Ruling by Statute

How Uncertainty and Vote Buying Shape Lawmaking

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On Statutory Policy Making

Scholars of comparative politics have traditionally argued that chief executives, both under presidentialism and parliamentarism, require adequate partisan support in the legislature to govern as well as to survive in office. Consider the case of Argentina's Fernando de la Rúa. The fate of his presidency was sealed on the night of October 14, 2001. After almost two years in power, his administration lost control of the two Houses of Congress to the Peronist party. Two months later, on December 19, 2001, thousands of people marched on the Casa Rosada calling for his resignation. After de la Rua stepped down, Adolfo Rodríguez Saá became interim president. But he also had to resign a week later when he lost the support of fellow Peronist governors. A Peronist-controlled Congress eventually chose Eduardo Duhalde to complete De la Rúa's term. These events show the degree to which a chief executive with little legislative support can unleash a dangerous spiral that renders a country increasingly ungovernable.

Chief executives whose parties do not control the legislature are common in all countries. Still, it is not always the case that these chief executives are doomed to failure. Moreover, even chief executives with considerable partisan support in the legislature and significant agenda-setting powers may find it difficult to muster sufficient votes in the legislature and obtain passage of each and every one of their proposals. Peru's Alberto Fujimori is a case in point. Despite having very strong legislative powers, thanks to a 1993 tailor-made constitutional reform and a considerable legislative contingent, he needed to bribe or intimidate both his opponents and legislators of his own party, *Perú 2000*, to obtain their support. Curiously enough, many bribery situations were recorded on video tape, and the revelation of these tapes led to Fujimori's resignation in November 2000.

In this chapter, I outline two of the main ideas of this book. First, I discuss the role of uncertainty regarding legislators' voting behavior as the key factor that shapes a chief executive's capacity to successfully enact policy changes through acts of government by winning legislative majorities. Second, I examine how vote buying shapes legislative voting. In particular, I assume that legislators are concerned with both policy outcomes and the position-taking aspect of their voting decisions. This conceptualization of legislative behavior gives rise to the other main conclusion of this book; the idea that in the presence of vote buying, winning coalitions will not be oversized.

My theory of statutory policy making can be understood in varying degrees of mathematical precision and generality. In this chapter, I present a descriptive framework which is relatively intuitive and example-based. A formal exposition is introduced in Chapter 3.

2.1 LAWMAKING AS A STRATEGIC GAME

Chief executives can create policy in a variety of ways. For example, they can act without the explicit consent of the legislative branch and "legislate" on their own through executive orders, decrees, or regulatory ordinances. Yet, the use of executive prerogatives as a source of law has important limitations. Decrees, for example, are usually seen as an exceptional policy-making instrument, and thus are particularly sensitive to judicial review. And, in some countries, they can be overturned by legislature. In contrast, the legislative approval of statutes often allows chief executives to better insulate their policy choices from legal review (Remington et al. 1998; Amorim Neto 2006). Chief executives may thus find it preferable to enact policy by winning legislative majorities for statutes rather than by circumventing the legislature and acting on their own.

Statutory implementation of policy, though, is often more complex because it depends on the interactions between the executive and the legislature. Legislators are purposive agents, and their aims may be in conflict with those of the executive's. When a chief executive attempts to gain legislative approval for her bills, she must anticipate and overcome resistance to her plans. In other words, she must have a *strategy*, a plan of action appropriate to such interactive decisions.

Given these considerations, a useful way to analyze the lawmaking process is to represent it as a game of strategy. Players in the game include the chief executive and the members of the legislature. Assume for now that there is just one issue; it could be a general liberal-conservative split, a continuum on which liberal policies are located on the left, moderate policies are located in the center, and conservative policies are located on the right. We represent this issue and all possible positions on it by a line. Each player has an *ideal point* in this line, that is, a policy that yields greater benefits to the player than all other policies. Each player's preferences are *single-peaked*, meaning that any outcome farther from his or her ideal point is less desired by that player than policies closer to his or her most preferred policy. Finally, an exogenous *status quo point* represents existing policy.

As Dixit and Nalebuff (1991) note, the essence of a game of strategy is the interdependence of players' decisions. These reciprocal actions emerge in two ways. First they can be *sequential*: The players make alternating moves; second, they can be *simultaneous*: The players act at the same time, without knowing the current actions of others. The lawmaking process examined here contains elements of both types of interactions.

Consider first the move of the chief executive. For any given issue, she can either send a bill to the legislature with a new policy or she can keep the existing one (i.e., the status quo). If she decides to initiate legislation, then it will be the turn of the legislature to make its move. By definition, a legislature is a collective body, hence, its choice depends on the aggregation of its members' individual choices. To keep things as simple as possible, we take the legislature to be a set of n individuals, where n is an odd number and where everyone casts a vote. It makes decisions by majority rule, and no amendments can be proposed.

