Chapter 9

Bicameral Resolution

The Politics and Policy Implications of Creating Identical Bills

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In the spring of 2003, with Republicans in control of both the House and Senate, Congress began to consider highly contentious legislation to overhaul U.S. energy policy. With the weight of the Republican White House behind them, Republican proposals in both chambers included wide ranging tax subsidies for energy producers and aimed to overhaul electricity laws to encourage private investment in energy infrastructure such as power plants and transmission lines. The House acted swiftly in adopting a bill based largely on recommendations from an energy task force led by Vice President Dick Cheney, but similar proposals met strong resistance from Senate Democrats. For several months, the bill languished on the floor, with Senate Majority Leader Bill Frist unable to get the sixty votes needed to end debate and move to a final vote. Finally, a breakthrough came when Minority Leader Tom Daschle suggested that they could simply replace the full language of the current bill with that of the Democratic-sponsored energy bill that had passed the Senate during the previous year (but never became law). Frist agreed, and the bill quickly and overwhelmingly passed the Senate.

Given the partisan stakes, this would seem a very odd concession from Frist, if not for one thing: “Republicans made no secret that the move was simply the fastest way to get to conference, where they planned to completely rewrite the bill” (CQ Almanac Online 2003). Because the House and Senate bills were not identical, Republicans knew that the final version of the bill would be formulated in a conference between the two chambers. The Republican chairs of the conference—Senator Pete Domenici and Congressman Billy Tauzin (both of whom were the Chairs of the standing committees in their respective chambers that produced the original legislation)—infuriated Democrats by negotiating and writing the conference report in private, and releasing the bill section by section to the other conferees. Moreover, Domenici made clear from the outset that he planned to use the original Republican bill—not the Democratic bill passed by the Senate—as the starting point for negotiating the Senate’s position in conference.

Even with this streamlined negotiation process, however, competing House and Senate preferences over key provisions led to weeks of intense negotiations
and major changes to the legislation; in the end, the completed bill reported from conference looked significantly different from both the House and Senate legislation. Needing only a simple majority, the conference report was quickly adopted in the House. However, leadership in the Senate again failed to draw enough support to end debate. Ironically, though they won over the support of thirteen Democratic senators, mostly from oil-producing or farm-belt states, the bill was thwarted by a band of six Republicans who objected to the billions of dollars in tax subsidies for energy producers.

In a sense, this anecdote stands in stark contrast to the impression left by the “presentment clause” of the U.S. Constitution (Article I, Section 7, Clauses 2 and 3), which offers the guidelines by which bills become laws and begins with a seemingly incidental, innocuous requirement: “Every Bill which shall have passed the House of Representatives and the Senate. ...” The fact that bills must be passed in identical form by the two chambers was so trivial in the framers’ minds that it is passed over without even an explicit acknowledgment. Nevertheless, as demonstrated by the opening anecdote, and more broadly by the history of U.S. policymaking, bicameral resolution of differences in the “same” bill as initially passed by each chamber is often anything but trivial.

For significant legislation, the predominant form of bicameral resolution in modern Congresses has been the use of conference committees. Once the House and Senate agree to disagree, each chamber appoints a set of delegates to serve as their chamber’s representatives in conference. After negotiating a version of the bill acceptable to a majority of each chamber’s delegates, the conference committee sends the revised bill—or “conference report”—back to the House and Senate for a final, unamendable, up-or-down vote. Because so many bills—especially complex and “important” bills—go through the conference process (Rybicki 2003), and because conferences often make substantial changes to legislation, the conference committee process is an integral factor in the shaping of policy outcomes.

Yet, just as the requirement of “identical bills” seems an afterthought of the presentment clause, the history of scholarship on conference committees is one of incidental interest.

Literature on conference committees emerged in the 1960s and 1970s. These initial works focused on the production of spending and taxation legislation and found the conference committee was an important step in the production of this legislation; the realization that bicameral competition and resolution were essential to the outcomes of these types of bills drew the attention of scholars to bicameral resolution.

The revival of conference committee research in the late 1980s and early 1990s was again motivated by their relevance to a more central theme in the congressional literature: the dominance of standing committees. Conference committees were seen as germane due to the “ex post veto” power they afforded the appointees, most of whom came from the standing committee(s) of origin. After yet another hiatus, much of the recent literature has sprung up as
an extension of the “do parties matter?” debate, which has become the central focus of the congressional literature over the past two decades. In that context, conference committees fit as a part of the quest to understand how parties affect outcomes, especially inasmuch as they do so by influencing the legislative agenda and legislative outcomes.

