

**Explaining Institutional Change:
Soaking, Poking, and Modeling in the U.S. Congress***

by

**John H. Aldrich
Duke University**

and

**Kenneth A. Shepsle
Harvard University**

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John H. Aldrich
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Introduction

Students of the U.S. Congress (like students of other institutions) are often fascinated by the details of institutional change. Inasmuch as the institutional ways and means of conducting an organization's political business often have significant if not decisive effects on what actually happens there, it is not surprising that scholars and journalists alike freight occasions of institutional change with great significance. Institutional arrangements are akin to the rules of the game, and it is supposed — sometimes formally, other times implicitly — that these arrangements surely stack the deck for some outcomes and against others, in favor of some programs and against alternatives. They may even create, change, or destroy equilibrium ways of doing things. Consider some well-known examples from congressional history:

- **Clay and the Growth of Standing Committees in the House.** In 1811, the year Henry Clay of Lexington, Kentucky, first entered the House of Representatives and was elected its Speaker, there were ten standing committees (most established in the first few years of the new Constitution) to which was referred somewhat less than half of the business of the House. In 1825, his last in both roles, there were 26 standing committees to which were referred nearly 90% of all bills. Moreover, during that period a powerful speaker's office insured a durable, (more-or-less) self-selection mechanism for committee assignments and a (relatively) regular procedure for bill referral. In short, the Jeffersonian preference for a House with weak institutional leadership and genuinely collective deliberation and decision had been radically transformed into one with a strong speaker and a division-of-labor committee system possessing powerful agenda control. By 1825, the Committee of the Whole, once the place where members participated without interference and where significant policy principles were established for a bill before sending it to a select committee for tidying up, had become a venue controlled procedurally by the Speaker and controlled substantively, jurisdiction by jurisdiction, by standing

committees. A House that had become disastrously chaotic and inefficient (especially after the war against Britain was concluded in 1815) had, in a few short years, become a much more streamlined organization.

• **Reed Rules.** In 1889, Speaker Thomas Brackett Reed ordered the Sergeant-at-Arms of the House of Representatives to bolt the door of the House chamber, and then instructed the House Clerk to count as "present and contributing to a quorum" all those in the chamber who had refused to answer to their names in a call of the roll. With these instructions he ended, first by *fiat* and then later in formal rules, the practice known as the *disappearing quorum*, a tactic used by the minority party to grind the chamber's business to a halt and thereby to extort concessions from the majority. When one Representative James McCreary protested, "I deny the right of the Speaker to count me as present," Reed imperiously challenged the temerity of this claim: "The chair is making a statement of the fact that the gentlemen from Kentucky is present. Does he deny it?" At the same time, Reed enunciated the Speaker's *right of nonrecognition* in which he took to himself the privilege of asking someone seeking the floor, "For what purpose does the gentleman rise?" If the Speaker judged the purpose dilatory, he denied recognition. The House was in an uproar for several days, but when the dust had settled, Speaker Reed and his closest advisors had drafted a new body of rules for the House, rules that facilitated its operation by removing minority veto points and other dilatory opportunities, thereby permitting the majority party to work its will.

• **Enlarging the Rules Committee.** In organizing the 87th Congress in 1961 to prosecute the agenda of the newly elected president of his party and of a newly unified government, Speaker Rayburn anticipated that the plans of this liberal chief executive would be severely compromised, if not defeated altogether, by a conservative coalition of four Republicans and two southern Democrats on the twelve-person Rules Committee. The latter was a decisive procedural veto point in the legislative process of the House. In an era in which committee chairs were lords of their respective jurisdictions, the fact that one of these two Democrats, Howard Smith of Virginia, was chair of the committee boded especially ill for pent-up liberal legislative aspirations (aspirations intensified by the liberal landslide an election earlier, and the frustrations in that Congress of many who were then reelected to the next Congress). In a watershed political event charged with considerable drama, Rayburn and Smith led their respective forces in a showdown over the issue of expanding the Rules Committee to fifteen. Since Rayburn and his minions had

sufficient control over committee assignments to Rules, if he were successful this would enable them to craft an 8-7 Rules Committee majority. By a 217-212 vote, Rayburn won on the issue. (That Smith remained as chair, that chairs continued to exercise considerable agenda power, and that one of the newly appointed Rules Committee members, James Delaney of New York, was not always a reliable ally of the liberals ultimately took some of the glow off this victory.) Again, a partisan majoritarian effort succeeded (at least nominally) in diminishing veto power.

• **Filibuster reform.** By the early 1960s civil rights activism and southern opposition had reached colossal levels. The Kennedy and Johnson administrations were eager to pass an historic piece of civil rights legislation. The existence of parliamentary devices and political conditions in the House (enlarged Rules Committee, a Judiciary Committee more or less purged of southerners, discharge petition, twenty-one day rule) meant that minorities in that chamber would have difficulty stifling these efforts. But a malapportioned Senate, giving extraordinary weight to southern preferences, combined with institutional procedures giving extraordinary clout to *any* minority, meant that it was in the Senate that the battle had to be won. The device by which Senate minorities in the past either defeated civil rights bills outright, induced them to be watered down beyond recognition, or deterred them from being introduced in the first place was the *filibuster*, the parliamentary right of a senator to hold the floor once recognized for as long as he or she wished. Debate could not be ended by ordinary means (short of adjourning). The extraordinary means, called *cloture*, required that two-thirds of those present and voting had to vote positively to end debate. In highly salient cases in which participation rates were very high, this essentially meant that civil rights proponents needed to secure 67 votes. With 22 southerners almost certain to oppose, and mischievous Republicans willing to help out, civil rights bills were often doomed at the outset. In a major institutional move, the Senate majority (with help, ultimately, from Senate Minority Leader Everett Dirksen of Illinois) revised Senate rules without destroying the filibuster altogether. The criterion for cloture was changed from the relative standard of two-thirds of those present and voting to the absolute standard of 60 votes.

