Old Questions and New Answers about Institutions:
The Riker Objection Revisited

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The last quarter century has witnessed an intense scrutiny of constitutions and institutions – as abstract principles of governance and as real ways of doing things collectively. The veritable explosion of democratization during this period has provided both theoretical rationales and empirical laboratories for this scrutiny. In this essay I want to revisit some old issues to suggest some new considerations, and to resurrect some old answers as possible solutions to new problems.

I motivate the discussion with three questions:

- What are institutions?
- How are institutions chosen?
- Once chosen, how are institutions maintained or changed?

With these as motivation, I take up what has come to be known in the political science literature as the Riker Objection. By far the lion’s share of analyses in the institutional revolution takes political institutions as given and studies their effects. Riker’s objection is essentially that institutions, like the policies subsequently chosen under them, are endogenous. Riker (1980) praised early post-behavioral explorations (e.g., Shepsle 1979) for re-introducing institutions into formal analysis, but reprimanded them for treating decision-making arrangements as fixed exogenous constraints rather than as changeable features of the political landscape.

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The last few decades have witnessed some progress on the endogenous treatment of institutions, but standard comparative statics analysis has proven to be insufficient because institutional changes are dynamic rather than one-time changes. Constitutions, after all, are said to be “living.” Old regimes segue into new ones which, in turn, may segue into still newer ones. Rules are changed, constitutions amended, procedures suspended, institutions reformed, emergency powers invoked. Institutional arrangements at any particular point in time, in short, are possibly no more than way-stations in an evolving sequence. As a consequence, the treatment of institutions as exogenous and stable is riddled with perplexing issues, and the Riker Objection reminds us that this approach is at best a first step in a longer analytical project. The remainder of the essay focuses on some of these dynamic considerations.

1. What are Institutions?

The focus in this essay is on micro-analytical aspects of institutions, so I intend to put to one side macro-historical conceptions that treat broad phenomena like culture, law, and slavery as institutions (in one version likening them to coral reefs that form and re-form without apparent human agency – see Sait 1938). Rather I want to focus on interpretations of institutions that are micro-analytical, game-theoretic, and explicitly involve human agency. I discuss two interpretations in particular – institutions as game forms and as equilibria of more fundamental strategic interaction.

Institutions as game forms. “Institutions are the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction” (North 1990: 3; also see Mantzavinos, North, and Syed 2004). This definition takes an institution as a game form, and North (1990: 46) urges us to think flexibly of this as ranging from informal constraints like those found in taboos, customs, conventions, codes of behavior, and traditions, to formal rights, responsibilities, and constraints as are contained in modern contracts, official

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1 A fine modern treatment of historical institutionalism may be found in Hall and Taylor 1996. For a more elaborate conceptual discussion of institutions generally, see Crawford and Ostrom 1995, and Ostrom 2005.
procedures, and written constitutions. The institution qua game form specifies
the set of players, what actions players may take (must take, may not take, etc.),
informational conditions under which they make their choices, the timing of
moves, the role and timing of exogenous events, and the outcome that results
from a distribution of choices and the realization of all random factors. Once
player preferences are added to the mix, the game form becomes a game. For
North, the players are often organizations and the entrepreneurs that create and
maintain them. Organizations – firms or political parties or legislative committees
or interest groups or public bureaus or military units – exploit their institutional
environment in order to pursue entrepreneurial objectives. An institution, then, is
a venue for strategic social interaction and choice.

Where do these venues for strategic interaction come from? No single
answer will do, since institutions may be the explicit product of choice and design
(like the US Constitution of 1787, or the 1975 revision of Rule 22 of the US
Senate modifying the vote requirement to shut down filibusters and close
debate), or may have evolved in complex and possibly inexplicable ways
shrouded in the mists of time (for example, “Who is the architect of Roman Law?”
asks Sait 1938). I think it is fair to say, however, that most uses of the game-
form conception of institution are focused mainly on the consequences of
institutional arrangements, not their origins. Attention is riveted on the play of the
game and its outcome – what I elsewhere called a structure-induced equilibrium
(Shepsle 1979), or simply an institutional equilibrium (Shepsle 1986). It is a
description of the set of strategies in (subgame perfect Nash) equilibrium, given
player tastes and rules of engagement.

Institutions as Equilibria. Rather than take an institution as an exogenously
provided game form that induces equilibrium outcomes – the classic Downsian
model of two-party electoral competition under plurality rule is an exemplar – one
might instead think of the game form itself as an equilibrium – as an endogenous
product of a more primal setting, or what may be called an equilibrium institution
(Shepsle 1986). It is a relationship of a set of arrangements to the elemental
features of its environment, or an adaptation of these arrangements to them. For
example, one would ask in which political circumstances a plurality electoral system will emerge. The electoral rules, treated as fixed and exogenous parameters in Downs, now become variables that are the product of a more encompassing game. In effect, the primal strategic setting is characterized parametrically, but these parameters may change in response to shocks or perturbations.

Typically shocks to the primal parameters are taken to be exogenous. For example, the accidental discovery of mineral deposits may boost the private demand for military assets (protection of oil fields or diamond mines), and thus increase the potential political influence of military groups on a regime. However, there are times when the institution itself may affect the distribution of shocks to primal parameters. A regime of well-defined property rights and well worked out mineral law, for example, will encourage exploration and thus affect the likelihood of “accidental” discovery. In either case, these changes in the primal strategic environment will influence the viability of existing institutional arrangements.

