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Legislatures and Oversight

Edited by Riccardo Pelizzo and Rick Stapenhurst

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Legislatures and Oversight

Edited by Riccardo Pelizzo and Rick Stapenhurst

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Legislatures and Oversight
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Foreword

As part of its Governance program, the Poverty Reduction and Economic Reform Division of the World Bank Institute (WBIPR) has sought to strengthen parliamentary oversight, in order to promote enhanced government accountability and transparency. In this regard, support was given to the organization of a Roundtable entitled "Legislative Oversight: Theories and Practices," at Southern Political Science Association Annual Meeting, New Orleans, LA, USA, January 7-10, 2004. The papers presented herein reflect the papers presented at that Roundtable

The paper by Pelizzo and Stapenhurst presents the data collected from a survey of 83 countries by the Inter-Parliamentary Union in collaboration with the World Bank Institute. The data analysis reveals that legislatures in parliamentary systems are generally better equipped to oversee government activities than legislatures in presidential and semipresidential systems. The paper also investigates the role of legislatures in preparing and approving the budget. The analysis reveals that legislatures in presidential systems are generally the most active legislatures in the preparation of the budget, while parliaments are the most active legislatures in approving the budget.

Thomas F. Reminton's paper examines the use of de facto oversight mechanisms by the Russian Federal Assembly and relates them to institutional performance in the postcommunist Russian state. The paper finds that by contrast with the early 1990s, policy making has become much more efficient.

David M. Olson's paper argues that the Polish Sejm is currently the most active post-communist parliament in oversight and administrative review. In the light of the Polish experience, the paper suggests that post-communist parliaments will have increasing capacity to be active in oversight as a result of both the budgeting process and growing international influences upon policy choices.

Edward Schneier's paper investigates why the post-reforms Indonesian parliament has not put mechanisms of legislative oversight to effective use. The problem is partially by three sets of factors, namely the legislature's own failure to institutionalize, endemic problems of corruption and a lingering tendency to defer to entrenched elites.

Scott W. Desposato's paper investigates how legislatures' ability to engage in effective oversight activities is significantly related to both the formal institutional framework and informal institutional incentives. The paper investigates the impact of the informal institutional incentives on state assemblies'ability to oversee executive activities in Brazil.

Mark Shepard argues that in spite of the House of Commons' awareness of its limitations in administrative review and oversight, change has been slow and hampered by the constitutional framework, executive hegemony and strong partisanship in the British Parliament. The author further argues that although there have been some important concessions recently, many of the successful reforms have focused on improving efficiency of oversight rather than effectiveness of oversight per se.

Timothy J. Power's paper addresses one of the most important issues that constitutional engineers and practitioners are confronted with, that is: is executive dominance irreversible? After discussing some of the historical factors that have created the conditions for executive dominance, Power illustrates how the Brazilian congress managed to do the unthinkable: to reduce the President's

authority to issue emergency decrees and, by doing so, to reduce substantially the power of the executive.

Keith Schulz's paper raises an interesting issue. He notes that while international agencies' involvement in legislative capacity building represents one of the most critical aspects of their activities, it is not at all clear how the impact of internationally funded programs should be measured. The author also discusses how USAID has attempted in the past couple of years to respond to this dearth of knowledge and information.

Riccardo Pelizzo is an Assistant Professor at Singapore Management University, Rick Stapenhurst is a Senior Public Sector Management Specialist in the World Bank Institute and David Olson is Professor Emeritus at the University of North Carolina at Greensboro. The views expressed herein are entirely those of the authors and do not necessarily reflect the views of the World Bank Institute.

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Introduction

In a recent issue of the *Quaderni di Scienza Politica*, Roberta Maffio published a detailed and informative discussion of parliamentary oversight in comparative perspective. Her article is of interest for at least two reasons. First, because it testifies to the revived interest in the long-neglected study of parliamentary oversight of the executive activity. Second, because it provides a great wealth of information with regard to the types, the variety, and the functioning of the instruments of parliamentary oversight.

Building on her article, we plan to expand Maffio's analysis in two respects. First of all, we discuss why the often neglected study of parliamentary oversight has received increasing attention in the course of the past decade. Our argument, in this regard, is relatively straightforward. We argue that the end of the Cold War transformed the value system of the international community from one in which 'political order' was the good thing to one in which democracy is the 'good thing'. We further suggest that the transformation of the value system led, in its turn, to a renewed interest in the institutions that make democratic regimes work well and consolidate—institutions that include parliaments and the mechanisms through which parliaments oversee the executives. We finally suggest that the interest in and the research on parliamentary oversight originated in this context.

Second, we present the some of the results of a survey of 83 legislatures conducted by the Inter-Parliamentary Union in collaboration with World Bank Institute in 2001. Specifically we will provide evidence as to what are the instruments of parliamentary control, to what is their distribution, to how they relate to different forms of government, and, finally, to the role that parliaments play in the budget process. Two sets of findings seem to be of particular importance. With regard to oversight of the executive, the data analysis reveals that legislatures in parliamentary systems are generally better equipped than legislatures in either presidential or semi-presidential systems to oversee the executive branch of the government. With regard to the role of the legislature in the budget process we found mixed results. Legislatures in presidential systems are generally more involved in the preparation of the budget than their counterparts in parliamentary or semi-presidential settings. On the contrary, legislature in parliamentary systems are generally more active in the examination and confirmation/approval of the budget.

The International Framework

In the late 1960s, Samuel Huntington challenged what he called the "prevailing assumption of American policy", that is the belief that "economic assistance promotes economic development, (and) economic development promotes political stability"[1]. In contrast to this widely held belief, Huntington argued that economic development (especially rapid economic development) could disrupt the stability of political regimes and that in the absence of stable and strong institutions governments would not be able "to innovate or execute policy"[2]. Hence, Huntington argued, if the policy execution requires political order, "the most important political distinction among countries concerns not their form of government but their degree of government"[3]. For many years after

[1] Samuel P. Huntington, *Social Order in Changing Societies*, New Haven, Yale University Press, 1968, p. 6.
[2] Samuel P. Huntington, *Social Order in Changing Societies*, op. cit., p. 1. Huntington went on to argue that "in some instances programs of economic development may promote political stability; in other instances they may seriously undermine such stability. So also, some forms of political stability may encourage economic growth; other forms may discourage it", *ibidem*, p. 6.
[3] Samuel P. Huntington, *Social Order in Changing Societies*, op. cit., p. 49 and p. 1.

Samuel Huntington published his *Political Order in Changing Societies*, the international community was somewhat committed to Huntington' s principles: it was willing to acknowledge that political order is a determinant – if not *the* determinant - of policy success and was willing to sacrifice democracy in the name of development.

With the fall of the Berlin wall, the end of the Bipolar order, the end of the Cold War era, and an unprecedented expansion of democracy in the World, the international conditions that had somehow justified the international community's commitment to political order rather than to democracy disappeared. The publication of Huntington' s *Third Wave of Democratization* is absolutely emblematic of the paradigmatic shift that had occurred between the publication of *Political Order* in 1968 and that of the *Third Wave* in 1991. "My previous study" Huntington wrote in 1991 "focused on the problem of political stability. I wrote that book because I thought political order was a good thing…The current book focuses on democratization. I have written it because I believe that democracy is good in itself and that,…, it has positive consequences for individual freedom, domestic stability, international peace, and the United States of America"[4]. By the early 1990a democracy had become a value that could not be compromised.

This paradigm shift radically altered the framework in which the international community operates in two major respects. First, it made clear that democracy could no longer be sacrificed for the sake of promoting development but was instead a condition without which development and poverty reduction strategies could not be properly implemented. Second, it sparked a new interest for those institutions that can make democracy work well, that can contribute to its consolidation, and, trough democratic consolidation, can promote development and poverty reduction.

In the light of these changes, international organizations started paying increasing attention to legislatures, to the relationship between legislatures and executives, to strengthening legislatures, to the role that legislatures play in consolidating newly emerged democracies and, last but not least, "to the role that legislatures can play in poverty reduction"[5]. The renewed interest in parliaments revived, in its turn, the interest in the legislative oversight of the administration[6]. This is why, twenty-five years after the publication of Lees' s article in late 1970s, what Lees considered "an important but inadequately researched area of legislative activity" had become an important and increasingly researched area of legislative activity[7]. Within this context the Inter-Parliamentary

[4] Samuel P. Huntington, *The Third Wave of Democratization. Democratization in the Late Twentieth Century*, London, The University of Oklahoma Press, 1991, p. xv.

[5] On legislative strengthening, see National Democratic Institute for International Affairs, "Strengthening Legislative Capacity in Legislative-Executive Relations", *Legislative Research Series*, Paper # 6, Washington, DC, 2000. On the parliaments and poverty reduction see Frederick C. Stapenhurst and Riccardo Pelizzo, "A Bigger Role for Legislatures", *Finance & Development. A Quarterly Publication of the International Monetary Fund*, vol. 39, n. 4, (December) 2002, pp. 46-48.

[6] Lees defined legislative oversight as "the behavior by legislators and their staffs, individually or collectively, which results in an impact, intended or not, on bureaucratic behavior", see John D. Lees, "Legislatures and Oversight: A Review Article on a Neglected Area of Research", *Legislative Studies Quarterly*, vol. 2, n. 2, (May) 1977, pp. 193-208.

[7] John D. Lees, "Legislatures and Oversight: A Review Article on a Neglected Area of Research", *op. cit.*, p. 193. An assessment of the importance of parliamentary oversight can be found in a Research paper of the National Democratic Institute where it was argued that "(Legislative) Oversight of the Executive is perhaps the most important function of any legislature", see National Democratic Institute for International Affairs, "Strengthening Legislative Capacity in Legislative-Executive Relations", *op. cit.*, p.19. An extensive bibliog-

Union (IPU) conducted a survey on "Relations between the Legislature and the Executive in the Context of Parliamentary Oversight". The purpose of the next two sections is to provide some evidence with regard to parliamentary oversight of the executive and to the role that parliaments play in the course of the budget process[8].

Legislative Oversight

The data gathered by the Inter-Parliamentary Union (IPU) are relevant in two respects. First of all, they indicate countries' potential for effective oversight by showing which institutional arrangements have been adopted to enhance legislative oversight. Second, they indicate how tools and types of oversight are related to another institutional feature, that is the form of government.

The IPU survey provides information with regard to 83 cases, that is 82 countries plus the European Union (EU) which, interestingly, is treated as a country. Respondents were asked questions concerning the accountability of the government to the parliament, the impeachment, the dissolution of parliament, the oversight of administration, budgetary oversight, oversight of implementation of the budget, oversight over foreign policy, oversight over national defense policy, the parliament and the state of emergency, the verification of the constitutionality of laws, and, finally, oversight over the application and evaluation of laws. In this note we will focus only on the oversight of the administration and we will pay particular attention to the parliamentary oversight of the budget.

With regard to oversight respondents were asked several questions. They were asked whether the administration in their country was 'considered an institution that must report to Parliament', they were asked 'how does the parliament exercise oversight?', and, in addition to these two questions, respondents were also asked whether parliamentarians could question government officials, whether question time was allocated, whether interpellations were foreseen and, finally, whether there was an ombudsman in the country[9]. Some of the responses are presented in Table 1.

Table 1. *Number of Oversight Tools by Region. Analytic Table*

Number of Oversight Tools	Australia and Pacific Islands	East Asia	Middle East	CIS states	Central Europe	Western Europe	Africa	Latin America and Caribbean
5 under	3	3	4	8	1	1	9	3
6 over	0	4	0	3	9	14	13	4
Total	3	7	4	11	10	15	22	7

raphy on parliamentary oversight can be found in Roberta Maffio, "*Quis custodiet ipsos custodes?* Il controllo parlamentare dell' attivitá di governo in prospettiva comparata", *Quaderni di Scienza Politica*, vol. IX, n. 2, (Agosto) 2002, pp. 333-383.

[8] In this respect, we have to repeat what we have argued elsewhere, that is "legislative oversight of government policies in general, and of the budget process in particular, is of vital importance in ensuring that governments carry out their duties efficiently, democratically, and in a fiscally responsible manner", see Frederick C. Stapenhurst and Riccardo Pelizzo, "A Bigger Role for Legislatures", *op. cit.*, p.46.

[9] A discussion for why questions, question time, interpellations should be considered as instruments of parliamentary control can be found in Roberta Maffio, "*Quis custodiet ipsos custodes?* Il controllo parlamentare dell' attivitá di governo in prospettiva comparata", *op. cit.*, pp. 333-383. See also David G. McGee, *The Overseers. Public Accounts Committees and Public Spending*, London, Commonwealth Parliamentary Association in Association with Pluto Press, 2002.

What is the meaning of these findings? These data provide interesting information in at least three respects. First of all, these data indicate that there is considerable variation in how common are these various tools of parliamentary oversight. For example, parliamentarians can put oral or written questions to the government in 79 of the 82 countries for which data are available or in 96.3 percent of the cases. Committees of inquiry and committee hearings are also very common instruments of parliamentary control as they are utilized in more than 95 percent of the countries for which data are available. On the contrary, interpellations and the ombudsman are remarkably less common. Interpellations to the government are used in about 75 percent of the countries for which data are available, and the figure of the ombudsman is instituted in less than 73 percent of the countries that responded the survey question. Data are presented in Table 2.

Table 2. *How common are these oversight tools?*

Committee Hearing		Hearing in Plenary Sitting		Committee of Inquiry		Questions		Question Time		Interpellations		Ombudsman	
%	N	%	N	%	N	%	N	%	N	%	N	%	N
95.9	73	90.8	76	95.9	73	96.3	82	84	75	75.4	65	72.7	77

Second, the analysis of the data indicates that all countries adopt some parliamentary oversight tools and that most of them use more than one tool. Complete information is available for only 49 of the 83 countries that were surveyed, while in the other 34 cases information was provided incompletely or was not provided at all as in the case of Lesotho. In any case, more than 12 percent of the countries for which complete information was available used 4 tools of parliamentary oversight, more than 14 percent of them used 5 tools, almost 33 percent of them used 6 tools and another 40 percent used 7. Data are presented in Table 3.

***Table 3**. Countries and the Number of Parliamentary Oversight Tools*

0	2	3	4	5	6	7
Lesotho	Azerbaijan	Congo	Angola	Australia	Andorra	Austria
	Russia	Macedonia	Armenia	Bulgaria	Belarus	Belgium
		Tajikistan	China	Cameroon	Benin	Costa Rica
		Zimbabwe	Ivory Coast	Iran	Brazil	Croatia
			Kazakhstan	Jordan	Canada	Czech Republic
			Liechtenstein	*Mexico*	Cyprus	Estonia
			Rwanda	*Mongolia*	EU	France
			Uruguay	Nicaragua	Germany	Gabon
				Palau	Guatemala	Greece
				Philippines	Guinea Bissau	Hungary
				Samoa	Guinea	Indonesia
				Senegal	Iceland	Japan
				Singapore	Ireland	Lithuania
				South Africa	Korea	Madagascar
				Sudan	Jamaica	Mali
				Turkey	Latvia	Romania
				Ukraine	Luxembourg	Spain
				Yemen	Namibia	Sweden
					Netherlands	Switzerland
					Niger	Zambia
					Poland	
					Slovakia	
					Slovenia	
					Chad	
					Thailand	
					Togo	
					Tunisia	
					Uganda	
					U.K.	

Note: The score of the countries in Italics indicates that information concerning the presence/absence of some tools of parliamentary information was not available.

Third, these IPU data shed some light on how tools and types of oversight are related to another institutional feature, that is the form of government[10]. Even in this respect the analysis of the data is quite telling. First of all, the analysis makes clear that there the number of oversight tools available varies from a form of government to another. As shown in Table 4, oversight tools such as Committee Hearings, Hearings in Plenary Sittings, Question Time and Interpellations are generally

[10] Respondents were asked to indicate what form of government was adopted in their countries. Responses were coded as follows: Presidential form of government was given value 1, Parliamentary form of government was given value 2, Semi-Presidential form of government was given value 3, Parliamentary form of government in countries with a Constitutional Monarchy was given value 4, Parliamentary form of government in countries with a Hereditary Monarchy received value 5, and other forms of government were all given value 6. In the course of our analysis, we have however adopted a different coding scheme. Countries that were given value 2, 4 or 5 by the IPU dataset were all considered to have a parliamentary system and were hence collapsed into a single.

more common (and hence more likely to be found) in the legislatures of parliamentary systems (Parliaments) than in the legislatures of either presidential or semi-presidential systems, while other tools such as Questions and the Ombudsman are as common in parliamentary systems as they are in, respectively, in presidential and semi-presidential systems.

Table 4. *How common are the tools of parliamentary oversight by form of government*

Form of government	Committee hearings		Hearings in Plenary Sittings		Committee of Enquiry		Questions		Question Time		Interpella-tions		Ombudsman	
	%	of N	%	of N	%	of N	%	of N	%	of N	%	of N	%	of N
Parliamentary	100	34	97.1	35	96.9	32	100	32	88.6	35	76.9	26	77.8	36
Presidential	88.2	17	83.3	18	100	19	85.7	21	78.9	19	72.2	18	77.8	18
Semi-Presidential	93.3	15	81.3	16	86.7	15	100	17	86.7	15	75	16	52.9	17

Table 5. *Form of Government and Number of Parliamentary Oversight Tools.*

	Number of Parliamentary Oversight Tool			
Form of Government	4	5	6	7
Presidential	Ivory Coast Kazakhstan	Nicaragua Palau	Benin Brazil Cyprus Guinea Korea Chad Tunisia	Costa Rica Indonesia
Parliamentary	Liechtenstein	Australia Turkey	Canada Germany Guinea Bissau Jamaica Luxembourg United Kingdom	Austria Belgium Croatia Czech Republic Estonia Greece Hungary Japan Lithuania Spain Sweden
Semi-Presidential	Angola Armenia Rwanda	Cameroon Senegal Yemen	Niger Togo Yugoslavia	France Gabon Madagascar Mali Romania
Other			Switzerland	

Note: Zambia was not included in this table as it did not provide any answer as to what is its form of government.

As a result, legislatures in Parliamentary systems have more oversight tools at their disposal than legislatures in either Presidential or Semi-Presidential systems. See Table 5. The results of the data analysis do not allow to make any inference as to the effectiveness of the oversight tools, that is as to whether legislatures in parliamentary systems are more effective than legislatures in either Presidential or Semi-Presidential systems in overseeing the executive branch of the government.

Oversight of the Budget

The data gathered by the IPU shed some light on the role that parliaments may play in the budget process. Specifically, the IPU survey provides evidence as to whether the legislature was consulted in the preparation of the budget and as to the various types of oversight of the financial act. Data are presented in Table 6.

***Table 6**. Budget and Oversight*

1	2		3		4		5	
Form of government	Legislature consulted in the budget preparation		Examination of The Budget		Reports		Confirmation and Approval	
	% of	N	% of	N	% of	N	% of	N
Parliamentary	47.1	34	97.2	36	93.3	30	95.8	24
Presidential	47.6	21	95.2	21	84.2	19	87.5	16
Semi-presidential	37.5	16	87.5	16	93.8	16	91.7	12

The data presented in the second column of Table 6 are consistent with the notion that parliaments and legislatures are relatively uninvolved in the preparation of the budget. Interestingly though, legislatures in presidential systems are as involved (if not even more involved) in the preparation of the budget as legislatures in parliamentary systems. In contrast, legislatures in semi-presidential systems tend to be less involved in the preparation of the budget.

