

Congress Is a “They,” Not an “It”: Legislative Intent as Oxymoron

KENNETH A. SHEPSLE

*Department of Government, Harvard University, Littauer Center M-35,
Cambridge, MA 02138, USA*

An oxymoron is a two-word contradiction. The claim of this brief paper is that legislative intent, along with military intelligence, jumbo shrimp, and student athlete, belongs in this category. Legislative intent is an internally inconsistent, self-contradictory expression. Therefore, it has no meaning. To claim otherwise is to entertain a myth (the existence of a Rousseauian great law giver) or commit a fallacy (the false personification of a collectivity). In either instance, it provides a very insecure foundation for statutory interpretation.

Unfortunately, much analysis of statutory interpretation seems transfixed by this oxymoron, resulting in a jurisprudential version of Gresham's law, viz., unsound speculation has driven out sound reasoning. Mashaw (1989:152) recently put it somewhat differently: “A normative theory of interpretation without a positive theory of politics may lead us simply to defeat our own ends.”

To their credit, many legal scholars have sought a positive theory of politics, finding intellectual succor in a quarter-century's worth of research in public choice. While hardly mainstream in either political science or economics, much less in legal scholarship, this body of work enjoys a substantial influence in all three fields. In the first section below I establish this “public choice connection,” suggesting that legal scholars have lamentably emphasized one of its variants at the expense of a possibly more relevant alternative. It is this other variant, the dilemma flowing from Arrow's famous impossibility theorem (Arrow, 1963), that I elaborate in section 2. In section 3 I trace out some of the implications of Arrow for the meaning one can attach to “legislative intent.” In section 4 I defend the view that it is no embarrassment to fail to make sense from nonsense and suggest that statutory interpretation must rely on something other than intent. In the concluding section I summarize my argument.

A preliminary version of this article was presented as a talk in the Harvard Law School's Governance Seminar, December 1, 1988, organized by Professors Lance Liebman and Richard Stewart. Subsequently I benefited from conversations with and comments from Peter Aranson, Morris Fiorina, Jerry Mashaw, H. W. Perry, William Riker, and Barry Weingast. The article was delivered at the Conference on Collective Choice Theory and Constitutional Law, School of Law, Stanford University, CA, October 25–27, 1990.

1. Legal Analysis, Public Choice, and the Chicago School

The last few years have witnessed a number of fine survey papers in law journals on the relevance of public choice analysis for the study of statutory interpretation.¹ What is found in these essays is an often sophisticated and detailed account of positive theories of legislative politics, or public choice. The most discriminating distinguish between two subspecies—legislatures as arenas for interest group politics (with homage paid to Stigler, Becker, Peltzman, Posner, others of the Chicago School, and Olson) and legislatures as arenas of social choice (where the patron saints are Arrow, Black, Downs, and Riker). Yet even among the most discriminating there is a decided Chicago School "spin" given to public choice in the legal literature.²

The reasons for the Chicago School emphasis are many, not the least of which is a longstanding attachment between scholars in Chicago's law school and economics department, an attachment (not always sympathetic) that includes and transcends the likes of Frank Knight, Aaron Director, George Stigler, Gary Becker, Harold Demsetz, Henry Manne, Sam Peltzman, Richard Posner, and, more recently, Frank Easterbrook and Cass Sunstein. A more substantive reason for this attachment resides in the treatment accorded legislation. Legislation is considered to be an economic product and, like other economic products, is subject to the law of supply and demand.

Both proponents (e.g., Easterbrook) and opponents (e.g., Mashaw) of Chicago-style public choice appear to accept this characterization of legislation. Interest groups and legislators enter into a relationship the terms of which are determined by forces in the political marketplace. Interest groups demand specific sections of bills, and legislators supply them in exchange for various forms of political support (campaign contributions, endorsements, promises of economic aid to legislative districts, bribes, etc.). Disagreements among scholars arise less over the details of the positive model of interest groups, legislators, legislatures, and legislation than over the normative implications of this model.³

The principal feature of the Chicago School view, and its principal failing in my opinion, is its asymmetric, *demand-side reductionism*. Almost exclusive emphasis and attention are given to the agents who lobby for legislative products. Politicians on the

¹In addition to an entire issue of the *Virginia Law Review* 74 (1988), a partial list includes Eskridge (1987), Farber and Frickey (1987), Macey (1986), Mashaw (1989), and Posner (1982, 1983).

²Alternative classifications make this narrowness apparent. In a very sophisticated reading of the public choice literature, Noll (1989) suggests a four-way partition of public choice theories: (1) Chicago theories of government: interest group competition for rents; privilege to those groups with organizational cost advantages (acknowledging Olson, 1965); convergence toward efficiency, qualified only by transaction costs. (2) Arrow tradition, I: indeterminacy of democratic outcomes; role of institutions in stabilizing this indeterminacy (Shepsle, 1979; Shepsle and Weingast, 1981, 1987); role of political entrepreneurs in outcome selection (Riker, 1986). (3) Arrow tradition, II: the Arrow-Downs concern with rationally ignorant voters and the advantages that accrue to groups and politicians that manage to overcome or otherwise exploit this condition. (4) Leviathan: coercive powers of the state serve the interests of politicians and bureaucrats (Buchanan and Tullock, 1962; Niskanen, 1971), and only indirectly serve constituents and interest groups; politicians as "shakedown artists," collecting bribes in exchange for rents.

For another partitioning, see Mitchell (1988), and for a more thorough-going account of the Chicago School, see Mitchell (1989) and Tollison (1989). The point I wish to make is that distinctions among public choice arguments are made, both by economists and political scientists, but all too rarely are kept in mind by lawyers.

³An excellent discussion is found in Macey (1986: 226–27).

supply side are at best Stackelberg followers, but more often are treated casually and pliantly responsive to whichever congeries of interests gets its act together.

To make my point clear, consider the following stylized characterization of anti-trust or criminal code or immigration policymaking falling within the jurisdiction of the Senate Committee on Judiciary. To simplify things, let us suppose that there has been absolutely no change in the configuration of demand-side interests during the 1980s, so that Chicago School forecasts would entail a prediction of constant responsiveness to the dominant set of interests. Consider, now, the following facts. At the end of the 1970s, James Eastland, conservative Democrat from Mississippi, was succeeded as committee chair by Edward Kennedy, liberal Democrat from Massachusetts. Committee leadership reverted to the Republicans in 1981, with Strom Thurmond of South Carolina as chair. Finally, as a consequence of the Democratic recovery in 1986, liberal Joseph Biden of Delaware became committee chair. It would be hard to believe, *even with little change on the demand side*, that Judiciary Committee policymaking was untouched by the Eastland-Kennedy-Thurmond-Biden policy-preference roller-coaster on the supply side. The reason such a forecast would be hard to believe is that most of us, intuitively, believe that committee chairpersons are important jurisdictional players in the policymaking game. They are not "mere" Stackelberg followers, undifferentiated by personal characteristics. *A fortiori*, this intuition holds even if the preferences of floor majorities in the Senate did not change, the House remained unchanged, and the presidency stayed fixed. And yet, most Chicago School interest group theories would hardly have noticed.⁴

A focus on the supply side is what distinguishes the branch of public choice theory associated with the work of Arrow, Black, and Riker and developed over the last few years by students of formal political theory.⁵ Its emphases—on *which* majority wins, *who* sets the agenda, *what* role procedures play, and *how* revealed preferences should be interpreted—are the subject of the next section.