To make this more precise, imagine that we can place the executive's proposal on the liberal-conservative scale discussed earlier. Legislators express their preference by choosing between the executive proposal or the status quo. Since the issue is one-dimensional, legislators' preferences are single-peaked, and a majority is needed to win, we can calculate how each and every legislator will vote. Moreover, if the proposed policy yields greater benefits to the legislator with the *median* position than the status quo, then it will be approved. To see this, consider what would happen if the status quo is the ideal point of the legislator with the median position. This type of situation is illustrated in Panel A of Figure 2.1. The legislator with the median position divides the legislature in two equal halves: There are exactly as many legislators who want the policy to move left of the

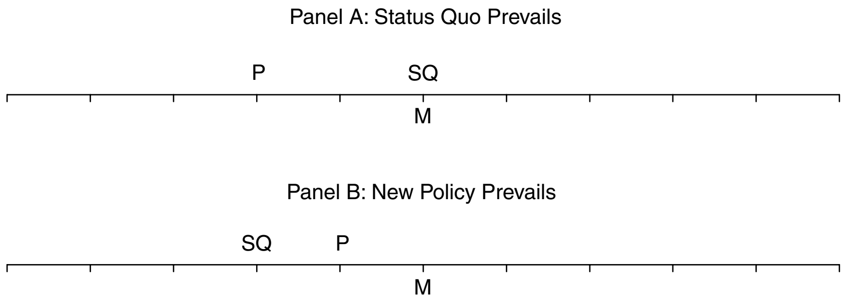

Figure 2.1. The "median" voter and policy outcomes: An illustration.
Notes: An illustration of how the location of the "median voter" vis-á-vis alternative policy proposals affects legislative outcomes when the issue under consideration is one-dimensional, legislators' preferences are single-peaked, and a majority is needed to win. Relative locations of the ideal policy of the legislator with the *median* position (M), the status quo (SQ), and the new policy proposal (P) are shown on a unidimensional space. The legislator with the median position divides the legislature in two equal halves. The top panel shows that no alternative proposal that can beat the status quo under majority rule exists. The bottom panel shows that a coalition in support of the new policy will include the legislator with the *median* position. The new policy will thus be the majority choice in this case.

status quo as to move right. Hence, no alternative proposal that can beat the status quo under majority rule exists.

Suppose now that the status quo is anywhere other than at the ideal point of the legislator with the *median* position, and that the proposed policy is closer to him or her than the status quo. This alternative scenario is depicted in Panel B of Figure 2.1. In this case, the coalition in support of the new policy will include the legislator with the *median* position. By definition of *median*, no more than one-half of all legislators minus one can be to his or her left (or his or her right). Therefore, the proposed policy will be the majority choice. In fact, any bill that is closer to the location of the legislator with the median position that the status quo will be approved by the legislature in this environment.

Turning our attention back to the chief executive, it is safe to assume that a prudent politician will anticipate the legislative outcome and exercise foresight. In this case, the chief executive will try to count "noses" and assess how much support exists for the bill in the legislature. In particular, she will likely only send a bill to the legislature if the legislator with the median position prefers this new policy to the status quo. Otherwise, assuming that suffering a legislative defeat will entail a political cost for the chief executive, she may be better off by not sending any legislation to the legislature at all.[1]

2.2 CROSS-PRESSURED LEGISLATORS AND LAWMAKING

Notice that by predicting the legislature's actions, any chief executive could strategically take advantage of the sequential structure to the decision making, and avoid costly defeats. Following this logic, many scholars have developed models of statutory policy making where proposers are never defeated (Shepsle and Weingast 1987; Alesina and Rosenthal 1995; Groseclose and Snyder 1996; Heller 2001). For example, Shepsle and Bonchek (1997) offer no explanation as to why a proposer would send a bill that will be defeated, other than a proposer's own sheer stupidity.[2]

Acting strategically, however, it is not always so easy. In particular, consider the role of information. The way the argument was presented suggests that chief executives can successfully identify the location of legislators' ideal policies (including the preferred policy of the legislator with the median position). But where would this information come from? It could be argued that legislators' partisan affiliations contain enough information to allow any observer to predict their preferences. Hence, in a world where partisan identities accurately reflect policy positions, a chief executive could use her knowledge of the partisan distribution of the legislature to act strategically. For example, if she knows that her party holds a majority of seats in the legislature, and that all of its members favor her proposal over the status quo, then she can confidently anticipate a legislative victory. Notice that if this were the case, then for every possible bill, any chief executive would be able to strategically tailor her legislative agenda to her degree of partisan support. And, again, per the

1 Some scholars argue that chief executives may sometimes actually choose to be defeated in order to send a particular signal to the general public (Matthews 1989; Ingberman and Yao 1991; Groseclose and McCarty 2001). According to this view, a chief executive may occasionally adopt a strategy of "triangulation" – positioning herself between her own party and the opposition forces in the legislature to build popularity. If there are opposition forces in the legislature that need to be exposed in front of the general public, then this strategy may be palatable for a chief executive. Yet, if the public views the legislature as a natural extension of the chief executive's authority, it may not be a good idea for her to force defeats too frequently.