The situation changes considerably when we look at the oversight of the finance act (column 3). In fact, the percentage of parliaments and legislatures that examines the finance act is very high. Virtually all the legislatures in parliamentary and presidential systems examine the budget. Though a fairly high percentage of legislatures examines the finance act in semi-presidential systems, this percentage is not as high as it is in either parliamentary or presidential systems.

The data presented in columns 2 and 3 of Table 6 indicate that parliaments in semi-presidential systems are, generally, the least involved and/or the least equipped to oversight the budget. The data presented in column 4 of Table 6 make clear that under no other form of government, legislatures use legislative reports as type of oversight as much as they do in semi-presidential systems. Almost 94 % of the legislatures in semi-presidential systems use legislative reports, while only 84 % of the legislatures in presidential systems do so.

Finally, the data presented in column 5 of Table 6 show that the percentage of parliaments that approves and confirms the budget is remarkably higher than the percentage of legislatures in presidential systems that do so. The percentages are respectively about 96% for parliaments and 87.5% for legislatures in presidential system. The percentage of legislatures in semi-presidential systems that approves the budget falls in between these two values.

Conclusion

This note indicates three basic conclusions. First of all, it suggests that the revival in the study of parliamentary oversight was largely, though not exclusively, promoted by international factors. Second, with regard to oversight tools, we showed that some types of oversight tools are more common than others, that all countries adopt more than one type of oversight tool, and that the number of oversight tools varies depending on what is the form of government. Specifically, we found that parliamentary systems are generally better equipped to oversee the actions of the executive than both presidential and semi-presidential systems. Third, with regard to the role of the legislature in the budget, we found that while legislatures in presidential systems are generally more involved in the *ex ante* activities such as the preparation of the budget, legislatures in parliamentary systems are more involved in the *ex post* activities such as the examination or the approval of the budget.

The data collected by the IPU give us a relatively clear picture of the formal powers that legislatures can use to oversee the executive in different political systems. Interesting as this information may be, it is by no mean sufficient as many other questions remain without an answer. Knowing what is the number and the distribution of the parliamentary oversight tools across different political systems provides no clue whatsoever as to whether these tools are used effectively or as to whether they are used at all. Yet, this is what we need to know and is the kind of information that future research should try to provide.

Separation of Powers and Legislative Oversight in Russia[11]

Thomas F. Remington

Separation of Powers and Governance in Russia

Scholars identify three general ways in which a legislature may control the bureaucracy in a separation of powers system: oversight, legislation, and budget-making.[12] For these to work, some conditions must be met: there needs to be a certain degree of cooperation between the branches in policy making (each side must be willing to bargain and compromise in order to get some policy benefits), the legislature must have some capacity to monitor the executive, and the executive needs to be willing to comply with legislative enactments. Certainly these conditions have not always applied in Russia. Especially in the early 1990s, when President Yeltsin was fighting parliament for a greater share of a dwindling pool of state power, much policy was made in the form of executive acts, such as government regulations and presidential decrees, rather than being submitted to the open process of deliberation and mutual compromise. Yet there has been a considerable amount of interbranch cooperation in law-making, even in periods of intense interbranch conflict. Since 1993, both sides have regularly preferred to compromise than to press a confrontation to the limit.[13] There has been a zone of shared agreement on policy goals between parliament and executive even when the two branches are at odds on many issues. For example, the communists and the reformers were able to agree on legislation governing the federal judiciary and federal elections in the mid-1990s. And even though the 1993 constitution removed any direct reference to a right of legislative oversight— "*kontrol'*"—over the executive, forms of legislative oversight have existed in such mechanisms as parliamentary hearings, interpellations, investigations, and government hour. Under Putin, the pendulum has swung equally far in the opposite direction: parliament rarely opposes the president directly, but uses its powers of agenda-setting, amendment, and negotiation to achieve relatively minor legislative victories. In neither case has oversight been a particularly important instrument of power. Let us examine the use of de facto oversight mechanisms, including budgetary policy making, by the Russian Federal Assembly and relate them to institutional performance.

Oversight

The concept of oversight is best expressed the Russian term, *kontrol'*. The history of *kontrol'* institutions in the Russian state is long and revealing, because, since *kontrol'* was always understood as an instrument of political control over the bureaucracy, the Soviet state set up a number of different types of structures for monitoring the compliance of the state bureaucracy with policy-makers'

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[11] This paper is based on research conducted under the auspices of the Project on Governance in Russia directed by Stephen Holmes and Timothy J. Colton, with the support of the Carnegie Corporation of New York. The valuable comments of the participants in the project and the support of the Carnegie Corporation are gratefully acknowledged.

[12] John D. Huber, Charles R. Shipan and Madelaine Pfahler, "Legislatures and Statutory Control of Bureaucracy", *American Journal of Political Science*,vol. 45, n. 2, 2001, pp. 330-345.

[13] Thomas F. Remington, "The Evolution of Executive-Legislative Relations in Russia since 1993", *Slavic Review*, vol. 59, n. 3, 2000, pp. 499-520; idem, *The Russian Parliament: Institutional Evolution in a Transitional Regime, 1989-1999*, New Haven, CT, Yale University Press, 2001; Paul Chaisty, "Legislative Politics in Russia," in Archie Brown (ed.), *Contemporary Russian Politics: A Reader*, New York, Oxford University Press, 2001, pp. 103-120; Michael McFaul, *Russia's Unfinished Revolution: political change from Gorbachev to Putin*, Ithaca, N.Y. Cornell University Press, 2001; Tiffany A. Troxel, *Parliamentary Power in Russia, 1994-2001: President vs Parliament*, New York, Palgrave MacMillan, 2003.

goals.[14] These were instruments by which one branch of the bureaucracy checked others, however; the history of legislative oversight is far shorter. Institutionally, however, legislative *kontrol'* over the bureaucracy is analogous to congressional oversight of the executive in the American context, where it was defined by a US Senate committee as "a wide range of congressional efforts to review and control policy implementation."[15]

Although Russia's parliament lacks a *formal* right of *kontrol'* under the 1993 constitution, de facto oversight is exercised through several mechanisms. One is the Audit Chamber, which has a staff of around 500 people who conduct audits of state organizations. Parliament names its chair and gives it specific assignments. The Audit Chamber has investigated an extremely wide range of government organizations and state enterprises and worked assiduously to expand its powers. Under its ambitious chairman Sergei Stepashin, it has created a network of regional branch offices which it has been trying to build into a centralized hierarchy.[16] In the 1995-2000 period, it conducted some 3000 investigations.[17] Much of the time, its reports have had little apparent effect on the bureaucracy, although often its findings are reported in the Russian press. Its 1997 investigation of the trust auctions (the "loans for shares" scheme) of 1995 found serious legal irregularities but the Procuracy refused to act. It has regularly clashed with the government and with the Finance Ministry in particular over its right to conduct audits. It regularly complains that the government ignores its findings. It does not have the power to bring legal charges and its reports have only advisory force. But its power to expose abuses and corruption contributes to parliament's (and president's) ability to generate political pressure on high-ranking government officials. In the spring of 2003, a series of well-publicized disclosures about the misuse of federal funds in the preparations for St. Petersburg's 300th anniversary undoubtedly weakened governor Yakovlev's political position and led to his removal as governor in June. By itself the Audit Chamber has little power to improve governance, but when elements of the executive branch are receptive to its recommendations, it becomes another instrument at the disposal of parliament for political influence.[18]

Parliament also has the power to hold legislative hearings and to invite ministers to appear and answer questions before the Duma during "government hour." Hearings do not need to be specifically associated with pieces of legislation; most Duma hearings in fact are not related to individual

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[14] For early Bolshevik efforts to reconcile "workers' control" with "state control," see Thomas F. Remington, "The Rationalization of State Kontrol'," in William Rosenberg, Ronald Suny, and Diane Koenker (eds.), *Party and Society in the Russian Civil War: Explorations in Social History*, Indiana University Press, 1989; idem, "Institution Building in Bolshevik Russia: The Case of State *Kontrol'*," *Slavic Review*, v. 41, no. 1, 1982, pp. 91-103.

[15] As cited in Mathew D. McCubbins and Thomas Schwartz, "Congressional Oversight Overlooked: Police Patrols versus Fire Alarms," *American Journal of Political Science*, vol. 28, n. 1, 1984, p. 170.

[16] Polit.ru, May 16, 2001.

[17] Polit.ru., September 15, 2000.

[18] Stepashin has sought to put the Audit Chamber under the direct authority of the president and to reduce the Duma's ability to demand investigations. In the spring of 2002, Stepashin pressed for a law that would make the body subordinate to *both* president and parliament, while in summer 2003 he called for a change in rules that would make require a vote by a majority of the Duma (rather than merely 90 votes) in order to begin an investigation. Stepashin has repeatedly expressed frustration that the government and the procuracy do not respond to Audit Chamber reports, and argues that placing the Chamber under the presidential administration would increase its bureaucratic clout. The Finance Ministry has opposed Stepashin's empire-building efforts, and the legislation incorporating some of Stepashin's proposals has languished in parliament for want of support. See Polit.ru, April 23, 2003; RFE/RL Newsline, August 1, 2003.

bills. Each year, Duma committees hold close to 100 hearings. These give committee chairs and members the opportunity to publicize problems, advertise their policy positions, attract press attention to their legislative agenda, and put pressure on the executive branch to act on particular issues. Committees also conduct seminars and roundtable discussions for similar purposes. Government hour is another opportunity to focus the spotlight on particular government officials and to publicize parliament's watchdog role.

Members of parliament also have the right to submit interpellations (*zaprosy*) to the government (any deputy may propose one, but the motion to submit one requires majority support), to contact government officials directly, and to question government officials in the course of question hour. Often these powers are used for particularistic purposes—indeed, like other legislative powers, often they are used for corrupt purposes. In other cases the Duma uses interpellations as a way of demonstrating that it is playing its proper role as the guardian of the public interest, as when the Duma unanimously passed a motion calling for an interpellation to Procurator-General Ustinov demanding that he check into press reports of corruption in the Interior Ministry.[19] The net effect of these powers is a considerable increase in the flow of information from the executive to the legislative branch and greater pressure on the executive branch to fight corruption and inefficiency.

Parliament also has an implied, although again not formal, power to conduct investigations. It does this by forming special-purpose commissions to conduct wide-ranging inquiries, including, in the present convocation, a commission devoted to fighting corruption. An example is the Duma's investigation of the activity of former Atomic Energy Minister Evgenii Adamov. The Duma's anti-corruption commission reported at the beginning of March 2001 that Adamov had skimmed off huge sums from contracts with the ministry and created numerous commercial firms with them. At the end of the same month, Putin dismissed Adamov.[20] Pressure from the commission was also undoubtedly a factor leading to the fall of the powerful minister for railroads, Nikolai Aksenenko, at the beginning of 2002. In both cases, dismissal was the outcome of a lengthy subterranean bureaucratic war, in which pressure from the Duma was only one of many contributing reasons for the eventual outcome. The difference between these episodes and similar bureaucratic wars in the Soviet era is that now legislators, with an eye to the public and electoral consequences of taking sides, are opening them to public debate.

Thus parliament's de facto oversight powers have expanded the flow of open information, often of a scandalous nature, but they have not greatly strengthened parliament's capacity to check abuses in the executive or hold the executive accountable. This is because the executive usually acts in response to parliamentary pressure only when it is prepared to do so. Parliamentary hearings, investigations and reports operate as another arena in which bureaucratic and social interests compete for influence.

Budget control

The power of the purse is a vital domain of legislative control over the executive. The evidence suggests that in Russia, parliamentary influence over the budget has grown substantially. For example, the level of detail of the state budget law has increased every year as the government has shared more information about state revenues and expenditures with the Duma. If sheer length of the budget law is any indication at all of increased legislative capacity to monitor the state budget, then surely it is worth noting that the 2002 budget law was 50 times longer than the 1992 budget.

[19] Polit.ru, October 18, 2001.
[20] *Segodnia*, March 3, 2001.

(See Table 1). The budget law is now regularly signed each year before the budget year begins, rather than partway through it. The law also includes a far greater level of detail for individual line items. And this is not the product of large distributive coalitions in support of deficit spending, since the budget has been in balance since 2000.

Table 1: *Federal Budget Laws*

Budget year	Date signed	No. of articles	No. of pages
1992	17-Jul-92	18	8
1993	14-May-93	27	19
1994	1-Jul-94	39	28
1995	31-Mar-95	62	67
1996	31-Dec-95	71	33
1997	26-Feb-97	99	119
1998	26-Mar-98	120	115
1999	22-Feb-99	141	59
2000	31-Dec-99	163	243
2001	27-Dec-00	139	340
2002	30-Dec-01	147	423

NB: Number of pages refers to pages in official publication of law in Sobranie zakonodatel'stva Rossiiskoi Federatsii. Budgets for 1992 and 1993 are from Vedomosti S"ezda Narodnykh deputatov RSFSR i Verkhovnogo Soveta RSFSR.

In the Yeltsin period, passage of the annual budget law was a parody of responsible budgeting: as everyone knew they would, budget revenues invariably fell far short of projections, while planned outlays incorporated far more commitments than could ever have been honored. As Satarov and his associates observed, Yeltsin never vetoed the budget, despite the fact that powerful pressures from within and outside the government invariably managed to bypass the Finance Ministry and to win concessions from the parliament and the presidential administration.[21] The government always succeeded in persuading the Duma and Federation Council to pass the budget law by accepting some of parliament's demands for increases in spending on politically influential groups and interests, despite the fact that these changes widened the projected deficits—never mind the actual deficits.

Nonetheless, over the course of the Yeltsin period, parliament increased its ability to enforce budget discipline. As a result of the Budget Code, signed into law in 1998, parliament significantly restricted the discretion of executive agencies at all levels of the state to use budget resources arbitrarily. It introduced a treasury system for the first time, requiring that all budget revenues be held in the state treasury. It closely regulated the use of incomes and revenues by state organizations and restricted the right of administrative authorities to deviate from spending the amounts specified by the budget law, and provided substantial penalties for violations. Moreover, it ended the right of regional and local governments to form their own off-budget funds and required them to cut back on spending in proportion to shortfalls in revenue.[22] The budget code was tightened further in 2000, when the Duma adopted amendments proposed by the government that eliminated regions' right to borrow money in foreign capital markets and ended the practice of mutual write-offs of budget obligations.

[21] Satarov et al. *Epokha El'tsina*, pp. 440-442.
[22] *Segodnia*, April 15, 1998.

Even more significant is the fact that parliament has also expanded its control over *extra*-budgetary funds, after the period in the early 1990s when both executive and legislative acts created non-budget funds freely. When Khasbulatov and his supporters in the Russian Congress of People's Deputies were fighting for supremacy with Yeltsin, Khasbulatov frequently signed decrees creating special-purpose off-budget funds under government agencies, specifying that only he could control the use of funds from them.[23] The practice continued into the mid-1990s under the new constitution. Typically, by law or executive action, an administrative body would be created and given the right to form its own extra-budgetary account to receive and spend revenues. These revenues, in turn, would exempt from taxation. In some cases they would include the right to conduct import and export operations without paying customs duties.[24] For instance, the press minister tried to persuade parliament to create a "fund for support of the press" -- which he would control--as part of the law on state support for the media (the provision was dropped from the final version of the law). An LDPR deputy introduced a bill "on the preservation and development of Slavic traditions," which would create a tax-exempt fund. Another deputy proposed a bill creating special purpose off-budget fund for development of the Far North, another for treatment of solid wastes. Industries formed their own extra-budgetary funds authorized by the government and funded through contributions from individual enterprises (treated as part of production costs). In 1994, Gazprom's off-budget fund took in about 10 trillion rubles in revenues, or close to $3 billion. Railroads Minister Aksenenko was accused of creating six off-budget funds, including the "fund for supporting educational institutions of the ministry," "the fund for health care," the "financial reserve fund," and the "fund for investment programs of the ministry." Only in December 2001 did a new law on the Procuracy-General eliminate the procuracy's right to maintain its own off-budget "development" funds. These funds may have been legal, but they created an enormous temptation for corrupt diversion of resources for other purposes.[25]

The use of off-budget funds by local and regional governments, ministries and other state organizations, and enterprises proliferated. The volume of resources flowing through them was staggering. By the mid-1990s the money in off-budget funds totalled close to two thirds of the state budget.[26] But off-budget funds were not subject to budget control, often were free from tax, and (until the introduction of the treasury system in 1998) often were managed in commercial banks. At a time when the economic system was shifting from one based on the administrative control of physical resources to one in which money became a financial resource, off-budget funds enabled public entities to act as if they were private interests outside of any public accountability and to provide elected officials with politically useful slush funds. Granting the right to form off-budget funds became yet another of the ways in which the executive and legislative branches competed for support during the early 1990s. Both parliamentarians and executive branch officials benefited from control of large slush funds outside any budgetary control. They deadlocked over policy measures designed to bring off-budget funds under budgetary control. A bill requiring that extra-budget funds be subject to budget oversight and regular audits, and maintained in the state treasury, died following heated debate in the Duma in summer 1995. Many deputies wanted to bring the pension fund and other social funds under the Duma's budgetary control but the Pension Fund itself and deputies sympathetic to it argued that doing so would only increase the likelihood that pension re-

[23] Satarov et al. *Epokha El'tsina*.
[24] *Izvestiia*, June 6, 1995.
[25] Polit.ru, October 24, 2001.
[26] *Izvestiia*, June 6, 1995.

sources would be diverted to other uses.[27] Meantime, the Audit Chamber and the government's own auditors constantly discovered massive abuses in the use of off-budget funds, including the Highway Fund, the pension fund, and other social funds, often by regional authorities.

Over time, parliament has imposed tighter budget controls over these funds. A 1999 law established a general framework for social insurance funds, separating them from budgetary social assistance programs. The law on the single social tax passed in 2000 unified contributions into the four funds (pensions, medical, and the two social funds) and lowered the aggregate rate. This did represent a significant step toward placing all the social funds under budgetary control. The next step was to increase the Pension Fund's control over pension spending by restricting governors' ability to treat pension funds as part of general budget resources (Putin issued a decree to this effect in September 2000, which the Constitutional Court upheld). In the future, the Pension Fund's control over pension contributions will be reduced through the shift away from social insurance (though a component of social insurance will remain) to a contributions and investment system consisting both of the state's pension system and private funds. With time, therefore, parliament has increased its control both over the state budget and over extra-budgetary flows of resources.

The government's ability to pass balanced budgets through parliament owes to several changes since 1998 in the political and economic environment; it is certainly not only or even mainly the consequence of increased parliamentary efficiency. The more favorable exchange rate for the ruble, higher oil and gas prices on world markets, and higher tax collections, as well as the government's ability to command a majority in the Duma that requires fewer spending concessions than in the past, all play a part. The formation of a coalition of four factions that command a stable majority provides a more efficient institutional mechanism for aggregating policy interests than did the old system of building ad hoc cross-factional coalitions for every individual piece of legislation. Now bargaining between the government and its allied factions allows the government to win over a secure majority for the budget bill without having to spread benefits across the Duma too widely. The government's practice is to into negotiations with the "coalition of four" even before submitting the budget bill to the Duma.[28] For example, the finance ministry consulted with the leaders of the four allied factions in the summer of 2003 over the shape of the 2004 budget. Sensitive to the deputies' electoral interests, the government relaxed budget discipline somewhat and gave each of the four friendly factions the right to raise spending in one or two issue areas. For example, Unity, the Duma arm of United Russia, has sought to identify itself with the cause of greater defence procurement. The faction People's Deputy, which formed the People's Party, pushed the government for greater spending on budget sector employees in the regions. OVR (which originated as the Duma faction of the Fatherland-All Russia party, then subsequently merged into the United Russia party) demanded more funding for agricultural producers. The Russia's Regions group sought more spending on transportation and housing. Sympathetic to their interests, the government developed a budget with optimistic estimates for revenues in order to accommodate the deputies' interests; experts estimated that the deputies' wish list was filled by about 85%.[29] Close coordination between the government and its supporters in the Duma has now made it possible for the govern-

[27] *Segodnia*, June 8, 1995.

