

Constitutional Choices and the Performance of Presidential Regimes

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ABSTRACT

Politicians and academics alike agree that the design of political institutions is important in shaping policy decisions and the nature of political competition. This paper focuses on a set of issues that have been points of intense debate and conflict in the design of constitutions in newly democratizing countries during the 1980s and 1990s. First is how the electoral systems for the executive and legislative branches interact to encourage or discourage partisan support for the president. Whereas most studies of electoral systems focus on methods of electing legislatures, I direct attention to the electoral formula for presidential elections and the relative timing of elections for the executive and legislature. I conclude that plurality elections for the president and concurrent legislative elections tend to encourage partisan compatibility between the branches more than majority run-off elections for the president and non-concurrent legislative elections. The second part of the paper shifts attention to the constitutional powers over legislation afforded to presidents, regardless of partisan support, and the effects of these powers on bargaining and compromise between executives and legislatures. I examine, in turn, decree authority, agenda authority, and veto authority. The conclusion is that legislative procedures that allow presidents to implement policy decisions unilaterally generate more conflict between presidents and legislatures than those that encourage debate and negotiation prior to implementation.

Key Words: constitutional choices, electoral systems, presidential power

Introduction

The formal rules of political competition and procedure have direct impact on the performance of political systems. This paper discusses the effects of constitutional design on relations between the executive and legislative branches of government in regimes with independently elected presidents. Specifically, I focus on two general issues on which political science can contribute some insight:

- ◆ elements of electoral systems that affect the likelihood of partisan compatibility between the president and legislature; and
- ◆ formal powers over legislation vested in the office of the presidency itself, which are relevant to policymaking even independent of the actual level of partisan support the president maintains in the legislature.

I argue that the method of presidential election, and the relative timing of presidential and legislative elections, can have a substantial impact on the likelihood of divided government. I also suggest that, even apart from the issue of partisan compatibility, legislative procedures that allow either branch to implement or fundamentally alter policy decisions in lieu of action by the other branch, are likely to discourage negotiated solutions and encourage conflict between the branches.

Part I: Electoral Systems: Partisan Support for the President

A central characteristic of presidential government is that it allows voters the option of expressing separate preferences for leadership of the two elected branches of government. Unlike parliamentarism, in which a voter's single ballot for the assembly is inherently also a vote for who will lead the executive, in presidential systems voters can distinguish their choice in one branch from their choice in the other. If the executive and legislative branches of government fulfill different functions—the former, for example, representing a broad national policy agenda and the latter representing the diversity of society—this characteristic may be intuitively appealing. The rationale is that the democratic character of a regime is enhanced to the extent that voters are allowed maximum discretion to

express their preferences over political representation. On the other hand, separate elections also imply the potential for voters' collective decisions to be dissimilar, and even conflictual. The potential for incompatibility between executive and legislature increases when elections for the two branches are held at different times, and possibly even on dissynchronous schedules, as is the case in a number of regimes with elected presidencies. Part I of this paper focuses on two aspects of electoral systems that systematically affect the extent of partisan support presidents enjoy in legislatures: the electoral formula for the presidency, and the electoral cycle.

Executive Electoral Formula

Plurality Versus Majority Run-Off

Two types of formulas account for most presidential elections: plurality, and majority run-off (MRO).¹ Under plurality rule, the candidate with the most votes is elected, period. Under MRO, a majority of votes is required for election in the first round. If no candidate secures a majority, then the top two candidates compete in a run-off election. The most important difference between these systems is that the MRO format encourages a greater number of presidential candidates to compete than does plurality. Under plurality rule, the threshold for success in the general election is high—one must win first place. Therefore, the best strategy for a presidential aspirant who cannot reasonably expect to win the most votes is to enter a pre-electoral coalition with a viable candidate, in exchange for whatever concessions can be negotiated. Under MRO, on the other hand, the threshold for electoral success is lower. One need finish only second in the first round to survive. Moreover, given that electoral coalitions can be re-negotiated after the first round in anticipation of the run-off election, even non-viable candidates must compete in the first round in order to establish formally their electoral strength and the value of their second round endorsement.

These two effects are reinforcing. The more candidates enter in the first round (perhaps to establish their “bargaining currency”), the greater the expected fragmentation of the vote among candidates. The greater the

1 The US president is still elected indirectly, through an electoral college. In the 20th Century, however, the electoral college has never failed to select the plurality vote winner. In Bolivia, if no candidate wins a majority of the popular vote, the president is selected by a joint session of Congress.

vote fragmentation, in turn, the lower the hurdle to winning second place, and thus to entry into the second round of competition. MRO, then, can be expected to encourage competition and occasional success by outsider candidates, who would have difficulty in putting together credible campaigns under plurality competition. Three cautionary examples of this phenomenon are the elections of Fernando Collor in Brazil in 1989, Alberto Fujimori in Peru in 1990, and Jorge Serrano in Guatemala, also in 1990. Each of these politicians:

- ◆ campaigned as a political outsider, explicitly running against the traditional party system;
- ◆ ran under the banner of a new political party that was initially little more than a vehicle for its candidate's presidential campaign;
- ◆ survived to the second round of a MRO election by winning less than one third of the first-round vote in a divided field of candidates;
- ◆ quickly confronted intransigent opposition from the legislature that evolved into a constitutional crisis.

Collor was impeached by Congress in 1992 on corruption charges, although his conviction was later overturned by Brazil's Supreme Court on the grounds that the congressional investigation violated norms of due process. Fujimori ended his deadlock with the Peruvian Congress in 1992 with a self-coup, in which the president ordered the military to close the legislature and arrest his opponents. Under international pressure, Fujimori later agreed to hold elections for a new assembly, which also drafted a revised constitution in 1994. Serrano attempted a self-coup in the style of Fujimori, but was abandoned by the military and removed from office in 1994.

