

Chapter 4

The Speaker and the Senate

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In 1897, a Senator described a “very curious thing” to his colleagues in the Senate Chamber. It seems Speaker Thomas Brackett Reed (R–ME; 1889–1891; 1895–1899) had spent a great deal of time in the Senate side of the Capitol persuading (the Senator said “coercing”) Senators into supporting the pending tariff measure. The Senator found it even more extraordinary that as he passed a room where Representatives and Senators were meeting to negotiate a compromise between the Chambers on the tariff bill, he saw “a powerful policeman standing guard at the door.” When the Senator inquired as to why the guard was there, he was told “it was for the purposes of keeping the presiding officer of the House from invading the secrecy and the councils of the conference committee.”¹

The characteristically vigorous efforts of Speaker Reed in this instance may indeed have been, as the Senator claimed, “extraordinary and unusual.” The need to coordinate with the Senate on legislation, however, is as established and necessary as the Office of the Speaker itself. According to the Constitution, each House of Congress must agree to a measure before it can be sent to the President. The two Chambers, however, often disagree over policy proposals, and the Constitution is silent as to how the House and

Senate should reconcile differences in pending legislation.

In no small way, the responsibility of resolving differences and coordinating with “the other body” has fallen on the Speaker of the House. Disagreements between the Chambers on most major legislation are resolved by conference committees, ad hoc panels composed of legislators from each Chamber that meet to negotiate a compromise acceptable to both the House and Senate. The Speaker appoints the House conferees, or “managers,” and at times his careful selection of individuals has influenced the final policy outcome. Further, a great deal of inter-chamber coordination takes place prior to, instead of, or after the formal creation of a conference committee. The Speaker works with Senate leaders in order to shepherd significant measures through the entire legislative process. In sum, the Speaker plays a major role in the two principal devices of legislative coordination: bicameral leadership cooperation and conference committees.

Both the relationship between the Speaker and Senate leaders and the role of the Speaker in the appointment of managers to conference have changed over time. Since the major reforms of the seventies, the Speaker has had greater discretion over who he appoints to conference. For most of congressional history, the Speaker selected a few senior members from the standing

¹ *Congressional Record*, 55th Cong., 1st sess., vol. 30, July 23, 1897, p. 2867.

committee with jurisdiction over the bill to negotiate with the Senate. Late 20th-century changes in practice, including multiple referral and the tremendous growth of conference committee delegations, have left the Speaker with more authority over conference committee composition. The modern Speaker chooses how many Representatives serve as conferees, as well as what committees the conferees come from and what matters they may consider in conference. In addition, the transformation of the Senate from a committee-centered, seniority-driven institution to a more open body with an equal distribution of power has transformed the role of the Speaker in inter-chamber negotiations. A close personal relationship with the Senate majority leader and important committee chairmen likely solves fewer legislative logjams than it did in the mid-20th century, and the press of business makes the threat of a filibuster more potent. Although conflict between the Chambers is an inherent part of the bicameral system, the Speaker today faces a particularly significant challenge in coordinating the passage of legislation with the Senate.

THE "OTHER BODY"

At the end of the 19th century, the procedures of the House and Senate began to move in divergent directions. The House, under the leadership of Speaker Reed, developed into a majoritarian body, able to act whenever most of the Members favored action. The Senate, meanwhile, continued to grant great parliamentary powers to individual Senators. The lack of Senate rules allowing a simple majority to end debate left Senate leaders dependent on unanimous consent agreements to set the schedule for considering and voting on measures (even after the enactment of a rule in 1917 allowing a super-majority to close debate). For over 100 years, the Speaker has been accustomed to setting the legislative agenda with the backing of the majority, but the Senate majority leader must always take into account the rights afforded to individual Senators under the rules and precedents.

Not surprisingly, because of the differences in the decisionmaking processes of the two Chambers, Speakers have long found working with the Senate to be challenging. In 1890, Speaker Reed

grew exasperated with Senators, including those in his own party, who chose to deliberate and debate, rather than quickly pass, House bills on the tariff and election reform. He urged the Senate to change its rules, attempted to stir public sentiment against the Senate, and threatened to keep Congress in session until the Senate decided the fate of the bills. The Speaker's disapproval of the Senate could not expedite the process; as one Senator commented dryly to the press, "Unless Mr. Reed comes over here in person, and takes command, I do not see how we are to oblige him . . . It would hardly be fair to him to ask him to run the Senate and the House at the same time."²