In this chapter, I begin by describing the basic logistics of bicameral resolution, and then proceed to detail the “three waves” of research on bicameral resolution just mentioned. Following my discussion of the most recent research, I offer some suggestions as to both how and why conference committee scholarship should move forward in new directions. Specifically, I argue that (1) the means and outcomes of bicameral resolution are sufficiently important, in terms of determining the ultimate state of public policy, to occupy a more central place in the congressional literature, but (2) that in moving forward scholars should continue to try to integrate the “cutting edge” research topics (i.e., appointment, outcomes, choice resolution method) into a more unified framework. I conclude by posing several as yet unanswered questions about bicameral resolution that deserve further attention.

**The Logistics of Bicameral Resolution**

As noted above, by constitutional mandate, before legislation can be signed into law, the House and Senate must pass a bill in identical form. In many cases, on non-controversial or relatively simple policy issues, the same bill passes each chamber the first time through, and no further congressional action is required. But, when the chambers pass legislation on the same issue, but the bills are even slightly different—as is often the case with the most controversial and complex issues—some method of bicameral resolution is required. There are two primary means for achieving this resolution: amendment trading (or “shuttling”) and conference committee. In some cases, the two methods will be used in conjunction, but typically one or the other is used in isolation.

The intuition of the amendment trading method is very straightforward, though the procedures and logistics can become very complicated. When one chamber passes a bill, it then sends the bill on to the other chamber for action. If the second chamber passes the bill without amendment, then no further resolution is needed. However, if any amendments are adopted prior to passage by the second chamber, then those amendments constitute the substance of disagreement between the chambers. In that case, the bill will be passed back to the first chamber, where for each amendment adopted by the second chamber, the first chamber can either “concur” in the amendment or amend the amendment and send the bill back to the other chamber. If they concur in all amendments, then the process is complete and the bill can be sent to the president. However, if they amend the other chamber’s amendment—in other words, offer the other chamber a new proposal—then the process continues as described. This is where the process can become procedurally complex; how
many amendments to amendments are in order, and how those are considered by each chamber, can be procedurally messy. The basic substantive idea, however, is simple: amendment trading equates to the chambers making proposals back and forth until some agreement is reached.

Conference committees are sometimes formed when amendment trading fails but, more often, both chambers anticipate the need for a conference in advance and go directly to this process after the bill is passed. For major legislation, conference committees have historically been the preferred method, but overall amendment trading is actually more common. Figure 9.1 shows the percentage of all public laws, for each of the 95th through 110th Congresses (1977–2008), that went through each method of bicameral resolution. For each Congress, the left-hand bar represents the percentage of bills that were reconciled using conference committees, and the right-hand bar represents the percentage resolved using amendment trading. In each Congress except the 104th, amendment trading outpaces conference use, in many instances by more than double. Note also that the need for bicameral resolution in general seems to be on the decline. In the early Congress in our time series, 55–60 percent of bills required bicameral resolution, where the most recent Congresses have seen resolution less than 25 percent of the time.

To get to conference, once the chambers have reached the “stage of disagreement” by stating formal disagreement on a bill, one chamber will request a
conference and the other then has the option to agree to the conference or not. Once one chamber has made a request and the other has agreed, each chamber chooses a slate of conference delegates—also called “conferees” or “managers”—from its membership. This process is similar across the two chambers, though it varies in some procedural specifics. Informally, the chairs and ranking members from the standing committees that considered the bill in each chamber have proposal power over the initial slate of majority and minority conferees. In the House, the proposed slate goes to the Speaker, who has final discretion over the makeup of the conference delegation. In the Senate, the conference slate is technically determined by a floor vote, though in effect discretion is almost always granted to the presiding officer and is effectively exercised by the majority and minority leaders.\

The size of conference delegations has been relatively stable in recent Congresses, but varies considerably across chambers. Figure 9.2 shows the average size of House (the left-hand bar) and Senate (the right-hand bar) conference delegations for each Congress from the 95th to the 110th (1977–2008). House delegations have a considerably larger range than the Senate, from eleven conferees up to thirty. The Senate’s average size, in contrast, is much more stable, hovering between nine and seventeen members for the entire time series. However, given the different sizes of the parent chambers—the House having more than four times as many members as the Senate—the larger House delegations are unsurprising. Indeed, the fact that the averages are as similar as they are implies that the Senate is stretching itself to keep pace with the House.

Figure 9.2 Average size of House and Senate Conference Delegations, 95th–110th Congresses
Once conferees are appointed, a conference is convened. While there are numerous well-defined procedures for handling conference-related business in each chamber, there are virtually no set rules governing what actually happens in conference. In essence, each conference delegation can decide what, if any, formal procedures they wish to adopt. The only rules required by each chamber mandate that a majority of each chamber’s delegation vote to approve the conference report, and that meetings be open to all conferees and to the public.

