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# Conference Committees: The Congressional Context

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by Robin M. LeBlanc

*In the United States, as in Canada, all legislation must be adopted in identical form by both Houses. Unlike Canada the Americans make extensive use of conference committees to resolve differences between the chambers. So important are these meetings to the legislative process they have been called the fourth branch of government. Most studies of conference committees focus on the narrower issue of "who wins". This article uses three case studies to examine the congressional conference as a legislative institution in its own right.*

No one can say for sure which chamber wins conferences or what conferences a particular chamber can win or why either chamber would win over the other. Certainly the list of who-wins might be trimmed or categorized according to the methodology adopted. However it would be a tiresome task of minimum benefit. As Richard Fenno has recognized, the problem of making an accurate and quantitative measure of a chamber's conference success is not a small one.

We cannot know what 'winning' means unless we know the preferences of the two sides (and preferably those of each conferee) with regard to the various amendments at issue. If, for example, one group is willing to give up an item costing \$50 million to get some especially valued item costing \$10 million, dollars and cents measures will be inadequate to define winning.

Even if some methodology could account for the most complicated configurations of preference, the "Who wins?" study is very limited. When we consider the myriad of differences that must exist between bills which would be tallied to establish any empirical sense of who-wins conferences, we must realize knowing which

chamber dominate does not mean we know much about the results of the legislative process.

*Knowing who wins does not enable us to answer one of the gravest questions of congressional studies. How does the conference process either help or hinder the development of genuinely good policy?*

Without a doubt, conference committees are key players in the legislative process. The use, since the early 80s of mega-conferences with over 200 conferees makes it apparent that conference committees are legislatures in and of themselves. The bills which would not have passed without conference committees to eradicate the incoherencies of House and Senate versions are among the most important bills in American history. The Bill of Rights, for instance, became part of the Constitution only after going to conference.

While just 10 to 15 percent of bills in a given year require conferences, this 10 to 15 percent could easily be considered the most important bills Congress passes. Conference committee reports must be voted either up or down by a chamber under a closed rule. If they are voted down, the bills have to be recommitted. Time constraints are usually such that the conference report must be voted up of a bill is ever to reach the president. Conferees often

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attach substantively new provisions to a bill despite rules requiring conference changes to remain within the scope of the original legislation.

Conference committees do more than reconcile different versions of the same bill. Since their opening to the public under 1975 reforms, conferences act as nodes for special interest groups to exert their influence on the policy process. Interest groups have managed to obtain their desired policy outcomes more often since the conferences were opened. Advice from executive officials may carry weight in conferences where decisions can be complicated by the need to obtain consensus (and consensus that does not get a presidential veto) on seemingly irreconcilable issues. Staff, accessible to lobbyists and used to draft details of the more pedestrian compromises or to provide area expertise, can also be influential.

Some evidence suggests conference committees can affect the legislative process before the bill which will go to conference has been written. The certainty that budget resolutions will eventually end up in conference sets in motion a process of House-Senate negotiations while the bills are still in the markup stage. Members dissatisfied with the resolution drafted in their chamber may work deals with members of the other chamber in hopes of getting what they want in conference. An understanding of the predisposition of the other chamber may affect the progress of the resolution in the home chamber.

*Despite the emphasis bargaining behaviour places on winning for the parent chamber, the conferees' strategies are usually directed towards a common goal-compromise.*

Members' voting choices on bills in their own houses could be influenced by knowledge that they would be members of a conference later on where they could hope to change the bill to reflect their own wishes.

Even the most stalwart conferees are really taking strategic stances. The realm of possible stances includes stating unbroachable commitments to certain items in a bill and the proffering, as concessions, of expendable items in the bill. Conferees employ threats, for example the threat of seeking instructions from a parent chamber. Sometimes the threats are of mutual destruction, such as when conferees announce they will walk out on negotiations altogether if parts of the final bill fail to accommodate their chamber's wishes. Conferees also draw on a variety of debts and promises hinged on the

fact that conferences between the same legislators, albeit not over the same bill, are a constantly recurring event.

Compromise in conference is not always easy. Congress is better at distributing resources than it is at redistributing them. The most expedient means of achieving conference compromise would require everyone in conference to receive at least part of what they asked for—essentially a strategy of distribution. But today such a strategy is not possible. With the current emphasis on fiscal restraint, budget conferences act to redistribute rather than simply distribute. The redistribution problem is not limited to budget conferences. Even conferences more oriented towards policy than fiscal concerns are forced to recognize the need for a sort of redistribution. Not every proposed program can be included in a law; the money to pay for them all just does not exist.

