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THE DISAPPEARING CONFERENCE COMMITTEE: THE USE OF PROCEDURES BY MINORITY COALITIONS TO PREVENT CONFERENCING

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Despite the importance of post-passage bargaining for legislative outcomes, little is known about the factors that lead to a conference committee. While the conventional wisdom claims conferences are used to resolve differences on important or complicated legislation, the theory developed here claims that coalition size and chamber rules are increasingly important determinants of conferencing. The empirical results demonstrate that post-passage bargaining and conferencing depend on the ability of the coalition within each chamber to overcome procedural hurdles. This has important implications for post-passage bargaining in an age of narrow, partisan coalitions. While the chambers may prefer conferencing to resolve their differences, minority coalitions are now willing to block the motions necessary to conference, forcing amendment trading on many bills.

President Obama and the congressional Democrats repeatedly called the health care reform bills passed by the 111th Congress the most significant domestic legislation in decades. And, despite the assertions of the media in the days leading up to final passage in the Senate, the leadership from both chambers decided almost immediately to bypass a conference committee because, the Democrats claimed, using a conference committee would give Republicans additional opportunities to slow down the bill's progress.¹ As further evidence of the congressional Democrats' hesitance to use a conference, later in the process, after the House accepted the Senate's version of the bill, the amendment trading process was used to pass the reconciliation bill of "fixes."

Conference committees are among the areas of congressional action about which scholars know the least (Ferejohn 1975, Longley and Oleszek 1989), a

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theoretical deficiency that has substantively important implications for our understanding of policy outcomes. Every bill passed in different forms by the chambers must be reconciled if it is to be sent to the president.

The conventional wisdom claims conferences are used primarily for important or complicated legislation. In the modern Congress, this reasoning is problematic because conference use by the chambers has declined substantially for unknown reasons. If the explanation that legislative importance causes conferencing is true, then variation in the frequency of conference committees can only be explained by a complementary change in the number of important bills passed by both the House and Senate. But as the role of the conference committee changes, a better explanation of their use is needed, particularly given the increase in party differences within Congress (Poole and Rosenthal 1997, Theriault 2008)—a factor that seems to be affecting the frequency of conference committees.

This article develops a theory of conference use which is not based on the importance of legislation, but instead on the ability of each chamber's majority coalition to engage in post-passage bargaining and on the constraining effect of each chamber's rules. In recent years, minority coalitions are willing to exploit these rules to prevent conference committees. Conferences are an efficient and useful way of resolving differences, but they are also procedurally difficult. In many cases, amendment trading is simply an easier venue to use because the procedural hurdles are lower, especially in the Senate.

The results indicate that in the Senate, the fewer majority party members in the winning coalition, the less likely any post-passage bargaining becomes, and the less likely conferencing becomes. In the House, previous Congresses required large coalitions with bipartisan or majority party support to engage in post-passage bargaining. However, the House is becoming similar to the Senate in that the total number of members who support the bill does not affect post-passage bargaining, while the number of majority party members in the coalition is the critical factor for conferencing. These findings explain why the use of conferences as a post-passage resolution mechanism is now the exception rather than the rule.

The theory and empirical results have two implications. First, the institutional rules of both chambers have a significant effect on the post-passage bargaining process. Second, the use of conferences is changing because the ideological composition of members within each chamber is changing. Increased polarization and intractability by minority coalitions are making it harder to use conferences and may be making it harder for the majority coalitions within each chamber to resolve their differences. Importantly, this article demonstrates how the growing divide between liberal and conservative members of Congress has an effect on policy outcomes.

CONFERENCES AND INTERCHAMBER DISAGREEMENT

The post-passage resolution process has been neglected in part because researchers cannot observe the horse-trading of different provisions by members of Congress,

nor are they privy to the conversations between chamber leaders or other important members that take place leading up to the post-passage bargaining process.² Despite the difficulty of studying post-passage bargaining, an increasing interest in bicameralism has led to new examinations of the importance and role of conference committees. This new research is moving away from the “who wins” question (Fenno 1966; Ferejohn 1975; Ortega and McQuillan 1996; Strom and Rundquist 1977; Volger 1970) and instead focuses on the role of conference committees as a way for conflicting chambers to engage in noncooperative bargaining with the purpose of resolving policy conflicts (Tsebelis and Money 1997). In this framework, the House and Senate rely on their conferees, who are almost always members from the relevant standing committees (Sinclair 1983, Smith 1988), to fight for the chamber or party position (Lazarus and Monroe 2007, McQuillan and Ortega 1992, Oleszek 1996). The view of post-passage bargaining as a non-cooperative process is consistent with the intentions of the framers who believed a bicameral legislature would generate increased policy conflict and serve their goal of creating policy stability (Hammond and Miller 1987). As the 111th Congress demonstrated, even when the chambers are ideologically similar, there is no theoretical reason to expect them to have the same preferences (Tsebelis and Money 1997).

Conferences provide an arena where delegates from each chamber are relatively free from limitations—the only formal constraint conferees face is that they may not change provisions agreed to by both chambers in the original bills, though they must be careful to satisfy their leadership, relevant committee members, and a majority of members in their chamber. As Oleszek (2007) points out, conferences are used to reconcile differences on important bills because they do not suffer from some of the limitations of the other post-passage resolution mechanism, amendment trading. Conferences allow the most knowledgeable members on a policy issue to negotiate over many issues at once and free the chamber to take up other business.³

Amendment trading, on the other hand, requires each chamber to sequentially pass floor amendments which bring each chamber’s version of the bill one step closer to the other chamber’s version.⁴ The exchange of amendments are usually coordinated by the leadership from both chambers or the committee members in charge of the bill though any amendment proposed can itself be amended in accordance with the rules of the chamber. This may make it a riskier proposition for those who support the bill because there is no take-it-or-leave-it offer. Most observers consider the amendment trading process as too blunt a tool to resolve differences on complex legislation.

The chambers may avoid post-passage bargaining altogether by passing the other chamber’s bill without amendment⁵ though this becomes more difficult as the number of provisions or dimensions subject to within-chamber bargaining increases. In the House, the ability to control or limit amendments gives the majority party more control over the bill, but in the Senate, the lack of a germaneness requirement and Rules Committee make it much easier for a winning coalition to form on any particular amendment, leading to changes to the bill (Smith 1989b; Smith and Flathman 1989). Given the advantages conferences have in reconciling

legislation, most scholars accept the idea that difficult legislation is usually resolved through conferences (see for example, Lazarus and Monroe (2007), Longley and Oleszek (1989), Oleszek (2007)). However, some recent high profile (and complicated) bills have not gone to conference. For example, in addition to the legislation already mentioned, comprehensive energy reform passed by the 110th Congress was reconciled using amendment trading. Democrats blamed Republican Senators for blocking conferee appointments, but there was evidence that Democrats preferred not to use a conference because of the difficulty the House leadership had in holding together a coalition.⁶