It is not the case, of course, that all MRO presidential elections generate victories by outsider candidates, or even that viable outsider candidacies are necessarily undesirable. The extent to which MRO encourages and rewards outsider candidacies depends on the strength of the existing party system. In each of the cases cited above, voter disillusionment with the traditional parties preceded the rapid rise of outsider candidates (Schmidt, 1996). One could also argue that the very permeability of MRO elections to new parties and outsider candidates is an attractive feature in that it discourages the ossification of the party system and increases competitiveness. At the very least, however, it is important to recognize that MRO does this by encouraging candidate entry into presidential contests and correspondingly by

decreasing the incentives for pre-electoral coalitions among presidential aspirants and their parties.

As a result of the incentives discussed above, MRO presidential elections generate greater fragmentation of the first round vote among presidential candidates than do plurality election. Data from 54 elections across 13 countries show that the mean effective number of presidential candidates winning votes was 3.8 under MRO, as opposed to 2.8 under plurality.² This has important implications for the legislative party system as well, for two reasons. First, where executives and legislatures are both popularly elected, executive elections tend to be more salient to voters than legislative elections.³ As a result, the effects of institutional rules governing executive elections tend to spill over into legislative party systems. Second, where presidential and legislative elections are held at the same time, legislative elections are almost always held concurrently with the first round of MRO presidential elections, rather than the second round.⁴ The result is that legislative party systems tend to mirror the fragmentation of presidential contests. Where plurality elections encourage broad coalitions at the presidential level, legislative party systems are less fragmented. Where MRO encourages more fragmentation in presidential campaigns, on the other hand, legislative party systems reflect this pattern as well.

There is particular irony here, in that one of the principal arguments in favor of MRO has been that it would ensure the election of a president with a mandate from a majority of voters (Jones 1995). To the extent that MRO contributes to fragmentation of the legislative party system, however, it can make legislative coalition building more difficult, thus undermining the ability of presidents to act (Shugart and Carey 1992).

Alternative Electoral Formulas for Executives

It is important to note that there is no reason for those designing rules

2 Effective number of parties (N) is the standard index of party system fragmentation, developed by Laakso and Taagepera (1979). It is calculated as: $N = 1/v_i^2$, where v_i is the proportion of the vote (or seats) won by the i^{th} party.

3 There are a number of plausible reasons for this—that voters perceive the executive as the more important branch, that more money is spent on executive campaigns, that there are economies of scale in transmitting information about executive candidates.

4 The single exception to this of which I am aware is the Ecuadorian election of 1979, in which congressional elections were held concurrent with the second round of presidential balloting.

of electoral competition to regard plurality or MRO presidential elections as the only viable alternatives. Plurality elections have the attractive property of encouraging broad pre-electoral coalitions, but they are widely distrusted on the grounds that, if in a particular circumstance such coalitions do not form, plurality can allow the narrow electoral victory of a candidate supported by only a minority of voters—and perhaps opposed by a clear majority. Salvador Allende's victory with 36.6% of the vote in Chile in 1973 is often cited in this regard. Even if the goal of a two-round system is to avoid such an outcome, however, it does not necessarily follow that the requisite vote share for a first-round victory must be 50%.

For example, Costa Rican presidential elections since 1949 have required that the first-place candidate win at least 40% of the vote in the first round, or else a run-off election ensues. This first-round threshold has been perceived as attainable, and so has encouraged broad first-round coalitions, with the result that Costa Rica has had a first-round winner in all eleven presidential elections since. Perhaps more strikingly, these coalitions have depressed electoral fragmentation sufficiently that nine of the eleven presidential victors have actually won absolute majorities. Thus, Costa Rica has insured itself against a first-round victory by a plurality winner with an excessively low vote share, but without encouraging the level of electoral fragmentation associated with a standard MRO system.

In 1994, Argentina replaced its electoral college for the presidency with a system similar to Costa Rica's, although somewhat more complex. A first-place candidate with:

- ◆ more than 45% of the vote, or with
- ◆ more than 40% of the vote and at least 10% more of the vote than the second-place candidate

wins in the first round; otherwise there is a run-off election. In the only election held under this rule, in 1995, Carlos Menem won reelection to the presidency with an absolute majority.

In both the Costa Rican and Argentine cases, lowering the first-round threshold for victory suggests a compromise between plurality and MRO formats. Nevertheless, such systems do not completely preclude the possibility of narrow victories by minority candidates. Moreover, the level of the threshold is essentially arbitrary. Consider, for example, the distributions of votes across candidates in the hypothetical presidential elections shown in

Table 1. Election 1 would produce a first-round winner in Costa Rica, but not in Argentina. Moreover, in Argentina, Election 2 would produce a first-round winner whereas Election 3 would not, despite the fact that the first-place candidate's claim to have resoundingly defeated all opponents is more plausible in the latter election.

Table 1: Vote distributions in hypothetical presidential elections

Candidate	A	B	C	D	E
Election 1	40%	39%	21%	—	—
Election 2	45%	44%	11%	—	—
Election 3	44%	35%	9%	7%	5%
Election 4	40%	25%	15%	12%	8%
Election 5	40%	31%	15%	8%	6%

The critical point is that in determining victory, we are interested in two things: first, the absolute vote share of the first-place candidate; and second, the relative scope of victory over other contenders. A higher absolute share and larger the relative victory ought to count toward first-round victory. If that is the case, then there is no reason to set a fixed threshold for first-round victory to begin with. Rather, the electoral formula for executive elections could simply weight the extent to which the leading candidate falls short of a majority against the extent to which she defeats the other candidates in the field. Such a formula, known as the Double Complement Rule (DCR), has been proposed by political scientists, but has yet to be adopted in practice (Taagepera and Shugart 1994; Shugart and Carey 1992). Under the DCR, the leading candidate (v_1) wins in the first round if the extent by which she falls short of a majority is less than half the extent by which the second place candidate (v_2) falls short. Arithmetically, the first place candidate wins if:

$$50\% - v_2 > 2(50\% - v_1).$$

Under this rule, a minority candidate wins in the first round only if she is significantly stronger than her competitors. Referring back to Table 1 above, the distribution of votes in Election 1 would require a run-off election, whereas an election with a larger margin of victory for the first-place candidate, as for example in Election 4, would allow for a first-round victory. In the latter case, however, if Candidate A were highly objectionable to her opponents, there would be strong incentives for the opponents to coa-

lesce prior to the first round, unlike under MRO. Finally, the distribution of votes in Election 5, which would generate a first-round victor under the Costa Rican format, would require a run-off under the DCR, on the grounds that with such a divided field of candidates, a nine-point margin over the second-place candidate should not generate a first-round victory.

