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978-1-107-02224-9 - The Power of American Governors: Winning on Budgets and Losing on Policy

Thad Kousser and Justin H. Phillips

Excerpt

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## I

### One Problem Shared by 50 Governors

Governors, just like American presidents, face a singular disadvantage when it comes to lawmaking. Though the public may look to governors to lead their states, credit them with any successes, and hold them accountable for most failures, state constitutions strip governors of any direct power to craft legislation. Legislators in this country hold a monopoly over the power to introduce, amend, and pass bills, giving them the ability to write laws and then present them as take-it-or-leave-it offers to America's chief executives. A governor's only formal legislative power is a reactive one – the ability to veto or sign bills that are passed by the other branch – and comes at the end of the lawmaking process.

The dynamics of this relationship can be seen in the logistics of the annual rituals that bring the branches together. When presidents lay out legislative agendas in their State of the Union addresses, they head down Pennsylvania Avenue to do so from the speaker's rostrum before a joint session of Congress. Likewise, governors typically deliver their State of the State speeches to lawmakers in their respective legislatures' lower houses. Governors recognize who the home team is when it comes to playing the legislative game and know that their ability to shape policy depends crucially on the actions of the men and women who serve in the legislative branch. With respect to many of the formal prerogatives of lawmaking, each state's chief executive stands behind even the most junior rank-and-file legislator.

In their direct and even indirect power to create laws, governors also trail far behind chief executives throughout the world. Unlike the leaders of most parliamentary governments, they cannot reasonably expect the support of the majority coalition in the legislature, and their cabinet

officers do not serve as legislative leaders with the power to introduce key bills and shepherd them through the lawmaking process. They are thus prevented from moving their agendas as quickly and successfully as prime ministers in Europe and Japan. Presidents in Latin America have the ability to introduce laws, and many possess that right exclusively for their nations' budgets, elevating them above legislators, who often serve simply to cast up or down votes on presidential agendas (Payne et al. 2002; Aleman and Tsebelis 2005; Saiegh 2011). In some countries, presidents possess decree authority, allowing them to establish the law in lieu of legislative action (Carey and Shugart 1998). The separation of powers in the United States, by contrast, dictates that our chief executives cannot author legislation.<sup>1</sup> Whether they wish to pass a new budget or make any statutory policy change, they are dependent on the legislature to do so.

Yet, governors are granted many opportunities to overcome this constitutional obstacle. They are the central figures of state politics, allowing governors who shine in the spotlight to shape a state's agenda (though executives who suffer under its glare gain no automatic advantage from their prominence). Chief executives possess many informal weapons to counteract their formal weakness, sticks and carrots that may compel legislative cooperation if used wisely. Although there are no guarantees that governors will move their agendas through legislatures, many are able to harness their assorted powers to pile up wins. Some governors are unqualified successes, whereas others are undeniable failures. What they share are unlimited expectations but limited powers. All governors are expected to be their states' "legislator in chief" (Lipson 1939; Beyle 1983; Rosenthal 1990; Gross 1991; Bernick and Wiggins 1991; Morehouse 1998; Ferguson 2003). Voters demand policy leadership and results from the governors whom they send to office, overlooking the mismatch between these expectations and the constitutional authority of the executive.

In this book, we consider whether American governors can use their varied powers to overcome their common challenge – the institutional advantage that legislators hold in the realm of lawmaking. Just how successful are governors in moving their programs through the legislature?

<sup>1</sup> While the bills proposed by governors and introduced into legislatures are in some states explicitly referred to as *governor's bills* (Rosenthal, 1990, p. 103), this is an informal arrangement that does not confer constitutional powers on governors. The legislative authors of governor's bills still control their content and shepherd them through the process, and the legislative branch as a whole maintains complete authority over their fates.

