Committee Theories Reconsidered

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The daily drama of congressional lawmaking plays out in committees. Committees are center stage, and party leaders or presidents rarely eclipse their policymaking powers. These committees, numbering 19 in the House of Representatives and 17 in the Senate, have proved remarkably resilient in the face of ongoing pressures for reform, even though committees are not constitutionally protected. Committees are periodically under attack from party leaders, caucuses, bureaucracies, interest groups and journalists. Scholars, too, often lament committees and call for any number of reforms, including clearer boundaries and less influence over legislation. A year rarely passes without somber calls for major changes, yet somehow committees and the committee systems of the two houses persist decade by decade. The spotlight never wavers; they are always center stage. Why is this the case, and how resilient can we assume that committees really are?

Political scientists have offered four general explanations for why committees exist, and in this chapter we clarify what those theories are. Then we compare them in order to determine which theory -- or combination of theories -- seems best to explain the presence and persistence of congressional committees.

Ask a member of Congress why committees exist and a dozen reasons could be given. Political scientists have just four, and they are introduced in Part 1 of this chapter. Committees exist, we are told, for harnessing the **informational** advantage of members who specialize in policy areas, and committees make it easier for members to trade favors and secure **distributive benefits** for their districts. To some extent, committees are also creations of **political parties** and allow the parties to maintain some control over policies. Finally, committees may exist to maximize the power of a chamber (the House of Senate in Congress, for example) in a **bicameral rivalry** for money and power.

In Part 2 of the chapter, we evaluate these theories by looking at how committees actually operate and seeing whether one or more of the theories could have predicted elements of the committee system (such as the existence of discharge petitions). Other scholars, most notably David Mayhew and Forest Maltzman, have used this approach.[1] This chapter, though, is different because we examine far more aspects of how committees work and while simultaneously seeing how the four important theories stack up. For instance, which theories – if any – imply that the House and Senate will have separate, not joint, committees? Which – if any – imply the existence of discharge petitions? And so on.

Is any theory about why committees exist consistently right when we look how the committee system really operates? We answer this question by the end of Part 2, and we devote the final part of the chapter to a discussion of our findings. One benefit of the chapter is that committee rules and procedures are presented in a systematic way, but we think the greater payoff comes in Part 3, because the spotty successes and failures of the four theories suggest why committees persist and why they remain so powerful.

1. Committee Theories

Theories are like the toy model airplanes many of us had as children. Models resemble reality, and they can teach us a lot about why planes fly or boats float. Plastic models are fine, but mathematical and argument-based models, while not as complicated as the workings of a plane, are more difficult to see in the mind's eye. This section introduces the four theories about congressional committees, and the second section fills them out with tests and examples.

1.1. Informational Efficiency Theory

We begin with the informational theory, most closely associated with Tom Gilligan and Keith Krehbiel.[2] Their approach resonates with earlier "institutional" works on congressional committees, and it is perhaps the most optimistic about committees. A committee is better informed about the consequences of a policy than the full member ship of the House or Senate. (We will refer to the full membership as the "floor") When the committee reports a bill, this sends important information to the floor, which may amend the bill so that the policy outcome is as close as possible to the floor's most preferred point.

Because the floor can rewrite the bill, the committee has an incentive to be strategic about the information it provides. In particular, if the committee's preferences differ from the floor's, it will want to exaggerate its information in such a way to cause the floor to write a bill that ends up being very similar to the bill that the committee would write if it had sole authority. But the floor recognizes the committee's incentives to exaggerate, and it discounts the information the committee provides accordingly. Gilligan and Krehbiel show in a formal model that the greater are the differences between floor and committee preferences, the less information the committee will be able to transmit successfully. However, when the

committee's wishes are the same as the floor's, the committee has no reason to exaggerate, and consequently the floor learns all the information the committee possesses.

One prediction is that if the floor has some control over the membership of the committee, the committee should not be a preference outlier.[3] That is, the hoped-for outcome of the median member of the floor should not differ greatly from the wishes of the median member of the committee. The theory is more complicated than that, though. If the information is costly, the floor may have to set up special incentives for the committee to gather it. One of the incentives may be special institutional rights such as a closed rule for the bills that it reports. However, as the goal is always to maximize the preference of the median member of the floor, the floor is very reluctant to give up power to a committee. As Krehbiel explains, "The subservient nature of committees in informational theories cannot be overemphasized. Committees are exclusively instruments of the legislature that perform for the legislature."[4]

1.2. Distributive Benefits Theory

While the informational theory sees Congress choosing bills from a one-dimensional policy space, distributive-benefits posits a multi-dimensional one. Congress's problem is like a collection of minority special interests trying to divide a pie. Because the division is not a zero-sum game, the process is more like dividing up a pie that contains slices of many different flavors. All members want as large a slice as possible, but the members have different preferences over different flavors. One set of members may prefer a large agriculture slice, another a large urban-benefits slice, another an import-restrictions slice, and so on.

Each special interest is a minority, so to obtain the special benefits desired, it must form a coalition with other interests. The art of politics is the art of coalition formation, and few members of Congress forget that old saw, "No permanent friends; no permanent enemies; just permanent interests."

A variety of problems can occur when forming temporary coalitions to pass bills. Most troubling, one group (or a collection of like-minded representatives) can renege on an agreement with other groups of members. For instance, suppose group *A* desires a particular regulation, while group *B* wants some public works projects. Neither group composes a

majority on its own, but together they do. How can they muster a majority on the floor of the legislature? Write an omnibus bill that contains the policies that each wants, and they both benefit.[5] That is the nature of a logroll.

The log rolling solution is not as simple as it seems. Once the public works projects are built, nothing prevents group *B* from canceling its support of the regulation that *A* desired. In fact, since the regulation does not benefit group B, it has an incentive to vote for future legislation that rescinds it. Although this would mean reneging on the agreement with *A*, *B* does not care, since its public works projects have already been built. Even worse for the process of coalition building, *A* anticipates this and realizes that it should not make the agreement in the first place. The incentive to renege is a major impediment to such logrolls between coalitions of minorities in Congress.