Each of these famous cases, and the legislative historian could easily produce a dozen more, describes how political agents redefined institutional practices in the House and Senate. Each is an instance of a concerted effort to cleanse (sometimes partisan) minority veto points in order to expedite matters of interest to its proponents. Another category of reform, only slightly

different from the examples of eliminating minority vetoes, is often observed when a new partisan majority sweeps into Congress eager to grease the skids for its "mandate." Perhaps the most dramatic example is that of the House Republican majority in 1995, the first in forty years, that sought to implement its Contract with America through major changes in House structure and practice.¹ Other examples include the creation of an explicit Senate leadership structure for the majority Republicans in the 1890s and for the majority Democrats in 1913.²

Admittedly we have conflated a variety of different *types* of reform: formal with informal, intrachamber with intraparty. A more systematic inquiry into endogenous institutional change would want to make these and other distinctions. In the present paper, however, we are less concerned with explaining institutional change (in which these distinctions would prove important). Rather we want to explain (or better, explore) how scholars explain institutional change.

The chambers of the U.S. Congress are charged by the Constitution with the responsibility of organizing themselves. These legislative bodies are self-governing groups. But they do not govern themselves in a vacuum. Long histories serve both as constraints and as bases for expectations and forecasts. When institutional changes arise — and they occur all the time, of course — then scholars want to know why. What are the conditions necessary and sufficient for institutional change? What motivates individual agents to seek or block change? What are the conditions propitious for the "watershed" changes like those recounted above? In this paper we examine a small cafeteria of explanatory approaches. We conclude that the principal approach — a theory of rational agents pursuing private objectives through tinkering with the institutional "production function" — is attractive, impressive, and incomplete in important ways. We further claim that soaking and poking is a methodological companion to rational choice explanations, and that context and sequence are theoretical supplements that are needed to complete this principal approach. After reviewing some standard explanatory approaches, we lay out our argument.

Modes of Explanation

Thick description as explanation. Watershed events like those listed above have been the subject of intensive examination by political scientists, historians, and journalists. Many of the most informative are unprepossessing case study exercises in description. The absence of good institutional histories aside — a gripe about which we feel deeply but won't trouble the reader with here — analyses of the official record and secondary sources for momentous institutional

¹ See John H. Aldrich and David W. Rohde, "Theories of Party in the Legislature and the Transition to Republican Rule in the House," forthcoming, *Political Studies Quarterly*.

² Gerald Gamm and Steven S. Smith, "Emergence of Senate Leadership, 1833-1946." Prepared for delivery at the Annual Meeting of the American Political Science Association, Washington, D.C., 1997.

changes give the interested student a glimpse of how these events played out. The best of these — the *thickly* descriptive ones — often entertain an implicit theory of how things played out so that they are careful to provide the reader with details that would be relevant to this implicit theory. Entertaining an implicit theory of strategic interaction among purposeful agents, for example, they might take the time to describe carefully the *sequence* in which specific circumstances unfolded, because a sequence of actions provides insights about the *strategies* that had been implemented. Were there motions to overrule Speaker Reed's ruling on counting people present in the chamber as contributing to a quorum? If so, was it the Speaker's "policy coalition" that supported him on these votes, or were there various stripes of "proceduralists" who went along with the Speaker on counting quorums even though they opposed him substantively? How did Speaker Rayburn sequence the events that were consummated in the 217-212 vote? Why wasn't a deal cut with Smith in advance? Was it incomplete information (neither side knowing quite who had the votes, but each believing *ex ante* that his chances were good), or the absence of commitment mechanisms (Smith could not credibly promise to be nice to the Kennedy administration agenda), or something else? Why didn't the Senate leadership cut a deal with southerners short of undermining the strong-form filibuster practice? Was it *complete* information (they *knew* they had the votes), the inability of southerners credibly to promise not to make mischief when civil rights legislation came to the floor, or something else? In each of these instances, a writer with a proto-theory in his or her head would feel compelled to present relevant fine-grained detail.

If, however, one developed a rigorous logic to the theory implicit in a tjock description, it would almost certainly be discovered that key elements of the necessary and/or sufficient conditions were not covered in the description. Indeed, one of the virtues of formalizing a verbal argument into propositional form is to discover just what it is that must be assumed to be able to make the argument logically consistent. As a result, the description, no matter how thick, would almost certainly overlook essential empirical pieces of the story – it will be hit or miss.

Moreover, if a sophisticated describer of the sort just depicted happened to entertain a theory *different* from the one in which you, the reader, were interested, then the details he or she reports may be of only passing concern to you.³ Thus, thick description may be hit or miss in this

³ Consider the following example. Roger Brown, in his excellent history of the decisions leading up to the War of 1812, informally but explicitly presents an argument that runs counter to the prevailing historical wisdom. His argument is that President James Madison was not a dove that had to be egged on by "war hawks" to submit a declaration of war. Rather, in the period between the convening of the 10th Congress in November 1811 and the declaration of war in June 1812, Madison worked hand in glove with war hawks (especially Henry Clay, Speaker of the House, Peter Porter, chair of the Foreign Affairs Committee, and John Calhoun, chair of the Military Affairs Committee) to build up the nation's military preparedness with two objectives in mind. By increasing the size of the army and navy and expanding the network of military

second sense. The early writers about the evolution of legislative practices in Congress — DeAlva Stanwood Alexander, Mary Parker Follett, Lauros McConachie, Woodrow Wilson, Chang-Wei Chiu, Robert Luce, Ada McCown — are sources both of admiration and frustration in both of these respects.

The shortcomings, then, of descriptive modes flow from the unpleasant proposition that there are "too many" facts and they do not speak for themselves. Consequently, facts reported are facts *selected*. And they may not be the right ones for one's own purposes, either because the selection principle is inappropriate to these purposes, or because there is no apparent selection principle at all.^{4 5} What is missing are a clear definition of just what it is that the scholar seeks to explain (i.e., a well-defined dependent variable) and a coherent, logical answer to the central question of science, why? (i.e., a well-specified "equation" for "estimation" of the dependent variable).

