**Tall, Grande, or Venti:**

**Presidential Powers in the United States and Latin America**

Scott Morgenstern

John Polga

Sarah Shair-Rosenfeld

Forthcoming, *Journal of Politics in Latin America*

Abstract

Comparative constitutional studies rank the U.S. president as relatively weak and most Latin American presidents as strong. However, specialized studies suggest that U.S. presidents have great abilities to implement their agendas. We argue that presidents with weak formal powers “reinforce” their ability to impose an agenda (scope), as well as their ability to make those decisions stick (force). These reinforced powers, however, have diminishing returns as formal powers rise. As a result, the sum of presidential powers ranges from high (the U.S.) to very high (Latin America).

Keywords: *Presidentialism, presidential powers, unilateral powers, decrees*

Resumen

Los estudios constitucionales comparados caracterizan al presidente estadounidense como relativamente débil y la mayoría de presidentes latinoamericanos como fuertes. Sin embargo, los estudios especializados sugieren que los presidentes estadounidenses tienen una gran capacidad para implementar sus agendas. Nosotros proponemos que los presidentes con poderes formales débiles “fortalecen” tanto su habilidad de imponer una agenda (gama) como su habilidad para hacer que sus decisiones sean acatadas (fuerza). Sin embargo, estos <poderes fortalecidos> tienen un rendimiento decreciente con un aumento en los poderes formales. Por consiguiente, la suma de los poderes presidenciales tiene un rango de alto (los EEUU) a muy alto (América Latina).

Palabras claves: *Presidencialismo, poder presidencial, poder unilaterales, decrees*

The comparative literature brands the U.S. presidency as relatively weak. Shugart and Carey (1992) and Payne, et al. (2007) find that U.S. presidents enjoy fewer powers than their counterparts in a wide range of presidential systems. Similarly, Cox and Morgenstern (2001) place the U.S. presidency and European prime ministers on opposite ends of a continuum that distinguishes the degree to which the executives can integrate themselves into the legislative process. They argue that “Latin American executives typically have greater powers of unilateral action than either U.S. presidents or European prime ministers, but they occupy an intermediate position as regards executive penetration of the legislative process within the assembly” (Cox and Morgenstern 2001: 175).

U.S. presidents, however, are not hamstrung. President Bush was known for his assertion of executive authority and President Obama has issued executive orders and additional directives to overcome legislative opposition and inaction on issues ranging from economic growth to environmental protection. U.S. presidential scholars recognize these faculties, titling their works *The Imperial Presidency* (Schlesinger 1974), *By Order of the President* (Cooper 2002), and *Power without Persuasion* (Howell 2003). In his review of the U.S. president’s unilateral powers, for example, Howell states that “a defining feature of presidential power during the modern era…is a propensity, and a capacity, to go it alone” (Howell 2005). Krause and Cohen (1997) also show that the president is poorly constrained by the constitution, revealing that the use of executive orders increases as presidential support in Congress decreases. And recently there have been concerns that U.S. presidents have attempted to overstep their constitutional boundaries by issuing signing statements in an attempt to establish their intentions and implementation strategies (see, for example, American Bar Association 2006). Is the U.S. presidency significantly weaker than its counterparts in Latin America, or have the comparativists substantially underestimated the power of the U.S. president?

We argue here that the latter is more the case; like coffee sizes that range only from “tall” to “venti,” there are strong or extra-strong, but no weak presidencies. The comparativists, however, are not all wrong in their modeling. Their comparisons of formal powers do suggest important distinctions among presidential systems. Institutionalists have shown theoretically and empirically that differences in veto, decree, and budgetary powers, for example, have important consequences for the executive-legislative power balance (Baldez and Carey 1999; Shugart and Carey 1992; Mustapic 2002; Garretón 1989).

The clash between the conclusions of the American and comparative literature is the result of the case-study approach of the former and the limits of larger-n studies in the latter. While presidential popularity and legislative support are available to both sets of studies (Krause and Cohen 1997; Pereira et al. 2005), generally the independent variables explaining presidential powers diverge. The American literature is divided between president-centered (idiopathic) factors, such as the president’s leadership style, character, and ability to move public opinion, and a presidency-centered approach that emphasizes institutional capacity and control of the bureaucracy (Hager and Sullivan 1994). The comparative literature, by contrast, uses variance in formal constitutional powers as its primary independent variable. If both sets of experts are correct in their assessments of the degree of power and the variables that explain it, what are the implications for comparative theory about the weak constitutional U.S. presidency and strong Latin American presidencies?

The answer has two parts. First, even if a theoretical model could include weak presidents, empirically the U.S. and Latin American presidents should range from moderate to strong thus suggesting differences of degree, not of kind. To explore this limited range of the dependent variable, we compare U.S. unilateral tools and Latin American decrees to show the abilities of each in achieving their agendas.

Secondly, the finding of similar exercise of powers implies that the comparative scales of presidential powers are lacking. If the ability to implement policies is similar but formal/constitutional powers are different, then the scales must be missing important tools available to presidents. At the same time, it may also mean that formal and informal powers are substitutive or complementary rather than additive. In other words, if presidents who are weak on the formal scales have similar abilities to implement their agendas as those endowed with stronger formal powers, it is the former that require greater recourse to informal mechanisms. In short, there are diminishing returns from informal powers when a president is already strong.

We explain the ability of presidents to implement their agendas, regardless of their formal powers by first dividing the totality of presidential powers into *scope* and *force*. Force and scope are shaped by the constitution and other formal rules, which are supposed to define the balance of powers. We then discuss how each of these pieces of presidential powers is “reinforced” with informal powers which are non-stipulated and often unwritten, such as the ability to guide public opinion for or against a legislative proposal, as well as associated powers which emerge from laws or institutions, such as organizational advantages or the ability to effectively control the bureaucracy.[[1]](#footnote-1) In short, reinforced powers are tools that the executive can use that go beyond constitutionally-enshrined mechanisms to directly propose or veto legislation. Oftentimes, the delineations between formal and reinforced powers bleed into each other, complicating strict classifications. U.S. executive orders and some Latin American decree powers, for example, have a constitutional basis, but the limits of authority are ambiguous. Our goal is not to draw strict boundaries between these types of powers, but to suggest that all presidents have recourse to a mix of powers, thus giving them important advantages in the lawmaking process.

We begin by summarizing the conventional wisdom regarding differences in presidential power between the United States and the modal Latin American country, focusing largely on their ability to implement policy proposals. The second section introduces the concepts of scope, the president’s latitude to define legislation, and force, the executive authority to prevent change or abrogation of the executive’s policy proposals by the legislature. Section three examines sources of presidential scope, specifically through reinforced powers, and then compares types and volume of unilateral directives between the U.S. and some Latin American countries. Section four then compares presidential force, focusing on the roles of the legislature and the judiciary. Each of these sections provides clear examples of how formal and reinforced presidential powers create presidents who all have medium or high abilities to implement their agendas. The fifth section concludes.

# Powerful Presidencies, Varying Formal Powers

Our motivating question is how presidents possessing different levels of formal powers can all be strong or very strong. The U.S. president's ability to implement policy priorities, sometimes in spite of institutional obstacles, is the focus of many studies. Schlesinger (1974), West and Cooper (1989), and Rudalevige (2005) all argue that the president’s intrusion onto legislative turf threatens the theoretical foundations of representative government. Owing to the covert exercises during the Vietnam War and then Watergate, Schlesinger labeled the American president “imperial,” refrains of which were also heard during the George W. Bush administration (Cooper 2005). Meanwhile, Cox and Morgenstern (2001) and Cheibub and Limongi (2002) explain that Latin American presidents intrude into traditional legislative domains, though the branches are not as fully integrated as in the ideal-typical parliamentary system. And O’Donnell (1994) admonishes that overly powerful presidents in Latin America yield a cheapened form of democracy which he labels “delegative.”