Once the bill is reported back to the chambers, typically the bill is not amendable and is subject to an up-or-down vote on adoption. However, in the Senate, the report can be filibustered and is subject to the same sixty-vote cloture requirement as bills earlier in the process. In practice, conference reports are rarely filibustered, though in some cases where significant changes are made at the conference stage, such as the opening example of the 2003 energy bill, conference reports provoke renewed resistance from opponents of the legislation.

Bicameral Resolution Research: Wave I

Recall from the opening anecdote that even with Republicans from both chambers firmly in control of the energy bill conference negotiations, House–Senate differences ultimately stalled the legislation for months. The first wave of literature over bicameral resolution focused almost exclusively on this horse-race aspect of modern politics—i.e., which chamber won as opposed to what was decided in conference. Each author begins with the question of whether the House or the Senate “wins” in conference committee negotiations, with winning being defined as a simple measurement of which side got more policy movement their way. The authors offer various explanations as to why a particular chamber won and the strategies that each side implements, but generally limit the application of their analysis to the determination of an intercameral victor. Though the narrow focus of scholarship on bicameral interactions is the by-product of a more focused interest in other aspects of congressional politics, it is this period which marks the foundations of a more systematic interest in the role of bicameral resolution in the legislative process.

The works of Pressman (1966) and Fenno (1966) are implicated as the initial source of scholarly focus on conference committees, though in both cases their role is seen as incidental to the primary question of which chamber wins with regard to appropriation committee bills. Pressman (1966) begins his writing with the conflict between House and Senate appropriations committees but expands it to general conflict between the chambers. He employs studies of bargaining strategies and references other literature on tactics employed by the opposing chambers, but comes to no specific conclusion as to why they disagree or the general outcomes of their fighting, a result of his work’s emphasis on providing a broader overview of congressional conflict. Fenno (1966) studies the results of House and Senate appropriations committees’ resolutions, generally finding that the Senate wins more often than the House. To understand
why, he uses the framework of the committees existing as entities both separate and composite to their larger chambers; to survive, the committees must please their broader constituencies while minimizing conflict with their opponents. He finds the Senate suffers less in trying to reconcile these two goals, which explains their disproportionate success in conference.

Manley (1970), in a similar manner to the preceding literature, addresses the role of conference committees only as they affect the resolution of disputes between the chambers on the particular policies on which he focuses. In Manley’s work, he analyzes bills coming from the House Ways and Means Committee in terms of whether they affect taxation, social security, or trade legislation. In determining whether there are systematic differences between House and Senate committee victories, he finds that the House wins on bills dealing with social security while the Senate wins over trade and taxation. His theory is that the difference lies in interest group support differentials between the House and Senate, and that this, more than intrachamber support, helps account for legislative outcomes.

Vogler (1970) is the first author to begin to emphasize the importance of conference committees among a broader range of policies and legislation, though again their import is a function of how they influence which chamber wins the post passage resolution process. In his article, he essentially replicates Fenno’s (1966) findings that the Senate tends to win more than the House in conference committee bargaining. His important contribution is to analyze a greater variety of committees, dealing with more than merely appropriations bills. He suggests that different trends in outcomes among different committees would be a fruitful area for study. Vogler (1971) expands this analysis to a book-length treatment, which provides support for his earlier work, serving primarily to expand upon his prior findings.

Ferejohn’s (1975) work serves as a counterpoint to the initial forays into the field by Pressman and Fenno; where their work on conference committees was incidental to a more specific emphasis on appropriations bills, Ferejohn’s focus on a narrow subset of legislation is incidental to his work on the role of conference committees. Ferejohn examines appropriations bills for the army corps of engineers and finds that final passage from conference committee favors the Senate position two-thirds of the time. This support echoes most other literature on the subject; nevertheless, Ferejohn’s key contribution is his theory that it is the sequence of steps in the legislative process that results in this outcome bias. By acting first, the House commits to certain goals in the bill; as a result, the Senate can ensure their amendments will survive reconciliation by restraining their recommendations to certain limits.

Strom and Rundquist (1977) serve to expand upon and offer additional support for the initial work by Ferejohn (1975), as their work replicates and expands Ferejohn’s findings of a sequence bias in apportioning outcomes. The chamber that made the initial proposal “loses” more than two-thirds of conference committee outcomes. Their empirical addition is to examine bills that
originate in either chamber rather than only the House of Representatives, but they also offer some additional theoretical clarity: conferences act as bargaining venues, wherein the conferees from the first chamber, by virtue of their “last mover” advantage at the prior stage, are simply in a superior bargaining position.\footnote{1}

In sum, this first wave of research broke critical new ground in understanding the theoretical mechanism and uncovering the empirical regularities of bicameral resolution. Boiled down to a single punch line, the scholarship of this era showed us that the Senate tends to win more often at conference. The question begged by this answer, however, is who is “the Senate” (and “the House,” for that matter). Put another way, when we try to assess House and Senate “wins” at conference, whose interests should we be attentive to? As the opening example of 2003 energy policy demonstrated, there are clearly subgroups and actors—such as parties, leaders, and committees—within each chamber that will accrue disproportionate benefits from a given conference outcome. Thus, the critical task of looking inside each chamber to assess the strategies and payoffs surrounding bicameral resolution was left to the next waves of research.

