new states—lay the groundwork for the subsequent development of the conference committee in the U.S. Congress. By the time of the creation of the new Constitution (which is completely silent about conference committees), the conference committee as the means of reconciling the views of divided legislative institutions was well established in American legislative experience.

The Early Congresses

This legacy of English, colonial, and state experience helps explain the ready acceptance of conference committees at the outset of the history of the House of Representatives and Senate. "It is not surprising," writes a congressional historian, "that the system was taken for granted from the very beginning of the bicameral Federal Congress."¹²

Almost immediately upon the convening of the first session of the First Congress in 1789, the Senate and the House considered rules providing for conferences between the two chambers. On April 7, 1789, the first day following the initial securing of a quorum allowing the Senate to meet, the Senate appointed a five-member committee "to prepare rules for the government of the two houses in cases of conference."¹³ The House soon named a panel of its own to confer with the Senate. Eight days after the senators were appointed, the Senate adopted rules governing conferences between the chambers:

Resolved, That, in every case of an amendment to a bill agreed to in one House and dissented to in the other, if either House shall request a conference, and appoint a committee for that purpose, and the other House shall also appoint a committee to confer, such committee shall, at a convenient time, to be agreed on by their chair-

10. *Ibid.*, p. 34. Reports of colonial conferences in New York State, for example, are analyzed by Mary Clarke in her study of parliamentary politics in colonial America (Mary P. Clarke, *Parliamentary Privilege in the American Colonies* [New Haven: Yale University Press, 1943], esp. p. 73). For further discussion of the colonial experience with bicameral relations, see Thomas F. Moran, *The Rise and Development of the Bicameral System in America* (Baltimore, 1898).

11. McCown, *The Conference Committee*, p. 33. For further details of the colonial experience with conference committees, see McCown, chap. 2.

12. Roy Swanson, *The United States Senate, 1787-1801*, Senate Doc. no. 64, 87th Cong., 1st sess. (1961), p. 232. McCown puts it similarly: "From the very beginning of our Congressional history, the conference committee was the accepted method of adjusting differences between the House of Representatives and the Senate" (*The Conference Committee*, p. 38).

13. *Annals*, 1st Cong., 1st sess., April 7, 1789, p. 18.

man, meet in the conference chamber, and state to each other verbally, or in writing, as either shall choose, the reasons of their respective Houses for and against the amendment, and confer freely thereon.¹⁴

On April 17, 1789, the House agreed to an identical resolution,¹⁵ and initial procedures for bicameral reconciliation between the two houses of Congress were in place.¹⁶

The First Conferences

The first conference committee met in the next month, on May 14, 1789, to resolve not a substantive legislative matter but an issue of congressional etiquette: how was the president of the United States to be addressed by Congress? The Senate preferred to use honorific or laudatory terms in referring to the president; the House opposed using any such title, presumably because it sounded too royalistic. This curious interchamber disagreement resulted in the first chamber "win" in congressional conference committee history: the Senate finally agreed to accept the views of the House and use no laudatory titles.¹⁷

The first major issue to be decided by Congress arose shortly thereafter and concerned the question of how revenue was to be raised in order to meet the needs of the new nation. On April 8, 1789, Representative James Madison introduced two revenue-raising bills. One levied duties on imports; the other involved a tax on the tonnage of vessels bringing goods into the United States. On May 16, the House passed this first revenue bill. The Clerk of the House notified the Senate of the bill's passage and requested it to concur.

The Senate began debate on the import tax measure and passed it on June 11 but added several amendments. The Senate-amended version was returned to the House. On June 15 and 16, the House again debated the bill and agreed to accept several of the Senate's amendments but opposed the rest. Informed of the House's actions, the Senate resumed consideration of the House amendments to the Senate amendments. It "insisted" on certain of its original amendments to the House-passed bill but "receded" from others. The secretary of the Senate delivered this result to the House on June 19. For the third time, the House took up the issue. Refusing to concur in several of the Senate's amendments, the House asked to meet in conference with the Senate and appointed three representatives as conferees, including Madison.

14. *Ibid.*, April 15, 1789, p. 19.

15. *Ibid.*, April 17, 1789, p. 174.

16. David J. Vogler, *The Third House: Conference Committees in the United States Congress* (Evanston: Northwestern University Press, 1971), p. 4; and McCown, *The Conference Committee*, p. 38. These initial formal rules proved to be noteworthy for their singularity, as McCown notes, "Except for the first joint rule in the first Congress, providing for conferences between the two Houses, the Conference Committee System [has] grown up without particular definite rules governing it in either House" (p. 75). Some definite rules regulating conference committee operations, however, have been adopted in the House and Senate since McCown wrote in 1927; these are discussed in chapters 3 and 7-10 below.

17. McCown, *The Conference Committee*, p. 41.

The tonnage bill, meanwhile, had passed the House on May 29 and the Senate on June 17, although in each case in different versions. Seven days later the Senate received a written request from the House asking for a conference on both the import duty and tonnage measures. In addition to the written request, the House sent the Senate the original bills plus the Senate amendments to each (these documents are called the papers). On June 25, the Senate agreed to a conference on both measures and appointed three conferees.

On June 26, 1789, the first congressional conference on a substantive matter convened on the Impost (the term then for imports) and Tonnage Bill. It was, interestingly, an "open conference," open to any interested party. There was so much member interest in this conference that the Senate had to adjourn for lack of a quorum.¹⁸ A similar problem occurred in the House; the entry for the record of events in the House for that day reads: "A number of the members attending the interesting conference which to-day took place with the Senate on the impost and tonnage bills, no business was done in this House." Records are not clear as to what occurred during this public conference, but it is worthy of note that this first conference proved also to be the last open conference that would be held for 122 years. (The next open conference meeting would not occur until 1911, when Senator Robert M. LaFollette of Wisconsin opened a single one-day tariff conference to the press and public as a short-lived experiment.)¹⁹ The conferees did manage, however, to resolve their differences in one day; this was accomplished by resorting to a classic bicameral compromise: the House conferees accepted all the Senate amendments to the Impost Bill "which related to [tonnage] discrimination," and the Senate representatives "receded from its other amendments."²⁰

The next day (June 27) both chambers planned to act on the conference report (a written document that embodied the negotiated agreement). When the Senate conferees made their presentation on the results of the conference, several senators wanted to vote immediately to adopt the conference report. The papers (bills and amendments of the conference), however, were in possession of the House. Some senators argued that a mistake had been made and sought unsuccessfully to obtain the papers from the House conferees. The result was that it was established that a conference report could be voted upon only by that chamber in possession of the papers. Senators "could not reconcile themselves to act without the bills," explained Senator William Maclay of Pennsylvania.²¹

Interestingly, the House acted first on the conference report, contrary to the principle evident even then that the chamber which asks for a conference votes last on the report. The jockeying going on between the legislative bodies, explained Senator Maclay, involved "a jealousy between the two Houses [over] who should act first, as the one which acted last would reject the bill, or at least have the blame of rejection if the bill was

18. Galloway, "The Third House," p. 2558; McCown, *The Conference Committee*, pp. 41-44.

19. McCown, *The Conference Committee*, pp. 43-177-78. The later opening of nearly all conference committees in 1975 is discussed in chapter 3 below.

20. *Ibid.*, p. 44.

21. The material regarding Sen. William Maclay (Pa.) was obtained from *The Journal of William Maclay* (New York: Albert and Charles Boni, 1927), pp. 87-89.

lost." Both chambers, however, eventually approved the conference report, and with it the import and tonnage legislation.²²

Because the first formal rules regarding conferences were sketchy, assertions and assumptions more than rules influenced the initial development of conference procedure. There are some practices of the first conference, however, that still guide conference activity today. For example, to request a conference or to vote on the conference report, a chamber must be in charge of the papers. Each house, too, may appoint any number of conferees, although three was the usual number for many years.

During the First Congress, conferences were held to work out House-Senate differences on a wide variety of legislation. Besides the issues of etiquette and the Impost Bill, conferences were also held on a Salary of Members Bill, the amendments to the Constitution we now know as the Bill of Rights, the Judiciary Act of 1789, which established the federal court system, and a Post Office Bill.²³ The Salary of Members Bill, for one, provoked ferocious debate over whether representatives and senators should receive equal compensation for their services. Institutional conflict over the status and respect due each chamber was present even in the First Congress and in its first conferences.²⁴

Another conference during the First Congress merits mention, for it illustrates both early conference independence from chamber preferences, and the responsiveness of conferees to executive or outside suggestions. As part of a measure providing the "means of intercourse between the United States and foreign nations," both the House and the Senate voted specifically that American ministers to foreign countries should be paid \$30,000 for their expenses. The conference, however, eventually reported an agreement setting \$40,000 for ministerial expense compensation. The conferees defended their action on the grounds that consultations with the secretary of foreign affairs had convinced them that the higher figure was necessary.²⁵

This conference report, certainly a clear case if ever there was one of conferees exceeding their mandate to negotiate House-Senate differences, was accepted by both the House and the Senate, early initiating a tradition of latitude for conference committee action. By the conclusion of the First Congress, we find the conference committee, with its English parliamentary roots and its colonial experience, well established as the mechanism for bicameral adjustment.

22. Original information on the first conference was derived from three sources: *Annals, 1st Cong., 1st sess.*; *Journal of the First Session of the Senate* (Washington, D.C.: Gales and Seaton, 1820); and *Journal of the House of Representatives, 1st sess. of the 1st Cong., vol. 1* (Washington, D.C.: Gales and Seaton, 1826).

23. McCown, *The Conference Committee*, p. 39.

24. Stanley Bach, "Germaneness Rules and Bicameral Relations in the U.S. Congress," *Legislative Studies Quarterly* 7, no. 3 (Aug. 1982): 356, n. 1. See also William Maclay, *Sketches of Debate in the First Senate of the United States, in 1789-90-91*, ed. George W. Harris (Harrisburg, Pa.: Lane S. Hart, 1880), and Louis Fisher, "History of Pay Adjustments for Members of Congress," in Robert W. Hartman and Arnold R. Weber, eds., *The Rewards of Public Service* (Washington, D.C.: Brookings Institution, 1980).

25. McCown, *The Conference Committee*, p. 46-47.

language and deal separately with the remaining matter—or alternatively will decide, by majority vote, to retain nongermane material in the conference report.¹⁰

Another noteworthy change in conference committee procedure occurred when Congress revised its budgetary process in the early 1970s. With enactment of the Congressional Budget and Impoundment Control Act of 1974 and the Gramm-Rudman deficit reduction legislation of 1985 (see chapter 11), the congressional budgetary process now imposes spending limits on all congressional committees, including conference committees. For example, in the wake of the stock market crash of 1987 and fiscal summitry between White House and Congress, the Senate rejected a housing conference report because it exceeded expenditure limitations set forth in the budget previously adopted by Congress. The conference report, said Senator Pete Domenici (R, N.M.), is "an absolute budget buster in the midst of a budget crisis in the name of housing reform."¹¹ As the revised budgetary process has imposed a degree of centralized direction on standing committees, it likewise has added constraints on conference committees.

Thus far, we have been discussing a variety of specific changes affecting conference committees that, while procedurally significant, neither individually nor collectively have had a fundamental impact on conference committee deliberations. A change adopted in 1975, however, had far-reaching implications. This change was the decision of both the Senate and House to open conference committees to public observation.

The Opening of Congressional Conference Committees

Secrecy is an important shield for conferees against pressures from outside.

—Jeffrey L. Pressman¹²

10. House procedures for handling nongermane provisions are discussed further in chapter 10 below.

In reciprocal fashion, the Senate, in late 1985, instituted a new procedure for its handling of nongermane material originating in the House and coming to the Senate as part of a reconciliation bill or conference report. S Res. 286, adopted on December 19, 1985, provided that a point of order may be raised in the Senate concerning such extraneous material, which, if upheld, would strike out the offending language. The purpose of this change, as its author, William Roth (R, Del.), explained, would be to give the Senate the ability "to request further conference or to insist on its disagreement or to recede and concur in the House amendment [bill] with an amendment incorporating the remainder of the text of the conference report or any other permissible variation which does not revive the provision deemed stricken by the successful point of order" (*Congressional Record*, Dec. 19, 1985, p. S18255).