2 As these authors note, if a committee and a legislature's floor want to move policy in opposite directions, the committee will refuse to open the gates. But, "... if they did stupidly open the gates, then any proposal they made to improve their lot would be voted down ..." (Shepsle and Bonchek 1997: 332).

law of anticipated reactions, legislative passage rates should always be 100 percent.[3]

Expectations would change radically if one believes that legislators' preferred policies cannot be fully predicted in advance. For example, suppose that a chief executive has to propose to a legislature composed of legislators who belong to political parties, but who must respond to various pressures. In particular, assume that in deciding how to vote, legislators consider a variety of influences, including their personal values, announced positions, the views of their constituents, and the preferences of their party leadership. If these pressures are not aligned, then legislators are cross-pressured (Fiorina 1974; Fenno 1978; King and Zeckhauser 2003).

The existence of *cross-pressured* legislators as a source of incomplete information is well illustrated by the recent experience of Henry Paulson. A former Goldman Sachs's CEO, Paulson served as the seventy fourth United States Treasury Secretary and had a leadership role in the Bush administration's efforts to cope with the 2008 financial crisis. As *Vanity Fair* reporter Todd Purdum notes, at Goldman, Paulson had played his share of high-stakes office politics; yet, when it came to Washington, he found he had much to learn. Paulson's candid revelation to Purdum, while he was still in office, tells us why:

> ... I found that at Goldman Sachs, to be effective as a leader, you had to build consensus when you're managing smart people who've got other alternatives. I'm in that situation today to a much greater extent than I ever was at Goldman Sachs, because the people I'm trying to bring together are *truly* independent. Oftentimes, they may even agree [with me] in private, but because of their constituencies or because of their parties or because of their committee chairmen or because of what the American people think, you know, won't agree in public. So I have to get used to people saying, Boy, that's reasonable – I really think a trade agreement

[3] The main problem with the traditional accounts is the "Hicks paradox," which holds that bargaining failures like strikes, wars, vetoes, or legislative defeats are irrational in a setting of complete and perfect information (Kennan 1986; Gartzke 1999; Cameron 2000). Other scholars have also stressed the role of incomplete information. Cameron (2000) relies on incomplete information to explain the existence of bargaining failures across the branches of government in the United States. Diermeier and Vlaicu (2007) model the legislative process as a multiperiod bargaining game under uncertainty to rationalize the fact that legislative success rates of chief executives are lower in presidential than in parliamentary democracies. They argue that bills proposed to the legislature are more likely to be accepted when legislators expect that failing to do so would lead to the collapse of the government. However, unlike Cameron (2000) and Diermeier and Vlaicu (2007), who do not identify the source of the uncertainty about legislators' preferences, I explicitly assert that incomplete information originates in the existence of *cross-pressured* legislators.

with Colombia is great, but I can't be for it. ... If you need my vote to get it done, I'll vote with you, but, fortunately, you don't, and I can take a pass ... (cited in Purdum 2009: 5)

Paulson's perplexity is illustrative of Washington's way of doing business. In fact, it reflects more broadly an essential feature of statutory policy making stressed in this book: how the unpredictability of legislators' voting behavior affects chief executives' ability to pass their legislative agenda.

In addition to anecdotal evidence, the fact that legislators account for different sets of interests when deciding how to cast their votes is well documented in the literature (Covington 1988; Kalt and Zupan 1990; Levitt 1996; Londregan 2000). Most of the theoretical models previously mentioned, however, do not incorporate these constraints in legislators' voting decisions.[4] A notable exception is Denzau et al. (1985); they examine the idea that principals (supporters) not only induce preferences in agents (legislators) but also constrain their mode of behavior. As Denzau et al. (1985) note, lawmakers vote in the legislature, but they secure support, campaign resources, and electoral rewards outside the legislative arena. Thus, legislators are judged not only by the collective choices made by themselves and their colleagues, but also by their own individual actions (Fiorina and Noll 1978; Denzau et al. 1985; Rasmusen and Ramseyer 1994; Groseclose and Milyo 2009).

For expositional purposes, throughout the book I will refer to a legislator's principal as her *constituency*. Still, legislators may wish to remain in the good graces of a group (or person) distinct from her electorate or constituency. These different principals may include a set of influential voters in the legislator's district, as exemplified in the U.S. case described in Chapter 1, but also the leadership of a specific interest group (such as a labor union or a business association), a local party boss, or even a higher authority (which may be embodied in a legislator's allegiance to a given set of religious or moral principles).

