

Rule Breaking and Political Imagination

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What's This Book About?

This is a book of stories about institutions and how they sometimes fail to perform in ways we expect. Institutions have figured prominently in theories of politics of the last half century. But it wasn't always this way. Although qualitative political science in the first part of the twentieth century put a premium on the role and importance of institutions, World War II and its aftermath pushed institutional analysis to the sidelines. The behavioral revolution, with its emphasis on the measurement of individual attitudes and behavior, arose from the confluence of social psychology and novel quantitative methodologies, especially scaling and survey research. Stouffer's classic, *The American Soldier* (1949), pioneered this approach. Individuals were the units of analysis, sometimes in isolation and other times embedded in a social or historical context.

Adapting these new methods to political topics, voting behavior and public opinion in particular, the behavioral revolution flourished as political scientists got better and better at measuring things about individuals and their environment. Modern political science was born in these years, but there was a growing sense that something was missing, that the behavioral revolution had wiped too much of the slate clean. For one thing, behaviorists provided few unifying principles for their descriptions, measurements, and hypotheses. Partially as a reaction to this theoretical vacuum,

some postwar scholars in political science and economics began a new project—formal political theory (also called “rational choice theory,” “positive political theory,” “public choice,” and sometimes even the old and oft-used label “political economy”). Individuals remained the units of analysis in these inquiries, but there was little emphasis on their accurate portrayal; rather, they were conceived of sparsely in terms of their *preferences* over potential political outcomes and their *beliefs* about how outcomes are produced as the resultant of individual *actions* (i.e., “how the world works”). Preferences, beliefs, and actions—mere shadows of real individuals—served as theoretical instruments to derive and explain *equilibrium patterns* at the group or societal level. Thus, to cite five influential exemplars, Downs (1957) proceeded in this manner to explicate voting and party competition in elections; Riker (1962) to characterize winning and losing coalitions in settings of interpersonal conflict; Schelling (1960) to produce insights about mixed-motive situations consisting of both conflict and cooperation; Olson (1965) to explain success and failure in collective action; and Buchanan and Tullock (1962) to portray the consequences of different constitutional arrangements. Politics, in this view, came to be understood as the result of instrumental behavior in which rational individuals transformed their preferences and beliefs into optimal actions that, in turn, combined into aggregate empirical patterns. Formal theory became a tool for deriving expectations that could be examined empirically. It provided an explanatory narrative that had been missing in behavioral scholarship.

Formal political theory shifted attention away from individual behavior per se (something that animated the research agenda of the behavioral revolution owing to its roots in social psychology). Instead it provided a stripped-down, optimizing model of man (Simon 1957) that yielded implications about *groups of individuals* in social, economic, and political settings. There was real value added in the form of analytical rigor. But still, there was something missing.

Institutions, that old chestnut of the late nineteenth and early twentieth centuries, were at best deep in the background and at worst ignored altogether by the more modern political science approaches, both behavioral and rational. As a formal modeler myself, but one also intrigued by the history and politics of the US Congress, I was struck by the schizophrenia many of my generation felt in our youth—modelers and methodologists by day but qualitative scholars of substance and history by night. In 1976, at a formal theory conference, it all came to a head for me when a prominent economist dismissed the richness of legislative politics with the observation that we didn't need much history or description once armed with the median voter theorem and other principles in the formal theory tool kit. For sure, I was pleased to claim credit with my formal theory colleagues for striking out in a productive new direction, but I was not ready to succumb to radical reductionism. This occasion began a personal intellectual odyssey for me (though I was not aware of this at the time) as I sought to bridge the chasm between the spare assumptions of rational choice theory and the rich substance of legislative institutions and practices.