The effect of this Senate rules change was to strengthen the Senate's position in postconference intercameral politics—and it may also enhance the position of Senate conferees during the conference, allowing them to oppose the inclusion of extraneous House provisions in the conference report on the grounds that they will be stricken from the legislation in the Senate on a point of order.

11. *Congressional Record*, Nov. 17, 1987, p. S16360. See also *Washington Post*, Nov. 23, 1987, p. A15.

12. Jeffrey L. Pressman, *House vs. Senate* (New Haven: Yale University Press, 1966), p. 56.

When conferences were in executive [closed] session, members didn't have to pound the table and make speeches they hope will be reported back home. They could sit there and say, "You know where I sit and I know where you sit so we've got to compromise." We do the same thing now but it takes much longer because we have to give all of our speeches first.

—Senator Mark Hatfield (R, Ore.)¹³

From the First Congress in 1789 until 1974, conference committee meetings—with but two exceptions¹⁴—invariably had been closed to the public and press. This is not to say that the only persons present at conferences were the conferees themselves. Committee staff, congressional aides, and executive branch officials certainly observed (and sometimes participated actively in) conferences over the years.¹⁵ Sometimes members of the House and Senate who were not officially members of the conference but had a personal interest in the legislation would "drop by" conference meetings and even express their views on the legislation. A conference would on occasion bring in outside experts to advise it on complex policy questions,¹⁶ and lobbyists were never very far away—either politically or physically.¹⁷ Finally, representatives of the president often would be invited to observe or participate in so-called closed conference sessions out of a realization that any compromise would still be, after congressional enactment, subject to presidential review and possible veto. Those whom the closed conference committee *did* exclude were representatives of interests not favored by conference leaders, the press that might write uncomplimentary stories about the wheeling and dealing of conference committee bargaining, and members of the general public, who could only wonder what happened to chamber-passed legislation in conference.

During the closed years, conference committee interactions were marked by political candor that included explicit threats, cajoling, and bargaining often resembling

13. Quoted in *Los Angeles Times*, Dec. 22, 1979, p. 6.

14. An open conference had been held in 1911 on the Tariff Bill of that year and was chaired by Sen. Robert La Follette of Wisconsin. Senator La Follette's Progressive Party stood for openness of all political and legislative activity; consequently he pushed the novel idea of opening conference deliberations to public scrutiny. As a trial, a one-day conference committee meeting on August 11, 1911, was opened to all comers. This experiment elicited considerable interest and detailed press commentary, but it would not be repeated until 1974. A detailed account of this open conference may be found in the *New York Times*, Aug. 12, 1911, p. 2; a briefer summary in Ada C. McCown, *The Congressional Conference Committee* (New York: Columbia University Press, 1927), pp. 177–78. For discussion of the only other pre-1974 open conference, that of 1789, see chapter 2 above.

15. For a discussion of the role of congressional staff and executive branch personnel in conference committee proceedings, see chapter 7 below. Among the other conference "players" there discussed are the president, agencies, the press, interest groups, and other congressmen.

16. Bertram M. Gross, *The Legislative Struggle: A Study in Social Combat* (New York: McGraw-Hill, 1953), p. 323.

17. Despite closed conference committees, as Rep. Morris Udall (D, Ariz.) put it, "The lobbyist always knew what was going on" (quoted in Adam Clymer, "A Congress Spectacular: Energy Bill," *New York Times*, Oct. 17, 1977).

simple horse trading.¹⁸ After the battle was over, however, the only public records of conference deliberations were the unrevealing official conference report together with often self-serving informational statements made to each chamber by the conferees. No printed or written records were publicly available, and conference bargaining and negotiations were revealed only to the extent desired by the participants.¹⁹ The conference committee was a mysterious black box into which the House and Senate placed their adopted bills to be transformed into new "compromise" conference legislation.

The fog began to lift in the mid-1970s. Early in that decade, there was increasing pressure from change-minded members and groups such as Common Cause to open House and Senate proceedings to the press and public. In 1974, as an experiment, twelve conferences voluntarily chose to open their sessions. The first of these was on a particularly contentious strip mine regulatory bill and, as the first open conference in sixty-three years, understandably attracted considerable press and public attendance. In order to get into the conference room, "Members had to carve their way through a wall of human flesh," one conferee ruefully reported.²⁰

Despite such congestion, conference participants were generally pleased by the experience with openness—it proved to many that public conference meetings "would not disrupt the conference process."²¹ Among those seeing benefits in open meetings were lobbyists on both sides of the initial strip mining conference. One mining industry representative pointed out that the open conference "benefits both sides . . . [since] you have a better idea of what's happening on a day-to-day, hour-by-hour basis." John McCormick, a lobbyist representing the opposing Coalition Against Strip Mining, argued that "openness was an assurance that we weren't going to lose anything major" during the bicameral deliberations. In support of this view, McCormick cited an instance when his organization was able to change the position of one conferee by informing

18. Charles L. Clapp, *The Congressman: His Work as He Sees It* (Washington, D.C.: Brookings Institution, 1963), p. 284. One political scientist recounted his surprise upon gaining access some years ago to the preopening conference minutes and files of the House Government Operations Committee. They were, he reported, "utterly explicit" in terms of deals and negotiations; presumably this candor was due to the presumption that the documents were absolutely confidential and for internal use only. Audience discussion at Congressional Politics Panel held at the Annual Meeting of the American Political Science Association, Chicago, Sept. 1, 1983.

19. As part of the actions taken in 1975 by the House and Senate to open conference committees, rules were also adopted that year requiring that a transcript or electronic recording be made of all conference committee proceedings—unless conferees should specifically vote otherwise. Even this "requirement," however, is commonly ignored by conference committees or honored only to the minimum degree of keeping exceedingly sketchy conference minutes noting only formal motions. Further, these records, where they exist, are usually only accessible at committee offices to those who can convince committee staff both of the reasonableness of their inquiry and of the existence of these fugitive records.

20. Rep. John F. Seiberling (D. Ohio), quoted in Congressional Quarterly, *Guide to Congress*, 2d ed. (Washington, D.C.: Congressional Quarterly, 1976), p. 354.

21. "Conference Committees Opened to Public" in Congressional Quarterly, *Inside Congress*, 2d ed. (Washington, D.C.: Congressional Quarterly, 1979), p. 67. An earlier version of this piece was published as "Reform Penetrates Conference Committees," *Congressional Quarterly Weekly Report*, Feb. 8, 1976, pp. 290-94.

constituents of his conference stance.²² The general acceptance that the twelve open conferences of 1974 received paved the way for Congress to act the next year to open all conferences.²³

In January 1975, a rules change was proposed in the House that would require all conferences to hold open sessions unless a majority of House conferees voted in public session to close a particular meeting. Such a vote would apply only to that single session of the conference committee; closing any subsequent meeting would require separate public votes each day. The proposed rules change drew some mixed reactions from representatives and lobbyists. Longtime congressional reformer Richard Bolling (D. Mo.) surprisingly exhibited considerable caution about this reform: "Sunshine laws kid the public. They imply a total openness and there never will be." Bolling pointed out that while openness was desirable, legislative compromises and accommodations must also be provided for, and these require privacy. "If we have to meet in our wives' boudoirs—if they still have such things—we will."²⁴ Responded another veteran reformer, Congressman Abner Mikva (D. Ill.): "[Representative Al] Ullman and [Senator Russell] Long still will go out to lunch together—as they did last Monday—and trade Park Place for Boardwalk, but that's no excuse for not opening up conference meetings."²⁵ A lobbyist for the U.S. Chamber of Commerce cautioned that open conference sessions could disrupt needed negotiations: "Compromise could be a little more difficult to come by. If you put a flock of Ralph Naders, John Gardners, or Sierra Clubbers in a conference room . . . it will make some conferees sweat."²⁶ This prospect, however, rather appealed to David Cohen of Common Cause, who expressed the view that public conference sessions would benefit public interest groups like his by making it easier to compete effectively with other interests traditionally well established in Congress.²⁷

The open conference committee rule was adopted by the House on January 14, 1975, as House Rule 28. A similar rules change was proposed in the Senate at about the same time, although it was not approved in that chamber until November 4. As a consequence, by the end of 1975, both houses had acted decisively to change one fundamental and traditional aspect of conference committees—their secrecy.²⁸

22. *Ibid.*, pp. 67-68. McCormick also speculated, according to CQ, "that open conferences might cut down the number of nongermane and special interest amendments added to the legislation in the Senate. Many of those amendments are accepted on the floor with the clear understanding that they will be quietly dropped in conference. The member benefits, however, because he can tell his constituents that he had the amendment approved on the floor." (p. 68)

23. Congressional Quarterly, *Congressional Quarterly Almanac*, 1974 (Washington, D.C.: Congressional Quarterly, 1975), pp. 961-62. A list of the twelve open conferences of 1974 can be found on page 962 of this work.

24. "Conference Committees Opened to Public," p. 68.

25. Quoted in *Chicago Tribune*, March 31, 1975.

26. "Conference Committees Opened to Public," p. 68.

27. *Ibid.* See also the discussion, later in this chapter, of the consequences to various interest groups of open conference sessions.

28. On the 1975 rules change, see "Conference Committees Opened to Public," pp. 67-71; Congressional Quarterly, *Guide to Congress*, 3d ed., pp. 435-455; *idem*, *Congressional Quarterly Almanac*, 1975 (Washington, D.C.: Congressional Quarterly, 1976), pp. 39-40, 931; *idem*, *Congress and the Nation: 1973-1976*, vol. 4 (Washington, D.C.: Congressional Quarterly, 1977), pp. 767, 770, 773.

One further modification of congressional rules concerning open conference proceedings occurred two years later. In December 1977, the House amended its rules additionally to require that all conference sessions be open unless the full House voted for a closed conference meeting.²⁹ As a result of this additional strengthening of the House's general prohibition against closed conference meetings, virtually all conference committees, except those dealing with national security issues or involving the Intelligence committees, are today officially open.³⁰ However, as we shall see, most public conferences still involve private conferences.

The Consequences of Open Conference Committees

Instead of waiting in uncomfortable corridors, lobbyists and reporters . . . now wait in uncomfortable committee rooms, mostly small old ones in the Capitol designed for private meetings.

—Adam Clymer³¹

It is my absolute conviction that the meetings that have been transpiring are not meetings of the conference but are informal expressions between members on both sides in an effort to advance—I will concede—in an effort to advance the business of the conference.

—Representative Thomas I. Ashley³²

Because conference committee sessions are now open does not mean that the public can easily observe conference proceedings. Unlike hearings and other meetings of regular standing committees, which are usually held in large hearing rooms in the House or Senate office buildings, most conference committees meet in tiny, exceedingly cramped cubbyhole rooms, often in the Capitol building itself. Meeting close to both chambers reflects a bicameral geographical fairness and enables conferees to reach their chamber quickly for floor votes or quorum calls. The predilection for conference locations in the Capitol building, however, creates special problems for nonconferees. On November 4, 1981, for example, a House-Senate appropriations conference convened in Room S-126

29. As a result of this 1977 action, House Rule 28 now reads: "Each conference committee between the House and Senate shall be open to the public except when the House, in open session, has determined by a roll-call vote of a majority of those members voting that all or part of the meeting shall be closed to the public." No formal comparable action was taken by the Senate in 1977 or in the following years, but in practice Senate conferees have accepted the House prohibition against closed meetings without explicit chamber approval (Congressional Quarterly, *Guide to Congress*, 3d ed., p. 455). As far as we know, there has been no conflict between the chambers on this point, with the House wishing to close conference sessions and the Senate urging open meetings (or vice versa).