This characterization of similarly strong U.S. and Latin American presidencies clashes with the textbook model and most comparative studies that include the United States as a case. While the U.S. founders were concerned with representation and therefore envisioned a balance of powers between the branches, Latin American constitutional framers were more interested in efficiency and therefore endowed the president with greater powers (Alemán and Tsebelis 2005). The resulting constitutions, as coded by Shugart and Carey (1992) and updated by others (e.g. Payne et al. 2002; 2007; Tsebelis and Alemán 2005) suggest that the U.S. presidency is weak, scoring close to the bottom of scales of presidential powers in terms of absolute scores or in comparison with Latin American countries. The low U.S. score is based on a two-thirds vote required for an override of the U.S. president’s veto, the lack of a partial veto, decree powers, exclusive initiative, or dominance over the budget.[[2]](#footnote-2)

This formal weakness, however, clashes with studies (e.g. Howell 2002; Rudalevige 2005; Beckmann 2010) showing U.S. presidents with significant success in implementing their agendas. How do formally weaker (U.S.) presidents manage to achieve similar policy success as formally stronger (Latin American) presidents? What are the sources of these powers, and what prevents the legislatures from protecting their turf?

When answering this first question, authors have commonly focused on the U.S. presidents’ “power of persuasion” in legislative bargaining as a function of reputation and prestige (Neustadt 1990), and their ability to appeal to the public and generate a mandate (Neustadt 1990; Lowi 1985; Kernell 2006; Rudalevige 2005; Schlesinger 1974; Canes-Wrone 2005). Ingberman and Yao (1991), for example, argue that public support allows presidents to issue credible veto threats, while Canes-Wrone (2005) demonstrates how presidents' appeals to the mass public can place pressure on Congress and shift policy in the direction of majority opinion. Other scholarship emphasizes how presidents fortify their bargaining power through control over the bureaucracy and its extensive resources (Neustadt 1954; Cooper and West 1988; West and Cooper 1989; Bawn 1995) and manipulation of both negative (Cameron 2000) and positive (Beckmann 2010) agenda-setting power.

Another branch of scholarship examines presidents’ ability to unilaterally implement policy without the consent of Congress through such mechanisms as signing statements, national security directives, and executive orders (Howell 2003, 2005; Moe and Howell 1999; Cooper 2005; Mayer 2001; Krause and Cohen 2000). Within the comparative literature there have been efforts to distinguish different types of presidential powers, such as Haggard and McCubbins’ (2001) classification of proactive and reactive powers. In their view, proactive powers, such as the authority to take unilateral action through orders and decrees, differ from reactive powers, such as the ability to veto or alter legislation through line-item vetoes, with respect to their potential effects on enhancing policy-making by the president.

Informal and associated powers, which we term ‘reinforced’ powers, are less central to studies of Latin America, in part because most of that region's presidents have stronger formal powers over legislative agenda control, including partial vetoes, decree powers, budgetary discretion, urgency provisions that allow the president to force quick legislative action, and the ability to directly initiate legislation (Shugart and Carey 1992; Mainwaring and Shugart 1997; Carey and Shugart 1998; Baldez and Carey 1999; Cox and Morgenstern 2001; Mustapic 2002; Negretto 2004; Tsebelis and Alemán 2005; Payne, et al. 2007). Studies, do, however, suggest that these presidents often have “partisan powers” (Mainwaring and Shugart 1997; Cox and Morgenstern 2001) that allow them to buy or negotiate for the support of legislators (through either legitimate or illegitimate means). However, with notable exceptions such as Calvo (2007), the comparative literature has tended to ignore presidents’ power to persuade the public and congress.

To explain the interactive role of formal and reinforced powers of the U.S. and Latin American presidencies, we focus on the *scope* of their power—the range of ideas that they put on the table and can turn into policy—and their ability to ensure that the legislature or courts do not overturn those policies, what we term the *force* of their power.[[3]](#footnote-3) A president with unrestricted decree authority, for example, would have the highest level of scope. Force, by contrast, is the ability of the president to make those policies stick. For example, if a president issues a decree or executive order (EO), Congress could attempt to change or repeal the requirement with a new law. But because a new law would require the president’s signature, the president can usually assure that the decree sticks. Scope would be limited if there were legal or other restraints on the use of decrees, and force would be limited if the legislature could review and rescind decrees.

Reinforced powers help presidents “fill in the cracks” of formal powers. For different countries, formal scope would include constitutionally-listed areas of exclusive executive initiative, decrees, and partial veto provisions that allow the president to implement some but not all parts of bills. These powers over the scope of legislation are reinforced by presidents’ abilities to push legislation through control over their parties, perhaps with the aid of public opinion or the control of budgetary resources that they can direct to recalcitrant legislators. Also reinforcing the scope of a president's powers could be the loose interpretation of constitutional provisions regulating decrees or executive orders, signing statements, presidential proclamations and memoranda, and national security directives, frequently built on past practices and sometimes further reinforced by presidential control over the judiciary.

A president's ability to define a policy agenda can also be reinforced by contextual variables and collective action problems that limit the legislature's action. Legislatures in Latin America generally have few resources, and thus must rely on the executive for technical expertise in formulating legislation.[[4]](#footnote-4) It seems uncontroversial that this limitation on legislative ability to be proactive further supports the president's scope.

Presidents also have an array of powers to prevent the legislature from negating their initiatives, which we collectively term *force*. The most important constitutional aspect of a president's force is the ability to veto legislative initiatives. As noted, if veto override requirements are high, then presidents only require a minority of legislative support to prevent legislation that would overturn a policy. U.S. legislators had tried to counter this problem by inserting "legislative vetoes" into bills, thus allowing them to oversee and abrogate executive actions that were taken under the authority that legislation. In the 1983 case of INS vs Chadha, however, the Supreme Court ruled that these were unconstitutional.

Since the 1930s the U.S. Congress had frequently written legislation that included provisions such that it could review and rescind agency rules that met disapproval in either one or both legislative chambers. In some cases legislation even called for committees to review expenditures or other actions.[[5]](#footnote-5) Under Chadha, however, the Court decided that such rules violated the constitution since they were essentially legislative, and as such, they must pass through both houses of congress and be submitted to the president for approval or veto (Cooper 1983; Leigh 1984).[[6]](#footnote-6) The result of this decision is that while it may be able to delay the implementation of agency rules (Cooper 1983), Congress would have to either challenge the rules in court, or write new legislation which would be subject to presidential veto. These authors deal with agency rules rather than executive orders, but presumably the Congress lacks a veto over orders as well, and would not have the same dilatory power over orders.

The Chadha ruling is surprisingly similar to Argentina’s infamous Peralta decision of 1990, in which members of the Argentine Congress who disapproved of President Menem’s continual use of Necessity and Urgency Decrees (DNUs) brought a test case regarding authority to transfer term deposits into public loans to their Supreme Court (see Ferreira and Goretti 1998). The court—which President Menem had successfully packed—both justified the broad use of decrees (scope powers), and in a manner similar to the US Supreme Court ruling under the Chadha, reinforced the president's ability to assure that these decrees stuck by arguing that the Congress could only overturn executive actions with a law. Their decision, however, did not dwell on the requirement of a presidential signature for any such law.

This example shows the grey areas of formal and reinforced force, and also highlights the interaction between them. They also show how contextual variables can reinforce both scope and force. Other variables that we discussed as reinforcing scope, then, also support force. Collective action problems, for example, not only give presidents advantages in initiating legislation, they also limit congressional response to executive initiatives. Relatedly, legislators who might wish to overturn a president's action face many veto gates (e.g. recalcitrant committees), especially on issues where the president has legislative allies (Kiewiet and McCubbins 1991; Moe 1993; Krause and Cohen 2000; Howell 2003). Urgency provisions that require short time frames for legislative action may also improve a president's force. In Ecuador, for instance, if the legislature fails to act on the president’s budget or other bills that the president deems urgent within a fixed (and short) time, the president’s proposal becomes law. Most of the Latin American legislatures are further hampered by executive control of (or at least sway over) the judiciary (Helmke 2002; Hilbink 2007) and limited access to professional analytical staff that can help them monitor executive actions and write bills (Morgenstern 2006). Short legislative careers and certain types of electoral laws also work against the motivations of legislatures to counteract executive actions (Morgenstern and Nacif 2002).

Table 1 summarizes some of the formal and reinforced powers for both scope and force that we have discussed, separating each by region. The list is meant to highlight tools available to different presidents, but is not intended to be exhaustive. For this reason the table ignores the important distinctions within Latin America and many of the reinforced powers listed as pertaining to the U.S. presidents are also available to Latin American presidents. Further, as noted, some of the lines are blurred; for example, delegated powers can bleed from formal to informal, as could judicial interpretations of the constitution that allow, executive orders. The purpose of the table, in short, is to highlight a wide range of powers available to presidents and suggest that the US presidents may need to rely more on reinforced scope and force, while most Latin American presidents have both formal and reinforced powers.