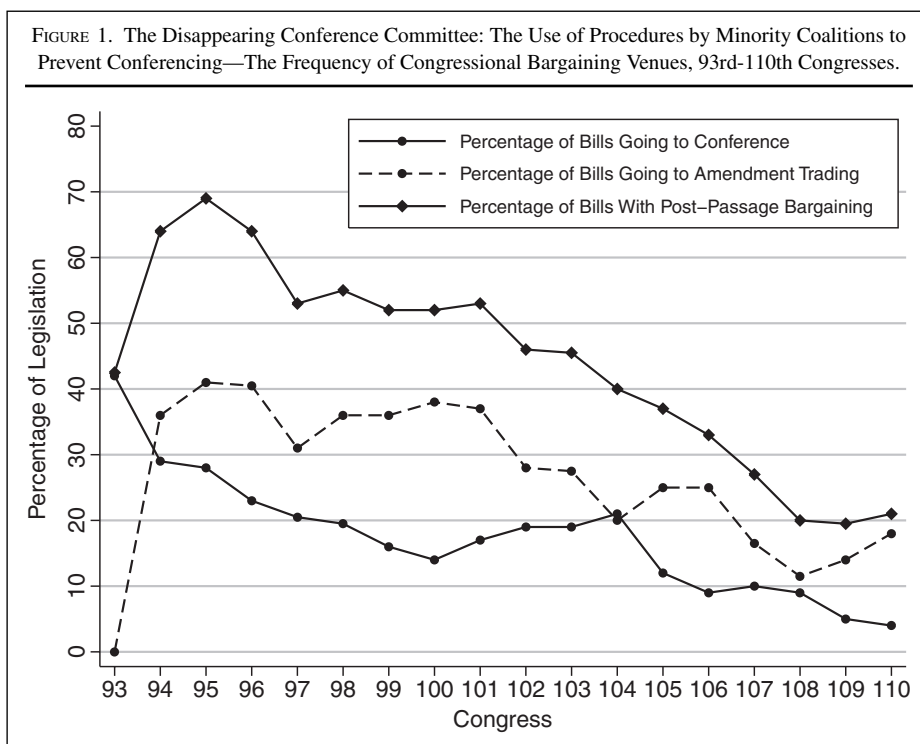
Even outright acceptance of another chamber's bill occurs for complex or politically divisive legislation.⁷ For example, the August 2009 extension to the "Cash-for-Clunkers" bill passed easily in the House, and the Senate seemed prepared to pass an identical bill, but some Senators began voicing concerns about the lack of environmental restrictions on new cars eligible for the government reimbursement.⁸ On final passage, there were 60 "yeas," the minimum needed to overcome a filibuster.

Table 1 shows post-passage actions for all noncommemorative, public bills passed by both chambers between the 93rd and 110th Congresses.⁹ As the table shows, most bills are not bargained on after being passed by both chambers. In these cases, legislation passes one chamber (about 68% of bills originate from the House), and is then sent to the other which passes it without amendment. Amendment trading is a more common post-passage bargaining venue for legislation which becomes law, but not for bills which fail. In general, when both chambers pass a version of a bill, the legislation becomes law about 94% of the time.

Figure 1 shows post-passage bargaining, conferencing, and amendment trading trends over time. The solid black line with diamond symbols shows the percentage of all bills passed by both chambers that went to one of the two post-passage bargaining venues, the dashed line is the percentage of post-passage bargained bills where the chambers used amendment trading, and the solid black line with circle symbols is the percentage of post-passage bargained bills reconciled in conference.

TABLE 1. The Disappearing Conference Committee: The Use of Procedures by Minority Coalitions to Prevent Conferencing—The Frequency of Post-Passage Action on Bills Passed by Both Chambers, 93rd–110th Congresses

Type	No Post-Passage Bargaining	Post-Passage Bargaining	Conference	Amend. Trading	Total
Public Law	3,805 (56.49%)	2,931 (43.51%)	1,075 (15.96%)	2,124 (31.53%)	6,736 (94.12%)
Bills That Did Not Become Law	187 (44.42%)	234 (55.58%)	276 (65.56%)	104 (24.7%)	421 (5.88%)
Total	3,992 (55.78%)	3,165 (44.22%)	1,351 (17.05%)	2,228 (31.13%)	7,157 (100%)



In general, the chambers are avoiding post-passage bargaining more often in recent Congresses. Amendment trading is almost always more commonly used than conferencing, but both have declined in recent years. In recent Congresses, conferences have become very rare. For example, in the 93rd Congress, there were 143 conferences, while in the 110th, only 16 bills in the dataset were reconciled using conference committees.

A THEORY OF POST-PASSAGE BARGAINING AND CONFERENCING

Negotiations between the House and Senate are conducted by the winning coalition within each chamber, usually made up of a majority of the majority party (though occasionally the majority party is “rolled” (Cox and McCubbins 2005)). Parties, as stable, durable majorities, coordinate members, solve collective action problems between members, and try to pass legislation which benefits the party (Aldrich 1995, Rohde 1991).

Legislation passed by the coalition in one chamber acts as an offer or proposal to the other, and on any given bill, the two winning coalitions only engage in post-passage bargaining if both coalitions agree on how to change policy but disagree on exactly what the new policy should be. The disagreement on the specifics of the new policy ensures an offer will be rejected, but agreement on the type of change

(i.e. more liberal or conservative) means both chambers will ultimately be better off from reaching a compromise than they would be with the status quo.¹⁰

The House and Senate will not bargain if they disagree on the type of policy that should be implemented relative to the old status quo. If one chamber prefers to make the new policy more conservative, and the other chamber prefers a more liberal policy, there is no possible compromise the chambers can agree on which makes both better off relative to the status quo. In most cases, this disagreement is unobservable. Either legislation on the public agenda is ignored by both chambers, or one chamber passes legislation and the other chamber refuses to act. While these situations are common, they fall outside of the scope of the theory and, for measurement purposes, any legislation which is not passed by both chambers is not included in the dataset. Legislation is only eligible for the post-passage bargaining process if it is passed by both chambers as these are bills where agreement by the chambers on the new policy direction is most likely. It may also rarely be the case that both chambers act on a policy agenda item, but because there is no possible compromise, the chambers will be unable to reconcile their differences.

When will post-passage bargaining occur and which bargaining venue will be observed? The best case scenario for the coalitions in each of the chambers is to agree on legislation during the process of initial passage within the chamber. When this occurs the bargain is termed “efficient” (Muthoo 2000) because neither party must engage in costly resolution activities. The more bargaining required by the chambers to reach a satisfactory solution, the less efficient the bargain. As additional amounts of time and energy are spent reaching an agreement, an increasing amount of costs are subtracted from each chamber’s benefit derived from the agreement eventually reached.¹¹

When a majority coalition decides to engage in post-passage bargaining, it must be cognizant of the preferences of its members and the coalition. One of the reasons post-passage bargaining is inefficient is because it complicates the coalition building process. Legislators may have a difficult time initially supporting the bill, and they may not approve of changes made to the legislation as a result of the bicameral compromise. Further, any changes made to the legislation during the post-passage bargaining process may encourage members to leave the coalition. This is more likely when the coalition contains members with preferences highly divergent from the median coalition member. As the preference diversity of the coalition increases, the more difficult it is to hold the coalition together and the more costly it becomes to buy-off legislators (Groseclose 1996).