30. *Ibid.*

31. Adam Clymer, "A Congress Spectacular: Energy Bill," *New York Times*, Oct. 18, 1977.

32. Rep. Thomas I. Ashley (D, Ohio), chairman of the House Ad Hoc Committee on Energy and co-chairman of the 1978 Energy Conference (quoted in Richard Corrigan, "The Sunshine in Room S-134," *National Journal*, April 29, 1978, p. 681).

of the Capitol promptly at 8 A.M. The only problem was that the Capitol building is not open to the public at that hour, and unless one had staff or press credentials it was impossible to gain access either to the Capitol or to the conference.

The size of conference meeting rooms frequently poses additional problems for observers.³³ In many cases, there just is not space in the conference room for more than a handful of the general public after staff and journalists have crowded in to join the conferees. In another 1981 appropriations conference, on an agriculture funding bill, dozens of high-powered agricultural lobbyists and interested observers were left for hours standing in a dark corridor outside Capitol Room S-146 while the conference conducted its business. A grand total of two persons from the long line of those waiting were ever able to gain admittance to the conference, while everyone else, including many who had lined up two hours or more before the scheduled time for the conference, were denied access. While waiting in the dark shadows of the hall, one could only speculate on the per-hourly fees the three-piece wool-suited lawyers and industry representatives were receiving for leaning against cold marble corridor walls.³⁴

Not only well-tailored suits are in ample evidence outside conference rooms, but also fine footwear. At one point in the course of the 1982 tax increase conference (discussed in detail in chapter 11), an aide to Senate Finance Chairman Robert J. Dole (R, Kan.) pecked into the hall and reported the now-legendary assessment, "There's wall-to-wall Guccis out there!"³⁵

33. These access problems are most severe for the general public and for many—but not all—lobbyists. Journalists usually enjoy preferred access ahead of others, and congressional staff, especially key committee staff, and sometimes personal staff, gain entry to conference committees almost automatically.

34. Seeing this talent cooling its heels outside the conference room brings to mind the observation Sen. Pete Domenici (R, N.M.) made in 1976 on a similar occasion of observing a long line of lobbyists unable to get into the conference: "There's more real knowledge of this bill out there than in here" (Bernard Asbell, *The Senate Nobody Knows* [Garden City: Doubleday, 1978] p. 436).

35. Dale Russakoff, "No More Wall-to-Wall Guccis: Tax Lobbyists Have Been Exiled from the Room," *Washington Post National Weekly Edition*, April 28, 1986, p. 15. This article referred to a novel experiment made in 1986 by the Senate Finance Committee during markup sessions on that year's far-reaching tax bill. Instead of having lobbyists overflowing the conference room and adjacent corridors, it was decided to pipe its proceedings two floors down into a large auditorium. There, interested parties could hear the conference discussions "while enjoying new freedom to smoke, drink coffee, curse the Senators under their breath and, when the going gets dull, read newspapers." The innovation was favorably received by many lobbyists who otherwise would have had to fight for a handful of seats within the conference room or spend hours standing in halls outside. "This is the most civilized markup we've had in years," reported Standard Oil lobbyist Dave Fransiak (*ibid.*).

The Gucci image continued throughout the 1980s to be a key aspect of references to lobbyists intensely interested in conference negotiations. The lobbyist corridor gathering place outside conference rooms was known as Gucci Gulch; the lobbyist with a weak legislative case "doesn't have a Gucci to stand on." The Gucci rhetoric, according to Capitol Hill lobbyist Lawrence F. O'Brien, "is a surrogate for the \$500 suit, or variation on that theme." Even hallway repairs were blamed on the wall-to-wall Guccis: when it was necessary at one point to repaint a second-floor Dirksen Senate Office Building corridor, then-Senate Finance Committee Chairman Robert Dole asserted that the scuff marks resulted from waiting lobbyists "with their Guccis." A few years later, during the landmark tax reform conference in 1986, Senator Dole offered the observation that the Gucci-footed lobbyists would soon (after

The virtual exclusion of the public and some lobbyists from many conferences might appear to be nothing more than the unfortunate consequence of inadequate centrally located meeting space, except that, as pointed out by Representative Les Aspin (D, Wis.), it is a "tactic of Congress . . . to hold conferences in rooms that are too small to hold visitors."³⁶ Many congressmen see small meetings rooms as a real assistance to conference committee proceedings. "You keep out a lot of the pirates," one aide to House Ways and Means Chairman Dan Rostenkowski (D, Ill.) explained in 1981. "The physics of a small room gets the job done faster."³⁷ Congressman Leon Panetta (D, Cal.) turned this idea into an equation: "The tighter the room, the quicker the resolution."³⁸ If using small Capitol meeting rooms provides both useful conference "physics" and the exclusion of "pirates," so much the better. There are few incentives for conferees to seek meeting space more adequate to the spirit of openness, and many reasons that small meeting rooms appear convenient, cozy, and desirable.

The openness of conference committee proceedings is also seriously limited through the growing tendency for preconference and during-the-conference informal caucuses and meetings. A major conference in 1979 between the House Ways and Means Committee and the Senate Finance Committee was announced, and the huge (in

passage of the tax legislation) be barefooted. Seldom if ever has so much political consequence been attributed to one brand of soft-leather loafers. Robin Tower, "Fear and Shoe Leather Among the Lobbyists," *New York Times*, July 31, 1986, p. 10.

For additional analysis of the Gucci gang, especially as regards their presence and activity during conference consideration of the landmark tax reform bill of 1986, see Jeffrey H. Birnbaum and Alan S. Murray, *Showdown at Gucci Gulch: Lawmakers, Lobbyists, and the Unlikely Triumph of Tax Reform* (New York: Random House, 1987).

36. Rep. Les Aspin (D, Wis.), letter to Therese A. Barry, Feb. 1, 1984. This correspondence was at the initiative of Barry as part of her 1984 Senior Independent Studies Thesis at Lawrence University, "Conference Committees and Institutional Adaptability." Members of the House Appropriations Committee jokingly refer to what they call "closed open meetings." These sessions, although officially open, are deliberately held in rooms too small to accommodate more than a few observers and reporters. Further, no documents are available concerning decisions made until days after the meeting, thus further hindering any effort by outsiders to monitor the action. Appropriations Committee Chairman Jamie L. Whitten defended the withholding of written reports on the grounds that often "something unexpected needs to be corrected" (Jacqueline Calmes, "Few Complaints are Voiced as Doors Close on Capitol Hill," *Congressional Quarterly Weekly Report*, May 23, 1987, p. 1060).

37. Quoted in *Boston Globe*, Aug. 7, 1981, p. 8. This idea of "keeping out the pirates" somewhat echoes a complaint made in 1975 by Rep. Wayne L. Hayes (D, Ohio) that "the most insidious part of open conferences is seeing lobbyists passing notes to members in conferences" (quoted in *Congressional Quarterly, Congress Quarterly Almanac*, 1975, p. 930).

A contention of many members is that closed meetings barred to lobbyists facilitate tough decisions on controversial legislation. Observed Representative Don J. Pease (D, Ohio), a former newspaper editor, "In a closed meeting, you can come out and say, 'I fought like a tiger for you in there, but I lost'" (Calmes, "Few Complaints are Voiced," p. 1059).

38. Quoted in *Congressional Insight*, July 24, 1981, p. 2. The pressure on the limited number of Capitol rooms for conference space was so great during the 1981 budget reconciliation process, which involved fifty-eight separate subconferences, that almost every Capitol meeting space was used. "One secretary in a secluded GOP leadership office was shocked when members marched into the small room and announced a conference committee meeting" (ibid.).

this case) Ways and Means Hearing Room was packed with hundreds of observers and intensely interested parties. The senators entered the room and sat down at the huge table. The House members also seated themselves. House Ways and Means Chairman Al Ullman (D, Ore.) spoke: "Before we formally convene this conference, the House members will caucus in the chairman's office; the Senate conferees will meet in Room _____." The conference members then retired to their informal caucuses in the privacy of members' offices while the public speculated about what deals were being struck. Hours later, when the conferees had failed to reappear in the hearing room, most of the observers had melted away, in many cases to make their own private soundings about emerging compromises.³⁹

Similar accounts abound concerning informal private discussions replacing, or at least supplementing, the formal and public conference committee sessions. The conference on the 1976 Clean Air Act, for example, was preceded at 10 A.M. by a meeting of Senate conferees to work out strategy.⁴⁰ Similarly, a 1978 energy conference was announced for Capitol Room H-328 but was preceded by lengthy meetings of the entire conference in S-334, the Capitol hideaway office of Senator Henry Jackson (D, Wa.). This location was so inaccessible as to defy discovery by even the most knowledgeable Capitol Hill journalist—to say nothing about any public citizen.⁴¹ (These preliminary meetings were the "informal expressions between members on both sides" referred to by House conferee Thomas I. Ashley in the quotation introducing this section.)

In a classic instance of backroom discussions replacing open conference negotiations, a 1985 conference committee on that year's Farm Bill was quickly adjourned after an initial session to allow for informal conferee meetings. The initial conference meeting had been extremely difficult, so tense in fact that Senate Majority Leader Robert Dole publicly reported, "We're just shooting each other in there."⁴² Unofficial meetings among conferees, staff, or both, it was felt, would better serve conference progress on this contentious legislation.

In some instances, preconference informal discussions may serve as the forum for major negotiations and the working out of compromises. When this occurs, the subsequent conference meeting may well be staged almost along the lines of a script, with conferees for one House proposing an alternative that is quickly agreed to, followed by the other conferees making a proposal that is likewise concurred with, and so forth. Bargaining and compromise may be formally represented in the conference, but only as an agreed-upon reflection of preconference agreements.⁴³

Sometimes informal meetings are necessary during the conference deliberations themselves. One legendary Capitol Hill story concerning the major energy conference of 1976 has Congressman John Dingell (D, Mich.) and Senator Henry Jackson (D, Wash.)

39. The preceding paragraph is based on the personal observation of one of the authors.

40. Asbell, *The Senate Nobody Knows*, pp. 432-33.

41. Corrigan, "Sunshine in Room S-334," p. 681.

42. *Congressional Quarterly Weekly Report*, Dec. 7, 1985, p. 2555.

43. These types of prearranged conferences we later term Hello and Good-Bye conferences. They are discussed further in chapter 7 below and illustrated by two brief examples in chapter 11.

desperately needing to negotiate a key point but being unable to confer directly in the crush of the conference. They finally had to retreat to the john, where they cut the crucial deal. Necessity is indeed the mother of invention—in this case of an innovative meeting place in order to limit conference openness.⁴⁴ And, of course, such highly informal meetings as the Dingell-Jackson summit and the other unofficial gatherings we have discussed do not include other private deals made over the phone, in one-on-one discussions in offices, or in the corridors of the Capitol.⁴⁵

Finally, "nonconference" negotiations can occur near the end of a conference in order to conclude unresolved matters in an expeditious manner. These final questions may be minor housekeeping matters, but often they involve substantial and contentious differences. Longtime House conference negotiator Representative Barber Conable (R, N.Y.) described this final stage as follows:

Usually, the non-controversial things are quickly disposed of, but the tough ones are saved for last, and involve separate caucuses of the delegations from the two Houses, with staff members sashaying back and forth with messages and offers. . . . The caucuses constitute forums for frank discussions and privacy. In short, openness in joint meetings does not mean we are always open.⁴⁶

There are other consequences of open conference committees besides the development of means of limiting openness. As suggested by the statement of Senator Mark Hatfield quoted earlier in this chapter, things may take longer because conferees feel the need to give their speeches first. Daniel Dreyfus, staff director of the Senate Energy Committee, echoed Senator Hatfield's remarks in commenting, "Since we opened up the doors, there has been a lot of time wasted in conferences. In the old days, someone would say, 'I know I'm going to lose on this item, so let's just go ahead.' Now, with a gallery there, they hold on for weeks trying to show they're hanging tough."⁴⁷

The result is that under the watchful eye of lobbyists, conferees tend to fight harder for provisions they might have dropped quietly in the interests of bicameral agreement. This is illustrated by an early open conference committee in which a tendency toward

44. One account in the Capitol Hill newspaper *Roll Call* neatly characterized several of the ploys we have discussed for limiting the openness of committee meetings: the *squeeze play*—purposely using too small a meeting room in order to keep out most lobbyists, members of the public, and some journalists; the *committee caucus*—meeting in a back room to work out a compromise; and *shuttle diplomacy*—sending staff back and forth between chamber caucuses with compromise proposals. This article, however, also described one additional, truly innovative "sneak play," which it labeled the *football huddle*. "Popularized by former Rep. Richard Bolling (D, Mo.), when he headed the Rules Committee, lawmakers group head-to-head at the center or perimeters of a committee room, conducting business in inaudible whispers but in full view of the public" (Barbara Rosewicz, "The Sunshine Slowly Fades," *Roll Call*, Oct. 20, 1983, p. 4).

