

Is the Lower House Dominant over the Upper House? :
A Spatial Theory of Bicameral Reconciliation in Japan

Paper prepared for Political Economy Lunch Discussion Group

Harvard University, October 12, 2004

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** The authors would like to thank Jun-ichi Hirano-Sawada, Yoshiyuki Kojima, and Takahiko Shigemasa for their diligent assistance in the preparation of this paper. Earlier drafts were presented at the annual meeting of the Japan Election Studies Association, the Sixth Workshop of Parliamentary Scholars and Parliamentarians, and the Western Conference of the Association for Asian Studies. We appreciate Sadafumi Kawato, Mikitaka Masuyama, Okiyoshi Takeda, and Harukata Takenaka for their helpful comments.

Abstract

The Upper House has two contradicting reputations in Japan. Some regard it as a “carbon-copy” of the Lower House, while others believe it to be “too strong” an institution. By contrast, this paper develops the concept of “conditional Lower House dominance.” To prove this, we focus on which chamber is superior when different versions of a bill are adjusted. This is an important point to consider, especially when the governing party loses the majority status in the Upper House, which is the parliamentary style of divided government. There are three ways of bicameral reconciliation; agreement, override, and conference. The Lower House prefers them in this order, although the Upper House does not. We show the conditions according to which each method of bicameral reconciliation is employed in a two-dimension spatial model and prove them by using quantitative analysis. It is concluded that, only on certain conditions, the Lower House is dominant over the Upper House.

Introduction

Bicameralism has traditionally been one of the most confusing subjects in legislative studies. On the one hand, ever since Abbe (Emmanuel-Joseph) Sieyes, it has been said that the Upper House would be meaningless if it consented to the Lower House and harmful if it opposed it (Bryce 1921). On the other hand, more idealistic views of the Upper House have defined it as the “reconsidering” or “rational” branch of government.

In the case of Japan, similar arguments have developed: Some scholars emphasize the fact that the Lower House has perfectly controlled legislative outcomes (Asano 2000). As we have said, they regard the Upper House as a “carbon-copy” of the Lower House. If this were indeed true, however, there would be no *raison d'être* to justify the existence of the Upper House. In contradiction, others have said that the Upper House has often been “overly strong” in the legislative process by means of its institutional power (Masuda 1995; Oyama 2003). This might, indeed, be a problematic issue, since the cabinet, which is responsible only for the Lower House, could be rendered unstable. These two extreme views of the Upper House reflect the traditional views of the roles of the House of Councilors in Japanese political science. Neither view, however, is based on systematic empirical evidence. Hence, the controversy between them is endless.¹ This paper aims to provide some empirical data on the subject and induce a few theoretical implications that can lead to a more constructive assessment of the Japanese Upper House.

1 Recently, though, some empirical studies of the Japanese Upper House or bicameralism appeared (Cox, Rosenbluth, and Thies 2000; Fukumoto 2002; Fukumoto 2003; Fukumoto 2004; Machidori 2000; Machidori 2001; Takenaka forthcoming).

For this research purpose, we focus on bicameral reconciliation, that is, how differences between the two houses' versions of a bill are adjusted under separation of power and separation of purpose, mainly because it reflects to what degree the Upper House is a "carbon-copy" of the Lower House or a strong legislative body. More concretely, our research question is whether the final output of the Japanese Diet is close to either the Lower House version of a bill or the Upper house one when the Upper House amends a bill the Lower House passes.

We will argue, based on a spatial model and empirical analysis, that the preferences of the Upper House are reflected in policy output, even though the Lower House preserves its dominance over the Upper House. The Japanese Diet has managed to keep both Lower House dominance and the *raison d'être* for the Upper House in place by means of its institutions of bicameral reconciliation. In other words, the dominance of the Lower House is dependent on certain conditions: we call this situation "conditional Lower House dominance."

Bicameral reconciliation is severe, especially when the government holds the majority (and confidence) in the Lower House but not in the Upper House. This situation is similar to divided government under the presidential system. And conference and override are equivalent to gridlock or presidential veto in the presidential system, respectively. Accordingly, we hope our argument contributes to divided government studies.

This paper proceeds as follows. First, we explain the question of bicameral reconciliation. Next, we offer a model that explains bicameral reconciliation. Thirdly, hypotheses are derived and tested using empirical data. Fourth, a case study in the 1990s confirms that application of our model can be extended to the recent situation. Finally, we conclude our argument and present its theoretical implications.

The Question of Bicameral Reconciliation

The Upper House and the Dominance of the Lower House

When the two houses pass different versions of a bill, it is necessary to adjust the difference between them for the final bill to be passed. George Tsebelis and Jeannette Money (1997, 48-52) have summarized the institutions of bicameral reconciliation among fifty-four legislatures around the world. According to their research, many legislatures have adopted Lower House dominance, the joint session of both chambers, or conference committees as their reconciliation methods. Among these major institutions, the simple dominance of the Lower House, under which its version becomes law, is the method most widely used, as evidenced by sixteen legislatures. A combination of a conference committee and Lower House dominance, or a choice between a conference committee and Lower House dominance, are also often used. Very few countries depend exclusively on conference committees.

The dominance of the Lower House is the result of the historical development of the legislature. In many countries before the nineteenth century, the Lower House was the body that represented ordinary people, and the Upper House the elite; this latter was designated as the “house of reason.” Given that the *raison d'être* for the legislature was its representation of governed people in society, the Lower House should have been the dominant one. To complicate matters even more, however, in the middle of the twentieth century, the Upper House also became a body that represented the non-elite. At that point, the Upper House, to some degree, lost its traditional role as “the body of reason” and became a representative body.