The identity of the principal, and the nature of the agency relationship with his or her representative, is likely to be shaped by legislators' electoral

[4] For example, in Groseclose and Snyder's (1996) model, legislators are primarily concerned with the position-taking aspect of their voting decisions, not with policy outcomes (i.e., they derive utility simply from taking part in decision making, even if they are indifferent to the collective outcome). This seems to be a particularly unrealistic assumption. As Barry cleverly points out, "a committee made up entirely of people who had no interest in pursuing some particular outcome but were fascinated by the process as such would be as frustrating as a brothel all of whose customers were voyeurs" (1980: 184).

incentives. Legislators who are elected by plurality rule in single-member districts are often responsive to influential voters in their district. In contrast, when legislators are elected via closed regional party lists and votes are pooled, they may give deference to the preferences of the regional party leadership.[5] Yet, regardless of the principal's identity, the agency relationship between legislators and their supporters implies that the former will not always be party loyalists. Conflicting pressures can induce them time and again to challenge the party line.[6]

From the chief executive's perspective, the fact that a group of legislators may face conflicting influences implies that in order to behave strategically, she needs to assess how these legislators would cast their votes. As previously mentioned, legislators are usually elected as members of organized parties, and their partisan affiliations are public information. In addition, a legislator's membership in a given political party or legislative bloc is often stable over time.[7] In other words, a legislator's partisan affiliation does not vary across issues, and certainly not in conjunction with a bill's content. In contrast, whether a legislator's principal likes a given piece of legislation will depend on the specific content of the bill. Therefore, although the partisan composition of the legislature is *a priori* observable, the policy preferences of legislators' principals are not.

Here, then, lies the main difficulty that even the most strategic chief executives must confront: When they send a proposal to the legislature, chief executives usually know with certainty what the legislators' partisan affiliations are, but they only have incomplete information about the policy preferences of the legislators' principals. Otherwise, as previously discussed, a strategic chief executive could always tailor the content of the legislation to accommodate the policy preferences of a majority of legislators and avoid being defeated (i.e., calculate *ex-ante* an optimal policy proposal).

[5] In Argentina, for example, the process by which provincial party lists are formed affects which candidates run on each party list, their ranking, and consequently their chances of winning a seat in Congress. In almost every province, local party bosses dominate the construction of party lists. Legislators' ability to adopt their own independent positions is thus substantially curtailed: To pursue a successful legislative career, they must maintain a good relationship with their local party bosses (De Luca et al. 2002; Jones et al. 2002).

[6] In the Argentine case, legislators tend to respond to their provincial party bosses. As a result, a president's ability to influence each of his or her co-partisans will depend in part on whether the legislator's provincial party boss supports the administration or not.

[7] Even in those countries where *party switching* is frequent, legislators publicly announce their decisions to defect/join a party and they often do not make these decisions in between terms (Desposato 2006).

2.3 DECISIVENESS, BRIBES, AND VOTING COALITIONS

We are now ready to examine the second type of interaction that characterizes the lawmaking process: The interdependence of legislators' voting decisions. Suppose that even without having an accurate representation of the policy preferences of legislators' constituencies, a chief executive decides to send a bill to the legislature with a new policy. Recall that such proposal can be represented by a point in a line (i.e., a general liberal-conservative continuum). Assume also that once a bill is filed, its content becomes public and that all lawmakers receive a mandate from their constituents. When this information is revealed, it becomes possible to identify the location of legislators' ideal policies. To make this situation interesting, it should be assumed that the chief executive cannot change the bill's content at this point (otherwise, she would tailor it to accommodate the preference of a majority of legislators and avoid a costly defeat).

It is now the legislature's turn to move. It has two choices: pass the bill or keep the status quo. By virtue of the requirement that majority vote is needed to pass legislation, the actions of individual legislators are linked. And, just as in any collective situation, strategic issues arise in voting. In particular, each vote can have two effects. It can be instrumental in determining the collective outcome, or it can be a "voice" that reflects the preferences of a legislator's constituency without altering the outcome. To determine whether the former is more important to a legislator than the latter, we need to consider the interdependence of legislators' decisions.

Consider a three-person legislature (composed of legislators *A*, *B*, and *C*) operating under majority rule. Suppose that legislators *A* and *B*, who favor the proposal over the status quo, realize that their constituents also support the policy change. The remaining legislator also likes the proposal, but he knows that his constituents will not be pleased with the new policy. How should legislator *C* vote? Note that there are only two circumstances for *C* to consider. If he votes yea, the bill will pass with three votes, and he will displease his constituents. But, given that *A* and *B* support the bill, *C* knows that if he votes nay the bill will also pass. So, legislator *C* is in the best of all possible worlds: By voting nay, he can please his constituents and have his preferred policy enacted as well.

Suppose the situation is the same as before, but now legislator *B* opposes the proposal, an opinion that she shares with her constituents. In this case, there is a split vote (one yea and one nay); as such, legislator *C*'s vote is decisive. Legislator *C* knows that if he votes yea, the bill will pass, but if he votes nay, it will fail. Unlike the previous situation, his vote now has the power to unilaterally change the outcome. His choice will depend on whether he cares about the policy consequences or the position-taking aspect of his voting decision. If he cares about the former, then he will vote yea even at the expense of displeasing his constituents. In contrast, if he cares most about reflecting his constituency's preferences, he will vote nay, even though he is personally in favor of the policy change.