45. "Conference Committees Opened to Public," p. 70.

46. Rep. Barber Conable, "What Happens in Conference?" *Roll Call*, June 21, 1984, p. 4.

47. Quoted in *Wall Street Journal*, March 4, 1980, p. 12. Similar posturing was found in a study of a 1980 conference on a continuing authorization for the Federal Trade Commission. This lengthy conference was characterized by "months of political game-playing and maneuvering" (David King, "In the Hands of a Chosen Few: The Federal Trade Commission's Struggle for Authorization" [Undergraduate research paper, Lawrence University, 1982], p. 20).

conference speech making was found to be linked to a tendency toward secret meetings. During these energy conference negotiations in 1975, it was observed that "several Senators and Representatives tend to give long-winded speeches and members from both sides find the need to meet regularly in private to plot strategy for the public sessions."⁴⁸

Anticipated Versus Actual Consequences

Many changes in conference committee proceedings were predicted to result from their opening. Among these were decreased efficiency in reaching agreements, an increased tendency for conference members to grandstand and play to the press, a wider use of secret meetings and caucuses to work out compromises awkward to negotiate in public view, and a greater tendency for conferees to argue for external interests and constituency concerns.⁴⁹ Any conclusions as to the extent these expectations have been fulfilled can only be tentative; however, we have cited some evidence supporting two of these three predictions: that open conferences have often tended toward speech making and posturing, and that informal and private "consultations" frequently supplement formal and open conference committee meetings. Now we note similar limited evidence to suggest shifts in conferee loyalties and behavior resulting from the opening of conference committees.⁵⁰

The presence of lobbyists in the conference room may cause subtle changes in the political context of conference decision making.⁵¹ Of course, in many cases before open conference committees, lobbyists were able to gain entry to a conference or be nearby. Face-to-face contact between conferee and lobbyist during a conference session, however, is considerably easier with open meetings. In 1981, for example, a key farm lobbyist was credited with influencing the agricultural conference "just by sitting in the front row." His presence was significant because "members know that he will report back to the sugar growers telling them who their friends are, and his mere presence reminds the lawmakers how the game is played."⁵² With lobbyists able to scrutinize

48. David E. Rosenbaum, "Senate and House Conferees Approve Separate Bills on Energy," *New York Times*, Nov. 6, 1975, p. 24. Rosenbaum goes on to describe the conference environment as follows: "This morning, the conference met in a room in the Capitol that is only slightly larger than a tennis court. More than 50 Senators, Representatives and their assistants were crammed together in the front of the room around tables placed in a circle while scores of lobbyists and reporters sat and stood elbow-to-elbow in the back."

49. These expectations of the likely consequences of opening conference committees are adapted from two tutorial papers prepared by Lawrence University undergraduates Andrew N. McLean, "A Comparison of Environmental Influencing Agents on Appropriations and Labor Conference Committees," 1979, and John R. Stoner, "A Summary of What Is Known about Congressional Conference Politics and Bargaining," 1981.

50. The diverse loyalties of conferees are further examined in chapter 6 below.

51. The analysis in this and the following four paragraphs is adapted from and influenced by a 1984 undergraduate Senior Independent Studies Thesis at Lawrence University by Therese A. Barry, "Conference Committees and Institutional Adaptability." Appreciation is expressed to Barry for insights and analysis incorporated into the following discussion.

52. Steven V. Roberts, "Conferences are Site of Legislative Showdowns," *New York Times*, Nov. 20, 1981.

proceedings in person, conferees may feel bound to maintain positions that they might otherwise quickly abandon in order to facilitate conference compromise. In an open meeting, the lobbyist knows "who does what, says what, and stands for what." The conferee's decision is there for all to see, and "promise-making includes promise-keeping."⁵³

Besides pressures on conferees arising from lobbyists' presence, open conference sessions give lobbyists and other interested parties the ability to know more precisely and accurately what is going on. When conferences were closed, a lobbyist's knowledge of the proceedings was less certain because he generally could monitor the conferences only through information supplied him by conferees who favored his viewpoint. Allies are not always perfect information sources, especially if they have modified or wavered in their initial views and positions. Now, having more complete and direct information through personal observation of conference negotiations, lobbyists can better ensure that their influence and persuasive efforts bear fruit.

In another way, open conferences also multiply interest group pressures by providing better access to a new type of lobbyist. Representatives of public interest groups usually had great difficulty knowing what was happening behind closed conference room doors. By contrast, clientele-type organizations, well represented in congressional districts, often would be accorded "courtesy" entry into a conference room or be given full briefings on the committee's activity. Such courtesies were seldom available to those groups advocating innovation or change in traditional practices and benefits. With the opening of conference committees, these new groups or their representatives are now able to compete more effectively and equally with entrenched, clientele-oriented groups.⁵⁴

53. Telephone interview with Ward Sinclair, congressional reporter, *Washington Post*, March 1, 1984. This interview was at the initiation of Therese A. Barry as part of her Senior Independent Studies Thesis.

54. An early anticipation of this leveling impact of open conference committees can be found in "Reform Penetrates Conference Committees," *Congressional Quarterly Weekly Report*, Feb. 8, 1975, p. 291. For a more recent assessment of the implications of this change for interest groups, see Gary W. Copeland, "The Opening of Conference Committees: A New Arena for Interest Groups," paper prepared for delivery at the 1985 Annual Meeting of the American Political Science Association, New Orleans, Aug. 27-Sept. 1, 1985.

Closed meetings inherently advantage well-connected veteran lobbyists over less experienced individuals. AFL-CIO lobbyist Calvin P. Johnson, certainly one of the former, observes:

A lot of lobbyists really complain about closed meetings. It tends to be less the men or women who are on the Hill every day working than the folks from the law firms and the accounting firms who come up here to take notes and go back and write up a newsletter and charge their clients \$250 an hour. They scream and yell like crazy because they don't know what's going on. They have fewer contacts and they don't feel comfortable with grabbing members as they go in and out and asking them what in the world is going on.

In contrast, Johnson notes, "We can find out. I can find out who rolled me and let them know that we weren't pleased with that. And when they come around to us for funds or for support or something, we can let them know, 'you banged me on that one, don't look to us on this'" (Calmes, "Few Complaints are Voiced," p. 1060).

A final consequence of open conferences is that journalists are able to attend at least the official conference committee meetings. This change had been anticipated as having great significance: government in the sunshine would produce greater public accountability of government. Whether these objectives have been achieved is difficult to say, in part because the proliferation of unofficial meetings has clouded over government in the sunshine. It is undeniably true that at times press, media, and editorial commentary can influence support or opposition to conference compromises.⁵⁵ Journalistic and media coverage of conference committees, however, is limited and usually deals only with the most dramatic and important conferences in which conference positions and political maneuvers are generally well known. Coverage of less prominent conferences is so minimal as to limit significant public accountability. In short, the "third branch of Congress" continues as a generally obscure arena of power, but today more because of spotty journalistic coverage than because of exclusion.

The story of the impact of open conference sessions on bicameral politics is largely one of institutional and individual adaptability. Some posturing and speech making are inevitable with open conferences, so stands are stated and speeches are given. Following this, the conference proceeds to work. "The fears [that posturing and long-winded speeches would impede the serious business of the conference] have never been realized," writes Representative Morris Udall (D, Ariz.). "Members do not waste the time of the committee. Nor is there much obstructionism."⁵⁶ It was anticipated that open conferences might make negotiation and deal making politically difficult, so unofficial, closed meetings have developed to facilitate these activities. In short, "Congress itself has been able to adapt to the reform [of open conference committees] in such a way that clearly diminishes any impact it may have had."⁵⁷ Rather than being the catalyst for sweeping transformation of conference committee politics and processes, the opening of conference committees has had far more subtle and modest consequences than either its proponents or opponents expected.

The Impact of External Change on Conference Committees

The conference committee, like Congress itself, is shaped by and responsive to the political environment of which it is a part. While bargaining and compromise remain fundamental and stable elements of the conference process, they take place within a

55. For an example, see David Rapp, "Budget Conferees Fail to Reach Accord," *Congressional Quarterly Weekly Report*, May 21, 1988, p. 1355.

56. Rep. Morris Udall (D, Ariz.), letter to Therese A. Barry, March 21, 1984, p. 2. This correspondence was at the initiative of Barry as part of her 1984 thesis. Representative Udall's deemphasis on the impact of openness on conference work is seconded by Frank A. Aukofer, Washington bureau chief, the *Milwaukee Journal*. In a telephone interview on March 13, 1984, conducted by Therese A. Barry, he stressed that following the opening of conference committees, all that was involved was members getting used to being in the public eye.

57. Barry, "Conference Committees," p. 106. As Jacqueline Calmes of *Congressional Quarterly* observes, "Both miniskirts and 'sunshine in government' reforms were fashionable in the early 1970's. Then the skirts were tossed out as inconvenient and too revealing" (Calmes, "Few Complaints are Voiced," p. 1059). As skirts have been lengthened, conference committees have been closed.

contemporary setting that differs in many ways from the recent past. For instance, today's committee and party leaders no longer wield the kind of authority their predecessors did in the 1950s, legislation is often reviewed by several committees simultaneously, omnibus bills or "package legislation" dominate much legislative decision making, and divided party control of Congress during six years of the 1980s added an intense partisan dimension to conference politics. As Congress changes, so also does the conference committee.

Weakening of Party and Committee Leadership

One of the most significant changes in Congress in recent years is the general weakening both of party leadership in the House and Senate and of the powers of committee chairmen. In the past, the conference committee was described as "the ultimate flowering of the power of seniority."⁵⁸ Today, the power of senior leaders of the chamber and of committees in conference decisions is much less certain and often more circumscribed.

Leadership in the House and Senate, in brief, is not what it used to be. Prior to the last two or three decades, the Senate majority leader and Speaker of the House often asserted an important role in significant conference negotiations. In the late 1950s, for example, there was a regular pattern of intervention by the Speaker in appropriations conferences:

Annually Speaker [Sam] Rayburn importuned an embattled [House Appropriations Committee Chairman] Clarence Cannon to yield his conference position for the sake of a year-end bill. . . . Cannon had to "deliver" under external pressure of this sort. From general exhortations through telephone calls from the Speaker, the conferees are subjected to environmental influences and they do make decisions which are directly responsive to these influences.⁵⁹

Today, the personal intervention of the majority leader or Speaker in conference politics is more occasional. In the tax increase conference of 1982, for example (recounted in chapter 11), the major players were the conferees, not the House and Senate leaders. The historically unprecedented conference in 1981 on the budget reconciliation bill, which included 58 separate subconferences and over 250 senators and congressmen, was coordinated in the House not by Speaker Thomas P. O'Neill but by a relatively junior member of the Budget Committee, Leon E. Panetta (D, Cal.), who at the time had served in the House for only four years. Direct leadership involvement, to be sure, is still evident in conferences dealing with issues of the highest substantial and

58. John W. Baker, *Member of the House: Letters of a Congressman by Clem Miller* (New York: Scribners, 1962), p. 114.

59. Richard F. Fenno, Jr., *The Power of the Purse: Appropriations Politics in Congress* (Boston: Little, Brown, 1966), p. 647. These interventions by House Speaker Sam Rayburn may have been particularly characteristic of appropriations legislation and the relationship between Speaker Rayburn and Appropriations Chairman Cannon. It is not certain how customary such involvements by the Speaker in conference negotiations were prior to the 1920s; it is clear—as noted in the next paragraph—that any such interventions are much rarer today.

political priority, such as tax, budget, trade, and deficit reduction measures. Such intervention today, however, seems much more selective and occasional than the usual pattern of leadership involvement in the past.