Over 100 years later, a public campaign by another powerful Speaker was no more successful in spurring Senate action. An electorate reportedly fed up with politics as usual in Washington, DC, gave Republicans control of the House and Senate in the 1994 elections. House Republicans, led by Newt Gingrich (R-GA; 1995-1999), had campaigned on a list of legislative proposals known as the Contract with America. As expected, while the House voted on every Contract proposal during the first 100 days of the 104th Congress (1995-1996), the Senate debated only some of the proposals in the same time period.³ Despite his unquestionable skills in communicating with the public, the Speaker could not force the Senate to act. Threats or trades are unlikely to be effective when the Senate leader has few tools at his disposal to force action on legislation. Speaking at a joint press conference during the consideration of the contract, Senate Majority Leader Bob Dole (R-KS) illustrated the differences between the job of the Speaker and the job of the majority leader. After stating that the Senate would probably not be able to "keep up" with the speedy House in passing the contract items, Dole turned the podium over to Speaker Gingrich by joking that he needed to get back to the Senate floor for an upcoming vote "before anybody defects."⁴

² "Speaker Reed Frowns," *New York Times*, Aug. 4, 1890, p. 1.

³ Norman Ornstein and Amy L. Schenkenberg, "The 1995 Congress: The First Hundred Days and Beyond," *Political Science Quarterly*, vol. 110, no. 2, summer 1995, p. 194.

⁴ Jake Thompson, "Dole Thrives, Despite Hype for Gingrich," *Kansas City Star*, Jan. 7, 1995, p. A1; Transcript, "News Conference with

LEADERSHIP COORDINATION

No Speaker can change the nature of the Senate, but many have succeeded in working with Senate leaders to ensure that the key pieces of their legislative agenda do not die in the other Chamber. To varying degrees since the 19th century, Speakers have met with Senate leaders to plan or discuss major policy proposals and strategy. Coordination between the Chamber leaders is largely ad hoc, depending partially on the personalities of the leaders as well as the preferences of the majority party in each Chamber.

At the very least, the leaders coordinate dates for adjournment, since the Constitution forbids either Chamber from adjourning for more than 3 days without the consent of the other (Article I, Section 5). They have also met regularly at various formal party or government events and served together on a myriad of commissions. The Speaker and the Senate majority leader have also long met jointly with the President, although the timing and agenda of these meetings are generally dictated by the President.⁵

The Speaker does not, however, just meet Senate leaders at formal events or at the White House. The Chamber leaders also meet to accomplish several legislative goals. Sometimes the leaders meet to discuss the measures they plan to bring to the floor in the coming weeks, but often, the leaders simply inform each other of their Chamber's actions, without attempting to coordinate or to even consult about their actions.⁶ Such information can prove particularly useful at the end of a session when decisions about when, or whether, to consider a bill can determine its fate. Any bill that has not passed both Chambers in the same form at the end of a Congress dies. The frequency of bicameral lead-

ership meetings and less formal contacts rises considerably at the end of a session.

At bicameral leadership meetings, the Speaker and his lieutenants might also discuss legislative strategy with Senate leaders. The leaders might agree, for example, that one Chamber should act before the other on a major piece of legislation. Passage of a bill by one Chamber might provide the momentum or public attention necessary to carry the bill through the other Chamber. Alternatively, the Speaker might urge the Senate to act first because he does not want to consume the precious time of the House to consider a measure that has little chance of passing the Senate. The Chamber leaders might agree to assign identical numbers (such as H.R. 1 and S. 1) to legislation to spotlight the issue as an agenda priority.

The frequency and nature of the coordination between the Speaker and Senate leaders apparently depends to some extent on the individuals holding the offices. The relationship between Speaker Sam Rayburn (D-TX; 1955-1961) and Senate Majority Leader Lyndon Johnson (D-TX) in the fifties is generally held up as the quintessential example of a close personal bond between Chamber leaders.⁷ Rayburn had been a mentor to Johnson when he served in the House, and they capitalized on their well-established friendship to turn bills into law.

The press could not help but compare the relationship of Rayburn's successor, John McCormack (D-MA; 1962-1971) with Senate Majority Leader Mike Mansfield (D-MT). One reporter described the leaders' relations in 1962 as not yet approaching "in intimacy or effectiveness the alliance of Rayburn and Johnson."⁸ After Richard M. Nixon succeeded Lyndon Johnson as President, another journalist reported that McCormack and Mansfield rarely coordinated with each other. At times they would disagree with each other publicly over policy issues or even about how to best process legislation through both Chambers. The Senate leader told reporters in 1969 there was "no need for more formal party

House Speaker Newt Gingrich, Senate Majority Leader Bob Dole, Republican National Committee Chairman Haley Barbour," *Federal News Service*, Jan. 6, 1995, available from LexisNexis (database online), accessed May 1, 2004.

