PART I

INTRODUCTION

1

Introduction

On July 27, 2002, after almost eighteen months of debate and delay, the Republican-controlled Congress granted President George W. Bush "fast-track" authority to negotiate international trade pacts. Most Democrats railed against the bill as a nail in the coffin of the U.S. manufacturing sector. In contrast, most Republicans supported the measure and argued that it would bring economic growth and lower consumer prices. Yet, trade is always a difficult issue in the House, and fearful that free trade would cost jobs in their districts, many Republicans broke ranks and joined the opposition. Meanwhile, Democrats from export-dependent districts were supportive of the measure. Democratic leaders, however, wished to keep most of their party voting against the bill to force Republicans from vulnerable areas to cast a "yes" vote that could be used against them in the November election. With such powerful crosscurrents, GOP leaders were wary of forcing members to take such a controversial vote. Anticipating that only his personal involvement could break the logjam, President Bush went to the Capitol and told Republicans that the economic future of the country was at stake. But even after the president's direct intervention, the outcome of the vote remained uncertain. Senior administration officials worked side by side with majority whip, Tom DeLay, trying to round up votes. When the bill came to the floor, these efforts paid off. A handful of Republicans succumbed to these pleas, including two legislators who changed their votes after securing commitments from Bush to help their districts. DeLay also picked up the votes of five additional pro-business Democrats, who resisted pressure from their party leadership. With victory assured, Republicans in districts with strong anti-fast-track constituencies (like Robin Hayes of textile-rich North Carolina), were let off the hook by their leaders, and voted “no.” At 3:30 A.M., the House passed the Trade Act by a razor-thin 215-to-212 vote, with 190 Republicans and 25 Democrats making up the majority.

President Bush was not so fortunate a few months later. On March 1, 2003, U.S. government officials were stunned when Turkey’s Parliament narrowly rejected a government bill to let 62,000 American troops on Turkish soil. The defeat also took Turkey’s political leaders by surprise. Prime Minister Abdullah Gul and the chief of the governing party, Recep Tayyip Erdogan, supported the resolution, and both men urged their party, which controlled a large majority of the Parliament, to support it. The U.S. military wanted to open a second front against Iraqi forces in Kurdish-controlled northern Iraq, using Turkey as the launchpad. With dozens of American warships anchored off Turkey’s eastern Mediterranean shores, Erdogan endorsed the request, arguing that the American relationship was too valuable to spurn. In addition, Erdogan had obtained the promise of billions in American economic aid to cushion the financial effects of the war. But the American request placed Turkey’s lawmakers in a difficult position, as polls indicated that as many as nine out of ten Turks opposed involvement in a war against Iraq. Hours before the vote, Erdogan and Gul held a straw ballot of the 300-plus Justice and Development Party members who dominated the 550-seat Parliament. Only about fifty members, made up of the party’s core of Islamist-minded politicians, expressed opposition. The alleged support should have given the resolution a comfortable majority. Erdogan, however, underestimated the strength of dissent within his own party. More Turkish lawmakers supported the measure than opposed it (the final vote was 264 votes in favor to 251 against), but the resolution failed because there were 19 abstentions. Under the Turkish Constitution, a resolution can become law only if it is supported by a majority of the lawmakers present. Presuming that the measure had passed, many lawmakers left the Parliament and boarded planes to return home. By the time Gul and Erdogan realized they had miscalculated, it was too late to change the outcome.

1.1 RULING BY STATUTE

This book is about ruling by statute. Chief executives can create policy in different ways: through executive orders, decrees, and even through international agreements.[1] Acting without the explicit consent of the legislative branch, however, has its drawbacks. The main disadvantage is that these policy-making instruments are particularly sensitive to judicial review. The legislative approval of statutes, in contrast, usually allows chief executives to better insulate their policy choices from legal review. Chief executives thus often find it more desirable to enact policy through statutes rather than by circumventing the legislature and acting on their own. This book investigates the factors that allow presidents and prime ministers to enact policy through acts of government that carry the force of law. It examines the role and influence of the executive and the legislative branches in creating law by winning legislative majorities.

The two examples – Bush's trade victory and Erdogan's defeat – illustrate several general features of statutory lawmaking: how political parties, the executive, and cross-pressured legislators interact with each other; how uncertainty affects the possibility of success or failure; and how legislators' vote intentions may change in response to incentives. These examples also focus on executive-sponsored legislation and highlight an intriguing puzzle.