This simple three-member legislature example leads to an important conclusion of wider applicability: Only if a vote is tied or is within one vote of a tie can a single legislator be decisive and affect the outcome by unilaterally changing his own actions. When the final tally does not involve a one-vote margin, a legislator's vote will have no effect on the outcome, and the only relevant factor in his calculation is the benefit associated with position taking.[8]

Consider now the implications of this characterization of legislative behavior for vote buying.[9] Suppose that, based on the legislators' announced positions, a vote is expected to result in a tie. Undoubtedly, this state of affairs would indicate that the chief executive miscalculated the support for her bill at the proposal stage. Nonetheless, she may still be capable of influencing the legislative outcome. In particular, if the chief executive wishes to get her proposal approved, she needs to procure exactly one more vote. As stated before, the chief executive cannot change the content of her proposal. She may still be able to incentivize the decisive legislator to adopt her preferred policy outcome. In other words, suppose that before voting takes place, the chief executive can offer a *bribe* to the relevant legislator. These bribes may include favors, sinecures, or political rewards, and votes can also be traded in exchange for monetary payments.

An important question, of course, is whether under such circumstances bribes are actually needed. It turns out that because legislators care about both policy and position taking, it might be possible for the chief executive to get her proposal approved without having to offer any bribes. For this to happen, the only requirement is that a single legislator who likes the proposal, and whose vote is decisive, takes the "bitter pill" (i.e., sides

[8] In light of this possibility, some authors have raised doubts as to the relevance of interpreting legislative "prowess" as decisiveness, suggesting as more relevant the notion of "satisfaction," which is defined as the likelihood of having the result one favors irrespective of whether one's vote was crucial for it or not (Barry 1980; Laruelle and Valenciano 2005; Laruelle, Martinez and Valenciano 2006).

[9] I develop a formal treatment of vote buying in situations where legislators care non-negligibly about how they vote in the next chapter.

against his constituency). So, going back to the second example of the three-member legislature, if we assume that the legislation was proposed by the chief executive, and that legislator *C* cared most about changing the status quo, then the bill would have been approved without any bribes being dispensed. Representative Marjorie Margolies-Mezvinsky's vote on President Clinton's budget-reconciliation bill suggests that a situation like this is not just a theoretical possibility.

The first Democrat in seventy-six years to be elected from a heavily Republican district, Margolies-Mezvinsky pledged to her constituents in her campaign that she would vote against higher taxes. Early in the 103rd Congress, she was the only Democratic freshman to vote against both Clinton's budget proposal and his economic stimulus package. But on August 5, 1993, the administration needed her vote to pass the budget-reconciliation bill. With nine hours left before the vote, the Democratic leadership was still 10 votes short of the 218 it needed to win. Indeed, when the vote began at 9:55 in the evening, it looked like the proposal was set for defeat. But, when time expired, the count stood at 216-215 in favor of the bill. With three more Democrats (Pat Williams, Ray Thornton, and Margolies-Mezvinsky) waiting to cast their votes, two of them had to vote "yes" or the bill would fail. As Hager and Pianin (1997) note, to the whips and the Democratic leaders, what had to happen was clear: Williams and Thornton would have to support the bill so that Margolies-Mezvinsky could vote no. Williams initially planned to vote against the bill, but he told the party leadership that he was willing to change his vote if needed. Tension mounted when Thornton signaled his intention to oppose the bill. Democratic Representative Bill Richardson intercepted him and stated: "Ray, you told the president that you were with us," but Thornton replied that he promised his constituents that he would vote against the bill (Hager and Pianin 1997). Now the vote was 216-216. If the tie held, the bill would die. Hager and Pianin (1997) recount the remainder of the story in the following way:

> Margolies-Mezvinsky was waiting 30 feet away next to the vote computer on the Democratic side of chamber … . [The Speaker of the House] Foley walked up and told her they needed her vote. Barely glancing at him, she hesitated and then began to walk slowly down the aisle toward the well … A Democrat handed her the green card she would need to vote yes. She joined Williams at the desk at the foot of the Speaker's dais. Williams signed his card and handed it in and, finally, agonizingly slowly, Margolies-Mezvinsky did the same. After a few seconds' delay, the orange lights displaying the vote total blinked out the changes: from 216-216 to 217-216 and finally to 218-216. It was over.

Margolies-Mezvinsky's service to the president did not go unnoticed. Bill Clinton subsequently recognized her action by speaking at a seminar on deficit reduction that she sponsored in her district. Clinton's gesture, however, was hardly an equitable compensation for her vote change. In her 1994 reelection bid, John D. Fox, the man that Margolies-Mezvinsky had defeated two years before, defeated her by more than 8,000 votes. As *Congressional Quarterly* puts it, he had a powerful weapon to use against her in the form of what came to be called "The Vote".[10]

This historical example highlights those situations in which votes are "close enough" (i.e., there is a tie) to make it worthwhile for a cross-pressured legislator to favor her party rather than her constituency when casting a vote. On most votes, though, there are usually multiple legislators whose vote can potentially change the collective outcome. In these cases, "narrow victory" coalitions may unravel unless rewards are appropriately dispensed.