2. The Arrowian Dilemma

Arrow's famous impossibility theorem is subject to a number of different interpretations. As an analytical claim, it establishes that several reasonable desiderata for collective choice procedures are incompatible. In the context of majority rule voting, this theorem implies that it is not possible to guarantee that a majority rule process will yield coherent choices. Put differently, if the preferences of the members of a voting body display a modicum of diversity, then majority voting need not generate a transitive ordering of the alternatives available for choice; the alternatives cycle, even though individual preferences are quite coherent. Indeed, incoherence will often take the form of the nonexistence of a collectively "best" alternative; the final

⁴The example of the sudden and unexpected death of Senator Henry Jackson of Washington provides another manifestation of the importance of the supply side. Jackson's death elevated Senator Sam Nunn of Georgia to the chair of the Senate Armed Services Committee. Would not one expect Seattle aerospace firms to be adversely affected, and Georgia military interests beneficially affected, by this development? Put differently, wouldn't a portfolio manager expect to make money by taking account of changes on the political supply side? For evidence that he or she would, see Roberts (1990).

⁵For recent work the reader may consult Shepsle (1986a,b). An especially clear statement of the *political* content of public choice, with its emphasis on "supply side" institutions, is Riker (1988).

outcome may be arbitrary (for example, a function of group fatigue) or determined by specific institutional features of decisionmaking (for example, rules governing the order of voting on motions). In either case we may be able to provide *positive explanations* of these results, but rarely will we also be able to provide *normative justifications*.

Arrow's theorem is discussed in many of the surveys of public choice in law journals (see note 2), but rarely given the emphasis it deserves. Indeed, in one excellent survey, the authors conclude that "Arrow's Paradox is both fascinating and illuminating, but it may have little direct relevance to legislative practice" (Farber and Frickey, 1987: 904).⁶ Mashaw, however, appreciates the potential relevance of this famous result for statutory interpretation and legislative intent. He suggests, on the basis of the Arrow result, that "courts interpreting statutes should be skeptical that statutes *have* public purposes. . . . Statutes are instead the vector sum of political forces *expressed through some institutional matrix which has had profound, but probably unpredictable and untraceable, effects on the policies actually expressed*. There is no reason to believe that these expressions represent either rational, instrumental choices or broadly acceptable value judgments" (Mashaw, 1989: 134, emphasis added). It is the "profound effects" of an "institutional matrix" that lay the ground for a radical conception of legislative intent and pose a genuine dilemma for statutory interpretation.

To see this clearly, I develop a graphical, spatial representation that displays the puzzle and incorporates the substance of Arrow's dilemma. Although I have simplified this spatial representation for the sake of clarity, it actually is quite a bit more general mathematically.

Suppose policies may be represented as points in a two-dimensional Euclidean space. In this space individual legislators have ideal policies, x^i for legislator i , with preference diminishing with distance from this point. Any points equidistant from x^i are in the same indifference class for legislator i , so that indifference curves for a legislator are a nested set of circles centered on the legislator's ideal policy.⁷ In Figure 1 three legislators, so described, are pictured. Their respective ideal points are x^1 , x^2 , and x^3 , and their preferences are sufficiently diverse to assure that majority voting will produce collective cycles.⁸ A distinguished point, x^0 , is also identified. It is the current policy status quo, a policy that prevails if no decisive coalition votes to change it. Indifference curves through x^0 are drawn in the figure indicating the circular set of points each legislator prefers to the status quo. Call this set $P_i(x^0)$, legislator i 's *preferred-to set*.

Assume this three-person legislature (these results generalize directly to any finite, odd number of legislators and, with some qualification, to an even number) operates according to majority rule. Thus, any two legislators constitute a decisive coalition.

⁶The authors are confused by the fact that even in voting processes victimized by the Arrow result, we are sometimes able to identify equilibria. These equilibria, however, are strongly affected by the underlying incoherence of majority preferences and, because of this, lack a compelling normative justification. Arrow's theorem does not necessarily entail constant flux and indeterminacy; rather, it implies that the manner in which majority cycling is resolved is arbitrary or otherwise morally indefensible.

⁷Thus, a legislator is indifferent among the points on any circle centered on his or her ideal point and prefers a point on a circle with a smaller radius to one on a circle with a larger radius.

⁸This conclusion follows from the fact that the three ideal points do not lie on a line. If they did, the median voter theorem of Black (1958) would apply. The slightest departure from collinearity is sufficient to produce cycles in Figure 1.