⁵Steven S. Smith, "Forces of Change in Senate Party Leadership," in Lawrence C. Dodd and Bruce I. Oppenheimer, eds., *Congress Reconsidered*, 5th ed. (Washington: CQ Press, 1993), p. 277; Walter Kravitz, "Relations Between the Senate and the House of Representatives: The Party Leadership," in *Policymaking Role of Leadership in the Senate: A Compilation of Papers Prepared for the Commission on the Operation of the Senate* (Washington: GPO, 1976), p. 128.

⁶Barbara Sinclair, *Majority Leadership in the U.S. House* (Baltimore, MD: Johns Hopkins University Press, 1983), p. 113.

⁷Robert A. Caro, *Master of the Senate* (New York: Alfred A. Knopf, 2002); Ralph K. Huitt, "Democratic Party Leadership in the Senate," *American Political Science Review*, vol. 55, no. 2, June, 1961, p. 338.

⁸David S. Broder, "'The Other Body'—Not 'the Upper House,'" *New York Times*, May 20, 1962, p. SM23.

coordination between the House and Senate. Each should conduct its own business and consult when it has problems.”⁹

The nature of bicameral leadership coordination has also varied with changes in party control of the Chambers and the White House. If the House and Senate are controlled by opposite parties, coordination can be even more challenging. A congressional scholar and former staff member in the House majority leader’s office reported that monthly bicameral leadership meetings, infrequently productive under unified control, disappeared almost entirely during the divided control of the 97th Congress (1981–1982). The scholar quotes one participant of the bicameral leadership meetings as saying, “They do what they want to do and we do what we want to do and we try to agree on an adjournment date.”¹⁰ The sentiment was echoed by a long-time Senate staffer who claimed the Senate Republican Leader Howard Baker (R–TN) was in constant contact not with the Democratic Speaker but with the House minority leader. The Senate leader did not otherwise actively work with the House. “We did our own thing,” the staffer said, “whatever it was.”¹¹

If the House is controlled by the party in opposition to the President, then the Speaker might seek to coordinate with the Senate in the hopes of building a strong response to the policy platforms of the Executive. For example, when the Democrats gained control of the House, but not the Senate, in the 72d Congress (1931–1933), they formed a joint policy committee. The committee was created to shape the party’s legislative program and determine how much support to give to the program of the Republican President Hoover.¹² Speaker John Garner (D–TX; 1931–1933), according to one source, opposed the creation of the committee, but the party caucus voted for its formation.¹³ Garner appointed the House

membership of the committee, convened its meetings in his office, and together with Senate Minority Leader Joseph T. Robinson (D–AR) acted as its spokesman.

CHALLENGES OF LEADERSHIP COORDINATION IN THE POST-REFORM ERA

The significant challenges to bicameral leadership coordination have become even greater since the major institutional reforms of the mid-seventies. Political scientists generally describe the reform era of the 20th century as a shift from committee-dominated policymaking to a more participatory process involving junior Members and granting new powers to individual Members.¹⁴ The institutional changes made by both Chambers in the seventies magnified the differences in House and Senate procedures.

While the weakening of committee chairs in the House was accompanied by a rise in the powers of the Speaker, no such centralization of power occurred in the Senate. In the last 30 years, the Speaker gained the power to refer bills to multiple committees and the Rules Committee became an arm of party leadership. Changes to the committee assignment process in the House also increased the power of the Speaker.¹⁵ The Senate majority leader, in contrast, gained no such increased authority over agenda-setting or debate control. Committee autonomy declined in the Senate as well as the House, but influence in the Senate was transferred to individual Members not to party leaders.¹⁶ “In the contemporary Congress,” a legislative scholar noted in the late nineties, “the legislative process in the two chambers is more distinct in form and in results than ever before.”¹⁷ In short, rising individualism, especially when combined with the recent rise in partisanship, have made leading the

⁹ Richard L. Lyons, “Democratic Leadership Gap Widens,” *Washington Post*, May 21, 1969, p. A1.

¹⁰ Barbara Sinclair, *Majority Leadership in the U.S. House*, p. 114.

¹¹ William F. Hildenbrand, Secretary of the Senate, 1981–1985,” (Washington: Senate Historical Office, Oral History Interviews), p. 326.

¹² Richard V. Oulahan, “Sense of Duty Prevails: Democrats Form Senate–House Board to Deal With Hoover Program,” *New York Times*, Dec. 8, 1931, p. 1.

¹³ W.H. Humbert, “The Democratic Joint Policy Committee,” *American Political Science Review*, vol. 26, no. 3, June 1932, pp. 552–554.