The loss of members becomes increasingly destructive to the coalition when it is small. As Groseclose and Snyder (1996) show, buying off larger coalitions is cheaper than buying off a minimal winning coalition because the “first vote buyer can decrease the amount of the bribe paid to each member of his or her original coalition, while keeping constant the amount the second vote buyer must pay to invade successfully.” With each defection, the minority coalition can decrease the

amount it must spend to encourage the next defector to leave, and as the size of the winning coalition shrinks, the more valuable each of these members becomes to the majority coalition. This does not include other factors that play a role in coalition maintenance like the negative psychological effects which contribute to coalition breakdown when defection momentum builds.

In short, majority coalitions that are unstable due to disparate preferences are more willing to accept the other chamber's proposed policy and prefer not to engage in post-passage bargaining in either venue due to the complications it introduces. From the coalition's perspective, there is often too much risk and too many ways in which a minority can exploit the resolution process to defeat the bill. Importantly though, this relationship manifests itself differently in each of the two chambers due to the rules and procedures of each. Because avoiding post-passage bargaining requires acceptance of the other chamber's bill, coalition constraints do not affect the probability of post-passage bargaining or the type of bargaining, in each of the chambers in the same way.

Institutional Rules and Post-Passage Bargaining

The expectation is, all else equal, that large coalitions are more willing to engage in post-passage bargaining than small coalitions are. This requires that small coalitions, if they are to avoid post-passage bargaining, prevent a bill from being amended on the floor. Doing this is easier in the House than in the Senate because of the House's institutional limitations on the minority's ability to amend.

In the House, there are three ways a small majority is able to limit amendments to a bill: the germaneness rule, a rule from the Rules Committee, and by marshalling support from members of the majority party who support the bill to block troublesome amendments. The germaneness rule is not sensitive to coalition size, while a rule from the Rules Committee requires only a simple majority. Therefore, even if the House majority coalition is small, it can use its institutional power to head off difficult amendments and accept the bill without amendment. If small majorities are able to block amendments and accept legislation, then large majorities are more likely to use post-passage bargaining because concerns about the coalition breaking down during the post-passage bargaining process are reduced. Therefore,

Hypothesis 1: In the House, as the size of the winning coalition increases, the more likely the chambers are to engage in post-passage bargaining, *ceteris paribus*.

The hypothesized relationship partly depends on members of the majority coalition supporting restrictive rules. However, the recent increase in congressional polarization suggests some members of the House winning coalition, even if they support the bill, may not be willing to support the rules necessary to limit amendments and promote acceptance, or to engage in "strategic disagreement" (Rybicki 2003). As Theriault (2008) demonstrates, most of the votes which account for increasing polarization have occurred on procedural votes rather than on substantive

legislative issues. This suggests that in the House, while minority party members may vote in favor of the bill on final passage, votes by members of the majority party should also make the winning coalitions more stable. Therefore, independent of the effect of the absolute size of the coalition, the number of majority party members in the winning coalition should also have an effect on post-passage bargaining, and the effect should be more robust more recently.

Hypothesis 2: In the House, as the number of majority party members in the winning coalition increases in more recent Congresses, the more likely the chambers are to engage in post-passage bargaining, *ceteris paribus*.

The Senate has no institutional tools that allow the majority to prevent modifying amendments during the passage process and avoid post-passage bargaining when the winning coalition is tenuous. Of course, these are the situations in which the minority is most likely to offer popular amendments that force bargaining and increase the costs of final passage. The best a winning coalition in the Senate can do is to appeal to members of its party. By using inducements given to party members to “buy-off” members (Snyder and Groseclose 2000), a small majority coalition may be able to prevent changes to the bill and avoid the post-passage resolution process.¹² Of course, these inducements are only relevant to members of the majority party. Further, because the Senate requires 60 votes to proceed to a final passage vote, maintaining support from majority party members is even more crucial, as it minimizes the number of minority party members that must be integrated into the coalition. It may be the case that some minority party members will support post-passage bargaining and the motions necessary to use conferencing, but some will not; it is always better for the majority party to maximize the number of its own members in the winning coalition.

Hypothesis 3: In the Senate, as the number of majority party members in the winning coalition increases, the more likely the chambers are to engage in post-passage bargaining, *ceteris paribus*.

Like the House, this relationship should be exacerbated by increasing polarization and smaller winning coalitions increasingly made up of majority party members in recent Congresses.

Hypothesis 4: In the Senate, as the number of majority party members in the winning coalition increases in more recent Congresses, the more likely the chambers are to engage in post-passage bargaining, *ceteris paribus*.

To see how the theory and hypotheses work within Congress, consider the final passage votes on health care reform in 2010. In the Senate, Republicans proposed a number of amendments that were attractive to some Democrats. The Democratic leadership asked its members to reject them in order to avoid sending the bill back

to the House. The Senate Democrats had no institutional rules which allowed them to restrict the amendments being proposed, so their only recourse was to appeal to members of the party. The Democrats realized that additional votes in either chamber made passage a more difficult proposition. The Democrats used the power of the party to avoid most additional post-passage bargaining by not substantially amending the House reconciliation bill.¹³

Institutional Rules and Conferencing

Should a bill be amended in either the House or Senate, the chambers must then decide on whether to use the conference or amendment trading process. While private negotiations take place between the leadership and committee members in each chamber, I focus here on the formal procedures used to convene a conference or amendment trading. After passage, using a conference requires additional steps which differ in each chamber. The ability of the majority coalition within each of the chambers to overcome the procedural hurdles necessary for a conference will determine whether or not it is used. If the majority coalition is unable to meet the requirements to use a conference, both chambers will have to use amendment trading—a less efficient and more difficult process because no take-it-or-leave-it offer is made and because the chambers have to use valuable floor time to reconcile the legislation. Further, if one chamber is unable to receive approval for a conference from its members, both chambers will have to use amendment trading. Approval within each chamber is a necessary but insufficient condition for a conference. Both must agree or a conference will not occur.

In the House, going to conference is a relatively straightforward process. There are three possible ways a conference can occur once the bill is passed. A unanimous consent request can be made, a provision allowing for an automatic conference “hookup” with the Senate can be included in the bill’s rule, or the motion to use a conference can be debated for one hour after which a vote takes place (Oleszek 2007).

There is no added procedural difficulty for using a conference as opposed to amendment trading if post-passage bargaining occurs. Once enough members agree on the legislation and want to reconcile it with the other chamber, going to conference requires a simple majority vote, after an hour of debate, only if unanimous consent is not granted, nor an automatic conference be provided for in the bill’s rule. Put differently, if the coalition leadership believes it has enough members to engage in post-passage bargaining, it should usually prefer a conference because it requires no extra effort. Therefore, no relationship is expected between coalition size and conferencing.

The Senate has institutional rules that makes coalition size particularly relevant to conference committee occurrence. Going to conference in the Senate requires three different motions (usually combined into one): a motion to insist on its amendments or disagree with the House’s amendments, a motion to request a conference, and a motion to allow the majority leader to appoint conferees (Oleszek

2007). Each of these motions are debateable and can be filibustered if a minority chooses to be obstructionist. If invoking cloture is necessary on any of the motions, it becomes much more difficult to use a conference, and amendment trading becomes the preferred option. Even if the Senate has the votes to invoke cloture on each of the amendments and pass the bill, the “ripening” time required for a cloture amendment makes a conference more costly to the majority coalition.

