

Context, Circumstance and Contingency in Institutional Theories of Legislative-Executive Relations

Our intellect does not draw its laws from nature, but it tries – with varying success – to impose upon nature laws which it freely invents.

—Popper (1963: 259)

Introduction

The literature on the executive power, the legislative power, and the relation between them is perhaps the literature that most explicitly incorporates the central tenant of new institutional economics, that is, “institutions matter.” Much of this literature focuses on a given institutional rule of the game, and seeks to work out what are the consequences of that rule in terms of outcomes. The rules are things like presidentialism versus parliamentarism, open versus close lists in parliamentary elections, majoritarian versus proportional electoral rules, and partial versus total veto power of the president. The list of different rules is very large and so is the corresponding literature. For each choice of rule, an expected outcome is typically theorized. It has been suggested, for example, that presidential systems are more prone to gridlock than parliamentary systems (Linz, 1990); open-list proportional systems lead to individualistic relations between voters and politicians and thus weaker parties (Ames, 1995); and proportional systems lead to multiple parties and thus to balkanization of Congress and less governability as coalitions have to be formed and maintained (Lijphart, 1999). The rules are not only expected to have political consequences but also economic consequences, for example, the suggestion that majoritarian electoral systems lead to greater fiscal discipline than proportional systems (Hallerberg and Marier, 2001; Roubini and Sachs, 1989).

We make no attempt to cover the entire literature on executive and legislative institutions in this paper, or to fully cover any of the many specific themes. Instead, we give a series of examples that illustrate two important characteristics about executive and legislative institutions. The first is that political institutions matter and are amenable to analysis, which is the central justification for the research covered in this book. But the second characteristic is a qualification on this broad statement. Although political institutions are consequential, it is often foolhardy to try to establish law-like statements linking a given class of institutions to a specific type of outcome. Political institutions are the rules and constraints for how laws, policies, and other governmental decisions are made and implemented, that is, they determine who has voice, who participates, who has a vote, who has veto and gatekeeping power, who initiates a new initiative, what are the fora it must traverse, in what sequence and with what timing. Although these rules and constraints are clearly central determinants of the types of outcomes that emerge in countries that adopt them, coarse-grained mappings from institutions to outcomes have often failed to explain the rich diversity of experience across countries. There is no unique outcome. The system is too complex with too many interactions.

Any political system is necessarily characterized by a very large set of rights, rules, structures, and processes, such as (1) separation of powers; (2) decree power; (3) exclusive rights to introduce some types of legislation; (4) veto power; (5) urgency requests; (6) electoral rules, for example, majoritarian versus proportional; (7) partisan legislation; (8) term limits; (9) types of electoral districts; (10) one or two rounds in elections; (11) open list versus closed list, and many, many more. With so many different parameters to consider when analyzing or designing a political system, it is no surprise that in the end no two countries’ political institutions will be identical.

Importantly, the impact of each of these rules is not linear and is not additive, as there are important interactions between them, as well as with other non-institutional characteristics such as a country's level of development, culture, history, religion, and geography.

The upshot is that the general law-like statements that research often tries to establish, such as “majoritarian systems are more decisive” or “fiscal federalism leads to more efficient public good provision,” often fail. Specific institutions that have a given effect in one context or when part of a particular set of institutions, can have different effects in other situations. And the interactions, non-linearities, and samples with low variability make it so that it is not simply a case of adding more control variables to hold fixed for these other effects. It is not that the institutions do not matter – they do crucially. But the effects are more highly contextual, fine-grained, and subtle than is evident from much of the literature.

In this paper, we substantiate these claims through three examples that illustrate established debates in the literature about the effects of specific executive and legislative institutions. Each debate is about the effect of specific institutions on specific sets of outcomes, and usually center around a claim of the kind “institutions x lead to outcomes y.” The common pattern in each of these examples is for a seminal paper or author to be associated with the initial claim, followed by much supporting evidence from the literature. Eventually, there is a challenge to the conventional wisdom, which suggests new theoretical ways to analyze the claim, also followed by supporting evidence. In some cases, this process of thesis and antithesis leads to a synthesis that maintains some of the validity of the initial observation, but reduces it from a broad overarching law to a much more context-specific conditional statement.

The three examples we cover are:

1. Presidentialism versus parliamentarism;
2. Distributive versus informational versus party cartel theories of Congress; and
3. Duverger's Law, and multiparty versus two-party systems.

Presidentialism versus Parliamentarism

The relative merits of presidentialism versus parliamentarism is one of the most enduring debates in political science. Academics and politicians have endlessly disputed the virtues and vices of each of these forms of government as regards the kinds of political and economic outcomes that each is more likely to induce. There are two central assumptions behind this debate. The first is that presidential and parliamentary systems are sufficiently different across categories and sufficiently similar within, that they can be grouped into just two distinct categories. The second is that each system, presidentialism and parliamentarism, will tend to induce distinct and well-defined outcomes. This is therefore a prototypical example of the kind of issue that new institutional economics is concerned with and is well placed to analyze. If institutions matter, then certainly adopting a presidential versus a parliamentary form of government will have important consequences for outcomes. The point that we highlight in this section is that, indeed, these institutions do matter tremendously, but they do so in more nuanced and sometimes counterintuitive ways than has often been portrayed in the literature.

The key distinction between presidential and parliamentary systems lies in the ways through which the executive is chosen and dismissed. In parliamentary systems, the executive is chosen by the legislature and can be dismissed by it through a vote of no-confidence before its term is over. In presidential systems, in contrast, the executive is directly elected by voters and faces a fixed term in which it cannot be removed (except through exceptional measures). These differences provide executives and legislatures with very different constraints and incentives, thus the expectation that behavior and outcomes will be different in different systems. Parliamentary

systems are expected to yield governments that are unified and cohesive and thus have more governability and resoluteness. Presidential systems, on the other hand, are frequently divided and fragmented, which is assumed to make it prone to gridlock and crises of governability. While parliamentary systems are assumed to be more institutionalized and party-based, presidential systems are expected to be more centered on individual politicians. There is also the expectation that presidential systems generate a fragmented interest group structure while parliamentarism produces more corporatism. Another difference is in the greater level of checks and balance that is produced by a divided system, which also generates more information for voters and society and thus more transparency. Other outcomes that have been suggested to be affected by the choice of governmental system are “survival of democracy, economic policy, budget deficits, economic performance, social cleavage management, ethnic conflict, international peace, international cooperation, the quality of democracy, party systems, human development and accountability” (Cheibub, Elkins, and Ginsburg, 2013: 516).

Because of the nature of these postulated effects, there has often been a predilection among academics and other analysts for parliamentary over presidential systems. Linz’s article, “The Perils of Presidentialism” (1990), was highly influential in making the case for the superiority of parliamentary systems, perhaps because events around the world seemed to be demonstrating worse results in countries that had opted for presidential systems, especially regarding the breakdown of democracy. Latin America, in particular, had wholly opted for presidentialism and had been the stage for frequent reversals from democracy to dictatorships. But at the same time, Linz’s argument also gave rise to a series of other papers questioning whether it even made sense to assume that all the various different democracies can be neatly classified into a presidential/parliamentary dichotomy, given that there are so many different arrangements and details in the specific institutions (Mainwaring and Shugart, 1997; Shugart and Carey, 1992).