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Under which institutional and strategic settings should state chief executives be most successful? When might they be most likely to fail? In short, can governors govern, and which ones are likely to govern most effectively?<sup>2</sup>

In formulating answers to these questions, we are guided by prior research on chief executives as well as interviews we conducted with dozens of key statehouse players. Talking with governors, their top advisors, and legislative leaders has given us insight into the goals of governors and the strategies they employ to pursue them. Combining this eyewitness testimony with lessons learned from past scholarship, we argue that critically different dynamics drive bargaining over the budget and over policy bills. As a result, we develop a model (or game) for each type of negotiation, building on existing game theoretic approaches to inter-branch bargaining. Our models demonstrate the various ways in which governors can use their formal and informal powers to influence the lawmaking process, allowing us to make predictions about the factors that will shape gubernatorial success. Additionally, the models point to the subtle and complex ways in which features of a governor's public agenda, including its size, scope, and ideological content, are functions of bargaining circumstances and the value that governors place on taking uncompromising policy positions.

In general, our models predict that governors will be most successful when playing the budget game. In this game, fiscal, legal, and political realities dictate that legislators must come to the negotiating table. Lawmakers are required by law to pass a new state budget every year or biennium, and a failure to do so brings dire political consequences for both branches, including (in many states) an automatic government shut-down. These consequences transform negotiations into a staring match, eroding many of the legislature's traditional bargaining advantages. The staring-match dynamic empowers governors everywhere but should be particularly helpful to those executives who are bargaining with impatient legislatures. All governorships are well-paid, full-time jobs that allow their occupants to reside in the state capital year round and engage in protracted negotiations. Many legislatures, however, only meet in short

<sup>2</sup> Because we want to examine closely the ability of governors to move their favored policies and spending plans through legislatures, we do not address other important gubernatorial functions such as unilateral policy making through executive orders (Ferguson and Foy 2009), influencing the bureaucracy (Wright et al. 1983; Sigelman and Dometrius 1988), or overseeing the implementation of laws. These are important areas of executive strength but lie beyond the scope of this volume.

sessions, and their members maintain outside careers. In these states, governors should be able to leverage their bargaining patience into additional budgetary concessions.

When the governor is playing the policy game, conversely, the legislature enjoys a particularly advantaged position. Lawmakers are free to ignore the governor's requests, and nothing very bad happens – policy simply remains at the status quo. In this game, governors will have a hard time convincing lawmakers to come to the bargaining table, let alone getting them to pass executive agenda items without significant amendment. The governors who are most likely to succeed will be those who want to move the status quo in the same direction as the legislature or those who can promise lawmakers large rewards for cooperation or stiff penalties for opposition.

What types of rewards and punishments can state chief executives dole out? Lawmakers who work toward the passage of the executive agenda can expect to receive favors such as support for their reelection campaigns and fund-raising efforts, plumb appointments for their political allies, and joint appearances with the governor in their districts. Correspondingly, chief executives can threaten to use their high-profile positions to attack uncooperative officeholders or campaign for their challengers. The governor can also transform her veto authority from a negative to a positive power by promising to sign bills that are important to individual lawmakers in exchange for their support of her proposals. Ultimately, however, the size of the carrots and sticks that a governor wields and her ability to use them should be a function of the governor's political capital, which is shaped by her popularity with voters, the extent to which she can credibly make veto threats, and the amount of time she has remaining in office.

We evaluate the predictions of our models using several new sources of evidence. First, we use journalistic and legislative archives to track the success of the policy and budgetary agenda items that governors propose in their State of the State addresses, creating a data set that records the characteristics and ultimate fates of over 1,000 proposals made by a sample of governors in 28 states. The literature on the American presidency (Wildavsky 1966; Rivers and Rose 1985; Bond and Fleisher 1990) and studies of Latin America (Haggard and McCubbins 2001; Morgenstern and Nacif 2002; Saiegh 2010) have relied on similar types of data for measuring and estimating the determinants of executive success. Second, we study negotiations over the size of state government by assembling a data set comparing what governors ask for at the beginning of budget battles with what they get in the final deal. This data set includes all

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states over 20 fiscal years. Finally, we supplement these large quantitative analyses with a series of case studies carefully chosen to isolate the causal impact of variations in governors' powers, formal and informal. The case studies use a natural disaster and political scandal to evaluate the effects of gubernatorial popularity, an Iowa Supreme Court ruling to consider the importance of the line-item veto, and a Californian ballot measure to test for the effects of legislative professionalization.