The institution-as-equilibrium perspective takes the behavioral equilibrium induced by the primal environmental circumstances as the institution. It was articulated early on by Schotter (1981), and then elegantly elaborated by Calvert (1995). This approach regards “an institution as 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 1995: 58, 60).

This contrasts with the institutions-as-constraint approach which takes for granted the rationality of conforming to institutional practices. That is, the institutions-as-constraint approach assumes away the prospect of defection and the necessity of enforcement; the institutions-as-equilibrium approach always allows the prospect of defection and requires as part of the equilibrium the possibility of adverse off-the-equilibrium-path consequences as a credible deterrent against defection. Calvert (1995: 73-74) describes this as follows:
…[T]here is, strictly speaking, no separate animal that we can identify as an institution. There is only rational behavior, conditioned on expectations about the behavior and reactions of others. When these expectations about others’ behavior take on a particularly clear and concrete form across individuals, when they apply to situations that recur over a long period of time, and especially when they involve highly variegated and specific expectations about the different roles of different actors in determining what actions others should take, we often collect these expectations and strategies under the heading of institution…Institution is just a name we give to certain parts of certain kinds of equilibria [emphasis in original].

The real advantage of this approach is that the basis for understanding an institution is the same as that for understanding behavior within it. Optimal behavior within the rules, and obeying the rules in the first place rather than defecting from them, are accounted for by the very same appeal to rationality.

Even if we grant the institution-as-equilibrium approach intellectual priority over the institution-as-constraint approach – I am a recent convert to this point of view – it is nevertheless possible to see how the two approaches fit together. When a set of arrangements is in equilibrium with its environment – either in the sense that it has adapted to a relatively calm and unchanging environment or is robust to perturbations experienced by that environment – then the behaviors it fosters appear to be equilibrium responses to the opportunities provided by this (equilibrium) arrangement. The “institution” looks like a game form, and behavior looks like an optimizing response to this stable strategic environment. The institution-as-constraint approach would capture things quite satisfactorily. If, on the other hand, the institution were not robust – small perturbations in the environment unraveled it – then it makes far less sense to refer to the institution as constraining. The very next shock to the environment contains seeds for the institution’s destruction, i.e., incentives for players to deviate from institutional prescriptions. A historic legislative chamber like the U.S. Senate or the British House of Commons appears to consist of players optimizing in a well-defined
game because the institution is well adapted to its environment. Its players are understood as optimizing according to given rules rather than contemplating moving outside the rules altogether. The opportunity to depart from the nominal “rules of the game” – to make things up as they go along – seems so much more attractive, on the other hand, to the legislators in the modern Russian Duma (see Andrews 2002). Its members constantly test how much they can get away with. Indeed, it may constitute an abuse of terminology in the institutions-as-equilibria approach to call the Duma an institution – it hardly seems “institutionalized” at all (Polsby 1968).2

2. How are Institutions Chosen?

In the literature there are both historical and analytical approaches to the “choice” of institutions. Choice is put in quotation marks because some institutional arrangements cannot literally be said to have been chosen, but instead to have evolved and taken hold. Having said that, however, I still insist that even these are the product of choices – that “taking hold” reflects choices by individuals to abide by, not defect from, behavioral conventions.

Uncertainty in various guises is an important feature in most depictions of institutional origins. Perhaps the most famous of these is the Rawlsian veil of ignorance (Rawls, 1972). In a (fictitious) constitutional moment, Rawlsian deliberators deliberate about prospective institutional arrangements in ignorance of their own physical, material, and intellectual endowments. Deliberators are therefore also ignorant of who stands as the decisive decision maker in any institutional arrangement they might craft. So, according to Rawls, deliberators

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2 What Calvert (1995) points out is that the institutions-as-constraints approach never entertains the possibility of a change in the game. In most circumstances where this approach is appropriate, this failure is not fatal. The reality, however, is that strategic players may wake up each morning and indeed ask themselves whether today is the day to make an unexpected move. The Speaker of the US House, for example, may decide one day not to draw most members of a conference committee from the standing committee of original jurisdiction – a move that would come as a bolt from the blue but one surely within the strategic reach of the Speaker in the “primal” majoritarian game (in which all his behavior requires in order to stick is support of a chamber majority). Indeed, in mid-2005 the Republican leadership in the US Senate considered just such a move, dubbed the “nuclear option,” in which the rules governing debate would be radically reinterpreted.
are unable to pursue institutions that maximize a private utility function, and thus are free to act on behalf of alternative objectives – maximizing the welfare of the “average,” the most advantaged, or the least advantaged, for instance, even if they don’t know that person’s identity. Rawls offers a normative brief for “maximin justice” under these circumstances, structuring institutions so as to maximize the welfare of the least well off.