¹⁴ Roger H. Davidson, “The Emergence of the Postreform Congress,” in Roger H. Davison, ed., *The Postreform Congress* (New York: St. Martin’s Press, 1992); Steven S. Smith, *Call to Order: Floor Politics in the House and Senate* (Washington: Brookings Institution, 1989).

¹⁵ Ronald M. Peters, Jr. “The Changing Speakership,” Chap. 1, *infra*.

¹⁶ Barbara Sinclair, *The Transformation of the U.S. Senate* (Baltimore, MD: Johns Hopkins University Press, 1989), p. 2; Christopher J. Deering and Steven S. Smith, *Committees in Congress*, 3d ed. (Washington: CQ Press, 1997), p. 183.

¹⁷ Barbara Sinclair, “Party Leaders and the New Legislative Process,” in Lawrence C. Dodd and Bruce I. Oppenheimer, eds., *Congress Reconsidered*, 6th ed. (Washington: CQ Press, 1997), p. 244.

Senate in the past 30 years extremely challenging.¹⁸

The Speaker and his lieutenants have attempted to meet the challenge of an often slow-moving, if not obstructionist, Senate. According to a long-time observer of Congress, formal contact between the Speaker and the Senate majority leader increased in the eighties.¹⁹ Speaker James Wright (D-TX; 1987–1989) and Senate Majority Leader Robert Byrd (D-WV) reportedly took turns hosting bi-weekly breakfast meetings which later became weekly meetings. The staffs of the Speaker and the Senate majority leader also stay in constant contact. After his election as party leader, current Speaker Dennis Hastert (R-IL; 1999–) designated a staff member to serve as his Deputy Chief of Staff for Bicameral and Intergovernmental Affairs. In the current Congress, House and Senate leadership aides reportedly meet every Wednesday that Congress is in session.

The Speaker and other leaders in the post-reform House have become more involved in determining the substance of legislation.²⁰ The Speaker, for example, might strive to shape legislation so it passes by a wide enough margin to send a message to the Senate regarding its broad support. Special meetings with Senate leaders might be called to discuss specific pieces of legislation.

Furthermore, the Speaker and the Senate majority leader in recent Congresses have been more directly involved in conference committee negotiations. The two leaders may even meet prior to the appointment of a conference committee to reach an agreement about the legislative vehicle.²¹ In the midseventies, it was reported that “as a rule” party leaders do not “inject themselves into conference negotiations unless asked to do so.”²² If this was a rule in an earlier era,

it is followed less often today. Although usually not named as managers, leaders of both Chambers often meet with the committee members serving as conferees. The Speaker and other party leaders are more likely to become involved when conference negotiations are expected to be difficult, or when the talks break down. The Speaker can help in behind-the-scenes dealmaking because of his influence over other aspects of the legislative process that sometimes become key bargaining chips in difficult negotiations. If House and Senate conferees reach a stalemate, they may seek assistance from their leaders, in part because party leadership is often in a better position to judge what compromise the Chamber as a whole might accept. The Speaker might also be called upon to mediate policy disputes between Representatives and Senators of the same party.²³

CONFERENCE COMMITTEES

Forging relationships with Senate leaders is only one avenue of bicameral coordination the Speaker pursues. After a major piece of legislation passes both Chambers, the House and Senate usually resolve their disagreements over the legislation in a conference committee. Traditionally, the Speaker never appoints himself to a conference committee, but this norm has not diminished his role in the crucial final negotiations on the major pieces of legislation in a Congress. In addition to his informal role in bicameral negotiations, the Speaker chooses the Members who will represent the position of the House in conference.

The selection of managers has clear implications on the content of a conference committee report and, in fact, on the success of a conference committee. Service on a conference committee carries with it the potential for enormous influence in the version of the legislation that will most likely become law. Conference committees report, at a time of their choosing, agreements that cannot be amended. Furthermore, despite

¹⁸Smith, “Forces of Change in Senate Party Leadership,” *Congress Reconsidered*, 5th ed., p. 273.

¹⁹Barbara Sinclair, *Legislators, Leaders, and Lawmaking* (Baltimore, MD: Johns Hopkins University Press, 1995), p. 83.

²⁰Sinclair, “Party Leaders and the New Legislative Process,” *Congress Reconsidered*, 6th ed., p. 236.

²¹Emily Pierce, “What’s Driving: This Week’s Agenda,” *Roll Call*, Sept. 2, 2003, available from LexisNexis (database online), accessed May 1, 2004; Tim Curran, “Leaders Consider Election Reform Strategy,” *Roll Call*, March 7, 1994, available from LexisNexis (database online), accessed May 1, 2004.

²²Kravitz, “Relations Between the Senate and the House of Representatives: The Party Leadership,” *Policymaking Role of Leadership in*

the Senate: A Compilation of Papers Prepared for the Commission on the Operation of the Senate, p. 131.