**[Table 1 about here]**

**Substitutability of Formal and Reinforced Powers**

Because many Latin American presidents have both formal and reinforced powers, it would be tempting to conclude that they are much stronger than their US counterpart. Clearly those presidents who can decree bills with the force of law (Negretto 2004; Carey and Shugart 1998; Pereira et al. 2005), excise individual lines from bills (Alemán and Schwartz 2006), cast amendatory or partial vetoes (Alemán and Tsebelis 2005; Tsebelis and Alemán 2005; Alemán and Schwartz 2006), or demand legislative action through urgency provisions (Cox and Morgenstern 2001) can go beyond what U.S. presidents can do. The question is whether these differences result in separation of presidential power by kind or just degrees.

Our answer is the latter: while there are more excesses in Latin America, studies that suggest that the U.S. president has usurped legislative authority or brand the U.S. president as “imperial” support the notion that this weak formal president is not as ineffective as comparative rankings would suggest. Overall, while Latin American presidents enjoy unbalanced constitutions that aid their abilities to direct policy, U.S. and Latin American presidents all enjoy powers that reinforce their ability to set the agenda and ensure implementation of their policies. In this sense, reinforced and associated powers have decreasing marginal utility. When formal powers are at their nadir, reinforced powers prove important in setting the legislative agenda and ensuring implementation of legislation, while extensive formal powers limit the necessity for and utility of associated powers.

Together these analyses imply that while institutions can create a strong presidency, presidents operating in the absence of those institutional prerogatives have other tools to support them. Perhaps then, these two types of powers are substitutes, and/or there is declining marginal utility of informal powers. In other words, reinforced power is more valuable to formally weaker U.S. presidents than to already powerful Latin American presidents. We support this finding below through an analysis of unilateral actions that shows broadly similar patterns.

# Modeling the Scope and Force of Presidential Powers

Figure 1 represents the premises of our model. The first node represents three ideal-typical constitutions that define formal scope powers of a president, covering the range from those that restrict the president's ability to implement an agenda (on the left) to those that provide the executive with strong agenda setting powers (on the right). We depict the U.S. Constitution in the top figure, using a bold line to suggest a relative balance of power. In the bottom figure we depict the ideal-typical Latin American president, using a rightward sloping line. The next set of nodes adds the powers that reinforced scope. Since reinforced powers are typically positive, we have used bold lines to imply that presidents with weak or neutral formal powers will likely range from moderate to very strong after adding these reinforced powers. However, the bold line implies only maintenance of power for the powerful presidents, in order to suggest that where presidents already have strong formal powers, reinforced powers are superfluous. In short, the graph is meant to highlight the idea that formal and reinforced powers are not simply additive; instead reinforced powers are, at least in part, substitutes providing decreasing marginal utility as a president's formal powers increase.

We model a similar dynamic with reference to force. Here again formal powers can be positive, neutral or negative, and we use a bolded line pointing downward in the top figure to depict a president under a constitution that supposes a balance of power, while the bottom figure has the bold line sloping to the right to represent a president with stronger constitutional powers. The justification for the differently sloping lines is the same as for scope.

These two different paths lead to a similar outcome, powers within a small range on the right side of the graph depicted by the grey oval. Presidents with weaker formal or reinforced powers—with relation to scope and/or force—might end up on the left part of the oval, and those with stronger power to the right side, but overall presidents will be tall and venti, not “small.” To empirically ground this finding, the following sections examine reinforced scope and force in U.S. and Latin American cases to show how executive use formal and reinforced authority to implement their agendas.

### [Figure 1 about here]

# Putting Policy on the Table: Formal and Reinforced Scope

Here we summarize types and give examples of unilateral executive actions, beginning with formal decree powers in Latin America and then moving to the reinforced powers often employed by U.S. presidents. Using these types, we then compare the frequency of unilateral directives across the U.S. and a sample of Latin American countries. Using the volume of directives as a proxy, we show that Latin American presidents are indeed extremely strong. While formally weak U.S. presidents do not reach the levels of agenda-setting power enjoyed by their counterparts in Latin America, they do retain considerable unilateral powers.

*Latin America*

While there are prominent exceptions such as in Chile during the Allende presidency, in Latin America the combination of constitutional provisions and control over political parties has generally translated into very high passage rates in the legislature for president-initiated bills (Alemán and Navia 2009 <Amorim-Neto, Weldon, Siavelis, Carey, other?>). Here we focus on a different aspect of scope: the ability these presidents to skirt the legislative process and implement policies unilaterally (Tsebelis and Alemán 2005, Carey and Shugart 1998). Such powers are sometimes enshrined as Constitutional Decree Authority (CDA) and in some cases this is augmented by Delegated Decree Authority (DDA). Further, informal mechanisms have helped the presidents to interpret vague constitutional language that references the decree power in their favor. Pereira, et al. (2005) explain, for example, that while the Brazilian constitution has a limited decree power for presidents, it also has a provision that allows presidents to issue "provisional measures" (*medidas provisórias*; MPs) for urgent issues. As a result, the presidents have, with the tacit tolerance of the Supreme Court, taken liberties with the definition of the term "urgent" to implement policies that were not necessarily time sensitive. A second example regards the constitutional limit on the effectiveness of MPs to 30 days, which led presidents to simply reissue them once they expired. The Brazilian Congress and President Fernando Henrique Cardoso eventually ended this practice, but the example shows how presidents have followed multiple and perhaps questionable routes to implement their policies.

Latin America is replete with similar examples. President Carlos Menem of Argentina (1989-99) was among the most notorious of the decree-wielders, in spite of a constitution that is mute with regard to such powers (see Ferreira and Goretti 1998; Mustapic 2002). As noted, the Congress' attempt to challenge this practice backfired when the packed court reified the decree power. Moreover, Menem's use of decrees suggests he had little respect for the legislative process. For example, he changed the organic law of the central bank, froze lawsuits against the Social Security Administration, reduced budgetary outlays, ordered the transmission of soccer matches, and determined the payments to social security from soccer revenues.

In response and as part of a deal to permit presidential reelection, the Argentine Congress did force a constitutional change that was supposed to rein in the use of presidential decrees. There now exists, therefore, a formal mechanism though which the legislature can oversee and regulate decrees. Despite this, presidents continue to use decrees as a standard tool. Since Menem's presidency, Argentina presidents have never issued fewer than 1,000 decrees in a single year, and they often issue double that number.

A similar dynamic has taken place elsewhere. Democratically-elected Venezuelan president Hugo Chávez has often relied on constitutional DDA despite enjoying a legislative majority through most of his time in office. For example, in mid-December 2010 Chávez took advantage of his expiring supermajority in the lame-duck National Assembly to obtain passage of an 18-month long enabling law (*ley habilitante*), the fourth time he was delegated this power since coming to office in 1999 (Daniel 2010; Corrales 2011). This law, which was denounced by the U.S. Department of State as autocratic, allowed him to issue decrees across a wide range of areas including housing, land, finances and security. Chávez has used decree powers to pass hundreds of laws, including measures to nationalize parts of the oil industry (Decree 5200) and expropriate businesses and private lands (Decree 7915). However, similar to Menem, decrees have also been used for such unessential business, such as prioritizing the importance of the internet for national development (Decree 825) or naming citizens to positions in low-level bureaucratic agencies (e.g. Decree 8483). As is the case across Latin America, the high volume of executive decrees obfuscates the much smaller number of decrees that clearly aim to legislate.

While Menem and Chávez were infamous for their unilateral governing styles, even presidents perceived to be pluralistic democrats rely on executive decrees in a combination of vital and non-vital policy areas. More constitutionally constrained Uruguayan presidents regularly issue more than 500 decrees a year, and while many deal with non-vital and non-urgent matters—such as declaring official mourning for the death of Argentine ex-president Raúl Alfonsín (Decree 166/009)—others are quite significant, determining such things as welfare eligibility (Decree 118/005). And as described above, Brazilian presidents have used the vague language constraining the use of *medidas provisórias* to their advantage, issuing on average more than four a month even after a constitutional amendment regulated their use in 2001. In his time in office, ex-president Fernando Henrique Cardoso relied on MPs to set regulations on professional sports teams (MP 39) and reorganize the federal bureaucracy (MPs 37 and 38). Even Chilean presidents, who are perhaps the most constrained in the region in their use of decree powers, issue dozens every year. In a controversial 2007 move, for instance, then-president Michelle Bachelet signed a Supreme Decree authorizing the distribution of the so-called “day-after” pill to females over 14 years of age without parental consent (although this was later overturned by the Constitutional Court).