According to distributive benefits theory, a specialized version of the committee system comes to the rescue. Suppose that group *A* dominates the committee overseeing the regulation. If it makes the agreement with group *B*, and afterward someone tries to rescind the regulation, *A* can simply exercise its gatekeeping power in committee. That is, it can refuse to introduce the bill that rescinds the regulation. Because of this power, *A* is now happy to join the logroll with *B*. The result is that the committee system provides a way for the two groups to enforce the prior agreement. Furthermore, group *B* actually prefers that its hands are tied from canceling the original agreement – otherwise the agreement is not possible. Moreover, it does not mind if group *A* dominates the committee that oversees the regulation.

One important implication of distributive benefits theory, then, is that committees will be *un*representative of the chamber. They will be *preference outliers.* (This contrasts with the informational theory, where if the committee's preferences differ too much from the floor's, the floor cannot trust the information that the committee reports.) However, just as important and often overlooked by scholars, the theory implies that committees should have gatekeeping power, which means committees can block legislation from moving forward. This is a powerful implication. For instance, it allows us immediately to reject the distributional theory as an explanation of other institutional bodies such as subcommittees, task forces, and caucuses, since these bodies do not have gatekeeping power.

1.3. Majority-Party Cartel Theory

Scholars have long noted – and sometimes lamented – the apparent lack of political party discipline in the Congress.[6] With a few exceptions the scholarship on party discipline has had little to say about how parties affect committee rules and procedures.[7] Majority-party cartel theory, associated with Gary Cox and Mathew McCubbins, is the great exception. A majority party, they argue, excludes the minority party and party members cooperate to achieve a party's collective goals.[8]

If the majority party is a legislative cartel, how much power – if any – should it give to the committees? What is the form of this power? Does it involve negative power, positive power, or both? That is, will the committee only be able to prevent legislation it does not prefer, or will it also be able to enact legislation that it does prefer, possibly over the wishes of the party or floor? Three elements of the theory are crucial.

First, committees are part of a reward system for the majority party, and the most loyal party members are rewarded by being more likely to get the committee assignments they request. If a seat on a committee can be viewed as such a reward, then committees must possess power. Otherwise, the seats would be hollow rewards.

Second, preferences of the majority-party members of a committee typically are not much different from the median preference of the entire majority party. Cox and McCubbins interpret this as evidence that the majority caucus holds the committee in close check. Again, this implies committees have power. Otherwise, the majority party would not care about the preferences of committees. This also implies that the majority party members on the committee collude among themselves and exclude the minority members. Otherwise, the relevant statistic would be the median of the *whole* committee.[9]

Third, the party cartel theory implies an important sequence for considering bills in Congress. For example, imagine that the Democrats are the majority party, the House is considering a minimum wage bill, and the status quo is $5.00 an hour. Suppose the median member of the House prefers $6.00 an hour, but the median House *Democrat* prefers $6.50. Utilizing the majority-party cartel approach, Democratic leaders could implement $6.50 as follows:

1. The relevant committee (with Democrats comprising a majority) writes a bill raising the wage to $6.50 an hour.

2. The Rules Committee (with Democrats again comprising a majority) introduces a resolution that disallows amendments to the bill.
3. The House floor votes for the resolution to restrict amendments. Although the moderate members of the Democratic Party would prefer to join a coalition of Republicans and defeat the resolution (since unlimited amendments would allow the median of the House to adopt his or her most-preferred policy of $6.00), party leaders apply pressure to prevent this.
4. Once the vote on the rule passes, the party can go on autopilot for the vote on final passage, and leaders do not need to apply any further pressure. Since the final vote is an up-or-down decision between $5.00 and $6.50, even moderate Democrats prefer to vote for $6.50.

The first and third steps may be especially difficult for the party leaders. However, the first step can be accomplished in either of two ways. One is to stack the committee so the median prefers $6.50, thus making the committee a preference outlier. However, a more likely route is for caucus leaders to pressure moderates into writing the $6.50 bill, despite their preferences. The third step, to persuade a majority of the chamber to vote for the restrictive rule, also can be accomplished through party pressure.

The strategy allows the party to achieve its policy goal. Meanwhile, it allows its members to vote their sincere preferences on the substantive issue, the final vote, but vote the party line on committee and procedural issues. Given constituency pressures, and given that constituents may be less watchful on such committee and procedural matters, the strategy may be easier for party leaders than applying pressure only on the final vote.

1.4 Bicameral Rivalry Theory

Students of American history will recall the Founders' debates over two proposed legislative systems – James Madison's bicameral "Virginia plan" in which seats in both chambers were determined by population, and the rival unicameral "New Jersey plan." The Founders' settled on a compromise that combined the interests of large and small states, opting for a bicameral legislature with one chamber responsive to small states and the other reflecting the large states. Inter-branch rivalry has often been mentioned as an important force in the development of 20th century committees, particularly around reorganizations in the early 1920s, and there has been a recent flurry of thinking about what the great

compromise means for today's committees.[10] What can bicameralism teach about committees?

Daniel Diermeier and Roger Myerson propose a model that seems almost too simple (and perhaps too cynical) to be true, yet it captures important features of modern legislatures. They imagine two competing lobbyists paying bribes to pass a bill. Because of competition, legislators receive excess "rents," which means they get more rewards than they would if there were only one lobbyist. Understanding this, legislator set up hurdles that maximize "rents" or bribes. These hurdles can take various forms, including a committee that can veto legislation, a chair who can refuse to hold the necessary hearings for a bill, a speaker or a Rules Committee that can kill a bill through scheduling, or a rule that requires a supermajority to pass a bill (such as the cloture rule in the Senate). All make it more difficult for outside interests to maneuver a bill through the legislature. We have seen legislative leaders keep bills from a final vote until after a crucial fundraiser, and in the quiet of their offices they will admit to us that the reason is to extract more money from lobbyists.

There is a fine line between setting up too many and two few hurdles. If passing a bill proves too costly, measured against the potential rewards, then lobbyists will not "pay to play," and legislators will not be rewarded. The institution-design problem is a balancing act. The legislature neither wants too many nor too few hurdles.

According to the bicameral rivalry theory, the more veto points in the constitutional structure of the government, the more hurdles a legislative chamber will want to create within its own chamber. In a parliamentary system with few veto points, the chamber creates few, if any, internal hurdles. However, in a system like the U.S. with numerous veto points, the two legislative chambers create many internal hurdles. Under Diermeier and Myerson's way of handling of the uncertainty regarding lobbyists' willingness to pay, each chamber in a U.S. structure will want to have one more internal hurdle than the other chamber, so each chamber creates an infinite number of hurdles. Of course, there are practical considerations against this result. Furthermore, we suspect that under different parameterizations of lobbyists' willingness to pay, the equilibrium would be finite, but still large.

