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Germaneness Rules And Bicameral Relations In the U.S. Congress

The legislative procedures of the U.S. House and Senate differ in a number of fundamental respects, and procedural conflicts may arise in the process of resolving policy differences. One important difference between the two chambers concerns the germaneness of amendments. House rules require that all floor amendments be germane; Senate rules impose no such requirement under most circumstances. Consequently, conference agreements may include provisions that violate a basic principle of House procedure. The House changed its rules during the 1970s to address this problem and sought accommodation rather than confrontation, attempting to isolate conflicts with the Senate and cope with them by means that protected the integrity of House proceedings.

It is generally characteristic of the relations between the U.S. House of Representatives and the Senate that the members of one chamber denote the other chamber as the "other body." This indirect form of reference during debate indicates something more than a sense of institutional distance. It suggests also the potential for conflict and the problems of coordination and accommodation that mark bicameral relations in Congress. It is considered inappropriate to acknowledge in debate that the decisions of the Senate may be influenced by what has or has not occurred in the House, and vice versa. Comity is promoted, and the likelihood of conflict is diminished, by modes of address that are formal, impersonal, and often oblique (Galloway, 1961, pp. 225-226).

Although linked inextricably by their shared legislative powers, the House and Senate are, in many respects, quite different and separate institutions. Their relations combine the same elements of cooperation, competition, and conflict that characterize relations between the legislative and executive branches (Galloway, 1953, pp. 249-259; Haynes, 1938, pp. 997-1034). Cooperation between the House and Senate is ultimately mandated by the constitutional requirement that both chambers must pass the same measure in precisely the same form before it becomes law. The potential for competition

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and conflict, on the other hand, is inherent in the differences in their composition and in the absence of any central coordinating authority.[1] Institutional differences between the House and Senate are real and important in and of themselves, whether or not they are exacerbated by differences in policy approaches or partisan control.[2]

At the heart of the matter is the relative autonomy of each chamber. Representatives and senators are accountable to different constituencies at different intervals. The House and Senate each may, without the concurrence of the other, "determine the rules of its proceedings" under the Constitution and resolve questions concerning its organization and membership. No single person or institution has either the formal authority or the informal power to organize and direct the actions of the two chambers, however much presidents might wish it were otherwise. Only the electorate has the means to do so, and the electorate usually speaks with many voices, if it speaks at all. The president and the public may attempt to set policy directions and goals for the Congress, but the institutional problems of bicameralism remain for the House and Senate themselves to resolve.

In managing their bicameral relations, the House and Senate must cope with the fundamental differences between the two chambers in their approaches to the legislative process. Perhaps the most vivid manifestation of these differences is the contrast between House and Senate rules governing debate, which in turn reflects the very different ways in which the chambers have responded to the problem of balancing the prerogatives of voting majorities against the rights of voting minorities. In the House, debate is limited—sometimes severely—either by rule or by majority vote so that the majority may prevail with reasonable dispatch. In the Senate, on the other hand, there are no effective limitations on debate, either by rule or majority vote, so that individual senators and minorities within the Senate can attempt to protect their positions against precipitate majority action.

The five-minute rule in the House and the filibuster in the Senate affect when and even whether legislation is passed, but rules on debate do not directly affect the content of legislation. Consequently, these rules are not often the source of direct, institutional conflict, however important they may be to the operations of each chamber. The potential for conflict arises when policy differences must be resolved if legislation is to be enacted. Moreover, when the rules of one chamber permit legislation to include provisions that are prohibited in the other, problems of policy and procedure become intertwined, as each chamber seeks to protect the integrity of its procedures and the autonomy of its decisions. The most basic, long-standing, and important difference between House and Senate rules affecting the possible content of legislation concerns the germaneness of amendments.

Germane and Nongermane Amendments

Since the House of Representatives of the First Congress adopted its rules in April 1789, the rules of the House have included a prohibition against nongermane amendments.[3] Clause 7 of Rule XVI currently provides that "no motion or proposition on a subject different from that under consideration shall be admitted under color of amendment." Although the apparent simplicity of this statement does not reflect the voluminous precedents and interpretive difficulties that are involved in determinations of germaneness, the principle underlying the rule is clear and reasonable. While considering a measure on one subject, the House should not be distracted by amendments on unrelated subjects that may not have received adequate, or any, committee consideration. It is commonplace for the germaneness of amendments to be challenged on the House floor, and virtually unprecedented for the membership to overrule its presiding officer in order to consider a proposition that has been ruled nongermane.

Unlike representatives, senators are not subject to any such general germaneness requirement. Under Senate rules, an amendment must be germane only if offered to a general appropriation bill or budget measure or to a measure on which cloture has been invoked. In practice, bills and resolutions are frequently considered on the Senate floor under the terms of complex unanimous consent agreements that, in addition to limiting time for debate, impose a germaneness requirement on amendments offered to a specific measure (Keith, 1977). But senators relinquish their right to offer nongermane amendments only by unanimous consent, and such agreements often provide for consideration of one or more nongermane amendments excepted from the general germaneness requirement that senators impose on themselves, voluntarily and consensually.

This difference in House and Senate rules gives individual senators considerably greater leverage over the floor agenda than is enjoyed by their colleagues in the House. A representative whose bill is not reported from the committee of jurisdiction has relatively little recourse within the House. A procedure for discharging a House committee from further consideration of a measure referred to it has been a part of House rules, in one form or another, since 1910. However, these procedures have rarely been used successfully. Between 1910 and 1980, 900 discharge petitions were filed; but during the same period, only 25 measures were discharged from committee by this means, of which only 2 were enacted into law (Lehmann, 1976; Beth, 1981). On occasion, the Rules Committee has extracted a bill from the control of another committee or permitted the text of one bill to be offered as a nongermane floor amendment to another measure, but House committees generally retain conclusive control over the measures referred to them (Bach, 1981).