I wrote a number of papers over the next decade (Shepsle 1979 and 1986 are illustrative) and participated in a fruitful collaboration with Barry Weingast (e.g., Shepsle and Weingast 1981, 1984, 1987), resulting in nearly a dozen papers during the 1980s incorporating and making salient the rules and practices of American legislatures. (In the 1990s, in collaboration with Michael Laver, I extended the scope of these arguments to parliamentary institutions; see Laver and Shepsle 1996.) This work put a premium on the structure of politics, made concrete by institutional arrangements and practices, within which individual preferences, beliefs, and actions take on meaning. I referred to the equilibrium patterns identified by this approach as *structure-induced equilibrium*. At about the same time, the classic statement of what came to be known as *the new institutionalism* was articulated by the late

Nobel laureate Douglass North, summarizing the realization that institutions structure and constrain rational action. An institution for North (1990, 3) consists of “the rules of the game in a society or, more formally, . . . the humanly devised constraints that shape human interaction.” As the economic historian Joel Mokyr (2014, 152) observed, “North . . . stressed that institutions are essentially incentives and constraints that society puts upon individual behavior. Institutions are in a way much like prices in a competitive market: individuals can respond to them differently, but they must take them parametrically and cannot change them.”

In the last quarter of a century, institutions have moved front and center as objects of analysis, returning from the exile imposed on them during the behavioral revolution. Not only are institutions conceived of as providing contexts for individual behavior but also as elements of choice themselves (Calvert 1993, 1995a, 1995b; Greif 2006; Schotter 1981). They may be seen as endogenous creations as well as exogenous constraints.* This latter development is significant. Groups of individuals—legislators, bureaucrats, voters, candidates, or parties—not only respond to institutional constraints according to this view, but they may also be in a position to alter these self-same constraints. Indeed, many institutions possess explicit self-altering features—methods to suspend, amend, or revise the very constraints according to which normal business is conducted.

North’s new institutionalism and my structure-induced equilibrium take institutional rules as exogenously given. The Schotter-Calvert-Greif treatment of rules, on the other hand, allows institutional practices to emerge and to change as matters of collective choice. In both of these approaches, the rules, whether

* As Rowe (1989, viii) puts it, “Though institutional constraints could be imposed on human behavior just like the physical constraints imposed by natural resources and technology, such a fiction could not explain the institutional constraints themselves.”

imposed or chosen, whether fixed or mutable, are understood to channel the choices of individual actors.

But what if they do not? An attempt to answer this question is what this book is about. The essays to follow illustrate how the scope for action is enlarged, despite the nominal constraining effects of rules, by *imagination* and by *transgression*. Imagination may be thought of as a “work-around.” It is a resourceful tactic to “undo” a rule by creating a path around it without necessarily defying it—figuring out a novel way to untie the Gordian knot as it were. Imagination is vision and revision. As McLean (2001, 231) describes it in terms of admiration for former British prime minister Lloyd George, “Once in a while there comes a politician who sees further than the others. Such a politician can see opportunities where others do not.” Transgression, on the other hand, is rule breaking; it is cheating; it is *cutting* the Gordian knot. There is no pretense of reinterpretation; it is defiance pure and simple. Whether imagination or disobedience is the source, constraints need not constrain, ties need not bind. This is what I hope to convince the reader of by arguments and examples.

Allowing for imaginative reinterpretation or outright violation forces a reconsideration of institutions as “humanly devised constraints.” They structure the proceedings of a group or society—and thus are part of equilibrium patterns—only insofar as their rules are obeyed by most in the group most of the time. They are something else when observance is problematical or discretionary—when a rule operates more as a suggestion than a constraint. Put differently, what humans devise, they may revise or defy.* Illustrating these possibilities with select examples is my remit in this volume.

*Harstad and Svensson (2011) make this same point in distinguishing *lobbying* (revising) and *bribing* (defying). Bates (2014, 57) offers a time-scale interpretation: rule breaking is a short-run departure from institutional practice, whereas rule change derives from longer-term considerations.

The essays of this book do not provide a theory of imagination or rule breaking. What they provide are instances of the two, instances that I believe will impress and entertain the reader and, most importantly, caution him or her against unreflective thinking about the controlling authority of institutions. The essays are what one reviewer called “a meditation on institutions,” neither systematic empirical analysis nor rigorous formal theory but rather a midcourse pause for reflection. As a project, the essays here comprise a genre shared by the stories in William Riker’s (1986) *The Art of Political Manipulation* and Iain McLean’s (2001) *Rational Choice and British Politics*. I hope the reader finds them as compelling.*

The remainder of part I elaborates institutions as rules, and imagination and rule breaking as forms of liberation from their constraints. Part II focuses on instances of imagination and rule breaking, with special attention to (and admiration for) the politicians who imaginatively exploit the situations in which they find themselves by novel stratagems or simply by breaking the rules. The essays mainly focus on legislative and electoral settings. Part III expands the scope to other institutional settings. I conclude by asking “So what?”

