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The Behavioral Foundations of Committee Power: Reflections on Ken Shepsle's *The Giant Jigsaw Puzzle* at 25 years

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The last 25 years have witnessed an explosion of research on Congress as an institution, as a sticky, historically established set of non-transitory norms, resource-allocation rules, and parliamentary procedures. More than any other scholar, Ken Shepsle fathered this literature, gave it broad direction, and provoked further study on a host of specific questions about the origins and implications of legislative institutions.

The touchstone for most of this work is not so much his book, *The Giant Jigsaw Puzzle*, but his notion of structure-induced-equilibrium, elaborated in a series of papers ranging from the highly abstract "Institutional Equilibrium and Equilibrium Institutions," to the more concrete, especially his 1987 award-winning paper with fellow theorist Barry Weingast, "The Institutional Foundations of Committee Power."

Jigsaw, after all, is a study of political behavior, first and foremost. Institutions enter into the behavioral puzzle as constraints, but they are not considered puzzles in themselves. The excitement surrounding SIE arose because it posed a solution to the problem of instability under majority rule, abstractly understood, and it did so in the case of one majority rule institution, Congress, by identifying the standing committee system as the structural operator that enabled self-interested legislators to fashion mutually self-serving collective bargains.

SIE was an altogether new idea, focused on a then rarely posed puzzle. Why do we have the institutional arrangements we have? Ken's theory defined a class of answers, and subsequent scholars have built upon it or reacted to it, sometimes complementing it, sometimes improving upon it. In American field prelims, one now commonly hears a recitation of the three theories (and their variants) of legislative organization: distributive, informational, and partisan. One common criticism of this line of theorizing is that if it is new-institutionalist, it is also neo-functional. Institutions serve certain needs or functions; therefore they exist (i.e., *have been chosen*) to perform those functions. Given that public organizations are renowned for often choosing sub-optimal, even dysfunctional policies and practices (e.g., Wildavsky and Pressman 1984), one wants to know the micro-level mechanisms that support the particular set of welfare-enhancing institutional arrangements in this particular organization.

In the corpus of Shepsle's work on legislative organization, I believe, most of the micro-level pieces are out there. Thanks to *Jigsaw*, in particular, we need not theorize as if the complex mechanisms of institutionalized practice are altogether opaque. To my way of thinking, it would be helpful if someone – to my knowledge, Ken has not done this – were to put the various pieces together.

My charge in reflecting on The Giant Jigsaw Puzzle in this retrospective was to play the "provocateur." Insofar as provocateur implies an obligation to critically provoke, I was ill-chosen for the role. More than any other book, Jigsaw has influenced my own work; indeed, I see much of my work as an extension of it.

Many of the pieces, I believe, come directly from the *Giant Jigsaw Puzzle* itself, which is "rich in institutional detail" (7), but they are not fully incorporated in subsequent institutionalist research, much of which is "first and foremost a stylized argument" (Shepsle and Weingast 1987b, 937). To put the point differently, too many pieces of the complex behavioral puzzle put together in *Jigsaw* are missing from the distributive puzzle of legislative organization. Put another way, the foundations of committee power are *behavioral*! At least, we need to better relate Ken's work as a legislative behavioralist to his work as a formal legislative institutionalist. At the end, I'll offer a few thoughts in service to that project, though a full integration is best left to a better theorist.

The Giant Jigsaw Puzzle Revisited

First, it is important, perhaps crucial, that we clean off the pieces we hope to put together. That is, we need to clarify what Shepsle *didn't* say in *Jigsaw*. He did *not* say that committee assignments are self-selected.¹

The Self-Interest Impulse

Rather, Shepsle argued that self-selection is the individual impulse, the goal, the energy that drives the assignment process's engine. Page 6-7: "Each member in the assignment process entertains interests, possesses behavioral alternatives, chooses from among the latter with an eye to the former..." Freshmen members seek assignments with an eye to their electoral self-interest, but also to the policy interests that flow from their personal background. As non-freshmen, they seek committee assignment transfers for the same reasons.