In the case of Japan, this confusion was reflected in the newly designed constitution that was introduced after World War II. Before that, Japan had had a peerage and the House of Lords, with members appointed by the Emperor. Following the introduction of the new constitution and the elimination of the peerage, the Japanese Government felt that an Upper House composed of appointed members should still be kept in place. To that end, the Minister of State, Dr. Joji Matsumoto, drafted a new constitution along those lines. The Allied Forces, led by General McArthur, opposed Matsumoto's draft, because it was seen as an effort to maintain the status quo. Many historians have subsequently pointed out that it was the intention of the Allied Forces to establish a new Japanese Diet with a unicameral legislature. The Allied Forces and the Japanese Government finally settled on a compromise according to which the Diet would have two houses, both elected by popular vote (Article 43, Section 1 of the Japanese Constitution). In this way, the Upper House acquired its new role as a representative body. Conversely, to preserve its traditional role as the Upper House, the electoral system of the House of Councilors included a number of features not found in the Lower House: e.g., half-chamber elections; fixed terms; districts based on prefectures; and the large "national" district, etc. In comparative perspective, Lijphart (1999) classifies the Japanese Diet as "weak" bicameralism.

Separation of Power and Separation of Purpose

The institutional structure and historical development have created a "separation of power" in the Upper and Lower Houses. In addition, the difference of electoral systems has given them a "separation of purpose" as well (Haggard and McCubbins 2001). Beginning with the "separation of power" and the "separation of purpose" that divide the two houses in the Japanese Diet, we wish

to determine how, and to what extent, bicameral reconciliation allows the final legislative output to reflect the interests of the Upper House.

On the one hand, the Japanese Constitution, which brings about bicameralism and separation of power, also prescribes bicameral reconciliation. At present, eighty-eight percent of government bills are first introduced in the House of Representatives.² After a bill passes the Lower House, it is sent to the Upper House. If the Upper House amends or rejects the bill and sends it back, the Lower House has three possible alternatives. First, if it *agrees* to the amended bill, the Upper House version will become law. Second, the Lower House version will turn to law when the Lower House *overrides* the Upper House version, and two-thirds of its members pass its own original version again. Third, the Lower House may refer it to a *conference* committee, which is composed of ten members from each chamber. These members review the bill and submit a two-thirds majority report on it to both houses. If the report is then approved by the two houses, the bill will become law, which is a compromise between the Lower House version and the Upper House one. As can be seen in this system, the Upper House does have room for influence in the case of agreement and, to some degree, conference; nonetheless, the House of Representatives dominates the House of Councilors when the conditions of override are met.

On the other hand, in the two houses, the electoral systems are different and have produced different party composition and separation of purpose, which have also made bicameral reconciliation necessary and significant. It is a well-known fact that, until 1993, the Lower House of the Japanese Diet had a single non-transferable voting system (SNTV) with medium-sized

² Analysis of all government bills covers the period from the 1st to the 147th session (1947-2000), unless otherwise specified. Data is based on Fukumoto (2000; 2002).

districts, each with three to five elected members. The Upper House had a different set of rules. Until 1980, its districts were of three types: fifty members were elected by the SNTV from the large national district; approximately twenty-five members were elected from the single-member districts; and others were elected by the SNTV from medium size districts³. From 1983 to 1998, the proportional representation (PR) system, with its closed list, was substituted for the large national district system. Since 2001, the PR has changed its closed candidate list to an open one. Owing to these differences between the electoral systems of both houses, their members have distinctly different preferences where bills are concerned. Actually, from 1947 to 1956, the governing parties were a minority in the Upper House; the same was true from 1989 to 1993 and from 1996 to 1999. This meant that bicameral reconciliation has a significant meaning, and this has remained true for a much longer period of time than was expected.

Research Question

When the Upper House amends bills the Lower House sends, each house has different preferences, at least on the surface. Then, it might be expected that the Lower House would call for a conference committee or, as long as the two-thirds majority held, rely on an override. In point of fact, however, 269 (84%) of 321 bills the Upper House amended after a Lower House resolution were consented to by the Lower House. Only thirty-one bills were referred to a conference committee. And the Lower House overrode only twenty-nine of the Upper House's amendments

³ Half of members are elected at each election. All these numbers were at each election. Accordingly, the House of Councilors were composed of 100 members from the national-large district SNTV, 50 members from the single-member districts, and approximately 100 members

and rejections, though the Upper House amended 165 government bills for which two-thirds supermajority were secured only by major parties in the Lower House.⁴

Here, however, we must raise a critical question: Why does the Lower House agree to the amendments of the Upper House in most cases? Our answer is as follows; if, for some reasons, the majority in the House of Representatives fails to set a bill at its ideal point, and the Upper House moves a bill close to the Lower House's ideal point by amendment, the Lower House should then agree to the Upper House's amendment. If not, the Lower House overrides it as long as it secures a two-thirds supermajority. Otherwise, a conference committee is held.

In the next section, using spatial theory, we outline the conditions according to which the Lower House employs bicameral reconciliation after the Upper House has amended the Lower House version of a bill and sent it back to the Lower House.

Model

Setting

Before constructing a model, we need to know something about the partisan distribution of seats in the Diet. Table 1 summarizes the seat shares of four major parties in the Upper House from the 1st session (1947) to the 22nd session (1955), when no governing parties held a majority and, in consequence, there were many cases of conference or overriding.⁵ This table indicates that each

from the medium size district SNTV.