\section*{Bicameral Resolution Research: Wave II}

Returning again to the energy bill example, one facet of that conference process that clearly escaped the lens of the first wave revolves around the central role of standing committee actors at the conference stage. On the energy bill, the chairs of the standing committees that originally reported the bill eventually helmed the conference. After the appearance of the initial writings on the role and significance of conference committees in the 1960s and 1970s, there was a decline in scholarly interest on the question, with most congressional scholars turning their attention to the power of standing committees in the legislative process. Thus, conference committee and bicameral bargaining literature of the 1980s and early 1990s was dominated by the concept of the “ex post veto.” In particular, the focus was on the power of standing committees to influence legislation at both the first and last stage of the legislative process. Strongly informed by the work of Shepsle and Weingast (1987), the bicameral resolution literature of this period sought to expand upon the initial interest generated by Fenno (1966) and others in post passage negotiation through a less partisan or intercameral lens. There are also echoes of the work done by Ferejohn on the role of legislative sequencing, with the ex post veto serving as an anchor point in the policymaking process.

In their groundbreaking work on the explicit and exogenous sources of committee power, Shepsle and Weingast (1987) construct a broad theoretical model to explain what methods and tools committees possess that grant them influence. Of particular concern for the literature on conference committees is their reliance on the ex post veto, the fact that conference committees generally contain a large number of legislators from the jurisdictional committees where
the bill first originated. This combination of gatekeeping and reconciliatory powers is invested as the predominant source of committee power and is seen as the natural evolution of the question first posed by Fenno (1966) as to who wins in conference committees.

Longley and Oleszek (1989) follow in Shepsle and Weingast’s footsteps by dispensing with the question of who wins in conference committees and instead focus on the relationship between individual members of Congress, the standing committees and the parent chambers. Through an exhaustive sampling of the extant literature and several case studies focusing on specific examples, the authors provide an incredibly rich, broad view of bicameral negotiation and post passage bargaining, though they draw few connections with, or conclusions about, the theoretical literature. Though their writing does touch on the power of the ex post veto and the role of standing committee members in conference committee delegations, the nature of their work—providing a broad array of descriptive examples and explanations—serves as a dramatic contrast to the formal theoretic focus of other literature.

Much of the action in this second wave, however, begins with the exchange in Krehbiel, Shepsle, and Weingast’s (1987), where Krehbiel and Shepsle–Weingast have a back-and-forth discussion within the article. Somewhat ironically, this coauthored work with Shepsle and Weingast marks the first of several publications by Krehbiel that critique the committee dominance perspective. Krehbiel proposes several limitations and omissions in Shepsle and Weingast’s (1987) original work; Shepsle and Weingast respond to Krehbiel’s criticisms, and conclude that their work might require revision, but it remains generally sound, and that it is significant for more than its illumination of the dominant role of the ex post veto model on this period’s conference committee literature. Krehbiel argues that the parent chambers of each conference committee’s delegation are not in fact as constrained by the threat or employment of the ex post veto as previously asserted. Rather he contends that the members of each chamber, who form the majority that vote on floor motions, have at their disposal many powers that they can use to constrain the ostensibly dominant committees. The thrust of his argument is that the assumptions in Shepsle and Weingast’s model are unrealistic and that the ex post veto is not as powerful as they contend it to be. In their rebuttal, Shepsle and Weingast concede that Krehbiel has meaningful objections and that their work would certainly be no worse for the addition of some of his critiques, but that the evidence which he asserts as a check on the ex post veto is not as easily or frequently observed as he might assume; while they concede their model would be richer for the inclusion of parent chamber influence on committee power, it is not negated for the lack of it.