In most contemporary democracies, chief executives play a dominant role in the lawmaking process. They sponsor a significant proportion of bills, and in some countries they even have the monopoly to introduce legislation on important issues. Given their proposal powers, chief executives should seldom be defeated. If a government knows that a bill will not have enough support, it can just refrain from sending it to the legislature and save face. In practice, however, chief executives experience numerous legislative defeats. Even on the floor of the British House of Commons, which may be regarded by many as the least possible scenario for such an occurrence, many divisions exist in which a whip is imposed and the government is defeated. This book thus addresses the following questions: Why does executive-initiated legislation ever get defeated? What explains the variation in the ability of chief executives to pass their legislative agendas?

Patterns of statutory legislation are a product of the interactions among a group of actors who are central to policy making in democratic systems:

[1] For example, as Vreeland notes, the executive branch tends to enter unilaterally into International Monetary Fund (IMF) agreements (Vreeland 2003). These arrangements are usually spelled out in a "Letter of Intent", and sent to the IMF Managing Director by a country's finance minister (and/or the central bank governor), whom the IMF recognizes as the *proper* authority over the economy (Vreeland 2007).

political parties, the legislature, and the executive. Hence, it is in the realm of lawmaking that we should examine the various combinations of institutional and partisan considerations that determine whether or not legislators will support a chief executive's legislative agenda. Most scholars are careful to note that the powers the executive derives from partisan support in the legislature can be as important as those derived from authority constitutionally vested in the office. Numerous studies have noted that party systems influence the workability of executive-legislative relations. Conflicting arguments and findings about the effect of inter-branch bargaining on the policy-making process, however, leave open the questions of *why* and *when* chief executives are able to successfully enact policy changes through statutes.

This book addresses these questions. Throughout its chapters, I develop and test a new theory of statutory policy making. Using a combination of an original analytical framework and statistical techniques, as well as historical and contemporary case studies, the analysis demonstrates that variations in legislative passage rates are the consequences of differences in uncertainty, not partisan support. In particular, I identify two major factors that shape lawmaking: the unpredictability of legislators' voting behavior, and the availability of resources to engage in *vote buying*.

The conventional wisdom states that chief executives' legislative passage rates depend on their degree of partisan support. According to this view, if a chief executive's party holds a majority of seats in the legislature, and if all of its members favor her proposal over the existing policy, then she can confidently anticipate a legislative victory. Conversely, if the chief executive's party is in the minority, then the partisan distribution of seats would have an opposite effect on her legislative passage rates. The implicit assumption is that a shared partisan affiliation automatically translates into legislative support. Notice that by this logic, every chief executive could strategically adjust her agenda to her degree of partisan support, and thus should never suffer any costly defeats. Expectations would change radically, however, if one believes that partisan identities do not necessarily reflect legislators' policy positions.

The consequences of uncertainty. Legislative defeats are typically associated with situations where chief executives cannot fully predict legislators' voting behavior. The source of the uncertainty is the existence of cross-pressured legislators. Lawmakers either belong to the governing party/coalition or the opposition, and this is common knowledge. Legislators, however, are also responsive to their respective supporters. Even if chief executives can observe the partisan distribution of the legislature, they may still be unable to identify the policy preferences of legislators' supporters. Given their prior beliefs about the latter distribution, chief executives may send a proposal to the legislature. Yet, as the Turkish example demonstrates, chief executives may lose such legislative gambit by miscalculating their support. A government may, of course, try to handle the effects of cross-voting with "deep pockets" or "big sticks." However, if the total cost of securing these votes exceeds the value of policy change, the government may be better off conceding defeat.

Modeling the legislative process as a game of incomplete information elucidates the empirical puzzle posed by chief executives' legislative defeats. It also leads to some clear empirical implications regarding the relationship between the uncertainty about how legislators may vote and statutory policy making. The existence of a winning voting coalition depends on the distribution of the policy preferences of legislators' constituencies. If a legislator's partisan identity accurately predicts her constituency's ideal policies, then a chief executive may be able to calculate more accurately how she will cast her votes. In contrast, if partisanship is weakly correlated with constituency interests, chief executives are more likely to make mistakes. Thus, a systematic relationship exists between a set of factors that generate more unpredictability and the passage rates of executive-initiated legislation. For example, the extent to which legislators represent a "national" rather than a "local" constituency is an important institutional factor that affects the correlation between partisan's and districts' ideal policies. In this book, I consider the different underlying causes of unpredictability of legislators' behavior.