Is self-interested assignment-seeking the impulse that powers the committee assignment engine? Yes. If one didn't believe it before, more recent work ought to convince. Scott Frisch and Sean Kelly have written several papers (e.g., 2000; 2001) based on amazing data on committee assignment requests, archives containing the advocacy about those requests, papers of the leaders who more or less accommodated those requests, and data on both initial assignments and transfers that were ultimately granted. They have some 25 congresses of data, and they have it for both Democrats and Republicans – a luxury Shepsle did not enjoy.

The first thing that becomes apparent – something that Frisch and Kelly do not emphasize as much as I would – is that assignment requests *set the agenda* for almost everything that follows. They are the raw material, they set the process in motion, they are the elephants in the room. As Shepsle argues, members make requests (the CC invites them to do so), and they lobby long and hard to get what they want. They do this Congress after Congress. And not only do naïve freshmen do this; senior members who know the system well sometimes vigorously pursue transfers to what, for each respectively,

certain overstatements in Shepsle's concluding chapter – in this case, esp. p. 238, 2nd full paragraph.

¹ As I point out below, this misreading is partly due to the subsequent exaggerations of others, myself included, and to Legislative Studies Section

is a better assignment. To be clear, as Shepsle was (see below), this is *not* to say that they always ask for, much less get exactly what they want, but we still must ask, rhetorically: Why would reasonably well-informed, rational actors go to all of this trouble if their self-selective impulses were bound to be fruitless?

The Floor on Non-Freshman Satisfaction

The second thing apparent in Frisch and Kelly's work is another elephant in the room, namely, that members retain "property rights" to the committees to which they are assigned. This is one of the basic, though certainly imperfect, mechanisms of self-selection, which Shepsle identified. It sets a floor on assignment satisfaction. That is, even if it wasn't their first choice, members can keep a committee assignment they have that they prefer to less desirable alternatives. Again, there is some skepticism that any "property right" to a committee seat exists. Keith Krehbiel asserted this view on the APSA panel that gives rise to these reflections. Insofar as one, legalistic definition of property rights goes that might be right. From a law and economics perspective, a property right might not properly be characterized a *right* unless it has some statutory or constitutional basis and there exists a super-ordinate authority that, on that basis, will enforce the right. Otherwise, the regularity we observe, namely, that members retain their committee seats when they care to, is better labeled a "behavioral practice."

If seat retention is a behavioral practice, it is a robust behavioral practice, and, in light of other theories of legislative organization, a somewhat anomalous one. Members don't get kicked off of committees – rather, it's a rare exception if they do – even though reshuffling assignments might, say, serve the purposes of some agent of the majority hoping to produce a more heterogeneous and informative

committee.² It would seem that there's something like an implicit right at work. Or rather, to take a page from David King's work on committee jurisdictions (1997), the distinction required here is between a statutory and common law organizational arrangement. There is no dictum written into House rules that members have rights of retention, but two things tell us that essentially they do. One is that for decades, session after session, the chamber and party caucuses have had the opportunity to disabuse members of their property right assumption yet consistently have not done so. Decades of collective *non-decisions*, in other words, serve as precedents that reinforce the assumption that the robust behavioral practice has the status of a common law right. Likewise, precedent-setting *decisions* reinforce this view. Members sometimes are deliberately kicked off of a committee, but the informative point is how egregious their behavior must be to suffer that sanction. For example, in 1981 the majority leadership stripped then-Democratic Representative Phil Gramm of his Budget Committee assignment. Gramm to that point had been anything but a party loyalist, but it wasn't until he conspired with the Reagan White House and co-authored the 1981 Gramm-Latta reconciliation package, which gored \$45 billion out of hallowed Democratic programs, that his committee assignment was rescinded. Meanwhile, the many other Democrats who voted for Gramm-Latta retained theirs. In any context, property rights are not sacrosanct. What defines them as rights is the severity of the violation for which they are denied.