As a normative treatise, *A Theory of Justice* is a milestone of twentieth century thinking about constitutional moments. As a basis for a historical or positive analytical treatment of actual constitution writing, it possesses problems. Once deliberation is completed, the Rawlsian veil lifts and the distribution of endowments becomes common knowledge. Then the tests for the new order are implementation and enforcement, and possibly the delicate matters of defection, punishment, and renegotiation. Why don’t the biggest, the richest, or the smartest, who now know who they are, threaten to defect or insist on renegotiation? A Rawlsian deliberation, in short, is not strategically compelling; it is a normative approach that is not predicated on equilibrium behavior and so fails either the institutions-as-constraints or institutions-as-equilibrium test. Rawls responds that his is an arrangement requiring integrity – if it is normatively satisfactory before the veil is lifted, then honorable people should behave honorably after the veil is lifted. This may be satisfactory in a normative exercise, but it is not helpful if one is trying to come to grips with actual constitutions and institutional arrangements.

The empirical problem with the Rawlsian veil is its lack of descriptive authenticity. In constitutional moments, deliberators are not often plagued by the sort of uncertainty supposed by Rawls. They often do know their own endowments. Thus, to a first-order approximation at least, winning coalitions (Riker 1962), veto players (Tsebelis 2002), and decisive political agents in any institutional arrangement will also be widely recognized. As Aghion, Alesina, and Trebbi (2004: 17) observe, “Veils of ignorance have large holes in them.”
To deny the Rawlsian veil, however, is not to deny the significance of uncertainty in choosing institutions. Downs and Rocke (1995) make a basic point. Even if uncertainty about individual endowments is not problematical, the realization of random shocks may still affect the distribution of attractive opportunities. The real source of ignorance concerns opportunities, not endowments; institutions will often appear endogenously in response to this kind of uncertainty. A society of healthy people, for example, is still subject to unexpected afflictions and infirmities. These, in turn, will affect their productive opportunities in the future. They all know their present health, but a particularly unlucky person faces a grim future. Medical insurance institutions may arise if people are sufficiently risk averse about these unexpected possibilities and occurrences are sufficiently random so that insuring people is a profitable undertaking.

This is clearly not uncertainty of the Rawlsian kind – which consists of incomplete information about current endowments (Tirole, 1999; Battigalli and Maggi 2002) – but rather uncertainty about the future. Deliberators are aware of the present distribution of physical and material endowments. Moreover, from any institutional arrangements they design at time t they are able to map their own “place” in the society at that time. The politicians of the founding era in the U.S. for instance – Federalists and Anti-Federalists alike – had well formed beliefs about what their places in the society and economy of 1787 would be as a result either of implementing the newly drafted constitution or leaving the existing Articles of Confederation in place. But what about 1797? 1807? The veil of ignorance is not about current endowments but rather about future developments.

It is from this non-Rawlsian veil that Fernandez and Rodrik (1991) deduce a status quo bias. Changing an institutional arrangement may, in principle, produce a sum of gains that exceeds all losses, and maybe even more gainers than losers. But ex ante it is not always possible to identify who is which. This ignorance about who will gain from reform is sufficient in some circumstances to defeat reform. (This was the bias that had to be overcome by the Federalists in
convincing enough state conventions to ratify the newly created constitution in late 18th century America. For an excellent analysis of the ratification campaign, see Riker 1996.)³

Another source of uncertainty is preference drift. Today’s “decisive deliberator” might well be able to select the institutional design that befits her preferences now. But her preferences will “drift” in uncertain ways over future periods. Indeed, whether her assets and tastes change or not, those of others may so that she need no longer remain decisive. It is this uncertainty about tomorrow that she will want to take on board as she plays the role of decisive deliberator today. In effect, her contemporaneous assessment of any institutional arrangement will be informed not only by today’s payoff, but also by its present value over a relevant time horizon discounted for both risk and time. This theme is developed by Messner and Polborn (2004).⁴

In sum, a constitutional moment is one in which uncertainty figures prominently in the minds of deliberators, but it is not the Rawlsian kind. Deliberators often know their own endowments, and thus their own interests, and sometimes even those of relevant others. But they may be less confident in their interests over a more extended time horizon owing to preference drift, unforeseen contingencies, and even foreseen contingencies that arise stochastically but have not yet been realized.

³ The Fernandez-Rodrik argument reminds us that institutions, whether explicitly chosen or not, must survive the test of time against proposals for “reform.” Their message is that uncertainty may sustain an institution, a point also developed in Shepsle (1986).

⁴ They begin with the puzzle of why, at a constitutional moment, a simple majority would agree to a super-majority decision rule, as is often the case on bond referendums in local school districts. Why, that is, would the median voter (who is decisive in the simple majority-rule model they explore) agree to a non-simple majority decision rule that did not make her decisive? They offer an interesting dynamic argument in which the median voter today is allowed to imagine how her preferences will change over time so that she may not be the decisive voter tomorrow. They formulate the optimization problem implied by this kind of preference drift as one in which the decisive voter chooses a decision rule that maximizes the utility of her average future self. They deduce that she will opt for a super-majority decision rule.
3. How are Institutions Maintained (or Not)?