The DCR is meant to sustain the coalition-building incentives of plurality rule without the risk of allowing a weak minority candidate a victory over a divided field. What is particularly attractive about this rule is that it does not require the establishment of arbitrary thresholds for victory in the first round. Instead, two critical characteristics of each electoral outcome determine whether a run-off is required: the first-place candidate's absolute vote share, and the margin of victory over the remaining candidates.

Summing Up

The choice of electoral formula for the executive has an important impact on the likely fragmentation of the vote in presidential elections. This, in turn, has direct effects on the viability of outsider candidacies and on the fragmentation of the legislative party system. Both of these, in turn, affect the prospects for conflict between executives and legislatures. MRO presidential elections encourage greater fragmentation of both presidential vote and legislative party systems than do plurality elections. MRO and plurality formulas, on the other hand, are not the only options available. In particular, the DCR may encourage broad electoral coalitions, as plurality elections generally do, without the consequent risk of plurality elections—narrow victories by candidates with minority support.

Electoral Cycle

Party System Fragmentation

Another critical feature of institutional design affecting relations between the branches is the relative timing of presidential and legislative elections. I refer to this as the electoral cycle. As suggested above, the fragmenting effect of MRO presidential elections on the legislative party system is particularly relevant when elections for the two branches are held at the same time. Across political systems, however, there is enormous variance in electoral cycles. In many cases, presidential and assembly elections are always concurrent, with members of both branches serving simultaneous terms (e.g. Costa Rica, Venezuela, Uruguay, Nicaragua). In others, there is an alternating pattern of concurrent elections and assembly mid-term elec-

tions (e.g. United States, Philippines, Argentina). In still others, presidential and assembly terms are dissynchronous, leading to irregular patterns, with assembly elections occurring sometimes early in presidential terms and sometimes later (e.g. France, Korea since 1987, Chile since 1993, Russia).

Two related effects of the electoral cycle are important to the shape of party systems. First is the effect, in conjunction with executive electoral formula, on party system fragmentation; second is the effect on partisan support in the legislature for the president. The combined effects of electoral formula for the president and electoral cycle are illustrated by the data on party system fragmentation across thirteen countries in Table 2.

The table illustrates a number of points. First, as discussed above, the effective number of presidential candidates is substantially higher under MRO than plurality elections. Second, the effects of executive electoral formula on the legislative party system are greater when elections are concurrent than when they are non-concurrent. In plurality systems, broader coalitions behind presidential candidates translate into less fragmentation of the vote among legislative parties. Voters are most likely to cast legislative votes for the slate of candidates associated with their presidential choice.⁵ Thus, fragmentation of the legislative party system is lowest under the plurality/concurrent format, even with proportional representation elections to the assembly. Under the plurality/non-concurrent format, the tendency toward broad coalitions is present in presidential elections, but is naturally mitigated for assembly elections when these are held at different times, and consequently on their own terms. In contrast to both plurality formats, highly fragmented presidential contests under MRO generate highly fragmented legislative party systems under concurrent and non-concurrent formats alike.

Partisan Support for the President

The other important effect of the electoral cycle is on partisan support for the president in the legislature. The fragmentation of the legislative party system is important here, of course. The more fragmented the party system, the lower the expected share of legislative seats held by the presi-

5 In Bolivia, Honduras, Uruguay, and intermittently the Dominican Republic, ballots have been "fused," meaning that voters cast a single vote for president and congress. Even where ticket splitting is possible, however, the parties of presidential winners tend to win inordinate vote shares under concurrent elections.

Table 2: Electoral Formula, Cycles, and Party System Fragmentation

Electoral Formula For President	Concurrent Elections	Non-Concurrent Elections
Plurality	$N_p = 2.8$	$N_p = 2.7$
	$N_s = 2.8$	$N_s = 5.0$
MRO	$N_p = 3.9$	$N_p = 3.7$
	$N_s = 4.2$	$N_s = 5.0$

N_p : Effective number of candidates in presidential election (first round, if MRO).

N_s : Effective number of seat-winning parties in lower chamber of legislative assembly. The number of seat-winning parties is used, rather than the number of vote-winning parties, because vote distribution data were not available for all elections in all countries. However, these results are consistent with those from a previous, smaller data set, in which the distribution of votes was used.

Data from 54 presidential elections and 65 assembly elections in the following countries: Brazil, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, France, Guatemala, Nicaragua, Peru, Poland, Portugal, Venezuela. Data from countries using SMD plurality elections for the legislative assembly are not included, because of the tendency of this system to depress the number of parties in assembly elections, independently of the effects of the electoral formula for president and the electoral cycle.

dent's—or any other single—party. Yet the effects of the electoral cycle are even more precise. One reason is voters' tendency to cast straight partisan ballots for both president and legislature when elections are concurrent, with the result that parties running strong presidential candidates are rewarded in the legislature. The other reason has to do with cycles of presidential popularity. Presidents tend to enjoy their greatest popularity early in their terms during their "honeymoon" period, and to experience decreasing levels of popular support thereafter.

Matthew Shugart (1995) has shown that declining support for the president's party over time is a characteristic of non-concurrent legislative elections across the whole range of electoral cycles. Under concurrent elections, the party of the the winning presidential candidate can expect, on average, to increase its share of legislative seats by around 7%. If a non-concurrent legislative election were held immediately after the election of a new president, the expected increase in share of assembly seats for the new president's party jumps to 19%. After that point, however, the expected gains for presidential parties decline in a linear fashion over time, dropping by more than 4% from the "honeymoon high" for each tenth of the presi-

dent's term that expires prior to the legislative election. Thus, by the presidential mid-term, the expected change in the president's party's seat share is negative, and even greater losses are expected later in the term. Shugart's estimates, of course, are the result of regression analysis, and the actual electoral data vary around these expectations. Some presidential parties have experienced losses in early-term legislative elections, and some have experienced gains late in the presidential term. These occurrences are rare, however, and overall, the temporal pattern Shugart shows, along with the strength of his statistical results, are striking.