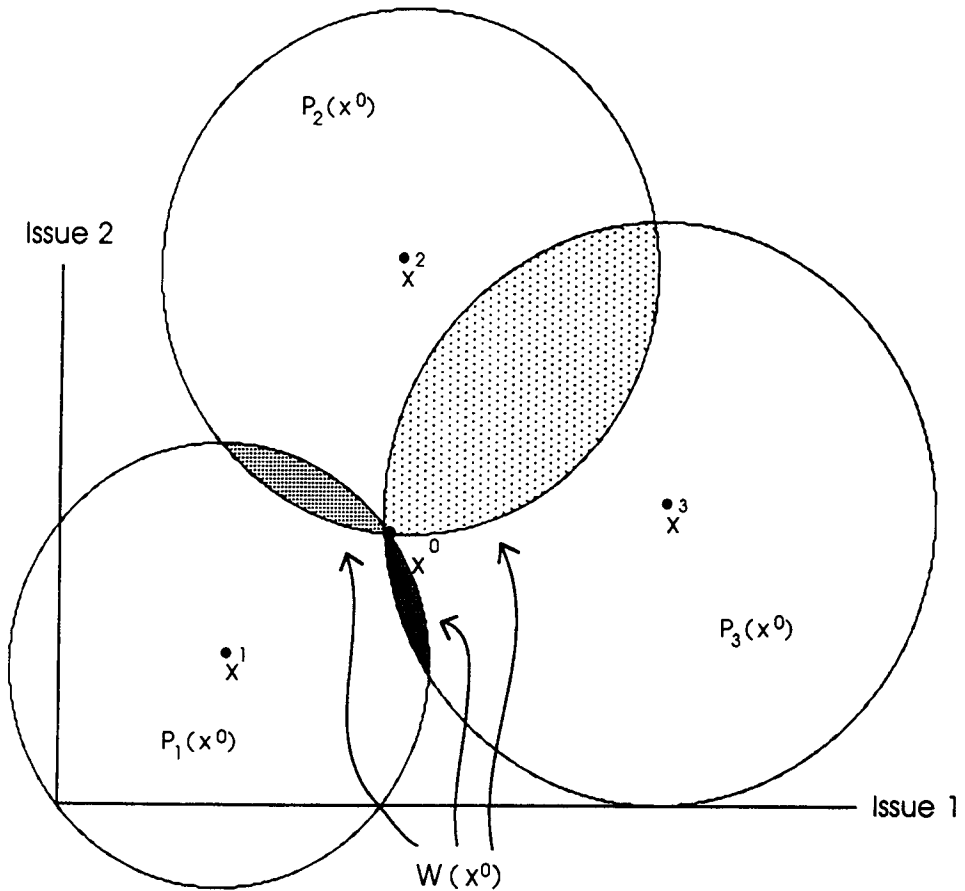


FIG. 1. Majority win set

There are then three sets of points preferred by majorities to x^0 : the coalition $\{1,2\}$ prefers points in $P_1(x^0) \cap P_2(x^0)$; $\{1,3\}$ prefers points in $P_1(x^0) \cap P_3(x^0)$; and $\{2,3\}$ prefers points in $P_2(x^0) \cap P_3(x^0)$. The union of these three petals is called the *majority win set* of x^0 , $W(x^0)$, and is shaded in the figure. It is the locus of points preferred to the status quo by a given majority.⁹

With some abuse of language, the implications of the Arrow theorem as applied to spatial majority voting may be stated:

1. With trivial exception, for every policy x it is the case that $W(x) \neq \emptyset$.
2. For any two points, x and y , there is a finite sequence, z_1, \dots, z_k , such that $z_1 \in W(x)$, $z_2 \in W(z_1)$, \dots , $z_k \in W(z_{k-1})$, and $y \in W(z_k)$.

The first statement says that for nearly all possible preference configurations, there is no unbeatable policy in a majority rule procedure; every policy is associated with

⁹This is developed in more detail in Shepsle and Weingast (1987).

a nonempty win set.¹⁰ The second statement asserts that all the points in the space are linked together in a majority rule cycle, with any point able to beat any other point in a finite number of steps; thus, from any commencement point a clever agenda setter can produce any majority rule result she wants.¹¹ In short, majority rule may produce anomalous results. To show how, I take up the questions posed at the end of the previous section seriatim.

Which Majority?

It is evident that Congress is composed of *many* majorities; each shaded petal in Figure 1 is associated with one. And each majority is composed of many individuals ($(n + 1)/2$ or more for an n -person majority rule legislature). When some point in $W(x^0)$ defeats the status quo, we only know two things for certain. First, one majority prevailed, but there were clearly others that could have, except for "other factors" (unknown, and possibly unknowable). Second, the winning majority consists of many legislators; their respective reasons for voting against the status quo may well be as varied as their number.

The first claim should raise some doubts about the normative status of any particular victor. For unspecified reasons a particular majority was assembled around a particular replacement for the status quo. Why that particular point and that particular majority? Hard to say. It could be for Chicago School interest group reasons. But then again it could be because some particular majority had procedural advantages (for example, it contained the relevant committee chair). Wouldn't a defense procurement bill backed by Georgia's Sam Nunn, or an antitrust provision sponsored by Delaware's Joe Biden, possess procedural advantages and protections that only a powerful committee chairman can confer? Many policies, in principle, can topple an existing status quo. That some are more likely than others to actually do so is dependent on idiosyncratic, structural, procedural, and strategic factors, which are at best tenuously related to normative principles embraced by democratic theorists and philosophers. In short, the particular winning coalition and the particular policy with which it won are, at least in part, the result of what Mashaw referred to as the "institutional matrix." I return to this point below.

The second claim adds an independent indictment to reading much, either substantively or normatively, into a winning policy. With $(n + 1)/2$ or more individuals in the winning coalition, there is not a single legislative intent, but rather many *legislators'* intents. Congress is a 'they,' not an 'it.' Legislator A may have voted for an amendment that ultimately became part of the winning policy because he favored the "plain meaning" of the text. Legislator B, on the other hand, may have voted for it because he thought (incorrectly as it turned out) that the amendment would undermine support for the final bill or draw a presidential veto, thereby allowing the

¹⁰If the three ideal points lined up on a straight line, then, as observed in note 8, the point associated with the ideal policy of the middle legislator would have an empty win set. In this case the preferences of the legislators would be "single-peaked" and effectively unidimensional; the "median" ideal would defeat any other point by majority rule (Black, 1958). The slightest perturbation, however, would reinstate the first statement in the text. Thus, this class of exceptional configurations may be taken as rare, or what the mathematicians call a "set of measure zero."

¹¹This manifestation of the Arrow paradox was formally and generally proven by McKelvey (1976, 1979) and is the source (though not his claim) for the view that with simple majority rule "anything can happen."

status quo ante to survive.¹² Finally, Legislators C, D, and E may have supported the amendment, disinterestedly, as a reasonable compromise among competing interests. To ask, in this circumstance, what Congress "intended" is to invite a non sequitur.

Who Sets the Agenda?

Alternatives to the status quo do not descend from the heavens. Congress has a complex and detailed division and specialization of labor in which each chamber gives disproportionate agenda power to specific subsets of legislators, namely, members on committees of jurisdiction. These standing and select committees bring forth bills that have three advantages. First, as the principal motion before a chamber, a committee bill has a privileged position in the order of voting. Second, and related, the legislative approach contained in the committee bill affects the way in which legislative deliberation proceeds. Third, the committee bill is given additional procedural protections.

Suppose a committee brings forth a bill, B, and, on the floor, several amendments are proposed, A_1, \dots, A_k . The decision tree governing how these amendments are disposed of varies from circumstance to circumstance; it is always the case in Anglo-American procedure, however, that the full chamber "perfects" the committee's product by provisionally amending it in various ways. In the penultimate vote the chamber decides between the "perfected" version and the committee's original bill. Whichever one wins is then paired, in a vote on final passage, against x^0 . By virtue of B *being formally considered late in the process*, it has the advantage of remaining on the sidelines, so to speak, while disputes among various contenders to it are resolved. Some alternatives that might well be able to beat it are victimized earlier in the process and never make it to the "finals."¹³ Perhaps more profoundly, by *being moved early in the process*, B's very presence has a discouraging effect on other motions. In short, the "first proposed/last disposed" quality of the committee bill B confers on it some decided advantages and thus confers on the agenda setters disproportionate influence over final legislative results.