²³Emily Pierce, “Tax Conference Getting Parental Supervision,” *Roll Call*, May 22, 2003, available from LexisNexis (database online), accessed May 1, 2004.

some restrictions placed on conference committee reports by Chamber rules and precedents, conference reports sometimes include provisions not previously considered by either Chamber. In other words, provisions of law are sometimes drafted within a conference committee.

The Speaker takes care in selecting Representatives to serve on conference because their policy positions and personalities can affect the outcome of the conference committee. Members who feel strongly that the House version is the best policy solution will likely be less willing to compromise with the Senate. Also, some Members are more skilled at the arts of negotiation than others. Most of the time, conferees come from the standing committees with jurisdiction over the bill, and sometimes past interactions between House and Senate members of committees can influence the bargaining sessions. Some Members have built up trust or reputations for fairness among them. The Speaker might take these factors into account when choosing conferees.

The Speaker has appointed House managers since the First Congress, although this authority was not specifically codified in House rules until 1890.²⁴ Even when the House stripped the Speaker of the power to appoint standing committees in 1911, it preserved the right of the Speaker to appoint conferees. Rulings in the early 20th century confirmed the authority of the Speaker to determine how many House conferees will be sent to negotiate with the Senate conferees. In 1913, a Representative made a motion to instruct the Speaker to appoint seven conferees. Another Member raised a point of order against the motion, arguing that it was entirely within the Speaker's discretion to determine the size of the conference delegation. Speaker James "Champ" Clark (D-MO; 1911-1919) agreed, sustaining the point of order and appointing three conferees.²⁵ The ruling was cemented in 1932 when Speaker John Garner (D-TX; 1931-1933), in response to a parliamentary inquiry, replied that "you can

not direct the Speaker as to the number or the manner in which conferees shall be appointed."²⁶

To be sure, the rules and precedents have long granted the Speaker wide authority in selecting members of conference committees. The discretion exercised by the Speaker in appointing managers to conference, however, has varied over time. Since the 1880s the Speaker has generally appointed members from the standing committee of jurisdiction.²⁷ Conferees, again by long-standing tradition, also represent the major partisan divisions of a Congress. The selection of conferees is sometimes described as a consultative process between the committee chair and ranking member, who then pass their recommendations on to the Speaker.²⁸ The Speaker need not simply follow the recommendations of the committee leaders, although he often does.

Until the second decade of the 20th century, the Speaker generally followed norms of conference appointment that seem to have limited his discretion in the selection of conferees. Nearly all House conference committee delegations were composed of three Representatives, usually the committee chair, the ranking member, and another majority party member of the committee of jurisdiction. Variation from the norm of appointing three senior members of the standing committee of jurisdiction was unusual, and in some cases controversial. Nevertheless, at times Speakers did appoint more than three conferees, or members who did not serve on the committee of jurisdiction, in order to create a delegation that could better represent the policy position of the House majority.

In 1900, for example, Speaker David Henderson (R-IA; 1899-1903) faced a situation where members from the committee of jurisdiction appeared to be poor representatives of the House position. The House had voted to instruct the conferees on the naval appropriation bill not to

²⁴The 1890 rule was omitted in the following two Congresses, when party control of the House changed, and restored in 1895. Neither the adoption nor omission of the rule affected House practice (Asher Hinds, *Hinds Precedents of the House of Representatives*, vol. IV, § 4470 (Washington: GPO, 1907), pp. 896-897)

²⁵*Congressional Record*, 63d Cong., 1st sess., vol. 56, Dec. 20, 1913, p. 1316. Cited in Clarence Cannon, *Cannon's Precedents of the House of Representatives*, vol. VIII, § 3221 (Washington: GPO, 1936), p. 716.

²⁶*Congressional Record*, 72d Cong., 1st sess., vol. 75, June 24, 1932, p. 13879. Cited in Cannon, *Cannon's Precedents of the House of Representatives*, vol. VIII, § 3220, p. 716.

²⁷Elizabeth Rybicki, "Resolving Bicameral Differences in Congress," Paper presented at the 2003 Annual Meeting of the American Political Science Association, p. 19.