Committee chairmen, too, have lost some control over conference committees. One way this has occurred is through the development of autonomous subcommittees within their full committees—subcommittees chaired by bright and aggressive members eager to take on floor or conference management responsibilities for legislation. This rise of subcommittee independence, labeled subcommittee government by some observers, has been widely commented upon in terms of such consequences as policy fragmentation, lack of legislative coordination, and the emergence of decision-making units with even greater interest imbalance than the parent committees.⁶⁰ A major consequence of subcommittee government is that inherently it involves the shifting of power from the committee chairman to the subcommittee leader and a sharing of intracommittee authority.⁶¹

One way this shift of power may be measured is in terms of bill management responsibilities. One scholar has charted this change in terms of floor management of legislation, finding that in the case of the House, "most bills are now managed by subcommittee chairs whereas in the 1960's most bills were managed by House full committee chairs."⁶² (House Democratic Caucus rules in fact now require full committee chairmen to allow subcommittee chairmen, if they wish, to floor manage legislation reported from their subcommittee.)

By contrast, subcommittee government has not been duplicated in the Senate. For instance, floor management by Senate subcommittee chairs *declined* somewhat between the Eighty-sixth and Ninety-fifth Congresses (from 1959–61 to 1977–78), from 31 percent of all bills to 22 percent. Full committee chairman management during the same period stayed at virtually the same level—between 14 and 15 percent.⁶³

While these data are subject to diverse interpretations and speculation, what is interesting for our purposes is the evidence that subcommittee government has devel-

60. See, for example, Roger Davidson, "Subcommittee Government: New Channels for Policy," in Tom E. Mann and Norman J. Ornstein, eds., *The New Congress* (Washington, D.C.: AEI, 1981); and Christopher J. Deering, "Subcommittee Government in the U.S. House: An Analysis of Bill Management," *Legislative Studies Quarterly* 7, no. 4 (Nov. 1982): 533–46.

61. See Roger H. Davidson, "Congressional Committees as Moving Targets," *Legislative Studies Quarterly* 11, no. 1 (Feb. 1986): 19–33.

62. Deering, "Subcommittee Government," p. 541. In subsequent research in which Deering was joined by Steven S. Smith, it was found that whereas in the 86th Congress (1959–60), 30 percent of all legislation was floor-managed in the House by subcommittee chairmen, by the 95th Congress (1977–78) this figure had more than doubled to 67 percent. Floor management by the full committee chairman had sharply declined during the same period from 54 percent of all bills to 28 percent. Sixteen percent of all House bills were floor-managed by "others" in the 86th Congress, and 5 percent by others in the 95th. Christopher J. Deering and Steven S. Smith, "Subcommittee Government?" paper prepared for presentation at the Annual Meeting of the American Political Science Association, Chicago, Sep. 1–4, 1983, p. 19.

63. What dramatically increased during this eighteen-year period was the assumption of floor management duties by the Senate majority leader—from 13 percent of all bills in the 86th Congress to 45 percent in the 95th. Forty-one percent of all Senate bills were floor-managed by others in the 86th Congress, and 19 percent in the 95th. Deering and Smith, "Subcommittee Government?" p. 19.

oped rather differently in the House and Senate. The House has witnessed a significant shift of legislative management responsibility from full committee to subcommittee leaders; the Senate, on the other hand, "continues to be a highly individualistic body—perhaps the ultimate form of decentralization."⁶⁴ As in so many other matters the House and Senate are indeed quite different institutions.⁶⁵

A conclusion drawn from this comparison pertains to the composition of conference delegations. Now committee chairmen (and even party leaders) have less freedom of choice in determining conferees. Particularly in the House, where the flowering of subcommittee government is more advanced than in the Senate, committee chairmen are virtually obligated to recommend (that is, select) their subcommittee leaders as conferees. These members, in effect, are preselected as conferees. The rules of the House Education and Labor Committee, for example, even stipulate that the "Chairman shall recommend to the Speaker as conferees the names of those members of the subcommittee which handled the legislation in order of their seniority upon such subcommittee." Such practices help ensure that conference delegations reflect diverse committee viewpoints.

Even when the full committee chairman today retains some latitude in the exercise of his power to name conferees (with his selection being subsequently ratified by appointment by the Speaker or Senate presiding officer), certainly the chairman cannot ignore the subcommittee chairman and other leading members who have floor managed the legislation during chamber consideration. As early as 1979, House and Senate committee chairmen had begun "to choose as conferees members of the subcommittee that originated the legislation."⁶⁶ This pattern reflected the tradition of both chambers' Appropriations Committees, which long have had quite autonomous subcommittees with special bill management and conference roles.⁶⁷ In short, the increasing independence of subcommittees in legislative origination and management means that full committee chairmen have less freedom of choice in determining conferees and, consequently, less influence over the conference committee itself.⁶⁸

64. *Ibid.*, p. 12.

65. For an elaboration of institutional contrasts between House and Senate, see chapter 5 below.

66. "Conference Committees Opened to Public," p. 69. This development is clearly of fairly recent vintage. George Galloway writes that as of 1955, "a tradition has not yet developed as to whether subcommittee members deserve a preferred place on the conference committee over ranking members of the full committee" (George Galloway, "The Third House of Congress," *Congressional Record*, March 8, 1955, pp. 2555). By the 1980s, however, this tradition had developed.

67. In 1969, for example, three senators chosen as conferees on the Legislative Branch Appropriations Bill were the three lowest-ranking Democrats on the full Appropriations Committee, but were selected because their subcommittee had had the initial responsibilities for the legislation ("Closed Conferences Often Wield Legislative Power," *Congressional Quarterly Weekly Report*, Dec. 12, 1969, p. 2573).

68. For a fuller discussion of conferee selection procedures, see chapter 8 below. Among the intriguing questions raised by the growing importance of subcommittees are to what degree a subcommittee chairman may serve as the *informal* leader of chamber conferees, and how often a subcommittee chairman may end up chairing a chamber delegation or even the entire conference itself. Appreciation is expressed to Steven S. Smith of the University of Minnesota for suggesting these future avenues of research.

Additionally, this development of subcommittee autonomy has an impact on chamber leadership power. In the past, discretion in who was to be a conference member provided considerable choice for both the full committee chairman and in many cases the chamber leader (working through and in negotiation with the chairman); to the degree this freedom of choice is diminished, both chairman and chamber leader lose influence over the composition and balance of the conference delegation.

Multiple Referral of Legislation

Another congressional development has had an impact on the power of committee chairmen. As the complexity of legislation has grown in recent years, there has been an increasing trend in the House toward the multiple referral of bills to committees. Many contemporary issues embrace the concerns of numerous committees. Recognition of this accounted in part for the House's adoption of a rule in 1975 formally permitting the Speaker to assign a measure to two or more committees simultaneously. As a result, it is today quite common for bills to move through several different House committees.

Since the adoption of the House rule in 1975, over six thousand bills and resolutions have been referred to multiple House committees. In one representative Congress, the Ninety-ninth (1985–86), such multiple referrals constituted over 25 percent of the total House committee workload.⁶⁹ The Senate, on the other hand, has long permitted the multiple referral of legislation by unanimous consent of the full membership, a practice anticipating the more recent House development. Multiple referral, however, is used less in the Senate (party leaders there strongly prefer that measures be assigned to only one panel); in 1983–84, for example, about 10 percent of the committee workload of the Senate consisted of bills and resolutions considered by more than one committee.⁷⁰

The consequence, in terms of conference, of multiple referral of legislation in House and Senate is that conferees often come from various panels in each chamber rather than from just one committee. It has become standard practice, on multireferred measures, for conferees to be named from all the several committees that had charge of the legislation. The Carter energy proposals of 1977, for example, were considered by two different, uncoordinated committees in the Senate. Five committees in the House considered parts of Carter's plan before their efforts were coordinated and synthesized by a specially created ad hoc Committee on Energy. The resulting conference commit-

69. Roger H. Davidson, Walter J. Oleszek, and Thomas Kephart, "One Bill, Many Committees: Multiple Referrals in the U.S. House of Representatives," *Legislative Studies Quarterly* 13, no. 1 (Feb. 1988): 3. See also Roger H. Davidson, "The Legislative Work of Congress," paper prepared for delivery at the 1986 Annual Meeting of the American Political Science Association, Washington, D.C., August 28–31, 1986; and Roger H. Davidson and Walter J. Oleszek, "From Monopoly to Interaction: Changing Patterns in Committee Management of Legislation in the House," paper prepared for delivery at the 1987 Annual Meeting of the Midwest Political Science Association, Chicago, April 9–11, 1987.

70. Davidson, "The Legislative Work of Congress," p. 15. An earlier analysis found that a total of 236 multiple committee referrals occurred in the Senate during the 95th Congress (1977–78) alone, many just to two committees, but some to as many as four. The referrals varied in type—some were simultaneous, others were sequential, and others were split, with parts of the proposed bill being sent to different committees (Davidson, "Subcommittee Government," pp. 120–21).

tee, drawing members from all eight of the involved committees, was highly diverse; twenty-eight senators met at different times and in widely different combinations with twenty-five representatives.⁷¹

Multiple referrals affect conference committees in several other ways. First, there has been a gradual shift toward larger conference delegations.⁷² It is mainly a matter of arithmetic. As a rule, the more committees that review a measure, the larger the conference delegation. More committees means more members with a reasonable claim for being selected as a conferee. The 1975 Energy Bill, for example, was considered by only one House committee, and seven conferees later represented the House in conference. On the other hand, in the Senate the legislation was referred to three committees, and twenty-five senators (one-fourth of the entire Senate) were selected as Senate conferees.⁷³

The number of conferees per committee is commonly worked out informally by the principals and generally reflects each committee's proportionate involvement with the legislation going to conference. Particularly with omnibus or controversial legislation, the designation of conferees can be quite a complex task, involving not only how many conferees are allotted each committee, but also the scope of involvement of different groups of conferees. For example, conferees can be named to deal only with certain sections or titles of the legislation. As a result, not only do committees sometimes disagree over their "fair share" of the conference delegation, but diverse committee representation and differing conferee authority and involvement mean that conferees may not reflect common perspectives and values or function in a cohesive manner.⁷⁴

Second, the more committees that select conferees, the longer it takes to iron out bicameral differences. Intralegation feuds erupt on some occasions. While the controversial bicameral issues in disagreement remain the critical factor prolonging the compromise-making process, large and diverse conferences are likely to complicate the effort.

Multiple committee representation in conference can also affect the mechanics of

71. Charles O. Jones, *The United States Congress: People, Place, and Policy* (Homewood, Ill.: Dorsey Press, 1982), p. 330. The consideration of energy legislation in 1977-78 by a total of six House committees was by no means unique. The House record for multireferrals was a measure that was dealt with by fifteen different House committees! Several other bills have moved through as many as nine standing committees. On the average, however, 80 percent of all multireferred measures go to only two committees. Davidson, "The Legislative Work of Congress," pp. 17, 18.