A final example comes from Panama, where presidents' scope is reinforced by the constitutional provision allowing cabinet ministers the ability to issue decrees (termed *decretos ejecutivos*). However, since these ministers are themselves appointed directly by the president—through decree—their legislation is bound to be directly or indirectly influenced by the president.

In sum, there are multiple examples of Latin American presidents using formal and reinforced powers to implement policy unilaterally. And though we have not dealt with them here, many studies highlight these presidents' success in controlling the legislative process. The presidents' scope, therefore, is very broad. Some presidents are empowered through more generous constitutions, but even those without strong constitutional decree powers issue them frequently, many of which have wide impacts and others simply show the presidents' latitude in implementing policies without input from their legislatures.

In sum, issuing executive decrees that cross the boundaries from regulation into legislation is a common practice in Latin America, even among presidents who lack clear constitutional authority to do so. And though we have not dealt with them here, many studies highlight the Latin American presidents' success in controlling the legislative process. The conclusion, then, is that the Latin American presidents dispose of high levels of scope.

*The United States*

The U.S. presidents are formally decree-less, but the scholarship examining U.S. Executive Orders (see Deering and Maltzman 1999; Howell 2003; Mayer 2001; Krause and Cohen 2000) shows that they too have had success in implementing their agendas. As Howell (2005) explains, U.S. presidents have two fundamental ways of advancing their policy agenda: submitting proposals through Congress, or exercising their unilateral powers. These directives, which straddle a line between formal and reinforced scope, include executive orders, executive agreements, proclamations, national security directives, recess appointments, and memoranda, and allow the president to dictate policies or manage the bureaucracy without Congressional endorsement.[[7]](#footnote-7) Another tool is central legislative clearance. In place since the 1920s but significantly strengthened by President Reagan’s Executive Order 12291 (West and Cooper 1989), this requires that agencies submit their rules to the president through the Office of Management and Budget (OMB) before publication.[[8]](#footnote-8) The procedures not only allow presidents to oversee bureaucratic procedures, but also to apply political litmus tests to agency decisions (Gilmour 1971; Larocca 2006). In so doing, executive rulemaking crosses into the legislative arena.

In contrast to Latin American countries, there is no constitutional provision or statute that explicitly permits executive orders, apart from rather vague language granting “executive power” (Article II, Section 1). These orders, however, are often of high consequence, and can only be overturned by legislation—which is subject to a presidential veto—or court proceedings, implying high force, as well as scope. Howell shows that in most cases, presidents have used orders to change existing policies over which Congress remains gridlocked (Howell 2005, 2003).

Beginning with George Washington,[[9]](#footnote-9) U.S. presidents have issued orders dealing with key political and social issues. Between about 1980 and 2010 presidents have issued between 40 and 70 orders per year, though earlier presidents, especially FDR and Truman, issued many more (see Table 2). Most of the orders create task forces, set up commissions and advisory boards, or implement congressionally-approved programs (Warber 2006). A large percentage of the orders, however, cross into the realm of legislation.

### [Table 2 about here]

Dividing the orders into categories of administrative, symbolic, and policy-oriented is an inexact science, since as Madison noted, the boundaries between the branches are “in general so strongly marked in themselves, [they] consist in many instances of mere shades of difference” (cited in Fisher 1978). It is arguable, therefore, whether bureaucratic reorganizations, pay rate changes, or even the setting up of investigatory commissions fall squarely into the administrative category. Still, it is necessary to consider the content of the orders and classify them in order to discuss intrusions of the executive onto the legislative turf. West and Cooper (1989) find an impressive growth of “quasi-legislative” rulemaking in the 1960s and 1970s. This is supported by data from Warber (2006), who classifies all U.S. Executive Orders from 1936 to 2004 as symbolic, routine, or policy-initiating.

The policy content of these orders is evident. Clinton, for example, issued orders that blocked property and prohibiting transactions with the Taliban (EO 13129), declassified documents (EO 12937), affected child support enforcement (EO 12953), and changed federalist arrangements (EOs 13083 and 13132). Table 3 provides examples of the executive orders issued by Presidents George W. Bush and Barack Obama with legislative content. This list of orders includes those that affect the economy, foreign relations, diplomacy, and security. And a statement by President Obama clearly indicates that he views this type of power as a tool to overcome legislative obstacles:

In recent weeks, we decided to stop waiting for Congress to fix No Child Left Behind, and decided to give states the flexibility they need to help our children meet higher standards. We took steps on our own to reduce the time it takes for small businesses to get paid when they have a contract with the federal government. And without any help from Congress, we eliminated outdated regulations that will save hospitals and patients billions of dollars.

(24 October 2011: “Remarks by the President on the Economy and Housing)

### [Table 3 about here]

Other reinforced tools of direct administration are even less clearly defined than executive orders. Presidential memoranda are pronouncements by the chief executive that are similar to executive orders in content and use, but lack guidelines for issuance and publication. Often, memoranda are directed at executive agencies to establish policy guidelines. A similarly vague tool is the presidential proclamation, an instrument that states a condition, declares a law, recognizes an event, or triggers the implementation of a law (Cooper 2002). Some of these are ceremonial, such as declaration of national days of observation, while others are quite substantive—such as Washington’s Proclamation of Neutrality or Lincoln’s Emancipation Proclamation.

A last instrument of associated direct presidential action are" signing statements" (Garber and Wimmer 1987, Cooper 2005). These pronouncements, which gained prominence under the Reagan Administration, are issued by the president at the moment of signing a congressional bill. Presidents use the opportunity to provide general commentary on the bill, perhaps interpreting the law, announcing constitutional limits on its implementation, or indicating how bureaucrats should administer it (Cooper 2005). In practice, signing statements have been employed as a type of line-item veto to set boundaries on the reach of legislation and to structure its implementation, but without the use of the formal veto or the opportunity for legislative override processes. From the president’s perspective, the strength of these pronouncements is that there is no constitutional or legal impediment to their issuance, disabling the legislature’s ability to respond.

In sum, it is clear that U.S. presidents change policy in important ways without congressional action.  Figure 2 shows a breakdown of direct presidential action in the U.S. between 1993 and 2011, adding these four reinforced powers: orders, signing statements, proclamations, and memoranda. The yearly totals surpass 200 and approach 300 in most cases, indicating a much more active U.S. president than commonly assumed.

*Comparing the Frequency of Unilateral Directives*

The above examples are meant to suggest that while many Latin American presidents have more formal power, and many have arguably abused their reinforced powers, the U.S. presidents also have sufficient power to implement important policy items. As a result, while decree powers have made Latin American presidents the object of scorn and concern, U.S. presidents only look weak on a relative scale, not on an absolute one.

The frequency with which different presidents use unilateral powers suggests a similar interpretation. Figure 3 compares the total number of unilateral directives (executive orders, presidential proclamations, memoranda, and signing statements) issued by U.S. presidents to all executive decrees in eight Latin American countries between 1993 and 2010. While U.S. presidents issued between 200 and 300 directives per year, the presidents of the other countries issued far more: between 400 and 900 for most country-years with the exception of Nicaragua (fewer decrees issued) and Argentina (more decrees issued). While quantity of decrees is not proof of their quality it seems reasonable to assume that Latin American presidents manifest broader decree authority than U.S. presidents.[[10]](#footnote-10) Still, the very high number issued from the U.S. presidents again the broad authority of that office.

**[Figure 3 about here]**

Whether or not the U.S. orders and the Latin American decrees differ in degree or type, these data do highlight the high frequency by which the executives direct policy without input from the legislature. As we discuss elsewhere, the legislatures can constitutionally review these edicts, but the presidents’ veto power and the courts’ sometimes unwillingness to oppose presidential authority can cement these executive initiatives into law. In other words, the wide scope presidents enjoy through their control of agency rules and “administrative” decisions is further enhanced by the constitutions, the courts, and the legislatures’ organizational challenges.