By the end, some readers may feel prepared to conclude that institutions do not constrain at all—that life is rife with rule breaking, illegality, and corruption. In talks I gave in Italy and Mexico, audience members suggested as much, claiming that in their countries, rule following, not rule breaking, was the exception. I think this goes too far. My simple claim is that institutions do create channels through which behavior flows, but occasionally the banks defining the channels are breached.

*There is a large analytical literature in political science and economics on institutions, some of which is listed in the references at the end of this volume. I have not made this body of work the focus here and have mainly relegated analytical matters to footnotes for the interested reader.

Part I
Basic Ideas

Rule Breaking

Introduction

Imagine we are on Capitol Hill in early January of an odd-numbered year. Congress is about to convene, the even-year election having been decided the previous November. But is it a *new* Congress? As we will see, this is a constitutionally controversial matter, one that lies at the heart of more abstract matters concerning the nature of institutions of self-governing groups.

For the House of Representatives, this is a settled matter. The previous House had adjourned *sine die* before the election and, from a constitutional perspective, is now an entirely new body. The newly convened House will operate under “general parliamentary law” until it has sworn in its members, elected a presiding officer, and adopted standing rules.

For the Senate, on the other hand, this is *not* a settled matter. For two-thirds of the senators, the election of the previous November in no way interrupted their respective careers. They are sitting senators who were not “in cycle” for the election—their staggered terms did not require them to face contract renewal in the just-concluded election. Under one constitutional view,

This is a revised and shortened version of “The Rules of the Game: What Rules? Which Game?,” chapter 5 in *Institutions, Property Rights and Economic Growth: The Legacy of Douglass North* © Cambridge University Press 2014. Reprinted with permission. See Shepsle (2014).

this Senate is the same collective body as the one that existed before the election; it never adjourned permanently (it *recessed*), and only a portion of its membership may have changed. More generally, the Senate of time t is the same as the one of time $t - 1$. By induction, a current Senate is the same body as the one that convened on March 4, 1789! There is never a new Senate. This is the *continuing-body* theory of the Senate (Bruhl 2010).

The continuing-body theory has interpretive consequences for rules that follow from several constitutional and statutory provisions. The first is Article I, Section 5 of the Constitution. This reads in part: “Each House may determine the Rules of its Proceedings. . . .” That is, each chamber is a self-governing group. The Constitution is otherwise modest in restricting internal features of each chamber.*

The second provision is a standing rule, authorized by the Article I, Section 5 rule-making requirement. Rule V of *The Standing Rules of the Senate* states:

1. No motion to suspend, modify, or amend any rule, or any part thereof, shall be in order, except on one day’s notice in writing, specifying precisely the rule or parts proposed to be suspended, modified, or amended, and the purpose thereof. Any rule may be suspended without notice by the unanimous consent of the Senate, except as otherwise provided by the rules.

* Article I, Section 5 lays out a short list of requirements. Each chamber is the judge of elections to it; a majority constitutes a quorum; it may compel attendance of its members and set penalties for violations; it may punish members for disorderly behavior; it may expel a member on a two-thirds vote; it must keep a journal of proceedings and publish it; and it may not adjourn for more than three days without the consent of the other chamber. In addition, Article I, Section 2 specifies that the House shall choose a speaker and other officers, while Article I, Section 3 designates the vice president of the United States as the president of the Senate and implores the Senate to choose other officers including a president pro tempore who presides in the absence of the vice president.

2. The rules of the Senate shall continue from one Congress to the next Congress unless they are changed as provided in these rules.