Dissynchronous Cycles

The temporal effect is particularly important with regard to dissynchronous electoral cycles, where presidential and legislative terms are of different lengths. In France, for example, the seven-year presidential term and five-year parliamentary term have been critical in determining the nature of relations between the president and parliament. President Mitterand used his authority to dissolve parliament and call elections during both of his honeymoon periods, securing large gains for the Socialists in each case. But five years into both his terms, the Socialists endured significant losses in parliament, ushering in two-year periods of *cohabitation*, marked by strained relations between the president, on the one hand, and the cabinet and parliament, on the other. President Chirac who, upon election in 1995, inherited a secure assembly majority as a result of Mitterand's late-term losses in 1993, did not call for honeymoon elections. By April of 1997, Chirac apparently concluded that his copartisans in the assembly were experiencing steady erosion of support. As a result, he has called parliamentary elections a year before the constitution requires. Shugart's data and analysis would generate an expectation that Chirac's supporters should experience neither large gains nor large losses in elections roughly one-third of the way through the president's term. If that is the case, and Chirac holds his majority in the 1997 elections, then France would avoid *cohabitation* in the latter part of Chirac's term, and could expect concurrent elections for both president and parliament in 2002.

Where cabinets are responsible exclusively to presidents, rather than to assemblies, the implications of dissynchronous electoral cycles may be even more dramatic because there is no institutional incentive for the formation of a cabinet acceptable to the assembly majority. In Chile, a 1994 amendment to the Constitution established a six-year presidential term, but left

assembly terms at four and eight years, for the lower and upper chambers respectively. As a result, some presidents will benefit from a concurrent electoral format, but will subsequently face another round of assembly elections four years into their term, when their party's prospects are much worse. Other presidents will be elected non-concurrently, but will subsequently face assembly elections two years into their terms. The nature of the electoral cycle, therefore, suggests that the prospects for partisan support in Congress are quite different for alternate presidents. But the difference is completely arbitrary—the result of a dissynchronous electoral cycle.

As a final example, consider Russia, which has a five-year presidential term and four-year term for members of the lower house of the legislature, the Duma. The president was first popularly elected in 1991. The first Duma was elected, in 1993, to a special two-year term,⁶ after which the next was elected in 1995, followed by a second presidential election in 1996. The sequence of past and anticipated elections is shown in Table 3.

Table 3: The Dissynchronous Russian Electoral Cycle

Presidential Election	Duma Election (Type)
1991	1993 (mid-term) 1995 (late-term)
1996	1999 (mid-term)
2001	2003 (mid-term)
2006	2007 (honeymoon)
2011	2011 (concurrent) 2015 (late-term)
2016	

The current Russian regime was born of a constitutional crisis between president and legislature that ended in a Fujimori-style self-coup, and persistent conflict between the branches has continued in the early years of the 1993 Constitution. It is by no means the case that constitutional design alone

⁶ under the transitional clauses of the 1993 Constitution, which was ratified simultaneously by referendum.

accounts for this conflict, but neither have the formal rules of political competition contributed to reducing the tension between the branches. With particular regard to the electoral cycle, the first two legislative elections held under this system occurred at times when Yeltsin's supporters could benefit from neither presidential coattails, nor a recent electoral victory by their champion. Yeltsin has contributed to this effect, of course, by refusing to form an official party himself. Overall, the effect of this cycle appears to have been to strengthen presidential opponents, including the post-communists and Vladimir Zhirnovsky's LDPR, in both Duma elections.

Looking ahead, the next scheduled Duma election, in 1999, will fall near the middle of Yeltsin's current term, and the next, in 2003, near the middle of his successor's. Whomever is elected president in 2006, however, will enjoy a honeymoon Duma election the following year. Finally, the year 2011 will bring both presidential and Duma elections concurrently, if the pattern of regular elections survives that long, before the dissynchronous cycle begins again. Russia's projected pattern of mid-term, late-term, honeymoon, and concurrent elections is even more varied than Chile's. Like Chile's, it can be expected to provide distinct advantages to some presidents and disadvantages to others in a completely arbitrary manner, depending upon at what point in the cycle a president is elected.

Summing Up

The electoral cycle is a function of the relative length of presidential and legislative terms, and of the sequence by which these offices are established and filled. Issues of term length and origin are frequently subject of extensive bargaining at the creation of new political regimes, but these negotiations often revolve around the immediate political and career interests of incumbent politicians and aspirants to office, rather than around the nature of the electoral cycle. The electoral cycle, however, has predictable and important long-term implications for the relations between the executive and legislative branches.

Either a concurrent or a honeymoon electoral format is more likely to generate strong partisan support for the executive in the legislature than a format with regular mid- or late-term elections. If unified government and consistent legislative support for executive policy proposals are desired, then either one of these two electoral cycles should be adopted. Conversely, if the goal of constitutional designers is to maximize the effective check that the legislature provides on executive power, then mid-term elections

may well be desirable. There is no plausible argument, however, for a dis-synchronous electoral cycle—one that effectively creates different prospects for the partisan support of different presidents as a pure derivative of relative term lengths. The establishment of a dissynchronous electoral cycle should be avoided if possible.

Part II: Presidential Powers Over Legislation

Partisan support in the legislature is critical to the effectiveness of presidents in realizing their agenda. Indeed, dominance over policymaking is frequently attributed to presidents with relatively miniscule formal authority over standard lawmaking procedures, provided that their party or coalition controls the legislature and that the president is the effective leader of his party (Kelley 1973; Levine 1973; Shugart and Mainwaring 1997). In such cases, it is not the formal authority of the presidency that accounts for executive influence, but rather the coincidence of the presidency with party leadership in the same individual. In other cases, however, formal authorities are enshrined in the office of the presidency, and sometimes elsewhere in the executive, independent of partisan support. The specific nature of these powers varies considerably across presidencies. In this section, however, I focus on three common types of presidential power over legislation: decree, agenda-setting, and veto authority. My central argument is that formal authority that allows either the legislature or the executive to implement policy decisions without securing the consent of the other branch encourages intractable conflict between the branches.