Cheibub (2006) forcefully examines the hypothesis that presidential systems are more prone to democratic breakdown. This expectation arises because when there is the separation between the executive and the legislature, there are fewer incentives for cooperation, higher propensity for conflicts, and thus the greater danger of coups or revolution. The data do show that historically presidential systems have on average lasted for shorter periods of time than parliamentary democracies; 24 versus 58 years from 1946 to 2002. What Cheibub questions is the presumption that this difference is due to the different systems of government. Other authors have suggested other variables that may be responsible for the difference in democratic survival across systems, such as wealth, rates of economic growth, or location (Mainwaring and Shugart, 1997; Przeworski et al., 2000). The data do show that parliamentarism is more common in (1) richer countries, which in turn are more likely to remain democratic; (2) countries with faster economic growth; (3) countries with smaller populations; and (4) in Europe versus Latin America and Africa. However, Cheibub (2006: 139) shows that even after these variables have been controlled for in regressions that explain transitions to dictatorship, there is still a greater propensity for presidential democracies to fall into dictatorship.

So if it is not the institutional differences between the systems of executive-legislative relations, and it is not any of these other variables, what explains the empirical fact that countries with parliamentary systems tend to have greater democratic survival than presidential countries? Cheibub suggests a surprising explanation: it was a historical coincidence. The argument is that the countries that had been military, as opposed to civilian, dictatorships in the middle of the twentieth century, were overwhelmingly likely to choose a presidential system when they democratized due to an institutional inertia that favored presidentialism even after a radical change

in the nature of government. Another fact from the data is that when democracies do break down, they do so more often than not through military interventions (more than 80 percent of cases). Therefore, a military legacy indicates a higher probability of breakdown, and because military legacies also tended to produce presidential systems, there is a correlation but not causation between presidential systems and the collapse of democracy. When a military legacy dummy is added to the regressions explaining transitions to dictatorship, it is highly significant and the presidential system variable loses its explanatory power.

What this discussion suggests is that it is ill-advised to try to categorize institutions into very broad definitions and then to derive general claims about the effect of these different classes of institutions. Parliamentary and presidential systems seem like very distinct and self-contained categories, where general rules might apply, but the literature has shown that even here this is not the case. Cheibub, Elkins, and Ginsburg (2013) created an index of similarity of constitutions within and across parliamentary and presidential systems using 401 constitutions from 1789 to 2006.¹ They start by categorizing each constitution as parliamentary or presidential according to the defining issues of who elects the head of the state and whether the executive is subject to the assembly's confidence. Then they look at six elective attributes of these systems: executive decrees, emergency powers, initiation of legislation, legislative oversight, executive veto, and cabinet appointments. The classic approach to presidentialism versus parliamentarism has clear expectations for the existence or the strength of each of these attributes under each system. Parliamentary systems are expected to have stronger decree power, weak emergency power, initiation of legislation by the executive, weak legislative oversight, no executive veto, and cabinet appointed by the legislature, while presidential systems have the opposite expectation. What the authors find, however, is that there is a surprising variety of combinations of these elective attributes under each system, and it appears that they are actually orthogonal to the type of system. The similarity index is created by counting the percent of defining and elective attributes that each pair of constitutions have in common. This yielded 80,200 pairs of constitutions. Of these, 14 percent matched all attributes, yet 56 percent of these perfectly matched pairs were composed of different government types. A comparison of all the pairs showed that the classic definitions had very modest power to predict the package of legislative and executive powers. The index was also used as the dependent variable in a regression, with explanatory variables being dummies for whether each pair of constitutions were both presidential or both parliamentary, with the cross-system pairs being the left-out category. In addition, they controlled for region, century, and whether the constitutions belong to the same country. The results show that while pairs where both constitutions are presidential have some similarity above the cross-system pairs, parliamentary pairs actually exhibit less similarity. Furthermore, they conclude that:

Knowing the century or the region in which the constitutions were written allows one to predict the similarity of their institutional attributes better than one could by knowing only that they are of the same system type. This is our principal and, we believe, somewhat unsettling finding for those of us who have come to rely upon – and teach – the classical conceptualization of regime types. (Cheibub, Elkins, and Ginsburg, 2013: 23)

What this review of the parliamentary-presidential debate shows is that institutions matter and are the fundamental determinant of performance, but context and details matter, and the mechanisms can often be more complex and nuanced than what emerges in the literature, where there is a strong propensity to generalize and find patterns in the data.

¹ They included a third category of semi-presidential systems, which we will not discuss here.

Distributive/Informational/Partisan Theories of Congressional Committees

In a foreword to a book on positive theories of congressional institutions (Shepsle and Weingast, 1995a), John Ferejohn opens with a statement that summarizes the main message of this paper:

An important contribution of positive political theory as applied to legislatures (or anything else) is just how elusive the empirical world can be. Very different theories of legislatures can have quite similar observational consequences in a wide range of settings. (Ferejohn, 1995: ix)

Positive political theory using rational-choice models and non-cooperative game theory is currently a dominant force in the literature on executive and legislative institutions. This literature started in the 1950s and 1960s with authors such as Arrow (1951), Black (1958), Plott (1967), and Buchanan and Tullock (1962), who pioneered abstract rational-choice models of politics, leading to important insights about majority cycling, vote trading, and coalition formation (see Shepsle and Weingast, 1995a: 6, for a brief review of the literature). This led to a subsequent literature that sought to apply these insights to actual real-world legislatures. This first-generation literature in rational-choice legislative politics sought to show theoretically and empirically that congressional institutions were subject to cycling, impossibility and chaos results, rational individual behavior leading to irrational collective outcomes, and other pathologies identified by the pioneering authors.²

But although some of these results did seem to fit observed behavior and outcomes in actual legislatures, others did not. In particular, there was a conspicuous absence of majority rule cycling. As noted by Tullock and Brennan in an article titled “Why So Much Stability”:

If we look at the real world, however, we observe not only is there no endless cycling, but acts are passed with reasonable dispatch and then remain unchanged for very long periods of time. Thus, theory and reality seem to be not only out of contact, but actually in sharp conflict. (1981: 189)

Part of the problem lay in the fact that the original models were purposefully institutionally poor for the sake of greater generality. By abstracting from most of the details of legislatures’ structure and process, this first-generation literature left out the very elements that were instrumental in assuring stability and predictability. This prompted a second generation of rational-choice legislative scholars to propose models and theories that explicitly sought to incorporate real-world institutional structure and processes that had the effect of inducing specific equilibria by eliminating through the rules many of the alternative proposals that would otherwise defeat those potentially unstable points. Shepsle and Weingast’s (1981) notion of a structure-induced equilibrium substituted a no-holds-barred world where an infinite sequence of new proposals under majority rule was replaced by real congressional institutions that constrained who could propose what and when, greatly reducing the win-sets of some specific outcomes. This new approach highlighted the fact that there was heterogeneity of preferences among legislators so that although they competed for scarce resources, such as pork and policies, there was scope for cooperation and gains from trade. This led to a view of legislative institutions as primarily driven by the intention to facilitate the political exchanges made possible by existence of these gains. In particular, the committee system was interpreted as a structure and process that helped to provide the credible commitment and cooperation to overcome the barriers to trade (Shepsle and Weingast, 1987; Weingast and Marshall, 1988).

² Cycling, impossibility, and chaos are findings from social choice theory that argue that in situations characterized by simple majority rule (i.e., in democracies), there is no predictable equilibrium. This approach expects policies to either change (cycle) indefinitely and unpredictably, or to settle in inefficient outcomes where alternative outcomes could make more participants better off.

These models, based on a distributive rationale for political institutions, brought theory and empirical results much closer than was the case in the first generation of models. They took a demand-side view of how policy and redistribution emerged in the legislative process, taking the institutions, such as the committee system, the seniority rule, gatekeeping powers, etc., as exogenous, and showing how those existing structures and processes facilitated the distributive intent of the players. Yet despite the great advance made by these models, in the late 1980s some new perspectives within the rational-choice positive political theory emerged to challenge the centrality of distribution and gains to trade. These third-generation models brought in additional institutional details ignored by the second-generation distributive models by taking a supply-side perspective. In addition, the third-generation models were concerned in heeding to the Riker Objection (see the introduction to Part II and Riker, 1980), that institutions are not fixed, but rather can be changed, reformed, amended, or eliminated by a suitable majority.