⁴ Analysis of this paragraph covers all government bills and member bills from the 1st to the 147th session (1947-2000). "Major parties" are those mentioned in the footnote 5. In this paper, we omit "procedural amendments" which only delay enforcement and, therefore, are meaningless.

⁵ In this paper, the parties referred as the "governing parties" are those parties which have a

major party held almost a quarter of the seats and that most pairs of parties could make up a “legislative majority” (Laver and Schofield 1990), with some assistance from smaller parties if necessary. By contrast, in the Lower House, the governing parties usually constituted a majority.⁶

<Table 1 about here>

Based on this seat distribution, the following assumptions are made in our model (some of these assumptions will be weakened in the Extension and Appendix which follow). In the Upper House, there are four parties, one governing party and three opposition parties, the Right, the Center and the Socialists. Their ideal points in the two-dimension policy space are denoted by G, R, C, and S, respectively.⁷ All parties, except for the Center, also exist in the Lower House. Each

minister(s) and have consistently been part of the legislative majority in the passage of government bills, i.e., the Democratic Party, the National Cooperative Party and the Japan Socialist Party in the 1st and 2nd session (1947-8), the Japanese Liberal Party and its renamed parties from the 3rd to the 20th session (1948-54), the Japanese Democratic Party in the 21st and the 22nd session (1954-5), and the Liberal Democratic Party after the 23rd session (1955). The Liberal Democratic Party began to have a majority after the 25th session (1956). The “Right” Oppositions include the parties mentioned above in different sessions as well as the National Democratic Party and the Progressive Party. The “Center” Opposition is the Green Breeze Group. The “Socialist” Oppositions include both the Right Wing and the Left Wing Socialists, as well as the Communists, excluding the 1st and 2nd session (1947-8). The unit of analysis is a session and shares are determined by distribution on the first day of each session. Emergency sessions are not included. Please note that some parties are not the same as present-day parties with the same name. The source is the Sangiin Jimukyoku (1998c). Fukumoto (2002, 96) reports on the annual seat share of governing parties in each House. Uchida (1990) offers detailed historical description of the Upper House during this period.

6 But the governing party was a minority in the 3rd and 4th (1948) sessions and from the 16th (1953) to the 22nd (1955) sessions of the same period.

7 Hammond and Butler (2003) explain bicameral reconciliation in a one-dimension policy space, and Hammond and Miller (1987) and Tsebelis and Money (1997) argue that bicameral

party has the same ideal point in both houses (even though this is not the case, our argument would scarcely be altered if it were). In the Lower House, the governing party has the majority and is the only veto player. In the Upper House, however, each party has a quarter of the seats and is a veto player, so a two-party agreement is necessary for resolution. The government submits a bill to the Lower House. The locations of the Lower House version of a bill, the Upper House amendment of a bill, and the status quo in policy space are represented by LH, UH, SQ, in that order.

Given the above assumptions, LH is in a set of points which are closer to G than SQ, i.e., a circle that passes through SQ, centering on G and inside of it. The governing party prefers policies in this area to the status quo and does not veto them in the Lower House. A set of policies which a veto player X prefers to a policy Y is called a winset over Y by X and denoted by $W(Y \text{ by } X)$ (Tsebelis 2002). Hence, LH is in the disk $W(SQ \text{ by } G)$.⁸

Next, the Lower House sends the bill to the Upper House. In the Upper House, there are two stages of votes. The first is the amendment stage, in which the Upper House votes for or against an amendment from LH to UH. The second stage is the passage stage, where the Upper House votes for or against UH, compared with SQ (the Lower House Rules, Art. 146, the Upper House Rules, Art. 131, Sangiin Jimukyoku 1998b, Art. 163; Shugiin Jimukyoku 2003b, Art. 114). At the

reconciliation in a multi-dimension policy space can be reduced to a uni-dimension policy space. But their model cannot show the conditions in which conference and/or override take place. It is easy to apply our argument to a case with more than three dimensions.

⁸ This paper shows possible areas of resolution using winsets by veto players. It does not focus on the exact points using Pareto optimum criteria or agenda setting power. Actually, when the governing party does not have agenda power, it cannot set LH at G. Anyway, we have no interest in where LH is set, which is left to future research. We study the sub-game after the Lower House passes a bill.

amendment stage, an amendment is resolved if any two parties prefer UH to LH, not to SQ. For example, consider the intersection of disks $W(\text{LH by G})$ and $W(\text{LH by R})$, which resembles a leaf pointing downward in Figure 1 and is denoted by $W(\text{LH by G}) \cap W(\text{LH by R})$. If UH is in this area, UH is closer to G and R than LH is. Therefore, the governing party and the Right are in favor of an amendment from LH to UH. Summation of intersections for every pair of winsets over LH in the Upper House is denoted by $W(\text{LH by two parties})$.⁹ UH must be in this set. At the passage stage, UH is resolved if any two parties prefer UH to SQ, and not to LH. Therefore, UH should also be in $W(\text{SQ by two parties})$. From the above, a set of possible Upper House amendments is the intersection $W(\text{SQ by two parties}) \cap W(\text{LH by two parties})$, which is called the “Upper House Set.” In Figure 1, this is shown as a dotted area that resembles a four-leaf clover.¹⁰

<Figure 1 about here>

After the Upper House amends LH to UH and sends UH back to the Lower House, the Lower House chooses one of the bicameral reconciliation rules, either agreement, override, or conference. We show the subsets in the Upper House set where each mode of bicameral reconciliation is employed.

Agreement

⁹ To be accurate, if UH is equal to LH, the Upper House does not amend the bill. Therefore, LH is not included in this winset.