Decree Authority

Types of Decree

I define decree as follows: the authority of the executive to establish law in lieu of action by the assembly. Thus, decree does not refer to executive actions governing the administration of law that has been set by the assembly—what are called executive orders or rulemaking authority in many regimes. On the other hand, decree can include executive policy initiatives that eventually require legislative ratification, provided the initiatives go into effect without prior legislative action. Even this seemingly straightforward definition of decree encompasses significant empirical complexity. Empirically, constitutional decree authority of executives varies according to whether executive proposals

- ◆ are effective as policy immediately (yes/no); and
- ◆ become permanent law even without legislative action (yes/no).

The four possible combinations form a 2X2 matrix, shown in Table 4, with empirical examples in each box. The formal procedures attached to decree authority are important to the incentives for compromise between the executive and legislature over policy because they determine whether there is an opportunity to debate a measure before it becomes law, and whether the assembly must take explicit action to rescind the measure.

Table 4: Variants of Constitutional Decree Authority

		Decree Becomes Permanent Law	
		YES	NO
Decree In Effect Immediately	YES	Russia (Art.90) Peru'93 (Art.118-9) Colombia'91 (Art.215)	Brazil'88 (Art.62) Italy (Art.77) Colombia'91 (Art.213) Argentina'94 (Art.99.3) France (Art.16)
	NO	Ecuador (Art.65) France (<i>guillotine</i>) (Art.49.3)	NA

At the top left of Table 4 is the prototypical decree authority whereby the executive issues a proposal that becomes permanent law immediately and without any legislative action. In these cases, the assembly may not even have an opportunity to debate the measure before it is brought to their attention. Executives can effectively present policy initiatives under this format as *fait accompli*. Moreover, cases in this cell indicate that only through the passage of new legislation (or a new decree) can the policy be altered. Apart from regimes in which the executive is not selected through democratic means, very few constitutions grant their executives such power, and those that do generally include some constraints on the policy jurisdictions in which executives may exercise decree.

The Colombian president may use decree to “restore economic order,” and the Peruvian “on economic and financial matters, when so required by the national interest.” Presidents in both countries have interpreted these powers expansively in setting economic policy—for example, changing tax

rates, privatizing public assets, and transferring assets to regional governments (Archer and Shugart 1997; Schmidt 1998). Decree in Russia is constrained not by policy area, but by the limitation that presidential edicts “cannot contradict the Constitution of the Russian Federation or Federal Law.” In the early years of the new Russian regime, President Yeltsin has used decree authority under Article 90 even more aggressively than his counterparts in Peru and Colombia, both to set national policy and to control the timing of regional elections, which in turn determine the composition of Russia’s upper legislative chamber. Presidential decrees have been routinely challenged before the Constitutional Court by the Russian Duma as exceeding the scope of presidential authority (OMRI 1996; OMRI 1997b). Thus far, the court has tended to support the executive (OMRI 1997a). It is important to note, however, that the scope of presidential decree authority in Russia in the mid-1990s may be a product of the legal vacuum that accompanied the establishment of a new regime and constitution at the end of 1993. The Russian president can exercise decree where the law and constitution are silent, but not to overturn existing law as in Colombia and Peru. As the body of Russian federal law grows, including the enabling statutes governing the exercise of constitutional authority, the range of discretion within which the president can act under Article 90 can be expected to shrink. In addition, Yeltsin’s successor as well as subsequent presidents will face Constitutional Courts appointed largely by their predecessors, whereas Yeltsin himself has nominated every member of the current court. For these reasons, it is reasonable to expect that the court will be increasingly willing to check Russian decree authority over time (Parrish 1998).

The top right box in Table 4 represents *provisional* decree authority in which executive proposals take effect immediately, but lapse after some designated period unless ratified by the legislature.⁷ In Brazil, presidential decrees lapse after thirty days; in Colombia decrees other than those “to restore economic order” lapse after a maximum of 180 days. As with the upper-left cell, provisional decrees may be implemented without any prior opportunity for the assembly to debate the matter at hand. However, the executive cannot ensure that the new policy will survive after the initial period has ended.

⁷ This type of decree authority is not unique to presidential government. For example, the Italian cabinet can issue decrees with immediate force, but which lapse after 60 days if not ratified by parliament (Art.77).

Whether such a provision is effective for initiating long-term changes even against legislative opposition depends in part on whether the decrees may be reissued at the end of the period. The reiteration of decrees has been a matter of ongoing constitutional controversy in Brazil. Judicial precedent currently holds that the president can reissue decrees on which Congress has not acted, but cannot reissue decrees Congress has explicitly rejected (Power 1998). This precedent, however, begs the question of whether a president can marginally alter the content of a decree that has been rejected and issue that policy by a new decree. Such a strategy would appear to place courts interminably in the position of arbitrating how much a decreed policy must be altered before it is no longer the same decree. It is difficult to imagine that judgments of this nature could be made on anything but a case-specific basis, which implies perpetual court involvement in arbitrating challenges to executive policy initiatives.

The bottom left of Table 4 describes *delayed* decree, whereby executive proposals do not take effect immediately, but become law *unless* the legislature acts to reject them. In Ecuador, for example, the president can propose legislation, declaring it “urgent,” and if Congress fails to act within fifteen days, the proposal becomes law. Such a procedure is decree in that executive proposals become law in lieu of legislative action. In France, where executive authority is divided between the president and a government responsible to parliament, the constitution provides the premier with a form of delayed decree authority commonly known as the *guillotine*, whereby if parliament rejects the government’s proposal, then the government falls; but if parliament takes no action, the proposal becomes law. By linking confidence in the government to the fate of a particular executive proposal, the *guillotine* clearly raises the stakes for both the premier and members of the parliament relative to standard legislative procedure. Unlike confidence vote procedures in most other parliamentary systems, however, the *guillotine* also allows assembly members to disassociate themselves from responsibility for executive proposals by taking no action and allowing the proposals to become law. Indeed, John Huber (1998) shows that the *guillotine* has been invoked much more frequently during the rare situations of minority government in France than when the government enjoyed majority support in parliament, suggesting that premiers are more inclined to rely on the procedure when they cannot rely on legislative support.