It should come as no surprise that description, thick or otherwise, is insufficient to the task of explanation. Once political scientists came to recognize explanation as their business, methods that moved beyond description began to evolve. This is not to say that description disappeared from our agenda. Indeed, on one view (not meant to be uncharitable) the methodological revolution beginning just after World War II, and including survey research and statistical methods, consisted of sophisticated forms of description. These permitted us to appreciate the connection of the data we had to the universe from which they were drawn, to measure with quantitative precision, to infer regularities from these data, and to assess the confidence with which we could draw descriptive conclusions. No mean feat, that! It is our contention that these methods principally enabled us to identify regularities that required explanation; they did not provide a technology of explanation, a method for addressing systematically *why* there are those

roads, he hoped first to signal the British *credibly* of American intent in the hopes of getting the British to retract their Orders in Council which were the stimulus to war in the first place. This is the "to-assure-peace-you-must-prepare-for-war" principle. Failing this, his second objective was to be certain that the nation could prosecute a war if, in fact, it entered one. Brown documents his argument in great detail. But there is virtually nothing in his fine book about how, exactly, Clay employed select committees — stacking their composition and sequencing their activities — to yield the conditions propitious for war in June of 1812. If a student of congressional organization were interested in the latter, there would be slim pickings in the Brown volume. Those facts never made Brown's radar screen. See Roger Brown, *The Republic in Peril: 1812*, New York: Norton, 1971.

⁴ Readers of the various books and *New Yorker* articles of Elizabeth Drew will appreciate that there is another type of thick describer — the one who reports *everything*, refusing to discriminate the profound from the trivial, and thus making it impossible for the reader to do so as well.

⁵ Our colleague, Morris Fiorina, has complained in private conversation of historians whose selection "principle" is, in effect, "whatever happens to be available." Consequently, the web they weave is one that depends entirely on whose diary they read, which desk drawer they opened, or which archive they happened to explore. The representativeness of the evidence is unknown, as are the various selection biases that may have been at work.

regularities. Still, it must be emphasized that uncovering regularities is a critical step, without which there would be nothing to understand or explain scientifically.

The "old" institutionalism. The early history of the discipline includes a sufficiently large number of descriptions of institutional arrangements that that era is sometimes referred to as that of ("old") institutionalism. It is untrue, as some nonetheless aver, that the "old institutionalism" was simply descriptive of the rules and details of various governmental bodies. The best were theoretical, quite in the sense cited above, of asking — and seeking to answer — why questions. Sometimes the theory was strictly normative (whether revealing Westminster parliamentary envy a la Wilson, or a Tory-Labour party system envy a la Schattschneider). Sometimes it was more nearly positive. In those cases, the driving forces of institutional form and change were generally broad, impersonal dynamics. One of the best in this tradition (albeit later in time than the old institutionalism) is Joseph Cooper's explanation for the emergence of standing committees in the House, an explanation based on repetitive and growing workload, increased complexity, and other organizational-theoretic factors.⁶ (It is worth noting that organization theory was developed in the era of the old institutionalism at least partly to provide some explanatory punch to overly descriptive scholarship.) Indeed, Cooper was quite accurate in noting that committees emerged amidst increasing volumes of legislation and recurring problems and topics. That this division of labor and the development of expertise that accompanied it would make matters more efficient is likely. These explanations are, we believe, an advance over the ad hoc, unintended, seemingly purposelessness that institutionalists like Sait argued for, as in his famous "coral reefs" metaphor concerning the absence of conscious design in political institutions.⁷

Institutional reaction to external forces is highly impersonal in old institutionalist stories and, we believe, essentially apolitical. No doubt, an organization-theoretic explanation like Cooper's is often a critical part of an explanation of institutional change. In providing background circumstances it may come close to characterizing necessary conditions. But whether necessary or not, such considerations are surely insufficient. For example, the emergence of standing committees in the House and Senate revealed different patterns, yet evidently both were affected at the same moments by essentially the same volume of workload, repetition, and complexity. Why did those of the House emerge sooner but more slowly, the Senate's all at

⁶ *The Origins of the Standing Committees and the Development of the Modern House*. Rice University Studies, 1970.

⁷ Some argue the metaphor is so well known precisely because it was and is so extreme and mystical.

once? The answer we propose -- the missing ingredient that renders Cooper's possibly necessary conditions something closer to sufficient -- is the motivation of key political figures.⁸

Rational choice (and maybe other purposive) models.

Motivations: The deductive approach most closely connected to legislative studies focuses on the purposes of legislative agents and the context in which they take actions, in effect adding people to the largely impersonal forces of the "old institutionalism." The focus on purpose enables the inquiry to create an abstracted version of individual legislators — flesh and blood human beings are replaced by a small set of purposes that are plausible descriptions of what animates the behavior of legislators. In effect, we substitute an "objective function" for a proper name: a function that generalizes the proper name to some (potentially) well-defined class of actors.

The most common approach of this sort takes legislators as single-minded seekers of reelection, the famous Mayhewian conception. Accordingly, legislators seeking to secure reelection act as agents for their constituents, the latter varyingly operationalized (as per Fenno) as the residents of the geographic district, their reelection constituency (those who voted for the legislator last time), or a partisan constituency (those who supported the legislator in intraparty contests in the past).⁹ Variations on this theme would include "constituents" possessing valuable electoral resources (money, organizational assets, transferable followers), or even constituents whom the legislator aspires to represent (e.g., a statewide constituency for a House member seeking a seat in the Senate). However operationalized, reelection-oriented legislators are assumed to be rational agents in the sense that they utilize the opportunities and endowments provided them by their current political office — staff, committee posts, access to contributors and media — to further their political objectives.

There is nothing inherent in the rational choice approach, however, that demands a singular definition of the contents of the objective function. Thus, Fenno's famous tripartite objective function -- that Members seek reelection, good public policy, and/or power in the House -- provides the major alternative to the single-minded seeking of reelection approach.¹⁰ The first of these is the Mayhewian view we have just discussed. The second – the pursuit of “good” public policy – is taken by many implicitly to be Mayhewian as well; that is, the policy preferences

⁸ For additional discussion on this topic, see Gerald Gamm and Kenneth Shepsle, "Emergence of Legislative Institutions: Standing Committees in the House and Senate, 1810-1825," *Legislative Studies Quarterly* 14 (1989): 39-66.

⁹ Richard F. Fenno, *Homestyle: House Members in Their Districts*, Boston: Little, Brown, 1978,

¹⁰ Richard F. Fenno, *Congressmen in Committees*, Boston: Little, Brown, 1973.

attributed to legislators are assumed to be indirect with legislative agents adopting the perspective of their reelection-relevant principals.