This last point provides a transition to the next question on our agenda. Institutions arise under conditions of uncertainty in the primal strategic environment. Over time the environment generates events, some anticipated and others unforeseen. It also generates changes in preferences. Institutions are robust if they still support the same equilibrium behavior despite the changed circumstances. Alternatively, changes in the strategic environment may invite deviation to a new equilibrium. This new equilibrium, given the changed environment, may prove satisfactory to those involved in the sense that no individuals or groups with the power to change the institution have an incentive to do so. Less satisfactory outcomes following departures from the initial conventional behavior, however, may provoke some to seek change in the institution itself. Institutional agents, that is, may not only change their own responses in light of the changed circumstances, but change the “rules of the game” as well. Indeed, some institutions possess self-referential mechanisms of adaptation and reformation – internal thermostats, so to speak – enabling them to adjust either to the “discovery of gaps” in their own makeup (Hayek 1979: 125), or to poor adaptation, by providing a course of correction and a way forward. For example, constitutional courts often reinterpret constitutional language to accommodate novel circumstances that had not been anticipated by the drafters of the document.

Before considering these internal mechanisms of change, let us first examine a case illustrating just how an unexpected or unforeseen circumstance can shake up an institutional relationship. De Figueiredo, Rakove, and Weingast (2000) contemplate this possibility in their discussion of events leading up to the American Revolution. The interesting feature of this historical episode is a

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5 That is, an institution may prove workable not only in the circumstances (the primal context) in which it was originally crafted, but also for changes in these circumstances. The larger the range of changes in context for which the institution continues to induce more or less the same equilibrium behavior, the more robust it is. It may exhibit this robustness because the outcomes it produces prove acceptable in a wide range of circumstances. Then again, it may be robust because the institution is very hard to alter, with the transaction costs of change exceeding the benefits of change.
mutually inconsistent appreciation of the colonial relationship of which neither colonialists nor the imperial center was aware – a difference in understanding that exogenous events made necessary to reconcile. A longstanding interaction had been founded on a misunderstanding that had not become apparent to the parties until the status of colonists became a paramount issue. The latter was a bolt out of the blue.

According to de Figueiredo et. al. some forms of interaction are in equilibrium because of incomplete information. I may do x and you do y and each is seen to be a best-response to the other by both parties. That is, my understanding of our strategic interaction allows me to appreciate that my choice of x is best against your choice of y, and that your choice of y is your best response against my choice of x. Likewise, your understanding of the situation allows you to appreciate precisely the same things about these choices. Best-responses, however, are in equilibrium even if our modes of understanding are not the same. All that matters is that our possibly different understandings about the world nevertheless lead both of us to believe that x and y are best-responses to one another. So long as this equilibrium is undisturbed, then it simply does not matter that we may have different underlying models of the world. Off the equilibrium path (involving choices not taken and situations not encountered) our differing understandings of how the world works may have significant consequences; so long as we “don’t go there,” it doesn’t affect our best-response behavior and beliefs. Nothing that occurs disconfirms either of our views about our own strategies or those played by others. Our respective choices constitute a self-confirming equilibrium. Our strategic interaction leads each of us to have our respective underlying models of the world confirmed.

This, de Figueiredo et. al. claim, constituted (roughly speaking) the equilibrium between colony and imperial power for more than 100 years in 17th and 18th century America. The English colonists enjoyed the protection of the empire, and the relative freedom of distant colonies, while the imperial center, distracted by war and intrigue on the European continent, tolerated elements of self-government as long as the colonies did not drain the Treasury. Continental
wars of the old world, however, spread to the new world. It grew expensive to protect the English colonists from the predations of the French and their native allies. To raise revenues to cover some of these rising costs following the Seven Years War (1756-63), Parliament imposed new taxes on the colonies. The imposition of these taxes was unexpected by the colonists, and distasteful. They objected, standing on their “rights as Englishmen,” claiming that this constituted a departure from the previous rules of self-government, and insisting on a role in decisions affecting their well-being. “Of what relevance are ‘rights of Englishmen’?” queried confused politicians in London attempting to cope with fiscal stresses. The Americans are not Englishmen, they are colonists. Here were two different understandings of exactly what the strategic interaction consisted. The colonists thought of themselves as Englishmen with rights of representation and self-government. To the imperial center, the colonists were colonists with no rights except what the center permitted and tolerated. So long as behaviors preferred by the colonists were within the realm of imperial toleration, as they more or less had been for more than a century before 1763, the differing understandings did not matter. Once events redefined what could be tolerated, the center felt unconstrained in responding to this redefinition (the supremacy of Parliament). These differences became all-consuming. The institutions comprising the colonial relationship were damaged – that is, no longer in equilibrium. Deviation from conventional behavior on each side of the previous relationship now looked attractive – revolt and repression. It is in this sense that a previous equilibrium, founded on incomplete awareness about inconsistent beliefs by the parties concerned but made transparent by unfolding events, fell apart.

In many institutional settings, however, various kinds of incompleteness are acknowledged and appreciated ex ante (Tirole 1999): it is known that contingencies will arise that were not anticipated, and it is also recognized that it is often too costly to specify appropriate behavior even in some contingencies that can be anticipated, at least probabilistically. In such circumstances there is often a reversion strategy: “If one of these unplanned for or unexpected
circumstances arises, then here’s what we do.” I take this issue up more fully in section 5. For now, though, let me make some brief remarks about maintaining institutions in the presence of “surprises.”