The first challenge was based on the notion that the act of legislating and producing laws is often subject to great uncertainty as to the effect of different ways of setting up policies. Given this uncertainty, different actors in the policy-making process risked seeing their interest harmed by a policy that did not turn out to have the intended effect. This risk provides incentives for institutions that foster the acquisition of information by specialized actors in the policy-making process so as to mitigate the chance of unintended consequences. A series of informational theories was proposed, suggesting that institutions, such as the committee system, should be understood as means to facilitate the acquisition and revelation of such information (Austen-Smith and Riker, 1987; Banks, 1991; Gilligan and Krehbiel, 1987; Krehbiel, 1992).

A second challenge focuses on the fact that the majority party in each chamber of Congress has exceptional power that makes the party akin to a legislative cartel (Cox and McCubbins, 2005, 2007). The majority party uses this power to control the committees and the legislative agenda in order to pursue its own interest. In this view, legislative institutions can only be understood as a purposeful choice of the majority party that has the power to control these institutions and associated practices.³

In the remainder of this section, we briefly describe the three main positive political theories of congressional institutions and discuss the predictions that each makes for how we should expect committees' structure, process and practice to materialize if that theory were the right way to understand those institutions. We then present some empirical results from the literature that highlight the fact that even though each theory makes different testable hypotheses, and even though there is plenty of data available to test those hypotheses, in the end there is no consensus on which view does better and no simple causal explanation for the existence of those institutions can be presented.

³ The three theories mentioned here—distributive, informational, and majority party—are not the only rational-choice theories to have been proposed. Kiewiet and McCubbins (1994), McCubbins, Noll, and Weingast (1987), and others have proposed an approach that focuses on the logic of delegation to the committees within a principal-agent framework. Epstein and O'Halloran (2001) seek to explain legislative organization in general and the committee system in particular as crucially determined by the separation of powers, where committees that supervise executive agencies are organized so as to act as a counterweight to executive branch policy making. We focus on the three main theories as these have received the most attention in the context that we wish to emphasize here.

Distributive Theory of Congressional Institutions

The distributive theory is the basis of the second-generation models of legislative organization. It is a demand-side view that sees committees as agents of distribution and allocation by exploring the gains from trade that arise from the fact that different legislators care about different issues, pursue different policies and respond to constituencies with different preferences and characteristics. That is, it sees the problem not as a zero-sum game of dividing the pie, but rather that of dividing a pie that contains slices of many different flavors, so that there are potential Pareto-improving deals to be made (Groseclose and King, 2001: 4).

When a legislator's interest involves benefits that are circumscribed only to his own constituents and costs are spread out among all other legislators' districts, there is little chance of approval unless some kind of cooperation can be achieved. The first-generation literature recognized the scope for gains to making deals, but reached the conclusion that such deals would necessarily be prone to cycling. The exchange of support among legislators is not a straightforward proposition, as there are other hazards besides cycling that can undermine the deals and unravel the requisite cooperation among the parties. Given the large number of legislators and the heterogeneity of interests involved in a dynamic setting that extends through time, the transaction costs to identifying, realizing, and enforcing the trades are very large. One problem is that the sequence and periodicity in which different projects arrive to be voted means that the deals extend through time so that some legislators will have to hold their part of the bargain today without guarantees that others will reciprocate in the future. Another problem is that many times the goods being exchanged can be revoked in the future by a subsequent proposal. If, for example, a bargain involves support for a bridge in one legislator's district in exchange for support for a subsidy stream to constituents in another legislator's district, then the first legislator can renege on the support for the other legislator's subsidies once the bridge has been built (Weingast and Marshall, 1988).

The distributive theory sees the committee system as an institutional solution to these problems, enabling the gains from trade to be realized. Rather than making the trades one deal at a time, the committee system institutionalizes a system where influence over all policies in a specific area is traded. This allows legislators to self-select into committees that monopolize power over specific jurisdictions, such as defense or agriculture. Because the legislator cannot be removed from the committee, she has an effective property right to disproportionately influence outcomes in that class of legislation. The system is complemented by a series of powers that the committee can use to ensure that its decisions will not be undone or reverted by the floor once a proposal is put to the vote. Gatekeeping power and proposal power provide the means to veto and initiate legislation. Additionally, control over the conference committee, which can revise the proposal approved by the floor, gives the committee an ex-post veto that has the effect of strategically discouraging the floor from rolling the committee's proposal over (Shepsle and Weingast, 1987). Furthermore, this system allows for adaptation to changes in preferences and circumstances over time, although occasionally the structure may have to be adapted, perhaps by creating new committees, for example, the Committee on Homeland Security in the House, which became a permanent committee in 2005.

Several testable hypotheses emerge from the distributive theory. If committees serve the purpose of enabling the realization of gains from trade, then it should be possible to show that they have and occasionally use gatekeeping power to kill proposals contrary to the committee's median preference. Similarly, there should be evidence that the floor accedes to the committee by not blocking or changing the committee's proposals, not out of deference, but due to strategic

constraints imposed by the conference committee procedures. The most common tests of legislative and committee organization have been of the type that analyzes the preference composition of the committees, as the different theories have very different expectations as to what should be the median preference of the committee relative to the chamber as a whole. Thus, we will focus only on this class of testable hypotheses here. In the case of the distributive theory, the prediction is that the committees should be composed of preference outliers, that is, members whose interests in that jurisdiction are distinctively unrepresentative of the parent chamber. The data for this kind of test requires some measure of legislator preference, such as NOMINATE scores, ADA scores (Americans for Democratic Action ratings), or other measures based on roll-call data or interest group ratings (see Groseclose, 1994, for a critique of some tests and data, and suggestions for more appropriate tests). The preference data then allows a direct test of whether the committee (usually the median preference) compares to the preference of the chamber in the manner predicted by the theory. Weingast and Marshall (1988) and Weingast and Moran (1983) find very strong evidence that committees in the US Congress are composed of preference outliers.

Informational Theory of Congressional Institutions

The third-generation theories of congressional institutions focused not on the demand for legislation and redistribution, but on supply-side issues related to their production. These theories also made important advances by incorporating the majoritarian postulate that institutions themselves are the result of aggregate choices and therefore cannot systematically make the majority of Congress worse off. The informational theory focuses on the fact that any policy selected by a legislature involves a great deal of uncertainty as to the outcomes it will engender once implemented. More specifically, they assume that a policy has a systematic component that is common knowledge, but that there is also a random component that can significantly alter the final outcome. The effect of this random component can be discovered by investing time and effort into learning about its impacts, but the costs and public good nature of this information collection means that this effort will not automatically emerge. The main argument of the theory is that the floor of the chamber may choose to establish incentives for some of its members to specialize in specific areas in order to collect and reveal the information about the random component of policy proposals. In particular, the committee system can be interpreted as an institution primarily designed to give such incentives to specific legislators. In this view, specific committees are repositories of expertise in their narrow jurisdiction, which makes the entire chamber better off by helping to shape policy so as to avoid disastrous unintended consequences and capture potential, possibly hidden, opportunities. The members of the committee have their own preferences regarding the policy and have to be given actual power to induce them to incur the costs of learning. They will not necessarily reveal this information truthfully, but might choose to act strategically to pursue their own ends. For this reason, the floor is expected by the theory to allocate to the committees, members with preferences that mirror those of the chamber. Thus, whereas the distributive theory predicts preference outliers, the informational theory produces the opposite expectation. The model shows that committees will never fully reveal the information they obtain, but the closer the preference of the committee median and that of the floor, the better informed will be the legislative process with greater potential gains relative to a situation under greater uncertainty. Gilligan and Krehbiel (1987) and Krehbiel (1992) provide several tests for the US Congress that support the informational theory.