Fenno, on the other hand, provides for the possibility of legislative preferences that are entirely exogenous – i.e., legislators who *really* care about policy issues quite apart from their value for reelection.¹¹ Legislators may deviate from reelection seeking in this view because the electoral filter is not relentlessly Darwinian, so that there is often considerable slack (due, for example, to a long-term partisan reputation that permits relatively unobserved shirking from it by policy-motivated Members). This enables even reelection-seeking legislators to entertain private conceptions of "good public policy" and to act on these. Nevertheless, it is the view of pure Mayhewians that legislators "run scared," leaving no stone unturned and no margin unattended in their reelection quest.¹²

While a geographic constituency is *assigned* a legislator as a matter of constitutional practice, a legislator's "constituency" is *chosen*. We touched on this above when noting that progressively ambitious legislators — contemporary House members who wish to win a place in the Senate, or 19th century congressmen who wanted to go back home to enter state or local politics — might act with an eye to a constituency they hoped to represent at some future time. What we are claiming here is that a legislator's objective function, incorporating a conception of responsiveness to constituency, is endogenous. Hence there are many different senses to the concept of "constituency." Some legislators, for example, depart dramatically from the Mayhewian notion, or even variations that allow for future ambition, by thinking of their constituency as consisting of their fellow institutional partisans. Especially when given the luxury of a non-binding connection to the folks back home — non-binding because of entry barriers or local political practices like machine politics that render congressional elections otherwise noncompetitive — these legislators seek power in the institution by taking other legislators as their "constituents." This, then, is the third of Fenno's conceptions about the motivations of legislators. (Robert Byrd of West Virginia is rightfully famous for simultaneously taking care of both geographic and institutional constituents — for overloading West Virginia with federal largesse on the one hand, and paying excruciating attention to the needs of his fellow

¹¹ See David Canon, *Actors, Athletes, and Astronauts: Political Amateurs in the United States Congress*, Chicago: University of Chicago Press, 1990.

¹² Exemplars of this view include Thomas Mann, *Unsafe at Any Margin: Interpreting Congressional Elections*, Washington, D.C.: American Enterprise Institute, 1977; and Anthony King, *Running Scared: Why America's Politicians Campaign too Much and Govern too Little*, New York: Free Press, Martin Kessler Books, 1997. Note that the position that even reelection seekers can entertain and act on policy preferences demands that legislators actually have multiple objectives, a la Fenno and in apparent contradiction of Mayhew. It is just that the continual demands of reelection yield a tradeoff between or among multiple objectives that continually favors reelection-maximizing strategies.

Democrats in the Senate on the other. He was, in other words, the nearly pure instantiation of a Cox-McCubbins party leader who internalized externalities and provided collective goods for the legislative party.¹³)

In short, a rational model of legislative practice defines members by their objective function. Legislative objectives, in the most commonly used form, revolve around responsiveness to the somewhat slippery conception of constituency. This is, as we have suggested, a permissive approach given that the idea of constituency is a flexible notion, that it is not carved in granite, and that legislators choose it. All manner of observed legislative behavior is compatible with it:

- legislators who never met a voter they didn't like, and are intent on taking care of just about all of them;
- legislators who develop and burnish a reputation for policy expertise and leadership; and
- legislators who like to spend time along the rail of the House floor or in the Senate cloakroom ministering to the needs of their colleagues.

Legislators, that is, are guided by one or more of Fenno's three political purposes — reelection, good public policy, power in the chamber. Although the electoral connection is, as noted, not relentlessly Darwinian, its pressures aren't chopped liver either! So different legislative *types* will be differentially "sorted" by it. In equilibrium, we believe a legislative chamber will be populated by *all* types, given variance in constituencies and electoral conditions.

Context as Strategic Interaction: The rational choice approach is not *just* about objectives. It is also about opportunities, constraints, and information. All of the objectives noted above address the idea of purpose, but the choices that are made in their service (*strategies* in the argot of game theory) depend upon context. The institutional context in which choices are taken include the official rules and unofficial norms that regulate legislative life, the clashing and complementary purposes of others, the extra-legislative circumstances that prevail at any particular time, and the private beliefs entertained by legislators. In short, institutional context is a shorthand term for a complicated production function that transforms the actions of purposeful legislative agents into (expected) outcomes. In other words, it is a *game*.

This, too, is a slippery term. Although there may well be some *real* way the legislative world works, no legislator knows it for certain and all entertain beliefs about it held with more or

¹³ Gary Cox and Mathew McCubbins, *Legislative Leviathan*, Berkeley: University of California Press, 1993.

less confidence. So the game-tree analogy for "opportunities, constraints, and information" in the legislative setting is suggestive at best, since in the subjective view of legislators it is often *not* a uniquely and commonly known concrete construct that theorists (like us!) typically assume. Like the blind-man-and-the-elephant allegory, legislators possess only partially overlapping visions of how the legislative game is played -- and thus of what the impacts will be of any particular "reform."

We have claimed that the idea of purposive actors -- the link missing in macro-historical and organization-theoretic accounts and provided by rationality-based approaches -- is nevertheless slippery. This is so because legislators are not stamped on their foreheads with any one purpose in particular, because there are many from which to "choose," and because the electoral mechanism is not so insistently selective as to weed out all but one. A legislative body, therefore, is composed of *many* "purpose types," and it is an empirical matter to determine the mix of types in a particular legislative body at a particular time.

Likewise we have just claimed, ever so briefly, that the context or game in which purposeful actors pursue their objectives is also slippery, because it consists of so many pieces and because so many of these are understood by the actors in an inherently subjective way. Even legislators with common purposes may proceed on the basis of entirely different understandings about how the legislative world works. They have different hunches, intuitions, beliefs about the mix of purpose types, knowledge of the rules, and understandings about historical precedents and legacies. Some, like Byrd in the Senate and Rayburn in the House, have stellar reputations for their cunning and expertise on all of these things. Others, especially rookie legislators, have only the crudest comprehensions and are fortunate if they can rely on a sympathetic cue-giver or Washington-wise staffer for guidance. And, while "getting these things right" will surely enhance a legislator's effectiveness in achieving his or her purposes, neither the electoral filter nor intralegislative selection mechanisms are so unerring or deterministic as to eliminate variance in this respect altogether. A legislative body, therefore, consists of *many* "belief types," and it is an empirical matter to determine the mix of types in a particular legislative body at a particular time.

We will return to "empirical matters" -- regarding the mix of both purpose types and belief types -- when we shortly give prominence to the methodology of soaking and poking that Richard Fenno has made famous. Before that, however, there is a short digression in which we give prominence to a different methodology, indeed an "art" -- that of heresthetic made famous by Fenno's former colleague, William Riker.¹⁴

¹⁴ William H. Riker, *The Art of Political Manipulation*, New Haven: Yale University Press, 1986.