# Keeping Policies in Place: Formal and Reinforced Force

For force, the modal Latin American president again enjoys stronger formal powers than those in the United States, although the latter is still able to shore up support through reinforced mechanisms. To a greater degree than scope, the concept of force lends itself more easily to manifestations of both positive and negative reinforced power, illustrated most clearly by potential constraints issued by legislatures and the judiciary. We explain this with a focus on each institution, first in Latin America and then the U.S.

*Limits on Overturn attempts by Latin American Legislatures*

Many Latin American constitutions support the president's ability to fight off legislative attempts to overturn executive initiatives, and several associated powers reinforce provide an extra buffer. In particular, many Latin American presidents have a partial veto powers, some can limit the time for legislative action, and most prohibit the legislature from making significant changes to the budget. The most important tools on the reinforced side are the control of parliamentary parties that help to block legislation or veto overrides, and courts that have limited authority with regard to executive actions and are frequently under the president's influence.

The partial veto is a tremendous weapon available to presidents in at least 12 Latin American countries (Saiegh 2010: 56).[[11]](#footnote-11) It is a much more potent than the even more widespread package veto, because it allows presidents to undo (and therefore stop before they are started) legislative logrolls. That is, if the president may excise a legislator's favorite project, then that legislator has little incentive to enter into a deal with a second legislator. In sum, the partial veto complicates deal-making, and thus should severely limit the ability of legislatures to solve collective action problems and overturn presidential edicts.[[12]](#footnote-12)

At least in one case, ambiguous language even turned the reactive partial veto into a proactive power. In Uruguay in late 1994, President Lacalle vetoed an article from the new Organic Law for the Central Bank, and sent the bill back to the legislature with a “suggested” alternative version of the crucial article. Congress was unable to muster a quorum to debate the veto and, as a result, the published law included the president’s substitute article—an article which had never been voted on by the legislature. Many constitutions define a partial veto authority, and in all of these cases the language is ambiguous enough to suggest that Uruguayan-style suggestions could become law.[[13]](#footnote-13)

A second friend of Latin American presidents is the time limitation that some constitutions impose on legislative action with regards to the budget and bills the president deems urgent. To take just one example, under both the 1998 and 2008 Ecuadorian Constitution, executive-initiated bills of “economic urgency” can be approved, modified, or rejected by a congressional majority. However, if a bill is not ruled on within 30 days, it officially becomes a decree law (*decreto-ley*).

*Judicial Upholding of Executive actions in Latin America*

As an additional reinforced power, Latin American presidents have frequently been able to control the judiciary—although some are becoming more independent.[[14]](#footnote-14) The Argentine court, which validated military decrees and abstained from political questions, exemplified the old model (Nino 1993; Larkins 1998).[[15]](#footnote-15) Even recently, Helmke explains that Argentine executives routinely cleaned house at the Supreme Courts, resulting in justices fearing for their jobs (Helmke 2005).[[16]](#footnote-16) Courts in some countries, however, have recently gained greater independence and power of judicial review, leading to a high degree of variation in the ability of constitutional courts to arbitrate policy decision (Helmke and Ríos-Figueroa 2011). One noteworthy case was the Colombian Constitutional Court’s 2010 ruling against a referendum that would have given citizens the ability to allow President Uribe to seek a third term in office. Similarly, the constitutional chamber of the Costa Rican Supreme Court has gained a high level of independence over the past twenty years (Wilson 2011; Wilson et al. 2004). Simultaneously, other countries, like Ecuador and Bolivia, had courts with counter-intuitively independent judges who have now lost much of that independence as presidents fight back (Basabe Serrano 2012; Castagnola and Pérez-Liñán 2011). Like the recent provisions that have tried to regulate presidential use of decrees, this growing independence of courts in some cases perhaps suggests a growing maturation of democracy and a concern for a more even balance of powers, though the effects are far from uniform across the region. However, the presidents' resistance to the changes suggests that while they may not retain outsized powers, they will still keep enough force to prevent frequent overturns of their policies.

*Limits on Overturn Attempts by the U.S. Legislature*

U.S. presidents lack the partial veto or the ability to impose time limits on legislative action that help Latin American presidents prevent actions that could counteract their decisions. Why then, in the face of a significant number of unilateral decisions by the U.S. presidents, has there been no legislative response to many of these intrusions? We contend that even though the U.S. president lacks some advantages enjoyed by presidents of Latin America, a combination of formal and reinforced provisions that limit legislative reaction.

From the perspective of Kiewiet and McCubbins (1988) or McCubbins and Schwartz (1984), the U.S. Congress tries to write legislation in ways that allow agencies broad latitude in areas that serve the legislature’s interests, or limit freedom in other areas (statutory control). Congress, they argue, also relies on monitoring mechanisms (“police patrols” and “fire alarms”) so that it can react if the bureaucracy acts in ways that harm the congressional majority’s interests. Once the legislature discovers prejudicial action, it can threaten budget cuts or more limiting legislation. West and Cooper (1989) add that Congress has significantly increased the resources and staff dedicated to oversight to accomplish these goals.

This perspective has several problems. First, while the problem is surely much more severe in Latin America where legislators still often work with no more than a private secretary, even in the U.S. Congress the lack of resources has made the “review [of the multitude of rules]… inevitably sporadic and haphazard” (Pierce Jr 1985).

A formal mechanism, the veto, is another part of the answer. Fisher (1978) puts the problem most clearly: while the Congress “delegate[s] authority by a majority vote [it can] recapture it only with a two-thirds majority” (244).[[17]](#footnote-17) In short, even if the legislature uncovers executive decisions that it wishes to undo, it must rally two-thirds of its members to take action. As important as this limitation is, it has been much more acute since 1983, when, as noted earlier, the U.S. Supreme Court issued its ruling in *Immigration and Naturalization Service v. Chadha* that ended the use of legislative vetoes.

Berry’s (2009) interesting work on the Chadha decision illustrates that despite the ruling, Congress has continued to use legislative vetoes extensively. Using a carefully constructed database, he also shows that the president uses reinforced powers—this time in the name of signing statements—to overcome unwelcomed legislative oversight.[[18]](#footnote-18) The president is not always successful but Berry shows that a) while sometimes the legislative veto is respected, there are many and important exceptions and b) bureaucracies sometimes react to the presidents’ signing statements rather than the enacted legislation.

*Judicial Upholding of Executive Actions in the United States*

While the veto and resource restraints provide U.S. presidents significant advantages, they do not have enough control over the courts to prevent a determined legislature from overturning unilateral actions. The U.S. Supreme Court dealt a severe blow to the legislature when it struck down the legislative veto, but other rulings also limit executive actions, since there is a supposition that the court will not allow the executive to directly contradict legislation. An example of this limitation was George W. Bush’s issuance of EO 13233, which regulated the *Presidential Papers Act*. That act explicitly states that 12 years after a president leaves office, his or her papers are to be turned over to the national archives for publication. The first affected presidency was to be that of Ronald Reagan, and the papers should have been released in 2001. But President Bush issued an order stating that the papers would only be published after both the current and affected president gave their approval. This clearly contradicted the letter and spirit of the law, yielded bi-partisan reproach in Congress, and was challenged in court by Public Citizen, on behalf of the American Historical Society. The court ruling favored the opening of the records, and most of the papers have since been published. Two facts still suggest that this executive order had teeth: first, the court only struck down a portion of the bill, and it took a second order, by President Obama, to revoke the order. In sum, while this case shows that the president is not without constraints, it also does show the limits on the legislature in reacting.

# Conclusion

In determining policy outcomes, constitutions vary in endowments they grant their presidents. Beyond these formal powers, presidents also have associated and informal tools to help them implement their agendas. These are complemented by non-formal forces and mechanisms, such as the presidents' partisan powers, a lack of resources, and collective action problems, that limit legislatures' abilities to resist presidential initiatives,. In this paper we argue that these informal and associated mechanisms reinforce presidents in these bargaining games. We argue further that due to decreasing marginal returns, while informal and associated powers are important everywhere, they take special import where constitutions, like that of the United States, grant presidents only weak formal powers.

Our review of unilateral actions by executives in Latin American the United States showed that while many presidents in the former do have stronger formal and reinforced powers, the U.S. president also has many tools and advantages over the legislature. If this constitutionally weak president has such powers, then perhaps comparative studies should recalibrate their scales, focusing only on range from medium to high; low seems an inappropriate label.