Majority-Party Theory

The majority-party theory (or procedural cartel theory) is also a supply-side third-generation model. Like the informational theory, it adheres to the majoritarian postulate, but assumes that what matters are the preferences of the majority party, as congressional institutions (at least in the United States) assure a central role in legislative proceedings to the majority party and its leadership. This power is used by the majority party to redesign legislative institutions, control the agenda, and essentially assure most of its interests. In this view, a central problem faced by the majority party is to coordinate the efforts of its members so as to mitigate the externalities, collective dilemmas, and other inefficiencies that arise as each pursues the interest of their individual district. The party leadership acts as a central coordination device restraining destructive individualistic behavior, maintaining the party's reputation (a public good), and resolving disputes, so that members' collective gains and reelection prospects can be maximized.

Under this theory, the composition of the committees is not expected to be made up of preference outliers, as in the distributive theory, but neither is it expected to reflect the composition of the parent chamber as in the informational theory. Instead, committees are expected to mirror the preference of the majority party and in particular its leadership, which has the power to control the process. The testable hypotheses that emerge from the majority-party theory are actually somewhat more nuanced. For those committees that involve overwhelmingly local and circumscribed issues that have few externalities and other impact on other party members, the composition is allowed to be that of preference outliers. But for committees that involve overarching policies that interact with many other jurisdictions, the theory predicts that the majority party will be careful to assure a composition with preferences close to its own. Cox and McCubbins (2007) provide much evidence and several tests that support this theory.

Choosing among Theories

Each of the three theories presented above are rational expectations theories that pay close attention to institutional detail. Each one has a solid theoretical foundation based on observed facts from real-world legislatures, and each focuses on a different key aspect – distribution, information, or majority-party power. The common goal is to explain legislative organization and outcomes, and special emphasis is placed on explaining why committee systems are organized the way they are, and what is the impact of this institutional design. Each theory yields distinct testable hypotheses, and there is ample data to perform those tests. One would therefore expect that the data would eventually refute two of the theories and the third would be recognized as the best explanation for why the specific congressional institutions that we observe have emerged and what is their impact (at least until a new better theory shows up). But it turns out that choosing among theories is not that simple, even with plenty of good data.

Groseclose (1994) tested the three theories against each other using a Monte Carlo method that was statistically more rigorous than many of the previous tests. He used data for 21 committees in the United States for which there were jurisdiction-specific preference indices available. The null hypothesis tested was that the committee (or subcommittee) had its members randomly assigned. The test consisted of randomly drawing N (the size of the committee) legislators from the parent chamber and calculating the distribution of the medians from 20,000 draws. He could then compare the median of the actual committee against that distribution to test the relevant alternative hypotheses for each theory. For the distributive theory, the alternative hypothesis of a committee composed of preference outliers would not be rejected if the actual median preference of the committee was higher (or lower) than 5 percent of the 20,000 random committee medians. The result obtained was that only 2 of the 21 committees tested rejected the null hypothesis of

random allocation. And because the null hypothesis had a 5 percent chance of being rejected even when it was true, the final result is that it is likely that even one or both of those two rejections might not be due to a truly preference outlier committee. Similar tests for the information theory and for the majority-party theory, also failed to reject the null hypothesis of random committee assignment. The first involved a test of whether the committee is representative of the floor, and the second a test of whether the median preference of the committee is similar to the median preference of the majority party. He concludes that “this essay provides little, if any, evidence to reject the assertion that committee selection is random” (Groseclose, 1994: 455).

In a subsequent paper, Groseclose and King (2001) take a different approach to testing the theories. Rather than focusing solely on the preferences of the committee members, they take sixteen different institutions, procedures, and rules related to congressional committees and investigate whether the existence of those rules and their specific details are compatible or not with each of the theories. The institutions are things like the fact that committees are separate and not joint across the chambers, or seniority being counted as time in the committee and not in the chamber. The fact that the minority party also receives committee seats, for example, is compatible with the informational theory (to assure the committee is representative of the floor), and is also compatible with the distributive theory (so that preference outliers from the minority party can self-select into the committee), but is not compatible with the majority-party theory (why not monopolize all seats?) The authors make a table in which the rows are the different institutions and the columns are the theories. Each cell receives a plus sign, minus sign, or interrogation mark when the institution is compatible, incompatible, or indifferent with the theory. The result is that:

...the first thing that stands out is that no theory consistently gets all plus marks for “explaining” the way things really work in Congress. This would be troubling to some political scientists who believe that any “minus” mark would constitute falsification of the theory. No single existing theory captures the complexity of today’s congressional committees, and we doubt that any single theory really ever has captured the reasons for the existence and persistence of committees. (Groseclose and King, 2001: 24)

Other efforts to compare the theories have also failed to reach a definitive answer.

This lack of definition and inability to tell an unambiguous story about the causes and impacts of these legislative institutions is frustrating to those who would like a science composed of law-like statements that have great generality and overarching applicability. But with institutions, as with many other objects of study, details and circumstance matters, and it is just the case that simple cause-and-effect relationships are rare. Robinson and Torvik (2011) make a similar case for how some well-known results in the literature, which are often taken as definitive, are actually conditional on institutions. And should these institutions be different, very different outcomes could materialize. New economic shocks, such as new available land, new technology, discoveries of natural resources, etc., create new opportunities whose utilization depends on the strength of institutions. They note, for example, the Black Death in the fourteenth century, by killing up to 200 million people and reducing the supply of labor, led to the decline of serfdom in Western Europe, where institutions were “stronger,” but to its intensification in Eastern Europe, where they were “weaker.” Similarly, the discovery of natural resources turns out to be a curse in some countries but a boon in others. Also, the discovery of the New World and opening up of trade opportunities in the Early Modern period led to economic growth in Britain and Holland but to decline in Spain and Portugal. They argue that in these and many other well-studied cases, “it is the nature of institutions which determines the comparative statics of an equilibrium” (Robinson and Torvik, 2011: 37).

In this paper, we also stress the conditionality of cause-and-effect relations, but focus not on how institutions condition the impact of shocks on outcomes, but rather on how the impacts of institutions depend on circumstances and detail. All three theories surveyed above try to explain the existence and working of legislative institutions as fulfilling certain functions related to enabling different forms of cooperation among different groups of legislators. The inability to come to a conclusion about which are those functions does not mean that the institutions don't matter, only that they arise and operate in complex ways that usually cannot be reduced to simple categorical statements. This should not be interpreted as a statement that theory and empirical validation are not important and cannot be done properly. Theory is crucial for providing potentially valuable explanations of observed outcomes. And it is only through empirical testing that we can choose among those explanations and further our knowledge. The point we make is that the process of selecting among competing theories often requires a more granular understanding of the specific context within which a specific political system is functioning, so that typically a theory will not hold in a law-like manner across nations. Similarly, this point about context and institutions does not vitiate empirical testing, but rather makes it much more challenging. In raising the bar for explanatory sufficiency for empiricism, institutional analysis also makes good empiricism more valuable.

Given the lack of consensus on which theory best explains congressional institutions, there has often been a temptation to argue that perhaps the three theories are complementary and can all be valid at the same time, perhaps each focusing on different aspects of congressional life and organization. Shepsle and Weingast (1995b: 22–23), for example, have argued that:

Nothing inherent in the logic of these approaches makes them antithetical. Accepting one of the principles described above as important for the understanding of congressional organization does not require that we reject the others. From an a priori theoretical standpoint, they are not mutually exclusive and may instead represent different and important parts of the same very complex puzzle. Congress is a multifaceted organization, one that is unlikely to be understood in terms of a single principle.