72. The tendency for conference committees to become larger because of multiple referral of legislation is a trend suggested by the specific examples cited in the text. In chapter 6, we report tabulations made especially for this book about conference size for three selected Congresses. These data demonstrate the wide variety of sizes of conference committees in different issue areas but do not themselves, however, reveal an overall systematic growth in conference size over time.

73. *Washington Post*, Nov. 9, 1975, p. A3. It is important to recall that the number of House or Senate conferees is of no importance in determining chamber success in conference. All conference committee votes are by chamber, with a majority of each chamber's conferees (no matter how many there are) needed for an agreement.

74. The impact of standing committees upon conferees is discussed in chapter 6 below. The increase in conference size and in the diversity of composition may have the consequence not only of making bargaining more difficult but also of making grandstanding more likely.

decision making. The conference itself, for instance, may subdivide into smaller groups, so-called subconferences. There may be *general* conferees to coordinate the activities of the *special* conferees assigned to various subconferences. For example, during the omnibus trade conference of the 100th Congress (1987-88), conferees were chosen from twenty-three House and Senate committees. One hundred and fifty-five House conferees and forty-four Senate conferees convened in seventeen subconferences, with some subconferences even forming subgroups ("sub-subconference") of their own. Interestingly, House conferees were selected to consider only issues that fell within their committee's jurisdiction. As a result, the decisions reached by any House subconference were binding on all House conferees. The Senate conferees, however, operated under informal procedures that permitted the entire group to review and override decisions reached by their senatorial colleagues on the respective subconferences.

Multiple referral further makes unclear who will chair the chamber delegation or even the entire conference. In the case of a single referral, the chairman of the full committee handling the legislation is normally accorded the role of delegation chairman. When a number of committees are involved in considering a measure, the question of who will lead the chamber's conferees—and the influence of that person as delegation chairman—can be a source of conflict subject to varying political and personal considerations.

Floor consideration of conference reports on multireferred measures may be more complicated than for singly referred legislation. This is particularly true in the House, which has stricter rules of procedure than the Senate. Conference reports are commonly called up in the House by the floor manager, debated for one hour, and then voted upon. On complex bicameral agreements involving multiple committees, it may be necessary for the House Rules Committee to establish special procedures for debating the conference report. For instance, the synthetic fuels conference report of 1980, which was hammered out by conferees from four House committees, came to the House floor under an unusual rule from the Rules Committee permitting four hours of debate. In short, multiple committee involvement in chamber consideration of legislation often adds to the length and complexities of subsequent postconference committee proceedings.

Omnibus Measures and "Fast Track" Procedures

During the 1980s, Congress and the White House developed a rather novel way of legislating. Instead of single-focused legislative measures, Congress's annual agenda became dominated by action on huge "packages," or omnibus bills, touching on multiple legislative matters. Tax, budget, trade, spending, and social security legislation are prominent examples of this approach. The Omnibus Reconciliation Act of 1981, a centerpiece of President Reagan's first-term economic agenda, for example, affected some three hundred different issues and, when enacted, repealed or changed more than four hundred laws. Omnibus bills may also be massive just in terms of sheer size: the House Trade and International Policy Act of 1986 ran nearly five hundred pages long, the Senate version of the 1986 tax reform bill totaled some fifteen hundred pages in length, and the Omnibus Trade Act of 1987 ran over two thousand pages.

These massive legislative initiatives have led to similarly massive conferences. This was the case with the budget reconciliation bill of 1981, the equally large 1984 budget bill, the 1986 reconciliation bill, and the 1987 trade bill. The conference on each of these measures included as conferees hundreds of senators and representatives. Occasionally bicameral negotiations involving such massive conference delegations are further slowed down because key conferees must be absent to attend to other important legislative business.

The packaging concept has come to be used in part to overcome institutional inertia and to protect members from the importunings of special interest groups. By packaging scores of issues into one bill, legislators can argue that they had to support the comprehensive measure both because of party leadership pressure and because any change in the package could cause it to unravel. "As long as special interests dominate the political scene in Washington, D.C.," noted Representative Mike Synar (D, Okla.), "the only way to fight them off is by packaging the legislation."⁷⁵

The recurrent utilization of omnibus, multitopic bills requiring bicameral reconciliation in conference means that conference committees increasingly serve as the center playing fields of legislative politics and policymaking. Many packages in fact are not subject to significant floor amendments in either chamber. An anti-amendment strategy, for instance, helped to propel the 1986 tax simplification bill through the Senate. A fundamental objective of Senate leaders and the White House was to get the Senate bill, with its attractive lower rates and virtual wipe-out of tax deductions, to the conference stage intact. There the conferees, not the rank-and-file representatives and senators, would write the final compromise bill. (Not surprisingly, the two tax-writing chairmen—Representative Dan Rostenkowski [D, Ill.] and Senator Bob Packwood [R, Ore.]—devoted considerable effort to insuring that their strongest allies were selected as conferees.)⁷⁶ Such massive legislative initiatives centering on the conference process involve a significant shift of legislative political centrality from the chamber floor to conference committee.

Some of the packages also short-circuit the normal legislative process of lengthy committee consideration and floor action in both chambers. There is increasing use of what has been called the legislative fast track for complex contentious legislation—shortcut methods including such techniques as rules from the House Rules Committee that restrict floor amendments, expedited procedures prescribed by statutes that limit both floor debate and amendments, the adding of substantive legislative riders to appropriations bills, and even the passage of bills that had never been considered by committee.⁷⁷ In the 1982 tax increase conference (see case study in chapter 11), the delibera-

75. *New York Times*, Feb. 21, 1983, p. B6.

76. Conferee selection on the 1986 Tax Bill is discussed further in chapter 8 below. See also Birnbaum and Murray, *Showdown at Gucci Gulch*, for a full account of these and other conference considerations concerning the 1986 legislation.

77. John F. Hoadley, "Easy Riders: Gramm-Rudman-Hollings and the Legislative Fast Track," *PS* 19, no. 1 (Winter 1986): 30-36; and Louis Fisher, "Across-the-Board Cuts and Behind-the-Scene Fixes," *Legislative Studies Section Newsletter*, Legislative Studies Section, American Political Science Association, vol. 9, no. 2 (April 1986), p. 58.

tions in conference were on a detailed tax bill as passed by the Senate and a phantom House bill existing in name only that reflected no House position on the issues to be discussed in conference. Another case study, in chapter 11, "The Gramm-Rudman Conferences of 1985," similarly reveals passage of major legislation that had received little subcommittee, full committee, or floor consideration in either House or Senate:

The passage of Gramm-Rudman-Hollings marks the approval of major legislation affecting macroeconomic policy, the fate of numerous government programs, and congressional budget procedures, without public hearings, without debate of any standing committee of the House or of the Senate, and without any debate on the House floor (other than on motions on whether to seek a conference or on a motion to approve the final conference report).⁷⁸

The recent trend toward fast track consideration of important but controversial bills is notable. "In fact," according to one scholar, "one can argue that most major legislation of the past five years has gone through fast track procedures. . . . In the new legislative obstacle course, the major difficulty is finding the right fast-tracked vehicle for your rider."⁷⁹ Further, the utility of such expedited procedures has an effect on legislation moving on more usual paths: legislative vehicles on the fast track "crowd out free-standing measures, or at least encourage other issues to hitch rides on the major measures."⁸⁰

The significance of curtailed committee consideration and speeded-up chamber consideration of legislation is to enhance the significance and power of the conference committee. When a bill—either because of the pressures of time or as part of an effort to avoid divisive chamber conflict—moves through the House or Senate stages without full and detailed consideration of its provisions, then it is the conference committee that will end up not only adjusting intercameral differences, but even crafting the final legislation itself. As with the 1985 Gramm-Rudman plan and the 1986 tax reform legislation, the chamber may provide the canvas, but it is in the conference committee that the colors are defined and the picture is painted.

Divided Party Control of Congress

Thus far, we have been examining a series of changes in Congress involving the weakening, compared with some earlier eras, of the legislative primacy of chamber leadership and committee chairmen. One final congressional change should be noted, one not internal to either House or Senate but resulting from differences between them. This is the split in partisan control of Congress that arose from the election of 1980 and that continued through 1986. The last time the two houses of Congress had been divided

78. Hoadley, "Easy Riders," p. 31.

79. *Ibid.*, pp. 33, 35.

80. Roger H. Davidson, "'Grambo, or First Blood, Part Two': The New Improved Budget Process," *Legislative Studies Section Newsletter*, Legislative Studies Section, American Political Science Association, vol. 9, no. 2 (April 1986), p. 57. This hitching of riders onto a bill has given rise to another striking motorcycle analogy: the legislative easy rider.

between the parties was fifty years earlier, in the days of Herbert Hoover, when the Seventy-second Congress (1931-33) had—by the narrowest of margins—a Republican Senate and a Democratic House.⁸¹ In the early 1980s, conference committee politics occurred in a most unfamiliar situation: the natural rivalry of House versus Senate was accentuated by the natural partisan divisiveness of Republican versus Democrat.

"As a result," Steven V. Roberts of the *New York Times* observed in 1985, "many of the conflicts dominating political debate [in Congress] today eventually get funneled into a conference for final disposition."⁸² The resulting conference committee politics reflected not only interchamber tensions but also partisan conflict. As Kirk O'Donnell, counsel to House Speaker Thomas P. O'Neill, Jr., put it, "Conferences [in the early 1980s] are not just reconciling the differences between two houses of Congress, they are reconciling the differences between two political parties."⁸³

Partisan differences between Senate and House also dictated different attitudes toward presidential preferences, with the Senate Republican majority generally tending to support their Republican president and the House Democratic majority frequently disagreeing with his goals. The result was that while the House played a largely defensive role, the Senate came to act both as a legislative gatekeeper and as a legislative facilitator (or, at times, referee) among the three political branches. As described in the *Congressional Quarterly Weekly Report*, "The Senate leadership generally has been able and willing to close the gate on measures the House has passed against Reagan's wishes. And since 1981 it often has fallen to the Senate leadership to find and open the door to compromise when confrontation between Reagan and the House threatens to disrupt the government's business."⁸⁴

An additional factor complicating any effort to facilitate conference agreement is the impact of budget austerity. In the past, the increasing of spending levels was a common tactic used to buy off competing interests and thereby meet the legislative interests of both House and Senate. With budgetary cutbacks taking place throughout the 1980s, this tool is less available to conference negotiators. As John E. Dean, former House Education and Labor Committee aide, put it, "In the old days, it was not a zero-sum game. You could come up with a package that gave the House and Senate everything they wanted."⁸⁵ Given the politics of fiscal austerity of the 1980s, conference negotiations are now more typically zero-sum situations with a resulting heightening of

81. Stanley Bach notes that "since 1881, there have been only seven Congresses in which party control of the House and Senate was divided" (Stanley Bach, "Bicameral Conflict and Accommodation in Congressional Procedure," paper prepared for presentation at the 1981 Annual Meeting of the American Political Science Association, note 2). In the twentieth century, there have been but two instances prior to 1981: the 62d Congress, 1911-13, and the 72d Congress, 1931-33.

82. Steven V. Roberts, "The Nitty-Gritty of the Conference," *New York Times*, July 17, 1985, p. A18.

83. Quoted in *ibid.*

84. "GOP Senate Plays Gatekeeper Role in 1983," *Congressional Quarterly Weekly Report*, Dec. 3, 1983, p. 2548.

85. Hook, "In Conference," p. 2080.

interchamber conflict and conference difficulty. In short, contemporary conference committees tend to be fraught with conflict and uncertainty.

