

# What is a Legislature's Purpose?

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**Abstract:** Legislatures in modern democratic nation states are social arrangements in which individuals elected as representatives interact with each other and with professional lobbyists according to quite specific transactional modes, producing continually updated bodies of legislation. It is widely assumed that the purpose of such legislation is or should be to benefit the society to which it applies, at least on balance. But analysis of the epistemic limitations of legislators, studies of the potential for opportunism enabled by the types of transactions that take place within legislatures, and empirical documentation of so-called “government failure” create doubt as to the validity of that assumption, and raise the question of how such a social arrangement can not only survive but grow in its influence over society. It is suggested that better understanding of this phenomenon can be had if the assumption of purpose, inappropriate for a complex social arrangement in that it conflates systemic purposes with ones appropriate for individuals, is abandoned and the legislative system’s operation is examined in terms of the overall organization of the processes which take place within it.

**Keywords:** legislatures, politics, government, anticipatory systems, process closure.

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## I. INTRODUCTION

Legislatures are the legislation-producing component of democratic government.<sup>1</sup> They are arrangements in which a limited number individuals, some of whom are elected as representatives and others of whom are private lobbyists whose business it is to influence legislation,<sup>2</sup> interact according to specific transactional modes, producing continually updated bodies of legislation.<sup>3</sup> Legislatures were conceived in a constructivist manner as organizations with fairly simple constitutional specifications, but they have evolved into much more complex arrangements and are more usefully characterized as spontaneous orders.<sup>4</sup> Any doubt as to their complex, adaptive nature should be quelled by a perusal of Riddick (1992), an exposition of the accumulated rules governing the activities of the U.S. Senate, which describes over 10,000 precedents.<sup>5</sup> In analyzing such systems, then, it is not unreasonable to differentiate between planning and acting on an individual level and the emergent systemic outcomes which are a side-effect of that activity in a particular context.

Common parlance is an impediment to clarity about the systemic nature of legislatures. The terms used to refer to legislators, like “policymaker” and “lawmaker”, contain the implication that it is the individual legislator who makes the legislation. But this is obviously not so. A legislator may draft bills, and she<sup>6</sup> may have a clear idea as to what specific legislation she would like to see passed, but she cannot enact it unilaterally. She must become a participant in a process in which proposed legislation is discussed and amended, where it is subject to the vagaries of compromise and logrolling, where even when initially passed it is subject to further modification in the process of reconciliation in conference committees. The legislation that ends up being enacted is emergent from this process and may bear little relation to the initially proposed bill.

The characteristics and purposes of individual legislators and lobbyists, and their epistemic and other limitations, are important considerations in understanding their behavior, but for understanding the operation of legislatures it is necessary in addition to examine not only the processes involved in legislator and lobbyist activity and interaction but also their organization, because adaptation and growth are features of the system as a whole. Legislatures are systems which are obviously capable of adaptation in order to survive and prosper, but attributing to them goals appropriate for individuals is a serious misconception.

But there is nothing original in the observation that legislatures are not individuals.<sup>7</sup> It has been common in the past for economists from Pigou to Samuelson to characterize legislatures as if they were a powerful person (a benevolent dictator, for example) with motivations and goals such as would be reasonable or desirable (in the opinion of the analyst) for such a person.<sup>8</sup> However, this is now sometimes recognized as a metaphor that should at least be qualified, as much attention has been devoted to the study of the internal structure of legislative systems. Economists and political scientists in the “rational choice” tradition<sup>9</sup> have theorized about political arrangements in much the same methodologically individualistic way that most economists approach market arrangements—individuals, constrained by the given arrangements, choose the best of the expected outcomes from the available options according to their preferences, which are assumed to be comparable and transitively ordered, i.e., they maximize expected utility.<sup>10</sup> The problem then becomes to examine how groups of individuals, faced with making a “group choice” will tend to react under different institutional arrangements. There is no assumption here that the group is merely the individual writ large; in fact one of the major findings of this line of research is that there exists no reasonable (which excludes dictatorial) way of forming a coherent group preference from the preferences of rational individuals.<sup>11</sup> Furthermore, theorists in this tradition, Buchanan and Tullock (1962), for example, explicitly reject naïve personifications of both the State and society at large; that is (p. 12), they reject the “organic conceptions” of the State as “some *überindividuell* entity” and the existence of a “general will” or an overarching “public interest”.

What does not seem to have changed, however, is the unexamined assumption that legislatures have a purpose,<sup>12</sup> and that this purpose is to generally (on balance, at least) improve the lot of the citizens subject to the legislation produced. The legislative individual has faded into the background, but her purpose, like a Cheshire cat’s grin, is still very much in evidence.

## II. THE PARADOX OF LEGISLATIVE SUCCESS

We have learned from many sources, most recently and convincingly from Scheall’s (2020) elaboration of “the problem of policymaker ignorance”, that the epistemic capabilities of legislators are insufficient to the task of accurately evaluating the fitness for purpose of the legislation they propose, let alone of accounting for the costs or benefits of the secondary consequences that might follow from its application.<sup>13</sup> In addition, as Buchanan & Tullock (1962) and others have pointed out, legislators are self-interested (in a not necessarily pejorative sense) human beings who face a range of incentives, not all of which point to action geared to the well-being of the country in general, or even of specific constituent groups. It is widely presumed that the current mechanisms of democratic politics are very poor at conveying to policymakers in more than vague terms what constituents want or need<sup>14</sup> (and this is complicated by the fact that constituents express

diverse and incompatible needs and wants); at least, they certainly do not convey in any practical detail how to realize policy in action. To bolster this rather dismal picture, there has been extensive documentation of what is characterized as “government failure”.<sup>15</sup> And yet—and here we have a paradox—government, of which a legislature is a vital component, is one of the most successful social arrangements ever to appear, in terms of survival and growth of influence.<sup>16</sup> How is this possible, if legislators and other government actors are inherently unable, in most cases, to fulfill promises made, and even when attempts are made at implementation, are unable to gauge the consequences, so that, even given the best intentions and despite the fact that there are always some beneficiaries of any particular item of legislation, a considerable amount of economic and social damage is inevitable?

