

# **The Treason of Rules: Political Entrepreneurship, Representative Government, and Constitutional Constraints**

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**Abstract:** Post-constitutional political rules that emerge through political entrepreneurship are an important source of change in the rules of the political game. A number of constitutional rules are vulnerable to undermining by post-constitutional rules in this manner. This paper focuses on two interlocking features of the United States constitutional order: political representation and legislation by majority rules. Following Mises (1949) and Kirzner (1982), we take entrepreneurship to be an important category of action that cuts across institutional spheres and is irreducible to instrumental choice. But where most accounts of political entrepreneurship have focused on the entrepreneurial role in generating policy, we instead highlight its function in marginally changing the rules of the political game. This “higher tier” of political entrepreneurship has largely been neglected in the literature. A simple taxonomy of constitutional, pre-constitutional, and post-constitutional rules is laid out to illuminate the scope for higher tier political entrepreneurship. The history of the committee system of the United States House of Representatives is used to illustrate our analysis.

## 1. Introduction

In 1937 Franklin Delano Roosevelt announced his infamous “Court-Packing Plan.” The Supreme Court had roundly rejected the constitutionality of a bundle of programs signed into law by Roosevelt. FDR’s response was a threat to change the rules by appointing more Supreme Court Justices beyond the traditional nine seats. He introduced legislation that would allow him to appoint an additional Justice for each Justice over 70 years old. The new Justices would, it was understood, be selected for their friendliness to Roosevelt’s preferred policies. Though the number of seats on the Court is not formally constitutionally mandated, this would have been a stark revision to the extant rules of the political game. The threat worked, prompting the “switch in time that saved nine.” The Justices relented in this particular decision. But that they took the threat seriously illustrates an important point: changing the rules governing political action is a viable strategy for political entrepreneurs whose plans are frustrated under current rules.

Buchanan and Brennan’s *The Reason of Rules* argues that constitutional rules can be powerful checks on the power of Leviathan. Even procedural rules can limit state power or keep it from expanding. FDR’s policies, for example, were initially foiled by the Supreme Court, and the dominant party in the U.S. Congress must usually fear the threat of a filibuster by the minority to block legislation. Indeed, many provisions of political constitutions are expressly designed to constrain the range of policies that officeholders can enact. In the United States Constitution, for instance, the division of government into three branches, a bicameral legislature, and high barriers to amendment are clearly aimed at increasing the number of obstacles that a new rule may run afoul of.

Since the usual bias of officeholders is towards accumulating more power rather than less, this amounts to increasing the difficulty of expanding government's reach.

Of course, shackling Leviathan is no simple task. The stark limitations of paper constitutions in limiting state power are well explored. No external agency stands ready to enforce constitutional rules. To bind effectively they must on some level—perhaps in conjunction with informal norms—be self-enforcing. And even if there is a strong constitutional culture, there is always the threat of cheating in the absence of perfect detection of corruption. But we set these concerns aside in order to focus on another, underappreciated weakness in constitutional rules: other rules. We argue that “post-constitutional” rules that emerge from political entrepreneurship are an important mechanism by which the state escapes its constitutional shackles. Rules can empower Leviathan just as they shackle it.

We assume throughout that constitutional and other political rules do in fact carry some force. The rules we are concerned with, while they are the results of human action, are not merely epiphenomenal but rather carry some causal weight (Buchanan and Brennan 1985). This assumption serves two purposes. First, it allows us to focus on the effects of post-constitutional innovations to the rules, isolating their effects from other factors. Second, there is a significant class of constitutional rules that frequently command respect: procedural rules. However much substantive constitutional provisions may be violated, it is usually the case that, e.g., every four years a presidential election will be held and the winner of the most Electoral College votes will assume the office. By taking these rules as given we explain how their function as limitations on state power is abrogated by the introduction of new rules through political entrepreneurs.

A number of constitutional rules are vulnerable to undermining by post-constitutional rules. We focus on two interlocking features of the United States constitutional order: political representation and legislation by majority rule. The latter is meant to be a minimal safeguard against legislation that serves narrow interests of some legislators at the expense of their common interests, while the former is meant to hold legislators accountable to the electorate at large. Section 2 reviews the literature on these two democratic checks in the context of constitutional political economy, explicating their intended function as constraints on state power.