²⁸Lawrence D. Longley and Walter J. Oleszek, *Bicameral Politics: Conference Committees in Congress* (New Haven, CT: Yale University Press, 1989), pp. 178-181; *Resolving Legislative Differences in Congress: Conference Committees and Amendments Between the Houses*, by Stanley Bach, CRS Report 98-696.

include a specific provision in the conference report. The Speaker, following the norm, had appointed three members from the committee of jurisdiction to represent the House in conference. The conferees met with the Senate conferees, and then they presented to the House a report that included the language they had been instructed to omit. The House conferees claimed that the Senate conferees insisted on the provision. The House rejected the report and asked the Senate for a further conference. The Speaker, in what has been perceived as an instance of “discipline by the House of its conferees” appointed a new delegation to represent the House in these negotiations.²⁹ None of these members served on the committee of jurisdiction, and the Speaker’s announcement of the new conferees led to “a buzz of surprised comment.”³⁰ The new conferees, however, could no more convince the Senate to take the House position on the contested provision than the original conferees, and the House eventually yielded to the position of the Senate.

In another example, Speaker Joseph Cannon (R-IL; 1903–1911) discarded the generally well-followed appointment norms in the hopes of influencing the conference committee outcome on the 1909 tariff bill.³¹ Cannon selected nine members from the committee of jurisdiction, but he did not follow the norm of appointing more senior members before junior members. Cannon explained that he selected conferees in order to assure that the House was well represented geographically; indeed, he chose three members from the East, three from the West, and three from the South. According to press reports at the time, however, these appointments also happened to tilt the conference committee in a particular policy direction. “The fact is not overlooked,” the *Washington Post* reported, “that by this arrangement Speaker Cannon has been able to eliminate from consideration on the conference committee . . . the most aggressive and persistent fighter for the free-war-material policy.”³²

While Cannon’s decision to appoint nine conferees to the 1909 Tariff Conference was met with some disapproval, critics noted that the appointment of more than three conferees, especially on major legislation, was not unprecedented. Indeed, starting in the 1880s the Speaker occasionally appointed larger conference delegations to consider the most important policy questions of the day. In 1883, Speaker J. Warren Kiefer (R-OH; 1881–1883) appointed five managers to a conference committee on a highly controversial tariff bill.³³ Speaker Reed appointed eight conferees to consider a tariff bill in 1897, and Speaker Cannon appointed five Representatives to consider a Philippine Islands measure in 1905.

Over the course of the 20th century, the Speaker began to appoint larger delegations to conference. By the thirties, the average size of a House delegation had risen to five members.³⁴ The Speaker continued to appoint just three Representatives to some conference committees, but generally the smaller delegations considered measures that were important to fewer Members. The average size of House delegations increased gradually throughout the forties and fifties (Figure 1). While most contained 5 or fewer members, the delegations on the major appropriation bills, for example, often consisted of 10 or more representatives.

Anecdotal evidence suggests that past Speakers have, at least on occasion, taken advantage of the discretion granted to them by House rules to appoint conference delegations to serve the policy or political goals of their party. Such qualitative accounts cannot answer the questions of how often and under what conditions the Speaker is likely to diverge from committee recommendations or appointment norms, and there is no attempt to answer those questions here.³⁵ Instead,

²⁹ *Congressional Record*, 47th Cong., 2d sess., vol. 14, Feb. 27, 1883, p. 3356.

³⁰ Cannon, *Cannon’s Precedents of the House of Representatives*, vol. VIII, § 3221, p. 716.

³¹ Political scientists have recently attempted to assess more precisely the influence of the Speaker in conference committee appointments in the modern era. See, for example, Jeff Lazarus and Nathan W. Monroe, “The Speaker’s Discretion: Conference Committee Appointments from the 96th–104th Congress,” Paper presented at the 2003 Annual Meeting of the Midwest Political Science Association; Jeff Lazarus and Nathan W. Monroe, “The Speaker’s Discretion: Conference Committee Appointments from the 97th–106th Congress,” Paper presented at the 2003 Annual Meeting of the American Political Science Association; Jamie L. Carson and Ryan J. Vander Wielen,

²⁹ Ada C. McCown, *The Congressional Conference Committee* (New York: AMS Press, Inc., 1967), p. 153.

³⁰ “Contest of the Two Houses,” *New York Times*, June 7, 1900, p. 2.

³¹ DeAlva Stanwood Alexander, *History and Procedure of the House of Representatives* (New York: Burt Franklin, 1916), p. 228.

³² “Cannon Selects Nine,” *Washington Post*, July 10, 1909, p. 4.

the discussion below simply aims to demonstrate that, in the last 30 years, institutional changes and new practices have increased the potential for

the Speaker to exercise discretion in the selection of House managers.

