CHAPTER 17

Legislatures and bureaucracies

> To what expedient, then, shall we finally resort, for maintaining in practice the necessary partition of power among the several departments, as laid down in the Constitution? The only answer that can be given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied, by so contriving the interior structure of the government as that its several constitutent parts may, by their mutual relations, be the means of keeping each other in their proper places.
>
> The Federalist, No. 51

In the rent-seeking model of politics discussed in Chapter 15, politicians buy and sell legislation to interest groups. The legislature is a marketplace at which rents are bought and sold. Problems of bureaucratic discretion are ignored. The legislature is in complete control. In stark contrast, in the first model of bureaucracy discussed in the previous chapter, the legislature is at the complete mercy of an all-powerful bureaucracy. Both types of models are, of course, polar cases derived to illustrate certain features of the political process. In this chapter we take a further look at the relationship between the legislature and the bureaucracies charged with implementing the policies initiated in the legislature. We also consider the separate role played by the chief executive in presidential systems like that of the United States, and the role of the judiciary. We begin with a model that completely reverses the power relationship of the Niskanen bureaucracy model.

17.1 The Congressional-dominance model

17.1.1 *Congressional dominance through administrative structure*

Let us assume as in the rent-seeking model that each member of Congress seeks to win reelection by supplying legislation to her constituents and the interest groups that supply her with campaign funds. She alone cannot supply the legislation that her constituents want, however. She must first induce a majority of her colleagues in the legislature to vote for the legislation, and then she must make sure that the bureaucracy charged with implementing the legislation does so in a way that corresponds to the wishes of her constituents. The first difficulty could be circumvented if Congress were organized as a market in which each legislator could purchase the votes she needed for the legislation she desired. But this is not the case. Instead of literally buying or trading votes, members of Congress can only strike agreements

to trade, and these are potentially vulnerable to some members misrepresenting their preferences, reneging on promises, cycling, and so on.[1]

Weingast and Marshall (1988) argue that Congress has designed an organizational structure that solves both the problem of making sure that agreements do not come unstuck, and the problem of bureaucratic compliance. In particular, by establishing committees to both propose legislation and to monitor those entrusted with its implementation, and then filling these committees with representatives who have strong interests in the legislation assigned to each committee, Congress has created an institutional structure that vests rights to initiate and block legislation in those members of Congress who can most benefit from these rights. Moreover, the process by which differences between House and Senate versions of bills get resolved in joint committees gives key members of the original sponsoring committees the power to ensure that deals once made do not become unstuck.

> Instead of trading votes, legislators in the committee system institutionalize an exchange of influence over the relevant rights. Instead of bidding for votes, legislators bid for seats on committees associated with rights to policy areas valuable for their reelection. In contrast to policy choice under a market for votes, legislative bargains institutionalized through the committee system are significantly less plagued by problems of ex post enforceability.
>
> (Shepsle and Weingast, 1987, p. 148)

Congressional committees can use "the power of the purse" which they control to discipline the agencies that report to them. Because members of the committees have strong interests in the way the legislation is implemented, free-rider problems in gathering information and monitoring bureau behavior are mitigated. Moreover, committee members can often rely on their constituents to do the monitoring for them. If the Department of Agriculture is not treating the dairy farmers the way Congress wants them to be treated, the dairy farmers will know, and they have an incentive to set off a "fire alarm" that makes their grievances known to the congressional committees that draw up the department's budget.[2]

Empirical support for the Congressional-dominance model is provided by many studies that have found a significant relationship between a congressman's committee assignments and the federal monies flowing into his district. Pork-barrel legislation comes first to mind when one thinks of congressmen selling legislation, and membership on the House Public Works Committee does increase one's share of the federally funded pork (Ferejohn, 1974). But one can also benefit from being on the Ways and Means, Appropriations, Agriculture, Armed Services, Banking and Currency, and many more committees (Goss, 1972; Strom, 1975; Arnold, 1979; Holcombe and Zardkoohi, 1981; Rich, 1989; Cohen and Noll, 1991; Alvarez and Saving, 1997; Kroszner and Stratmann, 1998).[3] If one's constituents favor smaller

[1] See Mueller (1967), Park (1967), and the discussion of logrolling in Chapter 5.

[2] See McCubbins and Schwartz (1984). However, too many "false alarms" may destroy the efficacy of this means of control (Lupia and McCubbins, 1994).

[3] For counterarguments and evidence see, however, Rundquist and Griffith (1976), Rundquist (1978), and Krehbiel (1991).

federal spending, membership on oversight committees can also serve to rein in budget-maximizing bureaucrats.

Several studies have examined congressional influence over the regulatory policies of the Federal Trade Commission and the Justice Department. Here, too, members of the relevant "watch-dog" committees appear to be able to influence the kinds of cases brought by the government and *where* they are brought.[4] At least in some areas, Congress appears to be able to get the public bureaucracies to do its bidding.

17.1.2 *Congressional dominance through administrative procedure*

McCubbins, Noll, and Weingast (1987, 1989), often referred to as "McNollgast" in the subsequent literature, have developed a somewhat different variant of the Congressional-dominance model from that of Weingast, Moran, and Marshall. The basic structure of the model is again that of a principal–agent relationship, but the emphasis is now upon Congress' power to control government bureaucracies by defining the administrative procedures under which they must operate. By requiring that an agency announce a rule or policy change well in advance of implementing it, for example, Congress ensures that the affected interest groups have ample time to present arguments for and against it. By requiring that an agency hold public hearings on a policy change before implementing it, Congress ensures that interest groups have a legitimate venue in which to air their arguments. McNollgast also argue that the principal–agent problem Congress faces in providing legislation to its constituencies is to an important degree resolved by the constituents themselves monitoring the agencies that impact them, but McNollgast differs from the rest of the Congressional-dominance literature in stressing the potential Congress has to control governmental bureaucracies "up front" through its authority to define the administrative procedures under which the bureaucracies must operate. Congress, the principal, "writes the contract" that constrains its bureaucratic agents. This contract includes not only a broad statement of purpose and budget to accomplish this purpose, but detailed administrative procedures that ensure the bureaucracies will not be able to stray very far off course in pursuit of their own agenda.

17.2 The impact of uncertainty and transaction costs

Although the evidence and arguments marshaled for the Congressional-dominance model are sufficiently persuasive to lead one to abandon at least the strongest variants of the bureaucratic-power models of the last chapter, a few puzzles regarding the relationship between the legislature and the bureaucracies under its control remain. Why, for example, does the U.S. Congress sometimes adopt very broad legislation, as in the area of antitrust, which appears to give the regulatory agencies considerable scope for discretionary action, and in other cases, such as some environmental legislation, it specifies quite specific standards? Why are regulations sometimes

[4] See Faith, Leavens, and Tollison (1982); Weingast and Moran, 1983; Coate, Higgins, and McChesney (1990); Vachris (1996); and the collection of essays in Mackay, Miller, and Yandle (1987). Eisner and Meier (1990) dispute the importance of congressional influence, however.

monitored by governmental agencies like the Federal Drug Administration, and other times by the courts? In this section, we examine two sets of answers that have been given to these questions.