Section 3 makes the case for taking political entrepreneurship seriously as a source of change in political institutions. Following Mises (1949) and Kirzner (1982), we take entrepreneurship to be an important category of action that cuts across institutional spheres and is irreducible to instrumental choice. But where most accounts of political entrepreneurship have focused on the entrepreneurial role in generating policy, we instead highlight its function in marginally changing the rules of the political game. This “higher tier” of political entrepreneurship has largely been neglected in the literature. A simple taxonomy of constitutional and post-constitutional rules is laid out to illuminate the scope for higher tier political entrepreneurship.

The standard approach for understanding representative government in the economic analysis of politics cross-applies the principal-agent model to voters and politicians. Section 4 explores some of the implications of an entrepreneurial model of agency for the applicability of such models, especially in light of entrepreneurship over the rules of the political game. We argue that a social-epistemic asymmetry between

voters and political agents generates a bias in favor of the accumulation of further power on the part of political agents.

Section 5 examines the committee system of the United States House of Representatives in order to illustrate the importance of the analytic points made in Sections 3 and 4. By empowering legislators to engage in logrolling, the formal and informal rules that constitute the committee system undermine the state-constraining properties of legislative majority rule. We further draw on previous research (Martin and Thomas 2010) to show that these features emerged through a slow process of marginal rule changes instigated by political entrepreneurs. This series of changes evinces the bias in political entrepreneurship under representative government laid out in Section 4. Section 6 concludes, offering tentative implications and suggesting directions for future research.

## 2. Representative Government in a Constitutional Context

### a. Political Representation

The common rationale for a system of electing representatives is entirely straightforward. Were political deliberation costless, it would make sense for legislative decisions to be decided by a general vote or referendum. But the process of legislating is potentially extremely time consuming, so it may make perfect sense to delegate legislative authority to a smaller body. Delegation of course carries the danger (among others, such as sheer incompetence) that the interests of the legislators diverge from those of their constituents. By making provision for the periodic election of representatives, constitutional rules aim at fostering the accountability of rulers to the ruled and thus align

their interests. Legislators desiring re-election (a reasonable assumption) thus face a constraint on the use and expansion of their authority.

Political representation in this context has usually been depicted by cross-applying a principal-agent model to voters and politicians. The terminology of “principal-agent” problems originates from the theory of the firm (Jensen and Meckling 1976), where it is used to describe the relationship between shareholders and corporate executives. The basic idea, however, goes as far back as Adam Smith (1776). Shareholders would like to see a high price on their stock, while executives would like to enjoy various costly perks associated with being the boss to the detriment of the overall value of the company. More broadly, a principal-agent relationship characterizes any delegation of decision-making authority where the interests of the delegator and the decision maker may diverge (i.e., the “problem”). The result of this potential divergence is that principals often engage in costly monitoring of agents insofar as monitoring and other agency costs do not exceed the amount lost by agent opportunism.

Traditional public choice theory cross-applied these agency problems to political representation. As with the theory of the firm, the gist of the insight preceded the extant formal terminology. Understanding voters as principals and their elected officials as agents, public choice scholars found ample room for divergence between the common interest of the voters and the narrow interests of the politicians and politically connected. The gains from a policy can be concentrated on special interests and the losses dispersed among the citizenry more broadly, providing a weak incentive for any loser from the policy to engage in costly political action to overturn it (Olson 1965, 1982). Politicians thus have a strong interest to cater to politically well-organized special interests. Voter

ignorance was also identified early on as a driving force in generating “slack” between policy and the common interest. With such a low probability of affecting the outcome, voters have little incentive to become well-informed; in principle-agent terms, monitoring costs often fail to come with a corresponding benefit. When principle-agent models were formally brought to bear on the voter-representative relationship, they found voter principals can effectively control politician agents only under narrow favorable conditions (e.g., Ferejohn 1986).