It is obvious that this paradox can be resolved by asserting that the forms of government that have succeeded have done so because they have provided a net benefit. The hypothesis is that if government in its current form were not a net benefit, if the legislation produced were not in some sense “optimal”, then there would be incentive to change it or even do away with it. Since there is clearly no significant movement in this direction, it must be that, when all costs (including transaction costs) and benefits (including intangible ones) are taken into account, there must be a net benefit. This is the argument put forward by many prominent economists, including Becker (1983), Stigler (1992), and Wittman (1989).<sup>17</sup> Unfortunately, no mechanism is given for how epistemically challenged and self-interested legislators could produce such optimal legislation, but it could be that each is “led by an invisible hand to promote an end which is no part of his intention”. How this particular “hand” could work in the context of legislatures is considerably more mystifying than how Adam Smith’s works in the context of markets, but this is something of a moot point, since the net benefit conclusion depends on the assessment of unquantified and unquantifiable costs and benefits in an assumed equilibrium, and so it is no more than an unjustified assertion, an untestable claim.

A much simpler resolution of the paradox would be to dispense with claims as to the net benefit or otherwise of the legislative system and to hold that it is successful because, first, it provides clear and viable opportunities for the pursuit of happiness of internal participants (whether that be power and prestige, or wealth, or the promotion of societal ends thought worthwhile); second, it is an arrangement which is capable of sensing (and even anticipating) and reacting adaptively to certain features of its environment; and third, its product is such that, over time, it at least partially conditions the feedback from the environment toward favoring the system’s sustainability and growth of effective authority. It is also worth noting that, while the reactions from the system’s environment become more pointed from time to time in voting exercises, such feedback, to the extent that it is effective, is directed at those internal participants who face election and not at the systemic processes, much less at the system itself, so that only in very extreme cases of widespread rebellion would its existence as a viable system be threatened.

The question arises, then, of exactly what sort of a “viable system” is a legislature. An extensive literature in political science and public choice economics gives us excellent detail about how particular processes within legislatures operate, but does not add up to an overall picture that addresses the issues of viability and adaptability of the system as a whole. In order to address the question, it is necessary to step back from the detail to view the overall system organization, focusing on understanding how the various processes within the system interrelate so as to maintain system integrity and enable adaptability.

In what follows, the hypothesis will be put forward that a legislative system can be characterized as a materially open system with a closed causal cycle of processes, each of which provides the necessary output for the succeeding one. The output of one of these processes is a modifiable body of legislation which is the system’s internal model of its environment but which also impinges directly on and constrains activity in that environment. This enables the legislative system to attach itself, parasitically, to its host, the market economy, and it is able to thrive and grow as long as that host is productive enough to sustain the extractions that are called for by the legislation produced. As a separate social system with its own internal components and processes, it is not purposeful in any sense other than to maintain its own survival and growth,

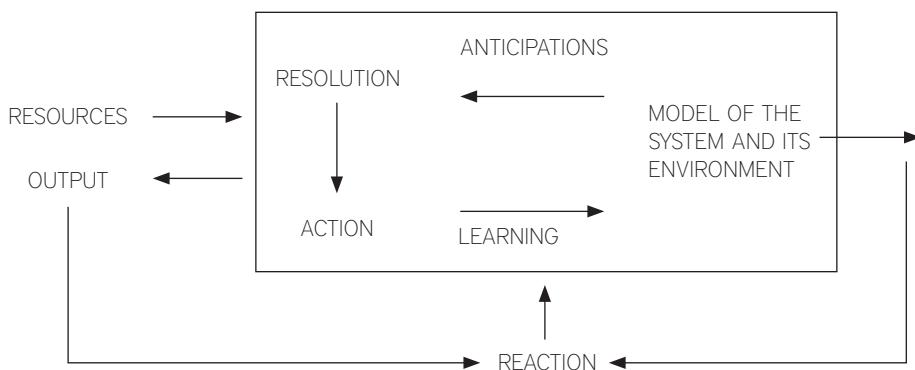
and to ascribe to it the explicit purpose of benefiting the greater society, whether one thinks that it succeeds or fails in that respect, is a serious misconception, an error of anthropomorphism.

No position is taken here with regard to the comparative virtues of different political systems. Democratic legislatures, and democratic governments in general, may well be, as Churchill (2008, p. 574) put it, “the worst form of government except for all those other forms that have been tried”,<sup>18</sup> and if this is widely believed it would certainly be a stabilizing factor. The long lives of some examples of democratic arrangements could be construed as evidence in support of that assertion.<sup>19</sup> But, be that as it may, the focus here is on the structure and interaction of the epistemic processes of well-established democratic legislatures, not on their merits relative to other arrangements, political or market.