Closely related to but less mechanical than the positional advantage of the committee bill in legislative *voting* is its dominant role in legislative *deliberation*. The effect of the deliberative process on the voting behavior of legislators is not altogether clear, though some, e.g., Maass (1983), believe that legislators' preferences are often transformed by debate and deliberation. This process, however, is almost entirely dominated by the committee bill and the legislative approach it incorporates. Deliberation, debate, and, ultimately, amendment activity are structured by the committee bill—typically a title of the bill at a time. Although legislative procedure permits comparisons between the committee bill and altogether different approaches (for example, when a floor motion is an "amendment in the nature of a substitute"), it is nevertheless much more typical for deliberation and debate to focus on comparisons between the committee bill and amendment alternatives that effect changes at the margin (a formula here, an authorization level there). The committee bill is the main legislative

¹²These are referred to among the cognescenti as "killer amendments."

¹³Recall that the Arrow theorem means that these eventualities, caused by intransitivities in group preferences, are quite possible, even likely.

vehicle, the committee approach the deliberative focal point. Thus, to the *agenda advantage* of the committee bill, we may add a *deliberative advantage*.

Over and above these two advantages for the committee bill there are, third, additional procedural protections. On some occasions, no additional amendments are permitted—the so-called closed rule regime. In this case, so long as the committee picks a bill, B, lying in the shaded area of one of the petals in Figure 1, its bill prevails. On other occasions there are substantive restrictions on the amendments, ranging from general restrictions like germaneness to extremely special ones as when only specific titles of the bill are amendable.

Given these structural advantages of agenda setters, both in determining what the full chamber may vote on and when (*proposal power*), and more subtly on what the full chamber may *not* vote on (*veto power*),¹⁴ who they are is of considerable import. It is not a major distortion of the facts to locate agenda power disproportionately with senior committee members in each chamber, principally the committee and subcommittee chairs. Their occupants, from the time of the First World War to the present (with some modifications in the mid-1970s), have been determined not by election but rather by the practice of *seniority*. Thus, it is fair to say that Eastland was replaced by Kennedy as chair of the Senate Judiciary Committee, and Jackson by Nunn on the Senate Armed Services Committee, not because of some dramatic ideological change in Senate (or even majority party) policy preferences, but instead by the operation of a mechanical rule. At best, majorities subscribe to the *rule* of seniority, not to the identity of particular beneficiaries. Thus, there is no strong or obvious relationship between the exercisers of agenda power and the preferences of majorities. To the extent such exercises of agenda power affect the content of legislation, as I claim they do, they cannot be traced to majoritarian preferences. Thus, as noted, a relationship between the content of legislation and the preferences of majorities is attenuated; the capacity of a bill to enjoy the normative gloss of majoritarianism is likewise diminished.¹⁵

This discussion has an interesting implication for faith in elections to correct legislative abuses. Such faith was articulated by the Supreme Court in its famous *Munn* decision,¹⁶ which provided the basis for about a century's worth of deference by the Court to legislative decisions in the economic realm. In that decision, the Court maintained that economic regulation "is a power which may be abused; but that is no argument against its existence. For protection against abuses by legislatures, the people should resort to the polls, not the courts."¹⁷ Abuses, however, need not be administered by majorities: they can reside with an agenda setter. Except for those living and voting in his or her constituency, however, most citizens *cannot* "resort to

¹⁴In most legislatures in the United States, it is very difficult for a bill to obtain a hearing by the full legislature without being marked up and proposed by the committee of jurisdiction. By "keeping the gates closed," a committee effectively vetoes a bill. While it is still possible for a bill to get a floor hearing, it is complicated, decidedly less likely to occur, and often shorn of the procedural protections it would enjoy if it had obtained the committee's imprimatur.

¹⁵To be fair, majorities may always "work their will," so the question is one of when they choose to short-circuit institutional arrangements to do so. Since the transaction costs are substantial, it should be apparent that agenda setters have considerable, if not unlimited, discretion. A development of this argument is found in Krehbiel (1987) and Cox and McCubbins (forthcoming).

¹⁶*Munn v. Illinois* 94 U.S. 113 (1877).

¹⁷*Ibid.* at 134. Also see the excellent discussion in Riker and Weingast (1988).

the polls," and since many abuses are often implemented on *behalf* of an agenda setter's constituents, the latter are unlikely to do so.

What Role for Procedures?

As just noted, procedures figure prominently in the House and Senate. They have a number of salutary effects on the process of legislating, but they also diffuse any bright line that might otherwise connect the preferences of majorities to final outcomes. Any legislative history that is not, at the same time, a detailed procedural history will be deficient as a source for what individuals and coalitions "intended."

This comment applies not only to the motion-making aspects of procedure, but also to other deliberative aspects. Legislative debate, such as it is, is controlled by a bill's manager (typically a committee or subcommittee chair) and a principal opponent (typically the ranking committee or subcommittee member from the minority party). Their allocative decisions, affecting who may speak and for how long, are according to their own lights. If there is a good deal of agreement between these alleged opponents, as was the case from 1958 to 1974 in the tax area in the U.S. House of Representatives, with Wilbur Mills of Arkansas and John Byrnes of Wisconsin as chair and ranking minority member, respectively, of the Ways and Means Committee, the range of matters that actually become the subjects of legislative debate may be severely truncated.

Finally, let me be clear that "procedure" covers a wide range of phenomena, not just motion-making and debate.¹⁸ For instance, the U.S. Congress, a bicameral legislature, has extremely intricate procedures by which to resolve interchamber differences before presenting a final product to the president for his signature. Before presentment, the Constitution requires precisely the same bill to pass both chambers. When each chamber passes a different version, it is often the case that one chamber "recedes" from its version and accepts that of the other chamber (or does so if the second chamber will recede from its version and concur in some modification in its product). Indeed, in approximately 85% of all bills, differences are resolved in this manner (called "messaging between the chambers"). However, for the most significant pieces of legislation, this method is too cumbersome, and it is necessary to call a *conference* between the chambers. Conference delegations from each chamber gather and resolve differences. Though constrained, they have a considerable degree of freedom in what they may agree to (a majority of each conference delegation must approve the final conference report). Each chamber is then confronted with a conference report that it may vote either up or down (it is not subject to further amendment); in effect, the chambers are confronted with a *fait accompli*. And who dominates each conference delegation? As the reader may have guessed, overwhelming majorities on each delegation are drawn from the *committees of original jurisdiction*. Thus, procedures necessitated by the presentment clause of the Constitution contribute to empowering jurisdiction-specific committees in a manner disproportionate to their numbers in policy area after policy area. These committees have *ex ante* proposal and veto power, and they dominate the deliberative process, as already noted. Now we see that they have *ex post* powers over difference resolution as well. Surely this supply-side feature of procedures, which is seriously neglected in the

¹⁸For a general discussion of rules of procedure, see Shepsle and Weingast (1984).