¹⁰ For convenience of presentation, $W(\text{SQ by any party})$ is assumed to be large enough to cover $W(\text{LH by any party})$, so that we do not draw $W(\text{SQ by any party})$ in all Figures. Figures are just for illustration, while strict definitions and arguments are expressed by set denotations in the text. Our argument is not dependent on the exact location of each party’s ideal points and SQ (though some sets may be empty).

If the governing party prefers UH to LH, that is, UH is in $W(LH \text{ by } G)$ (therefore, in $W(SQ \text{ by } G)$ too), the Lower House agrees to UH, and UH becomes law. We call the intersection $W(SQ \text{ by two parties}) \cap W(LH \text{ by two parties}) \cap W(LH \text{ by } G)$ the “Agreement Set.” In Figure 1, it is a dotted area that resembles two upward- and downward- pointing leaves. In this case, both the Lower and Upper Houses benefit from the amendment from LH to UH.

Readers may wonder if there has ever been a case like this, but such a one can be found in the health insurance bills of 1966 and 1973. The bills were originally introduced by the cabinet, as a result of the efforts of the Ministry of Healthcare, and they passed the Lower House. In the House of Councilors, however, the bill was amended: the premium rate was discounted, and government assistance and benefits were raised. They laid a heavy fiscal burden on the government. Nonetheless, the House of Representatives agreed to these amendments, because these amendments were supported by the voters.

Override

We assume that consent of the governing party and the Right are necessary and sufficient conditions for a two-thirds majority override in the Lower House.¹¹ The Right has a pivotal vote either to override or not to override. Therefore, we call the Right the “Override Pivot” (Krehbiel 1998). If UH is outside $W(LH \text{ by } R)$ and LH is inside $W(SQ \text{ by } R)$, the Right prefers LH to UH

11 Actually they were sufficient conditions, because the Liberals and the Democrats dominated with a more than two-thirds majority of the beginning of the 5th, 8th through 15th, and 20th sessions. And they were necessary conditions, because it was rarely the case that the governing party and the Socialists consented while the Right dissented a bill. Please note that the Center is not in the Lower House.

and SQ and wants to override UH. Similarly, If UH is outside $W(LH \text{ by } G)$, the governing party prefers LH to UH and wants to override UH. Hence, when UH is in the intersection of $W(SQ \text{ by two parties}) \cap W(LH \text{ by two parties}) \cap \text{not } W(LH \text{ by } G) \cap \text{not } W(LH \text{ by } R)$, which we call the “Override Set,” and LH is inside $W(SQ \text{ by } R)$, then the governing party and the Right override UH and pass LH by a two-thirds majority.¹² LH then becomes law. In Figure 1, the Override Set is shown as a black area that resembles an upward-pointing leaf with a chipped lower left edge.¹³

An override is the worst outcome for the Upper House, because the Upper House cannot then affect the final legislative outcome. Therefore, in essence, the Upper House refrains from passing amended bills in the override set and, as a result, the Lower House does not have to override them. This does not mean, however, that the override rule has no effect on actual legislative outcome; it tends to exclude the override set from Upper House amendments. Nonetheless, due to incomplete information or position taking, the Upper House passed twenty-nine amended bills in the override set and the Lower House overrode them.¹⁴

12 Once the Lower House overrides UH, it can pass no other bills than LH.

13 If the Socialists are also thought to be an override pivot, override pivot’s agreement becomes just a sufficient condition, but not a necessary one, and the Override Set is $W(SQ \text{ by two parties}) \cap W(LH \text{ by two parties}) \cap \text{not } W(LH \text{ by } G) \cap (\text{not } W(LH \text{ by } R) \cap \text{not } W(LH \text{ by } S))$. \cap means summation. In order for the Socialists to override UH, LH must be inside $W(SQ \text{ by } S)$.

14 The Public Servants’ Wage Revision Bill in the 7th session (1950) is the only case where the Lower House took a vote to override but failed. Even though the governing party was not sure whether it was assured two-thirds of votes, it tried to override the Upper House amendment, because the current Wage Act was going to lose effect soon. Every party managed to summon as many members as possible. The result was 194 to 100, short of 6 votes for an override. *Asahi Newspaper*, April 1, 1950.

Conference

Finally, bills in the Upper House set, which the Lower House neither consents to nor overrides, go to a conference committee. They are located in W(SQ by two parties)? W(LH by two parties)? not W(LH by G)? W(LH by R) and are shown as a hatched area that resembles a left-pointing leaf with its lower right edge chipped. We call this the “Conference Set.”

Which bills does the conference committee report on? It can adjust only differences between LH and UH, and can not change other parts of the bill unless they are related to those differences (the Conference Committee Rule, Art. 8). For example, in 1951, the Lower House passed the Bill to Revise the Tariff Rate Act; this stipulated that the tariff rate for vat dye should be 15%. The Upper House raised the rate to 25%. The conference committee then set the rate at the average of 20% and did not change any other Upper House amendments. Generally speaking, a conference committee report falls inside the circle whose diameter is the segment between LH and UH and which is shown as a bold line in Figure 2. Why is this the case? Consider the rectangle LH-X-UH-Y, made up of LH and UH and a pair of any points X and Y on this same circle. X and Y are symmetrical to each other over the center of the circle. The two adjacent and right sides represent independent policy dimensions. Therefore, in any policy dimension, policies in this rectangle are located in the interval between LH and UH. This disk is labeled Disk (LH, UH).