### III. THE SYSTEM AND ITS ENVIRONMENT

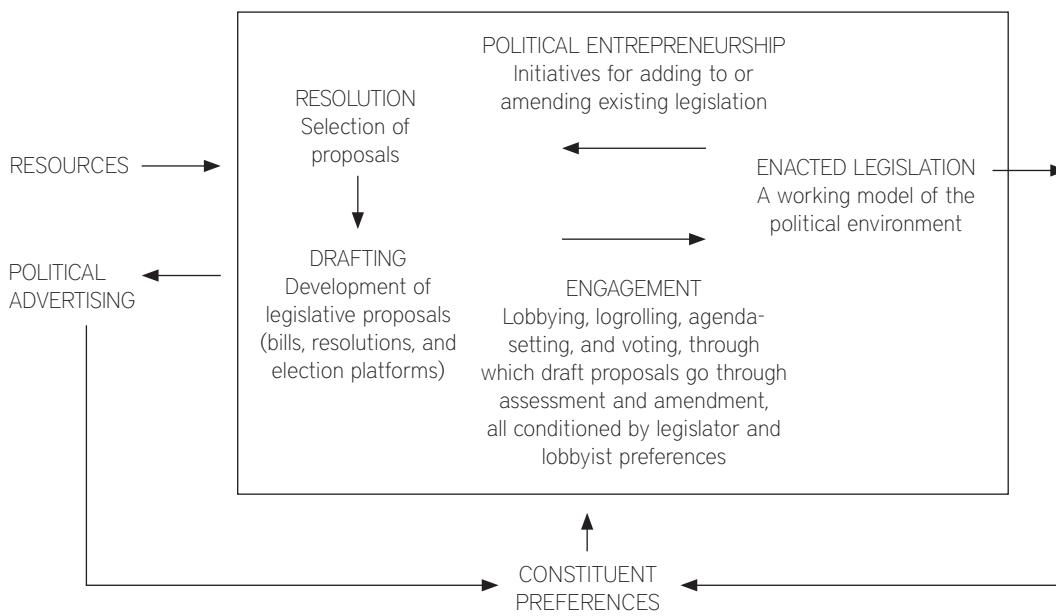
A legislative system as defined here encompasses the activities of people in their roles of legislators (and their staffs)<sup>20</sup> and lobbyists interacting according to specific transactional modes, which include lobbying, logrolling, agenda-setting, and voting, constituent relations, and engaging in the proposal, selection, and development of bills and resolutions (and amendments to these).<sup>21</sup> Observable as the emergent<sup>22</sup> result of this activity is a mutable body of enacted legislation. A mildly unorthodox aspect of this description is the inclusion of lobbyists as components of the system itself, as opposed to external influences acting on the system. This inclusion is suggested by the observation that lobbyists and legislators are in regular contact throughout the legislative process, and that lobbyists contribute to the development of bills and amendments along with legislators.<sup>23</sup> The general citizenry, on whom the legislation impacts, are part of the system’s environment. The focus here is on the organization of the various processes within the legislative system involving the activities of legislators and lobbyists, and by “organization” is meant how the separate processes, their inputs and outputs, are related to each other, and how this organization results in a coherent, potentially long-living, materially open but efficiently (in the causal sense) closed, adaptive system.

McQuade (2019) describes how, based on the work of systems biologists (particularly Bertalanffy and Rosen), social systems such as markets and sciences can be modelled in terms of the organization of their internal processes.<sup>24</sup> It is shown that these systems are organized in a generally similar way, and that this organization is conducive to the adaptation of the system as a whole to its environment. One of the organizational elements in these systems can be characterized as functioning as an internal model of the system’s environment—that is to say, the system is not merely adaptive, but capable of a form of anticipation employing its internal model.<sup>25</sup> Further, the systems are complete self-maintaining wholes in the sense that the conditions for the operation of each of their processes are provided by at least one other process in the system. While the systems are materially and energetically open, there is process closure in the limited sense that the processes form a cycle of efficient causation. The following is a schematic representation of the sort of social system being described:



“Action” processes within the system construct items which go directly to the environment but which may also undergo internal review and acceptance, modification, and rejection processes conditioned both by reactions from the environment to which the system is sensitive and by the tastes and preferences of the actors within the system. To the extent that these reactions from the environment are effective in the conditioning of the structure that emerges from the reviewing processes, this constitutes a form of “learning”, and is the means by which the system adapts to its environment. This emergent structure, therefore, can be regarded as the system’s “model” of its environment. The “anticipations” occur when entrepreneurial actors within the system can, based in part on the existing model, propose additional items which they guess will, if constructed, generate favorable reaction and thus will survive review and be incorporated in the system’s model. “Resolution” processes perform a culling operation on these proposals, selecting those which are actionable.<sup>26</sup> The model of the environment may be itself visible outside the system, and so is a component of the system’s overall “output” to which the environment reacts.

If this sort of arrangement is to have any relevance for understanding legislative systems, there must be identifiable a structure which serves as an actionable model of the system’s environment, as well as processes which effectively update that model and which employ that model to influence the propensities of the system for interacting with the environment. The following schematic suggests these identifications:



The body of enacted legislation, largely stable but changeable (almost always by accretion) in reaction to new initiatives and reassessments, is the structure within the system that serves as a model of the system’s environment—a model that is continuously updated by environmental feedback transmitted (and filtered) by the agency of repeated legislative transactions through which legislators and lobbyists engage with each other. Political entrepreneurs within the system rely, at least in part, on this existing knowledge base in imagining new legislative initiatives and in assessing the feasibility of these surviving, at least in part, the encounter with other legislators and lobbyists, and thus act as an anticipatory process affecting the system’s bill-and-resolution-drafting and platform-development propensities.<sup>27</sup> The “resolution” processes serve to cull from the legislative initiatives those in control of these processes (committee chairs, for example) view as actionable. The “drafting” processes include formalization of legislative proposals for submission to the “engagement” processes, as well as explication of proposals and platform to constituents, an activity labelled here as “political advertising”<sup>28</sup> Out of repeated transactions (involving lobbying, logrolling, and

agenda-setting with respect to the consideration of bills) between legislators and lobbyists (acting according to their individual subjective preferences but, for legislators, conditioned by perceived constituent preferences), and eventually terminated by voting, there emerges the structure of enacted legislation.