17.2.1 *Uncertainty and the locus of responsibility*

Fiorina (1982a) has emphasized the importance of uncertainty on the part of congressmen over the possible impacts of a piece of legislation as a key factor in determining the form that it takes. Suppose, for example, that representatives from cotton-growing states and those beholden to cotton interests for campaign contributions seek to repay their supporters with legislation. A tariff on imported cotton will have a direct and measurable effect on the wealth of cotton producers, and is an action that the representatives who pass the tariff can take immediate credit for. The preferred form of legislation is a tariff with the specific rate set by the Congress.

Consider, on the other hand, the 1887 legislation that created the Interstate Commerce Commission (ICC) to regulate the railroads, and the Sherman Antitrust Act passed in 1890. Both of these were in response to the rising populist tide at the end of the nineteenth century and had workers, farmers, small firms, and conceivably consumers as their targeted beneficiaries. But there must have been considerably more uncertainty on the part of congressmen over both the actual impacts of the legislation on intended targets and the future political costs from the likely losers from the legislation – the railroads and other large "trusts." Broadly written legislation administered by agencies directly under Congress' control provided Congress with the opportunity to "fine tune" the legislation over time through its control over the ICC and the Justice Department.[5]

17.2.2 *Uncertainty, transaction costs, and commitment*

The literature discussed so far from Niskanen through McNollgast contains models with essentially two actors: a legislature and a bureaucracy. Moe (1990a,b) and Horn (1995) add a third actor to the drama: future legislatures. Their work, like that of Fiorina, Weingast, and others, stresses both the uncertainty over the future that legislators face, and the transaction costs involved in getting the bureaucracies to implement it as intended. But Moe and Horn also call attention to the problem of *commitment* faced by the legislators at the time that they enact legislation. Even if they can reign in the bureaucracies as tightly as the Congressional-dominance models imply, how can they prevent future legislatures from undoing the deals done today?

In providing an answer to this question, Horn develops a model of legislature–bureaucratic interaction that incorporates all of the features of the models discussed so far. When writing a piece of legislation Congress must decide (1) whether to

[5] Libecap's (1992) analysis of the passage of the Sherman Act is consistent with the economic-interests-driven model of Fiorina. Poole and Rosenthal's (1993) analysis of voting on the Interstate Commerce Act of 1887 implies, however, that it was the *ideology* of a congressman that determined how he voted on the act and not the economic interests of his constituents.

write a broad, vague statute or a clear and specific one; (2) whether to implement the statute through the private sector, a governmental bureaucracy, or a state-owned enterprise; (3) if the private sector is chosen, whether to monitor the implementation through a regulatory agency or the courts; (4) what administrative procedures will govern the behavior of a regulatory agency or a public bureaucracy; (5) what civil service rules will govern the hiring, firing, and promotion of those who work in these agencies; and so on. Given the uncertainties involved and the underlying principal–agent relationships, Congress faces an extremely complex optimization problem whenever it introduces a major piece of legislation. On the other hand, as Horn describes it, Congress also has an arsenal of control mechanisms at its disposal that it can manipulate to achieve its desired outcome at minimal transaction costs.

To illustrate the richness of Horn's theory, consider the role he sees civil service rules playing in the drama. Imagine that a Congress is elected that is much less committed to environmental protection than previous Congresses that passed the Environmental Protection Act, created the Environmental Protection Agency (EPA), and so on. The new Congress would be tempted to try and achieve its goals by replacing many of the people in the EPA who are strongly committed to environmental protection with others who are less committed or even hostile to it. The elaborate protection civil service rules give to governmental employees eliminates this option from the current Congress' arsenal, however. Horn's explanation for the displacement of the spoils system of governmental patronage that existed in the United States in the nineteenth century with the independent civil service system that exists today is that Congress wished to increase the value of the legislation passed at any point in time by making it more immune to subsequent reversals.

Epstein and O'Halloran (1999) also rely on transaction costs theory to explore the question of congressional delegation. They extend the work of Horn and Moe, however, by drawing out the implications for delegation in the presence of divided government. When the presidency is controlled by one party and Congress by another, the principal–agent problem that arises when responsibility for policies is delegated increases the likelihood that Congress (1) does not delegate, (2) uses more specific language when it delegates, and (3) delegates to an independent agency rather than to a department within the Executive Branch.

Horn, Epstein, and O'Halloran provide considerable corroborative evidence for their theories. These theories pose, however, a puzzling question for the public choice literature. Why would a legislator enacting a bill today constrain the freedom of a legislator tomorrow, given that she is likely to be one and the same person? The answer Horn gives is that by imposing such a constraint a legislator greatly increases her ability to raise funds and reward constituents today, and this gain must presumably offset the opportunities to sell legislation that are closed off for her tomorrow. But this answer seems to presume a sophistication and far-sightedness on the part of constituents that are at odds with the picture of the myopic, rationally ignorant voter found throughout the public choice literature.[6] Can voters and

[6] Indeed, it seems at odds with Horn's (1995, p. 12) own assumption of rational ignorance on the part of constituents.

interest groups recognize that their long-run goals will be better served if a piece of legislation is vaguely formulated, delegated to a regulatory agency with such and such administrative rules, and so forth, rather than clearly written and monitored by the courts?

17.3 Congress and the president

In a presidential system of government, like that of the United States, many of the bureaucracies that deliver the programs created in the legislature are under the supervision of the president. In this situation, the issue of whether the legislature can succeed in getting the bureaucracy to carry out the legislature's goals has an added dimension – whether the president will accede to the wishes of the Legislative Branch. We explore this issue in this section.

17.3.1 *The legislature controls the president*

Consider Figure 17.1. The quantities of two public goods, x and y, must be decided. Both the president and the Congress are modeled as unitary actors with preferences defined over x and y. L is the ideal point of Congress (the legislature), and P is the president's ideal point. The curves U_{Li} and U_{Pi} represent indifference curves for the legislature and the president. S is the status quo combination of x and y.

The legislative game between the president and the legislature proceeds as follows: the legislature first chooses a combination C of x and y. The president then has the choice of vetoing this proposal or signing off on it. If he signs off, C becomes the new combination of x and y. If he vetoes, the legislature has the option of overriding the veto. In the United States this requires a two-thirds majority in both houses of Congress. If the legislature can override a presidential veto of L, it obviously proposes this point. The more interesting case arises when the legislature cannot override a presidential veto.

The legislature knows that the president will veto any proposal that makes him worse off than he is at the status quo S. His indifference curve through S, U_{P2}, this represents the boundary of the feasible combinations of x and y that the legislature can hope to achieve. Any proposal above and to the left of U_{P2} will be vetoed resulting in the victory of S. Given this veto constraint, the legislature's optimal proposal is C_L.

The strategic interaction between the president and the legislature can also be depicted with the help of the game tree in Figure 17.2. The legislature moves first and can propose $C = S$ or a different C. Assuming that some Cs exist that both offer the legislature a higher utility than S and will not be vetoed, it is in the interests of the legislature to propose one of these Cs, as, for example, C_L. The president is indifferent between this proposal and S and thus, let us assume, does not veto it; and therefore C wins.[7]

[7] For further discussion of these sorts of models, see Shepsle and Weingast (1981), Denzau and Mackay (1983), and Kiewiet and McCubbins (1988).