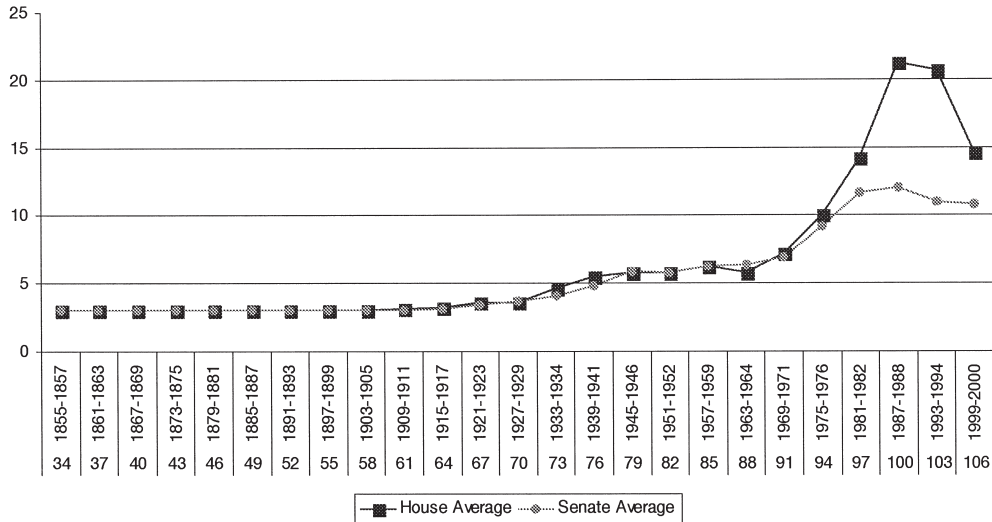


Figure I.—Average Size of House and Senate Conference Delegations, Selected Congresses, 1855–2000.

INCREASED DISCRETION OF THE SPEAKER IN THE POST-REFORM ERA

The major committee reforms of the seventies weakened the norm of appointing senior committee members to conference committee, and, as a result, strengthened the Speaker’s ability to shape conference committee membership. The House modified the standing rule granting the Speaker the authority to appoint conferees twice in that decade.³⁶ In 1975, the House amended the rule to direct the Speaker to appoint conferees who “generally supported the House position as determined by the Speaker.”³⁷ In 1977, the rule was modified again, this time to direct the Speaker to appoint Representatives who were “the principal proponents of the major provisions of the bill or resolution.”³⁸ The new language,

according to Majority Leader James Wright (D-TX), would encourage the Speaker to “consider appointing sponsors of major successful amendments which have been adopted on the floor of the House.”³⁹ In both instances, the aim of the reformers was to increase the influence of rank-and-file members in the crucial conference committee stage of the legislative process. The Speaker, as leader of the majority party, was expected to appoint members who represented the position of the House.

Neither of these rules changes had as significant an impact on the role of the Speaker in conferee appointment, however, as a 1975 rule granting the Speaker the authority to refer bills to more than one standing committee. Multiple referral transformed the composition of conference committees and increased the discretion of the

“Legislative Politics in a Bicameral System: Strategic Conferee Appointments in the U.S. Congress,” Paper presented at the 2002 Annual Meeting of the Northeastern Political Science Association.

³⁶ See House Rule I, clause 11 for the full guidelines the Speaker is expected to follow in the selection of conferees during the 108th Congress.

³⁷ *Congressional Record*, 93d Cong., 1st sess., vol. 119, Oct. 8, 1974, p. 34470.

³⁸ *Congressional Record*, 95th Cong., 1st sess., vol. 123, Jan. 4, 1977, p. 53.

³⁹ *Congressional Record*, 95th Cong., 1st sess., vol. 123, Jan. 4, 1977, p. 55.

Speaker in the selection of conferees.⁴⁰ When multiple committees consider a bill, the Speaker must decide how the various committees should be represented on the conference committee. Instead of taking the recommendations of a single chair, the Speaker may have to work with and coordinate among several committee chairs and their requests for representation on a conference committee. If disputes arise among committee chairs, they often call on party leadership to resolve the policy conflicts.

The new referral practices also make it more likely that the Speaker will limit the negotiating authority of a conferee. The Speaker has the ability to appoint what are sometimes called "limited purpose" conferees, or members appointed to consider only selected matters in disagreement with the Senate. If only a portion of a measure falls under the jurisdiction of a standing committee, for example, the Speaker may appoint conferees from that committee only for the purposes of considering those matters within their jurisdiction. Prior to the seventies, the Speaker rarely appointed limited purpose conferees, although he did so under certain circumstances. In 1950, for example, the general appropriation bills were combined into a single omnibus bill, and Speaker Rayburn appointed a unique set of managers (corresponding with the Appropriations subcommittees) to negotiate over each chapter of the omnibus bill.⁴¹

After the Speaker was given the authority to refer bills to more than one committee, he also began to appoint limited purpose conferees more often. From the 91st through the 94th Congress (1969–1976), the Speaker appointed limited purpose conferees on only three bills. In contrast, in the four Congresses (1977–1984) following the emergence of multiple referral, the Speaker set limited authority for conferees on 61 bills, or an average of 15 measures per Congress. At the start of the 102d Congress (1991–1992), Speaker Thomas Foley (D-WA; 1989–1995) announced that he

intended to simplify the appointment of conferees,⁴² but the appointment of complex conference delegations has continued to the present day. In the 107th Congress (2001–2002), the Speaker appointed limited purpose conferees on 10 out of the 37 measures the Chambers agreed to send to conference.