<Figure 2 about here>

A conference committee is composed of ten Lower House members and ten Upper House members.¹⁵ These are chosen by the chair of each house from parties which favor that house's

¹⁵ Only forty percent of members are chosen from committees which bills are referred to in each house (we assign each Diet member to a committee in which he or she is most frequently present

resolution. A two-thirds majority is necessary for the committee to submit the conference committee's report to both Houses (the Diet Act, Arts. 89 and 92, Sangiin Jimukyoku 1998a, Art. 409; Sangiin Jimukyoku 1998b, Art. 340; Shugiin Jimukyoku 2003a, Art. 473). The governing party's consent is also necessary, because it occupies ten Lower House seats in the conference committee. For this reason, if one opposition party adds its support to the governing party, these two parties will compose the legislative super majority in the conference committee.¹⁶ Therefore, a report should be preferred to SQ by the governing party and by any opposition party in the conference committee; (W(SQ by R) ? W(SQ by C) ? W(SQ by C)) ? W(SQ by G). Votes on nine out of twenty-eight bills passed by the conference committee were not unanimous.¹⁷

In addition, the report must be approved both by the Lower House and by the Upper House without amendment (the Diet Act, Art. 93). Since two parties have already preferred the report to SQ in the conference committee, they will pass it in the Upper House. In the Lower House, the report should not only be in W(SQ by G) (and it is, because this is the condition set by the conference committee) but also in W(LH by G) ? W(LH by R) (as long as LH is inside W(SQ by

in a session). Twenty-six percent members come from the House steering committee. According to our research on *The Proceedings of the Conference Committee*, *The Proceedings of the Committees in the House of Representatives*, and *The Proceedings of the Committee in the House of Councilors*.

¹⁶ In reality, Upper House members of the conference committee come from combinations {G, R, C, S}, {G, R, C}, or {R, C, S}, except in the case of the Prime Minister designation in the 2nd session (1948), at which time {G, C} chose Shigeru Yoshida. Only in the case of {G, R, C}, does the governing party have two-thirds of the seats and need no other party's consent, though, in all similar cases examined, all votes are unanimous. According to our research on the *Proceedings of the Conference Committee*.

¹⁷ According to our research on the *Proceedings of the Conference Committee*.

R)); this will insure that it is not overridden.¹⁸

Hence, the report in the intersection of all of the above sets, $\text{Circle}(\text{LH}, \text{UH}) \cap (\text{W}(\text{SQ by R}) \cap \text{W}(\text{SQ by C}) \cap \text{W}(\text{SQ by G}) \cap (\text{W}(\text{LH by G}) \cap \text{W}(\text{LH by R})))$, is approved in the conference committee, and in the Lower and Upper Houses, and it becomes a law. This intersection is called the “Report Set (UH),” and is dependent on (or a function of) UH. It is shown as a hatched leaf-shaped area in Table 2.

Some explanatory comments are needed here. First of all, a conference, unlike acceptance or an override, may pass a law that is different from both LH and UH, though the report set (UH) includes LH and UH.¹⁹ A conference benefits neither the Lower House nor the Upper House, but an override benefits the Lower House, and acceptance benefits both the Lower House and the Upper House. Secondly, UH may be outside of the conference set, because the report set (UH) is not always covered by the conference set. In this case, for some opposition parties other than the override pivot, even if they agree to an amendment from LH to UH, the report may be farther from their ideal points than LH or UH were.²⁰

From the above, it can be seen that a set of laws derived from a conference, and which we have termed a “Conference Law Set,” are a summation (or locus) of all possible report sets (UH) for any Upper House amendments in the conference set $\{x \mid x \text{? the report set (UH), UH? the$

18 But there is legal controversy over whether the Lower House can override UH after the Lower House rejects it (Kajita 1997).

19 Even if the Lower House rejects UH and refers it to the conference committee, the report may be equal to UH. Actually, this is the case for twelve of twenty-eight bills passed by the conference committee. According to our research on the *Proceedings of the Conference Committee*.

20 The Political Reform Bills of 1994 are a good example of this.

conference set}. This appears in Table 2 as a dotted and hatched area in the shape of a right-facing apple.

Discussion

It is often said that, among the three methods of bicameral reconciliation, the final legislative outcome is closest to the ideal point of the Lower House legislative majority when the following order is applied: override, agreement and conference. According to theory, however, the most expedient order should be that of agreement, override and conference. In practice, agreement is the most frequent. If the governing party gets more benefits from UH than LH, the Lower House will agree to UH and will not have to bring UH to a conference committee or override UH, even if two-thirds of the Lower House have approved LH. It is not until the governing party prefer LH to UH that the Lower House will override UH, as long as the override pivot, the Right, is in agreement. If it is not, the governing party cannot avoid referring a bill to a conference committee. On the other hand, an Upper House amendment will affect the final legislative outcome in the order of agreement, conference, and override.

To conclude, the parties that form the legislative majority in the Upper House and the divergence of their ideal points from those of the Lower House legislative majority are the issues that decide which bicameral reconciliation the Lower House will choose. If the Upper House legislative majority is close to the ideal point of the governing party, the Lower House will agree to Upper House amendments. If not, the Lower House will override them, unless the override pivot is in the Upper House legislative majority. In such a case, the Lower House will refer its decisions to a conference committee.

The agreement system assures that an Upper House resolution will affect the final legislative outcome. In that case scenario, bicameralism does make a difference. A conference committee, to a lesser degree, also works to the same end. On the other hand, the override mechanism prevents the Upper House legislative majority from passing a resolution that is opposed by the Lower House legislative super majority. If a bill is overridden by the Lower House, only a Lower House resolution will affect the final legislative outcome.