While the Senate rarely holds a cloture and passage vote on these motions, they do present real roadblocks to conferencing, a perspective that is consistent with the perception of Members and their staff. A former Senate staffer told me that, “the minority views these motions as the last opportunity to kill a bill.” The motions to go to conference are usually part of a unanimous consent agreement or are packaged into the manager’s amendment. The same staffer told me that recently, putting a hold on the motion to allow the majority leader to appoint conferees has become a favored tool of a determined, obstructionist minority.

Like the relationship between post-passage bargaining and the size of the majority coalition, overcoming the constraints imposed by Senate procedures requires commitment from party members. Even members of the minority party who support the bill on final passage may refuse to join the majority party in its efforts to pass the necessary procedural motions to go to conference. Again, procedural votes are less likely to be supported by members of the minority, even if they support the bill (Theriault 2008). The motions necessary to go to conference are precisely these sorts of procedural votes on which minority party members are unlikely to join the majority. And because the minority party leadership sees the motions to go to conference as a way to defeat the legislation, one should expect minority party members to oppose the procedural motions.

Hypothesis 5: In the Senate, as the number of majority party members in the winning coalition increases, the more likely the chambers are to engage in conferencing, *ceteris paribus*.

And, because polarization has increased in recent years, the effect should be greater in more recent Congresses.

Hypothesis 6: In the Senate, as the number of majority party members in the winning coalition increases in more recent Congresses, the more likely the chambers are to engage in conferencing, *ceteris paribus*.

To summarize, larger majority coalitions in the House will increase the probability of post-passage bargaining but will have no effect on the bargaining venue used. Majority party support should also have an independent, positive effect on post-passage bargaining, especially in more recent Congresses. In the Senate, an increase in majority party support will increase the probability of post-passage bargaining and the probability of using a conference, and these effects should

be exacerbated by the recent increase in party divisions. The hypotheses are based on the rules required to engage in post-passage bargaining in general and in conferencing specifically. The ability of the House to limit changes to the bill makes it easier to accept legislation when the coalition is small, while the Senate lacks similar institutional tools and needs majority party members to limit changes to a proposed bill. The Senate's rules also require substantial majority party support to use a conference.

While I expect the importance of legislation to be a significant predictor of bargaining and conferencing, I have also claimed it is an incomplete explanation of post-passage bargaining. The above theory does not differentiate between important legislation and more mundane bills. The relationships are expected to hold even for legislation classified as important.

DATA AND METHODS

The sample of observations is all public, noncommemorative bills passed by both chambers in the 93rd through 110th Congresses for the House and the 95th through 110th Congresses for the Senate.¹⁴ As explained above, bills passed by only one chamber are not included in the dataset because they are not eligible for post-passage bargaining, and because legislation not passed by both chambers is an indication the chambers may lie on opposite sides of the status quo (making post-passage resolution impossible). While the ideal points of the chambers are unobservable, and some of these types of bills may be included in the dataset, their inclusion provides a harder test for the theory.

Post-passage bargaining and choosing the venue is a selection process. Any post-passage bargaining that occurred over a bill constitutes the selection, while the choice of the venue—conferencing or amendment trading—constitutes the outcome. Bills that went to conference are coded in the Congressional Bills dataset, but bills that went to amendment trading are not available in any dataset I am aware of. In addition, some bills, notably appropriation bills, were subject to both amendment trading and a conference. This occurs because appropriations conferees can file a “partial conference report,” where items disagreed on in conference are subject to amendment trading (Oleszek 2007). Other bills go to both venues, especially when the Senate adds provisions which violate the House's germaneness requirement. The mechanisms of mixing the two venues allows the House to adhere to its own rules while still being able to accept most of the compromise bill and reject the objectionable parts without having to reject the entire conference report (Oleszek 2007).¹⁵ Therefore, all bills were coded by the author for amendment trading using the online congressional resource THOMAS. Any action characterized by THOMAS as “resolving differences” after the passage of the bill by both chambers was coded as part of the amendment trading process, unless THOMAS characterized resolving differences as the appointment of conferees by both chambers or some other action directly related to a conference.

Additional data was taken from the Policy Agendas Project,¹⁶ Rohde's Roll Call Voting Data (Rohde 2004, Rohde 2010), the Congressional Bills Dataset (Adler and Wilkerson 2008)¹⁷ and Poole and Rosenthal's DW-Nominate scores (Poole and Rosenthal 2007). The final sample has 7,157 bills passed by both chambers from 1973–2008.

The key independent variables measuring coalition size for each chamber are the log of the proportion of "yea" votes on final passage (out of all votes cast), and the log of the proportion of all "yea" votes cast from the majority party.¹⁸ High values indicate instances in which all or most members of the majority supported the bill, while low values indicates instances in which support from the majority party was relatively low. The log of each variable was used because an increase in "yea" votes is more valuable at lower levels than at higher levels. For example, garnering the 60th vote in the Senate is more valuable than garnering the 90th vote. The vote totals are taken from final-passage roll call votes; bills which were passed by voice vote or through unanimous consent are not included in the empirical models.¹⁹

A number of other factors may affect whether the chambers engage in post-passage bargaining and whether a conference is used. I classify each of the variables as being a characteristic of the bill itself and varying at the bill-level, or a characteristic of the Congress which passed the bill and varying at the Congress-level.

Bill Characteristics

The Senate typically defers the writing of legislation to the House so most legislation first passes the House and is sent to the Senate as a House bill. Most House legislation is routine and passed by the Senate without amendment, so the expected relationship between a bill originating in the House and post-passage bargaining is negative. Whether the bill was introduced by a member of the standing committee to which the bill was referred is an important predictor of legislative success. Legislation submitted by a member of the relevant committee is more likely to be substantive in nature and more likely to be successful because committee members are expected to have more expertise on the issue (Krehbiel 1992). The relationship between this variable and post-passage bargaining and conferencing is expected to be positive. Whether or not a bill was referred to more than one committee is also included in the analysis. Multiple referrals have become increasingly common in the House (though not in the Senate) as more legislation overlaps committee jurisdictions. Importantly for bargaining, an increasing number of committees with jurisdiction over the bill creates a larger set of conferees from which the Speaker may choose to preserve the majority party's preferences (Lazarus and Monroe 2007). All else constant, this may make conferencing more attractive. The expected relationship for both bargaining and conferencing is expected to be positive. "Must pass" legislation like appropriations should be more likely to be bargained on, and as discussed above, more likely to go to a conference. Appropriations are among the most urgent legislation and failure to pass them results in an extreme status quo

(Adler and Wilkerson 2009). The final passage date of the chamber which acted last is included in the models. It has been noted that amendment trading tends to increase as the end of the session nears, so this variable should be negatively related to both the selection and outcome variables (Longley and Oleszek 1989).

A continuous variable measures how many lines the legislation received in Congressional Quarterly's discussion of the bill.²⁰ Most legislation is not mentioned in CQ; only very noteworthy or important legislation will have a value greater than zero. Approximately 33% of legislation is mentioned in CQ, and the mean number of lines for all legislation is 5.3 lines.