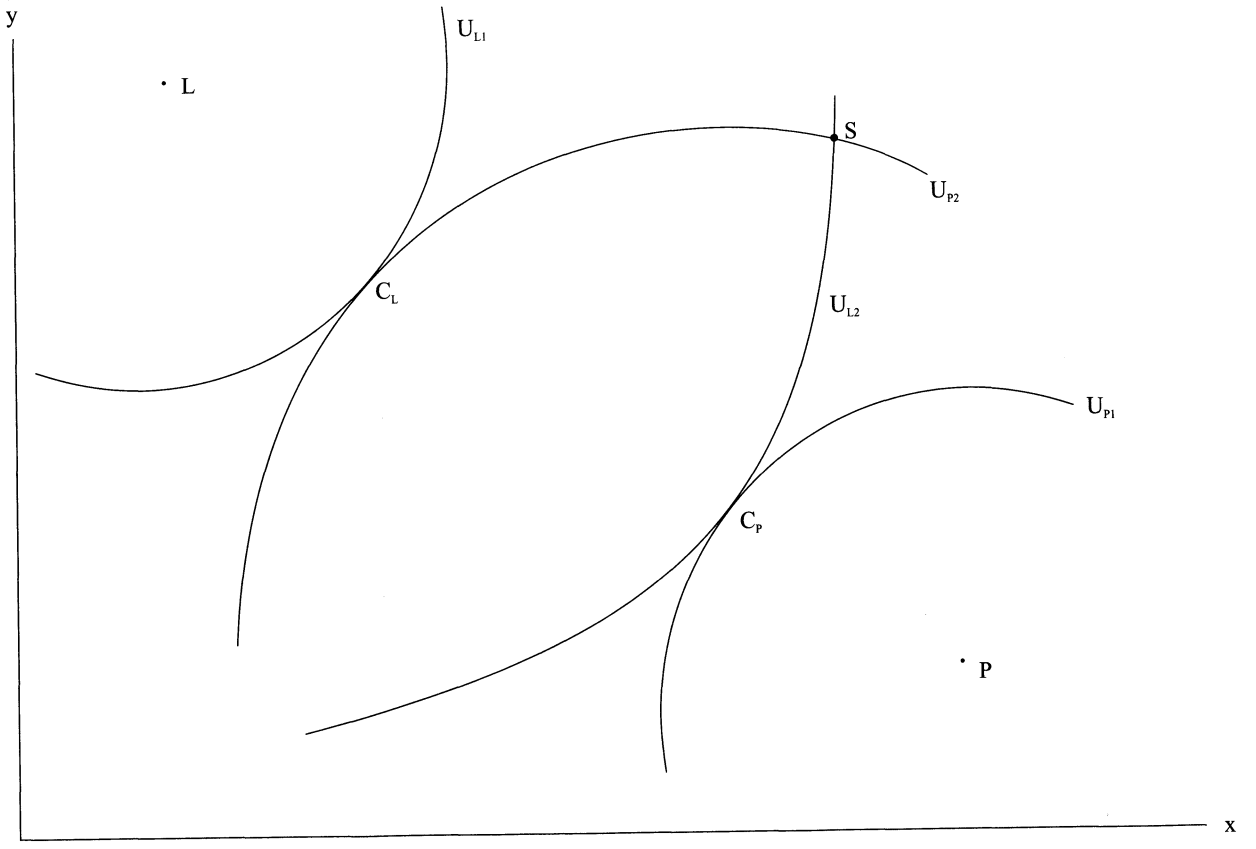


Figure 17.1. Legislative–presidential game.

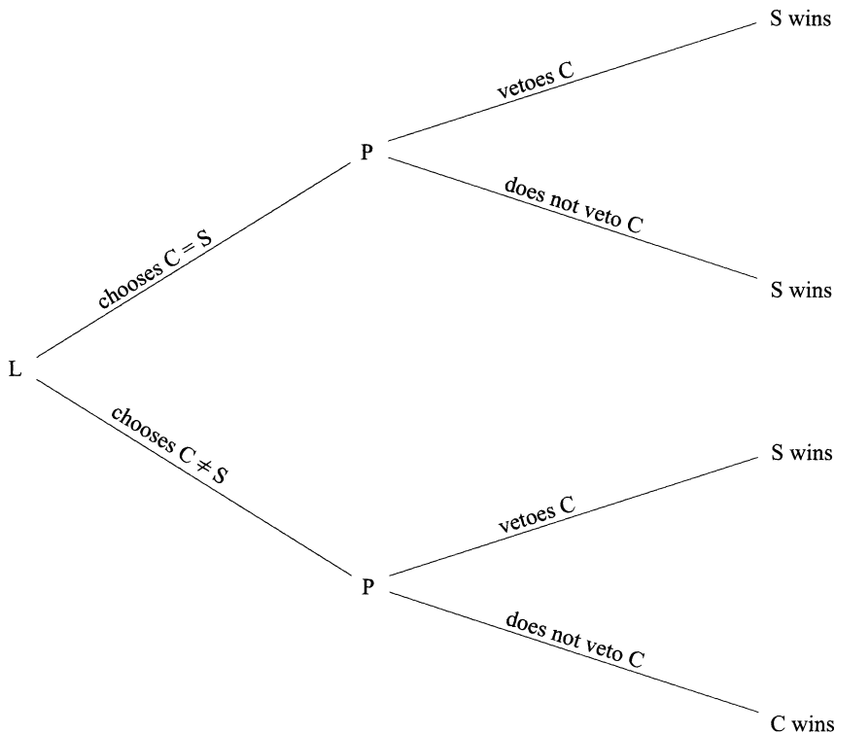


Figure 17.2. Game tree when legislature moves first.

17.3.2 *Presidential control over the legislature*

Ingberman and Yao (1991) have suggested that the president sometimes seizes the first-mover advantage in the legislative game by *committing* himself to certain policies before the legislature can make its proposals. The legislative game is now as in Figure 17.3. The president first decides whether or not to commit to a particular policy, C_P. If he does not commit, the legislature is free to propose whatever it wishes, and the game proceeds as in the previous subsection. If, on the other hand, the president commits to a combination C_P, as say depicted in Figure 17.1, the game proceeds along the bottom branch of the tree in Figure 17.3. The legislature is still free to propose C_L, of course, but if it does so and the president keeps his commitment to veto anything other than C_P, the status quo will result. Eliminating the weakly dominated strategies beyond the president's commitment stage reduces the game tree to that depicted in Figure 17.4. If there exist proposals like C_P that the legislature will accept over the status quo and that provide more utility for the president than C_L, it is in the president's interest to commit to these policies.