Contemporary political economy, however, has tended more and more to take issue with the conclusions of traditional public choice (c.f. Mitchell ). Prominent scholars have argued that democratic elections can and do effectively align the interests of voters and politicians. Wittman (1995) offers the most comprehensive case, claiming that voters are not as ill informed as public choice scholars have supposed. He argues that, while voters do not have high returns to monitoring even the votes of their representatives, their political competitors do. Exposing a vote that diverges from the interests of his constituents can do significant damage to a politician on the campaign trail. Likewise, voters have access to a variety of cognitive shortcuts—such as ideological labels and party affiliations—that radically condense relevant information. Wittman is not alone. Besley (2006) develops a full-fledged formal model of political principal-agent relationships that includes a mix of “good” and “bad” agent types. He goes so far as to argue that voting can be so effective at selecting high quality political representatives (“principled agents”) that additional constitutional constraints on their power can be welfare *reducing*.

Arguably the most important attack on the old public choice view is the “miracle of aggregation” (Shapiro and whomever 1992). The miracle of aggregation is the argument that voter errors due to ignorance could be in either direction. For example, some voters might think farm subsidies are much larger than they are while others think they are smaller. It relies on the assumption that voter errors due to lack of information are evenly distributed. Absent some reason to believe otherwise, such errors should cancel each other out on election day due to the law of large numbers. Only a small portion of the electorate need be well informed to achieve the same result that would be had if the entire electorate were informed. The “wisdom of crowds” is thus understood as an effective means of monitoring political representatives and so aligning the interests of voters and politicians.

The main argument in this essay bolsters the traditional public choice view. It is beyond the scope of this paper to offer a thorough critique of contemporary principal-agent models of politics, a critique that could come from a number of angles. The most important objection to such models, which we only touch on below, is that a simple cross-application of the principal-agent framework developed in the context of firm governance equivocates two central aspects of the voter-representative relationship with incommensurable aspects of a shareholder-executive relationship. The first aspect is the teleological character of the relationship; voters, like shareholders, are assumed to have a common metric for evaluating the success of an agent just as shareholders have a bottom line. Voters differ only in their parameter estimates of the agent’s performance. Under such conditions, which treat an entire society as a firm, it is “errors” may cancel. But it is unclear that such “errors” bear any resemblance to the sorts of errors that may

compromise the quality of political governance. The second aspect that contemporary models equivocate on is the institutional setting of the decision. In market-based corporate relationships, a shareholder can not only vote against an executive but also walk away from an entire firm. The voter cannot sever Congress's ability to legislate policies that affect him. This distinction will be important in the context of our critique, which argues that the possibility of political entrepreneurial discovery has been wholly omitted from such models.

It should be noted that voter control is not necessarily the same thing as constraining the state. Voters may well desire a more expansive role for government. Nonetheless, we will assume that voters generally do prefer a constrained state in order to isolate a different causal mechanism that tends to wear down such constraints: entrepreneurship on the part of government agents over the rules of the political game.

#### b. Majority Rule

Political authority carries with it the possibility of imposing substantial burdens on others. One way to limit such burdens is collective decision-making. In the limit, the unanimous agreement of all affected parties means that the costs of a policy are outweighed by the benefits. Of course, the more decision-makers that are required to pass legislation, the lower is the likelihood of agreement. Collective decision rules can thus serve as a constraint on the use, abuse, and expansion of state power. Majority rule is the weakest form of this constraint. We focus on its use in legislative bodies. A majority decision rule implies that, in a given area, constitutional designers thought that a policy

that fails to capture the approval of a majority of legislators fails an extremely minimal test for serving the common interest.

Arrow (1952) famously demonstrates the instability of democratic decision making under majority rule. He explains that democratic decisions frequently lack the property of transitivity. Policy A may be preferred to policy B and B preferred to C. Yet, under a wide range of circumstances, Policy C may yet be preferred to A. This is often referred to as the problem of “vote cycling.” Vote cycling means that majority rule decisions can be tenuous. With a given set of political preferences there is usually the possibility of some alternative coalition coming together that prefers a different policy, no matter what the current policy is. So long as the fairly robust conditions Arrow identifies hold, *every* dominant coalition’s bargain is dominated by some other potential bargain among a feasible coalition. Arrow despairs that, in the absence of coherent social preferences, dictatorship may be preferable to democracy for some spheres of government action.