Consider the following example. Suppose that the chief executive introduces a bill to a five-person legislature (composed of legislators *A*, *B*, *C*, *D*, and *E*). As before, assume that every legislator casts a vote, the body makes decisions by majority rule, and no amendments can be proposed. Legislator *A* likes the proposal, and she knows that her constituents will also be pleased with the new policy. Legislator *E* opposes the proposal, an opinion that is shared with his constituents. The remaining legislators like the proposal, but they know that their constituents will not be pleased with it. How should legislators *B*, *C*, and *D* vote? Let's focus first on legislator *B*. He knows that *A* will vote yea, and that *E* will vote nay. With respect to *C* and *D*, there are three circumstances for *B* to consider (2 nay votes, 2 yea votes, or a split in their vote). If *C* and *D* support the bill, *B* knows that if he votes nay the bill will pass (with three votes against two). So, by voting nay, he can please his constituents and have his preferred policy enacted anyhow. If there is a split vote between *C* and *D*, then legislator *B*'s vote is decisive. So, if he cares most about changing the status quo, he will have to take the "bitter pill" and vote yea (the bill will pass with three votes against two). Notice that this case is analogous to Margolies-Mezvinsky's situation described earlier. Finally, if both *C* and *D* vote nay, then legislator *B* would definitively vote nay. By voting yea under such circumstances, he cannot please his constituents, and he

10 Incidentally, on July 31, 2010, almost seventeen years after Marjorie Margolies-Mezvinsky cast her famous vote, her son, Marc Mezvinsky, married Bill Clinton's daughter, Chelsea Clinton.

would not have his preferred policy enacted anyhow. How about legislators C and D? Both of them face the same incentives as legislator B, so the same logic holds for them. Therefore, it is possible that, under the impression that the other two legislators will vote nay, each one of these legislators (B, C, and D) will vote nay. Namely, all potentially decisive legislators would end up voting against their preferred policy outcome. In consequence, the chief executive would suffer a legislative defeat (the proposal would lose by four votes against one).

As this example demonstrates, the strategic behavior on the part of individual legislators may sometimes lead to a collective dilemma, a situation in which an undesirable outcome prevails. The problem is the interdependence and simultaneity of decisions: The jointly preferred outcome arises when each chooses a somewhat *selfless* strategy. Each legislator is tempted to behave as a "free rider" (if there are already two yeas, and I am the remaining legislator, then by voting nay I can "have the cake and eat it too").

It should be noted that all three legislators could be better off if they could make a binding agreement to cooperate with one another (i.e., correlate strategies) when casting a vote. For example, if they all belong to the same political party, they could exchange promises to take turns when decisive votes are needed. Yet, as the example of Representative Ray Thornton highlights, the promises of cross-pressured legislators are seldom credible. Hence, it is probably safer to assume that in any given vote, each legislator will choose her own optimal action, holding the choices of all other legislators fixed.[11]

Turning back to the last example, it is clear that the chief executive may not be able to pass the new policy without offering bribes (for example, when legislators B, C, and D vote nay). So, how many legislators should be bribed? And who should be the recipient(s) of such compensations? In principle, the chief executive needs to "buy" two additional votes (only legislator A will clearly cast a vote in favor of the proposal). Yet, consider what happens when only one additional vote is bought. Suppose that the chief executive extends an offer to legislator B to make sure than he votes yea. Now, only one additional vote will be needed to pass the bill. Suppose

[11] In addition to the issue of credibility, another reason to assume noncooperative behavior is that the simplest way of bringing concerted action, a Strong Nash Equilibrium (which occurs when players cannot do better even if they are allowed to communicate and collaborate before the game), adds no new equilibria to those analyzed as ordinary Nash (Denzau et al. 1985).

that you are legislator *C*. If you expect *D* to vote yea, then you should vote nay (you can please your constituents and have your preferred policy enacted anyhow). But, if you think that legislator *D* will vote nay, and you care most about changing the status quo, then you should vote yea. Legislator *D* faces the same incentives as legislator *C*, so the same logic holds for him. Hence, only two possible outcomes can occur: (1) *A*, *B*, and *C* vote yea and *D* and *E* vote nay; or (2) *A*, *B*, and *D* vote yea and *C* and *E* vote nay. In both cases, though, the chief executive's bill wins for sure.

Suppose now that instead of bribing legislator *B*, the chief executive decides to reward legislator *E* in exchange for his vote in favor of the proposal. Again, only one additional vote will be needed to pass the bill. But, now, there are still three available voters (*B*, *C*, and *D*). How should these legislators vote? Consider first legislator *B*. If both *C* and *D* vote nay, then if he cares most about changing the status quo, he should vote yea (otherwise, the bill would not be approved). As before, the other two legislators face the same incentives as *B*. Therefore, three possible outcomes can occur: (1) *A*, *B*, and *E* vote yea and *D* and *C* vote nay; (2) *A*, *C*, and *E* vote yea and *B* and *D* vote nay; or (3) *A*, *D*, and *E* vote yea and *B* and *C* vote nay. In all three cases, the chief executive's bill wins for sure.

But, regardless of who receives the bribe (legislator *B* or legislator *E*), in both cases, the chief executive only needs to buy one more additional vote instead of two to secure her bill's passage. Thus, this last example illustrates how a strategic chief executive interested in obtaining a majority of votes may be able to do so by spending as little as possible. In this case, the chief executive's strategy consists of buying enough votes so that one of the cross-pressured legislators who like the proposal would find herself in the position of being able to unilaterally change the collective outcome with her vote.