Since there seems relative agreement that concentrating too much power in the presidency is dangerous to the quality, if not the stability, of democracy, several countries have already initiated reforms to address the executive-legislative imbalance. Several areas seem ripe for further reform. First, legislatures require more resources and further professionalization. This perhaps justifies international aid and domestic efforts dedicated to modernizing legislatures' technical capabilities and training legislators and their professional staffs. Still, the U.S. experience suggests that even with extensive resources, oversight might be haphazard.

Second, both the United States and Latin American countries should reconsider the issue of legislative vetoes. Even if the legislature has the capacity to oversee executive decisions, if overturning them requires a veto-proof majority of the Congress, then the balance is decidedly in favor of the executive. Since there is also a concern that presidents need the ability to act quickly in response to emergencies, perhaps the Brazilian decree rule, whereby the Congress must either convert the decree to law or it loses validity, would be a good starting point. That type of law could allow the desired governability without significantly degrading the representative system.

Third, the budgetary limitations on many Latin American legislatures are incompatible with the division of powers. If the legislatures are prevented from even considering how to collect and distribute public moneys, then the legislature becomes little more than a forum for debate or a rubber stamp. xxx

Finally, the lack of judicial independence and judicial review has helped Latin American presidents consolidate power, suggesting that judicial reforms could help to limit presidential powers. Many Latin American countries have undertaken significant judicial reforms, and some courts now do have the power to negate laws and decrees. However, without beefing up the legislature and eliminating the restrictions on their abilities to legislate, the judicial reforms cannot redress the executive-legislative balance.

**REFERENCES**

Alemán, Eduardo, and Patricio Navia. 2009. "Institutions and the Legislative Success of 'Strong' Presidents: An Analysis of Government Bills in Chile." *The Journal of Legislative Studies* 15 (4):401-19.

Alemán, Eduardo, and Thomas Schwartz. 2006. "Presidential Vetoes in Latin American Constitutions." *Journal of Theoretical Politics* 18 (1):98.

Alemán, Eduardo, and George Tsebelis. 2005. "The Origins of Presidential Conditional Agenda-Setting Power in Latin America." *Latin American Research Review* 40 (2):3-26.

American Bar Association. 2006. "Task Force Report on Presidential Signing Statements and the Separation of Powers Doctrine." *WWW.ABANOW.ORG* (304).

Ames, Barry. 2002. "Party Discipline in the Chamber of Deputies." In *Legislative Politics in Latin America*, ed. S. Morgenstern and B. Nacif. New York: Cambridge University Press.

Baldez, Lisa, and John M. Carey. 1999. "Presidential Agenda Control and Spending Policy: Lessons from General Pinochet's Constitution." *American Journal of Political Science* 43 (1):29-55.

Basabe Serrano, Santiago. 2012. "Judges without Robes and Judicial Voting in Contexts of Institutional Instability: The Case of Ecuador's Constitutional Court." *Journal of Latin American Studies* 44 (1):127-61.

Bawn, Kathleen. 1995. "Political Control Versus Expertise: Congressional Choices about Administrative Procedures." *The American Political Science Review* 89 (1):62-73.

Beckmann, Matthew N. 2010. *Pushing the Agenda: Presidential Leadership in US Lawmaking, 1953-2004*. Cambridge: Cambridge University Press.

Calvo, Ernesto. 2007. "The Responsive Legislature: Public Opinion and Law Making in a Highly Disciplined Congress." *British Journal of Political Science* 37 (2):263-80.

Cameron, Charles M. 2000. *Veto Bargaining: Presidents and the Politics of Negative Power* Cambridge: Cambridge University Press.

Canes-Wrone, Brandice. 2005. *Who Leads Whom?: Presidents, Policy, and the Public*. Chicago: University Of Chicago Press.

Carey, John M., and Matthew Soberg Shugart. 1998. *Executive Decree Authority*. Cambridge; New York: Cambridge University Press.

Castagnola, Andrea, and Aníbal Pérez-Liñán. 2011. "Bolivia: The Rise (and Fall) of Judicial Review." In *Courts in Latin America*, ed. G. Helmke and J. Ríos-Figueroa. Cambridge: Cambridge University Press.

Cheibub, José Antonio, and Fernando Limongi. 2002. "Democratic Institutions and Regime Survival: Parliamentary and Presidential Democracies Reconsidered." *Annual Review of Political Science* 5 (1):151-79.

Clayton, Cornell W. 1994. "Separate Branches-Separate Politics: Judicial Enforcement of Congressional Intent." *Political Science Quarterly* 109 (5):843-72.

Cooper, Joseph. 1983. "Postscript on the Congressional Veto: Is There Life After Chadha?" *Political Science Quarterly* 98 (3):427-9.

Cooper, Joseph, and William F. West. 1988. "Presidential Power and Republican Government: The Theory and Practice of OMB Review of Agency Rules." *The Journal of Politics* 50 (4):864-95.

Cooper, Phillip J. 2002. *By Order of the President: The Use and Abuse of Executive Direct Action*. Lawrence, KS: University Press of Kansas.

———. 2005. "George W. Bush, Edgar Allan Poe, and the Use and Abuse of Presidential Signing Statements." *Presidential Studies Quarterly* 35 (3):515-32.

Corrales, Javier. 2011. "A Setback for Chávez." *Journal of Democracy* 22 (1):122-36.

Cox, Gary W., and Scott Morgenstern. 2001. "Latin America's Reactive Assemblies and Proactive Presidents." *Comparative Politics* 33 (2):171-89.

Daniel, Frank Jack. 2010. "Venezuela assembly gives Chávez decree powers." *Reuters*.

Deering, Christopher, and Forrest Maltzman. 1999. "The Politics of Executive Orders: Legislative Constraints on Presidential Power." *Political Research Quarterly* 52 (4):767.

Ferreira, Rubio D., and Matteo Goretti. 1998. "When the President Governs Alone: The decretazo en Argentina, 1989-93." In *Executive decree authority*, ed. J. M. Carey and M. S. Shugart. New York: Cambridge University Press.

Fisher, Louis. 1978. "A Political Context for Legislative Vetoes." *Political Science Quarterly* 93 (2):241-54.

———. 1985. "Judicial Misjudgments about the Lawmaking Process: The Legislative Veto Case." *Public Administration Review* 45 (Special Issue):705-11.

Garber, Marc N., and Kurt A. Wimmer. 1987. "Presidential Signing Statements as Interpretations of Legislative Intent: An Executive Aggrandizement of Power." *Harvard Journal on Legislation* 24:363.

Garretón, Manuel Antonio. 1989. *The Chilean Political Process*. Boston: Unwin Hyman.

Gilmour, Robert S. 1971. "Central Legislative Clearance: A Revised Perspective." *Public Administration Review* 31 (2):150-8.

Hager, Gregory L., and Terry Sullivan. 1994. "President-centered and presidency-centered Explanations of Presidential Public Activity." *American Journal of Political Science* 38 (4):1079-103.

Haggard, Stephan, and Mathew D. McCubbins. 2001. *Presidents, Parliaments, and Policy*. Cambridge: Cambridge University Press.

Helmke, Gretchen. 2002. "The Logic of Strategic Defection: Court-Executive Relations in Argentina Under Dictatorship and Democracy." *American Political Science Review* 96:291-303.

———. 2005. *Courts Under Constraints: Judges, Generals, and Presidents in Argentina*. Cambridge: Cambridge University Press.

Helmke, Gretchen, and Julio Ríos-Figueroa, eds. 2011. *Courts in Latin America*. Cambridge: Cambridge University Press.

Hilbink, Lisa. 2007. *Judges beyond Politics in Democracy and Dictatorship: Lessons from Chile*. New York: Cambridge University Press.

Howell, William G. 2003. *Power without Persuasion: The Politics of Direct Presidential Action*. Princeton: Princeton University Press.

———. 2005. "Unilateral Powers: A Brief Overview." *Presidential Studies Quarterly* 35 (3):417-39.

Ingberman, Daniel E., and Dennis A. Yao. 1991. "Presidential Commitment and the Veto." *American Journal of Political Science* 35 (2):357-89.

Kernell, Samuel. 2006. *Going Public: New Strategies Of Presidential Leadership*. Fourth ed. Washington, D.C.: CQ Press.