[28] The Federation Council now participates informally but regularly in these "zero reading" consultations between government and Duma on a number of pieces of legislation, which in turn allows its members' interests to be accommodated before and during the passage of bills through the Duma. This is one reason that nearly all legislation reaching the Federation Council from the Duma passes.

[29] Ivan Preobrazhenskii, "Pravitel'stvo naidet deneg dlia vsekh," from the website of the Center for Political Technologies, Politkom.ru, as of August 7, 2003.

ment to ensure solid majorities at each stage of the budget process, something that did not occur in the Yeltsin era. Budget and tax policy remain subject to distributive bargains, but with fewer costly side-payments because the government can concentrate its largesse on the interests of a smaller and more cohesive set of factions.

Conclusions

Studies of governance often emphasize the contradictory qualities expected of institutions. Democratic institutions must be responsive but also decisive.[30] Policy makers must be able to respond to public demands and urgent policy needs, but they must also be able to maintain commitments to policy in the face of resistance. Effective governance may require imposing losses on some groups in favor of benefits for the larger public good.[31] Democratization does not necessarily improve institutional capacity; it can allow a broader range of interests to be taken into consideration in making policy and prevent special interests from capturing state power for private benefit, but does not necessarily do so. A weakened state undergoing democracy during a time of economic crisis is particularly vulnerable to capture and corruption by powerful interests that seek concentrated particularistic benefits at the public's expense. In the absence of strong, effective aggregating institutions, such as parties, opening the system to competitive elections and separation of powers may simply compound the problem of fragmented authority and multiply the arenas where organized interests can capture particularistic benefits. Giving a president in a weakened state decree-making authority allows him to buy off key players by granting them special benefits.

Considering the magnitude of Russia's state crisis in the early 1990s, the growth in institutional capacity is substantial. By contrast with the early 1990s, policy making has become much more efficient. Nearly all significant policy now is made by legislation rather than decree. Legislation passed in the late 1990s and under Putin has significantly increased budget control and reduced the level of loopholes, concessions, and grants of unaccountable power in fiscal policy. Public confidence in central institutions has risen. The system of parliamentary political factions and bicameralism have enabled parliament to overcome its own collective dilemmas, as it was unable to do in the two interim systems of 1989-1991 and 1990-1993. With greater capacity to deliberate and reach decisions has come greater capacity for oversight, law-making, and budget control. This capacity has grown, however, at the expense of parliament's independence. Legislative oversight of the executive branch is effective to the degree that that it serves the purposes of powerful executive actors, and bargaining between the legislative and executive branches is efficient because it narrows the range of political interests that must be satisfied in order to build reliable majorities. De facto oversight and other powers at the disposal of the Federal Assembly during the Yeltsin period often were instruments used by the political opposition in the legislature, which was unable to achieve its own agenda but sought to block the president's. During the Putin era, the same tools are used effectively by the president's allies in the legislature to achieve their political goals.

Therefore the record of success that President Putin and his government have enjoyed in passing their legislative agenda through parliament is partly the result of the growth of expertise and efficient institutions in parliament (such as the emergence of a stable majority coalition of four factions). But it is also the product of the growing use of administrative and police powers by the executive to silence the opposition, the rationalization of policy making capacity in the executive, and

[30] Stephan Haggard and Mathew D. McCubbins (eds.), *Presidents, Parliaments, and Policy*, Cambridge, Cambridge University Press, 2001.

[31] R. Kent Weaver and Bert A. Rockman (eds.), *Do Institutions Matter? Government Capabilities in the United States and Abroad*, Washington, DC, Brookings Institution, 1993.

the growth in the capacity of major business associations to aggregate the interests of their members. However, Russia has not developed a system of programmatic parties offering voters ideologically-based choices over government formation and government policy. We may conclude that the key to effective governance is less the formal powers enjoyed by the legislature than the existence of institutions that aggregate social interests as broadly as possible and allow policy decisions to be made with as few side payments to affected private interests as possible. In democratic polities, systems of competitive parties, tied with national interest groups and mass media, perform this role. Russia remains far from establishing such institutions.

Administrative Review and Oversight: The Experiences of Post-Communist Legislatures

David M. Olson

Review of administrative activity has not been a priority of the newly energized post-communist parliaments of Central Europe. In the first decade since the collapse of communism, parliaments have been preoccupied with other tasks.

The parliaments of new democracies have concentrated upon the design of the new democratic political system, such as the structure of parliament, the place and powers of presidents and prime ministers, and the election system. Many constitutional questions required attention, and both government and parliament have been overwhelmed with the policy requirements of a new economy as well as a new political system.

The new democratic parliaments have had a concurrent major task to organize themselves. The communist inheritance was their starting point: neither structures nor rules of procedure were adequate to consider serious policy questions in a multi-party environment. They have had to create a functioning committee system, define and regularize the formation of parliamentary party groups, and to devise and agree upon new rules of procedure[32].

This paper considers the special case of the Polish Sejm, the prospects for oversight in the other Central European parliaments, and the emerging developmental sequence of internal institutionalization of parliaments as prerequisites to the administrative review function.

Oversight in the Polish Sejm

The Polish Sejm is the only one of the post-communist parliaments to devote time and effort to administrative review and oversight. Its committees utilize a distinctive *desiderata* system to examine and instruct ministers and administrative agency heads.

This extensive procedure is not, however, a new invention: both the committee system and the oversight procedure were developed during the last thirty years of communist rule. The post-communist parliament has, in this case, been able to directly build upon its communist era inheritance[33]. This legislative innovation was part of a much broader process of distinctive Polish thought and action under communism.

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[32] Attila Agh, "Changing Parliamentary Committees in Changing East-Central Europe: Parliamentary Committees as Central Sites of Policy-Making," *Journal of Legislative Studies*, vol. 4, n.1, 1998, pp. 85-100; David M. Olson and Philip Norton (eds.), *The New Parliaments of Central and Eastern Europe*, London, Cass, 1996; David M. Olson, "Paradoxes of Institutional Development: The New Democratic Parliaments of Central Europe," *International Political Science Review*, vol. 18, n. 4, 1997, pp. 401-16.

[33] Karpowicz and Wesolowski 2002) Maurice D. Simon and David M. Olson, "Evolution of a Minimal Parliament: Membership and Committee Changes in the Polish Sejm," *Legislative Studies Quarterly*, vol. 5, n. 2, 1980, pp. 211-32; Ewa Karpowicz and Wlodzimierz Wesolowski, "Committees of the Polish Sejm in Two Political Systems," in David M. Olson and William E. Crowther (eds.), *Committees in Post-Communist Democratic Parliaments: Comparative Institutionalizaton*, Columbus OH, Ohio State University Press, 2002.

Each of the 25 committees of the Sejm has the formal authority to investigate administration on those topics within the legislative jurisdiction of the committee. Committee attention to administrative matters stems from a wide range of sources: the government's report on implementation of the previous year's budget, preparation of the new budget, citizen complaints, and reports from the external audit agency[34].

First, most committee reviews are prompted by the annual government report on administration of the previous year's budget. One example concerned the provision of care for single mothers and financial benefits for mothers with small children. Several joint meetings of two committees – Social Policy and Health - addressed these problems. The initial committee meeting on this topic was postponed because the ministry officials in attendance were considered by the committees to not rank highly enough to speak authoritatively for the ministry.

Second, the annual budget itself is the subject of a large share of committee reviews. Committees usually estimate that any given item needs greater funding, but are prohibited from increasing the government's proposed amount. Their remedy is to direct a *desideratum* to the government about the next year's budget proposal.

Citizen complaints are a third source of committee action. Citizen letters are addressed to individual Deputies, to parliamentary party clubs and to the Sejm secretariat. The Committee for Social Policy, for example, investigated the provision of care for people with chronic diseases in response to citizen letters.

The fourth major source of committee action is the external audit and investigation agency (Chief Board of Supervision, the NIK). Several committees joined in a *desideratum* on procedures for teacher evaluation, in response to a NIK report critical of skills and procedures of education superintendents.

Committee oversight activity is also suggested by many other sources, including the administrative agencies themselves, and outside interest groups.

Though Sejm committees are active in administrative review and oversight, the legal status of committee *desiderata* pronouncements is both unclear and controversial. Whether they are mere expressions of parliamentary opinion or authoritative pronouncement of requirements imposed upon the government are controversial judgments[35].

The Polish experience strongly suggests the critical importance of committees as the main source of continuing legislative review of the administration of public policy, as has been observed more generally elsewhere[36].

[34] Karpowicz and Wesolowski, cit., pp. 62-67.
[35] Karpowicz and Wesolowski, cit., pp. 62-67.
[36] Jean Blondel, *Comparative Legislatures*, Englewood Cliffs, NJ: Prentice-Hall, Inc, 1973, pp. 66-70; Joseph La Palombara, *Politics Within Nations*, Englewood Cliffs, NJ: Prentice-Hall, 1974, pp. 161-166.

Table 1: *Party Distribution of Committee Chair Positions by Government Status of Party in Selected Post-Communist Parliaments by Parliament and Time Period*

Parliament and Chamber	Time Period	Government Status of Party			Total
		Government	Opposition	Independent	
Bulgaria	1995	18	2	0	20
	1997	13	1	0	14
Czech Republic Chamber of Deputies	1992	11	0	0	11
	1996a	7	5	0	12
	1997b	4	7	1	12
Estonia	1992a	8	0	2	10
	1992b	6	2	2	10
	1995a	8	2	0	10
	1995b	9	0	1	10
Hungary	1990	6	4	0	10
	1994	15	5	0	20
Poland Sejm	1996	18	7	0	25

Note: Time period is whole electoral term, except for government or party changes midterm without election, shown as a, b.
Adapted from: David M. Olson and William E. Crowther (eds.), *Committees in Post-Communist Democratic Parliaments: Comparative Institutionalizaton*, Columbus OH, Ohio State University Press, 2002, Table 9.3.

Oversight Options

At least some of the post-communist parliaments (Czech Republic, Hungary) are now paying more attention than previously to budgeting and to economic policy linked to the state budget. Typically, the proposed state budget in its several parts is referred to legislative committees through the Finance Committee, to which the other committees report recommendations. But typically, according to interviews, each committee asks for increases in its portion of the budget, most of which the Finance Committee denies. As committees develop experience and gain a support staff, interest in administrative review and oversight might develop in post-communist parliaments in the second decade as a direct result of the budget process.

The opportunities for committees to engage in administrative review and oversight increase to the extent that single party control is relaxed. Committee seats are allocated proportionally to party size in the chamber, while committee chair positions sometimes are. The latter practice, however, varies with both the size of the government majority and the internal stability of each party. The accompanying table shows that the government coalition takes most committee chair positions, but that the balance between government and opposition parties can vary with midterm party splits, as illustrated by the Czech example in 1996-97[37].

[37] William E. Crowther and David M. Olson. "Committee Systems in New Democratic Parliaments: Comparative Institutionalization," in David M. Olson and William E. Crowther (eds.), *Committees in Post-Communist Democratic Parliaments: Comparative Institutionalizaton*. Columbus OH: Ohio State University

All of the post-communist democracies not only have multi-party systems, but each election results in a change of government. Each party thereby has the opportunity to learn from experience the perspective of both government and opposition. Furthermore, each government is usually a multi-party coalition always in danger of falling apart. One consequence of the usual turnover of government and opposition is that most MPs of the government parties are newcomers, while a sizeable proportion of the MPs of the opposition are themselves previous government ministers. That past government experience equips the current opposition members to be more active and effective than are the government coalition members in all of parliament's activities, including oversight.

There is a notable, by contrast with west European parliaments, absence of attention to district and constituency in the newly democratized post-communist parliaments. But there is also a concern that occupationally homogenous committees (e.g., teachers on the education committee) are a source of "inside" or hidden lobbying[38]. Either circumstance, however, is a potential motive for oversight.

At least some post-communist parliaments are supported in their oversight function by external investigative and audit agencies, of which the Polish Chief Board of Supervision is an example. In addition, courts and prosecutor organs sometimes initiate topics which come to parliament's attention.

International requirements impose a heavy burden upon fledgling state structures, including the legislatures, of post-communist states. To obtain financial support from international lending bodies, and especially to meet the requirements of membership in NATO and the EU, both government and legislature have rushed to adopt new law. Over time, we might expect legislatures to ask how things are working, for them. Currently, legislatures and governments cooperate closely in working toward NATO and EU membership. But over time, increased legislative oversight on such matters could very well become the expression of grievances toward and reactions against such international influences upon national level policy.

Oversight and Legislatures: Institutionalization Through Time

This paper has concentrated on routine administrative tasks as a subject for committee attention and review. High publicity allegations of corruption and power scandals occasion special parliamentary investigatory commissions, which are often both partisan and controversial. In Bulgaria, for example, many more special investigation commissions have been authorized than have ever met, much less delivered reports[39]. The administrative review function considered in this paper tends to be neither publicly visible nor controversial. Neither are they partisan. Political parties are apparently not involved in the Sejm's *desiderata* investigations and reports.

Press, 2002; Zdenka Mansfeldova, J. Syllova, P. Rakusanova, and P. Kolar, "Committees in the Chamber of Deputies of the Czech Republic," in David M. Olson and William E. Crowther (eds.), *Committees in Post-Communist Democratic Parliaments: Comparative Institutionalizaton*, Columbus OH, Ohio State University Press..

[38] Attila Agh, "Changing Parliamentary Committees in Changing East-Central Europe: Parliamentary Committees as Central Sites of Policy-Making," *Journal of Legislative Studies*, vol. 4, n.1, 1998, pp. 85-100; Karpowicz and Wesolowski, cit., pp. 62-67.

[39] Georgi Karasimeonov "Bulgaria: Parliamentary Committees – Institutionalization and Effectiveness" in David M. Olson and William E. Crowther (eds.), *Committees in Post-Communist Democratic Parliaments: Comparative Institutionalizaton*, Columbus OH, Ohio State University Press, 2002.

The contrast between the ability of the Polish Sejm to engage in administrative review from the very beginnings of the new democratic political system with the relative inattention to administrative review in the other post-communist parliaments suggests the ingredients required to make administrative review possible.

The experience of newly democratized parliaments of Central Europe suggests a developmental sequence of parliamentary organization and activity[40]. Oversight is not an activity which new parliaments undertake immediately.

Party groups and committees are the two basic types of internal working groups of parliament. Their structure and working procedures, in newly democratized parliaments, evolve simultaneously and interactively. In the initial years, both party groups and committees proliferate in number, in structure, and in specific activities. Improvisation through ad hoc reaction to events leads to numerous diverse subgroups with shifting members, unclear boundaries, and various and overlapping purposes.

After a two-term period of structural innovation and chaos, rules redefinition in the Czech Republic and Hungary resulted in a reorganized uniform committee structure. One attribute of the committees is that they now have a defined jurisdiction over a set of policy topics and the administrative agencies responsible for those policies.

Another committee attribute is that they become permanent. Even though party strength varies from one election to the next, even though one government is displaced by another, and even though parties themselves come and go, committees provide structural and procedural continuity for parliament from one term to the next. Even though member turnover continues to be high, committee continuity of form and procedure helps orient the new members to legislative life.

Administrative review and supervision by parliament rests upon these institutionalizing developments over time measured in a sequence of elections and parliamentary terms.

Note: The contributing authors to the Committees in Post-Communist Democratic Parliaments have provided the empirical material on which this paper rests. I very much appreciate the comments subsequently provided by Prof. W. Wesolowski.

[40] William E. Crowther and David M. Olson. "Committee Systems in New Democratic Parliaments: Comparative Institutionalization", *op. cit.*, pp. 198-199.

Emerging Patterns of Legislative Oversight in Indonesia

Edward Schneier

After nearly five years of constitutional tinkering and institutional development, the contours of Indonesia's mixed presidential system are beginning to emerge. The parliament, having effectively voted no-confidence in its first two post-Soeharto presidents (B. J. Habibe and Adurrahman Wahid) now seems content to let the present incumbent (Megawati Sukarnoputri) serve out her term and vie to succeed herself in a popular election this year (2004). Parliament has agreed to reconstitute itself as an authentic bicameral body with regional and population based constituencies replacing the partly appointive house-within-a-house approach of the 1945 constitution. And the flurry of constitutional amendments that have characterized the past three years appears to be over. In broad outline, then, the rather unique Indonesian mixed presidential system is beginning to come into focus.

The Basic System of Government

The president, directly elected on the same ticket with the vice president, with a second round of voting if no one achieves a majority, serves a four year term concurrent with that of the population-based Dewan Perakilan Rakyat (DPR), or People's Consultative Assembly, and the regional, largely consultative, Dewan Perakilan Daerah (DPD), or People's Territorial Assembly. The president appoints his or her cabinet, and although a 1999 amendment to the constitution requires consultation with the DPR in making such appointments, it does not require any formal process of confirmation. The cabinet consists of three 'coordinating ministers' for Political and Security affairs; Economics, Finance and Industry; and for People's Welfare, 17 heads of departments with portfolios, and 14 non-portfolio state ministers. The Cabinet rarely meets as a body and has no collective or individual responsibility to the legislature; it is neither a parliamentary cabinet nor an executive cabinet in the American sense. Each minister has executive authority over his or her ministry and has some personal staff resources at his or her disposal.

In practice, the appointment of each of these ministers is made in close consultation with the party leaders of the important parties represented in the DPR. Indeed these party leaders sometimes act as a sort of cabinet, though their meetings are not public and often include other politicians. An elected speaker of the house presides.