In the absence of shocks or unplanned-for occurrences, an institution consists of well-defined behavior arising out of strategies in equilibrium. It is self-maintaining, as it were. Taking it one step further, if there are shocks to the environment but they do not disrupt the equilibrium, then it is a robust institution. Taking it one step further still, there may be occasions in which shocks do disrupt the equilibrium, but reversion features of the institution allow it to transform itself, bringing it back into equilibrium so to speak. There are many such features on which I provide details shortly. These features may be thought of not so much as the means by which to maintain an institution no longer “appropriate” to its environment, but rather as the means to transform the institution. It is “merely” definitional as to whether we consider this transformed institution a different institution or not. What is clear is that the equilibrium is different. This prospect of self-generating institutional revision is the basis now for taking up the Riker Objection.

4. The Riker Objection and Some Responses

“…[T]he distinction between constitutional questions and policy questions is at most one of degree of longevity.” (Riker 1980: 445)

“Should the choice of a choice rule be treated as a special type of decision, or is it just one more instance of many issues that a society has to face?” (Barbera and Jackson 2004: 2)

During the debates at the Constitutional Convention of 1787, in various exchanges traded during the subsequent ratification campaigns, and in retrospective assessments, numerous activists and scholars defended the procedure for amending the Constitution as outlined in Article V. In Philadelphia, Madison’s Notes records Charles Pinckney as stating the positive case for this
Article: “It is difficult to form a Government so perfect as to render alterations unnecessary; we must expect and provide for them.” Madison asserted in Federalist 43, “That useful alterations will be suggested by experience, could not but be foreseen. It was requisite therefore that a mode for introducing them should be provided.” Writing a half century later about the Founding Fathers, Joseph Story observed in his Commentaries on the Constitution, “They believed, that the power of amendment was … the real effective instrument to control and adjust the movements of the machinery, when out of order, or in danger of self-destruction.”

These observers acknowledged that constitution writers are incompletely informed about the world around them, can only anticipate and make provision for some of what is likely to transpire – either because it is impossible to anticipate or simply is too costly to accommodate in advance – and thus are wise to supply ways to revise and otherwise “adjust the movements of the machinery” in light of events and experiences.

Riker (1980: 445) offers a less benign, less mechanical view of amendments: “One can expect that losers on a series of decisions under a particular set of rules will attempt…to change institutions and hence the kind of decisions produced under them.” Making provision for an amendment procedure is not merely the prudent ex ante recognition by constitution writers of the probable ex post necessity for future adjustments. Constitution writers surely recognize that unforeseen contingencies will be experienced, and revision procedures surely provide the means for addressing these. But a process for amending a body of rules is also a strategic weapon that potentially allows “losers” the means to become “winners” (Shepsle 2003).

This is an instance of the Riker Objection to the institutions-as-constraints, institutions-as-game-form perspective. The rules of the game are not fixed and inflexible. The constraints are not etched in stone. Even if no unforeseen contingencies are experienced, even if there are no ex ante uncertainties that

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6 The quotations in this paragraph come from Kurland and Lerner (1987), volume 4, pages 578, 579, and 584, respectively.
come to be realized ex post in unexpected ways, there still is a role for
amendment procedures to play. The *positivist* fact of the matter is that they
provide strategic opportunities, quite apart from any welfare-enhancing
justification for their utility in a constitution. The Riker Objection is both a
recognition of the endogeneity of rules and procedures – they cannot be taken as
preset and unvarying – and as an acknowledgement of their strategic potential.

If an institutional arrangement is altered, then this reflects that while it may
originally have been in equilibrium, it had been disequilibrated by some change in
the underlying strategic context. When, then, is an institutional arrangement in
equilibrium? Barbera and Jackson (2004) provide two ideas about *self-stability*
that depend upon whether policy decisions and procedural decisions differ “only
in degree,” as Riker would have it, or are distinctly different kinds of decisions.

Riker (1980: 445) assumes policy and procedural decisions are essentially
of the same type: “…[R]ules or institutions are just more alternatives in the policy
space and the status quo of one set of rules can be supplanted with another set
of rules.” For this circumstance Barbera and Jackson (2004: 4) describe an
institution entirely in terms of a *decision rule*, s. For an institution consisting of n
decision makers, a decision rule s (1/2 < s ≤ n) requires that the proportion of
decision makers necessary to approve a measure be at least s. Suppose a
group operates according to s-majority rule. Then:

> “Given a majority size s, will it be the case that no alternative majority
size s’ is preferred over s by s or more votes? If s is not so defeated
by any other rule, we say that the rule s is *self-stable.*”

As just defined, Barbera-Jackson *self-stability* takes decisions on
procedures and decisions on policies under those procedures as governed by
the same body of rules; this captures Riker’s idea that procedures and policies
are essentially the same – they are just things about which the decision-making
body decides.

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7 Without abusing the concept too much, we could say that the rule is an *s-Condorcet winner.*
Suppose, on the other hand, rules are not merely “more alternatives in the policy space” but rather that the method of making a decision on rules differs from making a decision on policy. Specifically, suppose we describe a body of rules in terms of two voting rules, s and S. As before, s is the voting rule for ordinary policy decisions of the group or society. A “special majority,” S, however, is required to change the rules. Then the rules are self-stable if no majority of size S or larger prefers some alternative set of rules to them.

