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UNANIMOUS CONSENT AGREEMENTS:
GOING ALONG IN THE SENATE

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ABSTRACT

In recent decades the U.S. Senate has made increasing use of complex unanimous consent agreements (UCAs) to set a time for a final vote on legislation (thereby precluding filibusters) and to specify, for example, who may offer what amendments. Because of the numerous dilatory tactics permitted in the absence of a UCA, controversial legislation is typically doomed unless a prior agreement has been reached. Thus the norm of consent to unanimous consent requests (UCRs) is puzzling. This paper addresses the puzzle with a decision-theoretic model of consent which yields what appears to be a rather stringent condition for objection to a UCR. Two actual cases of objection are analyzed and seem quite consistent with comparative statics results derived from the model. A concluding discussion considers UCAs as instances of endogenously chosen institutions which provide Senate leaders with opportunities to induce cooperative behavior.

UNANIMOUS CONSENT AGREEMENTS: GOING ALONG IN THE SENATE*

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"If you want to get along, you've got to go along." "Be a workhorse, not a showhorse." "Freshmen are to be seen, not heard." Congressional scholars are likely to be as familiar with such statements as with Fiorina's Keystone or with Mayhew's Electoral Connection. But if recent first-hand observations are any guide, the good old days may be gone. Howard Baker, the recently retired Senate Majority Leader, claims that "leading the Senate is like trying to push a wet noodle." And his successor, Bob Dole, apparently concurs: "There's a lot of free spirits in the Senate. About 100 of them."¹

Quips and quotes about the good old days are common in American politics, notwithstanding persuasive evidence to the contrary such as Polsby's (1968) accounts of cane-beatings, hunting dogs, fisticuffs and discharged pistols in the early House of Representatives. Regardless of whether these are good or bad days in the Senate, there is relatively little disagreement that some "norms" or "folkways" (Asher, 1973; Matthews, 1960) have changed over the years (Rhode, et al, 1985), and that even in the "old days" norms were not constants of legislative behavior (Huitt, 1961). While members typically obey the unwritten rules of the chamber, sometimes they bend them, and occasionally they break them.

This paper reconsiders norms from a rational choice perspective in a narrowly defined setting. Its empirical motivation is that with increasing frequency U.S. senators face situations in which they can unilaterally kill legislation by objecting to a request that it be considered under a unanimous consent agreement.² Yet instances of this seemingly effortless obstruction are rare. Is it because senators are habitually well-behaved, or is there an alternative explanation? Combining theory and two case studies, I make an argument for the alternative explanation that senators obey the "norm of consent" only if it is consonant with their individual long-term interests.

Part I is an overview of unanimous consent agreements (UCAs) and perspectives on congressional norms. Part II introduces a decision theoretic model of a senator's choice of consent or objection to a unanimous consent request (UCR). Part III applies the model to two cases from the Senate. And part IV summarizes the study and presents some broader implications.

I. UCAs AND THE NORM OF CONSENT

A unanimous consent request is a proposal to break rules. A unanimous consent agreement is a UCR that receives no objections and therefore supplants the standing rules of the Senate. UCAs may be simple or complex. Simple UCAs are reached perfunctorily and are used, for example, to rescind quorum calls, to insert material into the Congressional Record, to add senators as co-sponsors of bills, and

to allow staff members to enter the chamber during debate. Simple UCAs are always entered into verbally and are usually inconsequential in the passage of legislation.

The focus of this study is on complex UCAs, which are proposed orally but are written and published in the Record, the Senate Calendar, and whip notices. Such agreements are typically products of careful negotiations between senators who have a special interest in the legislation to which the agreements pertain. They may specify the rules for debate, who controls debate, the order of measures to be taken up, germaneness restrictions for amendments, and time limitations for almost any conceivable motion (such as amendments to amendments, motions to table or to commit, appeals, and points of order). So important are these latter functions — including most notably the setting of deadlines for a vote on final passage — that complex UCAs are often called "time limitation agreements" (Keith, 1977, p. 142).

The strong resemblance between complex UCAs in the Senate and special rules in the House is indisputable, however there is one crucial distinction. A single senator can kill a unanimous consent request, whereas even a sizable minority of House members is helpless against a minimal winning coalition that favors a special rule. Why, then, are objections to UCRs so rare? Responses to the question take two forms, the first of which is informative but easily rejected and the second of which is examined in greater detail, modified, and ultimately used in developing a theory of consent.

The first possible explanation is based on reversionary rules (cf. Romer and Rosenthal's (1978) reversionary policy). The argument is that a senator who contemplates objection to a UCR is likely to be deterred because he views a UCA as a mere superimposition of a new set of rules onto an existing set to which the Senate can and will revert if he objects to the agreement. Thus, a senator may expect that to object to the UCR would at best defer consideration of the bill he opposes. Such reasoning is plausible only if senators are ignorant of the standing rules of the Senate — a proposition with which few congressional scholars would be comfortable, not to mention Senators Byrd, Dole, Long, etc. In fact, the reversionary rules are more attractive to potential objectors than are UCAs, whereas UCAs almost always impose time constraints. Of the normal Senate rules, in contrast, Oleszek (1984) writes that "if the Senate strictly observed every rule, it would become mired in a bog of parliamentary complication (p. 156)," which is precisely what an opponent of legislation wants.³ Thus the reversionary rules reinforce the temptation to object to unanimous consent requests, so the puzzle of consent persists.

A more common explanation for the prevalence of consent stems from the sociological notions of norms or folkways. In spite of their widespread use, such terms are rarely defined with sufficient precision to yield testable propositions about narrow questions such as why senators "go along" with unanimous consent requests. But two differing (if not competing) perspectives on norms provide some useful

insights.

In its extreme form, the first perspective takes norms as exogenous, stable, "institutionalized" codes of behavior. Norms are perceived as so strong that they may be considered institutional features in their own right. Indeed it is not uncommon for proponents of this view to assert that norms as unwritten rules are more important to understanding Congress than are Congress's formal (written) rules. Consider, for example, White's (1956) statement in Citadel, in which he equates norms with "tradition".

All that is really necessary to know about [the rules of the Senate] . . . is that not all of them together have one-tenth the force of simple tradition, the tradition that some things are done and some are not done (p. 59).