Under the 1945 constitution, the legislative role of the DPR was limited largely to consultation, with the larger MPR (Majelis Permusyawaratan Rakyat) having the power to actually pass the Government's budget and overall policy plans. The MPR had the power, technically, to dismiss the President. But because the President directly appointed roughly twenty percent of the members of the MPR (augmenting the elected membership of the DPR), and controlled the nominations of many others, the President, under normal circumstances, dominated the legislature. It is certainly not inappropriate, throughout most of the Sukarno and Soeharto years, to describe Indonesia as a dictatorship. As in many large and diverse authoritarian regimes, however, the powers of the supreme leaders were contextual and highly variable. In the 1990s, Soeharto's game of staying in power was played at a table seating the military, the new and traditional economic elites, the two major Muslim organizations, and, to a lesser extent, various foreign economic players such as the World Bank. Some of these players were also represented in the MPR which, although it might technically be described as a 'rubber-stamp' legislature, was sufficiently representative of these groups that it could not be ignored and indeed became the vehicle for the abrupt changes that re-

sulted in Suharto's resignation in 1997 and the later demise of his chosen successor, Habibe. It is worth noting that the seemingly subservient role of the DPR-MPR in the 1980s and 1990s was played in the context of a script that gave it the trappings and sometimes the substance of real legislative powers. Scott Morgenstern has argued with regard to Latin America, that "it is often difficult to discern the legislature's policy influence, since, in addition to overtly proposing or killing legislation, it can discreetly lobby for favorable executive proposals."[41] This was sometimes true in Indonesia as well. On more than one occasion, Soeharto's ability to remain in power resulted from his ability publicly or privately to negotiate a deal with the otherwise quiet parliament. If only because it was populated largely by the important military, economic, and cultural elites of the country, the MPR was always a factor in Soeharto's calculus of power. As it moved to strengthen its position in the post-Soeharto years, the legislature was able to draw upon an intermittent but not trivial tradition of government by consensus, a key component of the prevailing doctrine of *Pancasila.* While this emphasis on a consensus-building process of decision-making deprived the DPR of "its constitutionally given rights and responsibilities (to initiate legislation, to hold government accountable, and to have free and open debate)", the government's ostensible devotion to the doctrine gave opponents to its policies an important window of influence that they might not have had in a pure voting system.[42]

Constitutional amendments and rules changes adopted since 1999 have resulted in "a significant shift of authority from the executive to the legislature."[43] While the newly constituted regional legislature may prove assertive in using its role to disapprove legislation affecting regional interests, it seems safe to say that the DPR will be the primary legislative and oversight body following the 2004 elections. The essential structure for oversight is in place, with the current DPR's committee system formally structured to encourage regular committee reviews of the ministries in their jurisdictions. These jurisdictions are clearly designed to define responsibilities over anywhere from one to three ministries. With minor modifications, the roots of these parallel structures can be traced back into the pre-reform DPR where these same basic committees held at least one meeting a year with the ministers of each agency, and sometimes took their oversight roles seriously. And although legislation was usually drafted by one of the ministries or in the presidential palace itself, draft bills were sometimes pulled back for modification after being aired at the committee stage.

It would be a stretch to argue that the DPR/MPR made much difference in governing Indonesia under Soeharto. It had no real power formally to amend draft bills, and its successes in exposing corruption or changing the course of government policies came only in cases of spectacular mistakes by the government and where powerful quasi-independent institutional forces - generally meaning the military and the church - were involved. An ill-advised attempt to set up a national lottery (the Koran is unambiguous in its opposition to gambling, and Indonesia is 90% Muslim), for example, was ridiculed to death in the Committee on Religion; and some of the more egregious grabs for money by members of the Soeharto family were exposed through parliamentary investigations. If such interventions were relatively rare, the important point is that the post-reform parliament has inherited the mechanisms for conducting some kinds of oversight, and a membership that includes a sprinkling of experienced parliamentarians.

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[41] Scott Morgenstern, "Toward a Model of Latin American Legislatures", in Scott Morgenstern and Benito Nacif (eds.), Legislative Politics in Latin America, New York: Cambridge, 2002, p. 7.

[42] Douglas E. Ramage, Politics in Indonesia: Democracy, Islam and the Ideology of Tolerance, New York: Routledge, 1995, p. 180.

[43] Greg Fealy, "Parties and Parliament: Serving Whose Interests?", in Grayson Lloyd and Shannon Smith (eds.), *Indonesia Today: Challenges of History,* Singapore: Institute of Southeast Asian Studies, 2001, p. 105.

Parties and Committees in the DPR and the Cabinet

There are ten officially-recognized caucuses or *fraksi* in the DPR. With more restrictive qualification rules in place for 2004, and with the elimination of special seats for the military and other functional groups (who had their own *fraksi*), the new parliament is likely to have a less fragmented structure. It will almost certainly include the two largest party groups, Golkar with 30% of the seats in the soon-to-expire session; Megawati's Democratic Party of Struggle (PDI-P) with 24%; and perhaps five other groups. Committee memberships and chairmanships are apportioned among the *fraksi* roughly according to the proportion of seats they hold, with the smaller parties slightly over-represented. Committee members are appointed by the party executive committees, and serve at their pleasure. Not only is party discipline strong in committee and on the floor, but the details of committee action are often worked out in advance meetings of major party leaders. *Pancasila* survives Soeharto as a foundation of the constitutional order, and there continues to be a strong emphasis on consensus modes of decision-making that limit factional activities and centralize power. What makes committees important is that on most issues it is the leaders of the key *fraksi* on the committees - not the central committees of the parties - who negotiate the actual details of legislation, and negotiate with the ministries they oversee. "The party never has to tell me what to do in committee", one chairman told me in a 2002 interview, "because I sit in the leadership meetings that would have to give those orders." The Budget Committee has some general oversight functions; but tends to work most closely with the Coordinating Ministers, leaving most of the formal and informal interactions between substantive ministries and parliament to the leaders of the standing committees.

Each minister, including those without specific administrative responsibilities, is likely to appear fairly frequently at an open committee hearing that is usually well-covered by the newly-rambunctious media. It is here that Indonesian parliament most manifestly performs its informing function, and where individual members of the DPR have some potential for influencing policy. 'Committee hearings', as a recent National Democratic Institute (NDI) working paper put it, "often act as a primary avenue to inject public opinion into the legislative process, allowing various elements of society and government the opportunity to offer their opinions and expertise on proposed legislation (in contrast to plenary proceedings that are restricted to legislators)".[44]

Although their nature and extent are difficult to gauge, there is little doubt that 'plenary' interactions also occur between committee chairs and 'their' ministers. Many public hearings are televised, and interactions with ministers are a staple of the nightly news. NDI cites a survey of world parliaments that showed a wide range of restrictions on public contributions: public involvement, it showed, "ranged from fairly restricted in Denmark, where after members of the public have sent in written submissions, the committee may invite witnesses to appear before it, usually for about a quarter of an hour. Danish committee members query but there is 'give and take' discussion between the committee and witness. This contrasts with the New Zealand Parliament where witnesses may also appear before committees to give oral evidence designed to supplement their written submissions".[45]

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[44] National Democratic Institute for International Affairs, "Strengthening Legislative Capacity in Legislative-Executive Relations", *Legislative Research Series, Paper #6* , Washington, National Democratic Institute, 2000, p. 17.

[45] Unit for the Study of Government in Scotland, "Checks and Balances in Single Chamber Parliaments: A Comparative Study: Stage 2", Edinburgh, University of Edinburgh, 1998 as cited in *ibid.,*

Committees in Indonesia tend to be fairly restricted in giving direct access to private groups: typically it is ministers and ministers alone who are invited to testify. And while they often do have more private interactions at the plenary level, frequent public hearings do serve both to inform the public and to provide other legislators, particularly from minority parties, to raise critical issues and to question government officials on them.

All seven of the essential tools of oversight described in the survey of national legislatures reported in the paper presented here by Riccardo Pelizzo and Rick Stapenhurst are available to the DPR. How effective they are is another question. Writing two years after the fall of Soeharto, Fealy concluded that "The DPR's use of its powers to probe executive action and provide input into government decision making has... fallen short of expectations. In deliberating on such matters, parliamentarians have often been ill-prepared and more inclined to seek political advantage than to adhere to due parliamentary practice".[46]

The major impediments to implementation can be grouped under three headings: those related to the structure and character of the state bureaucracy; those embedded in the nation's underlying political culture; and those endemic to the legislature itself.

The Indonesian Adhocracy

Although Indonesia inherited from its Dutch colonial past a well-trained and politically neutral bureaucracy, it brought with it a colonial mentality that tended to view its role more in terms of what could extract from the community than what it could provide. Under Soeharto, power became at once more centralized and corrupt, relying increasingly on the bureaucracy in ways that reverted back to the colonial practice of shunning accountability. The bureaucracy, in Herbert Feith's characterization lost "its instrumental character and became a law unto itself."[47] In 1997, a leaked internal memorandum of the World Bank estimated that at least twenty to thirty percent of the government's development funds were being diverted to bureaucrats and politicians.[48] Little has changed in the post-Soeharto years, as the so-called 'Bulogate' scandal illustrates.[49]

Bulog, the *Badan Urusan Logistic Nasional*, is the logistics agency for basic foodstuffs which controls the distribution of a number of commodities and provides emergency help for the poor. It also seems almost certain to have financed a large proportion of Golkar's 1999 campaign, and probably contributed to two other parties as well. The Golkar party chairman, Akbar Tanjung is also Speaker of the House was sentenced to three years in jail for his role in siphoning money from the food aid program to his party's coffers. Later freed on appeal, Akbar is not only still Speaker but will almost certainly be a significant contender for President in this year's elections. What was perhaps most striking about the Bulog scandal was the enormous disconnect between the way in which it was handled by an outraged press, on the one hand, and the political strata on the other. Not only were the President and the Speaker's fellow legislators largely silent, they actually passed a law allowing any felon sentenced to Akbar's three years or fewer to run for President. It is

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[46] Fealey, p. 106.

[47] Herbert Feith, "Dynamics of Guided Democracy", in Ruth T. McVey (ed.), *Indonesia,* Ithaca, N.Y., Cornell University Press, 1963, p. 397.

[48] Schwarz, p. 316.

[49] The Bulogate story has been well-covered in the English language *Jakarta Post* (available on-line at www.jakartapost.com). It is well-summarized in Bill Guerin, "Indonesia's Bulog Rises Again", *Asian Times,* August 23, 2003 and available on line at www.atimes.com.

widely believed, though of course not proven, that his fellow politicians have been reluctant to turn on Akbar out of fear that he will retaliate with information on comparable activities of theirs.

What the Bulog scandal reveals, and the reason it is relevant to this study, is a pattern of corruption that is institutional as well as individual. That civil servants in Indonesia rather routinely supplement their meagre salaries with graft is neither surprising nor particularly unusual. What distinguishes the Bulog-type of corruption is its apparent connection to what seems to be a larger pattern of relations between the parties, the legislature, and the bureaucracy that gives a new twist to the concept of captive agencies. While Bulog was apparently distributing money to two other parties besides Golkar, there appears to be a larger pattern in which certain ministries are essentially affiliated with particular parties who choose not only the Minister and his or her deputies, but the Chairs of the relevant oversight committees as well. In his landmark study of the House Appropriations Committee in the United States, Richard Fenno noted the tendency of substantive committees to develop what he called an 'interest-leniency-interest syndrome' in dealing with the agencies in their jurisdiction.[50] The Indonesian case goes beyond this kind of pattern by adding a partisan dimension to the structure of subgovernments. It is classic machine politics where, instead of their being a dominant party, there is a division of the spoils or a dominant interparty power elite supporting a syndrome of sympathy-interest-leniency and pelf. Lacking in the Indonesian system is the restraining force of competitive parties, a Bureau of the Budget, or of an Appropriations Committee with the kind of budget-cutting norms Fenno described. While the President does submit, through her Coordinating Minister for Economics, Finance and Industry, an overall projection of annual revenues and expenditures, there is no comprehensive budget as such. Late in the 2003 session, the DPR did pass a bill require a regular system of accounts, audits, and something like an overall budget, but it remains to be seen how these reforms will be implemented.

The military and the police - separated into independent agencies in 2001 -enjoy special autonomy. ABRI, the Indonesian Armed forces, with its loss of the police and of its assigned seats in parliament, has suffered some reverses in this period of reform; but it remains the single best-organized and financed institution in Indonesia. For more than forty years, the armed services have run "a parallel administrative structure to that of the state, from Cabinet level to local administrative regions and down to villages".[51] Although it no longer formally has direct representation in parliament, the army continues to dominate the Golkar Party and to articulate the doctrine of *dwifungsi,* the 'dual function' of defending the state and helping administer it. As if to compensate for its loss of a direct parliamentary role (and, some say, to repay it for its role in easing Megawatti's ascent to the presidency), the army was given the authority in 2003 to initiate emergency military actions in the separatist regions of Aceh and Papua without parliamentary or presidential approval. And although the armed forces are generally well-funded by the state, their *legal* enterprises - ranging from owner-ship of an airline, oil wells and shipping companies to control over the vendors selling watches to tourists on the beaches of Bali - are estimated to account for up to half of their total budget.[52] Legislative oversight of the armed forces is limited, and its existence as a parallel admin-

[50] Richard F. Fenno, Jr., *The Power of the Purse: Appropriations Politics in Congress*, Boston, Little, Brown and Co., 1966, p. 141.

[51] Damien Kingsbury, *The Politics of Indonesia*, Melbourne, Oxford University Press, 1998, p.52.

[52] 52) During the process of driving the Dutch from Indonesia, Sukarno ordered the nationalization of those Dutch companies that controlled major industries or refused to hire local management teams. The expropriations were carried about the army which simply maintained management. Adam Schwarz, "Introduction: The Politics of Post-Suharto Indonesia", in Adam Schwarz and Jonathan Paris (eds.), *The Politics of Post-Suharto Indonesia,* New York, Council on Foreign Relations Press, 1999, p. 13.

istrative structure to other government agencies has, does, and will frustrate the ability of the central government to control the state apparatus.

As if this administrative structure was not already beyond control, a decentralization law, adopted early in the *reformasi* period, has confused lines of responsibility still further. Popular, but hastily drafted and short on details, the 1999 law devolves administrative power and budgetary resources to approximately 40 provinces and 345 cities or regencies.[53] As explained by its sponsor, the regional autonomy act divides administration "into two areas, not levels, i.e. regencies and cities that are given full autonomy status, and provinces that are given limited autonomy. Full autonomy means that there are no operations by the central government in the region of the regency or city, except for the fields [of finance and monetary matters, foreign policy, justice, defence, religion, and some areas... of a national strategic nature]. Limited autonomy means that there is scope available for the central government to carry out operations in the province.... Because this system of autonomy does not have levels... the relationship between provinces and regencies is of a coordinative, counselling and supervisory nature".[54]

There are mechanisms for federal overrides that have been sporadically implemented, and reports vary enormously on the impact of the decentralization law which clearly has worked more smoothly in some regencies than others. But with the president and the legislature reluctant to intrude on the decentralization process, the need for some form of coordination is apparent. With the military retaining its centralized structure, its role in such coordinating processes is likely to increase. Indeed, "ABRI's territorial system has become more and more autonomous in establishing mechanisms of political surveillance that endowed it with political missions designed in accordance with the concept of territorial management".[55] It is also worth noting that a significant proportion of the elected *Bupati* (heads of regency governments) are either active or retired members of ABRI.

Governing at the Grassroots: Community Streams

The rapidity and dispersion of modernization in Indonesia has been astounding. But there are traditional patterns deeply embedded in the culture of the islands that are more than tangentially relevant to the ability of any parliament to oversee the implementation of the laws; and that - to the extent that they are part of the legislative process as well - make formal processes and institutions less relevant. While there are important democratizing trends manifest in contemporary Indonesia as well, it does not take an astute listener in the political world of Jakarta to hear strong echoes of Harold Crouch's 1979 analysis of an country in which "political competition among the elite did not involve policy, but power and the distribution of spoils".[56]

Patrimonialism in Indonesia is often described in terms of streams (*aliran*), described by Geertz as "comprehensive patterns of social integration", that tightly bind and compartmentalize the communities of Java in particular and of the archipelago in general. Geertz defined three distinct streams

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[53] It has become popular to create new regencies, making it difficult to give a precise count. These figures are calculated from the listing in Gold Group Asia, *Indonesian Governments Guide*, Singapore, Gold Group, Asia-Pacific Ltd., 2002, pp. 563-66.

[54] M. Ryaas Rasyid, "Strengthening Regional Autonomy: An Impetus to Democracy", in Edward Schneier (ed.), *Continuing Dialogues towards Constitutional Reform in Indonesia*, Stockholm, International Institute for Democracy and Electoral Assistance, 2002, p. 182.

[55] Jun Honna, *Military Politics and Democratization in Indonesia*, London, Routledge Curzon, 2003, p. 207.

[56] Harold Crouch, "Patrimonialism and Military Rule in Indonesia", *World Politics*, 31 (July) 1979, p. 578

in Indonesia; but the more important point politically was a common religion-cultural pattern that surrounded politics in a more comprehensive mesh of social relations.[57] In most rural areas, and in some neighborhoods of the larger cities, voters tend to vote as blocs in patterns that support Geertz's "notion that leadership has its own constituency based on socio-religious orientation".[58]

A second, somewhat related characteristic of Indonesian society, one it has in common with many, is the fundamental absence of an autonomous civic culture. Destroyed by Soeharto, flooded by the rush of aliran, there are - outside of the church and the military - precious few organized membership groups in the country. A profusion of NGO's, many with outside funding, sometimes gives the illusion in Jakarta of an evolving pluralism, but it is just that, an illusion.

As in the Philippines, there are many of the trappings of a patrimonial state in Indonesia which have their roots in both traditional society and the colonial past. The key point of differentiation, as neatly elucidated by Paul Hutchcroft, lies "along a continuum that reflects the relative strength of state apparatuses and business interests and the predominant direction of rate extraction: in *bureaucratic capitalism*, a bureaucratic elite extracts privilege from a weak business class, while in *booty capitalism* a powerful business class extracts privilege from a largely incoherent bureaucracy.... [B]ureaucratic capitalism is built on the foundations of the patrimonial administrative state, while booty capitalism arises out of the political foundations of the patrimonial oligarchic state".[59]

If corruption in the Philippines "presents an insightful case study of precisely what kinds of economic problems can result from the *insufficient development* of the state apparatus",[60] Indonesia shows us how a functioning bureaucracy in a patrimonial setting can be equally but differently corrupt. Hutchcroft's distinction between Indonesia and the Philippines - looked at from the perspective of a Western, Weberian model - overstates the development of the Indonesian bureaucracy. As in the Philippines, the weakness of central control units in general makes legislative (or any other kind of) oversight problematic. But the Indonesian bureaucracy, much more than that of the Philippines, is an active participant in the generally localized, triangular game of booty gathering in which the patrimonial oligarchy of the Philippine model is part of a much more complex clustering of local cultures and political forces.

The ways in which these cultural variables interact with the political structure described earlier in this paper to frustrate effective oversight is nicely illustrated in a recent case study of timber management in Sumatra. McCarthy's analysis of illegal logging in the supposedly protected national forest region of Southeast Aceh province shows a typical pattern of collusive behavior that helps explain why Indonesia's forests are among the world's most threatened.[61] Some of the illegal logging McCarthy found in the Aceh Tengarra National Forests was the product of what might be

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[57] Clifford Geertz, *The Religion of Java*, Glencoe, Ill., The Free Press, 1960.

[58] Afan Gaffar, *Javanese Voters: A Case Study of Election Under a Hegemonic Party System*, Yogyakarta, Gadjah Mada University Press, 1992, p. 157.

[59] Paul D. Hutchcroft, *Booty Capitalism: The Politics of Banking in the Philippines*, Ithaca, Cornell University Press, 1998, p. 20.

[60] *Ibid.,* p. 16.

[61] John F. McCarthy, "Power and Interest on Sumatra's Rainforest Frontier: Clientelist Coalitions, Illegal Logging and Conservation in the Alas Valley", *Journal of Southeast Asian Studies* 33, (February) 2002, pp. 77-106. For an overview of the forestry system in Indonesia see Carol J. Pierce Colfer and Ida Aju Pradnja Resosudarmo (eds.), *Which Way Forward? People, Forests, and Policymaking in Indonesia*, Washington, Resources for the Future, 2002.

called "ordinary" corruption whereby a local entrepreneur might bribe a public official to ignore a small sawmill operation. But much of the real damage was done, less by small entrepreneurs than through an elaborate "semi-autonomous social field" that "envelopes the district", and includes "forestry officials, members of the military and police and district government personnel who have the ability to mobilise the law, have something to trade in the networks surrounding logging".[62] There are strong symbiotic relations among the traditional Philippine-style elites with the capital to fund a logging operation (often entrepreneurs from outside of the region or country); village farmers who move onto the land cleared by loggers; villagers who find work in the sawmills; and local government officials who gain popularity by providing these opportunities, and tax revenues to provide other services. Collectively, they form tacit 'growth coalitions' that strongly resist national pressures for conservation.[63] Not surprisingly, when a coalition of NGO's, including the World Wildlife Fund's single largest project in Indonesia, was able to secure a presidential decree that ultimately resulted in an order to shut down eleven area sawmills, it took almost a year to actually close them down.