For Buchanan (1954), vote cycling is a feature rather than a bug. While accepting Arrow’s analysis of the instability of majority rule decisions, he claims that it is a boon for an individualist social order. Provided that policies are revocable and electoral constraints remain in place—most importantly, that present minorities maintain the right to vote—cycling militates against the entrenchment of narrow interests. Collective decisions always suffer from the inability of the minority to have what they want. Shifting coalitions through time at least provides present minorities with the possibility of being in the majority in a future period. Temporal power sharing means that different factions may take into account the possibility that their political rivals will hold power in

the future, and thus mitigate the amount of power they wish to grant to an office. More concretely, the narrower the interests served by a policy the more likely it is to be disfavored by future coalitions. It is precisely its dissimilarity to dictatorship that might commend majority decision rules in some spheres to those who value individual liberty. Because their outcomes are unstable, they are provisional and allow for experimentation rather than entrenchment.

Juxtaposed with the benefits of vote cycling are the dangers of logrolling. Logrolling undermines the romantic mental model implicit in so many discussions about government that democratic legislatures test for the majority approval of each policy. In reality, political agents trade votes with other agents, each voting for the other's preferred policy. That a policy passes a majority rule test fails to indicate that the policy itself serves the interests of even the majority of legislators; voting for the policy may be part of a quid pro quo. Logrolling is a virtually inescapable feature of most voting bodies, but cycling helps to mitigate it. Vote-trading is usually non-simultaneous: John votes for George's favored bill today on the promise that George votes for John's bill tomorrow. Cycling introduces significant uncertainty into future political conditions, making it more likely that George will have an incentive to renege on his promise to John and thus also less likely that John will take the deal in the first place.<sup>1</sup> It should come as no surprise, then, that legislative agents—who have a vested interest in increasing their ability to

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<sup>1</sup> There is an important analogue here between regime uncertainty in the market (c.f. Higgs 1997?) and the uncertainty of “political property rights.” When property rights are insecure exchange is more difficult; this is no less true for political exchanges.

secure favored policies, thereby expanding government power—waste no effort in developing mechanisms for securing cooperation with other legislators. Cycling is a constraint on their effectiveness at realizing their own ends, so they seek to undermine it. So enters the political entrepreneur.

### 3. Higher-Tier Political Entrepreneurship

#### a. The Entrepreneurial Perspective

In a review of Mancur Olson's *The Logic of Collective Action*, Richard Wagner (1966) argues that even though large pressure groups have been treated as the significant force driving the political process towards equilibrium, “devoting sole attention to pressure groups is a version of the forest-trees paradox: particular features of the political environment are examined at the expense of fundamental essences” (Wagner 1966, pp. 164-165). Wagner suggests that the political entrepreneur is the overlooked essence of the political process. Below we argue that entrepreneurship likewise contributes to the development and evolution of the rules that shape political processes. First, however, we briefly identify the nature and scope of political entrepreneurship, focusing on its features as they relate to our argument. What does an entrepreneurial perspective—hardly the norm in either older public choice or contemporary political economy—add to the economic analysis of politics?

The concept of political entrepreneurship extends the market metaphor into the political realm. Mises locates the roots of real world entrepreneurship in markets in an abstract feature of action: “The term entrepreneur as used by catallactic theory means: Acting man exclusively seen from the aspect of the uncertainty inherent in every action”

(p. 254). Thus defined, entrepreneurship is not an institutionally defined position that an individual occupies, but rather a feature of agents that cuts across institutional settings in the same way that instrumental choice does. Kirzner (1982) extends this analysis, arguing that responding to uncertainty entails imagining or perceiving options that the agent can act upon.

Entrepreneurship as an abstract category of action concerns the origins of opportunities that agents choose between. In utilizing that category as a tool for understanding real-world economic and political processes it is necessary to identify who the relevant entrepreneurs are in a given institutional setting. In markets, responding to uncertainty entails figuring out—among other puzzles—what the alternative uses of scarce resources are and how they might be used to appeal to consumers. Market entrepreneurs are thus usually residual claimants on the profits or losses of alternative resource uses (Kirzner 1973).