The option to appoint a conferee for a single purpose can be an important tool of the Speaker. It allows the Speaker to name Representatives with the most knowledge about portions of legislation as negotiators, without granting them influence over the entire compromise package. If a Member best represents the House or the party on only one element of the legislation, the Speaker can limit his or her involvement in conference negotiations to that element.

Since the reforms of the seventies, the norm of the small conference delegation has disappeared, giving the Speaker more flexibility to determine the size of the House delegation. In the last 30 years, the Speaker has appointed more Representatives to conference committees than he did in earlier eras (Figure 1). In the 94th Congress (1975–1976), for example, the average size of a House delegation was 10 Members, and 98 percent of all conference committees had delegations larger than 5 Members. The size of conference committees continued to rise throughout the eighties and nineties. To some extent, the average number of delegates is driven upward by a few mega-conferences each Congress. In the 100th Congress (1987–1988), for example, the Speaker appointed 155 delegates to the conference on the omnibus trade bill.⁴³ Yet even excluding the huge conferences, the average size of both House and Senate delegations grew in the second half of the 20th century.

While the historical evidence suggests that the Speaker has long taken advantage of the power to appoint conferees, since the seventies the Speaker has had a greater capacity to exercise discretion over the composition of the House delegation. The Speaker's ability to use conference assignments as a mechanism to influence conference outcomes was rather limited, both by the

⁴⁰ Garry Young and Joseph Cooper, "Multiple Referral and the Transformation of House Decision Making," *Congress Reconsidered*, 5th ed., p. 226; Walter J. Oleszek, "House-Senate Relations: A Perspective on Bicameralism," *The Postreform Congress*, p. 205.

⁴¹ *Constitution, Jefferson's Manual, and Rules of the House of Representatives*, H. Doc. 107–284, 107th Cong., 2d sess. (Washington: GPO), p. 284; *Congressional Record*, 81st Cong., 2d sess., vol. 96, Aug. 7, 1950, pp. 11894–11895.

⁴² *Congressional Record*, 102d Cong., 1st sess., vol. 137, Jan. 3, 1991, p. H31.

⁴³ Longley and Oleszek, *Bicameral Politics: Conference Committees in Congress*, p. 67.

size of the conference and the norm of appointing the two party leaders from the committee. In the modern Congress, the rules and practices leave the Speaker with more authority over conference composition. The most recent rules change in the 103d Congress (1993–1994) granted the Speaker the authority to add, or remove, conferees after the initial appointment.⁴⁴ Regardless of how often the Speaker actually exercises this power, the rules change could potentially increase his influence over conference committees. Conferees are aware that the Speaker can remove them from the committee or add enough other Members to the conference to ensure a majority will sign the conference report.

CONCLUSION

Over the past century, the Speaker has helped transform policy proposals into law by working informally with Senate leadership and by applying his formal conference appointment powers to further the goals of a majority of the House. The Speaker's role in bicameral coordination in the modern era is particularly challenging. The equal distribution of power in the Senate, one result of the seventies reforms, makes that body dif-

ficult to lead. The Speaker must coordinate not just with Senate party and committee leaders, but with other Senators, who, in the modern era, are more likely to be interested in a broad array of issues and are more likely to exercise their individual prerogatives afforded under the rules of the Senate.

The modern Speaker also has greater responsibilities in the appointment of House conferees. The advent of multiple referral and other rules changes have left the Speaker with the ability to determine not just who will serve as conferees, but how many will serve, what committees they will represent, and what portions of the legislation they will consider. The most recent rules change also allows the Speaker to add or remove conferees from the committee during the negotiations.

The changes in rules and practices that occurred three decades ago continue to shape the role of the Speaker in bicameral relations. It remains to be seen whether the duties of the Speaker in the two principal devices of bicameral coordination, leadership cooperation and conference committees, will continue to grow. It seems likely that the Speaker's role in bicameral relations will vary, as it has in the past, with changes in the membership and institutions of Congress.

⁴⁴ *Congressional Record*, 103d Cong., 1st sess., vol. 139, Jan. 5, 1993, p. 49.