In McCarthy's analysis, a semi-autonomous social field - the local coalitions of farmers, loggers and politicians working without outside entrepreneurs – "generated its own norms, values and rules", and was "able to enforce them... in contravention to the formal forestry laws".[64] This coalition, or *aliran,* to use Geertz's term, has prevailed, moreover in one of Indonesia's most closely monitored forest regions. It has done so in part because of the local forces so effectively described by McCarthy; but also in "the absence of clear authority structures willing or able to consistently govern access and use of the forest".[65] Corruption and an insufficiently developed state apparatus combine to make the central government virtually irrelevant. Laws creating national forests and protecting the environment are rendered nugatory by a bureaucracy that has little capacity to enforce the law. Even if the state forestry agencies were able to control internal corruption and vigorously enforce the laws, their ability to actually close down illegal operations would depend upon their ability to secure the cooperation of the police and, in many cases, the army, not to mention the local governments newly empowered by the 1999 decentralization law. ABRI is already known to be deeply involved in logging, as are some other agencies and national police offices. "It is likely that the involvement of such actors could become more entrenched as the state becomes weaker or more decentralized and as these agencies are less able to rely on formal budgetary allocations to support their operations" .[66] If the Indonesian parliament were, in other words, structured effectively to control the agencies of the state, it would find those agencies so amorphous as to virtually defy mapping, much less control. It is not so structured.

Mechanisms of Control

Although it has engineered and weathered the transition from a semi-authoritarian regime, the Indonesian DPR remains essentially a pseudo-parliament. Counterpoised to an indecisive, politically weak president; blessed with an expanding economy and popular support, it has been unable to define its role in the policy process. Corruption clearly plays a role, and the DPR is in no way immune. When the chairman of the Supreme Audit Agency reported to parliament that the 1999-2000 state budget was affected by 'irregularities' amounting to more than 45% of its total, no one

[62] McCarthy, p. 94.
[63] *Ibid.,* p. 98.
[64] *Ibid.,* p. 105.
[65] *Ibid.*
[66] Christopher Barr, "Timber Concession Reform: Questioning the 'Sustainable Logging' Paradigm", in Colfer and Resosudarmo, p. 212.

was particularly surprised.[67] 'Overseeing' a government in which nearly half of its expenditures are hidden is a manifestly difficult task for the most professional of legislatures. And the Indonesian DPR is by no means a professional legislature.

Despite the fact that nearly two-thirds of the votes cast in 1999 were cast for candidates of parties carried over from the controlled institutions of the New Order, it is striking that just over one of every three members (37.6 per cent) had previous parliamentary experience at the national level, or both national and regional levels. Even if we add the 69 members who had served in various provincial legislatures, it is worth noting that nearly half (47.8%) of those DPR members elected or appointed in 1999 were legislative novices. Of the members with legislative experience, 47 per cent were members either of the military *fraksi* (legislative party group) or Golkar which means that their previous terms in the legislature were served in the context of active membership in a civil or military bureaucracy.[68] Equally striking is the remarkable fluidity of party affiliations that characterizes member of the legislative class of 1999. In response to the question "to how many parties have you belonged?" a decisive majority (more than sixty per cent) said more than one, with more than ten percent admitting to having been affiliated with five or more (a remarkable figure considering that only three parties were legal for most of the years leading up to the 1999 elections).

Although it remains to be seen what kind of incumbency retention rates will manifest themselves as Indonesia settles into a routine pattern of free elections, the parallels with Eastern Europe are already striking. Looking at what Eastern Central European (ECE), systems in 2000, Attila Agh noted that "faction hopping or 'parliamentary tourism' has been very high in ECE with its immature or volatile parties".[69] Consequently, he went on, "the major problem of the ECE parliaments is that, although they are already democratic enough as formally and legally representative bodies, they are still too volatile or 'fluid' and, for this reason, are not yet performing well. Their efficiency is still rather low, mainly due to the 'subjective' or professional side.... The ECE parliaments have been 'filled' from cycle to cycle with 'first generation type' MPs who start their political learning process almost from the same departure point, always anew. It has been a grave political problem in the ECE countries because their ordinary citizens have realized this bottleneck and, therefore, the respect for the parliament as well as for the MPs has been thus far rather low".[70]

Much the same situation obtains in Indonesia, where pictures of sleeping legislators are a staple of network news reports and newspapers. Attendance at both floor sessions and the committees of both the DPR and MPR is often spotty. A March, 2000 meeting of one high-visibility investigating committee, to use a not uncommon example, was attended by only 9 of the committee's 50 members.[71] Staff resources are virtually non-existent for individual members, sparse at best for *fraksi*

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[67] Theodore Friend, *Indonesian Destinies*, Cambridge, Mass, Harvard University Press, 2003, 472.

[68] These figures were compiled by the author from the biographies published in *Panduan Parlemen Indonesia* or Indonesian Parliamentary Almanac, Jakarta, Yayasan API, 2001, pp. 507-1229.

[69] Attila Agh, "Change and Continuity Among the Members of Parliament: Low Incumbent Retention Rates in the New East Central European Parliaments", in Lawrence D. Longley, Attila Agh and Drago Zajc (eds.), *Parliamentary Members and Leaders: The Delicate Balance*, Lawrence, WI: Research Committee of Legislative Specialists, 2000, p. 26.

[70] *Ibid.,* p. 27.

[71] Julia I Suryakusuma, "Badan Legislatif Dalam Era Reformasi 1998-2000", (Inside the Legislative Body in the Reform Era, 1998-2000) in *Panduan Parlemen Indonesia,* p. 346. Translated by the author with the assistance of Puguh Priambodo.

groups or committees. There now is an independent Research and Analysis unit that seems quite competent, but it gets little use from members. And much of the legislature's central staff is mired in a Soeharto-era marsh of secrecy and paranoia so deep as to make it virtually worthless as a source of information. Since there is no effective distinction between 'governing' and 'opposition' parties in parliament, and since ideological distinctions between the parties are difficult to discern, the motivation that partisanship sometimes provides for oversight is not there.

Finally, it is important to note the DPR's historic and continuing disinclination to legislate. The 1945 constitution was unusually vague in locating lawmaking authority. While it made the MPR (the expanded DPR 'upper house') the supreme governing institution, it gave the president very broad, unspecific powers of issuing detailed regulations by decree. It is also said that "the president holds the authority to create legislation with the approval of the DPR". Although there was nothing to prevent the DPR from initiating legislative action on its own, throughout most of the Sukarno and Soeharto years, presidential decrees became the usual vehicles of legislation. Even during Indonesia's brief windows of democratization in the early and late Sukarno years, parliament never initiated more than a handful of bills. A constitutional amendment adopted in 2000 specifically gives the DPR the power to initiate legislation; but in its first two post-*reformasi* years the DPR used this authority only five times, three of them to create new provinces.[72]

The importance of legislative initiation in the process of oversight is difficult to evaluate: by giving certain members (and committees) of the legislature a proprietary interest in enforcement, greater legislative activity should serve to produce greater oversight activity. One can also make the case, however, that the need for oversight is greater in the case of a system that relies almost exclusively on executive initiatives, particularly when these come in the context of legislative traditions that emphasize consensus modes of decision-making and virtually exclude amendments to bills. By limiting the formal agenda setting and legislative policy-making roles of the legislature, Indonesia's mixed presidential system, by vesting so much power in its ministries has a particular need for effective oversight. It is not getting it.

Parliament and Public Policy in Indonesia

Legislative-executive relations in developed democracies are often evaluated in zero-sum terms. Oversight is depicted as a means of controlling bureaucracies. But while the independence of the army and police have posed continuing threats to stability and democratization, in many cases it is the *weakness* of the Indonesian bureaucracy that makes oversight both necessary and problematic. The extent of illegal logging represents a failure of mammoth proportions that derives not from a runaway bureaucracy, but from one incapable of implementing the basic law. Three facets of Indonesian society figure prominently in any analysis of the short-comings of the DPR. The strength of local networks, the *aliran* social forces linking communities in a patrimonial system of favor trading, makes it extraordinarily difficult to establish national institutions. Before examining the powers of the legislature in a country like Indonesia it is necessary to first establish the power of the state.

Second, even where state institutions are potentially capable of doing their job, a pervasive atmosphere of corruption - Indonesia consistently makes Transparency International's top ten in the world - makes reform problematic. 'Police patrol' methods of oversight, where legislators regularly monitor government agencies are worthless when the cops have been paid off. And finally, the absence of civic society makes more episodic forms of oversight problematic. So-called 'fire

[72] Fealey, p. 109.

alarm' methods of oversight depend upon networks of people willing and able to sound those alarms, and capable of having their alarms taken seriously by the firemen. In the case of illegal logging, those who sound the alarms are largely foreigners, or NGOs funded by other countries, whose lack of political clout in the DPR causes their warnings to be treated, in effect, as false alarms.[73]

The problem is also political. The destruction of the political left in Indonesia has left a permanent scar in the form of a party system virtually devoid of ideological content. 'Oversight' in Foreman's study of the United States, "emerges as a sometimes painful, inevitably self-interested process of consultation and second-guessing that reasonably well keeps administration sensitive to the concerns of person and groups affected by or attentive to public policy."[74] Indonesian politicians have neither constituency nor partisan self-interest to guide them in either their legislative or their oversight activities. A new election law that ties members of the legislature somewhat more firmly to geographic areas may help; but until there is a policy-focused pattern of politics in Indonesia, effective oversight will not emerge.

Finally, the professionalization of the legislature is an essential prerequisite. Underfunded, understaffed, and populated with too many novice members with little interest in their jobs, the DPR is in the process of overcoming its youth as a rubber stamp, but it has a long way to go. However, there is a growing core of parliamentarians who understand these problems. There is also a growing, and increasingly sophisticated middle class is beginning to ask more of its elected officials. It does seem clear that neither the experiment with decentralization nor Indonesia's peculiar mixed presidential system can work without a strong legislature. Whether it can work with it remains to be seen.

[73] Matthew McCubbin and Thomas Schwarz, "Congressional Oversight Overlooked: Police Patrols Versus Fire Alarms", *American Journal of Political Science* 28 (February) 1984, pp.165-79.

[74] Christopher J. Foreman, Jr., *Signals From the Hill: Congressional Oversight and the Challenge of Social Regulation*, New Haven, Yale University Press, 1988, p. 6.

Explaining Patterns of Oversight in Brazilian Subnational Governments

Scott W. Desposato

Introduction

Latin American democracies' challenges are typical of those faced by most young democracies. Governments are struggling to implement successful economic policy, especially in the context of recent downturns. Corruption continues to be a serious problem among bureaucracies and elected officials alike. Presidents, parties, and legislatures all are receiving remarkably low levels of public trust. In this context, legislative oversight is especially important, yet remains underimplemented in most of Latin America.

Interestingly, presidentialism - the current form of government for the great majority of Latin America - can make these challenges even more pressing, while at the same time creating more incentives for oversight. The potential challenges of presidentialism are well-known: separate and fixed mandates for executive and legislative branches lead to an increased potential for stalemate and regime breakdown. But Presidentialism may increase the quality of oversight, as conflict between branches and independent ambition should decrease the potential for collusion present in parliamentary systems.

Typically, however, oversight in Latin American democracies has been inadequate and driven more by scandals too large to ignore than by a constant pressure for efficiency, clean government, and good public policy. Many legislators have been co-opted into blindly supporting executives in exchange for public works for their constituency, or even bribes. Oversight only comes when executive corruption or failure simply cannot be ignored (Collor, Brazil), or only after executives have left office (Fujimori in Peru or Menem in Argentina).

There are several explanations for the nature of oversight observed in political systems. First is the formal institutional framework that authorizes legislative oversight and provides legal authority for challenges to the executive's programs or policies. Second are the informal institutional incentives for using that authority. In large part these are driven by the preferences of the electorate and the electoral system. One example is the extent to which elections are clientelistic or programmatic. Lastly is the capacity of the legislature to engage in effective oversight activities. This capacity is often endogenous to the other two variables. Legislators do not create capacity without incentives, for example.

This paper examines the impact of informal institutions on oversight by examining Brazilian state assemblies. Subnational governments are frequently overlooked in Latin American politics, but are important for at least three reasons. First, the policies implemented and decisions made in subnational governments have important and direct effects on the quality of life of citizens. State governments frequently control and set agendas for the distribution of education resources, health programs, and infrastructure development. While unlikely to affect inflation or unemployment rates, they do directly affect the lives of individuals. Second, subnational governments in Brazil directly mirror the formal institutions of the national government. The balance of power and patterns of politics are very similar to those of the national government. Hence, lessons learned from the states can directly affect conclusions about improving oversight at the national level. Finally, state governments provide a nearly ideal environment for testing the impact of nonformal institutions. They

share virtually identical formal institutional rules and operate in the same broader economic and cultural framework, but have dramatic differences in political history and culture. Some states are more developed and programmatic in their politics while others are much less-developed and more clientelistic. The result is a "mini-laboratory" for observing how the same institutions work in different contexts.

This paper proceeds by reviewing the formal institutions that define state politics. It then compares existing evidence that patterns of oversight differ greatly across states, corresponding to different political cultures. Finally, it concludes with a discussion of how professionalization and modernization may occur in Latin American legislatures.

Institutions Shaping Legislative Oversight

Brazilian state governments are all mini-presidential systems, with governors, unicameral legislatures, and state judiciaries. Elections for all state posts are held concurrently with fixed four-year terms. All states use the same basic election procedures. Governors are elected via a runoff majority system and state legislators are elected via open-list proportional representation - a very personalistic and "anti-party" system[75]. Some of these institutions are mandated from above by the national constitution. Other similarities across states are an artifact of history: when all state constitutions were re-written following the return to democracy, a lack of technical expertise and experience led many state legislatures to essentially copy the national constitution.

Formal Institutions

Brazilian state assemblies would be characterized as formally weak by many scholars. The executive retains the exclusive capacity to introduce legislation affecting budgets and taxation, the expansion of public employment, as well as other administrative issues. Governors also have reasonable veto powers: partial (line-item) or full vetoes, only overridden by an absolute majority of legislators.[76]

While legislatures have limited policy initiation capacity, they do have reasonable oversight authority, vested in several mechanisms. First, legislators can call state departmental heads to testify before committee meetings. In addition, at the request of a minimal number of legislators, the assembly can form a special investigative committee with some judicial authority that can refer its findings directly to the public prosecutor.

The legislature is also directly charged with the responsibility of over-seeing and evaluating the legality and efficiency of the use of state funds, the budget process, and all administration. One component of this responsibility is receiving, evaluating, and approving the annual audit of the state conducted by the *Tribunal de Contas*, a branch of the judiciary.

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[75] See B. Ames, *The Deadlock of Democracy in Brazil*, Ann Arbor, The University of Michigan Press, 2001; Scott Mainwaring, "Multipartism, Robust Federalism, and Presidentialism in Brazil", in Scott Mainwaring and Matthew S. Shugart (eds.), *Presidentialism and Democracy in Latin America*, New York, Cambridge University Press, 1997, pp. 55-109, J. M. Carey and Matthew S. Shugart, "Incentives to Cultivate a Personal Vote: A Rank Ordering of Electoral Formulas", *Electoral Studies*, vol. 14, 1995, pp. 417-439; J.D. Barkan, L. Ademolekun, and Y. Zhou, "Emerging Legislatures in Emerging African Democracies", Paper presented at the 2003 APSA Meeting, 2004.

[76] There are some minor differences across states in quorum requirements and veto powers. In addition, a handful of state governors have decree authority.

Finally, the legislature has the capability to directly confront the governor, overriding vetoes with an absolute majority vote. The legislature can also open impeachment proceedings and judge the governor, vice-governor, and all state department heads for crimes related to their offices.

In a purely formal sense, the state legislatures are thus relatively weak in terms of policy formation. The governors' exclusive initiation powers restrict legislative opportunities for independent policy-making in many areas. But the legislatures retain formal powers of oversight and are capable of challenging an incompetent or corrupt executive.

Many Brazilian state legislatures, however, often do not aggressively engage the executive branch. This is primarily due to the lack of electoral incentives for oversight.

Clientelistic and Programmatic Politics

In clientelistic electoral markets there are few incentives for legislators to invest in legislative professionalization, party cohesion, or policy development[77]. In programmatic electoral markets, such investments are much more likely. This argument has direct implications for the nature of oversight. In clientelistic electoral environments, oversight should be secondary to the pursuit of pork and patronage from the executive branch. In programmatic electoral markets, politicians can use oversight to further their careers.

The relationship is driven by the nature of the goods politicians deliver and voters' relative preferences for programmatic or individualistic goods. Individualist or private goods are relatively certain and immediate; public goods are delayed and uncertain. Where elections are driven by private goods - cash, food, t-shirts - or even local public goods (paving roads, for example) - appeals to abstract notions of preventing corruption have little interest for voters. Typically voters in such environments have pressing short-term needs that trump promises of long-term changes in health care, corruption, or the environment. A new hospital is worth more to a voter than a small cash payment, but said hospital might never be built while the cash payment can be enjoyed immediately.

The result is that in individualistic electoral markets legislators should focus on obtaining and delivering resources to voters. These investments of time and energy have direct electoral payoffs to politicians and welfare payoffs to voters. Other activities, including oversight, do not have any payoff to ambitious politicians. Indeed, a successful and clientelistic politician will be praised with a phrase common in Brazilian politics: "*rouba mas faz*", roughly "he steals but gets things done".

In contrast, in programmatic electoral markets, we should see very different patterns. Voters there are willing to forgo immediate low-value payoffs for longer term, uncertain and higher value goods. The implication is that legislators will work on delivery of such goods - introducing legislation, professionalizing, engaging in debates and committee work, and also overseeing the executive to reduce corruption and increase efficiency.

A few indicators of legislative behavior from Brazil show these patterns. Table 1 compares party cohesion for government and opposition parties, and shows how clientelism and poverty can degrade the potential for independent legislative action. In the poorest states, where individualistic

[77] Scott W. Desposato, *Institutional Theories, Societal Realities, and Party Politics in Brazil*, Ph. D. thesis, University of California, Los Angeles, 2001.

goods are a common part of legislative elections, government parties are very cohesive, while opposition parties are clearly divided. The pattern reflects legislators' need to abandon party platforms for gubernatorial-supplied pork. Government parties have high cohesion because of the congruence between party positions and the governor's positions. But instead of aggressive oversight and challenges, opposition parties split - some legislators sticking with their party's platform, others defecting to vote with the governor in exchange for pork.

Table 1*.Government and Opposition Average Party Cohesion – 1991-1998.*

State	Cohesion			
	Gov't	Opp.	Diff.	
Programmatic				
Rio Grande do Sul	.87	.93	-.06	***
Sao Paulo	.84	.87	-.03	***
Brasilia	.84	.86	-.02	
Clientelistic				
Piauí	.94	.48	.46	***
Bahia	.98	.81	.17	*

Note: Significance Levels: * .05, *** .01, **** .001

Table 2 shows another indicator of executive-legislative independence-- the frequency of vetoes. These reflect the legislature's willingness to pass legislation opposed by the executive branch, and shows substantial variation. Specifically, legislatures in poorer states are much less likely to pass legislation that diverges from the governors' preferences. Again, legislators' primary goal is delivering private and local public goods to constituents, but delegating legislative authority to the executive branch. In contrast, in public goods states, there is evidence of significant legislative-executive conflict. Legislatures frequently pass bills opposed by the governor and sometimes overturn those vetos. These patterns show how interbranch conflict and legislative independence is more likely to be observed in programmatic electoral environments, as opposed to clientelistic states.