Hypotheses and Results

How can we verify our model? Practically speaking, we cannot see where the ideal points of the parties, the bills, and the status quo are located. Nonetheless, we can predict, from the observable attitude of each party in the Upper House, which bicameral reconciliation the Lower House will choose after the Upper House has sent an amended bill back to it.

Before deriving our predictions, we must establish a clear picture of the relationships between each party at the amendment stage and those at the passage stage. The former picture is easily derived from the model, even if data is not available. It is the latter for which we must construct hypotheses. The attitudes at the two stages are not always the same (Fukumoto 2000, 48), because a winset over LH at the amendment stage is different from a winset over SQ at the passage stage. For party P, in a case where $W(SQ \text{ by } P)$ is covered by $W(LH \text{ by } P)$, if P agrees to UH at the passage stage ($UH? W(SQ \text{ by } P)$), then P should also have agreed to UH at the amendment stage ($UH? W(LH \text{ by } P)$). Conversely, when P does not agree to UH at the passage stage, then P may or may not have agreed to UH at the amendment stage. In the reverse case scenario, where $W(LH \text{ by } P)$

P) is covered by $W(\text{SQ by P}) \cap (W(\text{LH by P}) \cup W(\text{SQ by P}))$, if P does not agree to UH at the passage stage, P will not have agreed to UH at the amendment stage. When P does agree to UH at the passage stage, however, P may or may not have agreed to UH at the amendment stage. When considering these two cases (there are no other cases because the two sets are concentric circles), even if we do not know which one is the true case, we can form a conclusion.

When a party agrees to a bill at the passage stage, it is more likely that the party has also agreed to the same bill at the amendment stage. And when a party does not agree to a bill at the passage stage, that party is less likely to have agreed to the bill at the amendment stage.

(*)

If the governing party is in favor of a UH amendment at the amendment stage, UH is in $W(\text{LH by G})$. In that case, UH is in the agreement set. If not, UH is in the override set or in the conference set. From this and (*),

Hypothesis 1: If the governing party agrees to an amended bill at the passage stage in the Upper House, the Lower House is more likely to choose agreement and less likely to choose an override or a conference.

If the Right approves a UH amendment at the amendment stage, UH is in $W(\text{LH by R})$. At that point, UH will be in the conference set or in the agreement set. If it does not approve an amendment, UH will be in the override set or the agreement set. Therefore, considering (*),

Hypothesis 2: If the Right, the override pivot, agrees to an amended bill at the passage stage in the Upper House, the Lower House will be more likely to choose a conference and less likely to choose an override. Frequency of agreement is not dependent on the attitude of the Right.

If the Socialists consent to a UH amendment at the amendment stage, UH is in $W(LH \text{ by } S)$. Then, UH can be any one of the subsets in the UH set. If the socialists do not consent, UH will be in the conference set or in the agreement set. This is also the case for the Center.²¹ Adding (*) to this,

Hypothesis 3: If the Socialists agree to an amended bill at the passage stage in the Upper House, the Lower House is more likely to choose an override. Neither the frequency of agreement or a conference is dependent on the attitude of the Socialists.

Hypothesis 4: If the Center agrees to an amended bill at the passage stage in the Upper House, the Lower House will be more likely to choose an override. Neither the frequency of agreement or a conference is dependent on the attitude of the Center.

Table 2 shows, from the 5th (1949) to the 24th sessions (1956), how often the Lower House

²¹ According to Figure 1, the conference set always seems to be covered by $W(LH \text{ by } C)$, but this, in fact, depends on the exact locations of the parties' ideal points; it is not a condition that is warranted by our definition of a conference set.

chose each bicameral reconciliation method when the four major parties were for or against amended government bills at the passage stage in committees of the Upper House following a Lower House resolution.²² All of the above hypotheses, except for the fourth, are supported (related figures are surrounded by squares). It is also to be noted that the governing parties opposed twenty percent of Upper House amendments in vain, that is, more frequently than the Center (thirteen percent). This indicates that, in the Upper House, the minority status of the governing parties sometimes prevented them from having a legislative majority and the Center's

22 Each party's votes are recorded in committee reports from the 5th (1949) to the 28th sessions (1958) only. I omit cases after 25th session (1956) because the governing party gained the majority and the assumption of the model was not met. Fortunately, after the 25th session, there are only one case of an override and that of conference, which we'll explain in footnote 2426. As for the partisanship of members of committees, we refer to that of the latest election as at the time the bills were submitted. Sources are Steven R. Reed's database for prefecture districts and the Ministry of Home Affairs, *Survey of the Election Result of the House of Councilors*, various years, and Asahi Newspaper, *Asahi Almanac*, various years [both in Japanese], for the national district. Despite of this, since the Green Breeze Group (the Center) was formed just after the first election and before the first session, the seventy-four founding members (Shugiin and Sangiin 1990) are regarded as the Center. The definition of parties are the same as that of Table 1. Even if only one member of a party assents to a bill and others dissent to it, that party is considered to assent to a bill, because only the names of yea votes are recorded, not those of nay votes. Even if a party is absent from voting, it is regarded as non-assent. After 1956, neither party was the Right. Bills which are carried over to the next session in the Upper House are omitted, because the Lower House does not choose one of the bicameral reconciliation methods but passes, amends, or rejects them as part of ordinary deliberation. Votes on four bills in the 22nd session (1955) are missing. Upper House amendment includes its rejection. The conference committee failed to report to both houses for 3 bills, which are included in the conference category as well. There is one bill on which the Lower House took a vote to override but failed, which is also included in the cases of override. "No Action" means the Lower House chooses none of the modes of bicameral reconciliation and a bill is dead.

assent was the most important for Upper House amendments.