Of course, if the legislature were truly indifferent between the C to which the president was committed and the status quo, it might propose the status quo just to spite the president. To avoid this risk, and to avoid not obtaining his preferred outcome because he had misjudged the position of U_{L2}, the president is likely to

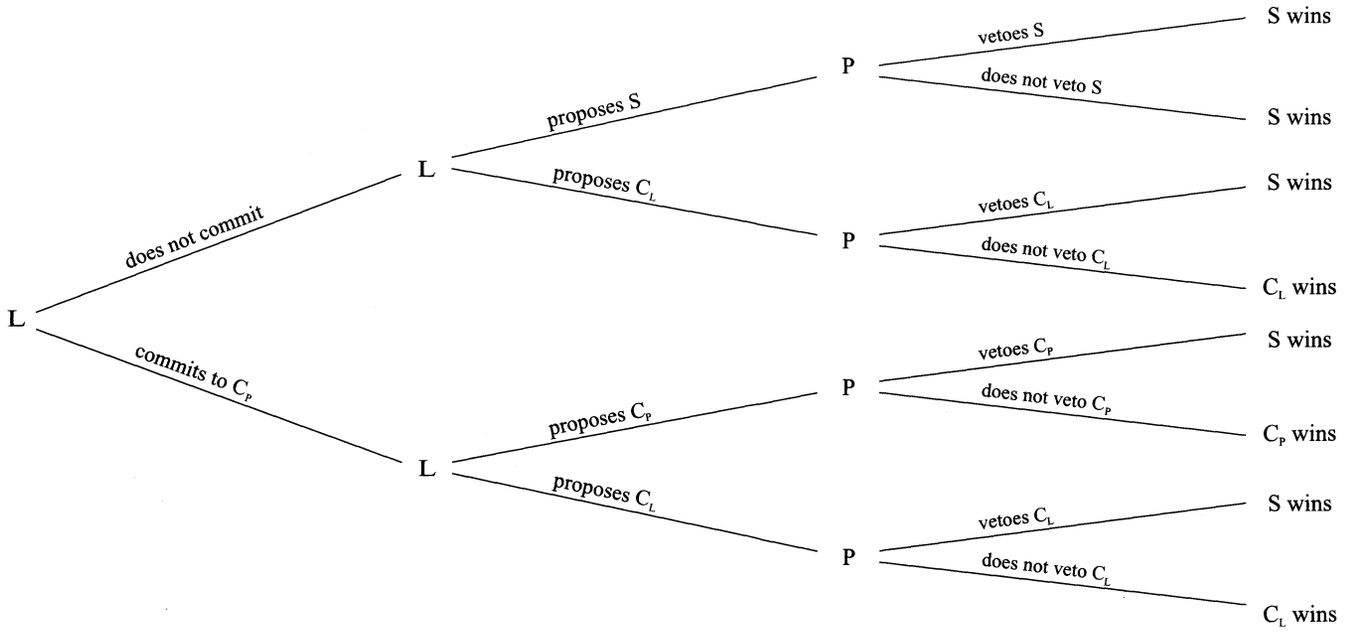


Figure 17.3. Game tree when president can commit.

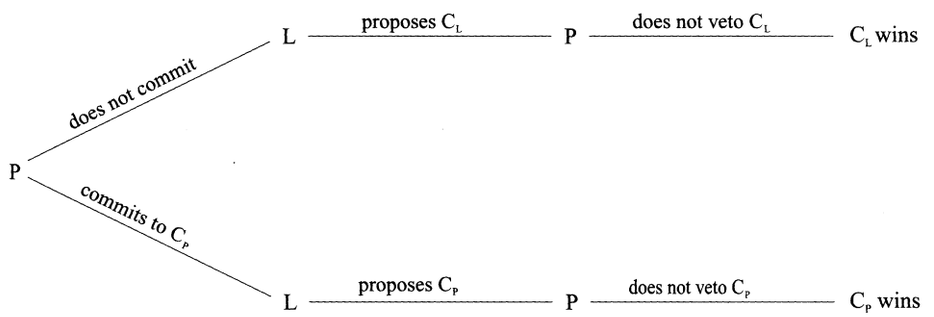


Figure 17.4. Game tree after eliminating weakly dominated strategies.

commit himself to proposals that promise some surplus in utility for the legislature over that provided by the status quo. Taking into account the uncertainties in the situation, for example, the president might commit to vetoing any proposals above and to the left of line CC in Figure 17.5. This line now becomes the boundary of the opportunity set for the legislature, and it will choose the point on it that provides it with the highest utility, for example, C_{LC}. When the president can precommit to certain policy combinations, the likely outcome of the legislative game is a compromise proposal providing gains over the status quo for both the president and the legislature.

As always with precommitment strategies, one must inquire whether they are credible. If the legislature's proposal is just inside of U_{P2}, the president's indifference curve through S, would he in fact veto it to keep his commitment? Obviously in a one-shot game this action would be irrational, and thus the commitment noncredible. But the legislative game between Congress and the president is repeated many times over an electoral cycle. Vetoing a bill that would provide the president with a small increment in utility can be a rational strategy in such repeated games if it makes the president's veto threats creditable and thus leads to future proposals from the legislature that promise large gains to the president.

In practice, of course, the president cannot observe the Congress' indifference map nor can it observe his. Uncertainty exists on both sides as to what the other will do. Cameron (2000) has recently modeled the bargaining strategies of both sets of actors, and used his model to interpret the use of the veto by American presidents.

17.3.3 *The problem of deadlocks*

Some of the commitments that a president makes occur during election campaigns. Congressmen must also stand for election, however, and they too may make commitments to their constituents. When both branches precommit to minimum or maximum expenditure policies, the result can be a set of precommitments that ensure the victory of the status quo.

To see this consider Figure 17.6. The president has promised to veto any proposal from Congress that does not promise combinations of x and y to the right of the $CP - CP$ line. The legislature has promised its constituents that it will *not* propose any combinations to the right of the $CL - CL$ line. There are no points within the