More generally, the number of legislators the chief executive will need to buy, and the total cost of a winning coalition in support of her proposal, will depend on the policy preferences of legislators and their supporters. For example, suppose that a chief executive needs to buy additional votes from legislators who dislike her proposal but whose constituents support it. In particular, suppose that legislator *A* likes the proposal and knows that her constituents will also be pleased with the new policy. Legislator *E* opposes the proposal, an opinion that is shared with his constituents. The remaining legislators dislike the proposal, but they know that their constituents will be pleased with it. To win for sure, the chief executive needs to "buy" two additional votes.

Consider what happens if the chief executive buys legislator *E*'s vote. Now, only one additional vote will be needed to pass the proposal, and there would still be three votes up for grabs (those of legislators *B*, *C*, and *D*). How should these legislators vote? Consider first legislator *B*. If both *C* and *D* vote nay, then if he cares most about keeping the status quo, he should vote nay (otherwise, the bill would be approved). But, if both *C* and *D* vote yea, then he should also vote yea (since he cannot unilaterally prevent the proposal's passage, at least he can please his constituents). Legislators *C* and *D* face the same incentives as *B*. Therefore, two possible outcomes can occur: (1) *A* and *E* vote yea and *B*, *C*, and *D* vote nay; (2) everybody votes yea. Note that if only one additional vote is bought, there is no guarantee that the bill will pass.

Suppose now that the chief executive extends an offer to legislator *B* rather than *E* to vote yea. Once again, only one additional vote will be needed to pass the bill. Suppose that you are legislator *C*. If you expect *D* to vote yea, then you should also vote yea (since you cannot unilaterally prevent the proposal's passage, at least you can please your constituents). But, if you think that legislator *D* will vote nay, and you care most about keeping the status quo, then you should vote nay. Legislator *D* faces the same incentives as legislator *C*, so the same logic holds for him. In consequence, only two possible outcomes can occur: (1) *A*, *B*, *C*, and *D* vote yea, and *E* votes nay; or (2) *A* and *B* vote yea and *C*, *D*, and *E* vote nay. So, to make sure that the bill will pass, the chief executive needs to buy one more vote.

Unlike the example previously discussed, in this case, the chief executive's strategy consists of buying enough votes so that none of the cross-pressured legislators who dislike the proposal would find themselves in the position of being able to unilaterally change the collective outcome with their votes. What the two examples have in common, though, is that in both cases, it would be be possible for the chief executive to buy a minimum winning coalition (i.e., two votes out of three) or even fewer votes (i.e., one out of three) to get her proposal passed. In fact, whenever a chief executive engages in vote buying, winning coalitions will never be oversized.

I provide formal proof of my last statement in the following chapter; for now, the following examples provide the intuition of these results. In particular, I focus on some recent events that took place in Argentina. These real-world cases illustrate some of the main lessons from the abstract theory discussed in this chapter.

After a marathon session that started the previous day, Argentina's lower house narrowly approved a government tax program for agricultural exports on Saturday July 5, 2008. The bill's passage was just another chapter of a bitter battle between farmers and President Cristina Fernández de Kirchner. The conflict originated when Kirchner issued a decree in March raising taxes on agricultural exports. The measure set off a rebellion in Argentina's countryside. Enraged farmers blocked roads nationwide, paralyzing grain and meat sales that caused food shortages across the country. The government responded to the protests by staging its own progovernment demonstrations. The president also attacked the leaders of the four major farmer associations and cast the farmers as greedy oligarchs or unpatriotic plotters intent on overthrowing the government. This discursive strategy backfired, as most opinion polls showed that her uncompromising line on the farm revolt damaged her popularity. On June 16, with a new round of protests under way, Kirchner sought to legitimize the tax program by allowing Congress to vote on the measure. This was an unexpected move, because her government, as well as the government of her predecessor and husband, Néstor Kirchner, had not asked Congress to approve any major government action.

The president's Peronist party held comfortable majorities in both houses of Congress. Yet, a significant number of legislators came from agricultural districts. When the bill reached the lower house's floor late on July 4, the government still did not have the votes needed for its passage. The majority Peronist leader Agustín Rossi had to exert enormous pressure on recalcitrant deputies to ensure the bill's approval. Despite these efforts, Felipe Solá, a former Peronist governor of Buenos Aires, and seventeen other *Kirchneristas* openly defied the government and announced that they would vote against the bill. At that point, the count stood at 124-122 against the bill, with six legislators still unsure of how to cast their votes (the remaining legislator, a Peronist from a heavily agricultural district, had already announced that she was going to abstain). In the wee hours of Saturday morning, after the government promised to eliminate the export tax on apples and pears exported by their respective provinces, the deputies Julio Arriaga and Fabiana Rossi switched away from the Solá camp. By securing the defection of these two deputies from the opposition, the government ensured that none of the remaining legislators could affect the outcome by unilaterally changing their votes. Released from the burden of being individually decisive, five of the legislators voted "yes" and the remaining one cast an abstention. At 12:13 P.M., the bill passed with a majority of 129 votes, just one more than the minimum the government needed for approval.