The bicameral rivalry theory, with its stark assumptions and scant consideration of real-world concerns of legislators, seems to be little more than an intellectual exercise. On second glance, however, it offers several insights.

- First, it offers an explanation for why committees typically have at most only negative power – that is, committees can only veto legislation, but they cannot unilaterally implement legislation above the wishes of the chamber.
- Second, it sheds light on the multiple veto points within Congress. Some scholars argue that it is not just committees that can keep the gates; this can also be done by committee chairs, the House Rules committee, individual senators bucking unanimous consent agreements, and others.
- Third, it helps explain regularity between the constitutional structure of a country and the power of committees within the country's legislature, for unicameral parliamentary systems usually do not have committees, or at least not committees strong enough to veto legislation.[11] Meanwhile, multi-chamber and division-of-powers systems usually have strong committees.

2. Committee Theories Reconsidered

We turn now to our data (committee institutions) for testing these theories. All of our findings are summarized in a single (large) table that shows institutional rules in rows and theories in columns. When the way things actually work corresponds to a theory, we put a plus mark in the cell. Presumably, the more plus marks, the better a theory performs.

As an illustration of our approach we use in this section, consider the seniority system in the House of Representatives. With rare exceptions, the seniority system specifies that the committee member of the majority party with the longest continuous service on the committee becomes chair. Subtle components are often overlooked. The norm does not reward seniority *per se*, but within-committee seniority specifically. Total service in the chamber rarely matters. Furthermore, House and Senate committees require prospective chairs to be members of the majority party, which contrasts with some state legislatures. Also, the House and Senate seniority systems refer specifically to full committees; a similar rule does not hold for subcommittee chairs or party leadership posts. Theories of committee institutions that purport to explain seniority systems would – ideally – illuminate these multiple subtleties.

4.1 The Seniority System

Several details of the system are especially relevant deciding which theory – or combination of theories – works best:

- The seniority system exists.
- Seniority in the House (though not the Senate) refers to continuous, not total, service.
- House seniority refers to committee, not chamber, service.
- Seniority does not transfer when a member switches chambers.
- There does not exist a similar seniority system for subcommittees.
- Seniority is party specific.
- Seniority is not binding; that is, committee chairs are still subject to a caucus vote, and
- Caucus slates are still subject to a vote in the whole chamber.

Chamber vs. Committee Seniority, Continuous vs. Total Service. The first three facts – that seniority exists, that it refers to continuos service, and that it refers to committee service – support the informational theory very well. Seniority "pulls members toward greater legislative specialization: members settle into the committee slots, cultivate expertise in a distinct policy field, and spend their time managing legislation and conducting oversight in that field."[12] To the extent that longevity within a committee is leads to greater expertise, committee-specific seniority – as opposed to chamber seniority – rewards expertise. Furthermore, if it depends on continuous service, it rewards specialization, since it discourages members from transferring to different committees during their career in Congress. Legislators come to treat service on a committee as a long-term investment, and the more senior they become the less likely they are to leave the committee.

The presence of a seniority system is also consistent with the distributive benefits theory. Committee service is a property right. Without it, a majority of the chamber could decide to oust the most intensely interested members from a committee. But if this is possible, the members would not be able to protect prior logrolls. This, in turn, would cause the logrolling process to unravel. Also, since, presumably, the most intense interests tend to stay with a committee the longest, the seniority system helps ensure that the most intense interests become chairpersons.

In contrast, the seniority system is a norm that takes away power from the party caucus. Accordingly, it is hard to imagine the current seniority system supporting the party-government theory. Some historical lessons support this claim. After the Civil War, strong House speakers, "struggling to control the unruly camber, sometimes ignored seniority to appoint loyal lieutenants to major committees."[13] This is not unlike Newt Gingrich's

bypassing of three senior Republicans when allocating committee chairmanships in January 1995. However, the era of strong speakers did not last. When Speaker Joseph G. Cannon (R-Ohio, 1903-1911) asserted party prerogatives over seniority by passing "over senior members for assignments and behaved arbitrarily in other ways, the House revolted, divesting the Speaker of committee assignment power."[14] Indeed, generations of political scientists have argued that the seniority system represents a check on the powers of party leaders.[15] Similarly, Gingrich's strong hand as party leader was short lived. Witness his reluctance to admonish – much less remove--James Leach (R-IA) from his Banking Committee chairmanship after the Iowa Republican lead a small revolt against the Speaker in early 1997.

The existence of the seniority system neither directly supports nor contradicts the bicameral rivalry theory. The same is true for the fact that seniority refers to committee, not chamber service. However, when one adds equity considerations to the theory – that the chamber not only maximizes power and resources, but seeks to allocate them equitably across members to maintain cooperation – then these two facts seem to support the theory. They are a mechanism for members to "get in line" to receive the power and benefits, and they reward members who have patiently waited and cooperated in the system that maximizes chamber power, instead of their own.

Seniority is Nontransferable Between Chambers. In computing seniority on a committee, neither chamber recognizes the service of a member in the other chamber. When Jon Kyl (R.-Ariz.) won a Senate seat in 1994, he had served for eight years on the House Armed Services Committee. Had received a seat on the Senate Armed Services Committee, he would have entered at the bottom rung of the committee.[16]

This fact seems inconsistent with the informational theory. If the expertise of a member was valuable while he or she was in the House, why not in the Senate? Meanwhile, it is consistent with the bicameral rivalry theory, since the theory assumes that the chambers will not cooperate on things like seniority. Under one interpretation, it also supports the distributive-benefits theory. When a member, for instance, switches from the House to the Senate, he or she usually does not represent the same interests from his or her House constituency. It is more important for the House district's new representative to fill in the committee seats of the former representative. In fact, there is a weak norm in the House for

just that, because it is not uncommon that new members are granted first shots at filling in committee seats of the members they replace.