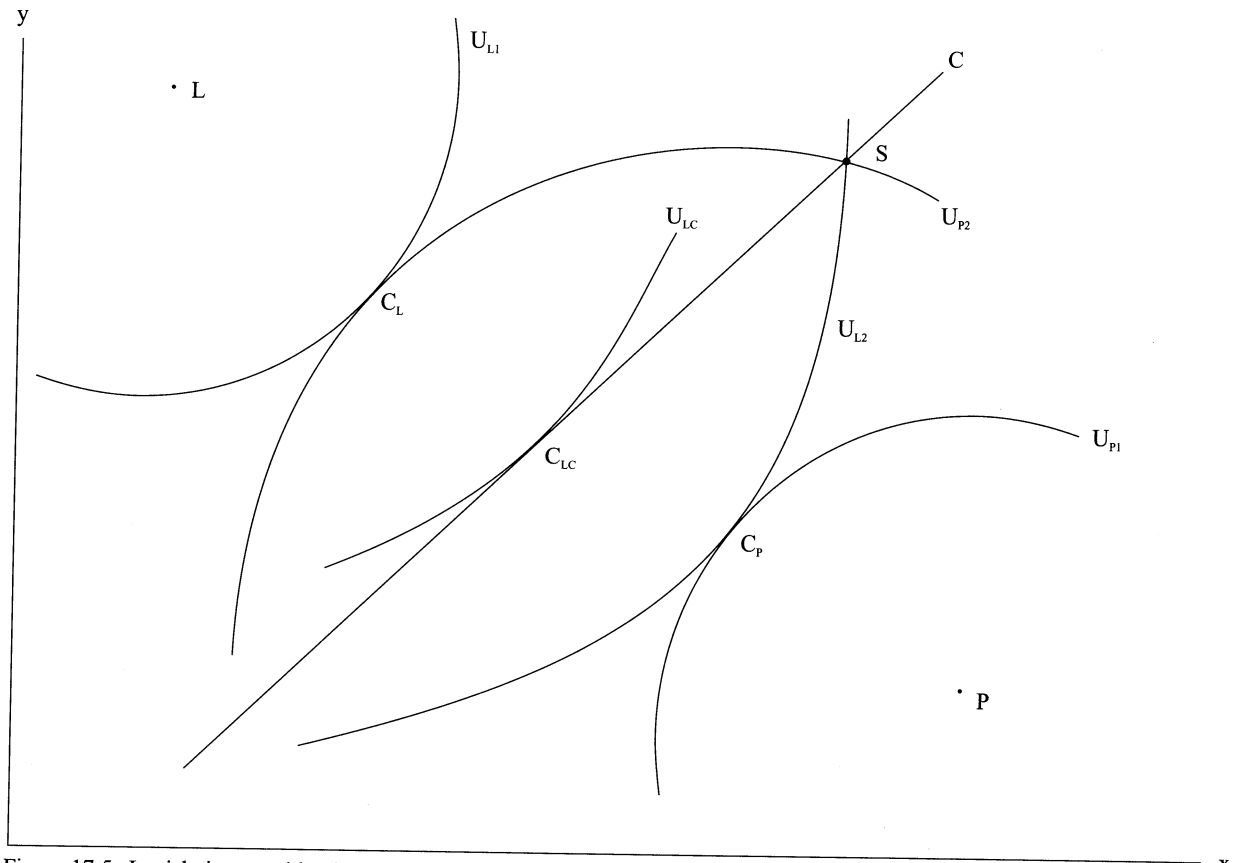


Figure 17.5. Legislative–presidential compromise – sharing the "gains from trade."

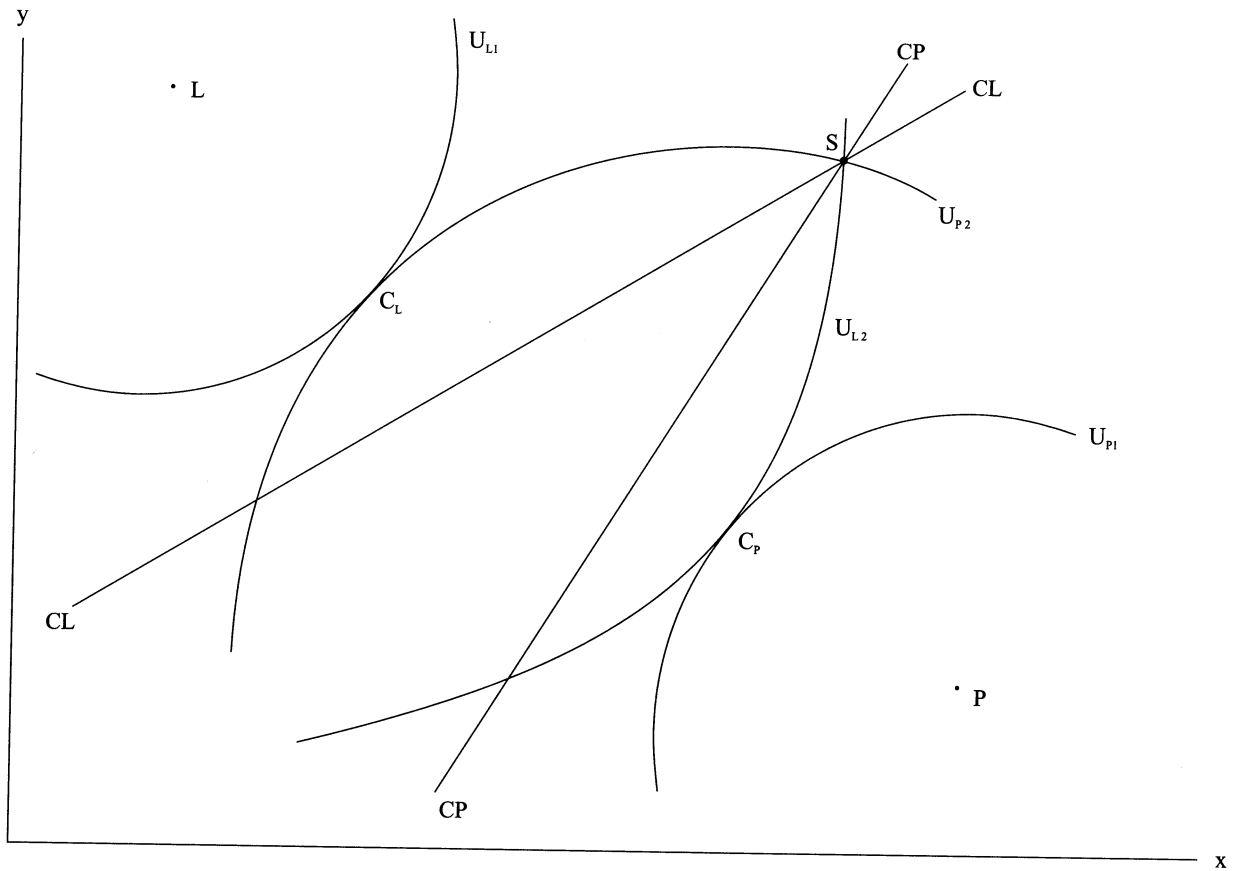
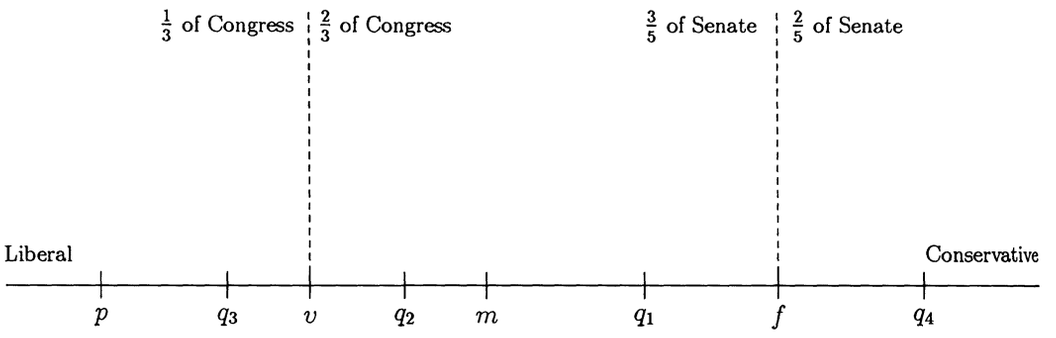


Figure 17.6. Legislative–presidential deadlock.



p = ideal point of president, v = veto pivotal point, m = ideal point of median member of Congress, f = filibuster pivotal point, q_i = status quo points

Figure 17.7. Modeling congressional deadlocks.

lens formed by the two indifference curves U_{P2} and U_{L2} that satisfy these two constraints. Thus, the status quo wins by default.

The importance of the position of the status quo to whether or not deadlocks arise, or as they are more popularly called in the United States, gridlocks, has been illustrated recently by Krehbiel (1998). In addition to the president and Congress Krehbiel adds a third actor, the Senate, since the Senate can also cause deadlocks by filibustering until the sponsors of a bill give up or agree to change it to mollify the bill's opponents in the Senate.

Consider the single-dimensional issue space depicted in Figure 17.7. Congress is again assumed to be a single committee whose median member has an ideal point at m.[8] In the absence of presidential vetoes and Senate filibusters m would win against any status quo point. Two-thirds of the ideal points of members of Congress are on or to the right of v, the pivotal point for overriding a presidential veto. Three-fifths of the ideal points of senators lie to the left of f and thus it is the pivotal point for blocking a filibuster. The president is a liberal with an ideal point at p.