Buying legislative votes. The Republican party's success at mustering enough votes to secure the passage of the "fast-track" bill illustrates the government's ability to incentivize legislators to adopt the chief executive's preferred policy outcome. These incentives are ubiquitous in legislative policy making, and common terms, such as "horse trading" or "deal making," accurately reflect the phenomenon of vote buying. As mentioned earlier, governments may resort to their "pocketbook" in order to handle the effects of cross-voting. However, chief executives would only offer compensation if the resulting outcome would make them better off than being defeated at a sufficiently low cost. If the chief executive could offer rewards under the condition that legislators be decisive, this cost would be negligible (by promising to reward at least one more voter than he/she needs to win, all legislators become nondecisive, and no payments need to be made). Yet, in deciding how to vote, legislators usually have to balance their own ideal policy, the wishes of the chief executive, and the pressures from specific constituencies. Legislators' responsiveness to their constituencies makes it impossible to use a compensation scheme that is contingent on the collective legislative outcome. On the other hand, considering that enacting legislation implies winning a majority of votes, the chief executive should often be interested only in corralling just enough votes to win, not in maximizing the amount of legislative support. As the "fast-track" example highlights, whenever their votes are nondecisive, some legislators will be free to vote with their constituencies. A chief executive may therefore be able to get her bills approved by rewarding one or few "marginal" legislator(s). In other words, vote buying does not result in supermajority coalitions. In fact, a chief executive may just need to buy a minimum winning coalition or even fewer votes to secure passage of her ideal policy.

1.2 EMPIRICAL PATTERNS

An understanding of the differential abilities of chief executive's to create statute law is hampered by the theoretical limitations described earlier. It is also hindered by the lack of truly cross-national research on this subject matter. Whereas the study of presidential legislative success in the United States has a long and fruitful tradition, these analyses seldom provide systematic comparisons with other countries. Likewise, most comparative research on this topic relies on either case studies of particular acts of government or from country studies.[2]

This book presents a novel approach by bridging together general theories and data over time and space. The studies in Döring (1995a) likely constitute the clearest effort to carry out a comparative study of lawmaking. But, as Gamm and Huber (2003) point out, most of the analyses were motivated by theoretical frameworks developed to examine the U.S.

[2] For example, a number of studies examine the statutory achievements of U.S. presidents (Edwards 1980; Spitzer 1983; Shull 1983; Hammond and Fraser 1984b; Rivers and Rose 1985; Bond and Fleisher 1990; Peterson 1990; Covington et al. 1995; Bond et al. 1996; Lockerbie, Borrelli, and Hedger 1998; Rudalevige 2002, Cameron and Park 2007; Barret 2005). Similarly, Coppedge (1994), Crisp (2000), and Amorim Neto and Magar (2000) study presidential policy making in Venezuela. Calvo (2006) and Alemán and Calvo (2007) analyze how institutional and contextual factors explain the approval of presidential initiatives in Argentina. Jones (1995) and Kellam (2006) provide some cross-national evidence from Latin American countries. In the former, however, the focus is more on executive-legislative conflict rather than on the ability of chief executives to pass their legislative agendas, whereas the latter concentrates in the stability of multiparty presidential coalitions in the legislature.

Congress. A few studies examine statutory policy making applying a more general theoretical approach. Yet, they rely almost overwhelmingly on data published by the Inter-Parliamentary Union in 1986 (see Tsebelis 1995). Such data are at most outdated or even inappropriate to study the passage rates of government legislative proposals under different conditions. This books departs from that tradition in that most of the analyses use time-series cross-national data. These data, which where specially collected for this project, document the pattern of chief executives' statutory achievements in more than fifty countries in Western and Eastern Europe, North and Latin America, Asia, and the Middle East for the period between 1946 and 2008.[3]

How can one evaluate a chief executive's statutory performance? Or, to borrow from Huntington (1968: 1), when does a government really *govern*? A substantial impediment to conducting research on statutory policy making at the cross-national level is the lack of a clear definition of legislative success. I measure success with the use of a *box score*. This indicator is calculated as the percentage of executive initiatives that are approved by the legislature over a period of time. Despite some of its limitations (which I discuss in Chapter 4), this is a tangible indicator that makes it possible to compare different chief executives and to assess their relative performance under varying circumstances.

Figure 1.1 presents the distribution of *box scores* in a sample of fifty two countries over the period 1946–2008. Two important trends are worth mentioning. First, the approval rates of executive-initiated bills varies considerably across countries and through time within countries. Second, on average, three-fourths of chief executives' initiatives are approved.[4]

This simple example underscores the importance of a theory of statutory policy making. The empirical patterns indicate that government's legislative defeats, such as the one described in Turkey, are hardly extraordinary events. They also present a direct challenge to the conventional wisdom regarding the relationship between chief executives' statutory performance and partisan support: Legislative passage rates are seldom 100 percent. Hence, any reasonable theory of statutory policy needs to account for the variation in chief executives' passage rates reflected in Figure 1.1.

[3] Information about the composition of the sample and the sources from which the data were obtained are listed in Appendix B.

[4] I analyze these patterns in more detail, including the variation in the passage rates of chief executives under authoritarian regimes, in subsequent parts of this book.