Finally, it is questionable how the party-government theory relates to the seniority system. It is not clear which is less consistent with the theory: seniority transferring or not transferring across chambers. The fact that seniority does not transfer across chambers underscores the myriad of alternative forms of seniority that Congress does not choose. Although conceivable in practice, a member's age does not matter for a member's seniority. It is not even considered as a tiebreaker when two members have the same committee or chamber seniority. Also, the House and Senate do not count service in other legislatures in computing committee seniority. For instance, Tip O'Neill thought his experience speaker of the Massachusetts Legislature helped him land a seat on the House Rules Committee once he entered Congress; but once on the committee, his Massachusetts past mattered not a whit in granting him extra seniority.[17]

Subcommittee Seniority. There is no explicit seniority system within subcommittees, with the exception of House Appropriations subcommittees. Before the 1995 Republican rules changes, House subcommittee slots were allocated through a bidding process that explicitly followed full-committee seniority – a pattern still used in the Senate.[18] Today, however, House Republican committee chairs are authorized – without sanction from committee caucuses – to name subcommittee chairs and assign members to subcommittees.[19] In choosing subcommittee chairs, subcommittee seniority does not explicitly come into play. And in the Senate subcommittee bidding process, the critical factor is committee-level seniority, not prior service on any particular subcommittee.

In general, for the same reasons that committee seniority supports a theory, the lack of subcommittee seniority fails to support the theory. Party government theory is an exception. While the seniority system does not support this theory, its substitute for subcommittees does not support it either. The Republican norm for choosing subcommittee chairs is to allow the chair of the full committee to appoint him or her. The Democratic norm is to allocate subcommittee chairs according to *committee* seniority. Both systems are at the expense of power for the caucus. Therefore it is difficult to see how they support the party-government theory.

Parties and Seniority. The seniority system for selecting committee chairs only applies to the most senior member *of the majority party.* This aspect seems inconsistent with information theory. If the most senior and expert member belongs to the minority party, why cannot he or she become chair? For similar reasons, this aspect does not support the distributive benefits theory. Also, because it opposes the notion of spreading power equitably (minority members are excluded), it is difficult to see how it is consistent with the bicameral rivalry theory. Of course, this aspect of the seniority system supports the party-government theory well indeed.

Caucus Ratification, and Floor Ratification. The seniority system is not a hard and fast rule. Rather, it is a norm that members follow when electing chairs of committees through their party caucuses. The caucus votes are then perfunctorily ratified on the floor. Occasionally, caucuses violate the seniority norm, such as in January 1975 when a bloc of first-term Democrats voted en mass to oust three committee chairs: Eddie Herbert (D-LA) of Armed Services, W. R. Poage (D-TX) of Agriculture, and Banking's Wright Patman (D-TX). Also, in 1984, Les Aspin rose to be Armed Services chairman, despite being 7th in seniority among committee Democrats. And in the aftermath of the 1994 Republican revolution, House Republicans – with the careful orchestration of Speaker Newt Gingrich – violated committee seniority three times when selecting chairmanships.

The fact that caucuses vote on committee chairs lends strong support for the party government theory, and it is evidence against the other three theories. Indeed, it is curious that the caucus is given this power. For instance, why not instead let the whole chamber vote on each chair separately, similar to a speaker vote? Or if not the whole chamber, why not let the committee itself vote on its chair? Indeed, this seemingly is the rule that would be most consistent with the informational and distributive-benefits theories. After all, the committee members have respectively the most expertise and the most intense interest. Why not let them choose their own chair? Finally, why not let the majority-party members of the committee choose the chair? In fact, this rule seems more consistent with the party-government theory than the actual practice of allowing the entire caucus to choose.

Caucus Slates Subject to Chamber Vote. The last word on selection of committee chairs remains with the whole chamber, not the caucuses. Each caucus forms its slate of committee members and chairs. These slates are bundled, and they must pass an up-or-down vote by the whole chamber. These votes are almost always along strict party lines, but it is possible for members to defect from caucus positions, as seven Republicans did when did not vote for Newt Gingrich as Speaker on the House floor in early 1997.

Thus, by rule, the final authority resides with the chamber. However, in practice, it is not clear how much power this actually affords the chamber. First, the vote is up-or-down. Thus, the caucuses have agenda-setting power, and their only constraint is that a majority of the chamber must prefer the proposal to the status quo. On the other hand, it is not clear what is the status quo. If the floor rejects the slate, no one believes that the result will be no committees. Rather, in practice, the floor would instruct the caucuses to rewrite their slates, and the floor would vote again on the new slates. This would continue until the floor finally okays the slates. Unlike the standard political science voting model, there is a *series* of up-or-down votes rather than a single vote.[20] As a consequence, the agenda setters in this situation have less power and the floor median has more power.

While the party-government theory is supported by the fact that caucuses nominate committee chairs, to the extent that the floor ratification takes away some this power, it is evidence against the party-government theory. Further, the opposite occurs with the other three theories. They are supported by the institution of floor ratification.

2.2 Minority Members Receive Committee Slots

It is not written in stone that members of the minority party have to be given seats on committees, yet they are, and this fact is consistent with the informational efficiency theory. If, instead, a committee were composed solely of majority-party members, it would be almost impossible for the committee median to have the same preferences as the floor median. And it would be almost impossible for the committee to provide an informative signal to the median of the chamber floor. This institutional fact is also consistent with the distributive-benefits theory. If, for instance, the minority party is more pro-agriculture or more pro-defense than the majority party, then the theory implies that minority members will receive seats on these committees.

The practice of assigning minority party members to committees, however, is not consistent with the majority-cartel theory. It conjures a quip attributed to "Czar" Reed (R-ME). "When asked in 1890 about the rights of the minority party, legend tells it that Speaker Thomas Reed retorted that the only right of the minority party was 'to draw its paycheck'"[21] Even Czar Reed let Democrats on committees. Why not simply deny seats to the minority? The recent House Republican majority, begot by the 1994 elections, effectively did just that on important legislation during the first 100 days of the 104th Congress. Speaker Newt Gingrich (R-GA) thought the committee system antiquated, cumbersome, and not sufficiently responsive to a centralized party voice – like his own. Instead, for important legislation, he created task forces that would mark-up bills and then introduce them to the rest of the House.[22]

This caused a stir among Congress scholars, if not the wider public. Democrats grumbled about being excluded from the new system, and the grumbles reached a roar when one of Gingrich's task forces began drafting a plan to overhaul Medicare. Democrats reacted by holding renegade hearings on the Capitol steps. This met great fanfare from the press and some seeds of discontent from voters. More importantly, some moderate Republicans began to lose their stomach. Once they threatened to join the Democrats to end Gingrich's task-force system, Gingrich relented. He and fellow Republican leaders expressed a metaphoric "oops," and the experiment ended – especially after the Republican's handling of Medicare became an important issue in the 1996 presidential elections.