Political processes likewise have their share of uncertainty and thus ample scope for entrepreneurship. In particular, collective action generates substantial indeterminacy that can exacerbate uncertainty. As noted above, even with a defined set of options there are many circumstances in which there is no dominant outcome under majority rule. Hardin (2003) demonstrates that such indeterminacy is a pervasive feature of collective action far beyond voting, including the determination of rules and conventions. Political entrepreneurs can thus exert substantial influence by determining the set of live options for collective action. Agenda setting—broadly construed to include both determining the

character of individual options as well as the overall set of alternatives facing democratic bodies—is an important form of political entrepreneurship that we focus on.<sup>2</sup>

Options to be selected from, whether in private or public choice, have to come from somewhere. Social outcomes are not insensitive to the options that agents face. By extension, the origins of these opportunities exert a powerful influence on the course of the political process. This is what the entrepreneurial perspective adds: an appreciation of why the relevant options are what they are. Understanding the origins of opportunities is important for understanding changing patterns of behavior and, we argue below, changing rules. We then proceed to argue that political representation creates a class of potential entrepreneurs whose opportunity perception systematically nudges institutional evolution towards increases in state power.

#### b. Higher Tier Entrepreneurship and Constitutional Rules

Boettke and Leeson (2009) argue that, when entrepreneurs' ability to engage in exchange and production is abrogated by the absence of property rights, their entrepreneurial initiative is redirected to a "higher tier" that seeks ways to secure those rights. Martin and Thomas (2010) apply their argument to politics. They argue that when political entrepreneurs are inhibited in their ability to secure favored outcomes at the level of day-to-day politics, they become active at higher tiers of political entrepreneurship by devising new rules to help them overcome existing hurdles. Just like higher tier entrepreneurs in the market place, higher tier entrepreneurs in politics seek the

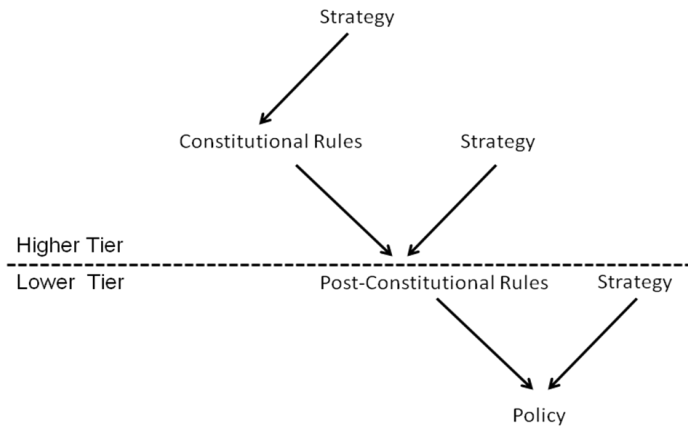
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<sup>2</sup> Thinking of adding a paragraph on de Jouvenal's "Chairman's Problem."

means to strengthen their political property rights. Such rule changes are derivative of their underlying lower-tier goals, however, and will have been successful only if they allow the political entrepreneur to achieve his lower-tier goals better.

Martin and Thomas (2010) identify three distinct layers of rules subject to entrepreneurial change in a constitutional context: pre-constitutional rules, such as informal linguistic and cultural institutions; constitutional rules; and post-constitutional rules, which are contained within the framework established by the constitution and further constrain or direct policies enacted at the lower tier. Each level of rules is subject to entrepreneurial change. Constitutional rules constitute a super-structure within which post-constitutional rules are formed (see figure 1 below).

We focus here on the tier of post-constitutional rules. Traditional constitutional political economy often ignores the distinction between these two levels of rules. We argue that this is a mistake, since the two can work at cross-purposes. For many political outcomes constitutional rules' influence on policy is first filtered through further post-constitutional rules. For instance, the number of justices on the Supreme Court is a post-constitutional rule that affects how the constitutional rules regarding checks and balances and the separation of powers operate in practice. Likewise, the congressional committee system is a set of post-constitutional rules that profoundly influences the behavior of Congress, a constitutionally defined body.



Note: Partial reproduction of figure 2 from Martin & Thomas (2010).