It is the purposeful agency of the legislators and lobbyists, in the course of acting according to their subjective preferences and motivations, which provides the motive force animating the processes in the system.<sup>29</sup> Legislators and lobbyists interact by participating in engagement, entrepreneurship, resolution, and drafting under the institutions of legislative procedure—a set of processes which, given the system’s material openness, are each necessary for the function of the others, and which together are sufficient to enable the system’s existence as a self-maintaining entity.<sup>30</sup>

To summarize, this organization of processes represents a legislative system as an anticipatory system incorporating and maintaining a working model of its environment, a model which can be accessed internally within the system to project the anticipated effects of future actions taken by the system. As with other social systems such as markets and sciences, the internal model of the environment has causal effects on the environment.<sup>31</sup> Reaction from the environment is taken into account in the processes which update the model, and this in turn provides an enhanced picture of the environment upon which entrepreneurial actors can base proposals which condition the propensities of the system to act on the environment.<sup>32</sup>

From the perspective of an individual within the system, participation has many potential benefits, both tangible and intangible: doing good for society, righting perceived wrongs, joining with others in promoting an ideological agenda, gaining power and influence, benefiting monetarily. From the perspective of the system, these motivations played out in the context of the particular transactions possible within it have the emergent effect of endowing the system with adaptability in the face of those reactions from its environment to which, for its own survival, it must be sensitive.<sup>33</sup>

#### IV. THE ANCHOR TO THE ENVIRONMENT

One feature of this legislative system which differs markedly from market and science systems is the nature of its anchor to the world outside of it. Markets face real scarcity as a hard constraint; sciences (to varying extents) prioritize conformity with observation of real events. In contrast, the only serious fully external constraint on legislatures (besides constitutional constraints<sup>34</sup> and the input of market-generated resources) is the preferences of constituents, and these are notoriously divergent and usually expressed as generalities lacking in specificity as to both implementation and understanding of possible adverse consequences,<sup>35</sup> and can be conditioned to some extent by political advertising. It may be argued in addition that constituent preferences are taken account of only intermittently, at election time, but legislators, like monopolists attuned to the effects of their actions on possibilities for future competitive entry,<sup>36</sup> are attentive to current moods as harbingers of possibilities for being voted out at future elections.<sup>37</sup> There is continuous political advertising aimed at conditioning constituent preferences. As public choice analysis has emphasized, the personal preferences of legislators and lobbyists loom large, but they are certainly always conditioned by perceived constituent preferences.<sup>38</sup>

In short, while constituent preferences are the legislative system’s anchor to reality, and as such certainly do affect legislators’ perceptions and behavior, that reality is not composed of hard and stubborn facts but is a shifting amalgam of diverse, abstract, inconsistent, and emotional ideas.<sup>39</sup> And yet, this shifting amalgam has an underlying coherence; its basis is in ideologies, the belief systems that all people adopt in order to simplify a complex reality and give meaning and sense to their social experiences.<sup>40</sup> The dominant ideologies in a society<sup>41</sup> are not static; they change over time as social experiences change,<sup>42</sup> and one major factor in those changes is the experience of living under legislation. There is two-way feedback between dominant ideologies and the legislative system.<sup>43</sup> Higgs’ (1987) exposition of “the ratchet effect” highlights the particular role of societal crises and of the experience of surviving the crises while living under the legislative edicts introduced as the government’s method of addressing the crises. With legislators attuned to dominant ideologies which take it for granted that a crisis requires legislation to authorize “doing something”,

the effect is that the legislature's disposition to deal with the crisis not only by expanding its scale but also by widening the scope of its activities is enhanced, and legislation enacted following such a disposition results in increasing legislative authority over aspects of society not previously subject to it. When the crisis passes, when the war is won, when the depression is over, when the pandemic is survived, there may be pressure to repeal the extraordinary measures, but the experience of living through the crisis under those measures and successfully returning to normalcy has the effect of validating to some extent those legislative advances, and repeal will be, at best, incomplete.<sup>44</sup>

It is not only as a result of crisis survival that the legislature's output conditions its ideological environment. The nature of legislation is such that any particular piece of legislation will result in (at least short-term) benefits to some and costs to others. As the quantity and scope of legislation increases, most constituents will experience both costs and benefits and can come to regard their benefits as a right. The presence of lobbyists within the system, together with the imperative faced by legislators to get reelected, conditions legislation to concentrate benefits and distribute costs,<sup>45</sup> and this property of legislation enhances in individuals a perception of general benefit (especially if the financing of the benefits can be achieved by borrowing or money creation), so that, even if (by some measure) it were possible that one could show net cost overall, it would be unlikely to be convincing at the individual level.

In short, a legislative system, like other adaptive social systems, has an anchor to reality, but the reality to which it reacts is ideological rather than physical. Systems anchored to physical aspects of their environment face hard constraints; and although it is conceivable that intangible constraints can be effective, in the case of legislatures the intangible constraint is subject to modification by the system's own output in a way that is favorable to the system's growth.<sup>46</sup>

## V. SUMMING UP

The question addressed here is why, given its unlikelihood in the face of the severe difficulties characterized by Scheall (2020) as “the problem of policymaker ignorance”, the significant possibilities for individual corruption detailed by political scientists, and the pervasive phenomenon of “government failure” documented by public choice scholars, the institution of the legislature has not only survived as an integral part of society but has been able to greatly expand its influence over society at large. A partial explanation has been given by Boettke et al. (2007), who point out that the political survival of individual legislators is not closely tied to whether or not the legislation they enable enhances economic efficiency.<sup>47</sup> Legislators are not ignorant of what is needed to succeed within the legislative system; it is just that economic knowledge is seldom helpful (and its application often distinctly unhelpful) in that regard. The feedback to the legislative system (and to individual legislators) from the economic effects of legislation is not direct but is filtered through an ideological lens; legislators rarely suffer political losses from economically inefficient or damaging legislation provided that the legislation can be characterized as conforming to the ideological presuppositions of the majority of constituents.