The difficulty of redistribution may heighten some qualities of conference compromise making the conference a substantively different legislative arena than the chamber. Chambers may be more inward-looking than conferences. Even when redistribution is called for, chambers may be prone to practice distribution. Distribution is by nature inclusive. It is the easiest way to win solid majorities for a legislative program, and no intro-chamber check and balance system exists to make sure that legislative programs adhere to fiscal realities. A Conference, however, does call a check and balance system into play. One chamber is checked by the other. But, even more important, a conference forces Congress to conceive of itself as a single part of a whole government system where checks can come from a variety of sources. In conference, a bill must be produced that will not only satisfy the two chambers, but will also demonstrate congressional policy-making legitimacy to external forces. A president whose rhetoric sings of fiscal restraint and a public concerned with the tight fiscal realities can define the value of a policy by its ability to redistribute in accordance with budget constraints. Correspondingly, the value of a policy can define the legitimacy of Congress as a policy-maker.

### Introducing the Congressional Context

Conferees draw the motives of their actions from three contexts, individual, committee and institutional.<sup>2</sup> They act, in conference, in ways that will accrue power to themselves, their committee and their chamber. Perhaps another context should be added to the list—the congressional context. In the congressional context conferees act to accrue power for the legislative branch of government. It is not hard to see that the demands of the congressional context might conflict with the

demands of the individual, committee and institutional contexts. The latter three contexts may occasionally levy conflicting demands on a conferee but they have something very significant in common. Individual, committee and institutional contexts are all likely to require power of a "getting nature". To be successful most easily within these three contexts, the conferee attempts to receive the best distribution of benefits. For instance, if a conferee could secure an appropriation or program which put federal funds into his district, he would satisfy the demands of the individual context. And, unless he stood against the majority preference of his chamber's delegation, he would also be satisfying the committee and institutional contexts' demands.

The demands of the individual, committee and institutional contexts are thus often fulfilled through acts of distribution. These contexts militate a decentralization of decision-making. Each conferee has a slightly different set of contextual demands, so, to a certain extent, each conferee could benefit the most by acting alone. But conferences do not accentuate the power of individual actors. In conference, agreement, not difference, is the goal, and currently, redistribution, not distribution is the theme.

Conference committees are more than arenas for the "getting" ethic of the individual, committee and institutional contexts. Conference committees are also playing fields where the reputation of Congress is on the line. When a bill does not come out of conference it does not come out of Congress. Without such legislation as goes to conference, Congress would be nothing more than the most rudimentary player in the broad system of government. When legislators act according to the confines of this understanding, they can be said to be acting in a congressional context.

Unlike the other three contexts, the congressional context demands centralized decision-making. Congress can only have one voice. In deficit days, the congressional context ethic is ... "giving up," not "getting" as it is in the other three contexts. Congress does not want to be known as the irresponsible, incapable policy-maker. While the individual and committee contexts dominate on the chamber floor, they are necessarily subverted to the congressional context in conference. Even the institutional context must take a back seat to the congressional context if compromise, (thus a bill) is to be achieved.

The hegemony of the congressional context makes conference a better arena for redistributive politics than the chamber. Because the ethic of the congressional context is giving up, conferences are imbued with an atmosphere which supports tough choices. Because the demand of the congressional context is centralization,

conferences allow for the strong leadership necessary for making tough choices. Finally, the congressional context promotes its own survival by acting as a good excuse for conferees. By acknowledging the primary need of conference is to produce a bill, conferees can espouse the logic of the congressional context to explain why they felt it necessary to compromise the preferences of constituents, committee or chamber. As one writer explained at the end of the 1986 tax reform conference:

The conferees had, in fact, gone into their closed sessions for much the same reason that Congress passed the Gramm-Rudman-Hollings anti-deficit law: It was an acknowledgement of a need to be saved from themselves and their own habit of yielding to outside pressures. With Rostenkowski and Packwood delegated to figure out a compromise, individual conferees could tell angry constituents and contributors that they had little or no control over the decisions.<sup>3</sup>

### The Case Studies

In three conferences, the 1986 tax reform conference, the FY 1988 deficit reduction conference and the 1988 Omnibus Trade legislation conference, bipartisanship, leadership and tough choices occur because the congressional context dominates. To make this point let us first consider the similarity of the three cases and then examine how existing evidence supports the influence of the congressional context on the conference results.