Figure 1: Taxonomy of Rules at the Higher and Lower Tier.

Introductions of or changes to post-constitutional rules often involve some sort of collective choice. Nonetheless, as with all collective choices, the options must come from somewhere. Congress votes on its internal rules, but those rules are first proposed, usually by members of Congress. Acting as political entrepreneurs, a number of Congressional leaders through the centuries have shaped the committee system. The next section explains why higher tier entrepreneurship by such political representatives is systematically biased toward expanding state power, even against voter wishes. Section 5 illustrates this point by showing how the congressional committee system—a set of post-constitutional rules—is the result of a slow evolution driven by entrepreneurial changes that has undermined the state-constraining effect of constitutional majority rule.

#### 4. Political Entrepreneurs as Political Agents

By omitting the possibility of political entrepreneurship, standard principal-agent electoral models systematically overstate the ability of voters to discipline political agents. Of course, behavioral symmetry demands that the capacity for entrepreneurship

be extended to voters and other political principals as well as political representatives. Since entrepreneurship is a capacity of action voters are potential political entrepreneurs as well. Why do principals' and agents' entrepreneurial alertness not cancel each other out? Is it not equally likely that political entrepreneurship will take the form of watchdogs more effectively constraining opportunistic power grabs? Rather than arguing that political representatives are smarter than voters or particularly power-hungry (though that may be true), we argue below that their social environment gives them tighter feedback on which to base their conjectures about viable opportunities. Though the social epistemics of political entrepreneurship are not nearly as definitive as the price and profit signals guiding market entrepreneurs (Hayek 1945, Kirzner 1973), systematic differences in local knowledge are sufficient for our point to hold.

Higher tier entrepreneurship by political representatives favors the expansion of state power on account of a social epistemic asymmetry between political agents and voters. This asymmetry results not from differences in innate competence but from the socially embedded nature of entrepreneurial activity. In any social context, entrepreneurs' alertness to opportunities is conditioned by their social environment. Political agents are situated in the political process in a way starkly different from their voter principals. Their day to day contact with the political process arms them with specialized local knowledge that is relevant for noticing political profit opportunities and unavailable to voters. Voter principals have only loose social feedback on which to base and correct their conjectures about political profit opportunities, while politicians and other political agents have much tighter feedback.

In arguing that social epistemic asymmetry biases political rules in favor of opportunism, we in no way imply that political agents are superhuman geniuses (evil or otherwise) capable of discerning the myriad consequences of their institutional innovations. As is the case with entrepreneurship in any institutional setting, the discovery of political profit opportunities is rife with trial and error. When rules themselves are the object of entrepreneurial innovation the consequences are even more difficult to discern. Even if the rules stick, they are subject to tweaking in the future and will always be combined with the nested strategies of other entrepreneurial agents. But for rules to stick they must generate compatible incentives for the agents that act within them. Those incentives constitute tight feedback for higher tier entrepreneurship, causing the system of rules to evolve along a particular path.

Insofar as political representatives are the agenda setters for post-constitutional rules, the rules will be adapted to their daily practice. That daily practice is aimed at securing favored political outcomes. Constitutional rules aimed at constraining state power are thus experienced much more directly by political representatives than by voter principals. They develop a peculiar local knowledge about how certain rules affect their ability to legislate. This is especially true of informal post-constitutional rules such as congressional reciprocity norms. Not being codified, they are more difficult for outsiders to detect, call attention to, or change.

Three other features of political rules reinforce this epistemic asymmetry. First, the effect of rules can be subtle. Not everyone has the mathematical acumen and training of a Kenneth Arrow and is able to discover that majority outcomes are nearly intrinsically unstable. But yet Congress gradually developed a system of post-constitutional rules to

mitigate that instability thanks to their day-to-day contact with those rules. Subtlety is compounded when different sets of rules interact with each other, which is exactly how post-constitutional rules operate. Second, policies passed in democratic polities are usually subject to some constraint of public (intersubjectively valid) justification, at least in some simplified form (Martin 2010). Procedural rules changes face a lower hurdle than most policies in this regard; the workings of narrow interest are not so naked when it comes to debating rules of order.