Delayed decree differs importantly from the forms of decree described in the top row of Table 4 insofar as policy changes cannot be imposed with-

out time for debate and negotiation between the branches. Executive proposals that run counter to the expressed preferences of legislative majorities can be rejected. Under such a format, however, legislative inaction is equivalent to acceptance of executive proposals. This characteristic can allow the assembly to accede to executive proposals for which individual legislators do not want to take direct responsibility simply by failing to act.

Finally, I am aware of no cases that would fall in the lower right box of Table 4, under which executive policy initiatives would not gain legal force until after a specified discussion period, and would lapse if not converted into law by the end of a given time after taking effect.

Implications of Decree

The use of decree authority has been central to conflicts between legislatures and executives that have generated constitutional crises in a number of countries. Decree is particularly contentious when policies can be implemented immediately.

In the first years of Fujimori's administration in Peru, the president's increasing reliance on decree in the face of legislative opposition to his policy proposals prompted Congress to pass legislation clarifying and constraining the scope of executive decree authority (Schmidt 1998). Before the bill could be passed over an expected presidential veto, Fujimori called out the tanks and closed Congress.

In Russia, decree was a focal point of the conflict between the branches even before it was enshrined in the 1993 Constitution. The highly fragmented Russian Congress of People's Deputies initially delegated sweeping decree authority to President Yeltsin during the Soviet constitutional crisis in late 1991. But Yeltsin's use of decree to enact broad economic reforms and abolish the Communist Party immediately prompted challenges from the legislature. Throughout 1992 and 1993, Russia experienced a "war of laws" in which presidential decrees were implemented, then overturned by legislation, which in turn was supplanted by subsequent decrees (Parrish 1998; Remington, Smith, Kiewiet, and Haspel 1994). As in Peru, the president eventually prevailed in this "war" through the use of military force, rather than negotiation with the other branch.

Brazil has not suffered a coup since the return to civilian government in 1985, but it is noteworthy that President Collor, who relied heavily on decree to bypass congressional opposition from the beginning of his term, was impeached by Congress after serving a mere two years. Even apart from

Collor, Brazilian presidents have increasingly relied on decree to implement proposals that would not survive congressional debate. This pattern has fueled conflict between the branches without encouraging negotiation and compromise over policy. The Brazilian case also highlights a critical characteristic of provisional decree, which ostensibly does not allow presidents to make permanent policy changes unilaterally. If executive proposals take effect immediately, overturning them can entail substantial "clean-up" costs. That is, once a policy is set, there may be steep economic and/or political transaction costs to backing away from it, thus making it difficult for the legislature to let a decree lapse even if no majority favored it in the first place. The adoption of new currency systems, each accompanied by heterodox economic reform packages, by the successive administrations of Jose Sarney and Fernando Collor illustrates this point. Twice in the space of four years, Brazilian presidents justified the use of decree to impose currency and economic reforms on the grounds that prior bargaining could have led to panic in currency markets (Power 1998). Yet without prior negotiated support in the legislature, the economic reforms of both Presidents Sarney and Collor lacked legislative support, and were abandoned quickly once initial waves of popular support ebbed.

In sum, where constitutions provide presidents with decree, the use of this authority to avoid negotiation with legislative opponents has consistently been the subject of serious conflict between the branches. When decree is structured such that the executive can implement policy unilaterally, without the requirement of debate, potential amendment, or even implicit assent by the assembly, conflict between the branches has frequently evolved into regime crisis. Delayed decree authority, however, is rare among presidential systems, and has proven less problematic because of the built-in time period for debate.⁸

8 It is worth noting that delayed decree was not related to the 1996 conflict between President Bucaram and the Ecuadorian Congress that resulted in Bucaram's removal from office by Congress. Indeed, Bucaram complained bitterly of Congress' failure to pass legislation necessary to the implementation of his economic reform plan, and prior to his removal, made explicit concessions in the plan in an attempt to win legislative approval. Given the charges of corruption and incompetence that surrounded Bucaram's ouster, it is difficult to determine precisely how important conflict over policy was to the crisis. But it is fairly clear that delayed decree as provided by constitutional Article 65 was not relevant (Notisur 1997a; Notisur 1997b).

Agenda Authority

Decree authority is the most extreme manner by which executive policy proposals are advantaged in some regimes. It is possible, however, to provide executives with substantial ability to influence legislative outcomes without providing decree. In many systems, executives may make policy proposals that have privileged procedural status before the legislature, either because they must be considered within a limited time period; or there are limitations on the manner in which they can be amended; or the proposal determines the set of policy alternatives among which the assembly must choose; or some combination of these.

Consider the standard confidence vote procedure in parliamentary systems, by which the assembly's support or opposition to a specific executive policy proposal is bound to the survival or rejection of the incumbent government. Technically, this does not imply executive decree authority if the assembly must act for the proposal to take effect, but the executive's proposal does restructure the policy alternatives available to the assembly by precluding the maintenance of the existing status quo (current government, current policy). Instead, such a proposal forces the assembly to choose between the new policy or a new government (Diermeier and Feddersen 1995; Huber 1996). The confidence vote is a formidable policymaking tool because it constrains legislative choices over future policy alternatives—that is, over the policy agenda. Even within the context of presidential regimes, moreover, significant agenda authority may be vested in executives.