A third provision, also a standing rule of the Senate, prescribes how standing rules may be amended as permitted by Rule V. According to Rule XXII.2, if sixteen Senators sign a motion to bring debate on any measure to a close (*cloture*), then the presiding officer

shall at once state the motion to the Senate, and one hour after the Senate meets on the following calendar day but one, he shall lay the motion before the Senate and direct that the clerk call the roll, and upon the ascertainment that a quorum is present, the Presiding Officer shall, without debate, submit to the Senate by a yea-and-nay vote the question: 'Is it the sense of the Senate that the debate shall be brought to a close?' And if that question shall be decided in the affirmative by three-fifths of the Senators duly chosen and sworn—*except on a measure or motion to amend the Senate rules, in which case the necessary affirmative vote shall be two-thirds of the Senators present and voting* [emphasis added]—then said measure, motion, or other matter pending before the Senate, or the unfinished business, shall be the unfinished business to the exclusion of all other business until disposed of.

As a self-governing group, in sum, the Senate may formulate its own rules of procedure as well as rules governing the revision of those rules (Article I, Section 5 of the Constitution). However, absent such rule-governed amendments to the rules (requiring majority support to pass but two-thirds support to close debate as specified in Rule XXII.2 of the Senate's standing rules), the rules of one Congress continue to the next (as specified in Rule V.2 of the standing rules).

Now imagine the following hypothetical exercise.* At the opening of a new Congress, the majority leader, who, according to Senate rules, possesses priority in recognition, rises in the well of the Senate and announces, “As the Senate is not a continuing body, its first order of business, under Article I, Section 5 of the Constitution, is to select standing rules for the new Congress in accord with general parliamentary procedure. I move the re-adoption of the standing rules of the previous Congress, with two exceptions. Rule V.2 is deleted. And the special treatment given to cloture as applied to amendments to standing rules in Rule XXII.2 [italicized in the previous paragraph] is removed.”†

After this motion is read, chaos breaks out in the chamber. The presiding officer, the vice president, gavels the chamber to order and recognizes the minority leader who, with great agitation, seeks recognition. “I rise to make a point of order. The Senate *is* a continuing body and thus is governed by the rules today that were in effect in the last session, not by general parliamentary procedure. This is clearly stated in Rule V.2. Thus it is possible to revise the rules only in compliance with Rule XXII.2, even if the objective is to revise said rule.” The key question to be ruled upon by the presiding officer is whether the previous Senate can bind its successor (as Rule V.2 would seem to do).

Because the majority leader has invoked a constitutional basis for moving to adopt rules, the presiding officer would normally yield to the norm of not ruling on a constitutional point him- or herself; instead he or she would entertain a motion to table the point, thus allowing the fate of the minority leader’s intervention to be determined by the full Senate. If the motion to table succeeds (thus rejecting the minority leader’s point of order), the majority leader’s motion to adopt new rules then becomes the

* I thank David Rohde for first bringing this possibility to my attention and Gregory Koger for further discussion.

† The most important feature of general parliamentary procedure is that decisions are taken by a simple majority, subject to a quorum being present.

unfinished business before the Senate. If the motion to table fails, then the majority leader's motion is effectively off the agenda.

A second key question arises—if the motion to table succeeds, is the subsequent unfinished business (the majority leader's motion to adopt rules) to be debated under the old Senate rules or according to general parliamentary procedure? The presiding officer rules that if the point of order is tabled, the Senate will proceed immediately to the majority leader's motion under general parliamentary procedure. The minority leader then appeals the chair's ruling, arguing that it makes no sense to consider the majority leader's motion under general parliamentary procedure because this is precisely what the majority leader's rules-change motion aims to establish but has not yet done so; the motion thus must, in the humble opinion of the minority leader, be taken up under existing Senate rules. That is, the majority leader's motion is predicated on the Senate *not* being a continuing body but, in the minority leader's view, *until* that is established, the Senate must operate under the old rules, not general parliamentary procedure. When the appeal of the presiding officer's ruling is put to a vote, a majority votes to sustain the ruling. (Senate majorities rarely overturn rulings of the presiding officer.) The minority leader's objection is thus tabled, his or her appeal defeated, and the majority leader's motion is taken up under general parliamentary procedure. A simple majority then approves his or her motion. *Voilà!* A revision of the rules—in effect a reduction in the threshold to end filibusters on amending the rules from two-thirds to three-fifths—has been accomplished by a simple majority. Moreover, a precedent has been set that the Senate is not a continuing body.