The conference of the 1986 tax reform appears remarkable at first glance for several reasons. The legislation coming out of conference was such a complete rewrite of previous tax law that virtually none of previous tax provisions remained unchanged. Many tax loopholes had been removed, and the preferences that remained were, for the most part, narrowly defined. The new tax code lowered rates for the middle class while remaining, at least on paper, revenue neutral. If the results are intriguing, contemplation of the situation at the conference opening makes them almost amazing. The House and Senate delegations were not only separated by chamber, but their party majorities were also in opposition. In general big money lobbyists opposed the bill. The differences between the chambers' bills were wide. The major conference problems included setting the top tax rate; figuring out how to stagger it while remaining revenue neutral; and defining the middle class. The bill needed to be done before the upcoming August recess, and time was running short.

Despite all the difficulties the conference encountered, it produced a bill. Conferees managed the situation by giving unprecedented authority to two leaders, Senator Bob Packwood (R-Ore), and Representative Dan Rostenkowski (D-Ill). The package the two men finally

presented, while pleasing no legislator wholly, was generally well-supported and even hailed by Secretary of Treasury James A. Baker III as...a remarkable bipartisan achievement.

The conference on the FY 1988 deficit reduction bill also demonstrated tough choices, bipartisanship, and strong leadership. The legislation produced by the conference made tax increases and appropriations cuts necessary to bring the budget deficit in 1988 and 1989 in line with the agreement made between Congress and the Administration at the November 1987 budget summit. It did so successfully enough to allow Congress to pass its appropriations bills on time for the first time in several years in 1988. What is more significant is that the conference made law a budget agreement labelled "Republican" by Democrats hostile to their lame duck president, and called "unconstitutional" by some legislators. If House/Senate differences were wide in the 1986 tax conference, they may have appeared irreconcilable in the deficit-reduction conference. The House bill had come to the floor before the summit agreement changed the drift of fiscal policy. The Senate bill, passed after the agreement, took the policy changes into account. The House refused to rewrite its legislation, and tax increases and program cuts were left in the hands of the conferees. Time was even more of a factor than it had been in the case of the tax conference. The government was already operating under Gramm-Rudman-Hollings sequestration. If appropriations and reconciliation legislation was not passed soon; it would have to shut down completely.

As in the case of the tax reform, the conference came through. Big problems, such as tax increases, program cuts and Reagan's demands, were resolved by private meetings between powerful committee leaders and the chamber leadership. In the end, although the majorities of both houses were Democratic, some characteristically Republican preferences made their way into the bill. The Fairness Doctrine was removed and aid for the Contras was included in a bid to avoid presidential veto.

The conferences on the 1988 Omnibus Trade Bill was similar in character to the tax reform and reconciliation conferences already described. The bill managed to create a comprehensive trade program putting in the president's hands the authority and responsibility to react to other nations' unfair trade practices despite the fact that the Administration preferred not to have a bill at all. The bipartisan agreement on the major tenets of the legislation was strong enough that even though the president vetoed the first version of the bill, he was forced to allow all but a few relatively minor provisions of the bill become law. Even the plant closing provision became

law, although it was separated from the rest of the bill by a self-executing rule.

*The three conference considered are characterized by bipartisanship, leadership and tough choices. It is possible this characterization came about as a sort of legislative miracle. But it is more likely the operating principle in the three cases is the congressional context.*

The trade bill conference used strong leadership to make tough choices as did the tax reform and reconciliation conferences. Since revenue-neutrality was not a concern of trade legislation, the conference could have been more tempted to practice distribution than either the tax or deficit-reduction conferences. But the conferees did not produce a work of protectionism to benefit industries in the states they represented. The *Washington Post* explained the conference this way:

Lloyd Bentsen, Senate manager of the bill, did a skillful piece of work, matched by his counterpart in the House, Dan Rostenkowski. Early in the process they agreed the bill was not to be loaded up with favours for constituents, protection for hard-luck industries or the usual assortment of gross giveaways. Along the way a number of protectionist horrors got voted into either the House or Senate bill but, not entirely by accident, never in both. All but the most minor were scrubbed out in conference, perhaps the most complex conference in congressional history.<sup>4</sup>

The congressional context implies that conferees were more concerned with demonstrating Congress's ability to produce cohesive policy than in gain for themselves, their committees or their chambers. The congressional context could be expected to come into play where ever congressional policy-making prowess is questioned. The pressure on Congress to produce policy was great in the tax, deficit-reduction, and trade areas.