Chicago School version of public choice, has a significant impact on the substance of legislation and should moderate any enthusiastic rush to normative judgment. The impact of procedures, like the impact of agenda setters and multiple majorities, loosens the coupling between legislative outcomes and majority preferences.

How to Interpret Revealed Preferences?

It is not at all clear what is being revealed when a legislator votes "yea" on a motion before her. Nominally, she is asserting that she "prefers" the state of the world that obtains if the motion passes to the one obtaining if it fails. But what does it mean to say that she "prefers" the one or the other? She may be expressing an idiosyncratic personal taste, a more considered value judgment (often referred to as an ideology), a reflection of the desires of particular constituents (for example, those among the folks back home that are attentive to and interested in the issue at hand), a reflection of the wishes of majorities back home in the district, a consideration given to those who have contributed to her welfare (campaign contributions, endorsements, bribes, speaking fees, etc.), or some complex mix of all these factors. It is clear that these different bases for preference do not enjoy the same normative status and, therefore, should not be accorded the same respect and deference by the courts.

What complicates matters even further is that a revealed preference may be based straightforwardly on *none* of these considerations. The complex of procedures only briefly referred to above induces a *game of strategy* among legislators. Votes on motions at one stage—for example, on whether to replace the original bill with an "amendment in the nature of a substitute"—have an impact on the menu of choices (and their relative likelihoods of passage) at later stages of the process. An early vote, therefore, may reflect neither tastes nor ideology nor constituency concern nor interest group indulgence, but rather a strategic calculus. Thus, when votes may be based not only on "preference" (however induced) but also on strategy, it is no mean task to infer the basis for a vote, and it is often next to impossible to figure out to what one ought to *defer*. Votes are not accompanied with explanations, and, even if they were, it is not clear that anyone should give them any credence.

Summary

I have briefly and superficially covered a good deal of ground. The conclusion I wish to leave with readers is a simple one. When a bill passes the House and Senate in the same form, and is signed by the president, there are only limited inferences to be drawn. We know that one majority in each chamber has revealed a "preference" for the bill over x^0 . We do not know why, and it is likely that each legislator has a mix of different reasons. We do not know how majorities feel about choices with which they were never confronted (one of the results of agenda control). That is, we have only a limited capacity to distinguish between what legislators want and what various procedural elements have foreordained. Finally, a naive look at final passage, even with the additional assistance of committee reports, a transcript of debate in each chamber, and other manifestations of legislative history, does not permit us to differentiate the "will of the majority" from the machinations, both *ex ante* and *ex post*, of agenda setters. All of these interpretive difficulties flow from the content of the Arrow theorem. Intransitive social preferences enable strategic maneuvers, exacerbate the conflating effects of procedure and agenda manipulation, and defeat bright-line inter-

pretations. In sum, the operating characteristics of supply-side institutions drain meaning from the concept of legislative intent. This is the claim I develop next.

3. The Meaning of Legislative Intent

In everyday discourse it is so easy to slip into the fallacy of false personification that we often succumb to it. The literature on statutory interpretation, however, seems transfixed by the notion of treating legislatures holistically, even when fallacy and sloppy thinking are pointed out. "The literature on statutory interpretation," writes Dickerson (1975: 206), "is rich in references to the 'intent' or 'purpose' of the legislature, terms suggesting that a legislature may have subjective attitudes and drives such as those possessed by a human being." But he goes on to note that "it is unrealistic to talk about legislative intent because the notion of 'the law maker' is fictional; there is no such person." Nevertheless, "despite occasional protestations to the contrary, the typical lawyer or judge continues to refer to legislative intent, even though it remains a matter of inference and conjecture" (Dickerson, 1975: 207, 216).¹⁹

Put somewhat differently, the Hart and Sacks (1958) notion that legislation should be treated as the result of "reasonable people pursuing reasonable purposes reasonably" is insufficient. Even if we do adopt this posture, even if legislators are the kinds of reasonable people Hart and Sacks envision, it is still fruitless to attribute intent to the product of their *collective* efforts. Individual intents, even if they are unambiguous, do not add up like vectors. That is the content of Arrow; that is the malady of majority rule; that is the blind spot in Chicago School interest groups interpretations of intent.

If intent has no meaning, as I believe the Arrow theorem necessarily implies, then discussions of the kinds of evidence relevant to discerning it are rendered moot. Farber and Frickey (1988: 423, 424, 438) describe prominent judges (Posner, Easterbrook, Scalia) who are dubious about the coherence one can attach to legislative history, yet who nevertheless wish to pursue the grail of intent and divine its meaning. They describe, for example, Scalia's attacks on legislative reports as a basis for inferring intent, attacks grounded not in the meaninglessness of intent but rather in the fact that no majority ever *votes* on a legislative report (as if voting on one would give it meaning). Posner similarly secretly wishes to discover intent but to limit the way judges go about doing it: "No matter how faithfully judges wish to carry out the will of Congress, they are limited to the public materials in divining that will" (Posner, 1982: 273). Given the meaninglessness of legislative intent, it appears to me that we

¹⁹As I read Dickerson (1975) I began to entertain the hope that at last a sensible treatment of legislative intent had been developed. But despite his criticisms of the concept, quoted in the passages in the text, his commitment to pointing out the vacuousness of the concept flagged (at 212ff.). He hopes to salvage the concept by substituting "consensus" for it. In his view, consensus is an indicator of "a real (not fictitious) corporate legislative intent consisting, not of the shared intent of a group of improbably like-minded legislators, but of the composite thrust of many individual intents . . . best likened to the resultant of a set of vectors" (Dickerson, 1975: 212). If one amends this notion of consensus in the spirit of the passage quoted earlier in the text by Mashaw, in which an "institutional matrix" has subtle, not always decipherable, effects on policy choices, then we are left, I believe, with another uninterpretable concept. If we add to the Mashaw qualification the inappropriateness of "vector addition" implied by the Arrow theorem, then the "consensus" vessel is completely empty.

can set aside the entire discussion of the evidentiary bases of intent, though we may wish to reserve those evidentiary bases for *other* purposes.

4. Statutory Interpretation and Incomplete Contracts

The argument to this point has served a useful, but essentially negative, purpose. Analytical scrutiny of the political supply side, something suppressed or ignored in Chicago School public choice, raises serious questions about the meaningfulness of legislative intent, the normative status of statutes, and therefore the appropriate foundations for statutory interpretation. Were the essay to end here, I believe these serious questions would remain, and any analyst ignoring them would do so at her peril. Nevertheless, there are surely those who would, even after provisionally acknowledging the problems, anguish over more practical matters: if legislative intent goes, then what should take its place? Practically speaking, how should a court interpret statutes and apply these interpretations to novel circumstances? Absent intent, at what point does a court begin trenching on the legislature's Article I powers?