Greater bicameral partisan disagreement is suggested by a sharp decline in the number of bills that went to conference in the first two years of divided partisan control of Congress—from 1981 through 1982. From 1947 through 1982, the average number of bills in conference during each two-year Congress was 139; the lowest number previous to 1981 during that thirty-six-year span was 110 (in 1959-60). In 1981-82, however, only 82 bills went to conference, a historic and sharp low.⁸⁶ Other factors unique to the Ninety-seventh Congress also played a contributing role in this sharp break—factors such as the difficulties in any new and innovating administration in coming up to full speed on legislation, a relative disinclination on the part of the Reagan administration to advocate new domestic legislation in contrast with letting old laws and policies expire, a wish not to load up Congress's agenda with scores of suggested new laws, and the aforementioned bundling of multiple legislative matters into comprehensive bills. Nevertheless, the sharp decline in measures going to conference in 1981 and 1982 did reflect the tensions of partisan bicameral differences. Anticipation of likely conference conflict and difficulties often led sponsors of bills to attempt to work out House-Senate differences by other, nonconference means, such as adopting floor amendments designed to create identical bills and faster bicameral policy coordination from the legislation's inception.⁸⁷ In short, divided partisan control of Congress encouraged partisan conflict in conference committees; it also heightened the tendency to seek ways to avoid conferences.

The practical and political consequences of the bipartisan party split played out differently on diverse bills; partisan disunity was often—in specific instances—overshadowed by bipartisan cooperation on major legislation. At other times, the partisan minority members of one chamber might make common cause with the majority members of the other to further their ends. In the past the majority Democrats in the Senate and House could, as a Democratic Senate aide at the time said, "work things out" between them when necessary. With divided partisan control of Congress, it is different; but we can still do an "end run appeal" to the Democratic majority of the House.⁸⁸ A Republican House committee aide similarly saw interchamber strategies as compensating for chamber partisan weakness:

Because we have a Republican Senate, [the Democratic House committee majority] has come to recognize the value of getting the minority on board. . . . If they tick off the Republicans totally, what we will usually do . . . is get to the Senate people and say "we need to kill this bill." That unspoken threat—the realization that the Republicans control the Senate and the White House—has been very impor-

86. These data were specially tabulated for this book by Tom Kephart.

87. For an example of such bipartisan and bicameral cooperation, see the discussion in chapter 1, p. 22, concerning the immigration reform bill efforts of the 97th and 98th congresses.

88. Washington interview, Nov. 4, 1981.

tant. . . . During the Carter administration, you found that [committee Democrats] were much less willing to accommodate Republican concerns.⁸⁹

The politics of divided partisan bicameral lawmaking from 1981 through 1986 was fascinating to watch as each chamber adjusted to the changing context of intercameral partisan differences. If nothing else, it underscored for political scientists and other commentators the reality of bicameralism—that textbook verity all too often glossed over.

⁸⁹. Quoted in Richard L. Hall, "Participation in Committees: An Exploration," paper presented at the 1984 Annual Meeting of the American Political Science Association, Aug. 30–Sept. 2, 1984, p. 21.

4

What Do We Know—and What Do We Need to Know—about Conference Committee Politics?

In the preceding chapters, we outlined some of the essential characteristics of congressional conference committees, including their evolution over time and the contemporary changes they have undergone. Before we continue in the next chapters of this book to analyze three contexts within which conference committees operate, it would be useful to pause in order to consider what is presently known about conference committee politics and what still needs to be determined.

What Is Known?

What is known about a key congressional process such as conference committee interactions is often very different in the professional literature from what is known on Capitol Hill.¹ Veteran lawmakers, congressional staff, and other Capitol Hill insiders commonly feel they have acquired through experience an understanding of the patterns and possibilities of conference committee politics that allows them to make rather definite statements about how it all works. Political scientists, on the other hand, frequently find these conclusions to be particularistic and personal in perspective and in need of further systematic evaluation before they can be accepted as valid general statements about conference politics.

The approach we have followed in this book is to meld these academic and insider perspectives. In our examination of conference committee politics we attempt to com-

¹. Appreciation is expressed to Terence Finn, both a political scientist and an experienced Capitol Hill observer, for suggesting this point.

the political and policy landscape is familiar and well trod, and this familiarity fosters relatively predictable and stable conference reconciliation processes (even though conflict may suffuse and permeate conference negotiations).

At other times conferees find themselves dealing with legislation that is either extraordinarily complex or innovative. An example of the former is the 1977-78 conference on President Carter's package of energy proposals, the complexity of which required negotiations extending over many months, the appointment of ad hoc committees, direct presidential intervention, and numerous behind-the-scenes negotiations. An example of conferences dealing with innovative legislation is the Gramm-Rudman deficit reduction conferences (note the plural) of 1985. (These are described in detail in chapter 11.)

Another distinction related to the problems facing conferences has to do with the differences between the chambers. Sometimes these differences are slight, allowing for quite abbreviated conference discussions. At other times, they are so enormous and all-encompassing as to make eventual conference agreement difficult to achieve.

Bicameral differences are not all of one type. *Quantitative differences* between the chambers concerning the level of funding for a program, or how many of something to approve, lend themselves to bicameral reconciliation by such familiar means as "splitting the difference." *Qualitative differences*, however, usually pose more difficult bargaining situations. The structure of a new governmental program or a definition of permissible conditions for government-funded abortions is not amenable to settlement at a midway point. Rather, conference resolution of such matters more likely will involve either a substantive concession by one chamber's representatives to the views of the other, some sort of sequential process of alternating bicameral concessions on different provisions of the legislation, or the artful use of language that enables both chambers to claim that their views were upheld.

Besides quantitative-qualitative differences, another aspect of chamber differences also influences conferences. This is *the extent to which the positions of House and Senate have been emphasized*, either by the margin of the vote in a chamber for particular provisions or on final passage or by special instructions given to the conference delegation that emphasize non-negotiable items or items that may be conceded. When floor votes are one-sided or chamber wishes on legislation are reinforced by specially adopted instructions to its conferees, bicameral agreement on significant differences is sometimes made more difficult.

A third difference among conferences, involving how a conference deals with the substantive problems facing it, may be termed *problem-solving perceptions*. Conference committees differ, first, according to *the degree of conferee-shared perceptions*, both among each chamber delegation and among the conference members as a whole.⁹ A common outlook among conferees—either within the delegation or in the overall conference—fosters effective bargaining; those negotiating will be speaking the same lan-

9. These two distinctions among conference committees are based on an idea suggested by Richard F. Feno, Jr., in a Washington discussion on Nov. 2, 1981. Appreciation is expressed to him for his insight.

guage as they discuss their differences and consider various means for resolving them.

Conferences also differ in *the extent of conferees' previous experience*. Today it is not uncommon for conferees to be drawn from diverse committees and to include less senior and experienced legislators.¹⁰ Lack of conference negotiating experience and of shared outlook can produce obstacles in reaching House-Senator agreement.

A final aspect of conference problem-solving concerns the use of *special bargaining techniques and procedures*. *Unofficial meetings* before and during the conference are the most frequent of such techniques. Meetings may be held by a chamber delegation, a partisan component of that delegation, or key conferees and staff from either or from both chambers. Sometimes the key conference decisions will be worked out in meetings directly between the two *committee chairmen*.¹¹ In other cases, crucial bargaining will be carried out by a series of *ad hoc conferee groups*.¹² And finally, in still other cases, key understandings will be established through lengthy *staff negotiations* that occur either prior to the conference's initial convening¹³ or during the conference deliberations themselves.

Not all conferences resort to small-group negotiations as a means of paving the way for full conference agreement. Serious and substantive bargaining goes on in the conference committee itself.¹⁴ The key point is that, in many conferences, unofficial bargaining units supplement or even supplant regular conference negotiations.

Outside Pressures

Another important element that distinguishes one conference from another is *the extent and source of external pressures*. Some conferences have few such influences with which to deal (an example is the low-intensity appropriations conference on the funding of the Washington, D.C., government considered in chapter 11). In these instances, the conferees are relatively free to perform their tasks without having to look

10. Recent modifications in the traditional practice of conferee selection from matched pairs of House and Senate standing committees, and of the most senior members of those committees, are discussed in chapters 3 and 6 above.

11. A classic example of chairman-to-chairman negotiations occurred during the final difficult conference bargaining over sweeping tax reform legislation in November and December 1986. Lengthy discussions between Senate Finance Chairman Robert Packwood (R, Ore.) and House Ways and Means Chairman Dan Rostenkowski (D, Ill.) were crucial in hammering out the final conference agreement. For a detailed account of these events, see chapter 11 of Jeffrey H. Burnbaum and Alan S. Murray, *Showdown at Gucci Gulch: Lawmakers, Lobbyists, and the Unlikely Triumph of Tax Reform* (New York: Random House, 1987).

12. Informal conference groups were instrumental in the conference accord eventually reached by the second Gramm-Rudman conference in late 1985. See the case study in chapter 11 below for an account of these complex proceedings.

13. For an example, see the chapter 11 case study of the Department of Education Organization Act, the second of "Two 'Hello and Good-Bye' Conferences of 1979."

14. It is possible, however, that there has been some lessening of the use of the official conference sessions as the arena for bargaining as a result of the opening up of most conference sessions to interest groups, press, and public. This change is discussed in detail in chapter 3 above.

over their shoulders to get the reactions or approval of deeply interested nonconferee participants.

In many cases, however, there is little political isolation for the conferees. Instead, external participants (discussed below) such as the president, representatives of governmental agencies, and interest groups have intense interest and impact on the conference deliberations. "This is not a conference between the two houses," remarked Senator John Danforth (R, Mo.) in 1988 about the omnibus trade conference of the 100th Congress. "It's a conference between Congress and the administration."¹⁵ Some conferences, in brief, operate in relative isolation; others are deeply immersed in politically volatile webs of interest and pressure.

Conference Success (or Failure)

Our final distinction among conferences is the most obvious of all: whether they succeed or fail. Even this simple distinction has its subtleties. For example, a conference may be a rousing success in achieving the reconciliation of differences, but the resulting conference agreement fail to pass either chamber or to secure presidential approval and signature.

How, when, and why conferences fail is one means of distinguishing among them. Conversely, successful conferences can be analyzed in terms of how, when, and why conditions developed that led to their eventual success. Conference success and failure, then, provides yet another and final set of differences among conferences.

In conclusion, we have identified a wide number of conference differences. These included distinctions such as large versus small, lengthy versus quick, complex versus simple, familiar versus unconventional topical material, modest versus major chamber differences, conferences composed of conferees with shared perspectives versus those with conferees with diverse perspectives, conferences with more experienced versus less experienced conferees, conferences forced to react to intense external pressure versus conferences more politically isolated, and conference success versus conference failure. Indeed, conferences are not all the same, but come in a wide diversity of types.

Varieties of Players

Thus far in this chapter, we have examined conference politics as a policy process and discussed the many different types of conference committees. Now, in this third and final section of the chapter, we turn to a consideration of the variety of individuals beyond the conferees themselves who regularly participate in conference deliberations.

Clearly, the most central participants in conference interactions are the officially appointed conferees. They have the formal duty of reconciling bills passed by House and Senate, they are the conference participants with the right to vote on proposed measures, and, of course, only they exercise the official powers of conference members in agreeing

15. Elizabeth Wehr, "Negotiations on Trade Bill Gain Momentum," *Congressional Quarterly Weekly Report*, March 19, 1988, p. 732.

on and reporting to the House and Senate a final bicameral accord. The conferees, however, are usually not the only participants in conference politics.¹⁶ Recurrently, other players, at the physical (but not political) periphery of the conference, let their opinions and judgments be known and, by doing so, seek to influence conference outcomes. These additional major participants are *nonconferee members of Congress, Capitol Hill staffers, the president, representatives of governmental agencies, interest group spokesmen, and the press.*

Nonconferee Congressmen

Many members of the House and Senate besides the conferees themselves may have an interest in conference committee deliberations. Typically, these congressmen include the leaders of each chamber, authors of major amendments, important nonconferee members of the parent committees, and any other congressmen with some personal interest, expertise, or stake in the legislation. These nonconferees may follow proceedings from a distance or dispatch a staff aide to monitor the conference's actions. Nonconferees will sit in at various points (or sometimes for entire days) during conference activities and even argue for or against matters that are in disagreement between the houses.