Matthews (1960) takes a less extreme view in which norms are not exogenous per se, but rather are attributed in part to a common desire of members to maintain their institution. For example, he writes that if "senators took full advantage of their opportunities for debate and discussion, the tempo of action would be further slowed," hence they behave consistently the norms by refusing to "play to the galleries" (p. 94). Similarly, his account for senatorial courtesy is that ". . . conflict does exist, but its sharp edges are blunted by the felt need — expressed in the Senate folkways — for courtesy" (p. 95). And the message is stronger still in his conclusion that "normative rules of conduct — called here folkways — exist in the Senate . . . because they perform important functions" (p. 100). In sum, to the degree that norms are explained at all, the form of explanation is often functionalistic: senators obey the folkways of

the Senate because to do so meets the needs of the Senate.⁴

If in contrast norms are to be potentially useful in predicting congressional phenomena, then a further drawback of the view of norms as institutionalized codes of behavior is the tendency to treat them as constants. If they were, then of course they could not be explained nor could they be useful as explanations for other congressional phenomena. But norms are not constant, neither within nor across legislatures. This point is convincingly illustrated throughout Wolfinger's (1972) study on filibusters, in which he concludes

My point here is that this solicitude [towards Rule 22] . . . varies significantly with the exigencies of the legislative situation (which is not so surprising) and the characteristics of those senators whose prerogatives are subject to violation. (p. 124)

The extension to the present study is straightforward: coincident with observable variations in "the exigencies of the legislative situation," so too should we see variation in the degree to which norms are observed. Depending on one's substantive focus, norms may be properly regarded as either dependent or independent variables, but the key point is that they do vary. Reformulation and reconsideration of norms in this light may therefore purchase some heretofore unexploited predictive leverage.

The first step towards clarifying the predictive possibilities of norms is to depart from the perspective of norms as codes of behavior to one in which norms are viewed as strategic responses to formal rules, motivated by preferences. An implicit feature of this

perspective is that congressmen appear to be observing norms (codes of behavior) not merely because it is "how things are done around here" (Hinckley, 1985, p. 150), but rather because selective compliance with and violation of norms are strategies through which members expect to reach individual goals (presumably long-term goals in the case of consenting to UCRs). That such rational behavior corresponds to normatively appealing behavior, namely cooperation, is a satisfying byproduct of goals and institutional design, even though strictly speaking it is mere coincidence.⁵

My preference for the strategic perspective on norms should now be clear. It is not particularly important that I prefer the phrase "strategic responses to formal rules, motivated by preferences" to the more concise but ambiguous term "norms". The more important challenge is to demonstrate that the strategic perspective is uniquely capable of explaining variation in the norm of consent to UCRs (where "norm" hereafter means typical but not universal behavior). The reason the strategic perspective is promising is a variation on the theme of variation (sic). Since preferences, institutions and policies change, so too should strategic responses to them. If in turn cooperative behavior in Congress (of which consent to UCRs is surely a special case) is a product of norms qua strategies, then deviations from such tendencies to cooperate ought to be predictable. Thus the reformulated question: when and why will a rational senator deviate from the norm of consent?

II. A THEORY OF CONSENT

The theory focuses on an individual senator who must decide whether to consent or to object to a UCR. He must select one of two strategies. Strategy α represents consent (going along), and strategy β represents objection (violation of the norm of consent). Although the theory captures the essential elements of a senator's decision to obey or to violate a norm, it obviously is not intended to reflect the full institutional and strategic complexity of the Senate.

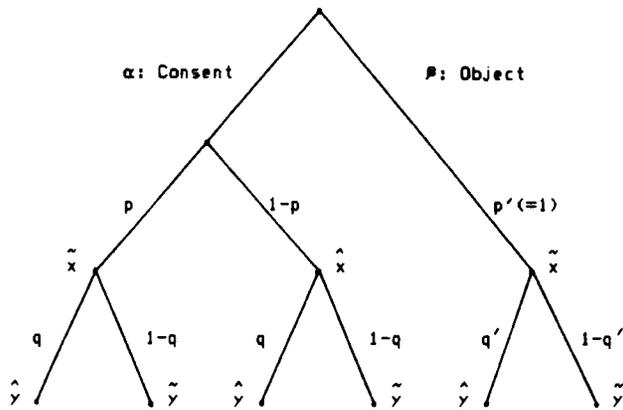
By assumption (formally specified below), the senator is tempted to object to a UCR for a pending issue x , because he prefers no change in policy (the status quo, denoted \tilde{x}) to the bill that he expects to be passed if a UCA is reached (denoted \hat{x}). On the other hand, he is constrained from objecting because there exists some other issue y on which he prefers a new bill, \hat{y} , to the status quo, \tilde{y} . (Note that tildes always refer to status quo points on the given issue; hats always represent the senator's expectation of the bill's final form.) If the senator objects to the UCR on x it necessarily lowers his expectation of getting a new bill on issue y . Finally, the senator believes that his choice of α or β on the UCR for issue x can affect the probabilities of the full Senate's ultimate selection of policy outcomes on both x and y , and he behaves rationally in accordance with his probability estimates of the effects of his actions.

For the two issues (x and y), the four relevant policy outcomes -- (\tilde{x}, \hat{y}) , (\tilde{x}, \tilde{y}) , (\hat{x}, \hat{y}) , (\hat{x}, \tilde{y}) -- and associated subjective probabilities of occurrence are illustrated in figures 1 and 2. The

Figure 1
Probabilities, Outcomes and Payoffs
under Consent and Objection

		α : Consent		β : Objection	
		q	$1-q$	q'	$1-q'$
p	(\tilde{x}, \hat{y}) LUCKY REWARD $u = 1$	(\tilde{x}, \tilde{y}) LUCKY SUCKER $u = \tilde{u}$	(\tilde{x}, \hat{y}) TEMPTATION $u = 1$	(\tilde{x}, \tilde{y}) PUNISHMENT $u = \tilde{u}$	
	(\hat{x}, \hat{y}) NORMAL REWARD $u = \hat{u}$	(\hat{x}, \tilde{y}) DOUBLE SUCKER $u = 0$			
$1-p$					

Figure 2
 Senator's Decision Tree
 for a Unanimous Consent Request on Issue x



Outcome:	(\tilde{x}, \hat{y})	(\tilde{x}, \tilde{y})	(\hat{x}, \hat{y})	(\hat{x}, \tilde{y})	(\tilde{x}, \hat{y})	(\tilde{x}, \tilde{y})
Probability:	pq	$p(1-q)$	$(1-p)q$	$(1-p)(1-q)$	q'	$1-q'$
Payoff:	1	\tilde{u}	\hat{u}	0	1	\tilde{u}

senator's estimates of the probabilities are defined as:

$p = \Pr(\tilde{x}|\alpha)$ = the probability that no bill passes on x if he consents to the UCR,

$q = \Pr(\hat{y}|\alpha)$ = the probability a bill passes on y if he consents to the UCR,

$p' = \Pr(\tilde{x}|\beta)$ = the probability that no bill passes on x if he objects to the UCR,

$q' = \Pr(\hat{y}|\beta)$ = the probability that a bill passes on y if he objects to the UCR.