But this is not the whole story. The fact that individual legislators can prosper in the face of epistemic and other difficulties does not fully explain why the system as a whole should survive and prosper. To explain that, it is necessary to inquire into the organization of the system's processes and to show how these processes combine constructively to endow the system with the capability for adaptation to (and even anticipation of) environmental feedback which may threaten its integrity. The bases for this feedback are the ideological preconceptions prevalent in society, and those preconceptions are, over time, conditioned, by the experience of living under the very legislation the system produces, to favor the production of more of it. The ability to react adaptively to the external pressure of ideologies combined with the conditioning of those ideologies by legislation itself is how the legislative system is able to survive and grow in scope and influence. To get to the source and mechanism of the legislature's adaptability it is necessary to understand both its organization as a system of mutually supportive processes which generate emergent effects, and the reciprocal interactions between its emergent products and its environment.<sup>48</sup>

## NOTES

- 1 “Government” is an umbrella term for a linked collection of systems, differing in origin, structure, and evolutionary history. Legislatures are but one of these; others include executive arrangements, bureaucracies or ministries, systems of legal enforcement, military systems, and so on. Each has unique features in terms of internal processes and aspects of the environment (including other social systems) to which they are sensitive and on which they impact. What unites these government systems is that their impacts on other social systems and individuals can involve the legitimized (by government itself, but with the tacit consent of most of the governed) use of force. The focus on legislatures here is not to deny the importance of these other units of government; however, their structure and their interactions (including with legislatures) require a separate treatment.
- 2 While, conventionally, “legislature” refers to the body of elected politicians, I use it here as a synonym for “legislative system”, i.e., the system whose elements are the legislators, their staffs, and the lobbyists.
- 3 The usual characterization of legislators as “lawmakers” is inapt, as Hayek’s (1973, p. 72) distinction between law (spontaneously evolved rules of conduct) and legislation (rules deliberately constructed) makes clear. The common misconception that all law is legislation is (p. 73) “a product of the intentionalist fallacy characteristic of constructivism, a relapse into those design theories of human institutions which stand in irreconcilable conflict with all we know about the evolution of law and most other human institutions”.
- 4 A very clear statement describing the political sphere of society as a spontaneous order (as opposed to an organization) is given by Martin (2010). Also Butos & McQuade (2017, p. 14): “if social science is going to seriously treat the interactions of different complex systems (science and government, for example) then a first step is to include in the analysis that government is indeed a complex system with its own characteristic structure, internal transaction types, and emergent effects”. Devins et al. (2015, p. 613) observe that “Legal institutions, designed to be economies [i.e., planned and controllable entities, in their parlance], become spontaneous orders as they evolve in response to shifting political and social environments, unforeseen and unforeseeable by the designers of these institutions. All institutions, even the most seemingly fundamental, evolve so as to drift, even dislodge, from their original premises, so that attempts to engineer these institutions will always fall apart in the long run.”
- 5 Such a characterization applies to legislatures not only in the U.S. but in democratic societies in which the legislature has considerable (but not necessarily total) independence from the other branches of government. It applies perhaps somewhat more clearly to systems in which individual players (including the executive) have limited control over the legislative agenda. It certainly does not apply to “puppet” legislatures controlled by authoritarian rulers in which the order is anything but spontaneous.
- 6 To paraphrase de Jasay (1989, p. 1, fn. 1): wherever I say “she” or “her”, I really mean “he” or “his”.
- 7 In fact Bastiat (1848, p. 146) says, with his usual clarity: “I contend that this *personification of the state* has been in the past, and will be in the future, a fertile source of calamities and of revolutions.”
- 8 Ascribing purposes and goals to the state as a unitary entity is done in an offhand manner, without analysis or even consideration that there might be anything controversial about it. For example, Pigou (1932, p. 142) states “It is, however, possible for the State, if it so chooses, to remove the divergence [between private and social net product] in any field by ‘extraordinary encouragements’ or ‘extraordinary restraints’ upon investments in that field. The most obvious forms which these encouragements and restraints may assume are, of course, those of bounties and taxes.” In a similar vein, Samuelson & Nordhaus (2010, pp. 306-308) ask “What are the appropriate economic goals for government action in a modern mixed economy? … A central economic purpose of government is to assist in the socially desirable allocation of resources. … In addition, government tries to smooth out the ups and downs of the business cycle, in order to avoid either large-scale unemployment at the bottom of the cycle or high inflation at the top of the cycle.” De Jasay (1985, p. 1), however, deliberately takes this stance in an “as if” sense: “Braving the risks of confusing institutions with persons and the difficulties of passing from the prince to his government, [my approach] chooses to treat the state as if it were a real entity, as if it had a will and were capable of reasoned decisions about means to its ends. Hence it tries to explain the state’s conduct towards us in terms of *what it could be expected to do*, in successive historical situations, if it rationally pursued ends that it can plausibly be supposed to have.”