Admittance to conference is a courtesy extended almost automatically to any member of the House or Senate. A few House and Senate committees have even worked out informal arrangements for participating in each other's conferences. Leaders of the House Armed Services Committee, for instance, sit in as ex-officio conferees during defense appropriations conferences, just as members of the House Defense Appropriations Subcommittee participate in military authorization conferences. The ex-officio members may debate matters but have no right to vote.

It is not unusual to observe at conference sessions a few congressmen sitting directly behind the conferees or settled in the front rows of the meeting room. In the case of the initial conference on the highly controversial Gramm-Rudman legislation in 1985, for example, all three of its principal authors were excluded (for various reasons, as noted in chapter 11) from service as Senate conferees; nevertheless, all three—Senator Phil Gramm (R, Tex.) most noticeably—observed the conference negotiations closely. A 1984 tax conference similarly was marked by the intense interest of one House member, James R. Jones (D, Okla.). The Senate bill had placed a 3 percent excise tax on, among countless other things, fish-finding devices. The House version did not tax such items. The interest of the representative in this very specific matter arose because a major manufacturer of fish-finders, Lowrance Electronics, happened to be in his district.

16. There are exceptions, as we have noted earlier in this chapter, when conferences are able to perform their tasks with a minimum of outside pressure—or even interest. Most typically this occurs on noncontroversial legislation, bills that essentially continue the policy status quo, or bills whose House- and Senate-adopted versions are essentially in agreement. In these instances, policy battles will be viewed as having been already waged—either in the past or during chamber adoption of essentially similar legislation—and the conference will be seen as a technical reconciling rather than a policy formulating or modifying institution.

Certainly, agency representatives, as part of the executive branch, are not about to lobby openly in opposition to presidential positions. In fact, much of their conference activity is explicitly in support of broad presidential policy. When House and Senate conferees during the 100th Congress finished their work on a major expansion of Medicare, they broke into applause for Health and Human Services Secretary Otis Bowen, who had worked diligently to push the issue of catastrophic medical costs onto the president's agenda. Secretary Bowen was an important participant during the Medicare conference's deliberations.⁵⁸

At other times, representatives of governmental agencies are concerned with more parochial issues. These matters may be substantially independent of presidential priorities and can include such issues as appropriations levels for specific programs or the enactment of legislation facilitating the agency's mission. When agency representatives are advocating agency-dependent legislative goals, their conference role will be less that of presidential policy advocate than representative of a particular interest—their governmental agency.

Representatives of governmental agencies are a rather special type of interest spokesmen. As part of the administration, they may be able to clothe their appeals vaguely as being compatible with the president's program. As directors of a sector of governmental policy, they may be able to find common cause with key conferees who have a strong personal or constituency commitment to established or evolving agency programs. And, as administrators dealing with ongoing governmental problems and programs, they have a special responsibility (eagerly accepted in most cases) to share their experiences and appraisals with Congress. It is indicative of their special relationship with congressmen and conferees that representatives of governmental agencies have a privileged place (along with officials speaking directly for the president) in conference meetings and negotiations—even those gatherings officially closed to outside participants.

An example from an agriculture conference held in 1984 illustrates the involvement of agency representatives in bicameral negotiations, especially in establishing bargaining limits as to what their agency will or will not accept. Agency leverage of this sort, of course, requires firm backing from House or Senate conferees. This was the case in this instance. Senate Agriculture Chairman Jesse Helms (R, N.C.) held the proxies of enough Senate conferees to give him a solid majority on the Senate conference delegation for his agricultural views, which also enjoyed the strong support of the Department of Agriculture. With the rapid approach of the spring planting season, the legislative alliance of Helms and the department was able to "call the shots" in conference. As House Democratic conferee Berkeley Bedell of Iowa subsequently explained to the House,

58. Julie Rovner, "Catastrophic-Costs Bill Ready for Final Action," *Congressional Quarterly Weekly Report*, May 28, 1988, pp. 1448-49. The various instances of the involvement of personnel from the Treasury Department in conference deliberations that we cited in the last section constitute additional examples. In working in support of the 1986 tax reform bill, for instance, the Treasury forces were very much lobbying on behalf of the president.

For those who were not at the conference committee, let me tell you how it worked. The way it worked, we Members on the House side brought up several proposals in order to improve this legislation. Each time the Senate side asked the Department of Agriculture whether they would agree to our proposal or whether they would not. They did not agree and the Senate then, which was controlled by a majority of Republicans, simply said, "No, we cannot accept it," and it was turned down.⁵⁹

The House believed it necessary to go along with the Senate and the Agriculture Department to avoid taking the blame for delaying the conference and upsetting farmers during an election year. Thus, representatives of a governmental agency, working in conjunction and cooperation with the majority of one chamber's conferees, were able, in this case, to dominate conference deliberations.

Interest Group Spokesmen

Lobbyists are an integral part of the legislative process, including at the conference stage. They provide expertise, analysis, and advice to conferees and often act as brokers and coordinators among various conference participants. Their clout in conference depends on a variety of factors such as an adroit application of the broad arsenal of persuasive techniques (from direct to indirect methods), the cohesiveness of the group, its capacity to form coalitions with like-minded associations, and the nature and visibility of the issues it advocates.

At various places in this book, we have considered the roles of interest groups in conference interactions, especially in terms of the changes resulting (or only partially resulting) from the opening of conference committees to lobbyists on an equal basis in the mid-1970s.⁶⁰ Without repeating these discussions, we note again the constant presence and influence of interest group representatives at every point in the conference process, from the decision to have a conference and the selection of conferees, through the meetings of the conference committee itself, to the ratification politics of the conference report.

An example of the pervasiveness of interest representation concerns the extensive interest group activity that permeated every stage of the legislative history of the 1986 tax reform bill. On one particularly oppressive Saturday in early August, for instance, dozens of lobbyists and reporters were "huddled around the closed doors of a Capitol meeting room where the [conference] lawmakers were working."

To the casual observer, it is hard to figure out why scores of lobbyists need to spend time hanging around the Capitol on [an August] weekend. Congress has been working on tax reform for more than a year, so they've already had plenty of time to make their pitches.

But lobbyists still have some ways to try to prevent damaging provisions from being written into the law.

59. *Congressional Record*, 98th Cong., 2d sess., April 3, 1984, p. H2183.

60. For a detailed discussion of the consequences of the opening of conference sessions, see chapter 3 above.

Suppose, for instance, that lawmakers start discussing limits on the deductibility of charitable contributions and come up with a compromise. As long as they know lobbyists from non-profit groups—who have been vigorously fighting to preserve such deductions—are just a few steps away, they can easily dispatch an aide to find out whether the compromise is acceptable. If the lawmakers learn that it isn't, they may decide to come up with a new approach—possibly one suggested by the lobbyists. Or they may choose to take the heat of making a decision that they know will be unpopular in certain quarters.⁶¹

Interest group activity may also take less dramatic and visible form. Representative Bill Alexander (D, Ark.) recalls what a lobbyist once told him: "Conference is where the dirty work gets done. A strategically placed phrase in a conference report can carry more weight [for the lobbyist's cause] than a whole year of hearings."⁶²

One way that interest group representatives develop access to and favorable relations with conferees is through their extensive and detailed knowledge of the technical aspects of policy questions and legislative language. At times, this resource can be immensely helpful to conferees. Representative Thomas S. Foley (D, Wash.) points out the importance of this knowledge: "I've seen lobbyists save conferees from making technical mistakes."⁶³

Clearly, any time an interest group can join forces with other participants—be they key conferee groups, representatives of governmental agencies, or other interest groups—it will be in a particularly strong position. Coalitions in interest group politics may transform narrow, selfish goals into what are instead perceived as expressions of the public interest. This is why interest group spokesmen will so readily cooperate with others who have allied goals. In 1981, representatives of sixteen major farm organizations quickly responded to a presidential request to meet at the White House to chart a common strategy; they agreed upon common goals concerning an agricultural conference that was agonizing its way through what would be twenty-seven marathon sessions.⁶⁴

Compromise is the essence of interest group politics—compromise among groups attempting to form a lobbying alliance, compromise by conferees seeking to placate interest group demands, and compromise—always—among conferees attempting to reach bicameral agreement on a contentious bill. Not all legislative matters, however, lend themselves to easy compromise. Differences of conscience or principle are frequently difficult to resolve. Abortion is a classic example.

Throughout the 1970s the House and Senate frequently locked horns over federal funding for abortions. Both chambers struggled to define antiabortion language that each could accept. The House generally opposed any federal funding except when the life of

61. Stacy E. Palmer, "College Lobbyists Stand Guard as Tax-Reform Compromise is Forged," *Chronicle of Higher Education*, Aug. 6, 1986, p. 10. See also the comprehensive account of this legislative initiative contained in Birnbaum and Murray, *Showdown at Gucci Gulch*.

62. Steven V. Roberts, "Conferences are Site of Legislative Showdowns," *New York Times*, Nov. 20, 1981.

63. *Ibid.*

64. Ward Sinclair, "Reagan Adds to Pressure on Farm Bill Conferees," *Washington Post*, Dec. 3, 1981.

the mother was endangered, while the Senate tended to insist on broader exceptions for abortion aid. Pro-life and pro-choice organizations mobilized public sentiment in members' states and districts, and individual lobbyists were active participants in day-to-day conference negotiations. One such interest group spokesman, Mark Gallagher, represented the right-to-life position of the nation's Roman Catholic bishops and was a particularly significant actor at the conference bargaining table. "Every time the Senate conferees make a compromise offer, Mr. Gallagher quietly walks to the conference table to tell a staff aide to the 11 House conferees whether the proposal is acceptable to the bishops," one account noted. "His recommendations invariably are followed."⁶⁵

Because of the intense viewpoints associated with this issue, conference compromises were seen as only temporary decisions, subject to periodic debate and revision in subsequent bicameral negotiating sessions. Groups opposed to current federal abortion aid policies could be counted on to spark new efforts to secure future language more acceptable to their preferences. The dilemma for conferees, noted one representative, is that no matter what was done concerning the Senate or House legislative language, "All we do is assure that every year we will have the same fight."⁶⁶ Policy questions of this type reverberate from year to year.

Congressional conferences have been termed "the court of last resort for affected interests."⁶⁷ Along with the interests of the presidency and governmental agencies, one also finds well represented in conference politics the vigorously articulated interests of private organizations of every variety.

The Press

The last of our participants in conference committees purports to be not a participant but an observer. Press coverage of conference deliberations and deal making, however, seldom is neutral in its impact. Particularly with the opening of conference committee sessions generally to press scrutiny, the reporting of conference negotiations and potential compromises can have significant impact on the processes of bargaining and negotiations. Yet, as discussed earlier,⁶⁸ journalistic coverage of conference interactions is highly spotty and uneven. The usual tendency of the media is to cover the outcome of conferences rather than to inquire into the internal dynamics of who and what determined the result. The result is that this important element of the legislative process seldom receives the journalistic coverage accorded other more prominent stages of the lawmaking process—such as a showy committee hearing featuring celebrity witnesses.⁶⁹

65. *New York Times*, Nov. 27, 1977, p. 4E.

66. Mary Eisner Eccles, "Conferees Inch Toward Abortion Agreement," *Congressional Quarterly Weekly Report*, Oct. 1, 1977, p. 2084.

67. Randall B. Ripley, *Congress: Process and Policy*, 2d ed. (New York: Norton, 1978), p. 85.

68. The recurrent tendency of journalists to neglect conference negotiations is discussed in chapter 3 above.

69. Noteworthy exceptions to this generalization include the excellent, ongoing Capitol Hill journalism of the *New York Times*, the *Wall Street Journal*, and the *Washington Post*, and most of all, the superb in-depth accounts of conference committee politics regularly contained in the *Congressional Quarterly Weekly Report* and yearly *Congressional Quarterly Almanac*.