The Republican system of task forces looked very much like the committee system that a strong party-government theory would predict. The speaker largely appointed members, and the majority party held the seats almost exclusively. The Republican's bold experiment and the results that followed offer some insights into why congressional committees *do* include minority party members. If they did not, the minority would revolt. More important, it appears that the moderate wing of the majority party might join the revolt. Since these members prefer to be deal makers and conciliators between the extremes of the chamber rather than an excluded voice within a strong majority, the threat is credible. Consequently, the majority party has little choice but to include the minority.

2.3 Minority Members Receive Proportional Representation on Committees

Congressional committees are composed of Republicans and Democrats in roughly the same proportion that each party holds in the House and Senate. So while the House in the 104th Congress had 228 Republicans, 206 Democrats and one independent (a 52.5% Republican majority), Republicans held 54.0 percent of the seats on the Agriculture committee, 53.6 percent on Banking, 54.9 percent on Commerce, and so on. Some committees are exceptions, such as the House Rules Committee (69.2 percent Republican) and the House Oversight Committee (66.7 percent Republican), but the general thrust is toward proportional representation. This is by no means inevitable in U.S. legislatures. For instance, committees in early Congresses often did not follow the norm.[23] Also, although many state legislatures mandate proportional representation (and it is even required by statute in Kansas), there are notable exceptions. For example, minority parties in Alabama, Alaska, Arkansas, Georgia, Louisiana and Texas are afforded no guarantee of committee representation at all.[24]

Proportional representation on committees seems to be evidence against the party government theory, which would predict that minority members receive *less* than their proportionate share. It is also inconsistent with distributive benefits theory, which could predict that minority members sometimes receive *more* than their proportional share. To see this, consider the Armed Services Committee when Republicans were in the minority. Even though Republicans were generally the highest demanders, this did not give them any extra seats. Certainly, proportional representation on committees is consistent with the informational theory since makes it more likely that committee preferences will be representative of the whole chamber.

Finally, since the bicameral rivalry theory does not incorporate parties or even ideological preferences of the members, it is difficult to construct an implication of the theory for the party-ratio norm. However, one interpretation yields a prediction. The theory assumes that members cooperate in maximizing the total resources or power that the members of the chamber accrue. Presumably, the chamber will distribute such power and resources in an equitable way; otherwise it is not clear how the cooperation of members would continue. Once such an equitable-division assumption is added to the theory, the party-ratio norm – which grants the *most* equitable division of power within the committee – is very consistent with the theory.

2.4 Separate vs. Joint Committees.

Most congressional committees are separate, not joint, between the two chambers. Each chamber has its own committee on agriculture, armed services, appropriations, veteran's affairs, and so on. Of course, Congress does have joint committees. There are four: the Joint Economic Committee, the Joint Committee on the Library of Congress, the Joint Committee on Printing, and the Joint Committee on Taxation. But these are not powerhouses, meeting infrequently and very rarely "marking up" legislation of any kind. This pattern is by and large found in the states as well. However, of the 49 bicameral states, three – Connecticut, Maine, and Massachusetts – consistently utilize joint committees.[25] As a practical matter it would be *possible* for Congress and other state legislatures to adopt joint committees as well.

Party leadership committees – such as the House Republican Committee on Committees, the House Republican Steering and Policy Committee, and the House Republican Campaign Committee – are also separate between the chambers.[26] For these committees especially, one might expect the parties to coordinate through joint committees, yet they remain separate – even to the point of competing with each other for dollars from the same contributors through mass mailings.

What does the lack of joint committees imply about the four theories? It does not provide support for the informational theory. If the sole reason for committees is to gather information, they could do this just as well if they were joint across the chambers. In fact, if information gathering were costly, why would Congress duplicate this process with two committees?   The same is true for the distributive benefits theory. If committees exist to protect previous logroll agreements, one joint committee with veto power could do this just as well as two. Similarly, if the sole reason for committees is to aid the majority party, why create two different committees in each house? For example, if it is possible for the Senate Democrats to take action that could harm the reelection chances of House Democrats, then the parties would presumably coordinate across chambers, and accordingly form joint committees. Perhaps worse, the fact that *caucus* committees, such as steering and policy and committee on committees, also are separate across chambers is troubling for the party cartel theory.

In contrast, the institution of joint committees seems impressively consistent with the bicameral rivalry theory. If committees exist to create hurdles for interest groups in ways that bring more power and resources to each chamber, then it would make little sense to have joint committees.

2.5 Gatekeeping Power

Several institutions that involve gatekeeping power are relevant for the four theories. Consider:

- Committees have gatekeeping power;
- discharge petitions exist, but they are costly;
- the chairs of committees and subcommittees do not, and subcommittees do not either.

Gatekeeping Power and the Discharge Petition. By conventional wisdom, committees have gatekeeping power. That is, if a majority of the committee does not prefer a bill to become law, the committee can refuse to report it. This prevents the floor from considering it, which effectively gives the committee a veto.

However – in the Rules Manuals, at least – gatekeeping power for committees is hard to find. In the House, any bill that a committee refuses to report can be extracted with a discharge petition. In the Senate, extracting a bill is even easier (though formal discharge petitions are extremely rare). Because the rules are more lax on the germaneness of amendments, if a committee refuses to release a bill, any member can introduce it as an amendment to another bill – effectively extracting it from committee.

Nevertheless, the conventional wisdom is that, de facto, gatekeeping power does exist for committees. Some scattered facts and anecdotes are usually offered to support this.

- Approximately 87 percent of all bills that are referred to committees do not reach the floor. In the 102nd Congress, for example, 10,238 bills and joint resolutions were introduced in the House and Senate. Only 1,201 made it to the floor, and just 667 passed both chambers.[27]
- Perhaps because it is so cumbersome, the discharge petition is rarely used in practice. As Ripley notes, between 1923 and 1975 only 396 petitions were filed. Of these, only 25 reached the required 218 signatures.[28]

No wonder Woodrow Wilson called committees "dim dungeons of silence."[29] More colloquial, the phrase "die in committee" has become a part of common parlance, and a famous Saturday morning cartoon ("I'm Just a Bill") features bills literally dying in committee.