<Table 2 about here>

Extension

Governing parties were a minority in the Upper House from 1989 through 1993 and 1996 through 1999, too, though voting data is not available and we cannot test our hypotheses. According to our model, the override set and the conference set should not be empty so that there were possibilities that the Lower House could not help overriding UH or bring it to a conference committee. But actually, it did not, because governing parties were so good at forming a legislative majority in favor of them that UH was always in the agreement set.²³ This is remarkable compared with the period of 1947 through 1956 when an override and conference happened in all cases except two.

In addition, this model can be applied to the situation where governing parties are the majority in the Upper House, 1956 through 1989, 1993 through 1996, and 1999 to the present. Let us regard the two factions within the governing Liberal Democratic Party (or the LDP and the Clean Governance Party which established a coalition government) as the governing party and the

²³ Special attention should be paid to the Financial System Stabilization Bill in 1998. The government gave up their version and “swallowed” opposition parties’ version in the Lower House, because they foresaw that, even if they passed the former in the Lower House, the latter would be the Upper House amendment of the former and be in the conference set of the former and wanted to skip the conference committee in order to hasten the passage of the bill in a financial crisis.

Right respectively. And let us take centrist parties as the Center, and the largest opposition party such as today's Democratic Party as the Socialists. We assume that, in the Lower House, the governing party and the Right hold the majority and the Center (and/or the Socialists) is an override pivot. Then, the agreement set is $W(\text{LH by G}) \cap W(\text{LH by R})$ and the conference set is the other area of the Upper House set, $W(\text{LH by two parties}) \cap \text{not}(W(\text{LH by G}) \cap W(\text{LH by R}))$. The override set is empty. But the governing party and the Right form an "executive majority" (Laver and Schofield 1990) and neither makes a "legislative majority" with the Center or the Socialists so that UH usually falls in the agreement set.²⁴

Even though the governing parties are a minority in the Lower House (1948, 1953-5, 1994, 1996-7), the agreement set remains the same because the governing parties have already got at least one opposition party's approval for a legislative majority in the Lower House. If we regard the Right Wing Socialist and conservative small parties as the "Center" (override pivot), the override set also remains the same and, as a result, the conference set does so, too. Under minority government, there were two cases of override and three cases of conference.

²⁴ There are two exceptions. One is the Political Reform Bills in 1994. They were rejected and referred to the conference committee, because some members in the coalition government had a weak commitment to the executive majority and cooperated with opposition parties to establish a negative legislative majority. The conference committee succeeded in submitting a report and both houses adopted it. Kawato (2000) explains this case using a sophisticated voting model under incomplete information. See Appendix for our model of rejection.

The other exception is a bill to protect restaurants, barbershops, and hotels in 1957, which the governing party was eager to pass. Even if socialists amended it in the Upper House, they overrode it in the Lower House in exchange of governing party's agreement with Upper House amendment of Public Servants' Wage Bill which Socialists advocated. *Asahi Newspaper*, May 20, 1957.

Conclusion

Due to historical, institutional, and party differences, the House of Representatives and the House of Councilors have different powers and differing purposes. Hence, the Japanese Diet must reconcile different versions of bills between two houses. Especially, from 1947 to 1956, from 1989 to 1993 and from 1996 to 1999, the governing parties failed to occupy as many as fifty percent of the seats in the Upper House. It is the parliamentary style of divided government that has led to a separation of power. During this period, reconciliation was badly necessary.

In this paper, constructing a spatial model, we have argued that the preferences of the Upper House are reflected in the legislative output of the Japanese Diet through the use of agreement and conference. The Upper House is not just a “carbon-copy” of the Lower House.²⁵ At the same time, however, the presence of the override rule encourages the Upper House to purge its amendments of changes that the Lower House might reject.²⁶ The Upper House is not “too strong,” either. Thus, the three rules of bicameral reconciliation create the conditional dominance of the Lower House. The bicameral reconciliation methods of the Japanese Diet has the potential of unifying separated powers and purposes into one effective body of legislation.²⁷

25 Although scholars and journalists have pointed out that there have been charismatic leaders in the Upper House, such as Mikio Aoki and Masakuni Murakami, who have succeeded in making it powerful, the influence that House enjoys is essentially structural in nature.

26 Masuyama (2003) emphasizes the institutional design structures legislative behavior even if without explicit exercise of measures such as amendment or rejection. It is also true for bicameral reconciliation.

27 This definitely does not mean that the House of Councilors has always played an ideal role in its bicameralism, nor that it did what was expected of it when designing the constitution. From

an empirical point of view, we can say only that the Upper House exerts influence over the conditional dominance of the Lower House in the Japanese legislative process.

Appendix

We illustrate our model in those cases where some assumptions in the text are not met.

Rejection

The Upper House may reject instead of amend bills the Lower House sends. Rejection is considered to be an amendment to set UH at SQ, which is in $W(LH \text{ by two parties})$. The Lower House never agrees to UH, because SQ is always outside of the agreement set. In reality, six of seven bills the Upper House rejected were referred to the conference committee, though two of them failed to be reported to the two houses. As for these two, since opposition parties demanded a thorough amendment at the conference,²⁸ the report set might not intersect both $W(SQ \text{ by G})$ and $W(SQ \text{ by any opposition party})$ simultaneously. The other one rejected bill was overridden in the Lower House.