From his initial objections to some of the assumptions of the ex post veto model of committee power, Krehbiel proceeds to formulate a challenge to the distributional model of Congress as a whole. Krehbiel’s (1991) book-length treatment on the role of informational theory as a paradigm to understand
congressional organization and outcomes touches only briefly on the role of conference committees in the legislative process. In his model, it is individual legislative preferences, rather than partisan committee dominance, that truly affect post passage bargaining. In a follow-up article on the declining evidence of partisanship in the U.S. Congress, however, Krehbiel’s (1993) focus on conference committees takes center stage. Krehbiel again objects to the unifying theme of this period’s conference committee literature—the role of standing committees with regard to the implementation of the ex post veto. In marshaling his data to disprove anecdotal claims of rising tides of partisanship in Congress through the mid to late 1980s, Krehbiel makes the point that the role of partisanship, for appointments to both standing committees and conference committees, is declining. This attack on the relevance of partisanship for congressional organization and decision-making foreshadows the direction the literature would move over the next two decades.

**Bicameral Resolution Research: Wave III**

Perhaps the most glaring, as of yet unaddressed feature of the energy bill example is the party influence exhibited: that conference served as a means of cross-chamber partisan coordination and provided the Senate leadership with an opportunity to advance their agenda further through the process. The third wave takes aim at how parties utilize bicameral resolution for their own benefit.

**Conference Committee Appointments**

Of the identifiable categories of modern scholarship on conference committees, those works explicitly focused on the determinants of conference committee appointments are of the oldest origin. The phenomenon of conference committee appointments as a focus of bicameral bargaining is not a new one, but the recent literature is notable for the rigor of the models and the increased emphasis on both partisanship and collective action issues. In the context of principal/agent relationships, it is helpful to view conference committee members as the agents; the subsequent question is, who is/are the principals? The answer to that question is the focus of this section.

Though temporally situated in the second wave, both Nagler (1989) and Ortega and McQuillan (1992) serve as important precursors for work in the most recent wave of bicameral resolution scholarship. Nagler’s analysis examines minimum wage legislation negotiation in the House of Representatives from 1972, 1973, and 1977 in the context of a modified form of Shepsle and Weingast’s theorem of committee influence as the product of the ex post veto power. Nagler goes into greater depth, treating the selection of committee members as endogenous to the Speaker’s preferences rather than exogenously given by committee actors. He contends that the Speaker, whose decisions and
preferences are a product of the general attitudes and preferences of the majority party, wields considerable power in the conference committee process. The paper asserts that the ex post veto is not a trump card, and that the parent chamber does influence legislative outcomes in a way not predicted by previous literature on the subject.

Ortega and McQuillan’s article forms, alongside Nagler’s piece, the historical roots of modern conference appointment scholarship. This paper is a useful empirical extension of Nagler’s critique of the ex post veto model. Using a test of preferences as opposed to representation, the authors show that conference committee members, though overwhelmingly selected from the jurisdictional committee from which the bill originates, have preferences distinct from those standing committee members that were not selected. Furthermore, the paper demonstrates that the preferences of the committee delegates are aligned not with the standing committee chair, but with party leaders of the parent chamber, providing substantive empirical support for Krehbiel’s (1991) contention that preferences rather than representation is significant.

Carson and Vander Wielen (2002) mark the beginning of the modern period of congressional work on conference committee appointments. Their paper uses data on conference committee delegations from both the House and the Senate between 1979 and 2000, which is significant in part because the preponderance of research on the subject has focused exclusively on the House. The paper analyzes the role that the Speaker of the House and the Senate majority leader play with regard to their appointment power, focusing on strategic and partisan considerations that influence their decisions. An important aspect of this work is its relationship with the previous period’s literature on conference committees, specifically its emphasis on explicit and partisan-based models of congressional organization. The significant findings of the paper are that conference delegations are picked to represent the preferred policy outcomes of powerful institutional actors in both chambers, as distinct from committee chairs, and that the frequency and magnitude of the strategic and partisan considerations vary according to the partisanship of each chamber as a whole.

Hines and Civettini (2004) continue the renewed interest in conference committee appointments, analyzing data from the Senate during the 101st through 107th Congresses, complementing a similar study by the authors in the House. They use these data to test the hypotheses first put forth by Krehbiel (1991), and find that seniority has a significant impact with regard to strategic considerations and constraints in conference committee appointments. This finding contradicts prior literature in the Senate, and the whole strain of House appointment literature, which emphasizes the pivotal nature of the Speaker with regard to conference appointments. Their work is, in part, very notable for its suggestions of new strands of research to be conducted and an illumination of the significant differences between the House and the Senate, in regard to involvement in the process and power of conference committee appointments.
Much like Hines and Civettini, Lazarus and Monroe’s (2007) article on the role of the Speaker of the House in appointing conferees engages in the “parties versus preferences” debate over congressional organization. Using data from the 97th through 106th Congresses they find support for the contention that the Speaker has significant powers over the outcomes of conference committee legislation through his power of appointment. Specifically, they find strong theoretical evidence for explicit circumstances in which the Speaker has both the motivation and ability to influence post passage bargaining. The work is notable also for its formal theoretic approach, deriving specific testable hypotheses and marshaling empirical evidence for the propositions of the model. Much of the work that follows is noticeably more formal than most of the prior literature on bicameral resolution.