² A notable if episodic exception is when the chamber majority changes hands and a new party resets committee sizes and party ratios. Low-seniority minority members can find themselves displaced from a committee due to the shrinkage of minority slots.

Constrained Maximization

Third, Frisch and Kelly emphasize what Shepsle himself also emphasized, namely, that even if self-selection is the driving impulse of individuals and even if a property right sets a floor on their assignment satisfaction, self-selection is not unconstrained. To repeat and continue Shepsle's thesis statement: "Each actor in the committee assignment process entertains interests, possesses behavioral alternatives, chooses from among the latter with an eye to the former, *and is constrained in his choices by the interests and choices of others and by formal institutional rules.*" He continues: "The chapters that follow represent an attempt to examine how self interest is manifested, *channeled and redirected* in an institutional environment" (6-7). His is a theory of "*constrained maximization in an institutional setting*" (7). (All emphases added.)

Although his work is often misrepresented to suggest that pure self-selection is a readily stylizable fact, *Jigsaw* consistently emphasizes the constraint side and explores, in sophisticated fashion, the importance and variety of constraints on self-selection: (1) the scarcity of committee slots (with some marginal adjustments in supply created to accommodate majority members' demand); (2) the overlapping demands of different members for the same committees; and (3) CC limitations on over-representation of states or zones on particular committees; (4) the queue-switching costs of moving from an otherwise less desirable committee with accumulated seniority to a more desirable jurisdiction with no seniority.

Anticipating these constraints, members' actual requests are often insincere expressions of their assignment preferences. A major theme of Shepsle's theory is that requests are discounted by probability of assignment. Statistically speaking, the data presented to the CC on assignment requests are censored. Even then, the CC cannot

accommodate all requests, due to the substantial gaps between (marginally adjustable) supply and demand. It often takes members two or three terms to reach a reasonable degree of assignment satisfaction.

Are Committees Composed of Preference Outliers?

The second thing *Jigsaw* does *not* say is that committees are necessarily, much less uniformly, composed of preference outliers. To be sure, this has been a common misreading, *mea culpa*.³ One reason, I suspect, is that many have projected Shepsle's necessarily stylized description of committees found in his subsequent institutional theorizing onto his earlier behavioral book. Speculative comments at the end of *Jigsaw* itself also contribute to misreading *Jigsaw* in this way. In the "implications" part of his concluding chapter. (esp, p. 247-248 and 259-260), Shepsle discusses the possible connections between the committee assignment process he's described and the problem of "unrepresentative committees" and "cozy little triangles" described by others. Keith Krehbiel alluded to these passages in his remarks at the panel. In a serious retrospective, I would simply assert, one ought to reread the book, not simply its concluding chapter. Or to put it differently, my disagreement with Keith goes to the weight that the interpreter should attach to what the book argues and what it supports (my emphasis) versus the brief speculations about policy bias Shepsle makes in the concluding chapter (Keith's emphasis).

Are all or even most committees composed of preference outliers? Shepsle's discussion of "implications" notwithstanding,

³ I made just such a mistaken attribution at the end of a 1987 article (Hall 1987). I redressed the misreading at some length in an extended response to Keith Krehbiel's 1990 article, "Are Committees Composed of Preference Outliers." See Hall and Grofman 1990.

one cannot draw the conclusion from the book. In the first place, the book only speaks to matters of “interest outliers,” not preference outliers, a matter to which I return below. With respect to the former, Shepsle analyzes in Chapter 9 the ultimate assignments that emerge from the interest-advocacy-accommodation process he has identified: “In the CC’s (Committee on Committee’s) effort to assign freshmen to committees they seek, the conclusion of the hypothesis tests of Table 9.11 is unequivocal: it is the internal (zone) and external (CC) competitive situations that are most important in distinguishing winners from losers” (214). Further, party loyalty doesn’t seem to matter consistently (217). Overall, neither do other specific indicators of bias: “Despite my best efforts, the statistical analyses have uncovered little evidence of CC discrimination on the basis of personal or ideological criteria” (222). In the end, the request-assignment linkage is strong only for the “semi-exclusive legislative committees,” decidedly weak for the both exclusive and non-exclusive committees (228).