Thus, by necessity,

$$\begin{aligned} 1-p &= \Pr(\hat{x}|\alpha) & 1-p' &= \Pr(\hat{x}|\beta) \\ 1-q &= \Pr(\tilde{y}|\alpha) & 1-q' &= \Pr(\tilde{y}|\beta), \end{aligned}$$

each of which has the obvious interpretation. Note that p terms always refer to issue x, q terms always refer to issue y, terms without primes presume the senator's consent (α), and terms with primes presume his objection (β). By construction, and as illustrated in figure 1, the possible outcomes are both mutually exclusive and exhaustive under either strategy.

The labels assigned to payoffs in figure 1 correctly suggest that the formal characterization takes on the flavor of a repeated play prisoner's dilemma game, even though only one actor's behavior is modeled explicitly. Choice of the strategy of consent (α) is analogous to cooperation, while objection (β) is a form of defection.

Accordingly, the terms describing the outcomes in figure 1 are duplications or variations of those in Axelrod (1984). Senators are tempted to object to a UCR because to object kills the bill on issue x . Given objection, retaliation may or may not occur during future consideration of issue y . If other senators do not retaliate, the gamble pays off, a bill is passed on y , and the senator receives the maximum TEMPTATION payoff. (Utilities are introduced below.) However, if retaliation does occur -- such as an objection by another senator to a UCR on issue y -- the status quo remains in effect on both issues. The senator therefore receives the PUNISHMENT payoff: his immediate gain from violating the norm of consent on issue x results in a subsequent penalty on issue y .

The larger set of outcomes under consent contains variations of reward and sucker payoffs. Rewards for consent, -- outcomes (\tilde{x}, \hat{y}) and (\hat{x}, \hat{y}) , -- occur whenever a bill is passed on issue y . If a bill on x does not pass in spite of the senator's consent to its UCR (for example, if someone else objects), then the consenting senator receives the LUCKY REWARD payoff. He is lucky on issue x and his cooperation is subsequently rewarded by unanimous consent to consider an ultimately passing bill on issue y . But if he is less fortunate on x but nevertheless wins on y , the NORMAL REWARD is the payoff from the pair of bills, \hat{x} and \hat{y} .

Of course the senator cannot expect rewards to occur with certainty. If he consents to the UCR for x but his consent is not reciprocated, he will have been suckered. Either his payoff is that

of a LUCKY SUCKER (if he wins on x but loses on y), or a DOUBLE SUCKER (if he not only is suckered into consent on x but also is double-crossed on y).

Formally, the assumptions are:

- A1. Minimal temptation. On issue x the senator prefers the status quo, \tilde{x} , to the expected bill, \hat{x} .
- A2. Nontrivial time horizon. There exists a future issue y on which the senator prefers \hat{y} to \tilde{y} .
- A3. Objection is deadly. $p' = 1$.
- A4. Objection is probabilistically costly. $q' < q$.
- A5. Separable, Von Neumann-Morgenstern utility functions.

For $x = \tilde{x}, \hat{x}$ and $y = \tilde{y}, \hat{y}$, there exist utility functions u , u_1 and u_2 such that $u(x,y) = u_1(x) + u_2(y)$.

Assumption 1 is self-explanatory. Assumption 2 loosely resembles Axelrod's "shadow of the future" in that the senator is interested in passing some bill after issue x is considered. (Either of these could be omitted in a more general treatment, but the results would be relatively uninteresting.) Assumption 3 embodies the power of objection and reinforces the temptation to object, while assumption 4 captures the potential future costs of present objection. Assumption 5 provides for normalized payoffs, represented as utilities. In particular, assumptions 1,2, and 5 permit assignment of payoffs as follows:

$$u(\tilde{x}, \hat{y}) = 1, \quad u(\hat{x}, \tilde{y}) = 0, \\ u(\tilde{x}, \tilde{y}) = \tilde{u}, \quad \text{and} \quad u(\hat{x}, \hat{y}) = \hat{u}, \quad \text{where}$$

$$0 < \tilde{u}, \hat{u} < 1.$$

Additionally, assumption 5 implies an expected utility representation of the decision. Given strategies α (consent) and β (objection), a senator chooses consent if and only if

$$Eu(\alpha) \geq Eu(\beta)$$

and, conversely, chooses objection if and only if

$$Eu(\beta) > Eu(\alpha),$$

where

$$Eu(\alpha) = pq u(\tilde{x}, \hat{y}) + p(1-q)u(\tilde{x}, \tilde{y}) + (1-p)qu(\hat{x}, \hat{y}) + (1-p)(1-q)u(\hat{x}, \tilde{y}), \quad (1)$$

and

$$Eu(\beta) = p'q'u(\tilde{x}, \hat{y}) + p'(1-q')u(\tilde{x}, \tilde{y}) + (1-p')q'u(\hat{x}, \hat{y}) + (1-p')(1-q')u(\hat{x}, \tilde{y}). \quad (2)$$

Thus a senator's decision about whether to consent or to object to a UCR for issue x is determined by the relative values of his expected utility terms, given in equations (1) and (2).