This is just a story, one in which we have dived deeply into the weeds of Senate procedure. However, it illustrates several points that will be the focus of this essay:

- Self-governing groups create the rules that govern their proceedings.

- Self-governing groups may change their rules—suspend, amend, override, even disobey.
- Let me repeat this last point. Self-governing groups may even flout the rules to which they have previously agreed (as they did in regard to Rule V.2 in the illustration just given).

Two Views of Institutions*

Douglass North (1990, 3; see also Mantzavinos, North, and Shariq 2004) is famously associated with characterizing an institution as a *game form*.[†] To repeat his famous definition, an institution is “the rules of the game in a society or, more formally, . . . the humanly devised constraints that shape human interaction.” North urges us to think flexibly about this definition. At one end of the continuum are informal constraints: taboos, customs, conventions, codes of behavior, and traditions. At the other end are formal rights, responsibilities, and constraints like those found in contracts, official procedures, and constitutions. An institution specifies the players whose behavior is bound by its rules; the actions the players must, may, must not, or may not take (Crawford and Ostrom 1995); the informational conditions under which they make choices; a script of their timing; the impact of exogenous events; and the outcomes that are a consequence of these choices and events. The game form is transformed into a game when players are endowed with, and thus motivated by, preferences over outcomes.

The *game-form view of institutions*, one to which I adhered in earlier work on the role of institutional structure on political outcomes (Shepsle 1979), is silent on three significant matters. First, this approach says little about the origins of institutions. Institutional arrangements are taken as exogenously given with

*This is more fully developed in Shepsle (2006 a, 2006b) and independently developed in Munger (2010).

[†]Also see Hurwicz (2008).

the objective of tracing the implications of these rules for behavior and outcomes. Attention is riveted on the subsequent play of the game governed by these rules and the outcomes that arise from this play, not on the origins of the rules.* Second, there is little consideration given to the durability of rules. Because they are taken as exogenous, they are not, themselves, part of the play of the game. They are assumed to endure. Third, the constraints entailed in the rules are regarded as self-enforcing. There simply is no provision made for deviating from the rules. An agent, at any node in the game tree to which he or she is assigned, has a fixed repertoire of alternative actions as specified by the branches emerging from the node, and must choose from among these.† It would never occur to a majority leader of the US Senate, staring into the mirror in the morning, to contemplate announcing, contra Rule V.2, that the Senate is not a continuing body. This is not an available option.

The *equilibrium view of institutions*—an alternative perspective associated with the work of Schotter (1981) and Calvert (1993, 1995a, 1995b)—does not focus primarily on institutional origins either, but it does have something to say about their durability and prospects for departures from their strictures. According to this approach, the game form itself is part of the equilibrium.‡

*For a general model of endogenous institutions, see Eguia and Shepsle (2015). Alston notes that in taking a long view, economic historians are able to observe both the determinants of institutions and their consequences. That is, they do not have to take institutions as fixed but rather as emergent and evolving. See Alston, Harris, and Mueller (2012).

†See the figure and discussion in chapter 2. As the late game theorist Nobelist Leonid Hurwicz (2008, 284) asserted, a game-form description makes sense only if “players will not or cannot cheat, that they will consider only strategies prescribed by the mechanism governing the system, what we call the ‘legal’ strategies.”

‡For a treatise, weaving together game theory and economic history to develop an elaborate theory of endogenous institutions, see Greif (2006). Greif is one of the exceptions in focusing on institutional origins as well as on equilibrium properties—at p. 137ff. and chapter 7. Greif’s approach differs slightly from Calvert-Schotter, mainly at the level of nuance, so I will group the three together for present pur-

What North took as exogenous, Calvert, Schotter, and Greif view as the endogenous product of strategic action in a more primal environment. There are really two parts to equilibria of interest: the outcome induced by play under a particular body of rules (*institutional* or *structure-induced equilibrium*; Shepsle 1979)—this is the one on which North focuses—and the one arising in the primal environment where rules are chosen and maintained (*equilibrium institution*; Shepsle 1986). The combination of these two elements is what Calvert, Schotter, and Greif have in mind as an institution—it is “an equilibrium of behavior in an underlying game. . . . It must be rational for nearly every individual to almost always adhere to the behavioral prescriptions of the institution, given that nearly all other individuals are doing so” (Calvert 1995a, 58, 60). Or as Greif (2006, 136) observes, “institutionalized rules and the beliefs they help form enable, guide and motivate most individuals to adopt the behavior associated with their . . . position [in the game] most of the time.”