However, the idea that all the theories could somehow simultaneously be part of a greater unifying theory has never really prospered. Groseclose and King (2001: 25), for example, have classified the notion that there could be a weighted average of the theories as “wrong and unimaginative.” And even though the different camps sometimes make conciliating statements about the other theories, more often than not the exchange has been intense and even bitter.

It has also been suggested that the existence of the different theories can best be understood as a consequence of the fact that Congress itself has changed significantly over the years and perhaps different theories were motivated and are best applied to each of these different epochs. The distributive model would be more apt to understand the textbook Congress that arose after the Second World War, for example, and the majority-party theory a better fit to the post-1970 reforms in Congress when parties acquired more power.

Be that as it may, institutional analysis should be leery of grand monolithic theories. Even physics, the purest of all sciences, cannot point to single explanations as Newtonian physics, relativity, and quantum mechanics offer often-incompatible explanations of reality. This does not diminish the value of institutional analysis, but reminds us about the nature of the enterprise and the importance of having an eye for details and context.

Two-Party Systems versus Multiple-Party Systems

Duverger's Law: The Causes and Impacts of Plurality Rule versus Proportional Representation

Most countries in the world can be divided into two-party systems or multiple-party systems (the exceptions being a few one-party systems). Examples of countries with two party-systems are the United States, Britain, Australia, Canada (in some provinces), India, Malta, Jamaica, Guyana, Trinidad and Tobago, Belize, Bahamas, Barbados, Zimbabwe, and Brazil during its military dictatorship (1964–1985). Examples of multiple-party systems are: Brazil, Canada, Denmark, Finland, France, Germany, India, Pakistan, Indonesia, Ireland, Israel, Italy, Mexico, Nepal, the Netherlands, New Zealand, Norway, Portugal, Russia, Spain, Sweden, and Taiwan. The distinction is important, as different types of systems are believed to be consequential for issues of representativeness, governability, democratic stability, public account solvency, among other characteristics. So why are some countries' politics organized in two-party systems and other in multiple parties? Is it just a question of taste, culture, or historical contingency? At first sight, there might seem to be some pattern in the lists above, with English-speaking countries tending towards two parties and others towards multiple parties, but there appears to be no easy answer. In this section, we describe Duverger's Law, a highly influential explanation of institutional determinants of countries' choice of two-party rule versus multiple parties. In the subsequent subsection, we provide a case study of the early determinants of the two-party system in the United States, the prototypical application of Duverger's Law, which shows how even in this case where the predicted relationship between institutions and outcomes was eventually borne out, the process operated gradually and imperfectly.

A protracted debate over the determinants of two-party versus multiple-party systems has been generating controversy at least since 1850. The most prominent explanation states that countries that use a plurality rule, or first-past-the-post, where the candidate with the most votes wins, will end up with two-party systems, whereas countries with proportional representation, where seats are distributed in some proportion to the votes received, will become multiple-party systems. Even as many countries were adopting electoral systems for the first time, it was noted by many commentators that electoral rules could have important systematic impacts on the political system and in particular in the number of parties that emerged and persisted (Riker, 1982: 755). Riker dates back to Henry Droop, an English barrister, in 1881 the earliest explicit statement of the idea that there is a link between plurality rule and two-party systems: "these phenomena [i.e., two-party systems] I cannot explain by any other theory of a natural division between opposing tendencies of thought, and the only explanation which seems to me to account for them is that the two opposing parties into which we find politicians divided in each of these countries [United States, United Kingdom, etc.] have been formed and are kept together by majority voting" (cited in Riker, 1982: 756). By the turn of the century, the issue had become a common topic of debate and thereafter gained broad acceptance in scholarly work, prompting Maurice Duverger (1963: 217), a french sociologist, to actually call it a "law." Since then, it has been known as Duverger's Law and, according to Dunleavy (2012), "it is no exaggeration to say that this proposition still underpins whole fields of research."

So what exactly is Duverger's Law? In reality, Duverger (1963) made two distinct claims. The first, and the one on which we focus here, states that "the simple-majority single-ballot system favors the two-party system."⁴ Duverger himself stated that "of all the hypotheses

⁴ There is some confusion in the use of the term "majority," which requires that one candidate receive more than half of the votes, and "plurality," where a candidate can win with less than half of the votes as

. . . in this book, this approaches most nearly perhaps to a true sociological law” (1963: 217). The second claim is that “the simple-majority system with second ballot and proportional representation favors multiple parties.” This has been called by Riker (1982) the Duverger’s hypothesis, as it does less well against the data than the previous statement, suggesting just a strong probabilistic association instead of an actual “law.” Regarding Duverger’s Law, however, Riker (writing in 1982) went to some length to argue that it did hold, despite a couple of counterexamples. His purpose was not so much to defend the law itself, but rather to argue that political science was a true science in the sense that knowledge accumulates over time through the formulation of new sentences about discoveries and the reformulation of empirically falsified or theoretically discredited old sentences, as opposed to political science as *belle lettres* (Riker, 1982: 753). He thus concludes that “the revised law is entirely consistent with our knowledge of the empirical world, accounting for both the long history of two-party competition in Anglo-American countries with plurality voting and the apparent exceptions. . . .” (761). Many other authors have agreed with him since, though subsequent analysis has qualified many conditions in which the relationship is and is not expected to hold (see, in particular, Cox, 1997; Dunleavy and Diwakar, 2013).

If we accept that Duverger’s Law has some explanatory power, what are the mechanisms through which it operates? Duverger identified two effects that map from electoral rules to the number of parties. The first he called the “mechanical effect,” and it consists in the disincentive to form new small parties due to the fact that the winner-takes-all system makes it very hard for these parties to get any seats or representation at all, whereas in proportional systems, even a small share of the votes can lead to some participation in power. The second effect is the “psychological effect” in which voters are loath to throw away a vote on a party that has little chance of winning even if they prefer that party’s platform. Riker (1982: 765) downplays this channel through voters, noting that from a rational-choice perspective, it is already uncertain why voters would vote at all, independent from electoral rules, but he sees a much stronger rationale through potential party leaders and donors, who would be reluctant to invest any time or resources in parties that can promise little chance of yielding any returns.⁵

Much of the controversy has been between political sociologists and institutional determinists. The former repudiate the idea that such important characteristics of a society as the nature of political competition could arise from simple electoral rules. Instead, they see these features as fundamentally determined by the social structures and cleavages in society, with parties arising to represent the varied social interest, such as workers, occupation, races, religions, and geographic location (Lijphart, 1977, 1999). The institutional argument, taken to the limit, is that electoral rules are all that matters, and social cleavages are mere window dressing. We do not defend either of these views. The argument of this paper has been instead that institutions are fundamental, but their effect depends in complex ways on several intervening factors. In the context of the dispute between those who favor social cleavages and institutional determinism, this position is well captured by the study by Ordeshook and Shvetsova (1994: 100), who argue that “in learning the influence of institutions on outcomes, we should consider the possibility that similar institutions in different social contexts yield different outcomes.” They find a strong interaction between the proportionality of electoral rules and the diversity of social structures in

long as she receives more votes than the other candidates. The correct formulation of Duverger’s Law is that plurality rule is always associated with two-party competition.

⁵ For a more in-depth analysis of these effects, sorting out when they operate in the electoral process and whom they affect, see Cox (1997), Dunleavy and Diwakar (2013), and Riker (1982).

determining the number of parties. In homogeneous societies, they find that increasing the proportionality of the electoral system does not lead to an increase in the number of parties, but does so in heterogeneous societies. In the same manner, they find that increasing the diversity of social structures in more majoritarian countries does not lead to more parties, but does so in proportional electoral systems (Cox, 1997: 25).