Table 2*. Estimated Veto Frequency – 1991-1998*

State		
	1991-1994	1995-1998
Programmatic		
Rio Grande do Sul	126	88
Sao Paulo	136	118
Brasilia	36	6
Clientelistic		
Piauí	0	0
Bahia	0	0

These patterns are corroborated by research on state budget processes. Schneider has found that in more clientelistic states, legislators completely defer to the governor on budgetary matters, even though they are constitutionally charged with oversight[78]. In one case, he found that budget committee members would call the governor's staff to ask which budget amendments they should pass! In contrast, in more ideological states, budget politics are much more controversial, with state assemblies even passing legislation over the governor's veto. None of these directly measures oversight, but all measure a key prerequisite of effective oversight: the independence of legislative politics from executive influence.

How Can Change Happen?

There are three implications about how improvements in oversight may happen in young democracies, reflecting the role of institutional change, social change, and exogenous change. I will consider each briefly in the following section.

Change through Formal Institutions and Capacity-Building Institutional change suggests increasing the powers afforded the legislative branch. Ambition theory suggests that legislators will use such powers to expand their authority over policy-making through legislative oversight. However, powers are embedded in constitutions and are only changed with difficulty.

Changing the availability of resources, however, is much easier. Such changes would entail increasing legislatures' professional staff with technical expertise in specific policy areas, including budgets. Evidence suggests that simply increasing such resources can have important effects on legislative oversight. For example, the state of Minas Gerais embarked on an ambitious legislative professionalization program ten years ago, creating a legislative school to train deputies, hiring technical staff, and increasing publicity of legislative activity. The changes have reportedly been very successful. One deputy reported that previously, the executive would simply send budget proposals to the legislature for a rubber-stamp approval. The legislators were not equipped to pore over a complex budget document. Now, however, they reported that the executive treated them with more respect - sending a team to present the budget and answer questions from legislators and their staff. Deputies attribute this directly to the increase in available professional resources.

Unfortunately, such changes are difficult to implement because they are endogenous to existing political systems. One reasons such resources are scarce is because legislators have previously had little use for such resources. Where elections are driven by individualistic goods, technical tools for legislative oversight are not a priority. Similarly, challenging or limiting the executive's behavior risks losing access to essential pork.

Informal Institutional Change One implication is that change comes about as the nature of elections changes - as clientelism diminishes and programmatic politics become more common. These sorts of changes can be seen in the Brazilian states. In particular, the less-developed state of Bahia is frequently characterized as heavily clientelistic state, where vote-buying is common and the delivery of local public goods an essential part of elections. Along with this has gone corruption and allegations of electoral fraud, as well as virtually no legislative oversight of the executive branch. The importance of executive-delivered pork is apparent in state deputies' thanking the governor for giving them their mandates.

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[78] A. Schneider, Federalism against Markets: Local Struggles for Power and National Fiscal Adjustment in Brazil, Ph.D. thesis, University of California, Berkeley, 2001.

But the development of a petrochemical sector in the Reconcavo region of the state has led to some significant changes. Workers there have organized into labor unions, and ideological labor politicians have been elected from those regions. They have engaged the legislature aggressively with efforts to debate policy on the floor or in committee meetings, and are pushing for significant changes in the nature of executive legislative relations. Status quo deputies acknowledge this shift - noting that previously debates were not even necessary, but now they were obliged to defend the government publicly.

Exogenous Change: Visionaries and Donors But such changes come very slowly to many political systems especially where economic growth is slow and unequally distributed. Improvements in legislative oversight can still come about from outside actors, as well as chance events. Minas Gerais' professionalized state legislature largely reflects the vision of the administrative director of the legislature - a political appointee responsible for the administration of the state assembly. Deputies reported that he began the pressure for increased legislative expertise and technical capability, founding a legislative school to train new legislators in legislative process and hiring additional technical staff.

Chance visionaries may never come to many political systems. An additional source of change is assistance from NGO's and other donors. Such agencies can directly increase the short-term professionalization of a legislature through technical training for legislators and staff. They may also provide basic infrastructure - computers, networks, and archival material –to facilitate professionalization.

Unclear is the long-term impact of exogenous assistance for change. Certainly donor assistance is changing the political landscape of many communities[79]. My own research suggests that donor assistance' potential to permanently improve legislative oversight depends on the nature of the assistance and each political system.

One core factor is institutional memory. Where resources are invested in legislators or politically-appointed staff, turnover and progressive ambition may reduce the effectiveness of such programs. That is, where legislators quickly move on to other offices and take their staff with them - because of term limits or opportunity structures - training will be less effective and not retained within an institution. Where turnover is low, donor resources can be invested in individuals. Where turnover is high, donor resources will probably only be effective when invested in more permanent institutional capacity - starting a legislative school or even forming a research institute at the legislature's disposal.

A second factor is the presence of legislators with incentives to use their new resources. In largely clientelistic political systems, most legislators will have no incentive to use procedure to challenge the executive branch. The existence of a small but significant minority of legislators with electoral support for oversight can change everything. In a state like Bahia, 10% of the representatives were from an ideological workers party and would likely use technical resources to push for political

[79] D. S. Brown, J.C. Brown and Scott W. Desposato, "Left Turn on Green? International NGO's, Civil Society, and Political Change", *Comparative Political Studies*, 2002

reform. Where there are only one or two such deputies, however, pressure for change may be easily quelled[80].

A third factor is an acceptance of the formal rules of the political game, backed by an impartial judiciary. Without such norms and institutions, legislative oversight - even when backed by a constitution - may be discarded or ignored.

On all these dimensions there is room for optimism regarding Latin America, and in particular Brazilian state assemblies. A national organization of state legislatures creates a forum for exchange and dialog. Reformist pressure from federal prosecutors and judges is placing pressure on even the most isolated and backward states. And ongoing development and democratic consolidation will increase legislators' incentives for oversight activities.

[80] But note that in Bahia, the governing coalition would simply leave if opposition deputies became too aggressive in their debates. The government coalition was so large that their departure would end the session via a quorum call.

Administrative Review and Oversight: The Experience of Westminster

Mark Shephard

Parliament has been left behind by far-reaching changes to the constitution, government and society in the past two decades. Despite recent innovations, particularly in the handling of legislation, the central question of Westminster's scrutiny of the executive has not been addressed. (Report of the Hansard Society Commission on Parliamentary Scrutiny, 2001: x)

Prior to the Labour Party's election victory in 1997, Labour's manifesto promised an 'effective House of Commons' to be realised in large part through the creation of a special Select Committee with remit to review procedures in light of the 'need for modernisation'. Shortly after victory, Labour established a 'Modernisation Committee' chaired by the Leader of the Commons and with a remit to review four key areas: the legislative process; ministerial accountability; working practices (such as sitting hours); and the style and forms of proceedings. Between 1997 and 2003 the Committee published 19 reports starting with a report on the legislative process. However, to date, most of the reports have focused on the modernisation of working practices and the style and form of proceedings. Reports that deal with improving the effectiveness of ministerial accountability have been notably lacking. Consequently, the view of the Hansard Society that 'parliamentary reform has been one of improving the efficiency of Parliament, but not its effectiveness' appears just as valid three years on[81].

There are of course serious contextual hurdles to reforming the effectiveness of Parliament. The nature of, and possibilities for administrative oversight at Westminster are largely bounded by constitutional arrangements such as the fusion of the executive and legislative branches in Parliament and the First-Past-the-Post electoral system that is conducive predominantly to one-party majority government maintained through strong party discipline. Compounding the systemic strength of the executive in Parliament is the growth of careerism and an emphasis on the ministerial career ladder with rewards for partisan loyalty.

In turn, Parliament is primarily considered as a body that reacts to executive measures[82]. This context of a strong executive and a reactive Parliament lacking independent powers and associated alternative career structures ultimately limits how far modernisation can go without 'seismic constitutional change'[83]. A prime example of the salience of context as a hurdle to the realisation of reform is the May 2002 defeat of the Modernisation Committee's proposal to move select committee appointment power from the party whips to a Committee of Nomination[84]. Alexandra Kelso argues that the context of partisan and patronage interests best explains why Parliament failed to make appointment to select committees a process independent of the whips' offices[85].

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[81] Hansard Society, The Challenge for Parliament: Making Government Accountable. Report of the Hansard Society Commission on Parliamentary Scrutiny, London, Hansard Society, 2001, p. 13.
[82] Philip Norton, *Does Parliament Matter?*, Hemel Hempstead, Harvester Wheatsheaf, 1993; Robert Rogers and Rhodri Walters, *How Parliament Works* (5th Edition), London, Pearson Longman, 2004.
[83] Robert Rogers and Rhodri Walters, *How Parliament Works*, cit., p. 369.
[84] Modernisation Select Committee, *Select Committees*, HC 224, 2001-2002 Session, 2002.
[85] Alexandra Kelso, "Where were the Massed ranks of Parliamentary Reformers? - 'Attitudinal' and 'Contextual' Approaches to Parliamentary Reform", *The Journal of Legislative Studies*, vol. 9, n.1, 2003.

As well as context, the behaviour of parliamentarians can be a factor in determining the effectiveness of Parliament in executive oversight. Philip Norton stresses the importance of attitudinal and behavioral changes occurring alongside any institutional reforms[86]: "There is no point strengthening the House of Commons if MPs are unable or unwilling to exploit the opportunities afforded by such change"[87].

However, David Judge challenges the Norton view on the basis that the normative system of the House reflects the preferences of those with the most power and so attitudinal change and internal procedural reform will invariably fail unless key constitutional arrangements are addressed[88].

Oversight and Effectiveness in the Westminster Parliament

The primary means of oversight in the Westminster Parliament are through debates, questions, and committees[89]. What follows is a discussion of key aspects of these means in the House of Commons as well as an attempt to assess their effectiveness.

The salience of debates in the House of Commons as a means of oversight are constrained from the outset as the government controls not only the timetable but much of the ground on which it will debate[90]. However, even on its own ground, government does not dominate entirely. Rogers and Walters use the example of the 2003 government debate and vote on war with Iraq to illustrate the government's unprecedented decision to seek Parliament's approval for military action despite it being a prerogative power of the executive. As well as Parliament possibly having captured a prerogative power of the executive, Rogers and Walters argue that this decision has set a precedent that future governments may have to uphold if they wish to be seen as acting legitimately[91].

In addition, while the government may control the timetable, there are 20 Opposition Days (or 120 hours) in which the opposition parties can debate and vote on a substantive motion of their choosing. Recent subjects chosen by the opposition have included advocating a referendum on the EU constitution and, questioning the military situation in Iraq, and the security of the electricity supply. Opposition Days provide a means for the opposition parties to scrutinise the actions and policies of the Government and selected subjects typically reflect domains where the opposition parties feel that the Government is particularly exposed to criticism.

As to the effectiveness of Opposition Day debates, the evidence depends on whom you consult and what you measure. When the Hansard Society surveyed parliamentarians in June 2000, one of the questions they asked was 'How effective are Opposition Day debates in securing information and explanation from Government?'[92]. Of the 179 responses they received, less than one in four replied that they were effective. The Hansard Society Commission concluded that the predictable defeat of opposition motions during debates combined with the 'low quality of debate in general', the 'little

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[86] Philip Norton, *Parliament in the 1980s*, Oxford, Basil Blackwell, 1985; Philip Norton, *Strengthening Parliament: The Report of the Commission to Strengthen Parliament*, London, The Conservative Party, 2000.
[87] Philip Norton, *Strengthening Parliament*, op. cit., p. 21.
[88] David Judge, *The Parliamentary State*, London, Sage, 1993, p. 215.
[89] Philip Norton, *Does Parliament Matter?*, op. cit., p. 89.
[90] Hansard, *The Challenge for Parliament*, op. cit.
[91] Robert Rogers and Rhodri Walters, *How Parliament Works*, op. cit., p. 374.
[92] Hansard Society, *The Challenge for Parliament*, op. cit., p. 131-132.

public interest' and the usage of the procedure 'to identify which MPs deserve promotion' meant that 'debates may no longer be suitable for today's politics'[93].

However, the effectiveness of Opposition Days is hard to measure and the conclusions of the Hansard Society Commission may be a little harsh given the evidence. While opposition motions are routinely defeated, they can have indirect effects such as capturing and/or perpetuating media coverage and pressure on the Government.

One such example was the October 2001 Opposition Day debate deploring spin tactics in the Department of Transport, Local Government and the Regions. The debate focused on the call for special adviser Jo Moore to resign over an email instructing colleagues to 'bury' bad news in the wake of the September 11th attacks. Jo Moore eventually resigned in February 2002 after constant media pressure and additional allegations of inappropriate behaviour. While the Opposition Day debate was not immediately or entirely instrumental in Moore's resignation, it is conceivable that it played some part. Another more recent example concerns the government's April 2004 u-turn over the possibility of holding a referendum on the EU constitution.

As well as Opposition Days, there are half-hour adjournment debates, very occasional emergency adjournment debates, Early Day Motions and since 1999, parallel sittings in Westminster Hall for debates on less contentious business such as committee reports and adjournment debates. The half-hour adjournment debates occur at the end of each day and allow back-benchers to raise an issue with the government that typically reflects a specific constituency concern that an MP wants the relevant minister to respond to. Early Day Motions are rarely debated but are used by MPs to express opinions on subjects and provide governments with indicators of levels of back-bench support and opposition on issues.

Arguably more important than debates, parliamentary questions (PQs) provide back-benchers an opportunity to call ministers to account. PQs include written questions and oral questions (departmental Question Time, inter-departmental Question Time, Prime Minister's Questions, Private Notice Questions, and questions following ministerial statements).

Departmental Question Time lasts roughly an hour each Monday through Thursday while the Parliament is sitting. While the government decides the departmental rota for Question Time, on balance each department faces scrutiny from the Parliament approximately once every four weeks. Inter-departmental Question Time in the parallel chamber is a recent innovation (2003-) that reflects attempts at 'joined-up' government for those issues such as crime that straddle departmental briefs.

The format of Prime Minister's Questions changed under Tony Blair from twice-weekly question periods on Tuesdays and Thursdays to one 30-minute question period on Wednesdays. While the overall duration of PMQs remains the same, and although time-wasting introductions and reiteration of replies have been removed from the procedure under Blair, there is still some criticism of the change, particularly the loss of twice-weekly questioning. The Report of the Commission to Strengthen Parliament (aka the Norton Commission) favours a return to twice-weekly question periods on Tuesdays and Thursdays, each of 30 minutes. The rationale behind this recommendation is

[93] Hansard, *ivi*, pp. 50-51.

that it would help restore the importance of Thursdays as a major business day and that it would connect the PM more with the Parliament[94].

Private Notice Questions (PNQs) are questions of an urgent nature on key issues of national importance and are granted at the discretion of the Speaker. Once granted, ministers are given short notice to appear before Parliament and can be questioned as long as the Speaker permits. Unlike PNQs, statements by ministers are more common, are prompted by the executive, and provide the government with a chance to inform the House (pre-empting PNQs) on key issues that arise. However, statements by ministers are generally followed by questions, again at the discretion of the Speaker.

Again, effectiveness of questions depends on whom you consult and what you measure. Out of the various types of questions, the Hansard Society found that just over half of MPs surveyed rated written questions as effective in securing information and explanation from government[95]. By comparison, oral questions were rated as less effective (effectiveness ranging from 45% for ministerial statements; 43% for Private Notice Questions; 25% for Question Time, to a low 8% for Prime Minister's Questions).

One of the reasons why written questions are generally perceived as being more effective than oral questions is that whereas oral questions perform other legislative functions such as political point scoring and tension release, written questions permit a more focused and persistent means of oversight. As an example of this distinction, Walters and Rogers note how Labour MP Tam Dalyell's determined usage of written questions led to the uncovering of misinformation during the Falkland's conflict[96].

Of the oral questions, PNQs and ministerial statements are regularly singled out as procedures that the government should give more time to by curtailing other less effective procedures such as debates[97]. Responding primarily to a different recommendation in the Procedures Committee Report (2002), the government opted to reduce the period of notice for questions to ministers from ten to three sitting days arguing that this would encourage 'more topical and relevant' questioning[98]. The government rejected calls for extensions of departmental Question Time on a single subject due to time pressures. However, the government did consent to a once a week, hour-long session of questioning in Westminster Hall.

Since the mid-1990s, the Public Administration Select Committee and its predecessor (Public Services Committee) have produced six reports on ministerial accountability and parliamentary questions. In their latest report, the Public Administration Select Committee continue to lament the evasive nature of many government replies to questions: "…the government's approach to answering

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[94] Philip Norton, *Strengthening Parliament*, cit., p. 20-21.
[95] Hansard Society, *The Challenge for Parliament*, op. cit., p.131-132.
[96] Robert Rogers and Rhodri Walters, *How Parliament*, cit., p.303.
[97] Philip Norton, *Strengthening Parliament*, op. cit. ; Hansard Society*, The Challenge for Parliament: Making Government Accountable*, cit. ; Procedure Committee, *Government Response to the Procedure Committee Report on Parliamentary Questions (HC 622)*, Cm 5628, 2002.
[98] Procedure Committee, *ivi* , p. 4.

questions has, at times, been characterised as minimising the opportunity for scrutiny of its actions through careful and skilful crafting of answers."[99]

The Committee acknowledges that the 1990s publication of codes of conduct, codes for access, and guidance on answering PQs have increased the duty on government to account for its actions. However, it criticises the government for treating public inquiries like the Hutton Inquiry more seriously ('committed to co-operating fully') than either PQs or Select Committees ('information provided…as appropriate')[100].

Of particular concern to the Committee are the issues of quality of replies and unanswered questions (often due to either prohibitive costs, future promises of replies, or exemption in the *Code of Access to Government Information*). In response to the concerns, the government has agreed to answer 'reasonable requests' about refusals to answer questions within 20 days, and has also agreed to specify the source of any exemption in its replies[101]. However, the Committee is sceptical about the government's level of commitment to its promises and has reacted by strengthening recommendations[102].

More important than either debates or questions are the oversight roles performed systematically by select committees since 1979. While acknowledging that the comparative effectiveness of the select committee system is constrained by the constitutional framework (primarily no separation of powers), single-party governments, and strong party loyalties, the Liaison Committee reported that the 'select committee system has been a success' and it has 'provided independent scrutiny of the government'[103]. Findings from the Hansard Society survey of MPs support this perspective as 84 per cent rated select committee hearings as effective in securing information and explanation from government[104].

There are several types of select committee. First, departmental select committees shadow each government department and are responsible for the detailed oversight of government and public body expenditure, administration and policy. Second, inter-departmental select committees primarily oversee activities that cross-cut government departments, for example, the Environmental Audit Committee, the European Scrutiny Committee, the Public Accounts Committee, and the Public Administration Committee. Third are select committees that deal with the procedures and administration of the House, for example, the Liaison Committee (which largely comprises select committee chairs and considers matters relating to the work of select committees), the Procedures Committee and the Modernisation of the House of Commons Committee.

Interest in reforming the select committee system has strengthened in recent years. Recommendations for reform have been wide-ranging (from increased resources to the establishment of independent appointment committees) and successes to date have been mixed.