In Vander Wielen and Smith’s (n.d.) work, conference committee delegates are analyzed in light of their similarity to the members of their parent chamber as a whole. This work, following in the direction of most recent scholarship, finds that the majority party dominates conference committees disproportionately to their dominance of the House of Representatives as a whole. Their explanation of this partisan power, over delegates directly and standing committees indirectly, lends support to both prior theories of the role of the ex post veto and modern models of partisan and cartel dominance of the House.

**How Policy Changes in Conference**

The second observable category of modern bicameral bargaining scholarship concerns the presence or absence of systematic effects of conference committee bargaining. While the literature of the previous section dealt with the ways in which powerful institutional actors could “stack the deck” of conference committee delegations with the goal of affecting the end result, this section’s work focuses on whether those actions are indeed borne out by the evidence.

Brady (2008) compiles data from the 97th as well as 101–110th Congresses in an attempt to illustrate systematic trends in conference committee outcomes. The paper finds that partisanship, as implemented through the ability of the Speaker of the House in particular to appoint delegates, is a critical factor in predicting policy shifts in conference. Other predictive factors include the level of partisanship in the standing committees from which the legislation originates and the level of bipartisanship in the Senate. Using these elements ex ante, Brady finds it possible to predict whether, and in what direction, a bill sent to committee will shift as a result of the committee.

Vander Wielen (2010b) addresses the same question by identifying votes on conference bills that generate strong partisan cleavages. On this set of votes, he tests whether conference committee outcomes are shifted not towards the median voter of the majority coalition but the ideal points of the committee members themselves. The paper provides a modern formation of the argument first originating in the literature of the 1980s, that standing committees have
significant influence over policy outcomes through their overwhelming representation as conference delegates. In direct contrast to other modern scholarship in this area, Vander Wielen rests a significant degree of power on the jurisdictional committee members chosen as delegates for conference committee resolution, as opposed to chamber-level institutional actors. Though careful to identify the constraint on delegates to propose a bargain that will pass in both chambers, this work is especially significant for its focus on conferees as independent actors.

**Strategic Bargaining/Alternative Resolution Strategies**

The final strand of research on post passage bargaining emphasizes the role of the conference committee as an ex ante procedure that wields significant influence with regard to the actions of congressional actors during the legislative process. In some sense, this line of research is an analog to Ferejohn’s (1975) work on the sequence of the legislative process, in that the modern scholarship is primarily concerned with how members in each chamber act in a strategic manner to manipulate the existence of post passage procedures for their benefit.

The initial formulation of this area of academic interest might be traced to Levmore (1992), who is primarily concerned with the historical foundations and modern applications of the bicameral system. He postulates that, in a two-chamber system, the necessity of proposing policy that is satisfactory to a majority of each chamber constrains the initial policy proposals of legislative actors, though he does note the power of conference committees to act strategically to achieve profitable outcomes. Levmore’s work speaks to the first wave of conference committee literature, in that he relies on disparities between actors in each chamber to pursue their own goals, though he uses a more rigorous theoretical construct.

Ortega and McQuillan’s (1996) paper serves as a transition between the modern scholarship on the strategic implications of conference committees and the distributive model critiqued by Krehbiel (1993) during the second wave of research on post passage bargaining. Their addition to these writings is to define a “bicameral stability” model of conference committees where the goal is to maximize the amount of legislation produced by Congress while minimizing the amount of intercameral conflict. Their explanation for pro-Senate bias in conference outcomes is a result of the relative vulnerability of the Senate with regard to partisan fighting. Their model uses data on conference committees from 1949–91.

A more recent extension of the theme first explicated in Levmore’s research is Van Houweling’s (2007) argument about the strategic actions of members of Congress prior to a bill being sent to conference. His survey of the 83rd–107th Congresses provides compelling empirical evidence that conference committees are used as a way of separating public and private preferences in terms of
senatorial accountability. That is, the lack of a closed discussion rule in the Senate makes discrete actors vulnerable to the consequences of their votes, leading them to use conference committees as a way to achieve their privately preferred outcome without a polarizing floor debate. This work is reminiscent of the initial period of conference committee literature and its emphasis on institutional differences between the chambers as a determinant of post passage outcomes.