Now consider a status quo point like q_1 between m and f. Point m could win a majority in Congress over q_1 and is preferred by the president to q_1. But more than two-fifths of the Senate prefer q_1 to m, since the pivotal point f is to the right of q_1. Thus a vote on m can be blocked by a filibuster in the Senate. The proponents of m lack the three fifths majority to bring about cloture. The status quo wins; deadlock reigns.

The same is true if the status quo is between v and m as, say, at q_2. The president prefers q_2 to m and vetoes a bill proposing m. Since v lies to the left of q_2, more than a third of Congress favors q_2 over m. The president's veto cannot be overridden; deadlock again reigns.

The status quo points q_3 and q_4 cannot triumph, however. If q_3 is the status quo Congress can propose v and override a presidential veto if he bothers to cast one. If q_4 is the status quo, a proposal of f will obtain enough support in the Senate to

[8] The importance of differences between House and Senate preferences is illustrated by Morris and Munger (1998).

kill the filibuster. An interesting feature of Krehbiel's theory is that the existence of deadlocks in U.S. politics *does not* depend on the presidency and Congress being controlled by different parties. All that matters are the positions of the pivotal points and the status quo.

17.4 Congress, the president, and the judiciary

17.4.1 *Adding the judiciary to the model*

The third potential actor in the legislative drama is, of course, the judiciary. In many countries like the United States, the judiciary can intervene in the legislative game by declaring the compromise reached between the executive and legislative branches null and void. It does so by deciding that the legislation is inconsistent with the language or the intent behind the language in the Constitution.

The judiciary can be introduced into the model of the previous section by assuming that it, too, has preferences defined over x and y. If the judiciary's ideal point lies to the right and below point P in Figure 17.1, or to the left and above L, its addition to the game will not affect the outcome, since its set of outcomes preferred to the status quo will contain those of one of the other actors. The situation changes, however, if the judiciary's ideal point lies closer to the status quo than do the ideal points of the president and the legislature. An example is depicted in Figure 17.8. The judiciary's ideal point is J and it will veto any proposals that fall outside of its circular indifference curve, U_C, through S. The set of alternatives to the status quo that might be proposed by the legislature and not vetoed by either the president or the judiciary is now reduced from the lens falling between U_{P2} and U_{L2} to the darkened portion of the lens. This set would be reduced still further if we allow the president to precommit to certain combinations.

Very often the judiciary's ideal point coincides with the status quo. In this case the set of legislatively feasible alternatives to the status quo is empty, of course. A fairly recent example along these lines occurred in California. The governor wished to change policy to deny immigrants access to the public schools and healthcare system. The California Supreme Court preferred the status quo to this policy, and imposed it by declaring the governor's proposals unconstitutional.[9]

17.4.2 *The goals of the judiciary*

In modeling the legislative game, it is reasonable to assume that the "preferences" of the legislature and the president are a reflection of the preferences of the voters who elect them, and thus in principle testable hypotheses can be derived as to when a president will veto legislation, make a commitment to veto, and so on. In many countries and in all of the federal courts of the United States, judges are not elected,

[9] Many studies have analyzed the behavior of the judiciary from a public choice perspective. See, for example, Mashaw (1985, 1990), Ingberman and Yao (1991), Ferejohn and Weingast (1992a,b), Levy and Spiller (1994), and the papers collected in Stearns (1997). Stearns (1994) offers a critique of some applications of public choice to the analysis of the judiciary.

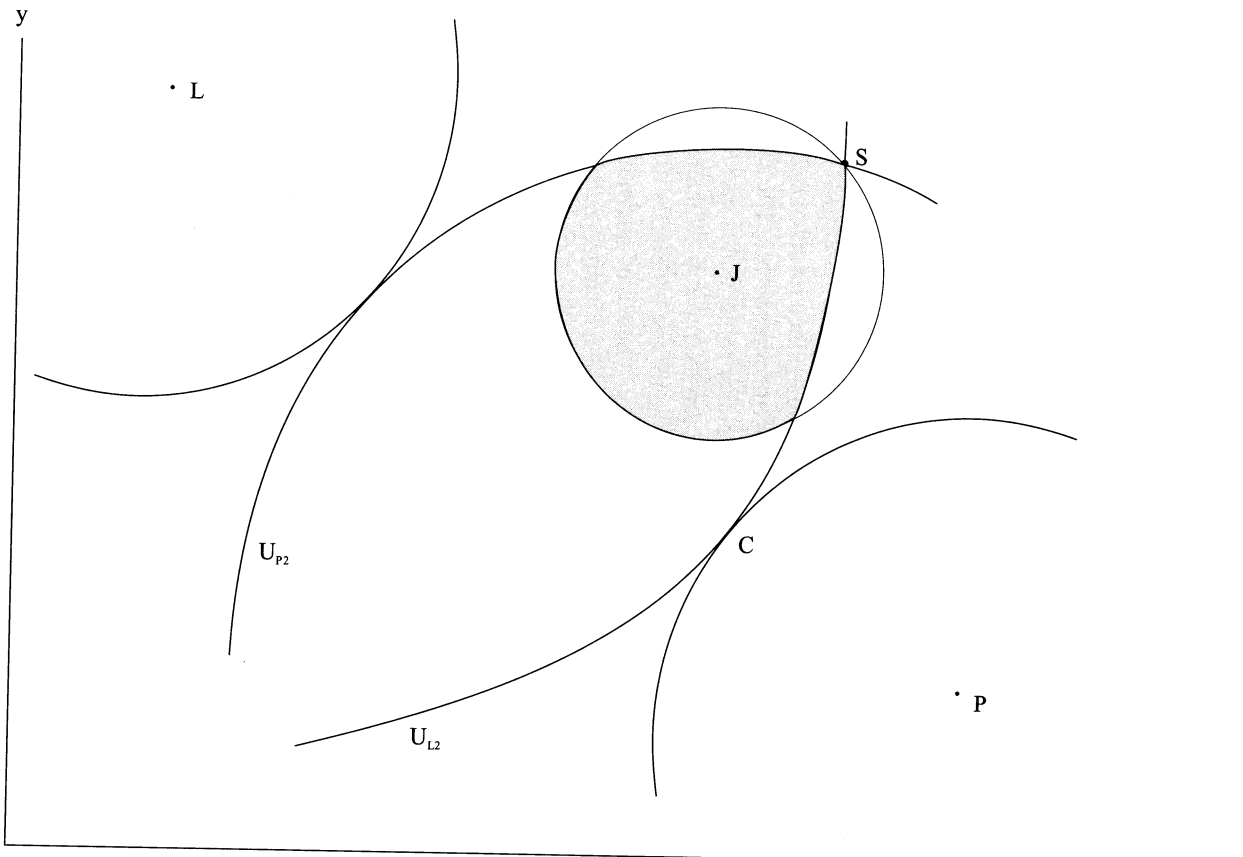


Figure 17.8. Legislative–presidential–judical compromises.

but rather appointed, and often their appointments are for life. What determines the "preferences" of a person who must neither stand for reelection nor fear loss of income and position as a result of the preferences that she reveals through her judicial decisions?

Landes and Posner (1975) offered one of the earliest answers to this question. They claimed that the framers of the U.S. Constitution wished to increase the value of the legislation sold to interest groups by increasing its permanence. This goal was accomplished through the creation of an independent judiciary that could use its independence to veto the "sale" of new legislation which would reduce the value of past sales.