Figuring out what determines the number of parties is not the only issue related to legislative and electoral institutions where the impact of institutions is conditioned by other contextual factors. Once a country has, for whatever reason, become a multiparty system, what is the effect of this feature on other political and social outcomes? Scott Mainwaring (1993) argues that the contrast between the democratic stability of Britain and the United States after the Second World War versus the instability of Germany and Italy, convinced several scholars (including Maurice Duverger) that two-party systems were more suitable to democracy, and that multiple-party countries were prone to instability. This notion was later countered by Lijphart (1977) by noting that by giving a chance for the diverse social groups to participate and have a voice, multiple-party systems could actually be more stable, especially in very plural societies. This issue is still one of those long-lasting controversies in political science.

Despite the attractiveness of multiple-party systems for fomenting legitimacy and loyalty, many negative impacts of this type of system have been pointed out by the literature. In particular, the literature in Latin American politics has been highly critical of multiparty systems, no doubt due to the high levels of democratic instability and economic crises in the region since the 1970s. Poterba (1994) and Roubini and Sachs (1989) have argued that countries subject to coalition governments (which typically arise in multiple-party systems) are more prone to larger and more persistent budget deficits. Inman and Fitts (1990), Shepsle and Weingast (1981), and Weingast (1979) argue that due to the norm of universalism the greater the number of parties, the larger will be public expenditures and consequently the potential for deficits. Scartascini and Crain (2002) find that political fragmentation, as measured by the number of effective political parties, has a positive relationship with the size of the government, and with subsidies and transfers. Schofield (1993) argues that multiple parties makes for much more difficult bargaining situations that might lead to lesser governability.

Looking at the specific case of Brazil, a highly fragmented party system with 32 parties represented in Congress in 2016,⁶ Ames (2001), in a book called *The Deadlock of Democracy*, linked many of the country's problems to the lack of governability in such a system. As no president's party will likely have a majority in Congress under such a fragmented system, he expected that presidents would always remain hostage to coalition partners, having to pay a steep price in terms of patronage to get anything done. Mainwaring (1999) argues that the weakly institutionalized party system in Brazil leads to volatility, weak parties, and lack of legitimacy, with nefarious economic and social consequences.

Both of these authors discussing Brazil, as well as most of the literature cited in the previous paragraphs, was written during the 1980s and 1990s when much of the world, and Brazil in particular, was going through an extended series of crises. Brazil, in particular, transitioned from an economically declining military dictatorship to a hyperinflationary democracy. It seemed natural to associate the country's extreme party fragmentation to the perverse economic and political outcomes it was experiencing. However, by the 2000s, even though the hyper-

⁶ There were 32 parties in Congress in 2016 and another 40 parties seeking to get in. Nevertheless, the effective number of parties (a concept used by political scientists to consider only those that have a greater impact) is 6 or 7.

fragmentation was still in place, a new strand of the literature started pointing out how other institutional rules and structures associated with high levels of executive power actually counteracted many of those perverse effects and enabled not only governability but even expedient policy making (Alston et al., 2006, 2016; Alston and Mueller, 2006; Figueiredo and Limongi, 1996, 2000; Pereira and Mueller, 2000, 2004). These compensating institutions emanated from the constitutional powers of the president, which enabled strong decree power, line-item veto, monopoly to initiate legislation in some areas, control over most budgetary procedures, and several political currencies in the form of pork and jobs with which to purchase support.

This is another example of how some institutions (multiple-party system) can have one effect in one context but a different effect in another. Whereas multiple parties do often induce deadlock and overspending, when combined with strong presidential powers subject to checks and balances, these elements might be subdued. The historical experience of Latin America with strong executives has not been positive, so the notion of strong presidential powers often raises concern. However, Alston and Mueller (2006) argue that because of the different nature of the electoral connections held by the president versus those held by Congress, there are advantages to giving the president more power, as he/she should care more about national issues, such as economic growth and inequality, than legislators who are more concerned with local interest and geographic redistribution. One way to reconcile these two opposing forces is to have strong checks and balances so that the powers of the president are used primarily in the interest of the greater good. In Brazil, this role has been played by an independent judiciary, independent district attorneys and court of accounts, a free press, and a highly participative civil society (Alston et al., 2006, 2016). Whereas the recent corruption scandals and misguided policies of the Dilma Rousseff administration (2010–2016) show that strong presidential powers can in fact be abused, the subsequent impeachment is a testimony to the functioning of Brazilian checks and balances.

Another alleged consequence of the multiple party is the tendency to generate clientelism, patronage, cronyism, and party politics. Alston and Mueller (2006) examine the exchange of pork for policy in Brazil's hyper-fragmented strong presidential system. At first glance, this exchange of votes by legislators for pork and jobs in the vast federal administration (for themselves or for allies) is reminiscent of the image often associated with multiple-party countries in general and that often characterize Latin American presidential systems. The Brazilian president has extreme discretion to dole out pork and jobs and uses these political currencies openly and systematically. Scholars (e.g., Ames, 1995, 2001; Shugart and Carey, 1992), as well as journalists and public opinion, have often lamented this form of governing and ascribed to it many of the problems faced by the country. Alston and Mueller (2006), however, present a model that shows how the strategic use of the dispensation of pork and jobs by the president allows gains to cooperation between the executive and Congress to be realized at low budgetary cost and in such a way that provides greater governability and ability to implement reforms. Although this form of executive-legislative relation is inferior to one where altruistic politicians pursue the common good, the actual counterfactual is one where the president is unable to accomplish his policy agenda and where policies would be highly unstable or in gridlock.

The Origins of the Two-Party System in the United States

Duverger's Law predicts that plurality voting, when applied to single-member geographic districts, generates a two-party system. Interestingly enough, the scholarly acceptance of this phenomenon preceded the evolution of electoral laws, lending themselves to a two-party system in the United States; the theory was widely accepted by contemporary political theorists in 1881, although it was not formalized as a law until Duverger's seminal work in 1950. Riker surveys refinements to

Duverger's Law, as well as apparent exceptions to the law, Canada and India, reconciling these exceptions by noting that the existence of a significant third party on the national level is driven by the persistence of third parties in local and state politics in both of these countries. This incomplete convergence to a two-party system emphasizes the broader point of this paper: these "laws" (or, more accurately, probabilistic institutional patterns) operate gradually and imperfectly, even where they are arguably present. This current insight into political systems is also seen mirrored in the history of political development in the United States, which has as an institutional design feature plurality voting in single-member, geographically defined districts. This case study into the emergence of the two-party system in the United States emphasizes how even where a specific institutional design feature is present, the process by which the predicted effects of such a feature is both gradual and complex.

In the nineteenth-century United States, a two-party system emerged twice at the national level and subsequently returned to a multiparty system both times. This return to party plurality occurred when a member from neither of the two dominant parties either seriously contended, or actually won, an election. Given this theoretical and historical background, one thus sees the final coalescence of US politics into the two-party system known today occurring near the end of the nineteenth century as a result of changes in state and local political systems.

In the decades surrounding the turn of the twentieth century, two major institutional changes in the structure of voting appeared that led to the stable two-party system that has persisted over the course of the twentieth century and beyond. The first was the adoption of the Australian ballot. The name stems from its historical origins in the Australian electoral process, but its important features lie in its legal definition of a single, state-printed ballot, and the secret nature of such a ballot. Prior to its inception, the onus of printing ballots lay on the various political parties themselves, a trend whose effects for small parties were theoretically ambiguous. On the one hand, small parties had no entry costs beyond the printing of ballots, and in polemic elections, could garner a significant share of votes. Also, there were no restrictions about a single candidate appearing on the ballot of multiple parties; thus, a given "minority" candidate could win an election based upon support from numerous marginal parties.