Constituted Rejection

According to the Constitution, Article 59, Section 4, the House of Representatives may determine to constitute a rejection of a bill by the House of Councilors, when the House of Councilors does not take final action within sixty days after receipt of a bill passed by the House of Representatives. In this case, too, we regard SQ as UH.

Members of the conference committee are chosen from each party in proportion to its seats (Sangiin Jimukyoku 1998a, No. 409; Sangiin Jimukyoku 1998b, No. 340), because there is no

resolution of the Upper House. Thus, governing parties can attend the conference, though it still needs at least one opposition party's cooperation. In addition, constituted rejection makes it impossible for UH to fall in the agreement set. Therefore, constituted rejection is not a good option for the Lower House. That's why the Lower House used constituted rejection for only three bills though it could do it for 117 bills (Sangiin Jimukyoku 1998b, Table 8). One was overridden and two were sent to the conference committee, one of which was killed there.²⁹ By contrast, thirteen of the rejectable bills were dead. It is true that this measure can prevent a pocket veto by the Upper House at the end of a session, but actual constituted rejections were done a week before the end and those sessions were adjourned.

Bills Introduced to the Upper House

The government can submit bills to the Upper House. First, we consider the case where the governing party has the majority in the Lower House. Suppose the Upper House sets UH and sends it to the Lower House. The Lower House amends UH into LH, which is in $W(\text{UH by G})$ and is then sent back to the Upper House. $W(\text{UH by two parties})$ is the agreement set. This includes $W(\text{UH by G and override pivot})$ so that there is no override set.³⁰ $W(\text{UH by G})$? not $W(\text{UH by any party})$ is the conference set. Under minority government, since LH is in $W(\text{UH by two parties})$, the Upper

28 *Asahi Newspaper*, May 3, 1950 and May 11, 1951.

29 The Socialist Party and the Progressive Party took "absenteeism tactics" so that quorum was not met (*Asahi Newspaper*, August 1, 1952). In order to prevent this, Article 91-II of the Diet Law was added.

30 But there is legal controversy over whether the Lower House can override UH when the government submits a bill to the Upper House (Kajita 1997).

House should always agree to it. In reality, there was only one conference case in 1950 (the majority government) and no override.

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Table 1. Seat Share of Parties in the House of Councilors (% , 1947-1955)

	Average	Median	Minimum	Maximum
Governing Parties	28.8	32.5	8.1	38.0
Oppositions				
Right	14.3	11.7	6.4	37.1
Center	24.8	22.0	19.2	36.9
Socialists	25.0	26.6	18.0	28.2

Table 2. Distribution of Bicameral Coordination (% 1949-56)

	Bicameral Coordination				N	
	Agreement	Override	Conference	No Action		
All UH Amended Bills	76.0	11.5	12.0	0.5	100.0	183
Governing Party						
Assent	81.7	9.8	8.5	0.0	100.0	153
Non-Assent	46.7	20.0	30.0	3.3	100.0	30
Oppositions						
Right						
Assent	76.0	10.7	12.4	0.8	100.0	121
Non-Assent	75.9	12.1	12.1	0.0	100.0	58
Center						
Assent	76.5	10.5	12.3	0.6	100.0	162
Non-Assent	71.4	19.0	9.5	0.0	100.0	21
Socialists						
Assent	74.6	13.0	11.6	0.7	100.0	138
Non-Assent	80.0	6.7	13.3	0.0	100.0	45

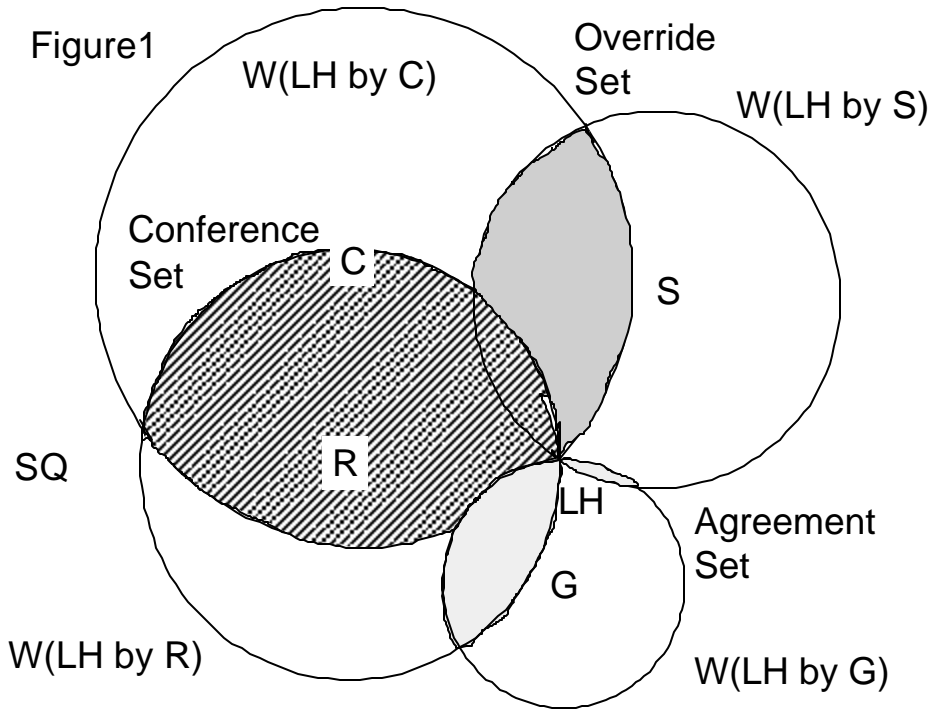


Figure 2