Finally, the electoral check of ousting incumbents does not dislodge the force of these post-constitutional rules. The rules stick around. Newly elected officials do not enter an institutional vacuum, but rather the same ecology of pre-existing rules and norms for dealing with colleagues inhabited by their predecessors. Given the hierarchical nature of many of these systems of rules, such as the congressional committee system, voters could simply be giving up a powerful voice for their parochial interests by ousting an opportunist that holds a senior position. However principled, junior politicians usually have little clout. Rent-seeking systematically enabled by post-constitutional rules does not disappear when new players enter the political game. This is of course compounded by the fact that one cannot, in the ordinary sense of a market principal-agent relationship, sever one's ties with political representatives entirely.<sup>3</sup>

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<sup>3</sup> But one can dream.

## 5. Congressional Committees and Logrolling

### a. Committees and Political Exchange

Entrepreneurship on the level of post-constitutional rules can undermine constitutionally designed systems. We suggest here that the evolution of the congressional committee system is one example of a post-constitutional system of rules that has undermined constitutional rules at the higher tier. Specifically, the committee system has weakened the majority rule constraint on the growth of government by facilitating exchanges between politicians. It has significantly increased the ability of congressional representatives to engage in logrolling and along with it in extensive amounts of redistribution. The increased ability of elected representatives to conspire has significantly reduced voters' ability to monitor congressional action and has therefore changed the voter-representative relationship as it was framed in the constitution. More importantly however, it has effectively removed the majority rule constraint on congressional decisions through its rules of deference and reciprocity.

Martin and Thomas (2010) describe how this congressional rule system surrounding committee power has evolved over time through incremental entrepreneurial efforts by individual legislators. They suggest that each step of the way towards the existing system, a political entrepreneur drove the rule change or the formation of a new congressional norm that would facilitate legislative exchanges. Table 1 summarizes this process.

Because of the inherent instability of social choice outcomes, the legislative process should be subject to cycling, but congressional institutions have evolved to limit this instability through post-constitutional rule systems. The committee system has

evolved to restrict politicians' ability to ex-post defect from a legislative bargain by constraining proposal power and the power to influence legislative content to committee members. The most basic function of the committee system is to create jurisdictions over specific issues. Like with a geographic monopoly, congressional committees maintain a monopoly over a specific range of issues and they have almost complete proposal power within their jurisdiction. The move towards standing committees with established jurisdictions happened early on in the history of congress during the speakership of Henry Clay between 1809 and 1829. Restricted proposal power and the committees agenda setting power limit the number of alternative proposals that can be brought to the attention of congress, which results in greater legislative stability (Shepsle & Weingast 1981).

Table 1: Entrepreneurial Origins of Committee System Features	
Institutional Feature	Origins
Standing Committees	1809-1829: Clay Speakership establishes standing rather than special committees
Committee Jurisdictions (over drafting legislation)	1809-1829: Clay Speakership establishes norm of committees drafting legislation before it is brought before the whole House 1946: Congressional Reorganization Act reduces number of committees with overlapping jurisdictions
Deference Norm	1809-1829: Clay Speakership established deference norm to committee decisions, which strengthens committee jurisdictions. 1903-1911: Cannon Speakership solidifies deference norm.
Seniority	1829-1890: Informal seniority norm emerges after Clay Speakership 1890-1910: Seniority norm abrogated when the Speaker of the House becomes chairman of the Rules Committee 1910: Speaker of the House loses chairmanship of Rules Committee, restoring seniority system

Note: Replication of table 1 in Martin & Thomas (2010).

Committees essentially maintain a monopoly position over their assigned issue space, which allows them to control new legislation that would affect the status quo in the

respective jurisdiction. Even though individual congressmen are not legally restricted from bringing bills to the congressional floor without the responsible committee's approval, congressional deference norms ensure that such action is limited. The deference norm also emerged during Henry Clay's speakership, but it was not solidified until Joe Cannon became speaker of the house of representatives in 1903.