Together, these comprehensive new data sets outline some of the basic but important facts about what state chief executives ask for in their public agendas and what they get. Our data show that governors' agendas vary significantly in terms of their content, size, and scope. Although governors enjoy and exercise a great deal of ideological flexibility when setting their fiscal and policy priorities, we observe (perhaps unsurprisingly) that their partisanship remains the single best predictor of the ideological tilt of their proposals. In formulating their agendas, particularly their policy proposals, chief executives respond to their bargaining circumstances.

We find that state chief executives can be, and often are, powerful players in the lawmaking process. Our analysis of 1,088 policy and budgetary proposals in State of the State addresses shows that governors frequently get a good portion of what they ask for – legislators pass 41 percent of executive agenda items and deliver a compromise measure on an additional 18 percent. In budget negotiations over the size of state government, each dollar of overall spending or revenue changes proposed by the governor in January translates into roughly 70 cents in the final budget deal reached with the legislature. Importantly, we also find that success varies across governors and bargaining games and does so in the ways anticipated by our models. Governors are more successful when it comes to negotiating over the budget than they are over policy bills. In the budget realm, the governors who do best are those who bargain with an impatient legislature – a legislature in which lawmakers will face personal costs if they engage in protracted budget negotiations. By contrast, the governors who succeed with their policy proposals are those who are lucky enough to negotiate with an ideologically similar legislature or who have a large amount of political capital that can be expended in pursuit of legislative achievement.

In addition, our investigations reveal the often hidden powers of American governors. Even though past studies have reached the puzzling conclusion that budgets passed by Democratic governors spend no more money than those signed by Republicans, we use new data sources and

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analytical approaches to show that chief executives nonetheless exert impressive power over the size of state government. To understand the sources of state executive power, we show that it is critical to view the budget and policy-making processes separately. When they are combined, the factors that make for strong governorships are obscured. When budgeting and policymaking are kept analytically and empirically distinct, the most important powers of governors in each realm become clear. While at first glance, popular governors seem to pass fewer of the bills that they propose than unpopular ones do, a closer look shows that political capital can indeed pay dividends. Over and over again, we show that one of the strongest determinants of gubernatorial power lies outside of the executive branch altogether – the professionalization of the legislature.

In this introductory chapter, we begin by making the case that a study of governors in the American states can learn from and contribute to the wider literature on executive power. Next, we sketch our view of governors and introduce our arguments about the ways in which they attempt to wield power over legislatures. We lay out the types of evidence that we assemble to explore our hypotheses and then preview in greater detail how some of the hidden powers of governors are revealed. Finally, we map out the way in which we will interweave theory, close examination of cases, and large-scale data analysis.

### 1.1. States as Laboratories for the Study of Executive Power

Although our empirical focus is squarely on American governors, broad questions about the nature and dynamics of executive power motivate our inquiry. The states provide a unique laboratory in which to investigate executive power over lawmaking. A close study of governors, especially one looking at how their influence varies across the wide range of institutional structures and political dynamics present in American states, can yield larger lessons. In particular, studying governors can teach us something about American presidents. Because state constitutions are based, by and large, on the federal structure, the office of the governor operates much like the presidency. Except in the realm of foreign policy, governors and presidents deal with a similar set of policy issues. In the modern era, with the exception of a few independent governors, both types of chief executives have worked within the same two-party system. Many people have held both offices, with Jimmy Carter, Ronald Reagan, Bill Clinton, and George W. Bush ascending from the governorship to the White House, and today, statehouses are full of presidential aspirants.

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Most important, presidents face the same constitutional quandary as governors, needing to summon all their informal strength to combat the legislature's advantage in formal powers. Writing about presidents, Kernell and Jacobson (2006, p. 283) speak of how "modern executives do all they can to break out of the Constitution's 'take it or leave it' bind." They could just as easily have been talking about governors. Presidents and governors have many of the same tools to draw on, with governors using their political preeminence and personal popularity to "go public" in the same way that presidents do (Kernell 1986). States can give us additional empirical traction to expand the presidential literature, providing out-of-sample cases to test new theories and explore well-trodden fields that have yielded mixed results, including the literature linking presidential popularity to legislative success.<sup>3</sup>