Even if *de facto* gatekeeping power exists, the above facts severely overstate its extent. The 87 percent fact neglects bills introduced under duplicate labels. Some bills that appear to die in committee really do not; they are just considered under a different label. Some of these reach the floor as amendments to another bill, yet they are recorded as part of the 87 percent that do not. More importantly, many of the bills that never reach the floor would have been voted down if the floor had considered them. That the committee never sent them to the floor may have been just a means to save the floor the trouble of a nay vote. If so, this is not properly called gatekeeping. For a committee to have true gatekeeping power it must be able to prevent a bill from becoming law, *despite the floor's preferences for the bill.*

Evidence, regarding how infrequently the discharge is used ignores the threat value of the discharge. As Speaker Champ Champ Clark explained in 1910,

> I predict that if this [discharge] rule is adopted we will never have very many occasions to put it into operation, because it will be held in terrorem over the committees of this House, and they will report out the bills desired by the membership of the House, which is the great desideratum. ... Therefore the bad practice of smothering bills in committee will cease and there will be little necessity of using this rule.[30]

Consistent with Speaker Clark's prediction, there have been cases where a committee sent a bill to the floor, not because its members favored it, but to prevent the embarrassment of having the bill discharged from the committee. Krehbiel and Oleszek report cases of a committee reporting a bill because it was clear that a discharge petition either had reached or would soon reach 218 signatures.[31]

These two facts – the infrequency of successful discharge petitions and the frequency of bills that do not reach the floor – tell us little about what we would really like to know: How often does a committee kill a bill, *despite a majority on the floor supporting it*? We offer no precise answer. However, because discharge petitions are costly, we are confident

that (in the House) the answer is at least "sometimes" – though possibly very rarely. Of course, any costs at all imply a weak form of gatekeeping.

Some evidence that there are costs is the fact that the House could make the discharge petition a less cumbersome procedure, but does not. For instance, instead of requiring members to trek to the office of the House Clerk to sign a petition, the House could allow members simply to request a vote to extract a bill. Other possibilities would still require signatures but require a fewer number. In fact, in 1924 the House required only 150 signatures, and from 1931-1935 it required only 145 signatures.[32]

How do the theories stack up with gatekeeping institutions? First, on the surface gatekeeping seems at odd with the informational theory. Why would the floor give up power so the committee can have a veto. Next, it does not support the party government theory. Why would the caucus want to give up such power to the floor? On the other hand, under another interpretation, it is not clear if the party government theory makes any prediction. If the caucus indeed controls the majority-party members of the committee, gatekeeping power is irrelevant. The caucus would not care whether the committee has or does not have gatekeeping power. Yet another interpretation shows a questionable relationship between gatekeeping power and the party-government theory. Since committee assignments are rewards for members who have been loyal to the party. Without gatekeeping and other power for the committee, it is not clear how valuable such rewards are.

Gatekeeping power is largely consistent with the distributive benefits and bicameral rivalry theories. Each of these predicts gatekeeping power for committees and no other power. Of course, for opposite reasons, the existence of the discharge petition provides opposite support for each of the theories. Further, the lack of gatekeeping power in the Senate is troubling for the bicameral rivalry theory. Meanwhile, this is *not* as troubling for the distributive benefits theory. This theory requires only one body to protect logrolls. It does not need a duplicate body in the Senate to achieve this.

Gatekeeping Powers of Committee and Subcommittee Chairs. According to conventional wisdom, chairs of committees and subcommittees also have gatekeeping power. However, like committees, *de jure*, their powers are somewhat limited. Every tool that can block the gatekeeping power of a committee – such as the discharge petition – can also block

the gatekeeping power of the *chair* of a committee or subcommittee. Other less-costly tools further limit the gatekeeping power of chairs. The chair can be overruled by any majority within a committee or subcommittee. Indeed, some have argued that a chair's power is in anticipating where the median committee and floor position is likely to be, diminishing the likelihood of being visibly defeated in committee. Votes alone cannot upset committee gatekeeping power – the more cumbersome procedure involving signatures recorded with the House Clerk is also required. However, with chairs, votes alone – namely those of a majority of the committee – can destroy their gatekeeping power.

For example, one of the myths surrounding the legend of Judge Smith is that he alone was able to thwart the liberal agenda of President Kennedy. However, without the support of Republicans and William Colmer (the only other Southern Democrat on the committee) Smith would be remembered as just another Rules chairman, not as the legend he has become to students of congressional procedures.

Our view is not widely shared among congressional scholars, many of whom regard committee and subcommittee chairs as gatekeepers of the highest order. However, we suspect the conventional view has fallen prey to a missing-variable problem. The preferences of a chair are likely to be highly correlated with the preferences of a majority of his or her panel. Therefore, when he or she refuses a hearing or a markup, a majority of the committee or subcommittee is likely to favor that decision as well. If one does not control for the preferences of the majority of the committee, one never knows if the chair is exercising true gatekeeping power (at the expense of the preferences of the majority), or if he or she is simply doing what the majority of his or her panel wants.

Subcommittees do not have gatekeeping power. Similarly, subcommittees do not have gatekeeping power. As with chairs of committees, any measure such as the discharge petition, that prevents *committee* gatekeeping power also prevents subcommittee gatekeeping power. There are other measures, as well: a majority vote in the full committee can negate *any* power of the subcommittee, including gatekeeping power. For instance, if the majority of the full committee wants to report a bill but the relevant subcommittee refuses to hold hearings or conduct the mark-up sessions, there are several ways the committee can subvert

the subcommittee. It can simply force the subcommittee to report the bill. It can refer the bill to another subcommittee, or it can conduct the mark-up or hearing on its own.

Certainly, subcommittees since the 1970s play a much more central role than they once did, and certainly power in Congress became more decentralized throughout the 1970s and into the 1980s – but subcommittees *still* do not have nearly the institutional powers of full committees. Their gatekeeping powers are limited, and they do not have very much positive power as well. That is, unlike the relationship committees to the floor, subcommittees are never given closed rules when they report bills to the full committee. Also, there are no sure-fired safeguards that prevent the full committee from altering the jurisdictions of subcommittees. And there is no strong seniority system on subcommittees that prohibits the removal of subcommittee members from their posts.

That subcommittees have little gatekeeping power is consistent with the informational theory. At the same time, this poses questions for the relation of *committees* and the informational theory. Given that the particular form and power for subcommittees supports the informational theory, why don't committees take the same form? That is, why isn't their relation to the floor more like the relation of subcommittees to their parent committee?