Although this hypothesis has some intuitive appeal in countries in which a sitting legislature writes the constitution, it runs into some historical difficulties as an account of the judiciary's independence in the United States. First of all, the octogenarian Benjamin Franklin, future president James Madison, and several others who met in Philadelphia were neither members of the national legislature at that time, nor were likely to have contemplated becoming members of the legislature created in the Constitution. Second, the U.S. judiciary's independence arguably owes more to subsequent judicial interpretation of the Constitution – as, for example, in Chief Justice John Marshall's decision in *Marbury v. Ames* – than to its original language.

An independent judiciary would play an important role as an agent of the citizens in a *normative* theory of constitutions in which the constitution is written by the citizens to advance their own interests. Such an independent agent is needed to help mitigate the principal–agent problem between the citizens and their agents in the legislative and judicial branches. Even though in such a normative theory, the judiciary's independence only *allows* members of the judiciary to intervene on behalf of the citizens, it does not provide them with positive incentives to do so.[10]

The public choice literature's approach to the problem of defining the objectives of the judiciary has been to assume it away – that is, to assume an objective for the judiciary without defending this assumption, and then to proceed to analyze the consequences of this assumption for legislative outcomes. Although this approach can be defended as a first step in integrating the judiciary into models of legislative behavior, it obviously makes such models of limited use, unless we can determine more concretely what it is that judges maximize and why they do so. The question of the motivation of judges in an independent judiciary remains largely an empty black box in the public choice literature.[11]

17.5 Legislative decision making in the European Union

Although the literature on legislative/executive bargaining and compromise has been dominated by studies of the institutional structure of the United States, some additional work has been done on other countries. Although institutional structures differ, of course, in other countries, the analytical apparatus used to study the United

[10] For further discussion, see Mueller (1996a, ch. 19).

[11] See, however, Posner (1993). It is also possible that the preferences of judges do not really matter, because the law evolves in such a way that only "efficient laws" survive (Priest, 1977; Rubin, 1997).

States can easily be adapted to the institutions of other countries. We illustrate this point with a brief discussion of decision-making procedures in the European Union.

There are three main actors in the European Union: the Commission, the Council, and the Parliament. The Commission is the European Union's equivalent to the executive branch, and consists of a president and commissioners from each member country. The Council can be regarded as one "chamber" in the European Union's political system, with representatives appointed by each member country. The members are assigned votes according to the size of the country. The Parliament is the European Union's second chamber. Its members are elected from each member country, with countries again assigned seats in rough proportion to size.

Figure 17.9 presents a simplified schemata of the sequence of decision making under the so-called cooperation procedure of the European Union.[12] The Commission initiates the legislative process by making a proposal for new legislation. Its proposal goes to the European Parliament which can accept it as is, amend it, or reject it by a simple majority vote. If the proposal is not rejected, it goes to the Council. If the Council accepts it without amendment it becomes law. If the Council amends the proposal, it goes back to the Parliament for a final reading. The Parliament has three options at this juncture: (1) accept the proposal as is, (2) amend the proposal and send it back to the Council, or (3) reject the proposal. Rejection of the proposal at this stage requires an absolute majority of the total number of seats in the Parliament. If the Parliament either rejects or amends the proposal it received from the Council, it goes back to the Council. The Council can only override the Parliament's rejection by a unanimous vote. It can also amend the Parliament's amended proposal only through a unanimous vote.

The procedure sketched in Figure 17.9 gives the European Parliament an effective veto over any legislative proposals coming from the Council, *if the Parliament can get one member of the council to support its veto*. This veto provides the Parliament with agenda-setting power, which it might be able to use to obtain its most preferred outcome among the set of outcomes that the Council is willing to accept in place of the status quo. This point can be illustrated with the help of Figure 17.10, which is simply a relabeled version of Figure 17.1, where P now stands for the ideal point of the European Parliament, and C the ideal point of the Council. To simplify the discussion, the preferences of the Commission have not been included in the figure. It is assumed that a majority of the Commission will accept any proposal that emerges from this procedure as was also the case in Figure 17.9.

If C is the ideal point of a *qualified majority of the Council* sufficiently large to approve legislation, and U_{C1} and U_{C2} are indifference curves for this qualified majority, then the Parliament will be able to amend the Commission's proposal on its second reading so that it corresponds to point C_P and obtain its most preferred outcome from the set of proposals that both the Parliament and the Council prefer to the status quo (the points within the lens formed by U_{P2} and U_{C2}).[13] If, on the other hand, C is the ideal point of a Council in unanimous agreement, then it will

[12] My discussion follows Tsebelis (1994, 1997); see also Steunenberg (1994) and Crombez (1996, 1997).

[13] At the present time there are 15 member countries in the European Union, and a total of 87 weighted votes. A qualified majority consists of 62 or more votes.