- 9 For a good introductory overview of the application of rational choice methods to politics, see Shepsle (2010).
- 10 A theorist is free to hypothesize the sorts of preferences that are likely to be uppermost in particular situations. For example, Riker (1962, p. 22) claims that “What the rational political man wants, I believe, is to win, a much more specific and specifiable motive than the desire for power. … He wants to exploit each situation to his advantage, and he wants to succeed in a given situation.” Riker viewed political science as a study of what he called “heresthetics”, i.e., strategic behavior aimed at winning rather than persuading, which includes particular behaviors such as agenda-setting, coalition-forming, and logrolling. See Riker (1977).
- 11 This result is known as Arrow’s Theorem—see Arrow (1951). It means, in practice, that while group decisions may depend on individual preferences, they are manipulable by those with the power to set agendas for the process of translating individual preferences into group decisions.
- 12 An exception is Kohn (2004, p. 310), who in a critique of the dominant and long-lasting “value paradigm” of economic theorizing and its cornerstone assumption of trading equilibrium for its claim to be a general theory of economics, notes that “the interaction of these individuals within firms and governments is ignored by the value paradigm and the aggregates themselves are treated as though they had motives and intelligences of their own”. See also Martin (2010, p. 234), who is clear that “policy is the result of an emergent process, not an object of choice. Ideas do not translate one to one into policies in the same way they would for an individual. Politics is not purposive; but political agents are.”
- 13 See particularly Hayek (1989, p. 7): “If man is not to do more harm than good in his efforts to improve the social order, he will have to learn that in this, as in all other fields where essential complexity of an organized kind prevails, he cannot acquire the full knowledge which would make mastery of the events possible. … The recognition of the insuperable limits to his knowledge ought indeed to teach the student of society a lesson of humility which should guard him against becoming an accomplice in men’s fatal striving to control society—a striving which makes him not only a tyrant over his fellows, but which may well make him the destroyer of a civilization which no brain has designed but which has grown from the free efforts of millions of individuals.” According to Scheall (2020, p. 1): “The problem of policymaker ignorance is the simple fact that the success of purposeful political action is necessarily limited by the nature and extent of policymakers’ ignorance and their capacities to learn. We cannot deliberately realize policy objectives beyond the ken and control of our political representatives. … Policymaker ignorance is the ultimate barrier that we cannot breach in our attempts to deliberately reform society and ‘make the world a better place’ …”.
- 14 The assumption of weak voter feedback is disputed by Wittman (1989), who argued that voters are sufficiently informed and legislators sufficiently disciplined by democratic processes that the legislation produced is wealth-maximizing. Among others, Boettke et al. (2007, pp. 136-141) have convincingly contested this view, at least in the extreme form put forward by Wittman. See also Boudreax (1996) and Wagner (1996).
- 15 Since Buchanan & Tullock (1962) developed their theory of “collective choice” with the very reasonable assumption that individuals when participating in the political realm were no more nor less self-interested than when participating in the economic realm, a large literature has emerged under the rubric of “public choice” which has examined political institutions both theoretically (from a methodologically individualist perspective) and empirically. One result of this investigation has been the recognition that neither markets nor governments meet any standard of perfection and, further, that the shortcomings of government (even with respect to claimed intentions) are considerably more damaging than market failures. Keech & Munger (2015) present a comprehensive “anatomy” of government failure from a theoretical perspective, and Simmons (2011, pp. 185-320) provides an extensive catalog of case studies. Another list of examples, this time from an Austrian perspective and emphasizing the unintended consequences of government action is found in Gallaway (1998). See also Ikeda (1997).
- 16 Estimates by Tanzi & Schuknecht (2000, p. 6) of government expenditure as a percentage of GDP in a number of countries including the U.S. indicate a growth factor between 1870 and 1996 of about 4.5. But expenditure is a very incomplete measure of the size and scope of government. As Higgs (1987, pp. 31-33) points out, the growth of regulation is not captured by the standard measures of growth, and “the long-run growth of governmental activity in the U.S. economy has depended mainly on the scope of effective governmental authority over economic decision-making, not on the degree which existing governmental potential has been realized at any particular time”.

A rough indicator of the growth of legislative activity is given by an estimate by Govtrack (<https://www.govtrack.us/congress/bills/statistics>) that, since World War II, “Congress has typically enacted 4–6 million words of new law in each two-year Congress”. Perusal of the Federal Register, which lists final rules (interpretations based on enacted legislation) of government agencies, shows a growth in such rules from about 4,000 in 1993 to over 94,000 in 2015. For a readable history of the growth of government in the U.S., see Hughes (1991).

- 17 According to Stigler (1992, p. 459), “every durable social institution or practice is efficient, or it would not persist over time. … Tested institutions and practices found wanting will not survive in a world of rational people. … So I would argue that all social institutions, including common and statute laws, must be efficient.” Wittman (1989, p. 1421) makes a more pointed claim, implying that democratic methods are as capable of disciplining legislators as market methods are of disciplining producers: “Behind every model of government failure is an assumption of extreme voter stupidity, serious lack of competition, or excessively high negotiation/transfer costs. Economists are very suspicious of similar assumptions regarding economic markets. This skepticism should be carried over to models of government behavior.” The Achilles heel of this line of thought is the fact that political and economic institutions and transactions are radically different in the incentives offered and the type of knowledge produced.
- 18 In his speech to the House of Commons on 11 November 1947, Churchill prefaced this remark with “Indeed it has been said …”, indicating that the quip was not original to him. A similar thought is articulated by Linz (1978, p. 18): “Our minimal definition of legitimacy is, then, a relative one: a legitimate government is one considered to be the least evil of the forms of government. Ultimately, democratic legitimacy is based on the belief that for that particular country at that particular historical juncture no other type of regime could assure a more successful pursuit of collective goals.”
- 19 See, however, the observation cited by Bueno De Mesquita et al. (2003, p. 5) that “autocrats last in office, on average, about twice as long as do democrats”.
- 20 According to U.S. congressional statistics published by the Brookings Institution (2019), the number of congressional committee staff and personal staff employees has grown from 39 in 1891 to 9,947 in 2015 (reaching a high plateau of over 11,000 between 1980 and 2006). Salisbury & Shepsle (1981, pp. 563–567) point out that staffs enable legislators to pursue multiple goals at the same time: getting legislation developed and ushered toward enactment, seeking advancement within the system, and working toward reelection.
- 21 For simplicity, the various government departments which are tasked with the implementation of legislation are not dealt with here. But it is to be noted that departmental bureaucrats are also regularly lobbied, and the rules developed by these departments have, for practical purposes, the same force as legislation. Growth in the number and scope of such departments should also be taken into account in assessing government growth.
- 22 The term “emergent” is used here informally to refer to a systemic property which arises from the interactions of system components. But it is not a simple concept. For an examination of the subtly different ways in which the concept is applied in economics and social theory, see Harper & Lewis (2012) and the articles in the volume for which that is the introduction.
- 23 For in-depth studies of legislator-lobbyist interactions, see Baumgartner et al. (2009) and Godwin et al. (2013). According to Buchanan & Tullock (1962, p. 294), “Scientific progress in the analysis of politics cannot be made until this widespread activity [i.e., special-interest lobbying] is fully incorporated in the analytical models.” Also relevant is the literature on rent-seeking stemming from Tullock (1967) and Krueger (1974). There is also a large literature on legislator-legislator interactions, particularly logrolling and coalition-forming—see, for example, Buchanan & Tullock (1962, ch. 10 & 11), Weingast & Marshall (1988), Evans (1994), and Holcombe (2006). Buchanan & Tullock (1962, pp. 135–136) draw attention to an aspect of bill construction which they call “implicit logrolling”. This involves the development of complex bills covering multiple issues designed to take advantage of the fact that a legislator who feels strongly about one of the issues may vote for the bill even the other issues in it, about which he feels less strongly, are not to his liking.
- 24 See Bertalanffy (1928; 1968) and Rosen (1975; 1985; 1991). When Bertalanffy talked about the organization of a biological system he emphasized the organization of the internal processes rather than the organization of the physical matter—in fact, he held that the former determined the latter. In Bertalanffy’s (1968, p. 27) own words: “In the last resort, structure (i.e., order of parts) and function (order of processes) may be the very same thing: in the