But states provide more than just a larger number of observations to study politics – the powers that governors possess and the political dynamics that they face vary in ways that do not fluctuate across presidents. This variation is richly cataloged in Rosenthal (1990) and Ferguson (2006) and quantified by Schlesinger (1965) and Beyle (1983, 2004). The critical details of veto powers, for instance, vary widely at the state level. Governors in a few states may be overridden by a simple majority of legislators (as in Kentucky), while others require very large supermajorities to do so. In 44 states, governors not only possess the blanket veto but also have line-item veto power, giving them the ability to nullify or reduce individual expenditures in appropriations bills. Some governors even have the ability to veto individual lines of policy bills, and at least one – the governor of Wisconsin – can, through the creative use of that state's "Vanna White" item veto, strike out individual letters and digits to alter the intent of legislative language.<sup>4</sup> Governors also vary widely in their levels of popularity. The comprehensive archive of gubernatorial approval ratings recently collected<sup>5</sup> shows just how much their popularity fluctuates, providing the opportunity for a comprehensive evaluation of the impact of the ever-elusive concept of political capital. As Squire

<sup>3</sup> National studies by Collier and Sullivan (1995), Covington and Kinney (1999), and Cohen et al. (2000) find little support for the idea that presidential popularity helps to sway congressional votes, while Edwards (1980), Bond and Fleisher (1990), and Canes-Wrone and de Marchi (2002) show that popularity helps presidents move their agendas under specific conditions.

<sup>4</sup> Daniel C. Vock, "Govs Enjoy Quirky Veto Power," accessed at Stateline.org on April 24, 2007.

<sup>5</sup> Richard Niemi, Thad Beyle, and Lee Sigelman, "Job Approval Ratings," accessed at <http://www.wnc.edu/beyle/jars.html> in January 2007.

and Hamm's (2005) sweeping overview of legislative institutions shows, the houses with which governors negotiate vary enormously in their levels of professionalization, that is, the length of their regularly scheduled sessions, the salary they pay lawmakers, and the number of staff they employ. Unlike the American president, many governors find themselves bargaining with citizen legislators. The states allow scholars to ask questions that we cannot answer by studying presidents alone and to anticipate the effects of proposed reforms – such as the line-item veto – on the presidency.

The study of legislatures has made tremendous use of the variation in state legislative institutions to test and further develop theories about committee organization (Overby and Kazee 2000; Overby et al. 2004), party power (Aldrich and Battista 2002; Wright and Schafner 2002; Kim and Phillips 2009; Cox et al. 2010), and ideological mobility (Kousser et al. 2007). In the same way, scholars should examine governors as part of a wider research agenda on executive power. Governors are not exactly like American presidents, just as state legislatures are not perfect copies of Congress.<sup>6</sup> But in the differences lies the great research design opportunity offered by the states, and the similarities are strong enough to make the states fertile ground for exploring more general theories about chief executives.

## 1.2. How We View Governors

The starting point of our argument is the formal institutional weakness of American chief executives. This weakness – the fact that the highest elected lawmakers of our land cannot themselves introduce or pass laws – poses a fundamental challenge to American chief executives. The dilemma of American executives has long been recognized at the national level and continues to shape how we view the actions of presidents today. Richard Neustadt (1960) famously deemed presidential power “the power to persuade,” whereas a recent description of President Obama's efforts to convince wavering Democrats to support his health care reform characterized the president as the “cajoler in chief.”<sup>7</sup>

<sup>6</sup> In fact, a key point we make in the next chapter is that formal models of bargaining between the branches of the federal government should not be automatically applied to every state.

<sup>7</sup> David M. Herszenhorn, “A National Measure, Inextricably Enmeshed with Local Interests,” *New York Times*, March 15, 2010, p. A13.



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Yet, of course, this institutional weakness does not make governors impotent, any more than it renders presidents powerless. Governors monopolize the power to sign legislation and control a host of other informal sticks and carrots that may help them compel the cooperation of legislators. The question is, when will legislators agree to enact the gubernatorial proposals? Legislators move first, governors act last. How does this bare set of rules shape their complex bargaining game?