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[99] Public Administration Select Committee, Ministerial Accountability and Parliamentary Questions: The Government Response to the Committee's Ninth Report of Session 2001-2002, HC 136, 2002-2003 Session, 2002, p. 5.
[100] Public Administration Select Committee, *ivi*, p. 6.
[101] Public Administration Select Committee, *ivi*, p. 5.
[102] Public Administration Select Committee, *ivi*, p. 20.
[103] Liaison Committee, *Shifting the Balance: Select Committees and the Executive*, HC 300, 1999-2000 Session, 2000, p. 2.
[104] Hansard Society, *The Challenge for Parliament*, cit., pp. 131-133.

One of the most contentious issues surrounding select committees is the independence of membership. In 2001, when the government attempted to remove two of its most ardent critics from select committee chair positions, the House of Commons voted against the motion and the critics were reinstated. Current selection procedures are still highly influenced by the party whips and the composition of each committee is generally proportionate to the balance of the parties on the floor of the House of Commons. The Liaison Committee (2000), the Norton Commission (2000), and the Modernisation Committee (2002) all favoured removing powers of selection from the whips. Proposing a more independent Committee of Nomination, the proposal of the Modernisation Committee was defeated in a 2002 vote in the House of Commons.

Other recommendations for reform have met with more success. Arguably the most important government concession to select committee scrutiny has been the Prime Minister's agreement to be questioned by the Liaison Committee. Although initially the PM had rejected a 2001 Public Administration Committee recommendation to appear before it on a yearly basis to discuss the then Government's Annual Report, in April 2002, the PM offered the Liaison Committee a twice yearly questioning period of some two to two and a half hours on domestic and international affairs. To date, the PM has been questioned on a variety of subjects including the Iraq war. Rogers and Walters perceive this as a further executive concession to Parliament that will be difficult for future PMs to withdraw from[105].

A further advance for the select committee system is the 2003 recommendation to reward departmental and most inter-departmental select committee chairs with £12,500 on top of their MPs salaries (Review Body on Senior Salaries, 2003). One of the recommendations of the Norton Commission was that select committees should offer an alternative career path to that of ministerial office[106]. While not universally popular both inside and outside the House, this move toward variable parliamentary salaries is arguably an important first step in any attempt to alter the current imbalances in career incentives between the legislative and executive branches.

Another recent advance for select committees has been the creation and extension of staffing resources for the Scrutiny Unit - a body that provides select committees with advice on expenditures and draft legislation. This development reflects the recent emphasis that the Modernisation and Liaison Committees have placed on supporting a more systematic and less ad hoc approach to the exercise of scrutiny. In June 2002, the Liaison Committee established guidance on four objectives and ten core tasks for departmental select committees:

Objective A: To examine and comment on the policy of the department.

Task 1: To examine policy proposals from the UK Government and the European Commission in Green Papers, White Papers, draft Guidance etc., and to inquire further where the Committee considers it appropriate.

Task 2: To identify and examine areas of emerging policy, or where existing policy is deficient, and make proposals.

Task 3: To conduct scrutiny of any published draft bill within the Committee's responsibilities.

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[105] Robert Rogers and Rhodri Walters, *How Parliament Works*, cit., p. 375

[106] Philip Norton, *Strengthening Parliament*, cit., p. 69.

Task 4: To examine specific output from the department expressed in documents or other decisions.

Objective B: To examine the expenditure of the department.

Task 5: To examine the expenditure plans and out-turn of the department, its agencies and principal NDPBs.

Objective C: To examine the administration of the department.

Task 6: To examine the department's Public Service Agreements, the associated targets and the statistical measurements employed, and report if appropriate.

Task 7: To monitor the work of the department's Executive Agencies, NDPBs, regulators and other associated public bodies.

Task 8: To scrutinise major appointments made by the department.

Task 9: To examine the implementation of legislation and major policy initiatives.

Objective D: To assist the House in debate and decision.

Task 10: To produce reports which are suitable for debate in the House, including Westminster Hall, or debating committees[107].

However, despite some recent advances (both own initiative and executive concessions), the select committee system continues to attract calls for reform, most notably in relation to access to papers and people, and on improving committee impact on the work and policies of government[108]. Key hurdles to effective oversight of government departments remain, for example, lack of prime time in Parliament to consider major select committee reports, lack of power to require the attendance of ministers and civil servants, and lack of power to force them to answer questions. Walters and Rogers argue that focus on these lack of powers is unlikely to go away, but that any attempt to address them 'would require a fundamental change in the relationship between government and Parliament'[109].

Administrative review and oversight by Parliament, although in flux, and with some recent advancements for Parliament, remains constrained by the constitutional arrangements, one-party majority governments and strong partisanship, that ensure that without fundamental change, the executive is invariably able to dominate.

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[107] Liaison Committee, *Annual Report for 2002*, HC 558, 2002-2003 Session, 2003, p. 9.

[108] Hansard Society Conference Proposals*, The Future of Select Committees: Issues, Challenges, and Proposals for Reform*, Westminster, 2004.

[109] Robert Rogers and Rhodri Walters, *How Parliament Works*, op. cit., p. 385.

Time and Legislative Development in New Democracies: Is Executive Dominance Always Irreversible?

Timothy J. Power

Thomas F. Remington's essay on the Duma points out some strong similarities in legislative politics between Russia and Brazil. The postauthoritarian experiences of both countries have often been compared. Some of the broad similarities are: (1) constitutions written in crisis environments; (2) an executive-centered political system with strong legislative powers for presidents; (3) weakness of political parties; (4) difficulty in constructing stable legislative majorities for presidents; (5) the crisis of fiscal federalism; and (6) a massive downturn in state capacity immediately after the democratic transition. There are many other features that could be noted. In each country, the experience of the first 5-7 years of democracy led to many pessimistic assessments about the potential for governability. In these crisis-ridden early years, the legislatures of both countries were widely perceived as marginal and inefficient. The buzzwords were "hyperpresidentialism," "ungovernability," and "delegative democracy."

However, in both Brazil (after 1994) and Russia (after 1999) the scenarios of economic management and political coalition-building (which have a reciprocal causal relationship) brightened considerably. This led not only to a palpable recovery of state capacity, but also to more harmonious executive-legislative relations. Remington notes that the consolidation of the pro-presidential coalition under Putin permitted the Duma to overcome some of its internal collective action problems; this in turn led to a partial reassertion of the oversight function. This new trend is somewhat illusory because Parliament is being instrumentalized by the executive, trading off independence in return for a bargaining role that generates frequent side payments. The similarity to Brazil could not be clearer. In both countries, the more optimistic economic trajectories initiated by Cardoso and Putin led to broad, oversized pro-presidential coalitions with a voracious appetite for pork.[110] Legislators appeared willing to follow the president's line on major national issues in return for payoffs of a localistic, parochial nature. Because of improved internal governance and a bargaining role with the president on major legislation, the legislature thus *appears* to be more central to politics—but in reality little headway has been made on the long-term problems of institutional development, such as programmatic parties that are independent of the president of the day.

In appraising this scenario, one could see the glass as half empty or half full. In the half-empty version, Congress is still far from the proactive role that would be prescribed by political scientists who study democratization and comparative presidentialism.[111] Congress only enters the policy-making process to the extent that this serves the executive's interests, and to the extent that the president permits it. The president retains massive agenda-setting powers. However, according to the half-full version, Congress has at least recovered some political space when compared to the days of "ungovernability" and direct executive-legislative confrontation. More stable political coalitions have led to a "results-based style" of executive-legislative relations. This productive pragmatism may have the unintended (at least from the president's point of view) effect of allowing the

[110] Compare Remington's analysis to that of Barry Ames in his excellent recent book, *The Deadlock of Democracy in Brazil* (University of Michigan Press, 2001).

[111] See Gary Cox and Scott Morgenstern, "Epilogue: Latin America's Reactive Assemblies and Proactive Presidents," in Scott Morgenstern and Benito Nacif, eds., *Legislative Politics in Latin America* (New York: Cambridge University Press, 2002).

legislature to reclaim some prerogatives. Remington's analysis of Russia can also be read in this more optimistic way, especially when he speaks of the growth of expertise in Parliament and the gradual enabling of various oversight provisions. Reading his analysis caused me to think of one particular reform that has been made in Brazil, against the predictions of many: the downgrading of presidential decree authority, which clearly implies at least a partial reduction in presidential agenda-setting powers. Below, in updating and extending some previous work, I speculate on the conditions under which partial legislative revitalization might occur.

Weber's Crystal Ball?

Throughout the twentieth century, but especially after World War II, contemporary democracies witnessed an incremental yet clear transferral of legislative powers toward the executive branch.[112] The growing literature on comparative presidentialism recognizes that presidents may not entirely dominate the legislature, but they are usually the lead player in establishing the agenda of issues that the assembly will debate and consider in modern democracies. Under presidentialism, to a significant degree, the president's agenda becomes the legislature's agenda.[113] Thus, in most established democracies, it is possible to identify the formal and informal mechanisms that the executive has used to impose its preferences upon Congress, either by legislating directly and/or by controlling the legislative agenda.

Some scholars trace the origins of modern executive agenda-setting to the challenges imposed by the First World War.[114] It is interesting that the end of the Great War was not accompanied by a restitution of legislative initiative to assemblies; rather, the transferral of powers to the executive was instead progressively institutionalized. In fact, executives even increased their powers by gaining the right to introduce new legislation or to veto undesirable bills. In the UK, for instance, Mackenzie observes that from 1890 to 1900 the *Statutory Rules and Orders* averaged about one thousand executive edicts per year, rising to approximately 1500 between 1914 and 1918. However, the record was set in 1942 with almost 3000 orders.[115] In addition, during the Second World War the British cabinet arrogated unto itself a near-exclusive right to initiate new legislation. According to Duverger, the wartime Parliament considered only government bills, and the great majority of reforms were made by decree laws.[116] Even in France, where the assembly traditionally has had an exclusive right to issue laws, the constitution of the Fifth Republic (1958) contained a mechanism (*ordonnances*) whereby the executive could issue rules with the force of law for a limited period of time. Germany and Italy also established mechanisms through which the executive could have a direct legislative role.

It is interesting to note that Max Weber, in his classic essay "Parties and Parliament in a Reconstructed Germany" (originally published in 1917 as a series of newspaper articles), predicted a reallocation of power between the executive and legislative branches that would grow sharper through-

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[112] This section draws on research I recently completed with Lucio Rennó and Carlos Pereira. See our jointly authored article, "Under What Conditions Do Presidents Resort to Decree Power? Theory and Evidence from the Brazilian Case,"forthcoming in *Journal of Politics.* I thank my co-authors for permission to use this material here.

[113] Mark A. Peterson, "The President and Congress," in Michael Nelson, ed., *The Presidency and the Political System*, 4th ed. (Washington: Congressional Quarterly Press, 1995).

[114] George Burdeau, . *Traité de science politique* (Paris: Librairie de Droit et Jurisprudence, 1970); Vicente Rao, *As delegações legislativas no parlamentarismo e no presidencialismo* (São Paulo: Max Limona, 1966).

[115] Kenneth Mackenzie, *The English Parliament (*London: Penguin Books, 1950), p. 172.

[116] Maurice Duverger, *Droit Constitutionnel et Institutions Politiques* (Paris: Montchretien, 1975), p. 6.

out the twentieth century.[117] He correctly argued that parliaments would become the locus of governmental oversight and of control of the budget, and less the promoters of legislative initiatives. His analysis seemed to have a direct impact on the Weimar constitution of 1919, since it featured an institutional provision that allowed the president of the Reich the power to decree orders with force of law (Art. 48:2). In Italy, even before 1914, it is possible to identify the growing acceptance of executive decrees "motivated by absolute and urgent necessity" which were regulated in 1926. The executive's failure to observe the necessity criteria, however, led to a new law that limited the *ordinanze* to cases of war and financial and fiscal crises. The current Italian constitution, dating from 1948, preserves the *ordinanzes* under the form of *decreto-leggi*.[118] The historical record of advanced parliamentary democracies is relatively unambiguous: the challenges posed by two World Wars and the intervening Depression led not only to a massive increase in the size and functions of the state, but also to a gradual empowerment of the executive (cabinet) at the expense of the assembly.

Presidential democracy is largely a Third World phenomenon, and particularly a Latin American one. Echoing the Weimar experience, the framers of Latin American constitutions have also responded to periodic crises by enhancing the role of the executive, and over time presidents have acquired greater prerogatives in the legislative process. The cumulative aggrandizement of the presidency may be attributed in part to the legacy of authoritarianism and military rule, but interestingly enough, the region-wide return to democracy in the 1980s and 1990s did not stimulate a return to more balanced executive-legislative relations. Rather, an unfortunate element of timing in the 1980s—the coincidence of democratization with severe socioeconomic crises—led to an even greater expansion of presidential powers in some countries, as was the case in Argentina, Brazil, and Peru. Again, there are clear parallels to Russia and other postcommunist cases.

Postwar Brazil illustrates this pattern quite well. Brazil had its first democratic regime beginning in 1946, which lasted until the coup of April 1964. A military dictatorship held power until the current democratic system was initiated in March 1985. Where did new legislation begin under these three distinct political regimes? During the 1946-64 democracy, Congress consistently surpassed the presidency in originating new laws, initiating 50-60% of legislation during this period. As one would expect, this pattern was sharply reversed under the military-authoritarian regime of 1964-1985 (which, unlike some neighboring dictatorships, generally allowed the legislature to function, albeit in an emasculated state). The military equipped the presidency with draconian powers, including the power to issue decrees with the force of law (*decretos-leis*). The percentage of laws initiated by the legislative branch fell to the 10-20% range. However, the transition to democracy in 1985 did *not* witness a return to the pattern of an assertive Congress established in the 1950s: rather, the pattern of executive preponderance established under military rule seems to have remained largely unchanged despite the historic change of regime. More than 75% of all laws passed since 1985 have been initiated by the presidency.

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[117] This classic essay is reprinted as an appendix to Max Weber, *Economy and Society*, 2 vols. (Berkeley: University of California Press, 1978).

[118] On Italy, see Vincent Della Salla and Amie Kreppel, "Dancing Without a Lead: Legislative Decrees in Italy," in John Carey and Matthew Soberg Shugart, eds., *Executive Decree Authority* (New York: Cambridge University Press, 1998); Mary Volcansek, Constitutional Courts as Veto Players: Divorce and Decrees in Italy," *European Journal of Political Research* 39, no. 3 (May 2001), 347-372; and Riccardo Pelizzo and Salvatore J. Babones, "The Determinants of Legislative Effectiveness: The Italian Case," *Quaderni di Scienza Politica* 8 (2001): 308-323.

Weber's prediction of an executivist bias in modern democracy proved prescient. Over the 20th century, the growth in the agenda-setting powers of the president led to an increasing decree of complexity in executive-legislative relations, as presidents attempted to expand their powers and assemblies responded by protesting, acquiescing in, or ratifying these efforts. A theoretical question we need to consider is the following: is the trend identified by Weber a secular trend? Is it irreversible in the 21st century? A corollary question is: if imbalances in executive-legislative relations are not irreversible, under what conditions might they occur?

Background on Brazil

In Brazil, the 1964-1985 military regime, while keeping Congress open for appearances, almost completely marginalized the institution from decision making. The transition to democracy in 1985 raised hopes for legislative revitalization and a newer, more balanced relationship between the executive and parliament. In 1987, a 20-month constitutional convention began, and the national legislature was assigned significant new powers by the Constitution promulgated in October 1988. The curious institution known as the *decurso de prazo,* a kind of "pocket approval" that guaranteed the approval of executive initiative proposals if Congress did not act swiftly, was abolished. Many administrative powers formerly attributed to the presidency shifted to the legislature. Powers of budgetary oversight were expanded considerably, and all development plans were required to pass through Congress (since 1988, work may not begin on any public works project without prior legislative authorization). The Senate assumed the responsibility for determining the limits of indebtedness of the Union and the states. Congress gained a significant voice in foreign policy making, and a whole slew of presidential and judicial appointments were made subject to Congressional advice and consent, after the model of the United States Senate. Congress insulated itself from presidential power by making the veto override a *secret* vote, decided by a simple majority. Significantly for democratic consolidation, under the new charter no "exceptional acts"—such as a state of siege or federal intervention in the states—are permitted without explicit authorization from Congress.

Thus, the debate over legislative strengthening focused on correcting a perceived imbalance in power between the executive and legislative branches. As in many other new democracies, one key issue concerned the legislative powers of presidents, particularly presidential decree authority.[119] The military's draconian version of decree authority (*decretos-leis*) was abolished, but it was replaced by a new provision copied almost verbatim from the Italian constitution of 1948 (although giving decree authority to a president rather than to a prime minister). Thus, Article 62 of Brazil's Constitution of 1988 allows presidents, in cases of "urgency and relevance," to decree "provisional measures with force of law" (*medidas provisórias com força de lei*, or MPVs in Brazilian legislative terminology). Based on a similar provision in the Italian constitution, the original formulation of Article 62 stipulated that these decrees would have immediate legal effect but would expire after 30 days if Congress did not convert them into law. Therefore, the new form of decree authority was viewed as more democratic than the one used under military rule, which reserved no role whatsoever for the national legislature.

However, after 1988, the new *medida provisória* came to be viewed as a far more expansive power than the one intended by the framers. Due to ambiguity in the constitutional language, several paraconstitutional initiatives of the first president to serve under the Constitution of 1988 (José

[119] Matthew Soberg Shugart and John M. Carey, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics* (New York: Cambridge University Press, 1992); Carey and Shugart, eds., *Executive Decree Authority*.

Sarney, 1985-1990) shaped the game of executive-legislative relations until 2001. One such initiative was for the executive, not surprisingly, to interpret self-servingly the constitutional requisite of "urgency." A second was to observe very few limits as to what types of policies could be initiated or altered via decree. A third, controversial precedent was to reissue decrees that Congress did not consider within 30 days. In this way, all four presidents between 1988 and 2001 gained impressive agenda-setting powers in the legislature and were able to establish literally hundreds of public policies via the constant issuing and re-issuing of decrees. (The Supreme Court tolerated reissues as long as presidents did not try to reintroduce any decree that Congress had specifically rejected.) The problems with this expansive version of decree authority have been well covered elsewhere.[120] Decree power is an integral part of the executive's impressive agenda-setting powers in Brazil .[121]

The experience of the late 1980s and the first half of the 1990s suggested that the imbalance in executive-legislative relations was permanently ingrained. Many analysts, myself included, believed that the situation was irreversible. The executive had acquired overwhelming agenda-setting powers and would not willingly relinquish any of them. Not only was it in the president's interest never to cede on decree powers (given the situation of "permanent crisis" that can always be alleged), but it would be relatively easy for the executive to disarm any coalition that sought to reduce decree authority. The reason for this was the tremendous internal collective action problems suffered by a fragmented Congress with weak, undisciplined parties: it would be difficult to unite against the president and reduce his powers, especially when his discretionary budgetary authority could be used to buy off any pockets of resistance within the assembly. Surveys showed that legislators were overwhelmingly in favor of reducing presidential decree authority. However, despite the introduction of constitutional amendments along these lines in virtually every year from 1991 onward, nothing happened.