As figure 2 illustrates, equations (1) and (2) are unnecessarily general in light of other assumptions. Normalization ensures that $u(\hat{x}, \tilde{y}) = 0$, and deadly objection (A3) precludes the possibility of outcomes (\hat{x}, \hat{y}) and (\hat{x}, \tilde{y}) whenever a member objects to the UCA for issue x . Consequently, the decision tree contains only six terminal nodes, and equations (1) and (2) can be simplified as:

$$Eu(\alpha) = pq + p(1-q)\tilde{u} + (1-p)q\hat{u} \quad (1')$$

$$Eu(\beta) = q' + (1-q')\tilde{u} \quad (2')$$

Now subtraction of (1') from (2') produces the senator's decision rule:

$$\beta \langle \Rightarrow \rangle q' - pq + [(1-q')-p(1-q)]\tilde{u} - (1-p)q\hat{u} > 0 \quad (3)$$

The inequality states the necessary and sufficient conditions for objection (β) to a UCR on issue x and is the basis for the more concise and interpretable result that follows.

Theorem. A senator will object to a unanimous consent request on issue x if and only if

$$\frac{\tilde{u}}{\hat{u}} > \frac{q - q'}{1 - p}. \quad (3')$$

Proof. See Appendix.

There are several ways to interpret the result. First suppose that senators are sure of the consequences of their acts. Specifically, they know that $p = 0$ (consent is tantamount to surrender on x), $q = 1$ (consent ensures victory on y), $p' = 1$ (objection kills x), and $q' = 0$ (objection on x always invokes punishment on y). Substituting these values into (3') immediately produces $\tilde{u}/\hat{u} > 1$ as a condition for objection (β). This further implies that $\beta \langle \Rightarrow \rangle \tilde{u} - \hat{u} > 0$. Separability (A5) permits expansion of this simplified condition to $\beta \langle \Rightarrow \rangle u(\tilde{x}) + u(\hat{x}) - u(\tilde{y}) + u(\hat{y}) > 0$, which after reordering produces the intuitive result that objection occurs if and only if

$$u(\tilde{x}) - u(\hat{x}) > u(\hat{y}) - u(\tilde{y}),$$

i.e., whenever the net benefit from killing the bill on x exceeds the net benefit from passing the bill on y . This rather obvious result for an extraordinarily tidy world introduces an important theme that recurs under less restrictive conditions: rational senators weigh short- and long-term factors when making an immediate decision. In this case, only if the costs of certain loss in the future are exceeded by the benefits of certain victory in the present will a senator violate the norm of consent.

A second, less restrictive interpretation imposes only one element of certainty, namely certain punishment ($q' = 0$). Now (3') simplifies only to

$$\frac{\tilde{u}}{\hat{u}} > \frac{q}{1-p}.$$

The imposition of the expectation of certain punishment can be interpreted as an assumption on the part of the senator that there is always at least one other senator who will play tit-for-tat. In such circumstances a rational senator systematically compares his relative evaluations of outcomes (\tilde{x}, \tilde{y}) and (\hat{x}, \hat{y}) with his relative estimates of the probabilities that bills \hat{x} and \hat{y} will pass if he consents. Suppose we set one of the two ratios equal to one. If for example the senator contemplates consent and estimates that the corresponding probabilities that \hat{x} and \hat{y} will be passed are equal ($q = 1-p$), then he will object to the UCR for x if and only if $\tilde{u} > \hat{u}$, which means that he prefers no bills at all to the bundle of bills. Similarly, if he is indifferent between both bills and no bills ($\tilde{u} = \hat{u}$), then the only

circumstances under which he will object to the UCR on x is when he regards \hat{y} as less likely to be passed than \hat{x} , i.e., when $q < 1 - p$. In sum, two forces can instigate violations of the norm of consent in a world of sure punishment: a strong preference for the status quo over a package of bills, and/or pessimism about the prospects of passage of the second bill in spite of consent to consider the first.

While each of the above interpretations imposes special restrictions, the centrality of long-term and short-term costs and benefits in the decision calculus extends to the more general case, as is illustrated by two additional interpretations which impose no special restrictions.

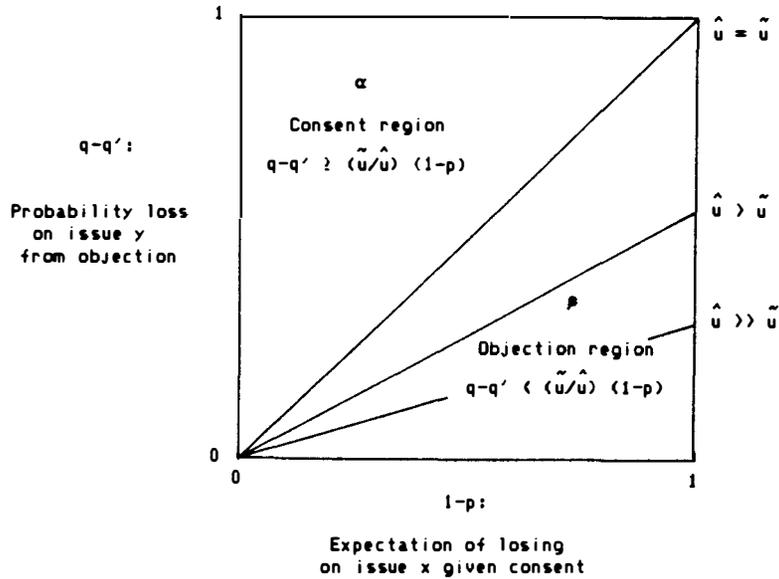
Reordering (3') as

$$(q - q') < \frac{\tilde{u}}{\hat{u}} (1 - p) \quad (3'')$$

allows situations to be represented on a unit square on which the horizontal axis $(1 - p)$ is the senator's expectation of loss on issue x under consent, and the vertical axis $(q - q')$ is the net probability loss on issue y from objection. As figure 3 illustrates, (3'') implicitly defines a line that necessarily passes through the origin and has slope \tilde{u}/\hat{u} . Thus for any given ratio of \tilde{u} to \hat{u} , the corresponding line is a set of points of minimal consent. Moreover, such lines always partition the square into regions of consent and objection. The strategy of a senator with any given values of \tilde{u} and \hat{u} is therefore determined by his probability assessments $(1-p)$ and $(q-q')$. He will object only if the pair of values represents a point

Figure 3

Interpretation of the Condition for Objection*



*Lines represent points at which consent is most weakly preferred to objection because for the given values of \tilde{u} and \hat{u} , $Eu(\beta) - Eu(\alpha) = 0$.

below the minimal consent line.