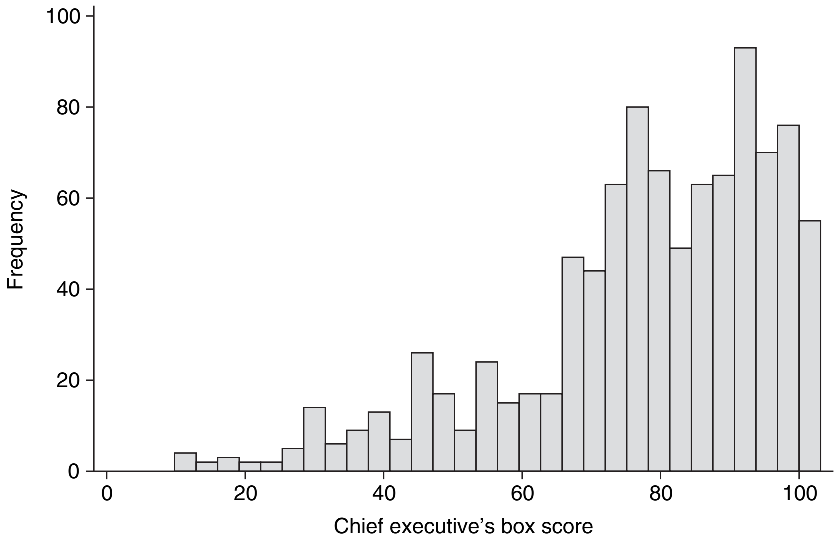

Figure 1.1. Distribution of chief executives' box scores.
Notes: Distribution of chief executives' *box scores*. This measure is calculated as the percentage of executive initiatives approved by the legislature over a period of time. Two important trends are worth mentioning. First, the data indicate that the approval rates of executive-initiated bills varies considerably across countries and through time within countries. Second, on average, three-fourths of chief executives' initiatives are approved. The sample includes observations from fifty two countries over the period 1946–2008 (additional information about the composition of the sample and the sources from which the data were obtained are listed in Appendix B).

1.3 NORMATIVE IMPLICATIONS

The question of how to improve *governability* while simultaneously protecting government *responsiveness* or *accountability* is one of the critical challenges inherent in assessing the quality of democracy. Understanding the conditions under which chief executives will succeed or fail in the legislative arena, where constituency interests are often represented, is of utmost importance. Nonetheless, although the concern with *governability* has been central for both political scientists and policy makers, it is remarkable that much remains unknown regarding the relationship between executive-legislative conflict, stalemate, and political instability.

By linking the notion of governability to chief executives' ability to enact policy changes, this book examines whether chief executives unable to accommodate change are threatened. Specifically, it studies the link between chief executives' box scores and social/political unrest in the developing world. Recent research in comparative politics has demonstrated that executive-legislative confrontation is not a necessary condition for political instability (Pérez-Liñan 2007). Instead, the ability of the opposition to remove a chief executive from office ultimately hinges on the degree of popular mobilization against the government.

It should be noted, though, that social conflict, turmoil, and even violence can be the product of the government's incapacity to solve urgent societal problems. These phenomena, however, can also be the result of unpopular policies. Therefore, governments often have to decide the form and degree to which they accommodate and/or repress popular demands. But, since policies tend to affect all aspects of the governability of a polity, these decisions usually entail a number of dilemmas and trade-offs. I evaluate these dilemmas both from an empirical and a normative standpoint. Empirically, I uncover the relationship between chief executives' legislative passage rates and social upheaval. The evidence indicates that political stability can be undermined when the opposition has no chance to block particular proposals of the executive (i.e., the government is institutionally too powerful). From an normative standpoint, this paradoxical finding suggests that, in terms of *governability*, some degree of control of the executive by the legislature is actually optimal.[5]

1.4 PLAN OF THE BOOK

The remainder of the book develops the arguments presented in this chapter. In Part II, I discuss the two main ideas of this book: (1) the notion that differences in uncertainty, not partisan support, drive the variations in chief executives' ability to enact policy changes through statute law; and (2) the view that in the presence of vote buying, winning coalitions will not be oversized (they will be either strictly minimal or they will include a majority of legislators plus one). I contrast these ideas with existing views on statutory policy making and vote buying in Chapter 2, and I formalize them in Chapter 3. In addition to the main findings previously summarized, the model also yields a number of ancillary empirical implications.

[5] This finding does not necessarily contradict the main tenets of the so-called *veto players* approach (cf. Tsebelis 2002). As Franzese notes, this perspective makes no prediction about policy outcomes; such predictions require information about the identity, powers, and preferences of *agenda setters*, and about the location of *status quos* in specific policy-making instances (Franzese 2010: 5).