Interest vs. Preference Outliers

In sum, not all committees are composed of interest outliers, for systematic reasons Shepsle identifies. Moreover, Shepsle argues clearly in earlier chapters that even constituency-driven requests and good-faith accommodation does not necessarily lead to interest homogeneity. “[C]ommittee jurisdictions are diverse, heterogeneous, and, consequently, very imperfectly correlated with particular social interests” (77). Even Agriculture and Interior exhibit some heterogeneity. Thus, while member-interest variables prove statistically significant in most models, “the heterogeneous and shifting jurisdictions of congressional committees, and the attendant imperfect relationship between committee business and member interests” make for very limited explanatory punch in

almost every case (77). Shepsle underscores this point in discussing the statistical results for Interstate Commerce requests, which turns out to be his #2 “requester-dominated committee” in Table 9.22, observing that the breadth of its jurisdiction necessarily produces a “diversity of applicants” (88). Interest homogeneity, then, is likely to appear in one subset of one subset of committees.

The last point leads to an important conceptual distinction, often lost on subsequent empirical research that endeavors to test distributive theories. Members can be interested in the same committee for different reasons, reasons which may lead to different policy preferences. In *Jigsaw*, Shepsle develops a theory of “interest-advocacy-accommodation,” not “policy-preference-advocacy-accommodation.” A committee-level bias in policy preferences requires both an interest-driven assignment process and relative homogeneity in the preferences that flow from those interests. In other words, the direction of preferences needs to map onto interests, even when members may be interested in the same committee for different reasons. Needless to say, this does not always happen.

Interest vs. Preference in Distributive Theory

Interest – or rather, interest intensity – is the core concept in the distributive story, not preference. In this, *Jigsaw*’s interest-advocacy-accommodation syndrome puts distributive theory on good behavioral foundations. Unfortunately, the language of economics and the interpretation of spatial models often conflate the two, but certain matters become clearer when we pull them apart.

Fundamental to theories of distributive politics is that “gains from trade” – exchange that make all parties to the agreement better off – are possible (see esp. Shepsle and Weingast 1987; Weingast; Weingast and Marshall 1988). Indeed, they lurk out there in the world as opportunities to be seized, if only rational

actors could come up with collective arrangements to save themselves from their own, near-sighted incentives to renege. The point that bears emphasis is that such gains cannot happen unless parties to the exchange value different things differently. In a word, they have different (differentially intense) interests. Representative Moe cares more about policy area This, Representative Schmoe cares more about policy area That. The different values they attach to This and That make attractive a trade in which each relinquishes their constitutionally equal power over both areas for greater power over the one they care more about. The question is what makes that bargain hold together, no easy matter to sort out when you have multiple policy domains and multiple legislators with overlapping interests. The question is a matter for careful modeling and careful testing using valid data. A matter, in other words, for academic debate.

The academic debate has been robust, to be sure. The problem is that too many attempts to formally model organizational choice in Congress don't allow for pareto-optimal trades in their basic set-up. This is true under most assumptions when one posits that policies are ordered along one dimension. Any movement of policy along the dimension entails a monotonic utility loss for one actor, a gain for another, so long as the status quo lies within the extremes (i.e., the one extreme prefers the opposite extreme's policy to the status quo). When the status quo lies outside that interval, in any case, there arise opportunities more aptly conceptualized as "gains from change," not "gains from exchange." Similarly misconceived (from a distributive point of view) are models that represent distributive politicking in Congress as a divide-the-dollar game. The set-up is inherently zero-sum. It can't do conceptual justice to a distributive story, which presupposes that deals can be positive-sum. Hypothesis tests that derive from a divide-the-