I turn to some of these issues momentarily. Before beginning, however, I wish to invoke a doctrine of severability. Legal scholars clearly have a comparative advantage in thinking about statutory interpretation in the absence of legislative intent, and I hope they will do so. The suggestions I have to offer on this matter, given my lack of legal training, will strike some as naive and uninformed or abstract and unworkable. My claim is that however much this may be true, it in no way damages the earlier argument. Doubts about the intentions of a collectivity are valid, independent of my success at arriving at an alternative foundation for statutory interpretation. The claim of the scientist that human physiology does not enable man to jump into space remains valid, even if he can design the substitute means by which to propel a body beyond the atmosphere. These matters may be severed and assessed in an independent fashion.

In this section, then, I want to take up, in a positive fashion, the "much vexed question of legislative interpretation" (Mashaw, 1989: 152). In particular, I want to apply the lessons developed earlier in this article to the matter of statutory interpretation. As Eskridge (1988: 277) observes, "Public choice theory does not support any general theory of statutory interpretation, but does suggest some useful lines of inquiry." In following these useful lines, I begin, from my earlier argument, with a rejection of the proposition that the Court's function is to apply the intention and/or purpose of the legislature to specific contexts. In its place I would begin, though recognizing that it is only a beginning, with the famous position asserted by Justice Holmes: "we do not inquire what the legislature meant; we ask only what the statute means."²⁰

This foundation, however, is hardly conclusive, as statutes do not often declare their meaning in a manner that permits uncontroversial application. As Posner (1982: 264) comments, "That the economist takes statutes to be complete when enacted is striking to a lawyer, who realizes that the meaning of a statute is not fixed until the courts have interpreted the statute." In my view, it is best to think of statutes

²⁰Quoted from Holmes's personal papers by Farber and Frickey (1988, n. 113).

in terms similar to those in which *incomplete contracts* are treated in the economic theory of contracts.²¹

A contract is something that must be transacted—it does not spring fully formed from anyone's forehead. The contracting parties, therefore, must bear *transaction costs* in negotiating, implementing, and enforcing any agreement. These transaction costs (which, in the view of Hart and Holmstrom, comprise "a notoriously vague and slippery category") derive from several sources: "(1) the cost to each party of anticipating the various eventualities that may occur during the life of the relationship; (2) the cost of deciding, and reaching agreement about, how to deal with such eventualities; (3) the cost of writing the contract in a sufficiently clear and unambiguous way so that the terms of the contract can be enforced; (4) the legal cost of enforcement" (Hart and Holmstrom, 1987: 132). In contemplating an agreement, parties will want to weigh the prospective benefits of resolving various matters explicitly against their costs. And, in doing so, their optimal response will, most of the time, result in an *incomplete* contract: "Due to the presence of transaction costs, the contracts people write will be incomplete in important respects. The parties will quite rationally leave out many contingencies, taking the point of view that it is better to wait and see what happens than to try to cover a large number of individually unlikely eventualities. . . . [T]he parties will [also] leave out other contingencies that they simply do not anticipate" (Hart and Holmstrom, 1987: 132).

In short, not every 'i' is dotted, nor 't' crossed, and some events are not anticipated at all. The key issue becomes one of determining what happens when one of these uncontracted for eventualities transpires. In the theory of contracts, there are two broad responses: governance structures and implicit contracts.²² A governance structure may be thought of as a dispute-resolution mechanism incorporated into the terms of the contract. It may grant authority to resolve disputes to one of the contracting parties (possibly subject to constraints), or it may specify the arena in which disputes arising over contract terms are to be resolved. Whereas a governance structure is explicit, an implicit contract is, naturally, implicit. With undotted 'i's and uncrossed 't's, a standard way of doing things emerges; it becomes part of the "culture" surrounding the explicit contract (see Kreps, 1990). In an employment relation, for example, the boss fills in the fine detail of job definition, not because there is an explicit contract provision that permits this, but rather because both boss and worker appreciate that it will prove more economical to do things this way, on the one hand, and that there are real constraints on the boss's exercise of discretion, on the other hand, owing to the reputation he or she will wish to maintain in the labor market. In a sense, some of the inevitable incompleteness in contracting is completed via explicit reversion provisions (governance structures) or implicit cultural practices (implicit contracts).

Despite these devices and conventions, contract incompleteness will remain. Disputes arising on these dimensions must ultimately be resolved legally. As Hart and

²¹An excellent general survey is found in Hart and Holmstrom (1987). The general spirit of my remarks has been influenced by Kreps (1990).

²²The boundary between these two categories is fuzzy; for example, some governance structures are not an explicit part of the contract, but rather remain implicit. On governance structures, see Williamson (1985). On implicit contracts, see Bull (1983) and Rosen (1985).

Holmstrom (1987:133) note, "Anyone familiar with the legal literature on contracts will be aware that almost every contractual dispute that comes before a court concerns a matter of incompleteness."

But might not the same thing be said of *statutes*? Indeed, precisely the same thing has been said: "the limits of human foresight, the ambiguities of language, and the high cost of legislative deliberation combine to assure that most legislation will be enacted in a seriously incomplete form, with many areas of uncertainty left to be resolved by the courts" (Landes and Posner, 1975: 879). Statute incompleteness and contract incompleteness are the result of the costs of legislating and contracting, respectively.

How are various manifestations of statutory incompleteness resolved? Perhaps most obvious and least appreciated are the private adaptations to the statute made by affected private parties. Interpretation is not the exclusive preserve of courts, and many private parties will alter their behavior in light of *their* interpretations of statutory meaning (or in light of their expectations regarding official interpretation), an effect completing what was previously incomplete.

Second, one can point to governance structurelike features of statutes. Legislative delegation of rule-making and quasi-judicial dispute-resolution authority in the regulatory realm, for example, is an instance of the explicit establishment of a governance structure. Official procedures, as in the Administrative Procedures Act, are laid out as an institutional mechanism by which bureaucratic agents are to translate the general provisions of a statute into specific detail ('i'-dotting and 't'-crossing). A variation on this theme is the various forms of legislative veto by which Congress (once, but no longer) delegates provisional authority (for example, to a regulatory agency) but subjects decisions made under that authority to a "second look" by the full legislature, one chamber of the legislature, or some subset of legislators.

Third, there is the implicit contract in which members of the legislature and justices and judges comply with Chief Justice John Marshall's famous *Marbury* motto: "It is emphatically the province and duty of the judicial department to say what the law is." It is an *implicit* contract in the sense that it neither is explicitly specified in the Constitution nor explicitly appears as part of statutory boilerplate.²³ Rather, it is part of our constitutional culture; on each occasion of lawmaking in which nothing to the contrary is recorded, it reflects a tacit willingness by *existing* members of the legislature to comply with this arrangement. What it does *not* reflect is any commitment by future legislators who may, unless a constitutional issue is involved over which the Supreme Court is the reversion arena for dispute resolution, modify Court decisions with new legislation or other forms of "legislative lawfinding" (Dane, 1990).