Reciprocity norms ensures that no individual congressmen or committee extracts disproportionately large benefits (Shepsle & Weingast 1987) and the seniority principle centralizes agenda setting power within the committee itself (Weingast & Marshall 1988). The seniority system, like most of the other congressional norms, emerged early on in congressional history, but it did not become part of the official rule system until the removal of Joe Cannon from the position of speaker in 1910. Through its different norms and rules the congressional committee system facilitates legislative exchanges that would be significantly less likely to occur under a system of majority rule unmitigated by any kind of post-constitutional rule structure. It also allows for special interests to become entrenched and their claims on redistributive rents to persist over long periods of time because of the intensified relationship between individual members of congress and the interest groups that support them. The next section discusses an example of such entrenched interests and the committee structure that supported them.

#### b. Congressional Committees and Narrow Interests: A Sample Case

Robert Higgs (1988) discussion of the manipulation of the Defense Appropriations Act for fiscal year 1973 onward is a good case in point. In 1960, the Department of Defense (DoD) in an arrangement with six senior members of congress

from Pennsylvania had agreed to use Anthracite, or Pennsylvania Hard Coal, instead of cheaper German coke at its European Posts. The agreement significantly benefited two congressional districts in Pennsylvania, which were the main producers of hard coal and had suffered greatly after the anthracite industry had begun to decline after world War I. When the agreement with the Department of Defense was made in 1960 “the industry was a shadow of its former self: output at 18 million tons (down 72 percent since World War I), employment at 20,000 workers (down almost 90 percent since 1914)” (Higgs 1988:87). The congressional committee system became important for the scheme in the late 1960s when the DoD requested budget authority to convert its “aging, inefficient, and labor-intensive anthracite furnances in Europe” (Higgs 1988:89). One of Pennsylvania’s congressional representatives, Daniel J. Flood (D), who was the second-ranking Democrat on the Defense appropriations Subcommittee, used his influential position among his peers to stop the DoD’s efforts to convert its furnaces. In 1973 he improved the protection the agreement provided for coal producers in his district by adding a rider to the Defense Appropriation Act, which prohibited the DoD from using any funds from its budget to convert heating plants. From then on until Flood’s early retirement in 1980, when he was charged with several offenses such as accepting bribes and conspiracy, the rider was renewed every time the Defense Appropriations Act was renewed. After Dan Flood’s departure from the House, Representative Joe McDade (R), a representative from a neighboring district and ranking Republican on the Defense Appropriations Subcommittee, took over the task of rounding up sufficient support in congress to keep the rider on the defense budget in place. When the use of anthracite in American furnaces almost caused a diplomatic crisis between Germany and the US in the

late 1980s because it violated German environmental standards, the DoD was finally relieved of its obligation to use Pennsylvanian coal. Instead of shutting down production after losing European furnaces, however, the mines kept operating prosperously thanks to yet another congressional boondoggle. They were only relieved of their obligations in Germany after agreeing to use the same amount of coal in its domestic furnaces. And this agreement was not the last one to benefit the miners. Thanks to Pennsylvania's Republican Senator Arlen Specter, the DoD's obligation to purchase hard coal was increased by 1.6 million tons in 1986. Following this increase, Army bases all throughout Europe started stockpiling Anthracite in such large quantities that by 1988 some of them had enough coal to last for more than four years without additional shipments.

Overall, the Pentagon bought coal worth \$20 million each year since roughly 1968 to benefit voters in Pennsylvania at the expense of everyone else. To this day, anthracite coal provisions are part of the Defense Appropriations Bill.<sup>4</sup> And the efforts of the coal lobby seem to be set at increasing its share of the pie. In February 2010, the Defense Advanced Research Projects Agency (DARPA) awarded a research contract to investigate coal utilization as an energy source, with the intention of using domestic coal turned into liquid fuels to replace petroleum-based fuels for use by the military.<sup>5</sup> Projects like this one would promise to continue the redistribution towards voters in coal producing district at the expense of the rest of the country. They can only be maintained

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<sup>4</sup> See p. 79 of Department of Defense Appropriations Act, 2010 (H.R. 3326)

<sup>5</sup> DARPA solicitation for "Coal to Liquids (CTL)," solicitation number: DARPA-BAA-08-58.

because of the organization of congress and the norms underlying the congressional committee system, which undermine the restrictions majority rule imposes on the size of the state.

## 6. Conclusion and Implications

To be determined.

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