Congress Characteristics

Besides characteristics of an individual bill, it is also important to control for factors within a Congress which may affect the likelihood of any particular bill going to post-passage bargaining and conferencing. The partisan and institutional factors of a Congress may affect the productivity of Congress (Binder 1999, Binder 2003). Included among these variables are a dichotomous variable measuring divided government, where divided government is equal to 1 if either of the chambers are controlled by a party different from the president. Variables are also included for divided party chamber control (where divided control equals 1), and the ideology of the median member of both the House and Senate as measured by their DW-Nominate score. More conservative chambers should pass less ambitious legislation and should be less likely to post-passage bargain and conference. The model also includes the absolute value of the difference between the chambers' mean DW-Nominate score. An increase in these partisan variables should have a positive effect on post-passage bargaining because the chambers will more consistently have difficulty reconciling their differences during the initial passage process and should be more likely to engage in post-passage bargaining and conferencing. Finally, to control for the public's demand for new legislation, demand which could drive the chambers to work more diligently on reconciling their differences, Stimson's policy mood is included (Stimson 1999). Higher values of policy mood indicate a greater demand by the public for government action. Also included is a variable measuring which Congress passed the bill. A naive estimate of conferencing suggests the relationship should be negative because conferencing has become rarer in recent Congresses as shown by Figure 1. A list of the independent variables and their anticipated effects are shown in Table 2.

A Sartori selection model is used to estimate the effect of a fixed set of independent variables on both the selection and outcome equations (Sartori 2003). The same set of independent variables are used to model both equations because the decision to use post-passage bargaining and a particular venue is an optimal strategy made by rational actors nearly simultaneously (Sartori 2003).²¹ In the Sartori models used here, the base selection and outcome equations are:

$$Z_{1i} = \theta' + \gamma_i x_j \text{ and } Z_{2i} = \alpha' + \beta_i x_j \quad (1)$$

TABLE 2. The Disappearing Conference Committee: The Use of Procedures by Minority Coalitions to Prevent Conferencing—Independent Variables and Anticipated Effects

Variable	Anticipated Effect on Bargaining (Bargaining = 1)	Anticipated Effect on Venue (Conference = 1)
Coalition Characteristics		
Total Yeas (Logged) in the House (Hypotheses 1)	+	0
Majority Party Yeas (Logged) in the Senate (Hypothesis 3 and 5)	+	+
Majority Party Yeas \times Congress in the House (Hypotheses 2)	+	0
Majority Party Yeas \times Congress in the Senate (Hypotheses 4 and 6)	+	+
Bill Characteristics		
Chamber of Origin (Senate = 1)	-	-
Committee Member Sponsored	+	+
Multiple Referral	+	+
Lines in CQ	+	+
Passage Month	-	-
Appropriations Bill	+	+
Congress Characteristics		
Divided Government	+	+
DW-Nominate Distance	+	+
Between Chamber Medians		
Divided Chambers	+	+
Policy Mood	+	+
House Median DW-Nominate	-	-
Senate Median DW-Nominate	-	-

Where Z_{1i} and Z_{2i} are the observed values for the selection model, post-passage bargaining (where bargaining = 1), and the outcome model, conference committee or amendment trading (where conferencing = 1) for observation i .²² Each equation models unobserved variables Y_{1i} and Y_{2i} , a latent, continuous selection and outcome value for observation i . The other parameters are θ' , the constant for the selection model, α' , the constant for the outcome model, γ_i , a vector of covariates described above used in the selection equation, and β_i , the same vector of covariates used in the outcome equation.

THE EFFECT OF “YEA” VOTES AND MAJORITY PARTY “YEA” VOTES ON BARGAINING AND CONFERENCING

Table 3 shows three Sartori selection models—two for the House and one for the Senate.²³ The first model in the table includes the control variables described previously, the proportion of “yea” votes on final passage out of all votes cast, and the proportion of majority party “yea” votes on final passage out of all votes cast. The model also includes an interaction term where total “yea” votes are multiplied by

TABLE 3. The Disappearing Conference Committee: The Use of Procedures by Minority Coalitions to Prevent Conferencing—Sartori Model of Bargaining and Conferencing with Conferencing Costs

	Selection Model: Bargaining = 1		
	House	House	Senate
Coalition Characteristics			
Number of Total Years	1.02	-.403	.331
on Passage (Logged)	(.464)*	(.237)†	(.872)
Number of Majority Party Years	.743	1.14	1.00
on Passage (Logged)	(.295)*	(.485)*	(.399)*
Total Years × Congress	-.128	—	-.066
	(.036)*		(.08)
Majority Party Years × Congress	—	-.01	—
		(.043)	
Bill Characteristics			
Chamber of Origin (House = 1)	-.353	-.326	-.289
	(.122)*	(.122)*	(.148)*
Committee Member Sponsored	.19	.173	.13
	(.09)*	(.084)*	(.138)
Multiple Referral	-.234	-.197	-.416
	(.116)	(.115)†	(.174)*
Lines in CQ (Logged)	.176	.184	.101
	(.017)*	(.016)*	(.025)*
Passage Month	.004	.004	.033
	(.006)	(.006)	(.01)*
Appropriations Bill	.733	.776	.956
	(.135)*	(.133)*	(.157)*
Congress Characteristics			
Divided Government	.033	.046	-.362
	(.124)	(.12)	(.259)
DW-Nominate Distance	-.935	-1.1	-.303
Between Chamber Medians	(1.02)	(.875)	(1.82)
Divided Chambers	.291	.341	.753
	(.164)†	(.156)*	(.295)*
Policy Mood	-.024	-.02	-.062
	(.021)	(.02)	(.037)†
House Median DW-Nominate	-.935	-.889	-1.48
	(.431)*	(.43)*	(.839)*
Senate Median DW-Nominate	1.21	1.37	-2.2
	(.773)	(.73)†	(1.47)
Congress	-.043	-.028	.06
	(.018)*	(.03)	(.041)
Constant	2.43	2.15	3.7
	(1.12)*	(1.1)†	(1.92)†

(Continued on next page)

TABLE 3. The Disappearing Conference Committee: The Use of Procedures by Minority Coalitions to Prevent Conferencing—Sartori Model of Bargaining and Conferencing with Conferencing Costs.
(Continued)