The geometric interpretation can be used to illustrate several comparative statics results that are derived below. The most visually intuitive of these is the ceteris paribus effect of a change in the slope of the line, which would be induced by a change in \tilde{u} or \hat{u} (or both). Because a decrease in the slope of the consent line necessarily shrinks the area of objection, a senator's increasing assessment of two bills (\hat{x} and \hat{y}) and/or decreasing assessment of no bills (\tilde{x} and \tilde{y}) can change his strategy in at most one way: from objection to consent. Actual instances of such changes are presented in part III, but before turning to them it is useful to expand and to clarify the relatively loose geometric representation with a standard comparative statics exercise on the condition.

The objective is to state the condition in a form from which potentially testable propositions can be derived. Let $E = Eu(\beta) - Eu(\alpha)$, the senator's net expected utility from objection. Reordering the condition in the theorem and setting it equal to E yields

$$E = q' \hat{u} - q \hat{u} + \tilde{u} - p \tilde{u} \tag{4}$$

Stated generally, the question of interest is: how will a change in any given parameter (\tilde{u} , \hat{u} , p , q or q') affect a senator's net expected utility (E)? Total differentiation of (4) provides the answers.

$$\begin{aligned} dE &= \frac{\partial E}{\partial \tilde{u}} d\tilde{u} + \frac{\partial E}{\partial \hat{u}} d\hat{u} + \frac{\partial E}{\partial p} dp + \frac{\partial E}{\partial q} dq + \frac{\partial E}{\partial q'} dq' \\ &= (1-p)d\tilde{u} + (q'-q)d\hat{u} - \tilde{u}dp - \hat{u}dq + \hat{u}dq' \end{aligned} \tag{5}$$

The five partial derivatives in (5) have natural interpretations. Each states the precise effect on E of a change in a given parameter, holding all other parameters constant. Incorporating our knowledge of the range of values and the substantive meaning of such parameters enables us to state five corresponding propositions. (The propositions are stated in terms of changes in the senator's net expected utility from objection, but the obvious converses hold.) Ceteris paribus:

- P1. An increase in a senator's evaluation of the no bills outcome will increase his net expected utility from objection, because

$$\partial E / \partial \tilde{u} = (1-p) > 0.$$

- P2. An increase in a senator's evaluation of the two bills outcome will decrease his net expected utility from objection, because

$$\partial E / \partial \hat{u} = (q' - q) < 0 \quad (\text{by A4}).$$

- P3. An increase in a senator's estimate that no bill will pass on x if he consents will decrease his net expected utility from objection, because

$$\partial E / \partial p = -\tilde{u} < 0.$$

- P4. An increase in a senator's estimate that a bill will pass on y if he consents will decrease his net expected utility from objection, because

$$\partial E / \partial q = -\hat{u} < 0.$$

- P5. An increase in a senator's estimate that a bill will pass on y if he objects will increase his net expected utility from objection, because

$$\partial E / \partial q' = \hat{u} > 0.$$

While most if not all of the propositions are consistent with informal intuitions about senators' behavior, they convey more information than mere common sense or geometric representations yield. The following cases were selected to determine whether such information is useful.

III. TWO CASES

The obvious obstacle to testing the theory is that techniques for measuring \tilde{u} , \hat{u} , p, q, and q' are unknown or at least not readily available. Consequently, empirical analysis is necessarily subjective and is based on a small sample. The discussion does serve at least two and possibly three purposes, however. First, descriptions of the cases provide a richer view of how complex unanimous consent agreements are reached in the contemporary Senate. Second, the attempt to interpret senatorial behavior lets us assess whether the formal terms of the theory have empirical referents. And finally, the joint focus on theory and observation provides a minimal opportunity to reject the theory or, barring rejection, to discover important omissions that might be incorporated into future extensions.

Case 1: Dairy and Tobacco Adjustment Act of 1983. On October 5, 1983, Senate Majority Leader Howard Baker interrupted a pending motion regarding authorizations for the Department of State to introduce a unanimous consent request for S. 1529, an act that would create a paid diversion plan to induce dairy farmers to produce less milk, and make adjustments in the acreage allotment and marketing quota systems in federal tobacco programs.⁶ It immediately became clear that the proposed UCR was ambiguous about the amendments to be permitted. Senator Melcher (D-MT) reserved the right to object to the request, and his key concern coincided with that of several senators from agriculture intensive states. Melcher questioned whether amendments pertaining to target prices for commodities such as wheat, corn, cotton or rice would be permitted during debate of the dairy and tobacco act. Baker's response was frank.

Yes, Mr. President. The bill will be open to amendment in general, as it is under the rules of the Senate. I know that, in addition to the dairy-tobacco bill, there is a serious controversy that revolves around the target price issue, which I believe is the subject of another bill. Target prices, of course, could be offered to this bill as an amendment unless we provided by unanimous consent that that would not be the case.⁷

This evoked an outright objection from Senator Exon (D-NB), which Melcher subsequently elaborated upon:

I am not at all happy with the situation . . . that an amendment dealing with the target prices on wheat or other commodities would be offered . . .

Baker attempted to accommodate Melcher, inquiring how "the Senator [would] react if a unanimous consent agreement were entered into that would forbid a target price amendment to this bill?" Exon responded

favorably.

I would withdraw my objection to taking up the bill if we could get a unanimous consent agreement that it would be on tobacco and dairy only and if there were a prior agreement on the matter of target prices that would not come up as an amendment thereto.

Although the preferred agreement seemed to be one resembling a closed rule, Senator Dole (R-KS) then entered the chamber and Baker correctly anticipated that Dole would have something to say on the matter of target prices for wheat. Consistent with Melcher, Exon and Zorinsky, Dole wanted to ban all amendments on target prices, however he "would not consent that we cannot offer amendments to the tobacco and dairy bill." In other words, he wanted a guarantee of strict germaneness: amendments should be permitted, but only if they pertain to the immediate content of the bill, namely dairy and tobacco farming.