Heresthetic, History, and Context. Even though we feature rational choice -- and how could we do otherwise at a conference in honor of an eminent member of the Rochester School -- we acknowledge, along with cutting-edge rational choice theorists at the present time, that rationality is imperfect. Information is incomplete, calculation capacity is limited and computation costly, and not even the most sophisticated strategist can look very far down immensely complicated game trees, much less engage in exercises of backward induction and probabilistic updating required in a "full" rationality approach. (Indeed, even if he or she could, it is not altogether clear, as game theorists like Binmore have emphasized, what conjectures should be entertained about how others have played.¹⁵) But even if we do not despair of these limitations in our toy models, we have also conceded in our earlier discussion of modes of explanation how slippery the very heart of rational choice is when it comes down to hard cases. The purposes of legislators are many-splendored; their beliefs about how the legislative world works are as variable as human perception, cognition, and understanding are in other contexts. But there is still another layer of complexity that needs to be acknowledged.

In the simplest of consumer behavior models in economics, the representative consumer is assumed to maximize utility, subject to a constraint on endowments in a context of market prices. The consumer knows his or her preferences, knows the resources with which he or she is endowed, and is a price taker. The first of these is not decidedly more problematical in the legislative context (though we note again that, in a manner not nearly the same as is conceded in a market setting, there will be a mix of purpose-types).¹⁶ The second of these is somewhat more problematical, inasmuch as a legislator may be more or less knowledgeable about how he or she may transform resources -- votes, staff, office budgets, committee posts, access to expertise, and so on -- into legislative results; that is, there is a mix of belief-types.¹⁷ The last of the items mentioned above is entirely problematical, at least at first glance, in the political sphere. The reason is that economic actors, in their roles as consumers, take the context in which they behave as fixed and unaffected by their individual actions. To effect changes in the economic context, consumers must abandon their more narrowly based economic roles and engage in politics --

¹⁵ Off-the-equilibrium-path behavior, for which strategic provision must be made by a player in the full rationality approach, implies that something *other* than a rational best response must have been made at a prior move by one of his or her opponents. But if this is the case then what kind of player could have made such a choice -- a mistake-prone player? one with a "trembling hand"? or a systematic form of irrationality? Even full-rationality approaches are laden with still unresolved theoretical complexities. See Kenneth Binmore, "Modeling Rational Players, I," *Economics and Philosophy* 3 (1987): 179-214.

¹⁶ Of course there is preference diversity in markets. If consumer tastes were identical, the circumstances would hardly be propitious for the kind of exchange at the very foundation of markets. But it is assumed that all consumers are engaged in satisfying their consumption desires. This is a far cry from the variance in purpose-types we described earlier for legislatures.

¹⁷ This step is normally not entertained in models of consumer choice, where any consumer knows simply that money is transformed, at fixed exchange rates, for utiles.

indirectly through their agents in institutions of the political world or directly through collective action. In short, in most circumstances economic actors may reasonably regard the economic setting as unaffected by economic behavior; these contextual parameters are set elsewhere. Legislators, on the other hand, are members of self-governing groups. Context-affecting activity is politics at its purest, and must be treated as entirely within the domain of self-governing political activity.

So, in politics much more than in economics, we must take account of the endogeneity of context.¹⁸ Not everything is up for grabs in anything short of revolutionary circumstances. But so many of the practices of a legislature -- from establishing an institutional division and specialization of labor, to deciding how to count quorums, to determining the size and composition of an agenda committee, to prescribing the terms of legislative debate -- as our introductory examples suggest, *are* up for grabs. The very act of conceiving how *else* legislators might practice institutional politics is an instance of a political art that William Riker termed *heresthetic*. In an additional layer of complexity, then, we must add to the variation and fluidity of political purposes and the variation and amenability to revision of political beliefs, the imaginative capacities that enable one to conceive of alternative institutional arrangements, and to modify them accordingly. Reed, Rayburn, Mansfield, and (allegedly) Clay saw that the objectives they sought were unattainable in the business-as-usual, status quo political context. So they reinvented government.

Summary Thoughts on Modes of Explanation. We have come to praise rational choice theory, not to bury it. In doing so, however, we wish to underscore some of the practical difficulties the researcher "in the field" encounters when trying to apply it. In most rational choice theories there are many degrees of freedom, much variance, and much fluidity, that is, many matters that cannot conveniently be left as primitive, unexplained, or exogenous. Consequently, the *theory* of rational choice needs to be wedded to a *methodology* of rational choice.¹⁹ That this is a real problem may be seen by briefly revisiting one of our historical examples. That there is a way forward is the subject of our final section.

¹⁸ To be fair, parts of modern political economy are all about how economic agents, possessing a political as well as an economic repertoire, may divert resources from nominally economic activities -- investment, production, and consumption -- to explicitly political activities if the latter improves their welfare. The literature on rent-seeking and corruption, for example, describes how economic agents alter, i.e., endogenize, the framework in which economic activity is conducted by intervening in the political sphere.

¹⁹ Of course, it is always possible to revise and improve the theory, and this is happening all the time. The toy models of extensive-form game theory (which were a considerable, even revolutionary advance over the toy-matrices of the normal form game) -- the very stock in trade of the modern legislative theorist -- remind us of the revolutions that happen in the world of theory. The present interest in incomplete information, bounded rationality, and evolutionary ideas stands as evidence that rational choice theorists are hardly complacent types.