	Outcome Model: Conferencing = 1		
	House	House	Senate
Coalition Characteristics			
Number of Total Years on Passage (Logged)	.965 (.547) [†]	-.89 (.235)*	-1.34 (.85)
Number of Majority Party Years on Passage (Logged)	-1.045 (.512)*	.21 (.657)	.803 (.413) [†]
Total Years (Logged) × Congress	-.161 (.042)*	-	.066 (.077)
Majority Party Years × Congress	-	-.086 (.066)	-
Bill Characteristics			
Chamber of Origin (House = 1)	-.447 (.162)*	-.468 (.163)*	-.086 (.132)
Committee Member Sponsored	.02 (.098)	-.008 (.09)	-.133 (.128)
Multiple Referral	-.214 (.122) [†]	-.175 (.122)	-.363 (.166)*
Lines in CQ (Logged)	.176 (.016)*	.184 (.015)*	.142 (.021)*
Passage Month	-.01 (.007)	-.009 (.006)	-.003 (.009)
Appropriations Bill	1.05 (.119)*	1.08 (.118)*	1.05 (.137)*
Congress Characteristics			
Divided Government	.003 (.13)	.037 (.128)	.147 (.225)
DW-Nominate Distance Between Chamber Medians	-.265 (1.067)	-.016 (.921)	-.102 (1.55)
Divided Chambers	.389 (.161)*	.389 (.153)*	.773 (.254)*
Policy Mood	.036 (.021)	.044 (.02)	-.049 (.033)
House Median DW-Nominate	.686 (.528)	.599 (.532)	1.02 (.732)
Senate Median DW-Nominate	-1.05 (.81)	-.652 (.77)	-5.52 (1.32)*
Congress	-.136 (.021)*	-.166 (.044)*	.032 (.035)
Constant	-1.9 (1.18)	-1.9 (1.11) [†]	2.11 (1.67)
(N)	1500	1500	688
(Log Likelihood)	-1162.35	-1170.77	-511.29
Wald χ^2 ; Prob > χ^2	433.69; 0.00	533.26; 0.00	151.82; 0.00

*p < .05, [†]p < .1

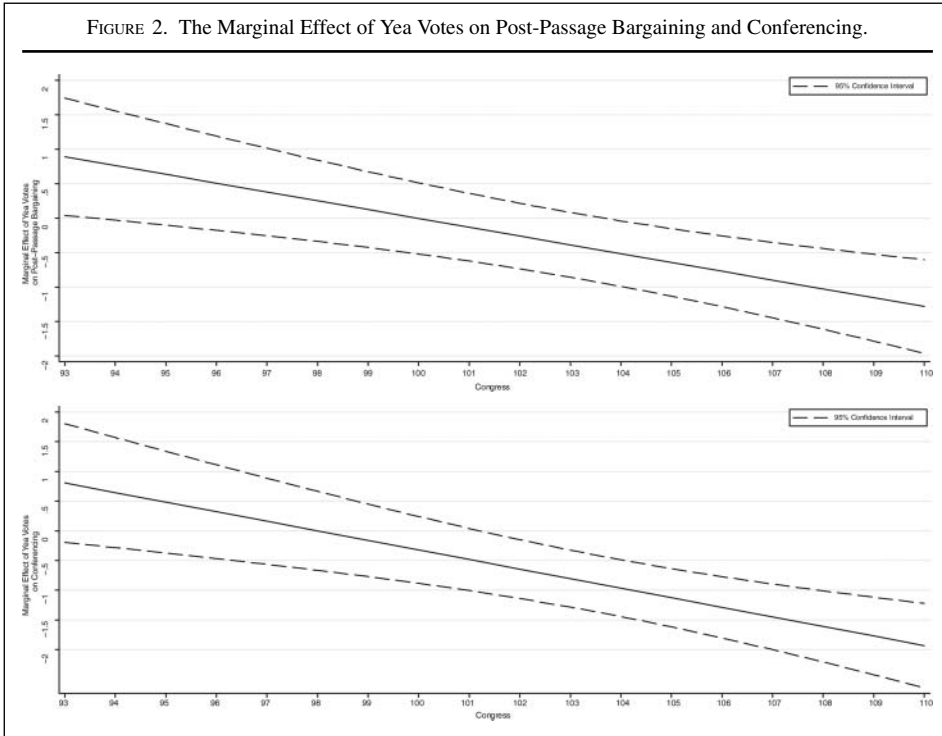
Congress. Hypotheses 1 suggests the size of the coalition, measured by the total number of “yea” votes on final passage will increase the probability of post-passage bargaining, while Hypothesis 2 claims there should be a similar effect for majority party votes in more recent Congresses because of increasing ideological and policy divergence between the parties. Both variables have a positive, statistically significant effect at the .05 level (two-tailed test). The interaction term of total “yeas” multiplied by Congress is significant and negative, suggesting the effect of total votes on post-passage bargaining has decreased in more recent Congresses.²⁴

The second model for the House includes an interaction term where the proportion of majority party “yea” votes out of all votes cast on final passage is interacted with Congress. The interaction term is not significant, while the effect of majority party yea votes is significant and substantively strong. The combined results from both models show that while total votes on final passage were a predictor of post-passage bargaining, increasing disagreement between the parties is making post-passage bargaining less a consensual process between the two parties, and one that is more dependent on having sufficient support from one’s party. As the interaction term demonstrates, the effect of total “yea” votes on post-passage bargaining is decreasing across Congresses.

The theory also predicts that an increase in total “yeas” and majority party “yeas” will have no effect on conferencing because of the rules of the House. After achieving passage, going to a conference in the House is a low-cost procedural action. The results in the outcome model, which measure the effect of a variable on conferencing given post-passage bargaining, generally support this. In the first model with the interaction term, the result is similar to the selection model where the effect of total “yea” votes on passage is reduced in more recent Congresses. In the second model, without the interaction term, the total number of “yeas” has a negative effect on conferencing. Interestingly, the number of majority party votes has a negative effect on the likelihood of conferencing in the first model. Clearly, in the House, more votes for a bill does not make it easier to use a conference.

To summarize the theory and results, post-passage bargaining and conferencing is most likely when the majority party is sufficiently unified to bear the costs of bargaining. Hypothesis 2, which states an increase in majority party votes on final passage will have an independent effect on post-passage bargaining, is supported by the evidence, and while Hypothesis 1 was true in previous Congresses, an increase in total “yea” votes no longer increases the probability of post-passage bargaining. Figure 2 shows the marginal effect of Congresses on total “yea” votes for post-passage bargaining and conferencing. By the 104th Congress, an increase in the size of the winning coalition actually has a negative effect on the probability of the chambers engaging in post-passage bargaining, and by the 102nd Congress, an increase in the size of the winning coalition has a negative effect on the probability of the chambers using a conference.

A number of bill characteristics have an important effect on post-passage bargaining and conferencing. The first two models for the House also demonstrate



the importance of bill complexity on post-passage bargaining and conferencing. In both models, the more complex a bill is, as measured by the number of article lines written in Congressional Quarterly, the more likely it is the chambers will engage in post-passage bargaining and use a conference committee. If a bill originates from the House, it is less likely to be bargained on, and less likely to go to a conference committee. Bills sponsored by a member of the reporting committee are slightly more likely to be bargained on, though this variable has no effect on the likelihood of conferencing. Finally, appropriations bills are much more likely than other bills to be bargained on after initial passage, and much more likely to go to a conference.

The variables measuring characteristics of the Congress perform fairly well in the two models. The effect of divided chamber control (when different parties control the House and Senate) is as expected. If the chambers are controlled by different parties, the more likely they are to use post-passage bargaining and conferencing to resolve their differences. Also note that post-passage bargaining and conferencing are less likely in more recent Congresses.

The median nominate scores for both chambers are included to measure the collective ideology of the House and Senate. The more conservative the House is, the less likely the chambers are to engage in post-passage bargaining, though neither the House nor Senate ideology has a statistically significant effect on conferencing.