The situation became more complicated and tense when objecting (or objection-threatening) senators drew attention to the possibility that a trade had been arranged between Agriculture Secretary Block and senators from dairy and tobacco states. According to Zorinsky (D-NB), the Agriculture Committee chairman, Senator Jesse Helms (R-NC), and its members had met with Block,

who attempted to initiate a quid pro quo in agreeing to what he called a very bad dairy bill, if, in effect, we would deliver to him sufficient votes to offset the money there, to take it out of the hide of the wheat people in putting a target price freeze on wheat.⁸

Charges and counter-charges occupy several pages in the Record, but a description of the outcome and interpretation of how senators' likely preferences and subjective probabilities encouraged objection

target prices (about which they cared a great deal). Therefore, as represented by the elliptical indifference curves, the policy change in the two-dimensional space from \tilde{x} to \hat{x} was highly undesirable under the initial unanimous consent request.⁹

What, then, did the objectors gain in the second UCR, and how well does it conform to the theory presented in the previous section? The "proposal germaneness" (Shepsle, 1979) provision they sought and attained has a simple spatial interpretation: it confines the set of permissible amendments to a subspace — in this case, to the x_1 dimension represented by the dotted line passing through \tilde{x} . Once objecting senators were assured that policy on the target price dimension, x_2 , would remain fixed at \tilde{x}_2 during consideration of S.1529, their expected outcome too could change only in the horizontal direction. Therefore, \hat{x}^* in figure 3 represents their expectation under the second unanimous consent request.

The geometric representation of the location of \hat{x}^* on a much higher utility contour than \hat{x} has a precise analogue in the theory, namely a positive change in \hat{x} , which, holding y constant, can be treated as a positive change in \hat{u} . Proposition 2 states that $\partial E / \partial \hat{u} = (q' - q) < 0$, meaning that holding other parameters constant, a positive change in the value of the projected outcome will make objection less attractive. Although we obviously have no precise gauge for the initial or terminal states of the relevant senators' calculations, we can look more closely at both the theory and the situation to guess how responsive the initial objectors were likely to

have been to the change in \hat{u} that presumably resulted from the new UCR.

The substantive interpretation of the proposition is that the magnitude of reduction in a senator's net expected utility from objection is proportional to his expectations of punishment ($1 - q'$) and/or likelihood of reward (q). The intensity of the debate during the initial UCR and the broader legislative setting provide insights into the likely values of the key terms. Although the two factions sparred over short-term procedural issue, they were nevertheless natural allies when it came to the long-term substantive issue of continued support for American agriculture. Recall that Baker's introductory remarks included an allusion to a separate bill on target prices that was pending. Thus initially objecting senators probably believed that there was a high probability of punishment if their objections were to have permanently killed the Dairy and Tobacco Bill. Theoretically, this suggests a large $1 - q'$ (probability of punishment, given objection) and by necessity a small q' . Similarly, on the consent side of the equation senators probably believed that to cooperate on the Dairy and Tobacco Bill would be rewarded later in the session when target prices were to be considered independently. Therefore q was probably reasonably large and, following through, $q' - q$ was large and negative.

The formal upshot from these impressionistic assessments is that each of the likely values — a large positive change in \hat{u} , a high q , and a low q' — would produce a large negative change in E , thereby

making objection a much less attractive strategy under the second UCR. It therefore seems plausible (with plausibility inversely proportional to the dubiousness of the interpretation) that the eventual observed change to compliance with the norm of consent is consistent with the theory.

Case 2: Martin Luther King Holiday. HR 3706, a bill to create a national holiday in honor of Martin Luther King, Jr., passed with strong support (338-90) of members on the House of Representatives on August 2, 1983. Senate leaders had hoped to act on HR 3706 on October 3, but their plan was aborted when Senator Jesse Helms launched a filibuster just as the bill came to the floor under the normal rules. The leadership of both parties responded by filing for cloture. The vote on cloture was scheduled for October 5, but even if cloture had been successful, the number of amendments was sufficient to tie up the Senate as it was trying to conclude its business before the Columbus Day recess. Given these constraints, Howard Baker mounted a last ditch effort to circumvent the normal rules by proposing that the bill be considered under a unanimous consent agreement. He was somewhat pessimistic when introducing the request.

Mr. President, as I indicated last evening, I wish to propound a unanimous consent request. I am by no means sure that it will be agreed to and, as a matter of fact, I have been advised that it probably will not be agreed to. However, I would like to go ahead and propound the request at this time . . .

The provisions of Baker's initial UCR were:

- the pending cloture vote would be vitiated

- the Senate would consider HR 3706 at 10 a.m. on October 18, 1983
- Senator Helms would be recognized to offer a motion to commit the bill to the Judiciary Committee
- debate on the bill would be limited to four hours
- amendments may be offered but debate would be restricted to one hour for each amendment¹⁰
- debate on second degree amendments, appeals, points of order, or other motions would be restricted to thirty minutes
- final passage would occur on or before 2 p.m. on Wednesday, October 19 and
- "that the agreement be in the normal form."¹¹

Most of the provisions are self-explanatory and were not controversial. Although the provision setting a time for final passage would preclude a filibuster and therefore was potentially objectionable to opponents of the bill, somewhat surprisingly, the last provision became more important. Immediately after the UCR was proposed, Baker expounded on "the normal form" by stating that "no amendments would be in order except amendments that were germane to the bill itself." This led Senator Gordon Humphrey (R-NH) to reserve the right to object, presumably because he wanted more details on the amendments that would be permitted under the UCR. Humphrey's claim was that

it is certainly not my wish to delay the final passage of the bill. I do, however, object to the provision which, if I understood it correctly, sets a time certain for final passage. As one of the opponents of the bill, I intend to offer one or two amendments.

Baker was reluctant to offer a guarantee to Humphrey that his amendments could be considered. When the presiding officer asked

whether Baker wished to modify his request, he responded:

No, Mr. President, I do not. The request was negotiated with many Senators over a long period of time and is a package. And, honestly, I think if I were to modify it to accommodate the wishes of the Senator from New Hampshire -- which is a perfectly legitimate request -- . . . it would make the agreement unacceptable to a number of Senators because there would no longer be any practical limit on the length of time that could be consumed in the debate on this measure. . . . So, without a time certain, I am afraid that the arrangement would fall apart.