Where does this leave us in terms of statutory interpretation? At the very least it provides a language and a model—that of incomplete contracts—for thinking about the issue of interpretation that is divorced from intent. To the extent that this is only a prospective, not an accomplished, argument, it invites a conversation between students of jurisprudence and students of incomplete contracts.

More concretely, I believe this conceptualization, in which the *Marbury* motto is part of the constitutional culture as a provision of an implicit contract, makes a case for several different positions, none of which gets the exclusive nod. Perhaps the

²³Notice that saying "what the law is" is different than saying what the Congress "intended" it to be. Indeed, it sounds quite compatible with Justice Holmes's imperative, cited earlier in this essay.

most extreme is the "plain meaning" doctrine, according to which (conceived at its narrowest) neither intention nor prediction play a role.²⁴ In the circumstance of cases apparently falling in the interstices of a statute, the Court must resist bringing the case under the statute's rubric. It may neither generalize the language of a statute, read intent into its words other than what is explicitly stated, nor forecast what the enacting majority (or some other majority for that matter) might have ruled. If the plain meaning of the statute's language does not cover a circumstance, then the statute is inapplicable. In a sense, this position, a minimalist one for courts, asserts that the *legislature* must complete otherwise incomplete statutes, not the courts. In either the interstitial case or the circumstance in which different statutes, with different dispositional implications for the case at hand, apply, it is the Court's obligation to seek further legislative guidance.

Clearly, this view is extreme and probably impractical in any complex, modern society. One could imagine, therefore, relaxing the strictures on plain meaning in various ways.²⁵ One should not dismiss, however, a potential benefit of a rather rigorous application of plain meaning, namely, that rational legislators with a modicum of foresight will seek to make their statutes plainer and more meaningful. A credible commitment by courts to plain meaning may have a salutary effect on statutory drafting, on the one hand, and on deceptive legislative practices, on the other.

At the other extreme is an implicit contract delegating the interpretation of interstitial and novel cases entirely to the Court. A majority in a subsequent legislature may, of course, always seize back interpretive authority, just as they may in the case of delegation to regulatory agencies. But, at the time of enactment, the tacit view of those comprising the winning coalition is that any incompleteness in the statute at hand will be completed by the courts.²⁶ This is simply a different governance structure from the narrow "plain meaning" regime described above. The more general point, however, and the one on which I conclude, is that a position on statutory

²⁴A clear description of this interpretive principle is given by Easterbrook in *Continental Can Company, Inc. v. Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) Pension Fund* (Seventh Circuit Court of Appeals No. 89-3759). In his opinion for the majority, Judge Easterbrook contends (at 6) that "[t]he text of the statute, and not the private intent of the legislators, is the law. Only the text survived the complex process for proposing, amending, adopting, and obtaining the President's signature (or two-thirds of each house. It is easy to announce intents and hard to enact laws; the Constitution gives force only to what is enacted."

²⁵I have nothing profound to say about the various ways "plain meaning" might be relaxed. I would only point out that the extreme version I have described does have a focal point to it (Schelling, 1960). One of the difficulties with relaxations that take place along a continuum is that any specific relaxation is difficult to justify (why not an epsilon more or less along the continuum?).

²⁶Although this is one conception of an "independent judiciary," it actually accords well at some points with the different views of Landes and Posner (1975). Their principal view—that the rationale for an independent judiciary is to enforce statutes in accord with the "intentions of the enacting legislature" (882)—is one that I have rejected as without meaning. However, my claim that legislators might choose (tacitly) to delegate interpretation to the courts is not as open-ended as it might first appear. First, as already noted, legislators may always seize back interpretive authority. Second, "the fact that the legislative and executive branches do have means of coercing the judiciary" (885) sets limits to how much of a departure the courts are willing to make from "plain meaning." Third, legislators with rational foresight may wish to employ their influence over courts in a manner that provides the courts with incentives for sticking fairly closely to the original meaning of a statute, *even if legislators should currently disagree with that meaning*. The reason is that the value to legislators of their *current* statutory activity is enhanced by "the predictability of [court] decisions, and decision according to the original meaning of a statute rather than according to the ever-shifting preferences of successive legislatures is probably an important source of that predictability" (885).

interpretation is, in effect, a position on principles and mechanisms for resolving incompleteness; it is an argument for some particular implicit contract or governance structure.

5. Discussion

The argument of this brief paper has been that an underappreciated branch of public choice theory—that growing out of Arrow's impossibility theorem—provides insight into the meaninglessness of the concept of "legislative intent." Individuals have intentions and purpose and motives; collections of individuals do not. To pretend otherwise is fanciful. To suppress the details of the political supply side, as I claim is the problem with Chicago School public choice, is to miss this point.

Nevertheless, it will be difficult to disabuse judges, lawyers, and legislators of their overreliance on the concept. Dickerson (1975: 217), for example, suggests that "even if there were no actual legislative intent, judicial deference to the constitutional separation of powers would require the courts to act as if there were, because the concept is necessary to put courts in an appropriately deferential frame of mind." I find this sentiment inapt, to say the least. It is a bit like asserting that nautical prudence and care require a belief in a flat earth; even if it were not true, sailors should act as if it were in order to put them in an appropriately careful frame of mind!

If legislative intent must go, as I urge, then so, too, must deference to it. The courts cannot defer to something that is nonsense. Just as the courts actively protect civil liberties and political rights, deferring not to the legislature but instead to the Constitution, they should interpret statutes in a parallel fashion, deferring not to legislative purpose or intention but instead to whatever implicit-contract principles govern the completion of incomplete statutes.²⁷

References

- ARROW, KENNETH J. 1963. *Social Choice and Individual Values*. New York: Wiley.
 BLACK, DUNCAN. 1958. *The Theory of Committees and Elections*. Cambridge: Cambridge University Press.