dollar game cannot be tests of distributive theory.⁴

That different policymakers can and do value different policies differently is a core insight of *The Giant Jigsaw Puzzle*. It doesn't always happen – this due, among other reasons, to the problem of competing requests for commonly valued (exclusive or broad jurisdiction committee) seats. But other times, members exhibit different tastes, permitting mutually beneficial barter. When the commodity is a fungible, common currency of exchange (e.g., dollars), in contrast, everyone wants a larger share of it. Which of these metaphors more accurately captures the collective choice situation in Congress, I suspect, depends. In deficit-neutral budget fights, the divide-the-dollar game may fit. In debates about within-subfunction program spending or sector-specific regulations, the mass of members may be more inclined to leave chocolate to the chocolate-lovers, strawberry to the strawberry-lovers. Some particular policy areas become deep in "interested." This is what Shepsle finds, but, again, only for a subset of committees.

The Behavioral Foundations of Committee Power

The problematic matter for distributive theory, aptly stated in the several joint and separate works of Shepsle and Weingast (e.g., Shepsle 1986; Shepsle and Weingast 1987; Weingast and Marshall 1988), is how one keeps these meta-deals over jurisdictions of policies from coming unstuck. More generally, what

⁴ Curiously, Gilligan and Krehbiel (1994) miss this. While they accurately characterize the gains-from-trade argument as assuming that "each legislator is more concerned about some dimensions of the legislature's activities than about others" (42-43), that outcomes can be "pareto-efficient," such that "aggregate welfare is increased" (38), their model assumes budget-scarcity, conflating an aggregate budget constraint with an aggregate utility constraint; hence they set up a zero-sum game. In characterizing "the division problem" in footnote 10 (68), they seem to confuse distributive with redistributive.

makes any institutional arrangement sticky if it has a non-majoritarian flavor to it? Krehbiel has argued (1987; 1990) that no institutional arrangement in Congress, save those arising from the Constitution, is genuinely exogenous in that majorities can change, ignore, or suspend their own rules at a whim. Closed rules can be defeated by majority vote; so too can conference reports be sent back with instructions. There must be more, it would seem, if the distributive story is to have a happy ending. An additional matter is how one devises a theory able to simultaneously account for committees that do allocate distributive gains and those that are more representative of the parent chamber and thus don't.

Direction can be found, I think, in the behavioral theory articulated in *Jigsaw*, extended a bit. For reasons already mentioned, the distributive ending will not always be happy, not for all committees equally. But *Jigsaw* provides hints when distributive politicking can work. Specifically, it suggests that institutions have behavioral foundations.

The earlier discussion of committee seat property rights provides an apt point of departure here. That members almost always retain their committee assignments if they care to (even if they try for but fail to transfer to a different one) is a robust behavioral practice, in spite of the fact that it has no statutory (House or caucus rule) or constitutional basis. There is no abject exogeneity, but neither is the behavioral practice merely an ambiguously defined norm. It is a practice institutionalized in the common law of the chamber.

The behaviorally based stickiness of institutional arrangements finds expression at several points in Shepsle's *Jigsaw*. To be sure, this is not the focus of the book; thus am I "extending" it here. But it rightly traces it from the logic of his argument, I think.

At several points, Shepsle suggests that the logic of behavioral practices can trump the

effects of even well-intentioned procedural changes. For instance, the interest-advocacy-accommodation syndrome, "while serving the objectives of relevant actors," creates problems not easily addressed by even well-designed institutional reforms (243). Many committee activities involve "time- and staff-consuming drudgery...[that] do not serve any [a member's] more immediate objectives" (244). Accommodation of requests ameliorates this problem (244); it creates an internal set of incentives that lead members to devote their scarce resources to controlling policy within their committee's domain. To the extent that members are coopted (or randomly assigned) to committees, in contrast, they rationally abdicate: "Members assigned to committees whose activities do not mesh well with their individual goals are likely to shift resources at their disposal to activities unrelated to committee work" (245; see also 246). Institutional reforms of committee assignment practices, in short, would be short-circuited by the self-interested behavioral logic Shepsle identifies. This same logic, in turn, may explain variance in committee power: "Because accommodation has been uneven - across members and across committees - its effects are likely to be uneven" (245).