In the aftermath of the House vote, public attention shifted to the Senate. The government needed thirty seven out of seventy two votes in a Peronist-dominated Senate to get the bill approved. Yet, pressure against the tax program kept mounting. Massive demonstrations, designed to influence various undecided senators, were organized by each side. After a number of tumultuous days, at about 4:20 A.M. on July 17, 2008, the Senate rejected the bill.

The events that led to the government's defeat had began to take shape during the previous day. Peronist Senator Teresita Quintela from La Rioja publicly announced that she would vote against the bill. After her defection, the count in favor of the bill stood at thirty four votes plus three undecided Senators. This state of affairs still gave the government a chance to pull off a favorable outcome. In contrast to the situation in the lower house, however, the Senate turned into a complicated game. By 6:00 P.M., and with three undecided votes still left, the priority of the leadership of the Peronist party was to avoid a tie. Three hours later, two undecided Peronist Senators announced their support for the bill. However, with the addition of these two legislators to the government coalition, Senator Julio Rached became the decisive voter. Rached was under intense pressure from the governor of his province to support the bill, but he personally opposed the measure. Forced to cast the decisive vote, Rached revealed that he would vote against the bill. At this point, the count stood at thirty-six to thirty-six, and every Senator had already publicly announced his or her vote intention.

With millions of Argentines following the debate live on television broadcast, the Peronist leadership knew that it would be impossible to convince anyone to change their votes. At this point, only one person, the unpredictable Vice President Julio Cobos, was in play. Cobos had challenged the President's authority a few weeks earlier by making a call to reach a compromise with the farmers. A turncoat member of the Unión Cívica Radical (UCR), a party that traditionally opposed the Peronists, he was selected by President Kirchner as her running mate to win voters outside her party's electoral base. When Cobos took the floor, the Senate hushed. In a weary, cracking voice Cobos said that although he understood that President Kirchner expected him to support the bill, he would vote against it because passing the measure would not offer a solution to the conflict. When the Senate finally voted, thirteen Peronists and twenty three members of different opposition parties voted no, tying the roll call at thirty-six to thirty-six. Vice president Julio Cobos broke the tie, squeaking out a loss, thirty-six to thirty-seven.

This real-world example clearly illustrates how despite having a solid majority in both houses of Congress, the Peronist party could not take the vote of some of its members for granted. In fact, the events that occurred in the Chamber of Deputies lend additional support to the view that chief executives may need to compensate a few vote switchers; yet, they will not necessarily need to buy too many votes or pay for votes in a losing effort. In the case of the Argentine Senate, the events that took place there vividly demonstrate how the collective decision of a legislature ultimately depends on the interdependent decisions of several individual legislators.

2.4 CONCLUDING REMARKS

The aim of this chapter was to introduce the reader to the theory of statutory policy making advanced in this book. In particular, the analysis sought to highlight the role of uncertainty regarding legislators' voting behavior as the key factor that shapes the capacity of chief executives to successfully enact statutes. Both the analytical as well as the historical examples illustrate some of the general features of statutory policy making: (1) how chief executives and legislators strategically interact with each other to produce policy changes; (2) how the existence of cross-pressured legislators affects the likelihood of a bill's passage; and (3) how legislators' vote intentions change in response to incentives.

This chapter also examined the consequences of legislative behavior for chief executives' vote-buying strategies. As the examples demonstrate, vote-buying opportunities depend on the properties of statutes and the manner in which they are produced. To reiterate, legislation possesses the characteristics of what economists call *public goods*. If a new tax rate is introduced, it will please those legislators who favor it and will displease those who do not. But, as Barry (1980) notes, the gains are not confined to those who voted on the winning side, nor are the losses confined to those who were on the losing side. The bill creates its own winners and losers by its content: If one is advantaged or disadvantaged by it, that will be so whether one voted in favor or against or did not vote at all (Barry 1980). The exception, of course, are those legislators who can unilaterally change the outcome (i.e., when a vote is tied or is within one vote of a tie). The analytical examples discussed in this chapter indicate that whenever additional votes are needed, a strategic chief executive should buy enough votes to ensure that all (none) of the cross-pressured legislators who like (dislike) her proposal find themselves in a position to unilaterally change the outcome.

The discussion of Argentina's failed tax program provide additional support for the arguments presented in this chapter. Specifically, the dilemma faced by the Peronist leaders when only three undecided legislators where left shows how, when cross-pressured legislators act strategically, even the most clever of vote buyers may end up with an undesirable policy outcome. The model presented in the next chapter explicitly identifies those situations in which strategic behavior on the part of individual legislators can lead to unanimously disliked outcomes.[12]

[12] I encourage those readers who are interested in this particular implication of the model to examine Lemmas 3–6 in Appendix A, as the events that took place in the Argentine Senate are represented almost to the detail in some of the examples that I use there to prove Propositions 1 and 2.