Kiewiet, D. Roderick, and Mathew D. McCubbins. 1988. "Presidential Influence on Congressional Appropriations Decisions." *American Journal of Political Science* 32 (3):713-36.

———. 1991. *The Logic of Delegation*. Chicago: University of Chicago Press.

Krause, George A., and David B. Cohen. 1997. "Presidential Use of Executive Orders, 1953-1994." *American Politics Research* 25 (4):458-81.

Krause, George A., and Jeffrey E. Cohen. 2000. "Opportunity, Constraints, and the Development of the Institutional Presidency: The Issuance of Executive Orders, 1939–96." *Journal of Politics* 62 (1):88-114.

Larkins, Christopher. 1998. "The Judiciary and Delegative Democracy in Argentina." *Comparative Politics* 30 (4):423-42.

Larocca, Roger T. 2006. *The Presidential Agenda: Sources of Executive Influence in Congress*. Columbus: Ohio State University Press.

Leigh, Monroe. 1984. "Immigration and Naturalization Service v. Chadha. 103 S. Ct. 2764." *The American Journal of International Law* 78 (1):226-30.

Lowi, Theodore J. 1985. "Presidential Power: Restoring the Balance." *Political Science Quarterly* 100 (2):185-213.

Mainwaring, Scott, and Mathew S. Shugart, eds. 1997. *Presidentialism and Democracy in Latin America*. Cambridge: Cambridge University Press.

Mayer, Kenneth R. 2001. *With the Stroke of a Pen: Executive Orders and Presidential Power*. Princeton: Princeton University Press.

McCubbins, Mathew D., and Thomas Schwartz. 1984. "Congressional Oversight Overlooked: Police Patrols Versus Fire Alarms." *American Journal of Political Science* 28 (1):165-79.

Moe, Terry M. 1993. "Presidents, Institutions, and Theory." In *Researching the presidency: Vital questions, new approaches*, ed. G. C. Edwards III, J. H. Kessel and B. A. Rockman. Pittsburgh: University of Pittsburgh Press.

Moe, Terry M., and William G. Howell. 1999. "Unilateral Action and Presidential Power: A Theory." *Presidential Studies Quarterly* 29 (4):850-73.

Morgenstern, Scott. 2006. "Limits on Exporting the U.S. Congress Model to Latin America." In *Exporting Congress?*, ed. T. Power and N. Rae. Pittsburgh: University of Pittsburgh Press.

Morgenstern, Scott, and Benito Nacif, eds. 2002. *Legislative Politics in Latin America*. New York: Cambridge University Press.

Mustapic, Ana María. 2002. "Oscillating Relations: President and Congress in Argentina." In *Legislative Politics in Latin America*, ed. S. Morgenstern and B. Nacif. Cambridge: Cambridge University Press.

Negretto, Gabriel L. 2004. "Government Capacities and Policy Making by Decree in Latin America." *Comparative Political Studies* 37 (5):531-62.

Nelson, Michael. 1989. *Congressional Quarterly's guide to the presidency*. Washington, D.C.: Congressional Quarterly Inc.

Neustadt, Richard E. 1954. "Presidency and Legislation: The Growth of Central Clearance." *The American Political Science Review* 48 (3):641-71.

———. 1990. *Presidential Power and the Modern Presidents: The Politics of Leadership From Roosevelt to Reagan*. New York: Free Press.

Nino, Carlos. 1993. "On the Exercise of Judicial Review in Argentina." In *Transition to Democracy in Latin America. The Role of the Judiciary*, ed. I. P. Stotzky. Boulder, CO: Westview Press.

O'Donnell, Guillermo. 1994. "Delegative Democracy." *Journal of Democracy* 5 (1):55-69.

Payne, J. Mark, Daniel G. Zovatto, Fernando Carillo Florez, and Andrés Allamand Zavala. 2002. *Democracies in Development: Politics and Reform in Latin America.* New York: Inter-American Development Bank and International Institute for Democracy and Electoral Assistance.

Payne, J. Mark, Daniel G. Zovatto, and Mercedes Mateo Díaz. 2007. *Democracies in development: politics and reform in Latin America*. Washington, D.C.: Inter-American Development Bank, International Institute for Democracy and Electoral Assistance, and the David Rockefeller Center for Latin American Studies.

Pereira, Carlos, Timothy Power, and Lucio Rennó. 2005. "Under What Conditions Do Presidents Resort to Decree Power? Theory and Evidence from the Brazilian Case." *Journal of Politics* 67 (1):178-200.

Pierce Jr, Richard J. 1985. "Role of Constitutional and Political Theory in Administrative Law." *Texas Law Review* 64:469.

Rudalevige, Andrew. 2005. *The New Imperial Presidency: Renewing Presidential Power after Watergate*. Ann Arbor: University of Michigan Press.

Saiegh, Sebastián M. 2010. "Active Players or Rubber Stamps? An Evaluation of the Policymaking Role of Latin American Legislatures." In How Democracy Works. eds. Carlos Scartascini, Ernesto Stein and Mariano Tommasi. Washington: Inter-American Development Bank.

Samuels, David J. 2002. "Progressive Ambition, Federalism, and Pork-Barreling in Brazil." In *Legislative Politics in Latin America*, ed. S. Morgenstern and B. Nacif. Cambridge: Cambridge University Press.

Schlesinger, Arthur M. 1974. *The Imperial Presidency*. Boston: Houghton Mifflin.

Shugart, Matthew Soberg, and John M. Carey. 1992. *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*. Cambridge: Cambridge University Press.

Tsebelis, George, and Eduardo Alemán. 2005. "Presidential Conditional Agenda Setting in Latin America." *World Politics* 57 (3):396.

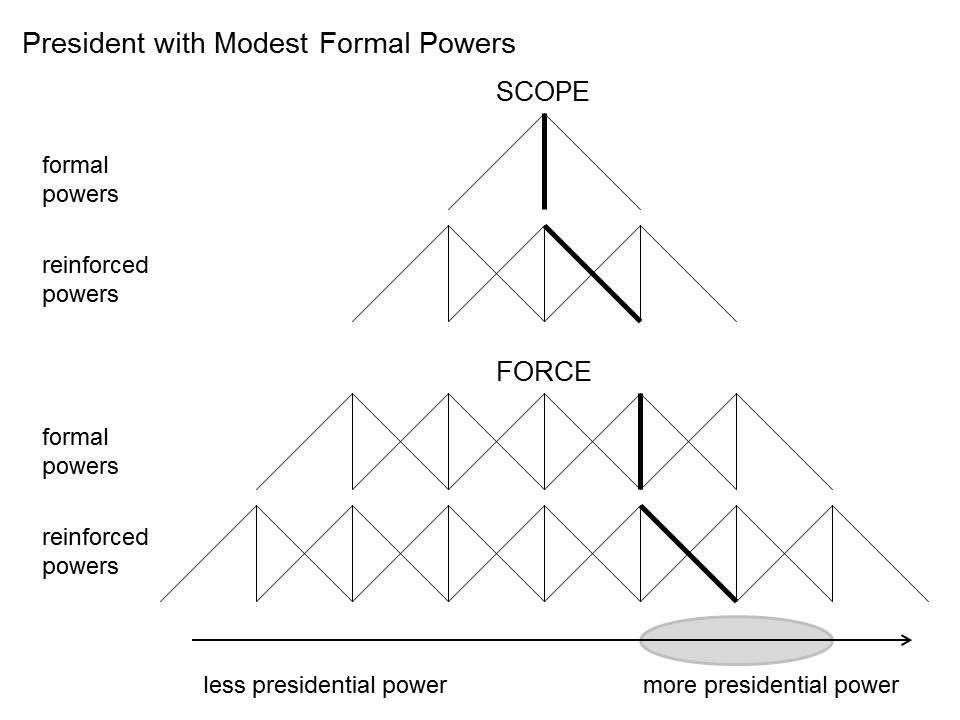
Warber, Adam L. 2006. *Executive Orders and the Modern Presidency*. Boulder: Lynne Reiner Publishers.