The Emergence of Congressional Committees Redux

In the modern historical literature on Henry Clay,²⁰ scholars emphasize time and again the man's burning ambition: to escape the meager opportunities of rural western Virginia as a youth; to make his mark as a young lawyer in the prosperous and bustling legal and business community of Lexington, Kentucky; to dominate the faction-ridden Kentucky legislature; to elevate his game, first briefly as a senator, then as a congressman, and then again as a senator in the national legislature; and, finally, to dictate the course of national politics, something he managed to do from the very beginning of his Washington career in 1809 to its very end in 1852. The historians portray Clay as an *issue entrepreneur*, casting about for issues that would serve to advance his ambitions. First, it was war with Britain (propelling him to the speakership); then conquest of Canada and the Floridas; then tariffs, a national bank, and internal improvements -- his famous American Plan; then recognition of and encouragement to the newly democratizing former Spanish colonies in Latin America; and, of course, slavery. The historians (and we hardly pretend to have surveyed them all) concede that Clay had a warm spot in his heart (or a soft spot in his head!) for some of these issues. He regarded the recognition of democracies throughout the world, for example, as a uniquely American responsibility. (It was, perhaps, only coincidental that this issue allowed him to differentiate himself completely from the Monroe Administration...and from three of Monroe's cabinet secretaries who were his political rivals -- see below for more.) Implicitly at least, it is suggested that Clay sought out issues because he saw these as ways to hold together a coalition that kept him in the Speakership (a position he was never to lose while sitting in the House from 1810 to 1825). The coalition that launched him to the Speaker's chair the very first day he set foot in the House -- war hawks mostly from the west and south, but a few in the north as well -- had lost its *raison d'être* after the end of the war with Britain and the Treaty of Ghent. Moreover, the Federalists had been discredited and were on their way to oblivion, leaving the Jeffersonians nearly a coalition-of-the-whole. In this factionalized environment with no large issue or credible opposition to keep the Jeffersonians cohesive, Clay needed a new base to maintain his hold on the speakership.

There are two methodological issues here that we address. First, most rational choice theories of politics hold ambition in high regard, for ambition is but another way to label maximizing behavior. These theories, however, are less satisfactory when addressing the singularly important behavior of someone other than a "representative" politician. Clay cannot be

²⁰ The best known of the secondary and biographical literature on Clay includes: Bernard Mayo, *Henry Clay: Spokesman of the New West*, (Boston, MA: Houghton, Mifflin, 1937); Glyndon Van Deusen, *The Life of Henry Clay*, (Boston, MA: Little, Brown, 1937); Robert V. Remini, *Henry Clay: Statesman for the Union* (New York: Norton, 1991); and Merrill D. Peterson, *The Great Triumvirate: Webster, Clay, and Calhoun*, (New York: Oxford, 1987).

understood "merely" as a reelection maximizer, or as someone interested in good public policy, or even as one who sought power in the House (at least not for its own sake). His ambition was more than any of these. Indeed, in his unbridled ambition, which many of his contemporaries believed was taken to such lengths as ultimately to be self-destructive, Clay was seen as without peer. How do we come to terms with someone who is *sui generis*? It is difficult, as just noted, to classify Clay using conventional categories, and this is a difficulty not only for rational choice approaches but for other theoretical frameworks as well. To come to terms with Clay lies outside theoretical discourse; it is an empirical challenge. Yet come to terms with Clay we must if we are to account for the politics of a period in which he occupied center stage.

More generally, no single individual may be representative of (or represented by) *any* objective function. To focus on any single individual is to focus both on what he or she shares in common with others and on what makes her or him unique as an individual. This is akin to that which is represented in the estimable parameters in some statistical equation, aggregated over numerous individual politicians, and that which constitutes the unique properties of each observation, captured in the residual term.

A second issue remains, even if we are not troubled by Clay's *sui generis* quality. Clay was at the center of politics in the House in a period of momentous institutional change. If Rip van Winkle had fallen asleep in 1815 (the end of the war with Britain) and awoke in 1825, he would have found a remarkably different House of Representatives. If, on the other hand, he had fallen asleep in 1825 and awoke more than a century later, he would, roughly speaking, have found a broadly similar House. To oversimplify, in the decade ending in 1825 many institutional features were set in the House that would prevail for almost 150 years -- specifically, a proactive political and substantive policy role for the Speaker of the House (in contrast to the Speaker of the British House of Commons and Speakers of the U.S. House prior to Clay), limitations on debate, and a refined division- and specialization-of-labor committee system giving subunits considerable jurisdictional agenda power. It is hard to imagine that Clay was a passive bystander in these developments. Indeed, it has been suggested that Clay was behind them, experimenting with institutional instruments along with floating substantive policy ideas in his quest to shore up a coalition that would maintain him in the Speakership and continue to fuel his presidential aspirations.²¹

²¹ This case has been made -- purely as an argument lacking "smoking gun" empirical evidence -- in Gamm and Shepsle (1989). In a recent paper, expressing sympathy and empirical support for an elaborated version of this position, Jenkins speculates that Clay began plotting his presidential bid seven years in advance of the 1824 election. In an instance of remarkable foresight, Clay, it is alleged, anticipated that Monroe would be unopposed for a second term in 1820, but that the 1824 election would be a wide-open competition among Monroe's major cabinet secretaries (Adams, Calhoun, and Crawford), potentially

The institutional reforms of this period, if Clay were indeed behind them, constitute clear cases of heresthetical maneuver. Standing committees with defined jurisdictions and "property rights" to membership extending beyond a single bill or single session of Congress were not unknown institutional forms in the first decades of the 19th century, having been invented by the English in the 15th century and traveled across the Atlantic to the colonial legislatures in the 17th and 18th centuries. But they were exceptional institutional devices in most legislatures of the early 19th century, reflecting a Jeffersonian suspicion of small, potentially unrepresentative groups; committees, when they were used at all (in contrast to conducting business entirely in the Committee of the Whole) were primarily *select*, temporary creations to consider a single bill or, perhaps, a series of closely related issues within a single legislative session. Clay's vision (if indeed it was his) was to commit credibly to potential allies to a durable deal in which they would have quasi-permanent influence on those issues that most concerned them. Failing to find an enduring issue around which to construct a durable coalition, he engaged in institutional engineering, giving long-term agenda power in jurisdiction after jurisdiction to members in exchange for their fealty. Thus, the account is of the general properties of institutions under various rules and the interaction of that general account with the specific acts of a specific — and at least partially unique — individual.

This is but a story. The makings of a more rigorous argument about credible commitment and durable coalitions lurk behind it. What is problematical is how to explain Clay's imaginative ploy? In effect, he convinced decisive collections of legislators to play a different game. In the new game, the privileges of subsets of House members were enhanced in their respective jurisdictions, on the one hand, and the boundaries defining these jurisdictions were made secure by the routinization of bill assignments, on the other. This arrangement permitted a considerable portion of the House to have extraordinary influence in policy areas to which they attached high priority which, in turn, secured for Clay support both procedural and substantive from his followers. In short, it was a deal made in heaven. But how did he imagine this? How best might we model, and hence explain, this sort of political ingenuity, this inventive artistry?