This means that the rules themselves are part of the equilibrium. Perturbations in the primal environment may undermine the existing rules equilibrium in any of several ways. A shock may change individual preferences over institutional arrangements, thus diminishing support for the existing regime. Alternatively, a shock may alter beliefs about the faithfulness of others to existing rules, thus causing one to recalculate his or her best response to existing rules and practices. Finally, a shock may modify one’s

poses. A close cousin of this approach is Krehbiel (1991), where he articulated the Majoritarian Principle, or “remote majoritarianism,” according to which decisive coalitions always lurk in the background on matters of institutional choice and maintenance. In addition, there is a vast literature in political science and political economy that analyzes the emergence of institutions alongside a consideration of their operating characteristics. This includes, but is not limited to, the origins and influences of parties (Aldrich 1995, 2011; Cox and McCubbins 1993); the process of democratization (Acemoglu and Robinson 2006; Lizzeri and Persico 2004); the structure of executives (Gailmard and Patty 2013); and legislative-executive relations in parliamentary democracies (Cox 1987). I could list many more examples.

own beliefs about how the world works and thus one's willingness to go along with existing institutional practices or to defect instead. In any of these ways, opportunities and incentives to change the rules may arise. Consider an exogenous change in constituency preferences caused, say, by the bursting of a housing bubble, a technological development, hyperinflation, a natural resource discovery, a commodity price change, or an environmental disaster. This may change either the composition of legislators, or the preferences or beliefs of existing legislators, which, in turn, may provide the circumstance for changing institutional rules—say, the elimination of the filibuster in the Senate.

Many institutions provide explicit avenues for suspension or revision of existing rules. This has already been mentioned for the Senate—Rule XXII describes how the Senate may amend its standing rules. Moreover, the Senate allows for suspending any of its rules by unanimous consent. The House, on the other hand, devises routine procedural routes around its standing rules, either by a suspension-of-the-rules motion (requiring two-thirds support of those present and voting) or by the majority adoption of a special rule brought to the floor by the Committee on Rules. The former allows a move directly to a vote, while the latter replaces existing rules with a specially crafted procedure. In either case, the procedure applies provisionally to take up a specific measure after which existing rules are put back in play.

There is a second methodological possibility this broader view of institutions permits. The North view of institutions does not countenance departures from the rules. They are assumed to be obeyed, although this remains implicit. In the Calvert-Schotter-Greif formulation, on the other hand, deviation is entirely possible. The Senate majority leader *can* announce that the Senate is not a continuing body, even though Rule V.2 declares that it is (so long as a majority is prepared to support this departure). The Senate is a self-governing group and can depart from its rules as it wishes. The more comprehensive equilibrium view of institu-

tions associated with the Calvert-Schotter-Greif approach does not *assume* that compliance with the rules necessarily occurs, and therefore allows for deviation.*

Endogenous Procedures to Change Rules

There are multiple mechanisms incorporated into the rules by which those rules may be changed. That some such mechanisms exist at all is partially due to the self-awareness of institutional designers at a constitutional moment that they are not omniscient. Mechanisms are provided *ex ante* to fill unanticipated gaps, to adapt to changing circumstances, and to deal with circumstances as they arise that could be imagined *ex ante* but are too unlikely or too convoluted to accommodate at the rules-selection stage.

One conspicuous instance of these is a constitutional clause that describes the method by which a constitution may be amended. This is the role played by Article V of the US Constitution. At the constitutional convention of 1787, many of its participants made clear that they sought a less-than-unanimous procedure, given the unanimity straitjacket into which the Articles of Confederation had placed the existing regime, but one that may not be exploited too easily.