Suppose, as is empirically the case most of the time, that \( s < S \). A simple majority is often all that is required for normal business, but an extraordinary majority is necessary for procedural changes and other constitutional matters. It is quite possible for a simple majority to wish to conduct business differently, but they fall short of the special majority required to revise the rules.

In a setting in which policy and procedure were subject to the same decision rule, Riker felt that dissatisfied decisive coalitions on policy would not long sustain the prevailing consensus on procedure. Since a winning policy coalition is also a winning procedural coalition, the denial of their policy preferences on procedural grounds would not persist. After experiencing defeats for a time perhaps, they will learn what procedures require change and implement them; they have both the means and the motivation. Preferences over institutions/procedures are inherited from preferences over policies (Shepsle 1986: 57). The decisive policy coalition can re-form itself as a procedural coalition, make the institutional changes, and thus obtain their policy preference.

The tension is acute, however, and potentially persistent, when winning policy coalitions fail to be winning procedural coalitions. If an s-majority suffices to prevail on a substantive vote, but an extraordinary S-majority is required to “shut off debate,” as in the U.S. Senate under Rule 22 for example, then s-majorities are limited by the tolerance of every coalition of size greater than 1-S that prevents an S-coalition from supporting the closure of debate and thus permitting a substantive vote to take place. Riker is on much weaker grounds in
this second context. This means that it will pay dividends to examine the various ways in which procedures may be altered.

5. Modes of Procedural Change

Suppose there were no way to alter a procedural agreement. Once in place it remains in place. This is problematical in two respects. First, there are prospective gaps in the agreement too costly to fill in advance as well as contingencies unforeseen altogether. If either of these arises, then the contracting parties may be worse off living under the agreement than abandoning it altogether.\(^8\) Defection from the agreement becomes a real possibility. Second, as Rosendorff and Milner (2001) describe in the context of international trade agreements, an ex post inability to “escape” unexpectedly onerous burdens imposed by an agreement produces ex ante obstacles to reaching agreement in the first instance.

But there is a tradeoff. An agreement with loopholes and escape clauses and easy routes to obviating its terms is hardly an agreement at all. The slightest inconvenience becomes a pretext for non-compliance. Unlimited discretion is a condition making it hardly worthwhile to enter into such agreements. Rosendorff and Milner (2001: 834) argue for costly escape clauses – “rules with costly discretion” rather than “no discretion at all.”\(^9\) Including costly escape clauses in agreements makes them easier to reach on the one hand, and restricts the circumstances in which their terms will not be honored on the other.\(^10\)

\(^8\) Mr. Iredell, in the North Carolina ratifying convention of the U.S. Constitution as reported in Kurland and Lerner (1987: 582), spoke to this point: “The Constitution of any government which cannot be regularly amended when its defects are experienced, reduces the people to this dilemma – they must either submit to its oppressions or bring about amendments, more or less, by a civil war.”

\(^9\) Downs and Rocke (1995: 77) complement this reasoning by suggesting that, instead of formal “exceptions” or “escapes” in a constitution, it is sometimes more effective simply to permit non-compliance, punish it, but to make these costs low enough that violations may occur from time to time in equilibrium. This may be simpler than struggling to craft exceptions in a more complete agreement.

\(^10\) Joseph Story, in his *Commentaries on the Constitution*, suggests: “The great principle to be sought is to make change practicable, but not too easy…” Battigalli and Maggi (2002) show that for various cost conditions an optimal agreement will possess different degrees of flexibility – that is, different mixes of discretionary and rigid delegations to agents. There are large literatures on renegotiation in game theory and optimal breach in contract theory that bear a close resemblance to these issues.
In the remainder of this section alternative forms of costly flexibility and revision are examined. I provide this brief catalogue to display how institutions in the real world actually build in a capacity to reform themselves. This underscores Riker’s objection to taking institutions as fixed and unchangeable. They may not be like ordinary policies, subject to ordinary change. But this does not mean they cannot be changed at all.

**Amendment procedures.** In the debates on the U.S. Constitution in the Virginia ratifying convention, Madison addressed the amendment mechanism contained in Article V by asking, “Does not the thirteenth article of the [Articles of] Confederation expressly require that no alteration should be made without the unanimous consent of all the states? Could anything in theory be more perniciously improvident and injudicious than this submission of the will of the majority to the most trifling minority?” (Kurland and Lerner 1987: 582) In the Constitutional Convention itself, Charles Pinckney had bemoaned the high cost of flexibility in the Articles of Confederation: “…[D]ifficult as the forming a perfect Government would be, it is scarcely more so, than to induce Thirteen separate legislatures, to think and act alike upon one subject…” (Kurland and Lerner 1987: 578) And Blackstone, in his *Commentaries*, notes: “Nor can we too much applaud a constitution, which thus provides a safe, and peaceable remedy for its own defects…” (Kurland and Lerner 1987: 583) Most bodies of rules provide for endogenous revision, typically requiring a greater consensus than on ordinary decisions – s < S in Barbera and Jackson’s formulation. The institution thus contains the very seeds of its own reform.