However, these expectations were confounded in 2001, when, via an accord with President Fernando Henrique Cardoso (1995-2002), Congress amended Article 62 so as to reduce presidential decree authority. Under Constitutional Amendment No. 32, decree authority was reduced in two important ways. First, presidents would be limited to a single reissue of a lapsed decree. Second, the amendment also reduced constitutional ambiguity by specifying a list of issue-areas in which the executive may not resort to decrees. Although the Brazilian president retains decree powers and has other agenda-setting devices, this is a substantial reduction in powers. The president now has a maximum of 120 days to form a majority around some version of his decree; failing that, the decree dies, and the substance of it cannot be introduced as legislation during the remainder of the legislative session. Agenda power has been reduced, and the costs of abusing decree power are now unacceptably high.

This, at least to my mind, was an unexpected development. It suggests that imbalances in executive-legislative relations are *not* necessarily frozen in place; they *can* be partially redressed, even under precarious economic conditions (Brazil has had weak and unstable economic performance since the devaluation of January 1999). These confounded expectations, read in tandem with Rem-

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[120] See Timothy J. Power, "The Pen is Mightier than the Congress: Presidential Decree Authority in Brazil," in Carey and Shugart, eds., *Executive Decree Authority*, and Gary Reich, "Executive Decree Authority in Brazil: How Reactive Legislators Influence Policy," *Legislative Studies Quarterly* 27 (2002): 5-31.

[121] Argelina Figueiredo and Fernando Limongi, "Presidential Power, Legislative Organization, and Party Behavior in Brazil," *Comparative Politics* 32 no. 2 (January 2000): 151-170; Octávio Amorim Neto, Octávio, Gary D. Cox, and Mathew D. McCubbins, "Agenda Power in Brazil´s Câmara dos Deputados, 1989 to 1998," *World Politics* 55, no. 4 (July 2003).

ington's account of Russia, sparks further theoretical reflections. How can a rollback of executive dominance occur? The historical version of this question is whether Weber's prediction for the 20th century will also hold for the 21st; the contemporary version of this question asks under what conditions executive rollback can occur in crisis-ridden new democracies with weak political institutions and precarious economic management. After all, not only Brazil and Russia fit this description.

One very uninteresting hypothesis is that the aforementioned reform was epiphenomenal, a result emerging from specific conditions that happened to obtain in Brazil in 2001. This hypothesis is—unfortunately for theory building—at least partially plausible. One fact that supports it is that Cardoso ceded on the reform only when his party won the presidency of the Chamber of Deputies for the first time (in January 2001). Not only was this a "safer" situation for him—he had a good relationship with the Chamber president, Aécio Neves—but Neves had based his own suprapartisan campaign for the Chamber presidency on a proposed reassertion of Congressional prerogatives. One could make the argument that that the emergence of contested elections for the presidency of the Chamber (which dates only from the early 1990s) generated incentives for candidates to advocate legislative strengthening. A second piece of evidence in favor of the hypothesis was that Cardoso only accepted the reduction of decree power as he was entering his eighth and final year as president, and he had already either attempted or achieved the bulk of his economic reforms. Lame ducks cede powers. A third idea, floated in the press and verging on conspiracy theory, was the center-right majority in Congress believed that the left-leaning Lula da Silva would win the presidential elections of 2002 (which he did), and that conservatives preferred a weaker presidency in the future. Since a preemptive reform like this really did take place in Brazil in 1961 (when Congress adopted a semipresidential system to emasculate the incoming leftist president, Goulart), one cannot entirely discount this interpretation (although I do anyway). In sum, there is substantial evidence that the reduction of presidential powers owes much to unusual political conditions in 2000-2001.

However, for our purposes here a useful thought experiment is to assume (hopefully) that the Brazilian experience is generalizable, and then attempt to the identify the conditions under which a reduction in presidential powers might occur, even contrary to prior expectations. Recall that the conventional wisdom holds that imbalances in executive-legislative relations are path-dependent and "sticky"—once in place, they are unlikely to come unglued. The conventional wisdom is reinforced by theories of constitution making that emphasize the external environment affecting the framing of new constitutions—the constitution of the French Fifth Republic in 1958, the Brazilian charter of 1988, or the Russian constitution of 1993 were all written in crisis environments. Such constitutions should be expected to promote executive aggrandizement, which they did. What could possibly "unstick" these constitutions and lead to a rollback of presidential dominance? One possible culprit is *time*, or to put it more accurately, the passage of time *in conjunction with* a relaxation of crisis conditions. Assuming (in many cases optimistically) a diminution of the political or economic crises that surrounded the framing of the constitution, there are at least five reasons why the passage of time could eventually lead to a gradual reequilibration of the executive-legislative relationship.

First, time allows for legislative professionalization. Over time, legislators seek reelection, and as they become professional parliamentarians, they seek to strengthen the institution they inhabit.

Polsby's analysis of the development of the U.S. House is the classic statement of this position.[122] We know from research on new democracies that static ambition, à la the U.S. House, is not necessarily the norm—both Brazil and Russia, for example, make subnational executive office attractive to politicians. Nonetheless, over time we should expect increasing efforts at legislative institutionalization, and concomitantly at constitutional reforms with a view to legislative strengthening. Time may also allow for the development of the parliamentary expertise that is necessary for participation in policy debates and for the implementation of the full legal powers of the institution (oversight included). Committee systems, for example, need time to develop internal constituencies within the assembly.

Second, and closely related to the legislative institutionalization thesis, is that time allows politicians to sharpen the tools they need to sustain the "electoral connection." If politicians are left to do what they need to do in order to get reelected, they may favor the curtailment of executive power in favor of direct legislative involvement in policy making. Wendy Hunter's research has shown that democracy in Brazil, contrary to early expectations, led rather quickly to a radical weakening of military tutelage—not for ideological or programmatic reasons, but for purely electoral ones.[123] Hungry politicians ate the military budgets, preferring to spend the money on their own pet projects. Over time, vastly more politicians will serve in the legislative branch than in the executive branch, and their very selfishness may work in favor of greater balance between the branches.

Third, time allows for role reversals. By this I mean that over time, the chances increase that the different parties and factions will have participated in both the "ins" and in the "outs." The alternation in power that comes with democracy—and we should recall that electoral volatility has been very high in both the Latin American and postcommunist cases—is instructive to politicians to the extent that they discover that the instrumental use of political institutions is a double-edged sword. When occupying the presidency, Party A favors hyperpresidential rule—but when relegated to parliamentary opposition, it bemoans the marginalization of Congress. As democracy cycles through the parties, they may come to favor a more balanced executive-legislative relationship, given that they learn that power is never permanent. Certainly Brazil is more advanced than Russia in terms of alternation in power. In 2002, with the victory of Lula, the odometer of Brazilian democracy was reset to zero after 18 years. Everyone has had their chance at power now, and the likelihood of continued role reversals in the future may favor more harmonious relations between the branches.

Fourth, time allows for political learning. Inefficiency, gridlock, and poor performance may teach politicians that equipping presidents with greater and greater legislative powers (the pattern Weber predicted) is not necessarily a panacea for the problems of governance. More importantly, time and excessive legislative power may often get presidents into trouble. The experience of the second postauthoritarian president in Brazil, Fernando Collor, soured many legislators on the idea of presidential decree authority—even many who had supported it in the constitutional convention. Collor clearly abused decree powers and had several run-ins with the Supreme Court. Although Cardoso did not face the same legal troubles as Collor, he signed nearly one new decree per week in his first term in office (160 over four years). Over time, Brazilian politicians of all political persuasions came to believe that granting the president sweeping decree powers had been a mistake.

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[122] Nelson W. Polsby, "The Institutionalization of the U.S. House of Representatives," *American Political Science Review* 62 (1968): 144-68.

[123] Wendy Hunter, *Eroding Military Influence in Brazil: Politicians Against Soldiers* (Chapel Hill: University of North Carolina Press, 1997).

While the first efforts to correct this mistake failed, the coalition in favor of decree reform grew in the second half of the 1990s, until Cardoso was finally forced to strike a deal in 2001. This shows that political learning is a necessary but not a sufficient condition for political reform.

Fifth, time permits the diffusion of legislative practices. The paper by Riccardo Pelizzo and Frederick Stapenhurst provides ample empirical evidence of the diffusion of legislative oversight practices across countries. The paper by Keith Schulz address a particular agent of diffusion, the legislative strengthening programs of USAID. Although we all recognize that diffusion is real, we know very little about how it works, except for vague propositions about proximity in time and space. For example, semi-presidential constitutions are increasingly popular among new democracies. How and why? In 1990, only one Latin American country used a gender quota in elections, but today, nearly all do. How and why did this happen? We need a lot more research into diffusion before we can say more about it. Weber's prediction about executive aggrandizement was a proposition about diffusion over time—legislatures were to become less proactive and more reactive. Today, it would be helpful to know a lot more than we currently do about diffusion, and what it means for Weber's proposition in the future. Many Third and Fourth Wave democracies seem to have quickly developed reactive legislatures. Perhaps the reform undertaken recently in Brazil—wherein legislators attempted to correct for a perceived overcompensation in favor of presidential power—presages the next stage of the historical debate. In the 1990s, decree-wielding presidents everywhere in the world acquired a bad reputation among political scientists, journalists, and especially professional legislators. Diffusion of this caricature, whether it be true or not, may help the pendulum swing back in the direction of legislative prerogatives.

That the passage of time is an important factor in legislative strengthening cannot be a very comforting thought for legislative reformers, all of whom want results yesterday. However, there are persuasive reasons to believe that the executive dominance we have seen in so many new democracies may come to be tempered over time—but only if we assume the relaxation of crisis conditions. This is a strong assumption that may not be realistic in many new democracies, many of which are battered by internal conflicts and external vulnerability to financial shocks. Time can only work in favor of legislative institutionalization when "normal" electoral politics is allowed to run its course. However, the recent experience of Brazil, with its unexpected reform of decree authority, does suggest that we need to extend our time horizon before we can arrive at solid conclusions about legislative development in new democracies.

Measuring the Impact of Donor Funded Legislative Strengthening Programs on Legislative Oversight Performance

Keith Schulz

Introduction

A major component of many internationally funded legislative strengthening programs in transitional and emerging democracies is assistance to develop the capacity of legislatures to exercise oversight of executive branch agencies. This assistance can take many different forms, including technical assistance on oversight strategies, exposure to comparative oversight practices, capacity development for public accounts and budget committees, and training on conducting committee investigations and public hearings.

A critical issue for international donor assistance agencies is how to measure the impact of these programs in terms of their contributing to the strengthening of a legislature's ability to exercise its oversight functions. In his book, *Aiding Democracy Abroad*[124], Thomas Carothers states that legislative assistance is the area of democracy assistance that most often falls short of its goals and that the record of legislative assistance is riddled with disappointment and failure. This criticism raises questions as to the effectiveness and impact of USAID-funded legislative strengthening programs. As stewards of public funds, USAID, like other bilateral assistance agencies, is obliged to account for performance and results in its assistance activities. USAID must be able to demonstrate results in its programs, less it risks losing its funding and mandate.

Closely related to this issue is one faced by academic researchers and political scientists, i.e., how to measure the evolution of, and changes in, legislative oversight performance over time and how to attribute those changes to specific causal factors. A variety of different factors or variables, in addition to donor assistance programs, can affect the oversight performance of a legislative body. These include, among others, the type of legislative system, the powers and authorities given to the legislature under the constitution or other legal framework, budget powers, electoral system, strength of political parties and especially opposition parties, legislative traditions, and culture.

For USAID, the issue is how to isolate one of these variables, i.e., legislative assistance programs, and measure the impact of these programs on the ability of a legislative institution to exercise effective oversight of the executive branch.

Background

A major premise of USAID legislative strengthening programs is that well designed and implemented assistance activities can contribute to enhanced democratic performance by a legislature - which in turn can lead to positive political change within a country - through assistance activities designed to increase the legislature's transparency, pluralism, public participation, representation, oversight, and effectiveness in lawmaking.

Since the mid-1970s, USAID has provided varied forms of assistance to legislatures in countries emerging from authoritarian rules or engaging in political transitions. In the late 1980s and early

[124] Thomas Carothers, *Aiding Democracy Abroad: The Learning Curve,* Carnegie Endowment for Peace, Washington, D.C., 1999.

1990s, USAID efforts to strengthen legislatures increased greatly in response to a wave of democratization around the world. Presently, USAID currently sponsors, or has recently sponsored, legislative strengthening activities in approximately 45 countries.

Many of these programs focus on the relationship between the executive and the legislature. It is well accepted that a government dominated by the executive branch, with a legislature that lacks the capacity to effectively oversee the executive or influence policy, cannot be deemed truly democratic. As a result, legislative strengthening programs often focus assistance efforts on improving the political will and capacity of legislatures to monitor and check executive power. Although these programs often employ a number of different approaches and activities to achieve these ends, very little critical thinking and research has been done on what particular assistance approaches and activities are the most effective in strengthening legislative oversight performance.

The types of programs and approaches often employed in legislative strengthening assistance programs to build legislative capacity to oversee the executive branch include the following:

- Constitutional, Legal, and Rule Reform – Technical assistance and exposure to other systems provide legislators with knowledge and expertise to push for reforms to increase the oversight power and authority of legislatures through changes in legal frameworks.
- Training in Oversight Techniques – Technical assistance and training programs provide legislators with exposure to oversight techniques and strategies used by other legislatures such as question and answer periods, committee investigations and hearings,
- Improved Budget Capacity – A range of assistance activities have been employed to improve the budget capacity of legislative institutions. These include, among others, training and technical assistance for legislators and staff on budget and fiscal analysis, developing budget software and procedures, improving legislative access to budget information, creating legislative budget offices, and building linkages between legislative budget committees and Ministry's of Finance.

Measuring Impact

Many of the studies and research on legislative development, and legislative oversight, in particular, have focused on the comparative development of legislature institutions. The Research Committee of Legislative Specialists of the International Political Science Association has been at the forefront of many of these studies. Their four volume series of Working Papers on Comparative Legislative Studies provide a vast array of articles, research, and case studies on many different aspects of legislative development and evolution from throughout the world.

However, these studies have not really focused on the long-term impact of outside assistance on the evolution and development of legislative institutions in transition and emerging democracies. To the extent that academics and legislative specialists have addressed this issue, it has been in the context of describing the results or outputs of assistance programs and activities rather then focusing on the long-term impacts of those programs on legislative development and reform.

To address this dearth of knowledge and information, the Office of Democracy and Governance ("DG Office") within USAID is considering a project to evaluate the long-term impacts of USAID legislative strengthening programs.

With legislative strengthening programs increasing in number, scope and mandate over the past decade, there is now a significant pool of completed and on-going programs in different areas of

the world. With the advent of a results management approach to program evaluation, and the use of strategic objectives, intermediate results, and indicators to measure progress and performance toward those results and objectives, USAID should have sufficient information and experience in legislative strengthening to provide the necessary qualitative and quantitative research for a long-term impact assessment and evaluation.

Over the past couple of years, I have been involved in an effort to develop an evaluation framework and methodology for a study of the impact of USAID-funded legislative strengthening assistance activities on the democratic performance of legislative institutions. As part of this effort, the DG Office is seeking to identify, measure, and better understand the relationship and linkages between USAID-funded legislative strengthening programs and the dynamics of change and reform within, and the performance thereof, parliaments and legislatures in transition and democratizing countries.

What USAID would like to do is develop a research methodology that attempts to address the following issues:

1. Measures the effectiveness of specific types of USAID legislative assistance activities including what types of programs and activities have produced successful results and under what circumstances.
2. Evaluates the overall impact of USAID legislative assistance programs on the democratic performance of legislative institutions and on the broader context of democratization or political change in a particular country.

Last year, the Democracy and Governance Office convened a working group of legislative specialists and practitioners to develop a research methodology and protocol to address these issues. This group met several times to discuss a range of issues having to do with legislative strengthening and evaluation methodology. In developing its recommendations on an evaluation methodology, the working group was faced with three criteria: (1) Acceptance of the legitimacy of the method by the target audience of democratic development professionals and policy makers; (2) Appropriateness of the method for the phenomena under study; and (3) Practical considerations of cost and administrative feasibility.

The working group ultimately recommended that a case study approach be used in preference to survey and other methods primarily reliant on larger data sets and more quantitative methods[125].

[125] It is a widely held belief that quantitative analysis of large data sets is always preferable to case studies when choosing among methods. Most scholars, however, would not argue that any method per se is superior in all circumstances. Despite high marks for initial public credibility, advisory committee members did not consider quantitative analysis of large data to be either an appropriate or a practical methodology for studying the impact of democratization efforts. The universe of USAID democratization efforts consists of programs undertaken over a long period of time in numerous countries, in varied circumstances. Working group members pointed out that existing or easily obtained indicators of legislative development are often highly country or context specific, of such varied quality, or so time-bound that they do not lend themselves to quantitative manipulation and numerical comparisons across countries and circumstances. Moreover, members of the working group agreed that the present state of measurement for key independent and dependent variables involved in legislative development and democratization is simply too crude to support quantitative analysis of large data sets sufficiently sensitive to pick out the impact of USAID efforts on either legislative capacity or more broadly on the degree of democracy achieved. Remedying the data problem through an

The working group was concerned that the methods chosen be sensitive to the substantial variation that exists in legislative development programs—differences between countries, and within a country at different times—as well as the problems of specifying the often elusive and context sensitive qualities of whatever advance in democracy is achieved. For these and other reasons, it was recommended that the study draw from a combination of case study approaches, using the country as the unit of analysis, and drawing on a combination of qualitative and quantitative measures.

Two different case study methodologies were decided upon in order to achieve the depth and breadth necessary for sustainable conclusions. First, a *comparative case study approach* would study the qualitative relationships between critical variables in depth, and would facilitate explicit comparisons between those things that are deemed to be the most important sets of contextual factors shaping democratic development. Second, a modified version of the *field network* approach was proposed to enable the gathering of data on a broader set of cases. Field researchers familiar with local circumstances would conduct studies limited to collecting data on a few key variables with the purpose of producing a larger base for making generalizations about the universe of cases. While the comparative cases will produce data about important types, the field network studies will produce a large enough set to support better generalizations about the frequency of occurrences. It is expected that these approaches will allow us to draw valid conclusions about how the important variables selected operate in a quasi-experimental context and to make generalizations about overall effects with the greater confidence that comes from a more broadly based data set.

We hope these studies led to better understanding about the relationships between what USAID does in these programs (the input) and what they produce in two important areas: the degree of legislative functionality (the desired output – i.e., stronger oversight performance) and the degree of democratization achieved (the hoped for outcome). In the abstract these relationships are complex and pose significant problems of measurement and attribution. At the individual case level, however, the issues tend to be more concrete and the process of attribution is simplified by the ability to examine the sequence of developments, the composition of programmatic efforts, and the ability to ask stakeholders about what has happened and about why they think developments occurred as they did. By using the comparative case and field network methods, we hope that the findings of those individual cases can be usefully combined to identify at least the most robust relationships and to suggest the characteristics of the more subtle ones.

Unfortunately, work has not yet begun on actual implementation of this research program. The Democracy and Governance Office is examining approaches for a broad evaluation of all of sectors of democracy programming including civil society, rule of law, election and political processes, local government and decentralization, and others.

The Office would prefer one unified, coordinated evaluation project rather than individual, distinct efforts in each of the sectors. Consequently, the legislative strengthening evaluation project is on hold for now. However, it is expected that when the Office moves forward on it evaluation agenda, that the methodology developed by the working group of legislative specialists and practitioners will be utilized. We believe this methodology will make an important contribution to the study of legislative development by allowing for the isolation of particular variables such as the impact of outside assistance programs on improvements in legislative oversight performance.

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extensive data collection effort would violate the constraint of selecting a practical method with reasonable costs.