This theme reappears in Shepsle's lengthy discussion of behavioral theory and the problems of congressional oversight (251-59). Statutorily, Shepsle observes, "the Legislative Reorganization Act of 1946 enjoined congressional committees to engage in 'continuous watchfulness' of executive agencies and programs" (251); nonetheless, congressional oversight is conspicuously light. Are inadequate institutional mandates at fault, the problem thus soluble through institutional rearrangements?

Shepsle suggests not. Instead, he turns to the behavioral problem confronted by individual committee members who have too much to do and too few resources to commit to

oversight activities that only partially pique their self-interest. One solution is to institutionally allocate more resources (Figs. 10.2 and 10.3), but Shepsle emphasizes how substitution effects subvert this strategy. "It is," Shepsle here quotes John Bibby, the individual's "political incentive that counts" (254). Still, increased subcommittee staff and personal staff help, in that they allow the "political incentive" to play into greater oversight, as the marginal value of "siphoning off" resources to non-oversight purposes declines (256). My point is simply be that oversight of the executive branch, an institutional matter, is cast as a behavioral problem. Solutions to sub-optimal oversight, Shepsle argues, lie in changing the ability and willingness of individuals to engage in oversight behavior.

Finally, in his later institutionalist work, Shepsle and Barry Weingast turn to behavioral considerations to bolster their argument about the "institutional foundations of committee power" (1987b). Responding to Krehbiel's argument (1987) that the ex post veto power of committees is susceptible to contravening majoritarian strategies, Shepsle and Weingast allow that the ex post veto suffers from an "imperfect implementation" problem. Their challenge is to explain why implementation is more or less perfect. As I interpret it, their explanation is essentially behavioral. Majoritarian mavericks have opportunities, procedurally speaking, to roll committee proposals, but the behavioral costs of controlling committees (analogous to the costs of engaging in oversight to control agencies) are simply too high to do this on a frequent basis: "Even if it were conceded that chamber majorities are able to attenuate ex post committee powers, it is necessary to determine under what circumstances they would actually do so." Such a challenge "is likely to be a legislatively intricate undertaking," Shepsle and Weingast continue, and "[T]he costliness

of the undertaking is not trivial and in many situations is a deterrent" (937). Indeed, behavioral constraints interact with committee ex ante agenda powers to protect the impact of the ex post veto. Committees can push their proposals to the end of a Congress, when workload on the floor is especially heavy, as a way of raising the "costs to others of nullifying [committees'] ex post veto powers.

Conclusion

My charge in reflecting on *The Giant Jigsaw Puzzle* in this retrospective was to play the "provocateur." Insofar as provocateur implies an obligation to critically provoke, I was ill-chosen for the role. More than any other book, *Jigsaw* has influenced my own work; indeed, I see much of my work as an extension of it. That fact has probably made me especially mindful of inappropriate stylizations, what I take to be misreadings, of the book's main claims. Of course, it may be that it has simply led me to make my own self-serving misreadings of the book – a plausible view, given that my reading of *Jigsaw* regarding such substantial matters as assignment self-selection and preference outliers is at variance with how it is commonly cited. A legislative behavioralist still, I am likewise inclined to favor the puzzle-solving behavioralist Shepsle to the puzzle-solving institutionalist Shepsle; to explore the implications of complex behavioral practices for institutional theory rather than derive from institutional theory behavioral implications; to marvel at the complexity of institutional arrangements rather than to stylize them or model them over-simply. To quote the final two lines of the book:

"The many pieces of the giant jigsaw puzzle have been interwoven, over time, with other practices, processes, and phenomena in the House of Representatives. *But that is what an*

institution is all about, isn't it?"
(Emphasis added.)

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