This technique, known as "fusion," was widely used throughout the nineteenth century by both minority and majority parties. Most of the historically notable victories of minority parties such as Grangers, Independents, and Greenbackers in the 1870s and 1880s were only possible due to a fusion between these groups and the Democrats. Fusion also allowed Democrats to "secure the votes of independents or disaffected Republicans who never considered voting directly for the Democracy they hated; it permitted such voters to register their discontent effectively without directly supporting a party that represented negative reference groups and rarely offered acceptable policy alternatives" (Argersinger, 1980: 290). Of importance was the fact that each party's contribution to the winning candidate could often be readily calculated, an aspect clearly lending itself to the preservation of party autonomy (Scarow, 1986: 637).

Of course, the non-fusion candidates adopted a line encouraging opposing voters to support only those candidates who were willing to be labeled as strictly representing one political party, accusing the others of ideological inconstancy. In a time where "rigid party allegiance was standard, and straight-ticket voting was the norm" (Argersinger, 1980: 289), these arguments met with a degree of success. Republicans even went so far as to underwrite separate campaigns by non-fusion minority parties in the hopes of splitting the opposition vote, in the hopes of countering the very real threat fusion parties presented (290).

However, not all aspects of the party-printed ballot system were directly conducive to the success of minority parties. A voter seen to take the ballot of a given party from its representatives was a clear signal of one's electoral decision, and in this respect, a given voter might not choose to vote against the majority party for fear of social reprisal or ostracization. Finally, this form of balloting gave an advantage to all parties when a voter only weakly preferred their party, for it was quite difficult to vote for different candidates across parties. This involved collecting the different party ballots, tearing them apart, and reconstituting a custom ballot from the pieces of each ballot.

While in theory the party-printed ballots did not render a clear advantage to majority or minority parties, the adoption of the Australian ballot, and the legislation governing its creation, yielded a clear advantage to the majority parties. This comes from the requirement that in order for a party to be listed on the official ballot, they had to have either received a large number of votes in a previous election (given the actual proportion required, this requirement was typically only satisfied by the two major parties), or obtain a sufficient number of signatures via petition. This last restriction can be seen as the entry requirement for small parties, and is clearly more costly than simply appearing on election day with a stack of ballots. A single example from Kentucky (one of the first two states to pass such laws) is sufficient: "*Official*; prepared and distributed at public expense by the county clerks of the several counties; obtainable by the voters only from the election officers, at the polls, on election day" (Ludington, 1911: 121; emphasis in original).

Even though these changes to legislation were billed as necessary political reform, there can be little doubt that the Republican Party, the majority party in the country, saw the clear advantage restricting the entry of minor parties provided them. In the face of eroding popular support nationwide, and a political arena in which minority parties were increasingly playing a decisive role (holding "the balance of power at least once in every state but Vermont between 1878 and 1892" [Argersinger, 1980: 290]), the Republicans clearly wished to reconsolidate their grip on national and local politics. A ballot with a reduced number of party options would mean the Republicans could expect to capture a portion of these, while commensurately decreasing the number of votes for their opposition. The advantages to this in a plurality system are unquestionable.

What follows is a list of the years in which each given state adopted the Australian ballot system (Engstrom and Kernell, 2005: 546–47):

- 1888: Kentucky (OB), Massachusetts (OB)
- 1889: Indiana (PC), Minnesota (OB), Missouri (PC), Montana (OB), Rhode Island (OB), Wisconsin (OB)
- 1890: Maryland (PC), Oklahoma (PC), Vermont (OB), Washington (OB), Wyoming (OB)
- 1891: Arizona (OB), Arkansas (OB) (Ludington, 1911: 94), California (PC), Colorado (PC), Delaware (PC), Idaho (PC), Illinois (PC), Maine (PC), Michigan (PC), Nebraska (OB), Nevada (OB), New Hampshire (OB), North Dakota (OB), Ohio (PC), Oregon (OB), Pennsylvania (PC), South Dakota (OB), West Virginia (PC)
- 1892: Iowa (PC)
- 1893: Kansas (PC)
- 1895: New York (PC)
- 1896: Utah (PC)
- 1905: New Mexico (PC)
- 1909: Connecticut (PC)
- 1911: New Jersey (OB)

In the preceding, OB denotes “Office Bloc,” a ballot type in which each office was listed with the candidates (and the party or parties they represented) competing underneath, while PC denotes “Party Column,” in which the candidates were listed on the ballot based on the party to which they belonged, and the office for which they were running. These were the two types of ballots adopted by states after passing Australian electoral laws. While the precise wording of each given law differed, it suffices to give a single example of each type: the OB type, first adopted by Massachusetts, “*Office group*; the names of the candidates are arranged in alphabetical order, according to surnames, under the title of each office. . . . Each candidate’s name is followed by his party designation” (Ludington, 1911: 131; emphasis in original); and the PC type, from Kansas, “*Party Column*; emblems; columns arranged in such order as the secretary of state may direct, precedence, however, being given to the party which polled the highest number of votes for the head of its ticket at the last preceding general election” (120; emphasis in original). The restriction on the order in which parties appeared on the Party Column ballot differed from state to state, but it roundly favored one of the two majority parties, or left such a decision at the hands of the secretary of state (who was with high probability a member of one of the two majority parties). It should be noted that the states that passed Australian ballot laws in the first years did not include restrictions on whether a candidate could be listed as representing more than one party (in the case of Office Bloc ballots) or listed underneath the heading of more than one party (in the case of Party Column ballots).

While political theorists have touted the adoption of the Australian ballot as the demise of the multiparty system on a state and national level (Scarrow, 1986: 638), this explanation suffices neither theoretically nor empirically, for the conditions noted above would still allow for some of the advantages of fusion, noted in the party-printed ballot setting, in which a candidate could garner the support of multiple parties. Granted, the number of parties that a non-majority candidate could rely upon was necessarily diminished, but local and national politics at the time nonetheless support this interpretation, as the Boston mayoral election of 1899 (the first using an Australian ballot) was contested between a Citizen/Democratic candidate, and a Citizen/Independent/Democratic/Republican candidate while at the national level, William Jennings Bryan was widely touted as a Democratic/Populist candidate in the 1896 presidential election (Scarrow, 1986: 635). In both these cases, the fusion candidates could claim that voters were staying true to their ideologies while at the same time voting for a candidate that had a chance against the majority opposition candidate.

The fusion between Democrats and Populists that Bryan represented was a significant threat to Republican hegemony in many local election outcomes as well, and it was these local contests that prompted the final institutional changes rendering a single party opposition to the majority as the only viable means of competition. Argersinger’s 1980 survey of fusion politics and subsequent anti-fusion legislation provides two telling examples of the first local stages from which this legislation began to later sweep the nation. Republicans controlled the local legislature in Oregon, although the party only represented a minority of voters in the state. In the hopes of ousting the minority incumbents, the Democrats withdrew a number of candidates in the state, exhorting their voters to support several fusion candidates instead. However, the legislation in Oregon delineating the adoption of the office-bloc form of the Australian ballot in the previous year contained an important clause: “No candidate’s name is to appear more than once on the ballot, but each candidate’s name is to be followed by the party or political designation, expressed in not over three words, of each party or group which nominated him and whose nomination he accepted” (Ludington, 1911: 169).

Once this clause became publicly known, the Democrats demanded that the ballot form be changed to party column format, in which they claimed their preferred candidate, Pierce, could appear with both the Democrats and the Populists. The clause came to light sufficiently late in the campaign to where there was not time to render a legal decision, and so the election in Oregon consisted of a mixture of ballots, with Democratic county clerks placing Pierce's name under both parties on a party column ballot, and the more legal-minded clerks and Republican county clerks listing Pierce only under the Populist heading, although designating him an affiliate of both.