²⁷In the end, the difficulty with interpretation—whether it is the literary kind or the legislative kind, and whether it is of meaning or of intention—is *language*. The *Marbury* motto, together with Holmes's corollary, requires interpretive principles that permit courts to infer meaning (not collective intent). But meaning, as I have endeavored to demonstrate, comes from the strategic context, contemporaneous conventions about language, and individual purposes and intentions. The question is how might the courts obtain some purchase on these things. A modest proposal, offered only partially in jest, is the establishment, along the lines of the Congressional Budget Office (CBO), of a legislative agency organized to transmit to the courts, either informally in consultant reports or formally in *amicus* briefs, a detailed *procedural* history of a statute. Unlike more conventional legislative histories, this report would highlight exercises of agenda power, procedural practices (like restrictive rules) that determine what is and is not brought to a vote, and expressions of individual legislative intent. Indeed, statements of intent from significant agents—committee chair, party leader, bill sponsor—not otherwise contradicted in debate may be taken as an indication of a wider intent. The agency would be headed by a nonpartisan, much like Alice Rivlin or Rudolph Penner at the CBO, possessing incentives to maintain the integrity and credibility of the agency instead of pursuing myopic partisan advantage. The point is that the courts as currently constituted possess neither the resources nor the intellectual inclination to do the kind of systematic legislative history that is sensitive to supply-side institutional intricacies. Principles of interpretation, it seems to me, must be sensitive to these sorts of things, and conventional forms of legislative history writing are not. An unintended by-product, though Chicago School adherents will attribute more significance to it, is that the labor demand will rise for those skilled in positive political theory and congressional procedure—people like my students and me!

- BUCHANAN, JAMES M., AND GORDON TULLOCK. 1962. *The Calculus of Consent*. Ann Arbor: University of Michigan Press.
- BULL, CLIVE. 1983. "Implicit Contracts in the Absence of Enforcement and Risk Aversion." *American Economic Review* 73:658-72.
- COX, GARY W., AND MATHEW D. MCCUBBINS. Forthcoming. *Parties and Committees in the U.S. House of Representatives*. Berkeley: University of California Press.
- DANE, PERRY. 1990. "Legislative Lawfinding." Paper presented at Columbia Legal Theory Workshop.
- DICKERSON, REED. 1975. "Statutory Interpretation: A Peek into the Mind and Will of a Legislature." *Indiana Law Journal* 50:206-38.
- ESKRIDGE, WILLIAM N. 1987. "Dynamic Statutory Interpretation." *University of Pennsylvania Law Review* 135:1479-1556.
- . 1988. "Politics without Romance: Implications of Public Choice Theory for Statutory Interpretation." *Virginia Law Review* 74:275-338.
- FARBER, DANIEL A., AND PHILIP P. FRICKEY. 1987. "The Jurisprudence of Public Choice." *Texas Law Review* 65:873-928.
- . 1988. "Legislative Intent and Public Choice." *Virginia Law Review* 74:423-70.
- HART, HENRY, AND ALBERT SACKS. 1958. *The Legal Process: Basic Problems in the Making and Application of Law*.
- HART, OLIVER, AND BENGT HOLMSTROM. 1987. "The Theory of Contracts." In Truman F. Bewley, ed. *Advances in Economic Theory: Fifth World Congress*. Cambridge: Cambridge University Press. Pp. 71-157.
- KREHBIEL, KEITH. 1987. "Why Are Congressional Committees Powerful?" *American Political Science Review* 81:929-35.
- KREPS, DAVID M. 1990. "Corporate Culture and Economic Theory." In James E. Alt and Kenneth A. Shepsle, eds. *Perspectives on Positive Political Economy*. Cambridge: Cambridge University Press. Pp. 90-144.
- LANDES, WILLIAM M., AND RICHARD A. POSNER. 1975. "The Independent Judiciary in an Interest-Group Perspective." *Journal of Law and Economics* 18:875-902.
- MAASS, ARTHUR. 1983. *Congress and the Common Good*. New York: Basic Books.
- MACEY, JONATHAN R. 1986. "Promoting Public-Regarding Legislation through Statutory Interpretation: An Interest Group Model." *Columbia Law Review* 86:223-69.
- MASHAW, JERRY L. 1989. "The Economics of Politics and the Understanding of Public Law." *Chicago-Kent Law Review* 65:123-61.
- McKELVEY, RICHARD D. 1976. "Intransitivities in Multidimensional Voting Models and Some Implications for Agenda Control." *Journal of Economic Theory* 12:472-82.
- . 1979. "General Conditions for Global Intransitivities in Formal Voting Models." *Econometrica* 47:1085-1111.
- MITCHELL, WILLIAM C. 1988. "Virginia, Rochester, and Bloomington: Twenty-five Years of Public Choice and Political Science." *Public Choice* 56:101-19.
- . 1989. "Chicago Political Economy: A Public Choice Perspective." *Public Choice* 63:283-92.
- NISKANEN, WILLIAM A. 1971. *Bureaucracy and Representative Government*. Chicago: Aldine-Atherton.
- NOLL, ROGER. 1989. "Comment on Peltzman." In Martin Neil Baily and Clifford Winston, eds. *Brookings Papers on Economic Activity (Micro)*. Washington: Brookings Institution. Pp. 48-58.
- OLSON, MANCUR. 1965. *The Logic of Collective Action*. Cambridge: Harvard University Press.
- POSNER, RICHARD A. 1982. "Economics, Politics, and the Reading of Statutes and the Constitution." *University of Chicago Law Review* 49:263-92.
- . 1983. "Statutory Interpretation—In the Classroom and in the Courtroom." *University of Chicago Law Review* 50:800-823.
- RIKER, WILLIAM H. 1986. *The Art of Political Manipulation*. New Haven: Yale University Press.
- . 1988. "The Place of Political Science in Public Choice." *Public Choice* 57:247-59.
- , AND BARRY R. WEINGAST. 1988. "Constitutional Regulation of Legislative Choice: The Political Consequences of Judicial Deference to Legislatures." *Virginia Law Review* 74:373-402.

- ROBERTS, BRIAN E. 1990. "A Dead Senator Tells No Lies: Seniority and the Distribution of Federal Benefits." *American Journal of Political Science* 34:31-59.
- ROSEN, SHERWIN. 1985. "Implicit Contracts: A Survey." *Journal of Economic Literature* 23:1144-75.
- SCHELLING, THOMAS C. 1960. *The Strategy of Conflict*. Cambridge: Harvard University Press.
- SHEPSLE, KENNETH A. 1979. "Institutional Arrangements and Equilibrium in Multidimensional Voting Models." *American Journal of Political Science* 23:27-59.
- . 1986a. "Institutional Equilibrium and Equilibrium Institutions." In Herbert F. Weisberg, ed. *Political Science: The Science of Politics*. New York: Agathon Press. Pp. 51-82.
- . 1986b. "The Positive Theory of Legislative Institutions: An Enrichment of Social Choice and Spatial Models." *Public Choice* 50:135-78.
- , AND BARRY R. WEINGAST. 1981. "Structure-Induced Equilibrium and Legislative Choice." *Public Choice* 37:503-19.
- . 1984. "When Do Rules of Procedure Matter?" *Journal of Politics* 46:206-21.
- . 1987. "The Institutional Foundations of Committee Power." *American Political Science Review* 81:85-105.
- TOLLISON, ROBERT D. 1989. "Chicago Political Economy." *Public Choice* 63:293-97.
- WILLIAMSON, OLIVER. 1985. *The Economic Institutions of Capitalism*. New York: Free Press.