The relative weakness of subcommittee gatekeeping powers is not very consistent with the bicameral rivalry theory, since it is a hurdle that the House and Senate could adopt but choose not to. Neither is it consistent with the distributive benefits theory. Although special interests can protect previous logrolls through *committee* gatekeeping power, what if the interests are so small that they do not compose the majority of a committee? If so, subcommittee gatekeeping power would be needed to protect logrolls they create. Of course, it is an empirical question just how large special interests in Congress are; it could be that they are all large enough to compose the majority of a committee. Finally, the institution seems to support the party-government theory. The institution fails to give power to the subcommittee, reserving more power for the caucus. On the other hand, if the majority party dominates subcommittees as they are hypothesized to dominate committees, gatekeeping power is irrelevant and the caucus would not care if the committee had it or not.

2.6 Closed vs. Open Rules.

Rules are said to be "closed" when amendments are not allowed on the floor, meaning that the committee position cannot be changed but can only be voted up or down. This tends to support the informational theory. One of the primary motivations for Gilligan and Krehbiel's original 1987 paper was to show that a rational floor would sometimes grant a closed rule in order to give a committee more incentive to gather information. Often overlooked is that the power is granted conditionally. Unlike gatekeeping power, for instance, closed rules are not given to all committees, nor to all bills that a committee reports. Rather the Rules Committee and the floor decide to grant this in only special circumstances. We interpret this as even more support for the informational theory. Just as the Gilligan-Krehbiel model shows, whether the floor should want to give a closed rule depends on such things as the costs of retrieving information, the location of status quo, and the preferences of the committee.

The institution is also consistent with the party government theory. Cox and McCubbins show how the scheduling power of a speaker (through his control of the Rules Committee) greatly aids his policy goals. One aspect of the power is the ability to grant closed rules to committees that report bills that are especially favorable to the speaker's preferences. Since the speaker is chosen by the majority caucus and represents their interests, closed rules help to further the goals of the majority caucus.

In contrast, it is not clear to us how the variance in uses of closed rules is consistent either with the distributive benefits or bicameral rivalry theories. Both theories imply that committees only need gatekeeping powers to stop legislation. They therefore do not need the positive power of a closed rule.

3. Discussion

Our brief review of various committee institutions is summarized in Table 1. The first thing that stands out is that no theory consistently gets all plus marks for "explaining" the way things really work in Congress. This would be troubling to some political scientists who believe that any "minus" mark would constitute falsification of the theory.

No single existing theory captures the complexity of today's congressional committees, and we doubt that any single theory really ever has captured the reasons for the

existence and persistence of committees. For our colleagues who want to count the pluses and minuses, as if the models are in a grand race against each other, we note several patters.

First, the bicameral rivalry theory makes a much stronger showing than we expected. There are quite a few question marks in its column – indicating no prediction about the institution and hence little power for the theory. The theory is probably counter to the intuition of most scholars and observers of Congress, and for that matter, we have not heard of one single journalist, member of Congress, or any other political scientist claim that committees exist because of a rivalry between branches of government. Also, as far as we are aware, the theory was introduced with the attempts to formalize it. So it is especially noteworthy that the theory is consistent with so many of the committee institutions.

Second, given that the party-government theory *is* the formalization of the received wisdom of many pundits and political scientists, it surprising that it does not make more predictions. There are a surprisingly – surprising to us at least – large number of question marks in its column. In trying to fit a party-government model to the U.S. system, scholars often have trouble refraining from adding retreats and caveats to the theory.[33] Indeed, the very nature of a "*conditional* party government" theory follows in this spirit of caveats and retreats from a strong theory of party government.[34]

Third, information theory and distributive theory frequently make the same prediction. This is surprising, given how often the literature treats the two theories as opposites. The fact that the two make so many similar predictions may help explain the glut of preference outlier test, as this is one of the few areas where the theories differ.

We caution against the temptation to count the pluses and minuses in the table to try to determine the "best" theory of the four. We left a number of institutions off the list, for example. Consider that we do not examine the theories' explanations for why subcommittees exist at all. That is, why must bills travel through the two-step process of subcommittee, then committee? Why not instead make each subcommittee a committee unto itself that reports directly to the floor?

Neither do we consider the existence of "exclusive" committees. Virtually all state legislatures – and the U.S. Congress – have a set of committees with "exclusive" memberships. If a legislator is on an exclusive committee, that member is not permitted to serve on any other standing committees. Why is it that some committees are exclusive while

others are not? Is this a reflection of the amount of work flowing to the committees? (Apparently not). Is it correlated with the most popular committees in terms of transfer ratios? (Yes in the House; no in the Senate.) Is the institution there to limit the patterns of logrolls – especially those involving Appropriations and tax committee members? (Perhaps.)

Also notice that none of the theories explain the sizes of committees? What about conference committees? What about term limits for chairs? For that matter, why are committees composed of members instead of staff? That is, why don't bodies such as the Congressional Budget Office, the Office of Technology Assessment, and the Congressional Research Service replace committees? Conversely, why don't congressional committees replace such bodies? There are plenty of other institutions; the only constraint for discovering them is our lack of creativity (and the word limit in this chapter).

We are confident that if we added such additional real-world facts to Table 1, none of the theories would suddenly emerge to dominate the others. What, then, is the point of all this theorizing in the first place?

Models of reality play a crucial role in helping us understand where political institutions come from and how public preferences are imprinted on public policy. And while the four theories often make contradictory predictions, we are comfortable with such a world. This is at odds with the late William Riker's comparison of scientific theories with the first rule of wing-walking: "Never let go of one grip until you're sure of another."   His idea is that a false implication should not be enough to discard a theory. One must also find a better theory to takes its place. Of course, we do not share this view. We see no problem with a view that *no* theory adequately describes a given set of observations.

A common response might be, "Obviously, all four theories represent important motivations of members of Congress for committees. Therefore a proper theory must be some sort of a weighted average of the four theories."   This is wrong and unimaginative. It is wrong because some of the institutions are inconsistent with *all* of the four theories. For instance, none imply the *lack* of a seniority system for subcommittees. Also, none simultaneously explain why committees sometimes have closed rules but subcommittees never have closed rules. How can an amalgam of the theories explain either of these two observations?

We believe that all four theories have some relevance, because a variety of reinforcing mechanisms or historical experiences led to the creation and persistence of each of the institutional facts we described above. Perhaps different causal factors explain different parts of the committee world. Certainly, different aspects of the committee system evolved and solidified at different points in time when different forms of congressional politics (parties, bicameral rivalry, expertise) were dominant.