physical world matter dissolves into a play of energies, and in the biological world structures are the expression of a flow of processes.” Rosen’s (1991, pp. 119-120) short statement of his approach to understanding biological systems was “throw away the matter and keep the underlying organization … The organization of a natural system … is at least as much a part of its material reality as the specific particles that constitute it at a given time, perhaps indeed more so.”

- 25 To summarize Rosen’s picture of anticipatory systems, a system is anticipatory if it contains a predictive model of itself and of its environment which allows it to change state on account of the model’s predictions as to a future situation. This ability to develop plans for possible futures, to form expectations of the future based on an internal model, allows for modification of the system’s current state in the course of implementing these plans or predictions and may result in output to the environment conditioned by that modification. And the system’s input from the environment may be processed within the system to confront, and perhaps modify, the model—for the model to be useful for anticipation, the system must be capable of learning, i.e., adjusting its model to reflect experience of reactions from the environment, especially in situations where prior expectations were not met.
- 26 For market systems, the “items” constructed are goods and services; the “learning” processes are the repeated exchanges as goods and services are bought and sold under conditions of scarcity; the “model” is the price structure (a complex structure of the prices and reputations of both consumer and capital goods and services); the “anticipation” is the activity of entrepreneurs in imagining new or improved goods and services; and the “resolution” process selects those projects that can attract sufficient capital to proceed. For science systems, the “items” constructed are papers presenting theoretical constructions or the results of empirical studies; the “learning” process involves the engagement of scientists with each other in assessing, criticizing, adapting, and incorporating in their own work the ideas presented, conditioned by a norm of correspondence with observation; the “model” is the body of provisional scientific knowledge; the “anticipation” is the activity of scientific entrepreneurs in imagining new hypotheses or methods; and the “resolution” process selects those hypotheses considered worthy of investigation.
- 27 Martin & Thomas (2013, p. 23), citing a large literature in political science and public choice economics on political entrepreneurship, describe a political entrepreneur as an “individual who plays a key role in identifying policy problems, mobilizing supporting coalitions, and implementing policy change”. This is a mixture of political entrepreneurship as described here (which focuses on ideas for legislative initiatives) and opportunistic behavior in the context of engagement with other legislators and lobbyists. They also describe another aspect of political entrepreneurship as being “directed at altering the institutional context within which entrepreneurship occurs”. This is certainly an important phenomenon, and it merits more attention than is given here. It definitely qualifies as entrepreneurship in a general sense, and it is a characteristic also of other social arrangements, including markets and science. It results in the slow but sure evolutionary changes within the system—it is the force behind the size and complexity of the rules and precedents that Riddick’s (1992) compilation documents.
- 28 Political advertising can run the gamut between sincere expressions of intent and misleading and diversionary oratory. On the latter, Scheall (2020, p. 154) points out, “policymakers can often accrue the same benefits by merely pretending to pursue a policy goal as they can by actually pursuing it. … However, in the modern age of 24-hour news, overtly biased journalism, politicians with sizable media budgets, and deranged social media bombardments, it is perhaps easier than ever for those in positions of power to manipulate constituents into mistakenly thinking their interests are being pursued.” Either way, political advertising coming from individual legislators or their surrogates is intended to influence constituent preferences.
- 29 This is a major difference between biological systems and social systems—in social systems, the efficient causes all have as their basis the purposeful action of the participants in the system. There is not “closure to efficient causation” in the same sense of the biological requirement for closure that the elements that act as efficient causes be generated within the system.
- 30 A legislative system is, in effect, being described here as a self-organizing and self-maintaining Popperian system in that its adaptive apparatus consists of a process for developing conjectures based on existing knowledge, a process for implementing these conjectures so that they may be confronted by the environment, and a “refutation” or

“error elimination” process through which failures and successes of this confrontation are learned from and the systemic knowledge updated. See Popper (1963).