The statistical differences in support for Pierce between counties with different ballot types are illustrative of the ideological dissension the office-bloc system generated. "In those counties in which his name was listed under both Democratic and Populist groupings virtually all Populists voted for their fellow partisan, while 92 percent of the Democrats also supported Pierce, an indication of some hostility to fusion but also of a general willingness to vote the Democratic ticket and all who were designated on it." However, in the counties where Pierce only appeared under the Populist Party group, but with a Democratic designation next to his name, he only received support from 91 percent of the Populist voters, and only 71 percent of the Democratic voters (Argersinger, 1980: 293). Clearly, for a large portion of the voters at the time, voting underneath the heading of another party, or voting for someone designated with the name of another party, even under one's own party heading, proved to be too much to swallow. Although Pierce narrowly won the election, his margin of victory would have been significantly larger had he been allowed to appear twice under two different party headings on every ballot.

From the same year, Argersinger provides a similar example. The Minnesotan legislature was similarly controlled by Republicans representing a minority of voters in the state, and Democrats once again chose to withdraw four of their nine candidates, choosing nominally Populist candidates instead, anticipating that the given candidates would appear twice underneath each office, given that Minnesota's Australian ballot law had specified the office bloc format. The Republican secretary of state proceeded to only list the fusion candidates once, even though no such provision had been included in the original ballot legislation. The Democrats understandably raised an outcry, but the lateness of the situation prompted the courts to rule that they had no jurisdiction in the matter, allowing the Republican-printed ballots to serve their official role. The results are entirely in line with those seen in Oregon, except in this case the widespread "anti-fusion" ballots achieved their aim, with the Republicans sweeping the elections, although only representing a minority of voters in the state.

While local elections, by definition, do not directly impact national electoral results, the outcomes in Oregon and Minnesota were sufficiently salient that Republicans in other states began to understand the advantages anti-fusion legislation could provide them. The anti-fusion laws differed slightly depending on whether the state had adopted an Office Bloc or Party Column type of ballot. While the actual wording of each type of law differed in a given state where it was passed, it suffices to cite one of each type to give the general idea of the legislation passed: for party column ballots (from South Dakota), "No candidate's name is to be printed in more than one column on the ballot but a candidate nominated by two or more parties may choose in which column his name shall be placed" (Ludington, 1911: 178); and for office bloc ballots (from Minnesota), "Nor shall any person be named on the official ballot as the candidate of more than one party, or of any party other than that whose certificate of his nomination was first properly filed" (136). Similar to the case of Australian ballot laws, with each passing year, the list of states having passed anti-fusion legislation grew in length (Argersinger, 1980: 298–302):

1892: South Dakota (Ludington, 1911: 178)

1895: Michigan, Oregon, Washington
1896: Ohio
1897: Illinois, Indiana, Iowa, North Dakota, Pennsylvania, Wisconsin, Wyoming
1899: California, Nebraska
1901: Kansas, Minnesota
1903: Idaho
1907: Montana
1913: Missouri (Scarrow, 1986: 639)
1919: Idaho (Scarrow, 1986: 639)

The widespread adoption of the antifusion legislation is a compelling argument as to the demise of minority parties, the last obstacle to the two-party system in use today. Local politics ultimately proved to be the driving force behind “antifusion legislation in those states where, at the aggregate level, it did not seem necessary or important” (Argersinger, 1980: 296). By driving a wedge between Democrats and the third-party groups (usually Populists), the Republicans succeeded in capturing a significant degree of the vote, forcing the Populists to choose between the less disliked of two non-ideal candidates: “if forced to vote for fusion as Democrats, many Populists declared, they would prefer to return to the GOP or simply not vote at all” (303). However, one may note that the above list is not so exhaustive as the preceding chronology of Australian ballot legislation. The reason for this is simple; in states where the two major parties enjoyed a great degree of organized support, the adoption of additional legislation was unnecessary in the face of the unquestionable supremacy the Australian ballot reforms had afforded them. Regardless, by 1920, twenty-five states had some form of anti-fusion legislation (Scarrow, 1986: 639).

Unsurprisingly, the above reforms were not driven solely by beliefs in political fairness or a desire for political stability; rather, anti-fusion laws were largely pushed through state legislatures by Republicans first seeking to ensure primacy over their two principal rivals, the Democrats and Populists, and later due simply to the electoral advantages such legislation obviously provided in the more closely contested states. Regardless of the effects these changes had on the degree of true representation in the US political system, the stabilizing influence they brought to the system cannot be denied. The two majority parties have maintained their supremacy at the national level since the aforementioned 1896 election. The decline of fusion candidacies on the local and state level occurred more slowly, but is also an undeniable phenomenon, as evidenced by Scarrow’s (1986: 636) comprehensive tabulation of fusion candidacies at these levels. This slow decline can perhaps be seen as a feedback effect; once local electoral laws had changed in those states where fusion candidates had a significant chance at the national level, the national system converged to a two-party system, and as the years passed with the only national contenders coming from the two majority parties, the ideological allure third parties still held at the local level naturally declined as their voter base had to choose between the majority parties at the national level.

This slow feedback between state and local-level candidacies and national-level electoral contests provides a rich backdrop with which to consider the way in which probabilistic institutional patterns operate. The slow and imperfect convergence to a two-party system in the United States indicates that the effects of these probabilistic institutional causal mechanisms are both gradual, and governed by factors that the theories at best imperfectly account for. Whether or not a particular institutional theory is deemed a “law,” the regularity with which laws operate in the natural sciences is weakened when it comes to their application to complex social systems consisting of nested layers of political, economic, and legal relationships, any one of which might

prove to confound the clean regularity predictive theories aim for. The United States is widely recognized as a nation displaying the institutional outcomes predicted by Duverger's Law, but the means by which this law was borne out were gradual and iterative, and very much subject to the contextual complexities of the United States in the latter half of the nineteenth century and first decades of the twentieth.

Conclusion

Executives, legislatures, and their interaction are one of the main topics of study of the impact of institutions on outcomes, as this is where much of the supply of policy takes place. In this area of study, it is practically inescapable to use institutional analysis, as the rules of the game for how policies are produced, implemented, and enforced are clearly a central part of any story. We have covered three examples of this literature here: the presidentialism versus parliamentarism debate, theories of committee organization, and the literature on the causes and impacts of multiple-party systems. Rather than simply describing the role of institutions in each case, however, we also highlighted a methodological issue that affects all institutional analysis, but which is, perhaps, most easily noted in the literature covered here. This is the fact that while institutions are central determinants of economic and political performance, there is often the temptation of looking for grand statements that are universally valid, ascribing to certain institutions impacts that always apply. Although it might seem obvious that this is not the case, and that everything is conditional and subject to interactions, the three examples in this paper show that it is not uncommon for the literature to swerve in that direction in the competition of ideas and the quest for generality. The following quote where Bird (1992) admonishes precisely this type of excess (in the context of tax policy) highlights its pervasiveness:

Much fiscal analysis of developing countries is on the following pattern: the academic literature is drawn on to construct a model fiscal system; the existing situation in a particular country is examined to determine how it diverges from the model; and a fiscal reform is then proposed to transform what *is* into what *ought to be*. This approach is deficient because it does not require sufficient detailed examination of existing reality to ensure that the assumptions postulated in the model are congruent with reality, that the recommended changes can in fact be implemented, or that, if implemented, they will in fact produce the desired results. In contrast, my approach is first to study in detail exactly *how* the existing system works, and *why* it works that way, in order to have a firm basis for understanding what changes may be both desirable and feasible. (Bird, 1992: x; emphasis in original)

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