In the subsequent debate it became clear that Humphrey did not object to the provision of the UCR setting a time for final passage, but merely wanted a reasonable assurance that his amendments would be considered. Interestingly, even Senator Helms exhorted Humphrey not to object. After a few minutes of formal negotiation, Senator Baker suggested the absence of a quorum. During the first quorum call, the conferring senators were unable to reach a new agreement, so Senator Moynihan requested another quorum call to allow the informal negotiations to continue. When a new tentative agreement was reached, Baker asked and received unanimous consent that the quorum call be rescinded (an example of a simple UCA), and proposed a modified UCR which ultimately satisfied Senator Humphrey. There were only three changes in the second UCR. Two of them extended the allotted time for debate (moving to 9 a.m. the time at which the bill was to be taken up and extending to 4 p.m. the time by which a final vote was to be taken). The third change waived paragraph 4 of rule XII, thereby permitting the new UCR to be agreed to in the absence of a quorum (since few Senators were on the floor when the new agreement was negotiated).

The example illustrates the practice of bending but not breaking the norm of consent by reserving the right to object without rejecting outright. The case also raises two difficult questions. First, why did Humphrey nearly object to the proposed agreement and then withdraw his objection? And perhaps more puzzling, why did Helms, who had previously filibustered against the King holiday, give his consent to the UCR that made continued filibustering impossible? A closer examination of the case, including preceding and subsequent events, provides tentative answers to these narrow questions and has broader implications for leadership strategy.

A reading of the Record makes it clear that Humphrey's strategy of threatening to object to the UCR resulted in his right to propose two amendments that otherwise would not have been considered. But the fit between the facts and the theory is not immediately obvious whereas Humphrey seemed not to expect that his amendments would pass.¹² For example, he introduced one amendment by saying,

Mr. President, I am under no illusions. A colleague observed to me a moment ago that this bill is unamendable, that you could not even amend the pledge of allegiance to the bill, and I believe he is probably correct (Congressional Record, October 19, 1985, p. S104).

To explain his change from objection to consent, therefore, requires an expanded interpretation of a proposition derived from the theory. Suppose that a senator's assessment of an outcome is influenced not only by the policy that results from the law but also from the means by which the collective choice was made -- more specifically from the position-taking opportunities afforded by the

agenda as constructed by the UCA. The evidence suggests that Humphrey accepted \hat{x} as a foregone conclusion, but nevertheless valued greatly an agreement that permitted him to offer two amendments during which he could make his position for economical operation of government known.¹³ So while the revised UCR changed neither his probability estimates nor his assessments of policies, it did offer him concrete position-taking advantages. Loosely, then, the change can be interpreted as an increase in the $u(\hat{x})$ component in \hat{u} , where $u(\hat{x})$ includes opportunities for position-taking in addition to the value associated with the expected bill. Proposition 2 suggests that such a change should decrease the attractiveness of objection, which is consistent with his change in behavior from near objection to consent.

On its surface, Helms's consent to the UCR for the Martin Luther King Holiday seems inconsistent with the theory. He strongly preferred no holiday (\tilde{x}) to a holiday (\hat{x}), and had previously filibustered the bill. Yet when the UCR which set a time to vote for final passage was proposed, he did not object. The key to understanding Helms's consent is Baker's scheduling strategy, the likely effects of which are consistent with propositions 4 and 5. Two points are revealing. First the UCAs for both the King Holiday and the Dairy and Tobacco Act were negotiated on October 5. Second, Baker's proposed UCR for the King holiday immediately preceded the UCR for the Dairy and Tobacco Act. Combined with the crowded legislative calendar and approaching Columbus Day recess, this sequencing may well have changed Helms's estimates of the probabilities of reward for

consent (q) and punishment for objection ($1-q'$). Specifically, were Helms to have objected to the UCR for the King holiday, the chances of reaching an agreement for the Dairy and Tobacco Act would have been less likely. Similarly, were he to have retracted on his efforts to kill the popular King holiday bill (which ultimately passed 78-22), his chances for receiving cooperation during the relatively compact schedule were probably enhanced. Formally, the change in q was positive and the change in q' was negative. By propositions 4 and 5, each of these changes should diminish the net expected benefit from objection. Of course we cannot be sure that had this scheduling not occurred, Helms would have continued his efforts to kill the King bill. It does seem reasonable to conclude, however, that the back to back scheduling of the two UCAs made violation of the norm of consent a much less desirable strategy.

IV. IMPLICATIONS

The general statement of the theoretical result -- that senators frequently consent to UCAs because to do so maximizes expected utility -- is somewhat vacuous when considered alone. But if the cases examined are typical, the theoretical result takes on additional meaning in light of the observed tendency of the Senate leadership to exploit others' maximization calculi to induce cooperation. Several theorists who are interested in Congress have recently addressed the question of how cooperation evolves and persists in an institution that is presumably devoid of enforceable contracts. Their answers

vary but nevertheless share the view that bargains are rarely struck explicitly, and that even implicit deals are nonbinding. Nevertheless cooperative behavior occurs. Ferejohn (1985), for example, attributes the instigation and persistence of food stamps and agricultural programs to jurisdictionally and preference induced logroll. Shepsle and Weingast (1985) argue that the reason committees rarely get "rolled" on the floor is neither because of the norm of deference nor because of insufficient temptations for noncommittee members to propose amendments, but rather because the committee possesses an ex post veto in the conference committee stage. And Axelrod (1984) offers interpretations of Congress based on his study of repeated play two-person prisoner's dilemma games. The theoretical results on unanimous consent agreements are not necessarily inconsistent with such explanations; although UCAs are binding, members cannot be forced to enter into them nor can they be formally punished for renegeing on implicit (or for that matter explicit) quid pro quos in the form of, say, mutual consent pacts. But the subtler and possibly unique empirical insight of the study is that the availability of institutional features such as the unanimous consent procedure permits clever leaders to construct situations in which potential defectors' extreme and very real temptations to object are accompanied by severe costs. Certainly such was the case for Jesse Helms during consideration of the UCR for the bill to establish a Martin Luther King, Jr. Holiday. So even though no contracts exist in such situations, leaders can and do schedule UCRs such that virtual

contracts are drawn up. Moreover (and figuratively speaking), even the "free spirit" senators who consider the terms of such contracts find it very difficult not to sign.