**Interpretive Courts.** Explicit amendment procedures are not the only way to change a body of rules. Justice Oliver Wendell Holmes once said of the U.S. Supreme Court that “the job of this Court is to say what the law means.” The interpretation of law, both statutory and constitutional, is an alternative road to reform; it is a complement to official amendment processes. And the activist role for the Court in judicial review first charted by Chief Justice John Marshall is undoubtedly responsible in part for the fact that the U.S. Constitution has, since the Bill of Rights, been amended fewer than twenty times in two hundred years.
Judicial review, either by extending the jurisdiction of a meaning or altering the meaning altogether, provides a less costly means of altering constitutional practice than amendment. In doing so, however, it must be noted that this arrangement empowers judges and, as Riker would surely remind us, this is not necessarily a benign development. Constitutional courts, in other words, are not merely procedural devices for “fixing” institutions whose equilibria have been perturbed by a change in the underlying strategic setting. While admitting that judges may be something more than mere politicians – “legislators in robes” (Shepsle and Bonchek 1997) so to speak – they surely are politicians with agendas of their own.

Suspension of the rules. In the U.S. House of Representatives there is a body of standing rules, adopted by a new Congress as one of its first orders of business but then rarely followed! Legislation almost always passes in two ways that deviate from “normal procedure.” First and most typical, the Committee on Rules proposes a “special rule,” crafted especially for the legislation at hand. This rule, if adopted by a simple majority, specifies the special circumstances that are to prevail in the consideration of the bill – limiting legislative debate, naming amendments that are in order, and making points of order against the bill out of order. A second device to expedite proceedings literally suspends the rules. In considering a bill, it is in order to move to “suspend the rules and pass” the bill in question. Debate is compressed, the ordinary rules are suspended, no amendments are in order, and the legislation is approved if the motion is supported by two-thirds of those present and voting. The standing rules, in other words, constitute reversion procedures that obtain only if special circumstances like suspension and special rules haven’t been arranged for.

The U.S. Senate also has a body of standing rules. Like the House, its “normal” procedures are so convoluted and burdensome to follow so as effectively to prevent action in many instances. To escape this perplexing problem without having to craft an entire new body of rules with their own flaws, the Senate typically observes unanimous consent on matters of procedure. Unanimous consent agreements, like suspension and special-rule procedures in
the House, are mechanisms for cutting the Gordian knot and getting on with business in a manner short of formal amendment of the rules. Such agreements, in both chambers, empower veto players and position them to extract concessions in exchange for lifting their veto.

**Escape Clauses and Nullification.** The Articles of Confederation required a form of unanimity for many formal actions by the Articles Congress. (A modern example is the Council of Ministers of the European Union.) This arrangement provided each state delegation with veto power, and proved to be a disaster in the face of growing threats. (Shays’ Rebellion and the inability of the Confederation to respond militarily to it was the straw that broke the camel’s back for many who assembled in Philadelphia in July 1787 to explore alternatives.)

Nullification limits the scope of an action (whereas veto power prevents action altogether). It is an ex post restriction on the reach of a policy and in effect locates ultimate sovereignty in the constituent units empowered to nullify rather than in the collectivity. It allows a constituent unit to escape the consequences of policies adversely affecting it. For example, it would have permitted 19th century South Carolina to nullify a high tariff on manufactured goods by permitting it to import those goods through the port of Charleston at lower rates.

Via backward induction, a nullification power would induce policy makers to take into account prospective ex post actions by constituent units. The prospective nullification of a tariff by a constituent unit, for example, to the extent that it would have national repercussions in effectively undercutting the rate structure on imports, might induce legislators to lower the offending rates. That is, nullification power enhances the ex ante bargaining leverage of constituent units.

Nullification, as Chen and Ordeshook (1994) remind us, is an alternative to secession (see below), and looks very much like escape clauses in international trade agreements (Rosendorff and Milner 2001). At the point of negotiating an agreement, the opportunity to escape its strictures may enhance its prospects of being entered into in the first place, especially in high-variance environments.
where uncertainties loom large and some of their realizations have the potential to wreak havoc. Having witnessed the Tariff of Abominations, for example, South Carolina’s John Calhoun promoted nullification as a protection for the South against the possibility of an out-of-control national legislature – one dominated by Northern economic and antislavery interests (Herzberg 1992). Rosendorff and Milner (2001: 831) claim that these constitute efficient responses in international trade negotiations to conditions of domestic uncertainty, reducing domestic pressure on governments to withdraw altogether from agreements during periods of protectionist sentiment.

Nullification and escape, especially if they are exercised at a cost to their initiator, may be superior to the failure to reach any agreement at all. Moreover, in multilateral settings an agreement that prompts a “local” evasion may nevertheless generate benefits to those remaining in the fold. So, the presence of an escape clause, or the opportunity to nullify, may have three distinct effects. They may reassure ex ante, thereby improving the prospects for an agreement. In order to discourage nullification or escape, they may dissuade a temporarily decisive coalition from extracting maximal advantage. And third, they may provide for agreement even if ex post uses of escape and nullification can be expected from time to time in equilibrium (Downs and Rocke 1995). Nullification opportunities, of course, may entirely unravel an agreement; but then an agreement without the nullification option may not have been in the cards in the first place. To avoid the use of nullification in every circumstance that makes a constituent unit worse off, it cannot be cost- or risk-free.