- 31 In the case of legislatures, this is obvious; the legislative edicts are imposed on the population as a whole and are backed up by legalized force.
- 32 Devins et al. (2015, p. 624) give a very compatible description of the legal system: “Laws are set in motion and catapulted into an ever-evolving dance between the legal system and the entities it regulates. In turn, this dance creates ever-new ‘opportunities’ in an ever-changing but unintended adjacent possible [i.e., unrealized but realizable system states] into which the legal system evolves and creates yet further adjacent possible opportunities. Laws are ‘used’ for purposes not intended or envisioned by those creating the laws. Often without intent or foresight, this evolution creates its own future possibilities and then expands into them. Rather like jazz or improvisational comedy, the system enables that which it becomes.”
- 33 In the extreme, as Hobbes (1668, p. 68) put it, “the power of the mighty hath no foundation but in the opinion and belief of the people”.
- 34 The subject of constitutional constraints on legislation is a huge one, far beyond the range of this paper. It is worth pointing out, however, that a constitution becomes less of a binding constraint over time than it may appear. According to Devins et al. (2015, p. 629): “We assert that the history of the United States Constitution, and its gradual failure, provides a compelling demonstration that design does not work. Power structures, institutions, and people will find ways to subvert the initial intent behind institutions in furtherance of their own interests.”
- 35 As Bastiat (1848, p. 140) put it: “The unfortunate state, like Figaro, knows neither to whom to listen nor where to turn. The hundred thousand tongues of press and rostrum all cry out to it at once: ‘Organize labor and the workers.’ ‘Root out selfishness.’ ‘Repress the insolence and tyranny of capital.’ ...”
- 36 See Wohlgemuth (1999).
- 37 Professional lobbyists can be much less attentive to voter preferences than can legislators, and this may well be a significant factor in accounting for the bias in legislation toward influential interest groups, a hallmark of “crony capitalism”.
- 38 There is more than a sliver of truth in the quip (usually ascribed to H. L. Mencken) that a politician is an animal which can sit on a fence and yet keep both ears to the ground.
- 39 Constituent preferences for such (abstract) goals as “economic equality”, “economic justice”, “a level playing field”, and “keeping undesirables out of the country” are loudly and unambiguously expressed, and do not constitute much of a problem for legislators to know them. And constituents, lacking (like most everyone else, including legislators) any coherent theory of society, think that they know the seemingly obvious concrete goals to pursue in order to realize these overarching goals: tax the rich, increase welfare, set minimum wages, subsidize local industry, impose tariffs, build a wall. And there is no big problem for legislators to know that constituents want these sub-goals pursued; indeed, they often agree that these are valid sub-goals for achieving the more abstract goals. What the constituents (chronically) do not know is that the obvious-seeming sub-goals are rarely, if ever, effective steps toward realizing the overarching goals. And not only do the sub-goals not work well, they in addition tend to have unintended consequences that can make things worse for some of those demanding constituents. According to Martin (2010, p. 236): “Politicians of all sorts *are* subject to popular control. But that control itself is exercised by those who have *no greater knowledge* of the conditions of the extended order than do the politicians.”
- 40 Martin (2010, p. 240) correctly points out that “the extended order, by default, does not offer tight feedback [to policy-makers]”, given that what he means by “tight feedback” is real effects such as scarcities. He does insist, however, on the importance of ideology in politics (p. 237): “The mental models that people have about society determine what sorts of arguments are valid or invalid when discussing policy options.”
- 41 At any time there may be, and often is, more than one dominant ideology (or at least family of ideologies); currently there are two major ones, “the right” and “the left”. These have different ideas concerning which areas legislation should address and the extent to which legislation should intrude into private life, but both are in general agreement that legislation of some sort is an appropriate way to address perceived social problems.
- 42 As Higgs (1991, p. 12) points out, “The world of 1901 differed in many pertinent ways from the world of 1989. Among other differences, people at the two dates had quite different ideas about what they wanted government to

do. In the United States in 1901 many people still thought in terms of a variant of classical liberal ideology. ... In 1989, in contrast, most Americans had relatively inflated ideas about the range of social and economic 'problems' they wanted the government to 'solve'."

- 43 There is no suggestion here of a deterministic relation between ideology and legislation. As Letwin (1965, p. 54) notes, a legislature "is not a factory that mechanically converts opinion into statutes". The effect of any particular external ideology (which legislators themselves may share) is but one input (although a significant one) alongside the personal preferences of legislators and lobbyists into the systemic processes which produce legislation.
- 44 Higgs (1987, pp. 71-72) describes post-crisis ideological change as follows: "Suppose, for example, that in a great social crisis a command-and-control system displaces the free market. Experience under the new regime will generate learning of several kinds. To some extent government planners and bureaucrats will improve their means of manipulating the economy ... These improvements make the controls less obnoxious to aggrieved parties ... Citizens also learn that some of their prior beliefs about the impossibilities or dangers of governmental control now appear groundless ... Many of the conservatives' stock warnings about the prospective horrors of one thing leading to another are perceived by the masses as well as the elites as overdrawn ... Conceivably, then, ideological learning makes a discrete leap as a result of social crisis and the attendant expansion toward Big Government."
- 45 There is a large literature on what is called "pork-barrel politics" and "special-interest politics" which examines the stratagems by which legislators and lobbyists can maneuver and lobby to have inserted into legislative packages legislation benefiting targeted parties. See, for example, Buchanan & Tullock (1962), Ferejohn (1974), Stockman (1975), Shepsle & Weingast (1981), and Evans (1994). Such legislation, once in effect, creates a constituency for its continuance which has a strong incentive to resist any efforts at repeal. Tullock (1975) has labelled this phenomenon "the transitional gains trap". Selectorate theory addresses similar issues from a wider perspective in terms of the maintenance of winning coalitions, where, especially in democracies where the winning coalition is a relatively large portion of the electorate, the maintenance of a winning coalition requires a significant provision of so-called public goods in addition to private goods distributed to elites and insiders. See Shirk (1993) and Bueno de Mesquita et al. (2003).
- 46 This is not to say that survival and growth are assured. It is possible, in crisis situations, that the dominant ideological belief in the legitimacy of the system can change rapidly, such that the system cannot adapt (or cannot adapt quickly enough) to its new environment. See Linz (1978) for an extended discussion of the breakdown of democratic systems.
- 47 In their words, (p. 131): "knowledge generated in the political context may enable individuals to survive in the competitive environment of politics, but it does not lead them to exploit the opportunities for gains from economically beneficial trades and eradicate economic inefficiencies ... The persistence of economically inefficient policy is not an illusion because it is possible for politically efficient policies to be economically inefficient. Whereas within a market system technologically possible projects are subjected to the economic test of profit and loss, the economic test of profit and loss is not employed in assessing political choices."
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