In the case of the tax reform legislation, Congress needed a bill to keep from looking foolish next to a president who put tax reform high on his agenda. Republicans in the Senate would not want to come across as unable to deliver on the party's big issues. House Democrats, on the other hand, were probably afraid of being stuck with the hot potato if tax reform failed to make it. This has been called the "don't let the dog die on my doorstep" approach to lawmaking. The House supported the conference action out of fear of political retribution from Reagan, while Senate Republicans supported it because they worried, if they failed to

produce a bill, GOP seats would be on the line in the next elections.

The pressures to produce were also high in the case of the FY 1988 deficit-reduction legislation. "the deficit is now a mainstream issue. Lawmakers who once boasted of pushing through new spending now brag as much about their cost-cutting prowess."<sup>5</sup> If a general emphasis on fiscal restraint was not enough to spur legislators to tough choices, the October 1987 stock market crash was. In November they convened a budget summit with the Administration. But, as the previous discussion of the deficit-reduction legislation has indicated, the summit alone was not enough to get policy in order. The conference became the arena where Congress's ability to legislate in tight circumstances was tested. As House Majority Leader, Thomas S. Foley said, if the conference failed to write a bill in conformance with the budget summit, Congress would give off the impression that "nobody's in charge".

The Omnibus Trade Bill conference was not as clearly under pressure for performance as the tax reform conference or the reconciliation conference. Yet some pressures did exist. After the devaluing of the dollar in the fall of 1987, the trade deficit could hardly have been far from the public mind. The presidential bid of Representative Richard Gephardt brought the trade issue into the campaign arena. As evidence to the fact, conferees considered retaining the Gephardt amendment in the final version of the trade bill although it barely passed the House and was not included in the Senate version at all. It was not dropped from the bill until Gephardt suffered in the Super Tuesday primaries. Beside the pressures for the trade bill was an incentive—Congress could look strong against the president. The president did not want a trade bill and Congress turned the moment to its advantage, "We want to produce a product that would be attractive to the president or that would be embarrassing to him if he were to veto it," said Rostenkowski. Although the president won the first round by proffering a veto the Senate was a few votes short of overriding, Congress did get him to accept trade legislation. In fact, in mid-conference, Senator John C. Danforth (R-Mo) remarked "This is not a conference between the two houses. It's a conference between Congress and the administration."<sup>6</sup>

## Conclusion

Pressures and incentives from outside Congress force it to think of itself as a single body and to do therefore what is in its interest as a single body. Such thinking is likely to be more prevalent in conference where legislators are working together on key bills with the final intent of sending them to the president. This supports a decision-making ethic that might allow for more responsible decisions. It certainly allows for bipartisanship, leadership and tough choices as the three cases demonstrate.

Of course, while the congressional context allows for preconditions to responsible policy-making it does not guarantee it. In some respects it may produce even greater road blocks to good policy than do the individual, committee or institutional contexts. Although the politics of distribution are insufficient for dealing with situations of financial crisis, one at least senses that constituents are getting what they want if not what they need. But in the decision-making process of the congressional context one senses a great many constituents are not "getting". Their enforced frugality may be beneficial to them in the larger picture. Then again, it may not. Who is to say that bipartisanship connotes an intelligent understanding of policy issues? Or that strong leadership is always just leadership? And is a tough choice necessarily a right choice?

These are questions that deserve answers. But we will be unable to answer them if we continue to look at conferences from the chambers' point of view instead of examining them on the merit of their independent contribution to policy-making. ●

## Notes

1. Richard F. Fenno, Jr. *The Power of the Purse: Appropriations Politics in Congress*, Boston: Little, Brown & Co., 1966, p. 661.
2. Lawrence D. Longley and Walter J. Oleszek. "The Three Contexts of Congressional Conference Committee Politics: Bicameral Politics Overlaid", Paper delivered at the 1983 Annual Meeting of the American Political Science Association, Chicago, September 1, 1983.
3. Eileen Shanahan. "Tax Conferees Start Work, Highlight Problems", *Congressional Quarterly Weekly Report*, July 19, 1986, pp. 1599-1603.
4. *Washington Post*, August 5, 1988.
5. Lawrence J. Haas. "The Deficit Culture", *The National Journal*, June 4, 1988, pp. 1460-1467.
6. Elizabeth Wehr. "Negotiations on the Trade Bill Gain Momentum", *Congressional Quarterly Weekly Report*, March 19, 1988, pp. 732-734.