Bodies of rules, likewise, often possess amendment procedures. Rule XXII of the Senate's standing rules is, as we have seen, one such instance. Suspension of the rules, special rules from the Committee on Rules, and motions to waive points of order (that would otherwise be in order) are examples drawn from the US House that temporarily eliminate a constraint on procedure. Other sources of institutional change include interpretive courts, escape clauses (in treaties and labor-market agreements), nulli-

*Thus, a body of rules—an institution or constitution—is in equilibrium if there is no incentive and means to violate or alter this body. As Levinson (2011, 745) observes, “In order for constitutions to serve as the rules of the political game, they must avoid *becoming* the political game” (emphasis in original).

fication arrangements, emergency powers (see Loveman [1993] on “regimes of exception” and Lintott [1999] on the “dictator” institution of the Roman Republic), devolution, redistricting, and expansion (contraction) of (s)electorates.

Without going into further detail about these rules-revision mechanisms, it should be clear that rules are provisional. They continuously face three strategic challenges: (1) At the level of individual behavior, is it in any agent’s interest to deviate from behavior required or expected by the existing institutional arrangements? (2) At the collective level, are there the means and the will to enforce rules and punish violators? (3) Is it in the interest of a decisive coalition to violate or alter the rules? Rules may be altered provisionally (as in a motion to suspend the rules) or more permanently (Article V of the US Constitution); they may be altered in the primal environment (as happened to the Articles of Confederation and the French ancien régime); and they may be disobeyed (as we shall see).

Self-governing groups have a commitment problem. Rules may serve a variety of purposes and confer conspicuous advantages, but by its very nature, a self-governing group cannot commit to sticking to them. There is no bond to post, no hostage to give. Like the all-powerful Hobbesian sovereign, a self-governing group can break any promise it makes. Its members may *choose* to obey its rules and follow its procedures, but then again, they may choose otherwise in any particular situation. Lest one thinks this merely an abstract problem with no practical significance, the essays of parts II and III provide concrete illustrations of imaginative maneuvering around rules as well as outright violations.

Rule Breaking: Some Further Considerations

Violating a rule in a given instance is one thing, but formally changing a rule is another. A revised rule subjects all future considerations to the new constraint. However, legislators, lacking

omniscience, may be uncertain what future considerations might fall within the purview of the new rule. Reducing the threshold for cloture in the Senate, for example, means that *any* measure subsequently taken up will have an easier route to a final-passage vote than under a more stringent threshold. Sometimes, senators are prepared to take this leap—the filibuster criterion was, in fact, changed in 1917, 1975, and 2013. But many attempts in the intervening years failed. Why? Perhaps because many senators anticipated they might actually benefit from a more stringent cloture threshold, not always but often enough and on issues of great enough significance to a senator compared to those on which he or she would be disadvantaged. Indeed, for this very reason, the imaginary scenario with which I introduced this essay—in which the Senate majority leader’s strategic maneuver resulted in abolishing the super-majority requirement altogether—might not succeed. Many in the majority may be loath to participate in the majority leader’s procedural ploy.

Pervasive uncertainty about the contents of the future domain of a revised rule is often sufficient to deter rules changes—better the devil you know, and all that. But it is not necessary. Even if legislators know that many, even most, will be beneficiaries of the change, if they are uncertain about the identity of beneficiaries, they may still balk at making changes—they wonder will they be among the many beneficiaries or not? Uncertainty about future incidence produces a *status quo bias* (Fernandez and Rodrik 1991). This status quo bias means that permitting the occasional, one-time-only “breach” or temporary “reinterpretation” of the rules may be superior to tampering with the rules directly. Thus, one problem of collective commitment to rules is a variant of *time inconsistency* in which the circumvention of a particular rule on a particular occasion is a temptation too attractive to resist at the time.

It is worth noting a second development. It is not unusual for majorities simultaneously to agree to standing rules *ex ante*, but

also both to provide mechanisms for temporary suspension and to leave loopholes that may be exploited in particular circumstances. The provision of these mechanisms and loopholes, and their anticipated use from time to time, identifies how the collectivity envisages the occasional circumvention. However, toleration for actually *breaking* rules is a horse of an altogether different color. That is, arranging a procedure for suspending rules in a particular circumstance and providing some regulation of its use (e.g., a super-majority requirement) is one thing. But permitting a simple majority to accept an outright violation damages the rules-as-constraints vision of institutions.