A major theme that guides both the approach of our study and the organization of this book is that what governors are able to achieve in the legislative process depends crucially on what they are bargaining over: the budget or policy bills. Although both the state spending plan and policy bills move through the same basic legislative process, the consequences of an impasse are radically different for each type of legislation. If legislators fail to pass a policy bill that the governor proposes, state policy in that area remains where it was before. Legislators face the governor's wrath, but they may be quite happy with the status quo policy. By contrast, if legislators fail to pass a budget that the governor will sign, the consequences can be dire. Both sides will face political heat from a late budget, and the operations of state government can be stalled or thrown into uncertainty. Neither branch will look forward to this outcome, motivating all sides to work hard to avoid it.

Legislators and the governor can see the endgame, and this changes how they play from the start. In the policy realm, knowing that no catastrophe will ensue if they fail to pass one of the governor's proposals, legislators can often stick to their positions. If they like an existing policy better than the governor's plan, and the governor has insufficient charm or threats to move them, they will not budge at all. That is why executive proposals contained in State of the State addresses can soon become dead letters. When bargaining over policy bills, legislators can take full advantage of their monopoly power to write and pass legislation on even the biggest issues of the day. In his 2003 State of the State address, the first item that Republican governor Jeb Bush of Florida requested was a legislative referendum asking voters to overturn (or pay for) the class size reduction plan they had approved in a recent ballot measure. Democrats in the legislature opposed such an effort, not wanting to see the state's effort at class size reduction killed just as it was getting started. Despite the governor's best efforts, lawmakers were able to hold out. "Bush constantly warned citizens that the class-size amendment will be costly to implement and asked lawmakers to put a repeal of the amendment on the

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ballot,” according to one statehouse reporter. “The lawmakers ignored his plea.”<sup>8</sup>

Even when they want to curry favor with a governor by cooperating on a policy bill, legislators, as long as they can live with the status quo should the governor veto their bill, can use their ability to make a take-it-or-leave-it offer to dictate the terms of the deal. In 2006, New Hampshire governor John Lynch asked the legislature for a bipartisan ethics reform bill. Republicans in the legislature responded with SB 206, which Lynch threatened to veto because it contained provisions that would have barred lobbyists from volunteering in the executive branch, while still allowing them to spend an unlimited amount of money on free meals for legislators. According to the *Nashua Telegraph*, “House Republican leaders dealt a startling defeat to Gov. John Lynch . . . ramming through their own version of ethics reform for the executive branch.”<sup>9</sup> Governor Lynch, who had made ethics a key plank of his 2004 campaign, eventually signed into law a compromise version of the Republicans’ bill. This compromise tightened reporting requirements for lobbyists but still imposed restrictions on the use of volunteers in the executive branch and placed only minor limits on legislators’ free meals. Though the bill was far from what he originally called for, Gov. Lynch hailed it in the press as “comprehensive ethics reform legislation that ensures the highest codes of conduct for public officials.”<sup>10</sup> It is doubtful, however, that the governor was as jubilant in private about the deal he cut. Simply put, legislators hold enormous sway over bills when they are content with the status quo but know that a governor is desperate to reach a deal.

The bargaining benefits of legislatures’ formal monopoly over the law-making process wash away, by contrast, in the budget because neither side can live with inaction. This puts the governor on equal footing with the legislature, even while it does not guarantee executive success. After a governor issues a set of budget proposals, legislators cannot believably boast that they will do nothing on fiscal policy, or make a take-it-or-leave-it offer tilted dramatically in their favor, because the status quo of a budget meltdown is untenable. For the same reason, the governor cannot credibly threaten to veto any and all state spending plans. Both sides must

<sup>8</sup> Diane Hirth, “Teachers’ Raises Cut for Smaller Classes,” *Tallahassee Democrat*, May 28, 2003.

<sup>9</sup> Kevin Landrigan, “House Passes Ethics Commission Bill,” *The Telegraph* (Nashua, NH), January 2, 2006.

<sup>10</sup> Tom Fahey, “Governor Hails Ethics Law Changes,” *New Hampshire Union Leader*, March 31, 2006, p. A2.