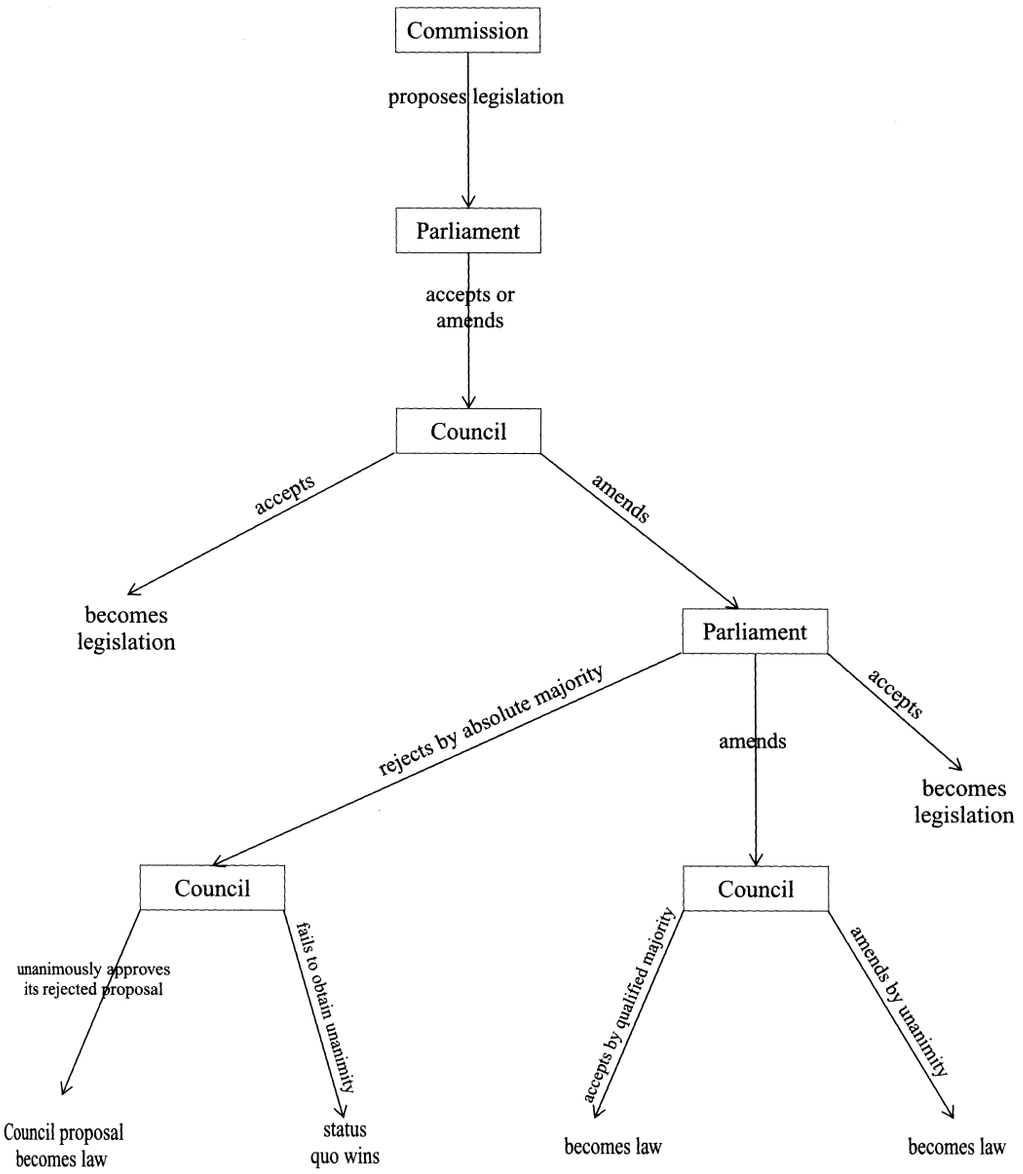


Figure 17.9. Sequence of decisions under European Union's cooperation procedure.

be able to impose this outcome if a majority of the Commission prefers this point to the status quo.

New procedures introduced in the Maastricht Treaty of 1992 add an additional step to the decision procedure just described. If the Council does not accept the proposal that emerges from a second reading in the Parliament the issue goes to a conciliation committee consisting of 15 representatives from the Council and 15 from the Parliament. Should this committee fail to reach an agreement, the Council is empowered to make a final proposal. Depending on the nature of the issue, this

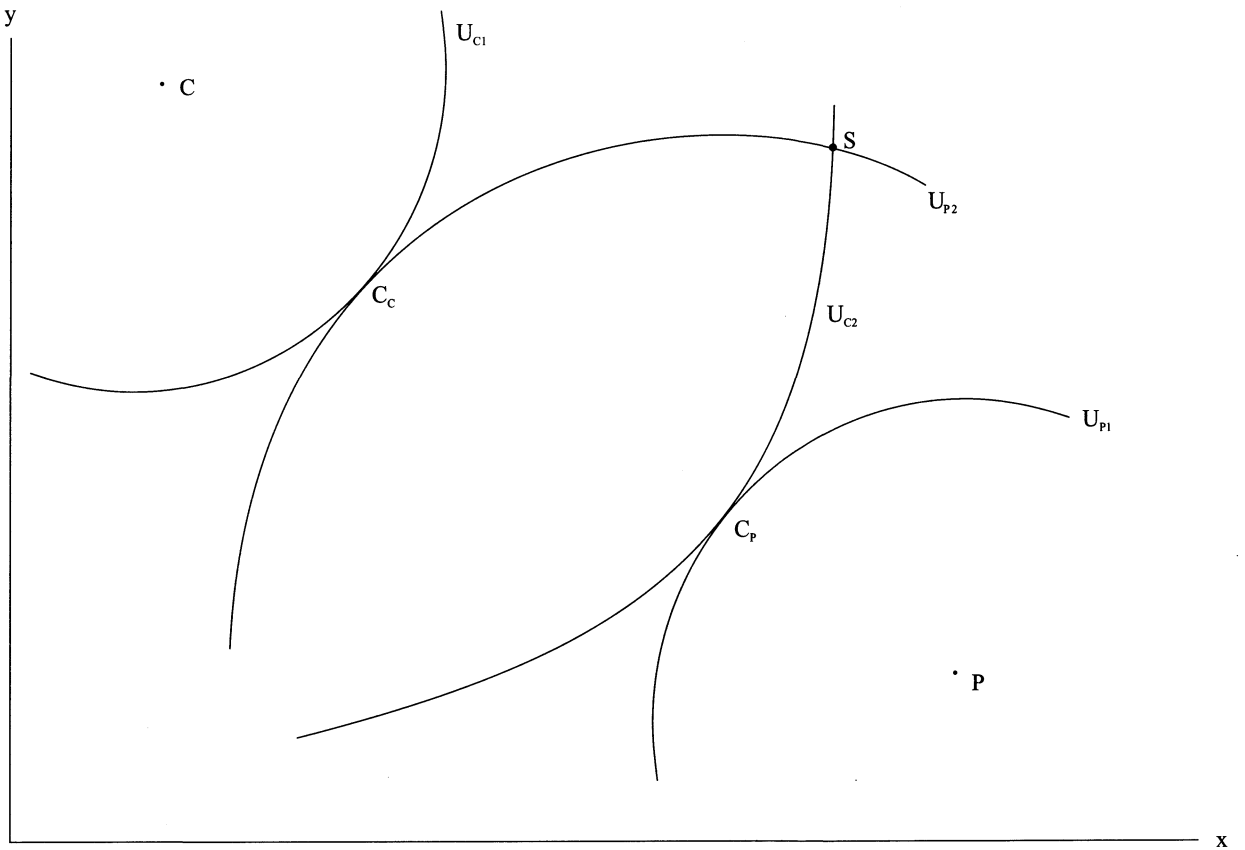


Figure 17.10. Council–Parliament compromise in the European Union.

proposal may require either a unanimous agreement by the Council or a qualified majority. The Council's proposal can only be voted down by an absolute majority of the Parliament. This new conciliation procedure puts the Council in the agenda-setting role at the end of the process, and increases the likelihood of proposal C_C winning instead of C_P.

Neither the Commission nor the Council nor the Parliament is a unitary actor with unique ideal points and indifference maps, of course; thus, a full analysis of decision making in the European Union requires a more elaborate structure and the use of concepts like the core, the uncovered set, and the tournament equilibrium set.[14] Such an analysis is beyond the scope of this chapter.

17.6 Conclusions

The literature on voting rules reviewed in Part I of this book assumes that voters choose outcomes directly. Whichever point in $x-y$ space a committee chooses gets implemented. The literature on representative democracy reviewed in the beginning chapters of Part II also assumes that the policies promised by candidates or parties in their efforts to win votes are implemented once the election is over. The discussions in the present and preceding chapters reveal, however, that these views of the political process are far too simplistic. The tabulation of ballots on election day constitutes the end of one sort of political struggle, the beginning of another – the latter being the struggle among those within the government, both elected and appointed, to shape the actual outcomes that emerge from the political process.

Bibliographical notes

Wintrobe (1997) and Moe (1997) have surveyed the literatures on bureaucracy and legislative/executive branch bargaining. Tsebelis and Money (1997) have described and analyzed bargaining and joint decision-making procedures in several countries as well as the European Union.

Bergman, Müller, and Strøm (2000) contain several papers analyzing delegation issues in European parliamentary democracies.

[14] The concept of the uncovered set was discussed in Chapter 11. The tournament equilibrium set was first discussed by Schwartz (1990). Applications of these analytic tools to bicameral decision making include Cox and McKelvey (1984), Hammond and Miller (1987), and Tsebelis and Money (1997).