Because there is no single explanation for the existence of committees, the committee system draws its strength and resilience from the web of causes that made them necessary. Under attack from parties for being too non-partisan (as was the case when former Speaker Gingrich turned task forces in the mid-1990s), the important role of committees as information centers becomes a counterbalance, returning the system to status quo. When committees become so focused on handing out goodies to districts, as the House Science Committee did with respect to Department of Energy installations in the late 1980s, then the committee's gatekeeping powers can be temporarily taken away (in that case by the House Appropriations Committee).

At heart, the four theories have basic political impulses driving members. Members are rewarded for making laws that rely on the best available information and predictions (information theory). Yet members are also rewarded for bringing district-specific benefits back home, often at the expense of other members (distributive theory). As coalitions of interest groups themselves, political parties are the biggest interest groups in politics, and their very survival necessitates institutionalizing and rewarding party discipline (party cartel theory). Finally, members need to amass financial and other rewards to mount reelection bids, and this is easiest when petitioners can be cleverly extorted (bicameral rivalry theory).

People are complex, driven by multiple motives. Political institutions usually prove even more complex. Few things in Washington seem more bewildering than congressional committees, with their Byzantine rules and exceptional power. Those rules reflect the complex and ongoing balancing of members' own grasps for political power against the whole Congress' needs to make good public policy and to keep the committee game working for all concerned.

Table 1
Institutions and Agreement with Theories

Institution   **Theory**

	Informational	Distributive Benefits	Party Government	Bicameral Rivalry
Committees are separate, not joint, across the chambers	**-** Information could be provided by one joint committee. Why form two?	**-** Logrolls could be protected by one joint committee. Why form two?	**?** Theory only applies to House. Also, not clear if party in one chamber want to help reelection chances of party in the other chamber.	**+** A joint committee could not function as a proper within chamber hurdle.
Minority party receives committee seats	**+** Otherwise comm. would necessarily be unrepresentative of floor.	**+** Otherwise intense interests from the minority could not self-select to committees.	**-** If majority party acts as a cartel to control committee, why give seats to minority?	**?/+** Theory has no par-ties. But if intra-chamber cooperation depends on equitable division of power, minority receives seats.
Proportionate seats for minority party	**+** " "	**-** If, e.g., the Democrats are the highest demanders for the Education Committee, why not let them have more than their proportional share?	**-** " "	**?/+** " "
Seniority system exists	**+** Direct: Makes committee members more experienced. Indirect: Gives disincentive to transfer, thus encourages specialization.	**+** Makes seat a property right. Most intense interests can't be kicked off, and they eventually become chair.	**-** Takes power away from caucus and party leaders.	**?/+** Theory only specifies how chamber will maximize resources, not how it will divide them. But equitable division may explain this.

	Informational	Distributive Benefits	Party Government	Bicameral Rivalry
House seniority means service in committee, not chamber	+ " "	+ " "	? Given seniority exists, it's not clear which is the worse evil for the caucus, committee service or chamber service.	?/+ " ".
There does not exist a seniority system for subcommittees	- Opposite reason why a committee seniority system supports theory.	- Opposite reason why a committee seniority system supports theory.	- The alternative is no better for caucus. Republicans: chair of parent committee appoints. Democrats: seniority in parent committee is the rule.	?/- Opposite reason why a committee seniority system supports theory.
Committee seniority does not transfer across chambers.	- If the expertise of a member was valuable while he was in the House, why not in the Senate?	+/- The member might not represent the same interests from his House tenure. But if he does, why not let him keep his seniority?	? Not clear from theory why seniority should exist, much less to transfer when the member switches chambers.	+ The chambers do not cooperate. Hence, no reason they should honor seniority from the other chamber.
Committee chairs are subject to votes of the caucus.	- Opposite reason why seniority supports the theory.	- Opposite reason why seniority supports the theory.	+ No question. This gives more power to the caucus.	?/- Theory has no parties. Opposite reason why seniority supports the theory.
But the floor must ratify the vote of the caucus.	+ More power to floor median.	+ Protects seniority from intrusions by caucus. [But why must self-selection pass hurdle of a majority vote.]	- Takes power away from caucus.	?/+ Takes power from caucus. More equitable division of resources.

	Informational	Distributive Benefits	Party Government	Bicameral Rivalry
Committees have limited gatekeeping powers.	-/+ Less power to floor median.	+ Exactly what theory predicts. Committees must have gatekeeping power to protect previous logrolls.	-/? Why should committees be able to withhold legislation, possibly over will of majority party? However, if committee is controlled by majority party, gatekeeping power is irrelevant.	+ Exactly what theory predicts. A committee must have gatekeeping power (but not positive power) to bring extra resources to chamber.
The rule for a bill must be approved by the floor.	+ Power to give a closed rule remains with floor.	? Existence of a rule for a bill is not consistent with theory. Therefore, not clear why floor must approve.	- Restricts the speaker's scheduling power.	+ The Rules Committee does not need positive power, only gatekeeping power.
Discharge petitions exist.	+/- Floor retains power.	- Restricts gatekeeping power, hence the ability of committee to enforce logrolls.	? Disallows committees to thwart the wishes of caucus. But also upsets the scheduling power of speaker.	- Negates hurdle that committees creates.
But discharge petitions are costly.	-/+ Opposite of above reason.	+ Opposite of above reason.	? Opposite of above reason.	+ Opposite of above reason.

	Informational	Distributive Benefits	Party Government	Bicameral Rivalry
Closed rules exist.	+ If info is very costly and the committee has similar preferences as the floor, then the floor prefers to grant a closed rule	- Committee only needs gatekeeping power.	+ Enhances the speaker's scheduling power.	- Committee only needs gatekeeping power.
But open – and modified open – rules are the norm.	+/- Power remains with floor. But what if above conditions are frequently satisfied? Then closed rule should be the norm.	+ " "	- Restricts the speaker's scheduling power.	+ " "
Subcommittees exist, but do not have formal gate-keeping power, nor do they receive closed rules when they report bills to the committee.	+ Without positive or negative power, information seems to be the only possible purpose of a subcommittee.	- How can a subcommittee protect a logroll without gatekeeping power?	? Not clear how subcommittees help the majority caucus.	- The subcommittee cannot form a legislative hurdle without gatekeeping power.

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