In most presidential systems, presidents are endowed with the ability to introduce legislation,⁹ and in many cases with the authority to require legislative action on proposals within a limited time, frequently two weeks or a month. This authority may allow executives to dominate the floor schedule of the legislature simply by generating a prodigious flow of proposals. Without accompanying authority to determine the available policy alternatives, however, it does not prevent the legislature from simply rejecting executive proposals outright. On the other hand, when executive agenda authority includes limitations on amendments or influence over what policy pertains

9 The United States is a rare case in which presidents do not formally have the right to introduce legislation, and so must rely on supporters in Congress to do so.

even if the legislature does not support the executive proposal, then executives can wield enormous influence over policy outcomes even in the absence of outright decree authority.

An Example of Agenda Authority: The Chilean Budget

Given the enormous range of specific agenda powers provided to various executives, I focus here only on one example that is particularly instructive because it illustrates all the aspects of agenda authority outlined above: presidential budget authority in Chile. The current Chilean constitution was written by the military government of General Augusto Pinochet well before the transition back to civilian government in that country. Many provisions of the constitution were explicitly designed to constrain the discretion of civilian politicians (Arriagada and Graham 1994; J.S. Valenzuela 1992). In economic policy, in particular, Pinochet and his advisors sought to minimize bargaining over spending decisions among legislative parties, and to limit congressional logrolling capacity in an attempt to guarantee fiscal austerity. Toward that end, the Constitution establishes strong presidential agenda control over the annual budget process, whereby the following holds:

- ◆ the president introduces the annual budget bill to Congress by September 30;
- ◆ Congress is allowed to amend each spending item within the budget downward only, and cannot transfer funds cut from one item to other areas of the budget;
- ◆ Congress must pass its version of the budget within 60 days, or else the executive's original proposal becomes law;
- ◆ only the executive may introduce legislation on spending or tax matters,
- ◆ thus prohibiting Congress from side-stepping the executive budget by introducing and passing supplementary spending bills.

The overall results of this procedure are twofold. First, relative to legislative budgetary procedures in other countries, in which the legislature's proposal and amendment powers are not so severely limited, the Chilean procedure constrains government spending levels. This is because *whichever* player prefers less spending on a particular budget item can always secure his ideal level. If the president prefers less than Congress, he can simply

propose his ideal level, which cannot be amended upward. If Congress prefers less, then whatever level the president proposes, Congress can always amend the item downward to its ideal. Most importantly, logrolling agreements between the two branches are discouraged because the proposal is not accepted or rejected as a package, but rather can be disaggregated into its component items and altered. Thus, Congress cannot credibly offer to accept higher levels of spending on some set of items that the president may want in exchange for a budget that includes higher spending on other items that Congress wants. If the president were to offer such a budget, Congress could simply amend the president's preferred items downward before passing the final version of the bill. Knowing this, the president should be reluctant to bargain with Congress over logrolls. In practice, this has been the case (Boeninger 1996; Baldez and Carey 1997).

The second general effect of the Chilean procedure is that it advantages the president relative to Congress in that it severely constrains congressional amending powers, and it establishes the president's proposal as the reversionary policy outcome—that is, as the outcome that applies if Congress does not pass a version of the budget.¹⁰ By making the president's proposal the reversionary policy, the Chilean procedure generates an enormous bargaining advantage for the president relative to Congress, even when Congress does act on the budget bill—which so far it always has. The president's ability to set the reversionary policy acts as another deterrent to logrolling agreements between the branches by reducing the incentives for the president to bargain extensively with Congress over the budget.

Both effects, spending constraint and presidential advantage, were fully intended by Pinochet's advisors in designing the constitution. They fully expected that the General would serve as president under the new constitution for at least eight years, even after the transition to civilian rule. This prospect, of course, was subsequently rejected by Chilean voters in a 1988 plebiscite. Since the transition to civilian government in 1990, ironically, the presidency has been controlled by Pinochet's political opponents, while his supporters have controlled only the upper chamber of Congress. Yet the impact of the budget procedure on policy has been substantial. First, Chilean budgets since the transition have been characterized by remarkable

10 In a strict sense, the Chilean budget could effectively be set by "decree" if Congress were to take no action at all on the president's proposal.

spending restraint, generating fiscal surpluses each year.¹¹ Presidents have been constrained in their ability to raise spending levels beyond what would be acceptable to the conservative Senate (Costa 1996; Feliu 1996). Second, Chilean presidents have been able to use their proposal authority to reshape budget priorities. One area in which Chile's civilian presidents have preferred lower spending levels than the divided Congress, for example, is in military spending. By setting military spending "ceilings" in their budget proposals, Chile's presidents have been able to shift the percentage of total appropriations allocated to the military from 12.1% at the time of the transition to 9.6% in 1996 (Baldez and Carey 1997).

In sum, presidential agenda authority can have profound effects on policy outcomes. This much is clearly illustrated by the Chilean example. Given the wide range of agenda powers accorded to executives in various constitutions, there is enormous potential for fruitful research in political science in the comparative effects of agenda control on policy. In the meantime, it is worthwhile to underscore a critical difference between agenda and decree authority. The former entails executive influence over the alternatives among which legislatures debate and select policies; the latter generally allows for executives to implement policies without legislative debate or assent. Democratic theory commonly holds that debate in itself is a valuable political commodity, even apart from its effects on policy choices (Lijphart 1977; Miller 1993). The experience of many presidential systems with decree authority supports this intuition. Policy implementation by decree frequently contributes to intractable conflict between executives and legislatures. Executive influence over policy may be just as great under procedures of agenda control as under decree; nevertheless, even the constrained

11 In comparison to the other large economies of South America, Chile was the only country to run surpluses throughout the period of the early 1990s (Baldez and Carey 1997). Despite many similarities between the Chilean budget process and the Taiwanese, moreover, it is noteworthy that Taiwan has run increasing fiscal deficits during this period. One key difference between the countries is that the president's initial budget proposal serves as the reversion point in Chile, whereas the Legislative Yuan can pass temporary budget legislation to fund the government until a final budget law is promulgated (Cheng and Haggard 1997). The possibility that the Legislative Yuan could control fiscal policy in the event of a budget stand-off should provide Taiwanese presidents a far greater incentive than Chilean presidents to accommodate the spending demands of individual legislators in their initial budget proposals.

debate and negotiation that follows executive proposals privileged by special agenda powers appears to mitigate conflict between the branches.