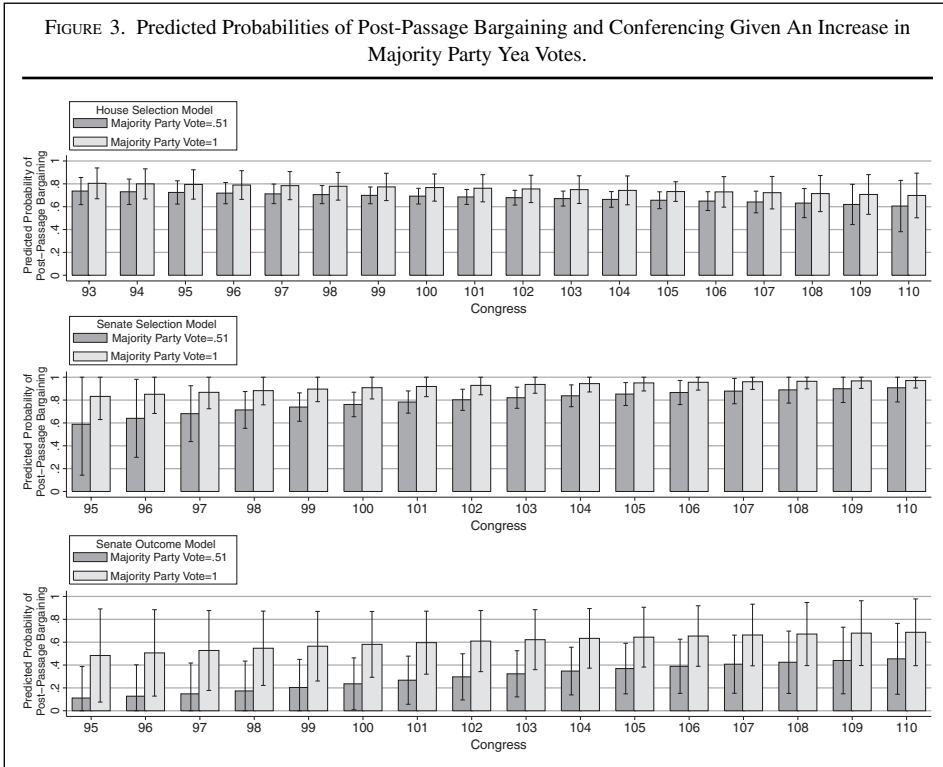
It seems that Republican-controlled chambers, in general, engage in less post-passage bargaining than their more liberal counterparts, though the effects are chamber specific.

I now turn to the effect of coalition size on post-passage bargaining in the Senate. While the number of total “yeas” has no statistically significant effect, the number of majority party “yea” votes increases the probability of going to post-passage bargaining and going to conference (the variable is significant at the .07 level, two-tailed test), confirming Hypotheses 3 and 5. Also included in the model is an interaction term where total votes are multiplied by Congress. Like the House, the effect of majority party votes has not changed over the sample, so an interaction term for majority party votes multiplied by Congress is not significant (results not shown). There is no evidence which supports Hypotheses 4 and 6, that the effect of majority party “yea” votes has increased over time.²⁵

Unlike the House, the total number of votes is not a significant predictor of going to post-passage bargaining, and its effect has not changed over time. In the Senate, the total number of majority party votes has been, and remains, the primary determinant of post-passage bargaining. Hypothesis 3 claimed this is because the Senate lacks institutional rules which give a majority coalition power to limit amendments to a bill. Instead, the majority party in the Senate must use inducements and goods distributed to party members to maintain small coalitions.

Also unlike the House, the number of majority party members is a significant predictor of whether a bill goes to conference. As stated by Hypothesis 5, this is because the procedural hurdle of using a conference is high in the Senate. Majority party members are needed to ensure the coalition can overcome these institutional barriers because determined minorities can use these rules to thwart a conference—even when members of the minority party support the bill. Conversely, as the number of minority coalition votes increase, the easier it is for the minority coalition to prevent or slow down the use of a conference. As explained above, a strong minority coalition can place holds or attempt to filibuster each of the three amendments required for conferencing in the Senate. The result that majority party votes in favor of the bill are important, while the number of total votes supporting the bill on final passage is unimportant, is consistent with extreme partisan divisions on procedural votes. Minority party members may vote for the bill on final passage, but if the minority party is determined to stop the bill and employs procedural tactics in the Senate, such as putting a hold on the motion to appoint the conferees, the majority party must have sufficient support from within its party to fight off attempts by the minority to prevent a conference.

Most other results from the Senate model are consistent with the results from the House models. The measure of importance, the number of lines the legislation received in CQ, is substantively large and statistically significant as expected. If legislation is mentioned in CQ it is more likely to go both to post-passage bargaining and to a conference committee. The multiple referral of a bill is negative and statistically significant for both post-passage bargaining and



conferencing. For the Senate, the later a bill is passed by the Senate, the more likely it is to go to post-passage bargaining. And as before, appropriations bills are more likely to go to a post-passage bargaining venue, and more likely to go to a conference.

The results for the characteristics of each Congress are also largely consistent with the results in the models for the House. Divided party control of the chambers makes both post-passage bargaining and conferencing more likely. The result for the DW-Nominate distance between the chambers is not significant, but, like the House, the coefficient is also negative for both the selection and outcome equations. This is also true for the House DW-Nominate Median’s effect on post-passage bargaining, though as with the previous models, the Senate’s DW-Nominate score is a statistically significant predictor of amendment trading (it has a negative effect on conferencing).

The substantive effect of the number of majority party “yea” votes on post-passage bargaining for the House and on bargaining and conferencing for the Senate is shown in Figure 3. All variables were held at their mean except for dichotomous variables: the chamber of origin was held constant at the chamber used in the analysis (the House for the first set of predicted probabilities, and the Senate for the second two sets of probabilities), committee member sponsored was

held at 1, multiple referral at 0, appropriations bill at 0, divided government at 0, divided chambers at 0, and the constant at 1. The graph shows the probability of each outcome at two levels of majority party “yea” votes for each Congress. The first bar graph shows predicted probabilities across Congresses for an increase in majority party “yeas” from .51 (slightly more than half of members voting yes are from the majority party) to 1 (all members voting yes are from the majority party). In the first set of predicted probabilities, used to model the effect on the first House selection model, the substantive increase in the mean probability a bill is post-passage bargained on is about .06 to .09.

The second two sets of predicted probabilities show the substantive effect of an increase in majority party “yea” votes in the Senate on post-passage bargaining, and an increase in majority party yea votes in the Senate on the probability of conferencing. The effect varies over Congress, and an increase in majority party votes has a smaller substantive effect in more recent Congresses. This is due to an overall increase in the predicted probability. For example, in the 93rd Congress, when majority “yeas” equals .51, the predicted probability of post-passage bargaining was about .6, while in the 110th Congress, the same level of majority party “yea” votes results in a predicted probability of .9. The same pattern holds for conferencing, though overall, the predicted probability of going to a conference is much lower than the predicted probability of engaging in post-passage bargaining, as one would expect.