Ragusa’s (2009) work in this area focuses on the implications of bicameral reconciliation for the ability of the majority party to exert positive agenda control. He asserts that, given a cartel-based theory of congressional organization, any legislative sequence that results in a reconciliation process, either through intercameral shuttling or conference committee, results in a suboptimal outcome for the majority party. This innovative hypothesis is in clear opposition to the model proposed by Brady (2008) and the assumptions underlying much of the literature with regard to conference committee appointments. Like Levmore’s earlier work, a counterintuitive implication of this work argument is that conference committees can functionally limit the influence of agenda setters.

Looking at the implications of failures in post-passage bargaining, Ryan (2011) provides a crucial commentary of many underlying models of congressional organization (i.e., that legislation is the result of negotiation among rational actors). In a model bounded by the most basic economic assumptions that bargaining failures do not occur, their unmistakable presence in the empirical world serves to question the most common models of bicameral resolution, and fuel further research and theorization. By emphasizing outcomes where neither side wins, Ryan is filling in the other part of the literature staked out in the initial wave of conference committee work. His work is also significant for its utilization of intracameral differences to provide a theoretical framework and testable hypotheses for when such failures will occur, which is a useful and important extension of the current academic writings.

Magleby (2008) poses an interesting challenge to the trends of bicameral negotiation literature that first arose during the second wave, the exogenous nature of the use of conference committees. Magleby assumes that the actors affect whether or not a conference committee is used, and therefore exert some influence over the legislative sequence. Magleby proposes a model to account for this, in which the pivotal legislators in each chamber, rather than institutional or powerful partisan figures, are able to influence the nature of policy change. There are clear parallels to Krehbiel’s critique of the work of Shepsle and Weingast; both are proposed models of congressional organization that discount the role of the party and challenge the status quo conception of the role and importance of conference committees.

Finally, Vander Wielen’s (2010a) model of strategic decision-making by congressional actors relies on literature discussed in the preceding section about the process of conference committee appointments and the expected policy shifts from post passage bargaining. He contends that conditional upon
certain preferences and information, both chambers can capture gains from policy changes by the strategic appointment of delegates given their individual preferences. This work builds upon Krehbiel’s criticisms of the exogenous power of jurisdictional and conference committees, echoing his sentiments about the ability of the parent chambers to utilize mechanisms to limit or manipulate conference outcomes.

**New Directions in Bicameral Resolution Research**

A common theme of the preceding three sections is that research on bicameral resolution, though rigorous and fruitful, has historically been viewed as largely tangential to the main body of research on congressional politics. This needs to change; below I will suggest both why and how.

First, the “why.” The bicameral characteristic of the U.S. Congress has long been underappreciated. That is, as little attention as bicameral resolution has received relative to other features of congressional politics, the more general implications of Congress’s bicameral structure have received even less. The dominant theories of Congress have been almost entirely myopic, focusing only on a single chamber at a time (and, disproportionately, that chamber has been the House).

Recently, however, this myopic tendency has begun to reverse itself. Beyond the research on bicameral resolution, there has been an emerging theoretical and empirical focus on the significance of the dual chamber arrangement (e.g., Lupia and Sin 2007; Gailmard and Hammond n.d.). A move in this direction necessitates the increasing significance of work on bicameral resolution. If the general literature becomes more focused on the interplay and anticipation between the two chambers, bicameral resolution research will, of necessity, be a fixture at its center.

The “how” is twofold. First, scholars in this area simply need to maintain a continued research program. Conference committee research has largely seen scholars moonlight on this topic, but none have sustained an ongoing program of research on bicameral resolution. If the topic is to make headway as a central part of the congressional literature this has to change. Perhaps one justification for this transient scholarly interest, however, is that often the topic has appeared to be quite limited and narrow. This, however, is at least partly a limitation of the single-chamber-centric theories that have historically defined the literature; where a given chamber defines the theoretical universe, interactions between the chambers will always be, at best, a secondary consideration. However, assuming congressional theories continue to broaden in their scope (as I suspect they will) to include both chambers as equally important theoretical components, bicameral resolution research might naturally move to the forefront. Under such circumstances, being a dedicated “bicameral resolution” specialist would become a much more attractive, sustainable option.
The second part of the “how,” though, depends much less on the context of the broader congressional literature, but instead is a function of the specific structure of the current bicameral resolution literature. At the moment, unfortunately, most of the work on bicameral resolution is hopelessly fragmented and does not build upon prior research in the same way as other areas of legislative politics research. Scholars have focused on one part of the process—appointments, outcomes, or choice of method—without attempting to integrate those processes into a coherent whole or develop theoretical models to account for individual or collective decisions during legislative reconciliation. This oversight contributes significantly to the perception that this literature is narrow or limited.

Despite this, these processes are almost certainly strategically interrelated. For instance, how does the chambers’ selection of delegates influence policy outcomes? How does the pool of available delegates influence the choice of resolution method? Do outcomes vary systematically, based on which method of selection is used? Each of these questions lurks in the most recent literature, but to answer them bridges must be built between the questions being addressed.