One alternative, that bears a familial resemblance more to evolutionary biology than to a purposive approach, is (paraphrasing Alchian's seminal ideas) to assume that imaginative

ending up in the House of Representatives (in light of the growing regionalism in electoral politics). If that did transpire, and Clay managed to finish at least third in the electoral-vote tally, his presidential prospects would depend on his control of that body. He thus engaged in institutional tinkering that would assure him the necessary influence in that event. See Jeffery A. Jenkins, "Property Rights and Institutional Selection: The Emergence of Standing Committee Dominance in the 19th Century House of Representatives," delivered at the Southern Political Science Association meetings, Atlanta, 1996.

schemes are hatched by political herestheticians all the time.²² Later observers are victimized by selection bias in the sense that the successful schemes are recorded by historians while the failures are relegated to the dustbin of history. Clay, after all, tried lots of things, turning, we conjecture, to institutional tinkering only after the more conventional maneuvers of an issue entrepreneur failed.

In our view a rational explanation is complemented by a highly nuanced appreciation of the formation of ideas. By embracing a model of cognition, learning, perhaps even imagination, it may come to terms with heresthetical moves that more generic hypotheses cannot accommodate and more generic theories find anomalous. At the very least a theory of idea formation may provide empirical guidance on these matters. Unless we are particularly unlucky, for example, and Clay hatched the idea of a "modern" committee system in the splendid isolation of his boardinghouse rooms, there should be empirical residues of the evolution of his thinking on these subjects. If only we knew where to look or what to look for! Soaking and poking, as we claim in our concluding section, is something that ought not to be restricted to the here and now. Historical examination of Clay's interactions with his allies -- or Reed's, Rayburn's, and Mansfield's with theirs for that matter -- means soaking and poking in diaries, correspondence, and other archival materials with a theoretical searchlight.

Soaking and Poking as a Methodological Companion for Rational Choice

Deductive approaches, by their very nature, must assume something like the proposition that factors left outside the theory effectively "cancel out." A clear understanding of why something occurs, according to this view, may adequately be accounted for with a small set of "included" variables and causal mechanisms. And yet, in her heart of hearts, even the most extreme rationalist harbors the intuition that shocks, perturbations, and disturbances, while canceling out most of the time, are not always compensating and sometimes are huge in their impact. Only the most stubborn of determinists, economic or otherwise, holds to the view that nothing idiosyncratic can make a real or lasting difference. Nevertheless, in the intellectual division of labor we tend to sort ourselves into those that think contingency is irrelevant and those that think it is everything. As expressed by Hill,

Within the disciplines that take human beings as their object of study, there are, very broadly speaking, two schools of thought. One school focuses on the universal attributes of human kind, finds a common substratum beneath cultural differences, and looks for convergence among the many separate histories of the species. The

²² Armen A. Alchian, "Uncertainty, Evolution, and Economic Theory." *Journal of Political Economy* 58 (1950).

other school seizes upon the particular, is preoccupied with the accidents of history, and regards contingency, rather than necessity, as the essence of the human condition.²³

Hill goes on to note that rational choice theory is one of the favorites of members of the first school, and obviously the present authors would place themselves in this academy. And yet (isn't there always an "and yet"?) the history of congressional politics is dotted with transforming events and occasions -- "contingency rather than necessity" -- in which a bold, unexpected, or imaginative interpretation or action moves events off in an entirely unpredicted direction.

Mayhew was properly impressed by the extent to which a simple rational model -- with reelection-seeking agents at its center -- could account for so much of everyday political life in the U.S. Congress.²⁴ And Fenno, by adding other motivations to the mix, permitted the development of a more nuanced picture of congressional life, not to mention qualifying the more cynical view of congressional politics if reelection were all there were.²⁵ These have provided us with the conventional categories in which nearly every congressional scholar now organizes his or her thoughts about legislative politics.

Fenno, however, in his Presidential Address to the American Political Science Association, sought to remind us that politicians not only are "goal-seeking [but also]...situation-interpreting individuals."²⁶ It is this latter capacity, we suspect, that permits flights of imagination, many of which crash and burn but some of which become the modern committee system, the Reed rules, the expanded Rules Committee, or the end of the strong-form filibuster.

Surely the behavior of even the most imaginative politician is accounted for initially by a more conventional set of categories.²⁷ Clay never had to worry much about reelection. His Lexington constituency apparently never tired of him even, for example, after he supported the infamous legislative pay raise which, in 1816, cost nearly three-fourths of all incumbents their seats.²⁸ But his close call in that election reiterated what his political antennae already had received -- namely, that other legislators (especially the huge class of freshmen in 1817) needed to keep the folks back home happy. Clay needed to run a House that could deliver for its

²³ Greg Hill, "History, Necessity, and Rational Choice Theory," *Rationality and Society* 9 (1997): 189-213.

²⁴ David Mayhew, *Congress: The Electoral Connection* (New Haven: Yale, 1974).

²⁵ Richard F. Fenno, *Congressmen in Committees*.

²⁶ Richard F. Fenno, "Observation, Context, and Sequence in the Study of Politics," *American Political Science Review* 80 (1986): 3-15.

²⁷ We depend heavily here on the fine interpretation of events offered by Jenkins (1996).

²⁸ See William Bianco, David B. Spence, and John D. Wilkerson, "The Electoral Connection in the Early Congresses: The Case of the Compensation Act of 1816," *American Journal of Political Science* 40 (1996): 145-171.

members. The "old" ways would not work in 1817, he surmised, in a context of factionalism and regionalism on the one hand and an influx of amateur politicians on the other.

Clay, as noted, had strong policy preferences, though we are uncertain whether they held an independent, exogenous fascination for him or whether he was entirely instrumental in their advocacy. For the most part we interpret this advocacy mainly in light of Clay's aspiration to be the spokesmen for the new states beyond the Atlantic -- "Harry of the West" as he was known. Only somewhat later, we surmise, did he appreciate the suitability of this role to the wide-open, one-party politics of faction and region that prevailed from the waning days of the "Virginia Dynasty" through the election of Andrew Jackson. In short, he was a policy entrepreneur because it seemed to make for good electoral and institutional politics (at least some of the time) and also because it seemed to be normatively attractive (again, at least some of the time). There is nothing particularly novel or unconventional about this. It surely did encourage Clay to enhance the role of the Speaker as a proactive policy advocate, a legacy that survives to this very day.