Conclusion

The institutions-as-constraints approach has been a workhorse in the positive political theory and political economy fields—Baron-Ferejohn bargaining games, Shepsle-Weingast amendment games, Romer-Rosenthal agenda games are examples. Collective practices are taken as fixed exogenously, providing a strategic context in which agents interact. In taking practices as fixed, equilibrium is established in which deviations from the game form are ignored (or repressed) and compliance is taken for granted. The game form is given *ex ante*, and there is no choice on whether to play it as opposed to some alternative game form.

The idea of institutions as constraints on behavior is a necessary, though incomplete, approach. It allows for an understanding of how collective activity proceeds when most people obey the rules. However, the institutions-as-equilibria approach allows a deeper appreciation of institutional life by taking on board the possibility that departures from the rules are possible. A self-governing group, like the Hobbesian state, cannot commit to enforcing its rules always and everywhere; thus, individual agents may find circumstances in which it does not always pay to comply with existing rules. Prospective departures, however, are not all

of the same type. I have identified four different senses in which departures from a given body of rules are possible.

First, an institution is, as Calvert and Schotter remind us, embedded in a primal environment. If the institution is initially in equilibrium, then an environmental perturbation may be sufficient to provide incentives for agents to “move against” the institution. A regime in place may be replaced by an alternative arrangement, peacefully (e.g., the Articles of Confederation regime) or violently (e.g., the *ancien régime* in France).*

Second, a body of rules may contain its own mechanisms for revision. Article V of the US Constitution and Rule XXII of the Senate’s standing rules are examples. Rules governing redistricting and reapportionment might also be regarded as self-referential mechanisms of planned adjustment to changes in the primal environment. Unlike departures of the first type (in the previous paragraph), where the impetus for departure from the rules comes in the form of unexpected changes in the primal environment, mechanisms of change here are prearranged by forward-thinking designers at a constitutional moment.

Third, rules may be temporarily suspended in accord with institutionally specified regulations. Suspension and special rules in the House, unanimous consent agreements in the Senate, escape clauses in treaties and contracts, and emergency powers in constitutions are examples. They share in common the belief that once the issue at hand is resolved, a return to “normal order” is expected.

Finally, rules may be broken. Declaring the Senate not a continuing body in direct contradiction of a standing rule clearly flouts the rules in place. A collectivity may have the means to re-

*The analogy to Schumpeterian “creative destruction” is suggestive, although for Schumpeter, a new regime or product or firm constitutes an improvement over its predecessor. I am not convinced by this teleology: one regime is superior to its predecessor by the lights of a decisive agent or coalition, but whether this is more broadly welfare improving is debatable.

verse outcomes based on rules violations or to punish deviations, but it may lack the will to do so.

All of these departures from rules raise concerns with the institutions-as-constraints approach. Institutions may, as North states, consist of “humanly devised constraints.” But what humans devise, they can violate or revise. Thus, institutions are constraints except when decisive coalitions decide they are not. The examples given in essays to follow suggest that clever institutional politicians are on the prowl for opportunities to bend, evade, and even break the rules.

A second concern revolves around the difference between revising rules and breaking them. Revising is forever (or at least until the next round of revision). Breaking is issue- and time-specific. The policeman looks the other way when a motorist travels forty miles per hour in a thirty-five-miles-per-hour zone; he neither enforces the rule nor attempts to have it revised but rather allows the breach to stand. Likewise, legislative majorities often ignore small procedural violations, indeed sometimes even providing blanket waivers of points of order against these violations. Small departures, some of the time, appear to keep an institution intact. It endures occasional violations and defies revision.

What we observe in many empirical settings is neither rigid adherence to rules nor the complete abandonment of rule-based discipline. The primal environment suffers the “slings and arrows of outrageous fortune” and institutional actors respond, sometimes adhering to, sometimes revising, and other times violating institutional rules. Whether adherence, revision, or violation is the more common response to shocks, the main message in the essays to follow is that entrepreneurial politicians will always seek to do better, by hook or by crook.