Veto Authority

Across presidential regimes, the most common executive power over legislation is the veto. The veto is generally considered a reactive authority, one that allows presidents to respond to legislative proposals rather than proactively to initiate policy changes, as with decree or agenda control. It is worthwhile, however, to distinguish briefly the effects of the two most common forms of veto—package vetos and item vetos—on bargaining between the branches. Package vetos allow presidents to reject entire legislative proposals, and generally require an extraordinary majority vote by the legislature for override. As a result, the package veto allows legislatures to offer logroll-type proposals to presidents, enticing presidents to accept some policies the legislature wants in exchange for securing some preferred by the president. The conventional wisdom regarding the item veto is that it should allow presidents to unpack such legislative logrolls, perhaps removing wasteful or inefficient programs supported by individual legislators or factions. This account, however, overlooks the strategic impact the item veto has on bargaining over legislation between the branches. Presidents can unpack logrolls only if such compromise legislation is passed by the legislature; but the very existence of the item veto discourages compromise by allowing presidents to alter policies approved by the legislature unilaterally before implementation.

Consider two policies: policy L, the legislature's favorite, and policy P, the president's favorite. Assume the following conditions hold:

- ◆ the legislature most prefers to pass policy L and least prefers to pass policy P;
- ◆ the president prefers the opposite;
- ◆ both sides prefer to pass both policies (LP) than to pass none (status quo).

If a package veto exists, the legislature can pass LP, the president should accept it, and both sides consider themselves better off than if the status quo had prevailed. If an item veto exists, in contrast, the president can no longer make a credible promise to abide by a compromise agreement and accept policy LP. The legislature knows that if it passes LP, the president can veto

L and promulgate P, securing his most preferred outcome. This is the legislature's least preferred outcome, however, so it should send the president no proposal. The irony is that, in this scenario, both sides end up worse off when the president has item veto power than when he has the weaker package veto variety. The point with regard to veto authority is the same as that made above regarding other legislative powers entrusted to presidents: when executives can alter policy and then proceed to implement those changes without an intervening step of legislative debate and assent, incentives for compromise between the branches are undermined. There are compelling arguments on behalf of the item veto, on grounds of budgetary efficiency, for example. But such arguments must be weighed against the extent to which the item veto weakens the executive's ability to commit to compromise agreements with the legislature.

Conclusion

The broad claim of this essay is that choices made by those who design the rules of political competition and procedure have straightforward implications for relations between executives and legislatures. The focus here is on two general areas in which constitutional choices are critical: electoral systems, and formal executive authority over legislation. Choices of electoral rules affect the likelihood and extent of partisan compatibility between presidents and assemblies. Most electoral studies focus exclusively on electoral systems for assemblies—for example, on the differences between proportional representation versus single-member district systems, or among variants of proportional systems. In contrast, I emphasize that the choices of the electoral formula for the presidency, and the relative timing of elections for the branches, are important determinants of whether presidents enjoy partisan support in the assembly. Plurality elections generate less fragmentation, both of the presidential vote and in the assembly party system, than do MRO elections for president. Given the potential of plurality elections to generate winners with minority support when broad coalitions fail to form, however, I advocate the double complement formula for presidential elections. This rule retains the incentives for broad coalitions inherent in plurality elections while precluding the possibility of a narrow minority winner. Regarding electoral cycles, I argue that concurrent elections contribute to partisan support for presidents and further mitigate fragmentation in the legislative party system. Non-concurrent electoral

cycles, conversely, increase the legislative check on presidential capacity because they tend to favor parties other than the president's if legislative elections are held around the middle of the president's term or later.

The central argument regarding executive powers over legislation is that formal authorities allowing executives to implement policy changes without prior negotiation with, and assent of, assemblies generate conflict between the branches. This is especially the case when presidents face opposition majorities in the legislature. Forms of decree authority that allow for immediate implementation of executive initiatives have consistently contributed to interbranch conflict as presidents rely on decree to bypass legislative opposition. Agenda powers may generate equal capacity for presidents to pursue their policy agenda, but have not been touchstones of executive-legislative conflict to the extent that decree has, probably because they generally allow for substantial debate prior to the adoption of new policies. The most common presidential power over legislation, the veto, is generally considered a device for promoting deliberation and negotiation between the branches. It is important to note, however, that the item veto variant can have the opposite effect, for precisely the reason that decree authority is problematic for executive-assembly cooperation. Because the item veto allows presidents to alter legislative policy initiatives unilaterally before implementation, it undermines incentives for interbranch negotiation and compromise. Presidential systems allow voters maximum discretion over the composition of the executive and legislative branches of government. The specific rules of political competition directly affect whether those branches will support complimentary policy objectives. To the extent that the preferences of the branches differ, the rules of legislative procedure have an immediate impact on whether executives and assemblies resolve policy differences through negotiation and compromise, or whether interbranch conflict leads to constitutional crisis.

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憲政選擇與總統制政府之表現

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摘 要

政治人物與學者都同意，政治制度的設計，就政策的形成及政治競爭的本質，是非常重要的。本文所要探討的問題是，在一九八〇及九〇年代新興民主國家在設計其憲政體制時，所面臨的抉擇及其引起的爭議。首先、行政及立法部門的選舉制度及其交互作用，是強化還是減弱黨派對於總統的支持。相對於多數選舉制度的研究，係針對立法部門而作，我則著重在總統的選舉方式及行政與立法部門選舉的時間配合。我的結論是，總統選舉採相對多數制及同時舉行立法部門的選舉，較之總統選舉採絕對多數多回合制及不同時舉行立法部門的選舉，利於行政與立法部門為同黨控制。本文的第二部分，暫且不論黨派的支持度如何，探討憲法賦予總統牽制立法的權力，以及此一權力對於行政與立法間的談判與妥協有何影響。我依序檢討總統的行政指令權、議程設定權以及否決權。結論是，立法程序如果允許總統單方面作成政策，比之政策作成前有討論與妥協的程序，總統與立法部門間的衝突即較多。

關鍵詞：憲政選擇，選舉制度，總統權力