If Clay's orientation toward reelection and good public policy do not strain the bounds of conventionality of these explanatory categories for legislative behavior, his aspiration to power in the House is slightly more complicated. He sought the Speakership in the House initially for much the same reasons he sought (and attained) the same office in Kentucky's lower house -- his vanity and ambition pushed him to distinguish himself from, indeed elevate himself over, his peers. He came to Washington already used to the idea that he was the center of attention, always where the action was. (A more contemporary exemplar of this phenomenon is Lyndon Johnson as Majority Leader of the U.S. Senate.) Released from constraining reelection worries, and apparently comfortable as an issue advocate so long as it didn't complicate his other needs, he was free to pursue the trappings of institutional power initially as an ego-trip and later as an instrument, a steppingstone, for higher aspirations. (In this latter respect, again Lyndon Johnson comes to mind.)

What we are suggesting, then, is that the standard purposive categories of modern legislative research seem to capture at least a part of Clay's motives and actions. But we would say of these what we said earlier of rational choice theory more generally -- they are attractive, impressive, and incomplete in important ways. The matter that continues to puzzle us is how Clay managed to piece together a path toward his ambitious objectives involving the changes in the institutional ways of doing business that he ultimately induced. How does a scholar come to terms with a strategic shift of gears, a new way of seeing one's way through from status quo to desired result, a gambit of such proportions that it endured even if the objective for which it was created was never achieved? If the question is bold and challenging, the answer is as modest as its main practitioner: soaking and poking. This methodology will not solve all problems, but it will,

we believe, provide some scientific discouragement to, and systematic constraints on, the temptation to treat the imaginative maneuvers of extraordinary politicians in entirely unique and utterly uninterpretable in terms of more general theories.

Sequence as well as Context

Even if soaking and poking is an appropriate addition to the methodological repertoire of institutionalists of the rational choice persuasion, the task of explanation will still not be completed. The conjunction of a general theory of the effect of rules with a specific account of Clay nonetheless leaves us with an institution that was dramatically, even radically, transformed, never to look the same again. That the heresthetician, Clay, appeared in the House in 1811 can never be explained in the scientific sense (or even granting Alchian's terms their due, it still cannot be explained why this particular heresthetical act succeeded in the second decade of the nineteenth century). This subject is *not* general-theorem science that focuses on a big-bang equilibrium that can ignore the starting point and path to that equilibrium. Rather, this is an historical science (with emphasis on it nonetheless being a science), in which path dependency, sequence, and starting points, and in which the historical appearance of particular individuals and other truly exogenous shocks, matter. The Hempelian notion of a scientific explanation of some phenomena is the conjunction of general principles with particular empirics. The rational choice apparatus provides the general principles, and these are both necessary to the specific explanation and to science in general. But in a historical science, in a path-dependent process, so too are the unique properties, the *sui generis* individuals, the unanticipated events.²⁹

The addition of soaking and poking is a question of methodology, more or less in the narrow sense. The addition of time dependency changes the nature of the scientific explanation, and thus is more than "mere" methodology. No longer can one make general statements meant to transcend time and place. The filibuster was and is important in the Senate but not the House because their path of development was different, and that which was different did not rest on systematic differences in the motivations of House versus Senate Members.³⁰ One can make scientific statements, but their application requires as well the specifics of time and place and person. Not just any specifics, of course, but specifics that must be compatible with the general theoretical statements (and vice versa, of course). Together, however, the methodology of

²⁹ More accurately the unanticipated events, not unlike the alleged meteor impact as explanation for the demise of the dinosaurs and rise of mammals — the explanation requires good science and good history. See Walter Alvarez, *T. rex and the Crater of Doom*, Princeton: Princeton University Press, 1997.

³⁰ See Sarah A. Binder, *Minority Rights, Majority Rule: Partisanship and the Development of Congress*, Cambridge University Press, 1997.

soaking and poking and the science of context and sequence are additions to the rational choice enterprise that effectively make it attractive, impressive and (nearly? actually?) complete.

Tentative Conclusions

Rational choice models now enjoy a great deal of respect and popularity in political science. They may be appreciated for their own sake – for their elegance, power, and parsimony – and many practitioners of the modeler’s craft hold precisely this view. But with their growing attractiveness rational choice models require something more than aesthetics; they require a user friendliness, an adaptability to real problems, perhaps even an owner’s manual.

We do not envision returning to earlier modes of explanation, but we do believe that rational choice models in practice will acquire some of the earlier features of social scientific explanation. Particularly when utilized to come to terms with historical phenomena, we think rational choice models need to be enriched both theoretically and methodologically.

Regarding the former, we have suggested that context and sequence ought not to be abstracted away. Institutions are embedded in a web of relationships that are historically influenced if not determined. This web, and the time dependency deriving from the importance of sequence, means that general statements will always need to be qualified by the specifics of time and place. But unlike earlier descriptive approaches, rationality, context, and sequence lend themselves to a more analytical rendering. Even though garden-variety, universalistic rationality must be harnessed by the specifics of context and sequence, the explanations produced will possess an analytic sharpness not usually enjoyed by the more descriptive approaches.

We have raised the “*sui generis*” issue that must be tackled in any effort to account for the watershed events in the life of an institution. The historically significant events that constitute major instances of institutional change are often heresthetical transformations entailing considerable imagination and creativity by the principals involved. Clay’s role in invigorating the Speakership and utilizing the standing committees, or Reed’s in articulating rules to grease the skids for the majority party, are instances of instrumental behavior, but the imaginativeness of the ploys remains a puzzle.

Finally, and perhaps most tentatively, we propose that the history of institutions can be a science. An historical science, however, differs from the model of science that has structured the thinking of most rational choice modelers so far. If our hunch is correct, an historical science of institutions retains derived propositions to which is added context, sequence, and the exogenous interventions of imaginative individuals. But such blendings of formal results with empirical specifics are the ingredients of scientific explanations in all cases. The derived propositions will be conditional, as all rational choice propositions are conditional, but the conditions will, we must

expect, be unique to the context, sequence, and appearance of exogenous forces in the life of the particular institution whose history is being explained.