A related but mostly tacit theme in this study is endogeneity of institutional arrangements. Some theorists have suggested that if members of an institution are permitted to change its rules (as senators do whenever they enter into a UCA), then many or most of the "chaos theorems" (McKelvey, 1976; Schofield, 1978; etc.) ought to be straightforwardly transportable to the sphere of institutional choice, except that perhaps preferences on institutional arrangements are relatively "congealed" (Riker 1980). One possible problem with this view is its implicit assumption that politicians know a great deal about the effects of alternative institutional arrangements. But a better argument against the dizzying prospects of endless cycling over the space of institutional arrangements pertains to the "unanimous" in UCAs. UCAs impose agendas on senators, moreover, agendas which are remarkably binding whereas a UCA can be rescinded only by another UCA. Theoretically, then, the only way to cycle over these endogenously chosen institutional arrangements would be for all senators to change their minds. A necessary condition for chaos in institutional choice therefore would be extreme fluidity of preferences. Since empirically this is an unlikely prospect, the endogeneity of institutional arrangements such as UCAs would seem to induce stability -- not undermine it. Considering the empirical fact that UCAs are reached with increasing frequency (albeit sometimes painstakingly), and

deferring the difficult question of what form such UCAs take, one might conjecture that there exist endogenous structure induced equilibria (ESIE), a la Shepsle's SIE which in contrast take the institutions as given. In other words equilibrium outcomes may be predicted even when the "structures" are situation-specific and chosen endogenously. Theoretical speculation aside, however, the more reliable point is that institutional features such as UCAs are frequently employed real world cases of institutional endogeneity and thus fertile testing grounds for forthcoming theories of institutional choice.

Summarizing more narrowly, this study has introduced an explicit strategic perspective on congressional norms and has assessed its usefulness for answering the question of when and why senators go along with unanimous consent requests. The reasonably close correspondence between the theory and the cases suggests that norm-related strategies vary in systematic and potentially predictable ways. This is not to claim confirmation of the theory, but only to underscore the hopeful prospects for continued study of congressional behavior using the strategic perspective. To reiterate, norms are not collective and constant codes of behavior but individual and variable strategic decisions. Congressmen have good reasons for behaving consistently with norms and equally good reasons for violating them.

APPENDIX

Theorem. A senator will object to a unanimous consent request on issue x if and only if

$$\frac{\tilde{u}}{\hat{u}} > \frac{q - q'}{1 - p}.$$

Proof. First note that $\tilde{u} + \hat{u} = 1$, since by definition $\tilde{u} = u_1(\tilde{x}) + u_2(\tilde{y})$ and $\hat{u} = u_1(\hat{x}) + u_2(\hat{y})$. Adding and rearranging yields

$$\begin{aligned} \tilde{u} + \hat{u} &= [u_1(\tilde{x}) + u_2(\hat{y})] + [u_1(\hat{x}) + u_2(\tilde{y})] \\ &= u(\tilde{x}, \hat{y}) + u(\hat{x}, \tilde{y}) && \text{(by A5)} \\ &= 1 + 0 \\ &= 1. \end{aligned}$$

The remainder of the proof consists of simple algebraic manipulations and occasional use of the fact that $\tilde{u} + \hat{u} = 1$.

$$\begin{aligned} \beta \quad \langle \Rightarrow \rangle \quad q' - pq + [(1-q')-p(1-q)]\tilde{u} - (1-p)q\hat{u} &> 0 && (3) \\ q' - pq + \tilde{u} - q'\tilde{u} + pq\tilde{u} - p\tilde{u} - q\hat{u} + pq\hat{u} &> 0 \\ pq(\tilde{u} + \hat{u} - 1) + q' - q'\tilde{u} - q\hat{u} + \tilde{u} - p\tilde{u} &> 0 \\ q' - q'\tilde{u} - q\hat{u} + \tilde{u} - p\tilde{u} &> 0 \\ q'(1 - \tilde{u}) - q\hat{u} + \tilde{u} - p\tilde{u} &> 0 \\ q'\hat{u} - q\hat{u} + \tilde{u} - p\tilde{u} &> 0 \\ \hat{u}(q' - q) + \tilde{u}(1 - p) &> 0 \\ \frac{q' - q}{1 - p} + \frac{\tilde{u}}{\hat{u}} &> 0 \\ \langle \Rightarrow \rangle \quad \frac{\tilde{u}}{\hat{u}} &> \frac{q - q'}{1 - p} && \text{Q.E.D.} \end{aligned}$$

FOOTNOTES

- * I am grateful to Tom Gilligan and Doug Rivers for helpful conversations and comments, and to Walter Oleszek for bringing the cases to my attention.
1. Alan Ehrenhalt, CQ, April 7, 1984, p. 819.
 2. Robert Keith's (1977) comprehensive historical study of unanimous consent agreements (UCAs) is the only focused treatment of UCAs of which I am aware. See also Oleszek (1984, pp. 161-164), part of which is based on Keith's study.
 3. Oleszek (1976) provides an impressive catalogue of dilatory tactics that are permitted under the normal rules.
 4. My excerpts from Matthews probably overstate his actual views. Other portions of his chapter on folkways are more consistent with the decision-theoretic approach I take below.
 5. A contrasting case in which the normative consequences are less desirable (but no less rational) is Weingast's (1979) "norm of universalism," generalized in Shepsle and Weingast (1981).
 6. See CQ Weekly Report, Oct. 8, 1983, p. 2076.
 7. All excerpts are from the October 5, 1983 Congressional Record, pp. S 13608-17.

8. He went on, however, to compliment the dairy people, because their answer . . . to the Secretary of Agriculture was in the negative, [and] that they want no part of the type of involvement in the subterfuge that takes place on a daily basis . . . in the Senate Chamber. Once again, it substantiates the fact that . . . there are two things people do not want to see done . . . watching sausage made and watching a legislature pass laws.
9. The precise locations of the points in figure 3 is not central to the argument, provided that the indifference curves of objectors are elliptical in the manner shown.
10. The specific amendments were not mentioned in the UCR.
11. Except where quoted, the provisions are paraphrased from the Congressional Record. Quotations that follow are all extracted from the Record, October 5, 1983, pp. S 13606-13608.
12. Indeed his amendments were defeated 16-74 and 11-83.
13. One of his amendments was to change the date of the holiday to the third Sunday in January; the other was to move the Lincoln holiday to Sunday instead of having a King holiday. When arguing for each amendment, he stressed the money they would save.

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