To summarize, Hypotheses 3 and 5 are confirmed. In the Senate, the size of the coalition on final passage is relatively unimportant once a majority is achieved, while the size of the majority party coalition is very important. And while there is no statistical evidence the effect of majority party votes has gotten stronger over time, the same number of majority party votes is much more likely to induce bargaining and conferencing in recent Congresses. In the House, the absolute number of “yea” votes was important in predicting post-passage bargaining (Hypothesis 1), but the relationship is mitigated by time. The House is looking more like the Senate in that a coalition made up of majority party members seems to be more important than the absolute coalition size. Therefore, Hypothesis 2 is partially confirmed, but the effect is due more to the reduction in importance of total votes, rather than an increase in the importance of majority party votes. Further, in the House, once bargaining is possible through a sufficient coalition size, there are no additional costs to going to conference, as predicted by the theory.

DISCUSSION

Post-passage bargaining is important because the process produces important substantive changes in legislation. The legislative compromise sent back to each chamber may have little resemblance to the original bill passed by the chamber. Not only does post-passage bargaining change legislation, but conferences or amendment

trading may serve as a roadblock to passage. About 3% of all legislation passed by both chambers fails during the post-passage bargaining process. Because of the importance of conferences in particular, it is critical that scholars understand the conditions which make each of the post-passage bargaining venues more or less likely.

This article informs our understanding of conference committees by empirically examining the conditions under which they occur. This examination moves beyond an explanation of conferences which focuses on importance or complexity, and instead develops a deductive, theoretical explanation based on chamber rules and coalition sizes. The results show that the ability to engage in post-passage bargaining and conferencing, even for important legislation, is largely dependent on the ability of the winning coalition to maintain its cohesiveness and repel attempts by the minority to delay or obstruct the legislation.

Conference committees are an effective way of reconciling differences—their relative efficiency and their unique operation offers some real practical and logistic advantages. The winning coalition within each chamber may even prefer to use them rather than have to use amendment trading. But, despite its attractiveness, conferencing is not always possible.

The effect of coalition size varies by chamber. In the House, the total number of majority party members in favor of the bill increases the probability of engaging on post-passage bargaining on that bill, while it has no effect on the probability of conferencing because the House rules pose no additional constraints on using a conference. The results also suggest that the risk of defection, from the party rank-and-file, has undermining effects on the coalition and damages the prospects of post-passage bargaining.

In the Senate, the passage of the bill may be the easy part. Those who support the bill may not necessarily support the procedural machinations required to conference. A large number of majority party members allows the coalition to go to conference more quickly and easily than it would if the coalition included many minority party members, members who may not be as willing to fight other members of their own party on the procedural votes required to go to conference.

The results also provide an explanation for the decrease of conference frequency. Narrow coalitions have become more common recently because of the increasingly partisan nature of Congress. Polarization suggests the parties are more homogenous than they used to be and they are growing apart on the policy spectrum (Poole and Rosenthal 1997), reducing the number of bipartisan votes. In the House, these votes matter, and their reduction makes post-passage bargaining less dependent on the number of total “yea” votes. In the Senate, the minority can use the procedural rules to force amendment trading, as holds, filibusters, or objections to unanimous consent agreements become more common. The majority can expect little support from minority party members to overcome these procedural devices, even if members of the minority agree with the legislation. If the high level of polarization in Congress continues, one should expect a continued decrease in the number of conferences.

NOTES

1. Shailagh Murray, January 6, 2010. "Democrats holding final intraparty talks on healthcare reform." *Washington Post*, January 6, 2010.
2. Though conferences must now be conducted in public, Longley and Oleszek (1989) note the "growing tendency" of deals being struck in pre-conferences, informal meetings, and caucuses (pg. 56).
3. An ongoing debate centers on the conferees' ability to force the chamber to accept a take-it-or-leave-it offer when the conference report is sent back to each chamber for approval (Krehbiel, Shepsle and Weingast 1987, Shepsle and Weingast 1987)
4. The back-and-forth is limited to three amendments. As with any rule in Congress, this rule can and has been ignored, but in general the chambers follow it.
5. Passage without amendment does not require the ideal points or policy preferences of the two winning coalitions within each chamber to be identical.
6. Steve Mufson, August 1, 2007. "Democrats Lack Unity in House Over Energy Bill." *Washington Post*, August 1, 2007.
7. The complexity and political divisiveness of legislation are assumed to be highly correlated, and most authors make no distinction between the two.
8. Corey Boyles, August 3, 2009. "Clunkers' Rebates at Risk Unless Senate Acts." *Wall Street Journal*, August 3, 2009.
9. Data available from the author upon request. Details on the collection of the data can be found in the "Data and Methods" section.
10. Even though both chambers prefer a resolution to bill failure, the process is still best characterized as non-cooperative bargaining. See Tsebelis and Money (1997).
11. Efficiency also decreases because for each period of time during which the chambers are bargaining, they do not accrue any benefits from the bargain. This point is not addressed further in this article. In a perfectly efficient bargain with complete information, agreement is reached in the first stage, see Rubenstein (1982).
12. Also see the response by Schickler and Rich (1997a), Schickler and Rich (1997b) and Cox and McCubbins (1997).
13. One innocuous amendment was approved and the bill was sent back to the House.
14. Non-commemorative bills are those defined as such by the Congressional Bills Project, and are excluded because they recognize an individual, group, etc., and are not substantive in nature.
15. All bills which went to both venues were classified as going to conference. The House had long complained about the Senate's ability to force votes on conference reports which contained items that would have violated the germaneness rules of the House. In 1972, the House adopted a rule which allowed it to reject these provisions without rejecting the entire conference report. See Oleszek (1996) and Smith (1989a).
16. Policy Agendas Project Citation Note: "The data used here were originally collected by Frank R. Baumgartner and Bryan D. Jones, with the support of National Science Foundation grant number SBR 9320922, and were distributed through the Department of Government at the University of Texas at Austin and/or the Department of Political Science at Penn State University. Neither NSF nor the original collectors of the data bear any responsibility for the analysis reported here."
17. Adler and Wilkerson data note: "The views expressed are those of the author and not the National Science Foundation."
18. A proportion is used rather than the absolute number of "yea" and "nay" votes because not all members vote on a given bill.
19. Most bills passed through unanimous consent are much less likely to be post-passaged bargained on, primarily because a large amount of these bills are trivial.
20. The natural log of the number of lines is used in the models.
21. In these cases, specifying different variables for both equations in order to fulfill the exclusion restriction of the usual Heckman probit model (Heckman 1976, Sartori 2003) would result in misspecification.
22. Bills which went to both post-passage venues were coded as going to conferencing only for the outcome model for two reasons. Conferencing is almost always the first venue used and most of the legislation which went to both were appropriations bills which go to amendment trading only because of the need to resolve disagreement over monetary values.
23. Approximately 25 bills from the 106th Congress are excluded because of missing values on two independent variables. A comment about the estimation process is warranted. Because the selection models have a difficult

- time converging, depending on the specification, the number of iterations of maximizing the likelihood was limited once Stata stopped reporting changes in the log-likelihood. I experimented with alternative specifications and allowing more iterations, and the substantive results and significance change very little.
24. The models were also tested using “fixed effects” for Congress, where a variable is included for every Congress. The substantive results for the noninteracted terms hold, though this approach does not allow me to test an interaction between Congress and vote characteristics—a key component of my causal story.
 25. If included, the model is poorly specified, and none of the coalition variables are significant.

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