**Secession.** Secession by a constituent unit is a mode of institutional change *in extremis*. It alters the nature of strategic interaction. In transforming the original game, the remaining players find themselves in an altogether different strategic setting. Their domestic affairs now have a different profile of interests and a revised set of decisive coalitions. The secessionist now has a domestic politics wholly different from what it had been originally. And now there are strategic relations between sovereigns that hadn’t previously existed. Chen and Ordeshook (1994) show that secession may be “constitutionally permitted,”
i.e., others will not seek to prevent it, or “constitutionally prohibited,” yet attempted. Both of these are equilibria of the Secession Game they analyze.

**Admission of new members.** The addition of players, like the subtraction, alters the strategic complexion of a game. The nominal practice in the United States was to have a geographic region first apply for territorial status, then write a territorial constitution that met with congressional approval, and finally apply for statehood when its population reached that of the average congressional district. Yet, as Stewart and Weingast (1992) show, the timing and sequencing of admission decisions by Congress were fraught with strategic calculation. As North and South moved in different directions on slavery and other economic issues in ante bellum America, the admission of new states produced some of the most spectacular congressional roll calls in the history of that institution. The admission of Maine and Missouri as part of the Compromise of 1820 began a pattern of “balance” in admissions between slave and free territories. The acquisition of new territory (e.g., the Mexican War) posed further strategic issues. Each new player in national politics meant a potential redefinition of winning coalitions and possibly dramatic swings in policy. Even after the Civil War, the late 19th century admission of western states had implications for national politics and presidential elections, depending on their partisan coloration. This did not go unnoticed by Congress.\(^{11}\) In short, as a game-form an institution is sensitive to the number of players and their strategic opportunities. Changes, whether by addition or subtraction, change institutions.

**Emergency powers.** “Regimes of exception,” as Loveman (1993) calls them, are constitutional orders with processes for partial self-suspension. The Romans, for example, conferred emergency powers upon dictators for limited periods. “The dictator could not initiate the state of emergency but rather was charged by the legitimate government with emergency powers and could not legally alter the existing constitutional order – only defend it.” (Loveman 1993: 19) Loveman suggests the “historical landmark” of modern emergency powers is

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\(^{11}\) A contemporary illustration of these same observations is the on-going expansion of the European Union.
the British Riot Act of 1714, empowering the forces of order to disperse a riotous crowd first by “reading them the riot act” and then resorting to force if necessary, their actions fully indemnified against civil prosecution for any harm done. His book is a broad survey of emergency powers in Latin American constitutions. Hayek (1979: 124-126) warns against conflating the declaration of a state of emergency with the actual exercise of emergency powers, arguing that the two should be held separate to minimize their use for self-serving purposes. (This was true of the Roman practice, but the separation did not hold over time and emergency powers lapsed into dictatorship – see Loveman 1993: 19.)

Emergency powers exercised during states of emergency, siege, public disorder, public disturbance, or internal commotion are normally interpreted as instances of a constitutional equilibrium upset by events. The powers are, in principle, defensive of the constitutional order and are deployed in order to remove the disruptive conditions that took affairs off the equilibrium path. However, the causality may be reversed – it is an out-of-equilibrium constitution that triggers public disorder which, in turn, precipitates the exercise of emergency powers. This latter interpretation brings emergency powers closer to endogenous amendment procedures in that both seek to restore equilibrium by adapting the constitution to the new circumstances.12

6. Conclusion

The endogenous forms of institutional change reviewed in the previous section highlight the importance of the Riker Objection in contexts even richer than he considered. There are a variety of ways for a decisive procedural coalition to adjust the institutional machinery. The decisive procedural coalition, however, need not be the same as one of the decisive policy coalitions that ultimately makes policy choices. The tools of institutional engineering are not always available to a “mere” policy coalition. So institutions may still structure equilibrium (Shepsle 1979), because the means for a policy coalition to alter the

12 The modes of procedural adjustment described here may be extended. Additional modes include redistricting, expansion of the (s)electorate, and devolution.
machinery to secure their preferred results either are not at hand or are too costly to employ (Calvert 1995). In effect, institutions have a life of their own and are decisive as long as they stay within the transaction-cost boundary that changing to a new institution would require.

Making this claim limits the impact of Riker's objection; however, it does not undermine the political thrust of Riker's line of reasoning. Endogenous sources of institutional revision are more than ex ante provisions to cope with a changing environment or to accommodate the "discovery of gaps." They provide alternative routes by which groups try to get what they want; they privilege particular coalitions of agents with procedural advantages; they may be deployed for reasons limited only by political imagination.

The Riker Objection was first formulated twenty-five years ago. In retrospect it may be seen as a static and narrow statement. It did not differentiate policy coalitions (s) from procedural coalitions (S). It did not give credit to institution designers for anticipating dynamic developments or for inserting self-revising features. The last decade or so has produced research that brings a great number of these elements into play. There is, however, a second facet of the Riker Objection – one focusing less on "failure correction" and other shortcomings of incomplete contracts in uncertain environments. Institutional revision is not merely an adjustment to imperfect design and unreliable settings. It is, as I have noted several times, a way forward for whatever purposes a decisive coalition sets for itself. Much less progress has been made on this political dimension.
References