Indeed, when one steps back and views it with a slightly larger perspective, a unified theoretical framework not only seems desirable, it is absolutely essential. Simply imagine the vantage point of the Speaker or majority leader who has just seen an important piece of legislation pass their chamber in a form quite different from that of the other chamber. How will the leader decide which direction to steer the resolution process? The simplest sequence seems likely to go something like this. The leader might ask: (1) what is the best possible conference delegation I could plausibly send? (2) what is the likely outcome of the conference under that condition? (3) what is the likely outcome under an amendment trading scenario (or some other method)? and (4) how certain can I be of any of these outcomes? Notice that within that sequence, all of the components of the most recent literature are present: appointments, outcomes, and choice of resolution method. Working towards a theoretical framework that incorporates all these disparate elements into a single theoretical model seems like a useful next step for students of legislative politics.

**Conclusion: Unanswered Questions**

Over the last four decades, scholars have begun, in fits and starts, shedding light on a key feature of congressional policymaking: bicameral resolution. However, recent research on the topic has become more sustained, broadening the base and increasing the depth of inquiry. Still, there are many more questions to be answered by scholars who seek to make a name for themselves in the area of post passage politics. I propose several new directions for legislative scholars here.

First, how does bicameral resolution differ in the Senate? Virtually all of the prior literature focuses on the House, which means there is inevitably some
catching up to do in the Senate. Moreover, it seems absolutely essential to understand the strategic context of the Senate, as compared to the House, if we are to better understand the interplay between the two chambers. Moreover, as work on the Senate becomes more theoretically formal (see, e.g., Den Hartog and Monroe 2011), extending those theories to include the conference stage is a natural next step in our understanding of bicameral politics.

Second, what goes on inside of a conference committee? Though scholars have taken a before-and-after approach to figure out what changes are made in conference, there has been very little systematic work on what the bargaining process is within a conference (cf. Hennig 1997). Not only is the question inherently interesting, it has major implications for the strategic processes that lead up to a conference; appointments and “instructions,” for example, will almost certainly be shaped in part by what happens within the conference, yet we know virtually nothing about that environment. This gap in our understanding is primarily a result of a lack of sources that systematically report what happens in conference. Yet, with appropriate coding schemes, scholars could use secondary accounts available in Congressional Quarterly Almanac and other sources to capture the process and substance of bargaining inside conference.

Finally, how and how much do extra-legislative actors influence bicameral resolution? The obvious starting point in addressing this question is to better understand how, when, and with what effect the president and other administration actors intervene in conference negotiations. But, the question also implies investigation well beyond the White House. Do interest groups, bureaucrats, or even constituents inform bicameral negotiation, both in terms of the choice of method and the substance of its resolution? Addressing these and other questions has the potential to push congressional scholarship in new and interesting directions and, perhaps more importantly, further illuminate a process that has significant consequences for the formation of public policy.

Notes

1 The author wishes to thank W. Bryce Underwood and Randall Collett for extremely valuable research assistance, and acknowledge Josh Ryan and Jordan Ragusa for providing data.
2 Most of the details for this anecdote are drawn from CQ Almanac Online (2003).
3 The latter stood to benefit from targeted subsidies for corn-based ethanol.
4 Note, however, that each chamber can send “instructions” to conference, either before the conference report has been received or while it is being negotiated.
5 For an excellent, in-depth discussion of the procedures involved in these two methods, see Rybicki (2008). This section is based heavily on information provided in that report.
6 Note that amendment trading, as discussed here, is not meant to refer to the informal process that sometimes occurs prior to passage of a bill in one chamber, where interested members of each chamber formulate amendments prior to passage that would make the bills identical and thus avoid the need for a formal bicameral resolution process.
7 In practice, one chamber often works on legislation simultaneous to the other chamber. Once the bill is passed by the first chamber and passed on to the second chamber, the second chamber then will simply amend the bill by striking the entire language and substituting in the language of their own bill.

8 Some of the data for this table was generously provided, separately, by Jordan Ragusa and Josh Ryan.

9 The actual distribution of influence between committee and party leaders over the final makeup of the delegation has been the subject of considerable scholarly debate, as discussed later in the chapter.

10 Earlier work by both McCown (1927) and Steiner (1951) focuses directly on conference committees, though both are largely descriptive accounts.

11 Ortega and McQuillan (1996), though writing in a later period, deserve brief mention here as their work is instructive for its incisive analysis and extension of this first wave of conference committee literature. Their article provides an excellent literature review of the majority of early writing with regard to conference committees, but extends the theme of that period substantively. The latter contribution is discussed in more detail below.