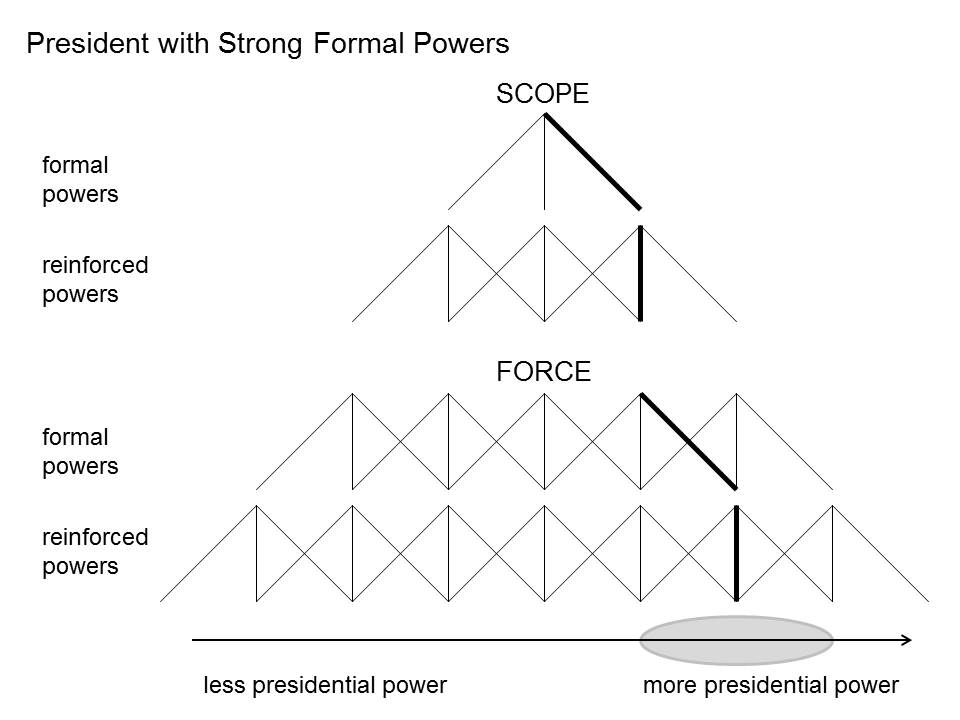
West, William F., and Joseph Cooper. 1989. "Legislative Influence v. Presidential Dominance: Competing Models of Bureaucratic Control." *Political Science Quarterly* 104 (4):581-606.

Wilson, Bruce M. 2011. "Enforcing Rights and Exercising and Accountability Function: Costa Rica's Constitutional Chamber of the Supreme Court." In *Courts in Latin America*, ed. G. Helmke and J. Ríos-Figueroa. Cambridge: Cambridge University Press.

Wilson, Bruce M., Juan Carlos Rodríguez Cordero, and Roger Handberg. 2004. "The Best Laid Schemes… Gang Aft A-gley: Judicial Reform in Latin America–Evidence from Costa Rica." *Journal of Latin American Studies* 36 (3):507-31.

**FIGURE 1: The Scope and Force of Executive Powers**





**FIGURE 2. Unilateral Presidential Directives in the U.S. (1993-2011)**

****

**FIGURE 3. Comparison of unilateral directives in the U.S. and eight Latin American countries**

****

Note: Case selection based on data availability; Argentina excluded for scaling purposes, since more than one thousand were issued every year

Sources: Agencia Boliviana de Información (<http://www3.abi.bo/>); Presidencia da República Federativa do Brasil (<http://www4.planalto.gov.br/legislacao/legislacao-1/decretos1#content>); Presidencia de Colombia (http://web.presidencia.gov.co/decretoslinea/); Sistema de Información para la Gobernabilidad, Ecuador (<http://www.sigob.gob.ec/>); Secretaría General de la Presidencia de Guatemala (http://www.sgp.gob.gt/Acuerdos.htm); Justicia Nicaragua (<http://nicaragua.justia.com/nacionales/decretos-ejecutivos/>); National Archives and Records Administration (<http://www.archives.gov/federal-register/executive-orders/disposition.html>); Presidencia de la República Oriental de Uruguay (<http://archivo.presidencia.gub.uy/>); Tribunal Supremo de Justicia de Venezuela (<http://www.tsj.gov.ve/gaceta/gacetaoficial.asp>)

**TABLE 1. Examples of Formal and Reinforced Scope and Force\***

|  |  |  |
| --- | --- | --- |
|  | **United States** | **Latin America** |
| **Formal Scope** |  | |
|  |  | Constitutional decree powers |
|  |  | Delegated decree powers |
|  |  | Urgency provisions |
|  |  | Exclusive executive initiative for tax or spending bills |
| **Reinforced Scope** |  | |
|  | Leadership of congressional delegation | |
|  | Executive Orders | Asserted decree powers, perhaps backed by court decisions |
|  | Presidential Memoranda | Declaration of State of Emergency |
|  | Presidential Proclamations | Control of cabinet ministers |
|  | National Security Directives |  |
|  | Presidential Signing Statements |  |
|  | Central legislative clearance |  |
|  | Recess appointments |  |
|  | Legislative reliance on executive for technocratic expertise |  |
| **Formal Force** |  | |
|  | Veto powers | |
| **Reinforced Force** |  | |
|  | Lack of legislative veto | |
|  |  | Time limitation on legislation |
|  | Judicial review | |
|  | Partisan powers/control of legislative majority | |
|  | Congressional collective action problem | |
|  | Public addresses/public opinion | |
|  | Bureaucratic control/Ability to delay implementation | |

Note: The examples for Latin America are not universal. Among others, decree, urgency, budgetary provisions, and veto powers vary widely, as do the presidents' control over legislative majorities and the independence of constitutional courts to enforce judicial review.

|  |  |  |
| --- | --- | --- |
| **TABLE 2: U.S. Executive Orders** | | |
| President | Number of Orders | Orders/Year |
| Roosevelt 1933-1945 | 3466 | 266.6 |
| Truman 1945-1953 | 893 | 111.6 |
| Eisenhower 1953-1961 | 481 | 60.1 |
| Kennedy 1961-1963 | 213 | 71 |
| Johnson 1963-1969 | 323 | 53.8 |
| Nixon 1969-1974 | 345 | 115 |
| Ford 1974-1977 | 168 | 56 |
| Carter 1977-1981 | 319 | 79.8 |
| Reagan 1981-1989 | 380 | 47.5 |
| Bush 1989-1993 | 165 | 41.5 |
| Clinton 1993-2001 | 363 | 45.4 |
| Bush 2001- 2009 | 291 | 36.4 |
| Obama 2009-Dec. 2011 | 108 | 36 |
| Source: National Archives and Records Administration  <http://www.archives.gov/federal-register/executive-orders/disposition.html> | | |

|  |  |
| --- | --- |
| **TABLE 3: U.S. Executive Orders with Clear Legislative Content, Presidents Bush and Obama** | |
| **Obama, 2009-11**   * Blocking Property and Prohibiting Certain Transactions Related to Libya (13566) * Extending Provisions of the International Organizations Immunities Act to the Office of the High Representative in Bosnia and Herzegovina and the International Civilian Office in Kosovo   (13568)   * Prohibiting Certain Transactions With Respect to North Korea (13570) * Blocking Property of Certain Persons With Respect to Human Rights Abuses in Syria (13572) * Blocking Property of Senior Officials of the Government (13573) * Blocking Property of Transnational Criminal Organizations (13581) | * Blocking Property of the Government of Syria and Prohibiting Certain * Transactions With Respect To Syria (13582) * Reducing Prescription Drug Shortages (13588) * Blocking Property of Certain Persons Contributing to the Conflict in Somalia (13536) * Optimizing the Security of Biological Select Agents and Toxins in the United States (13546) * Presidential Records (Revokes 13233) (13489) * Ensuring Lawful Interrogation (13491) * Classified National Security Information (13526) |
| **George W. Bush 2001-2002**   * Agency Responsibilities With Respect to Faith-Based & Community Initiatives (13198) * Revocation of Executive Order on Nondisplacement of Qualified Workers Under Certain Contracts (13204) * Termination of Emergency Authority for Certain Export Controls (13206) * Further Amendment to Executive Order 10000, Regulations Governing Additional Compensation & Credit Granted Certain Employees of the Federal Gov’t Serving Outside the United States (13207) * Additional Measures With Respect To Prohibiting the Importation of Rough Diamonds From Sierra Leone (13213) * Amendment to Executive Order 13125, Increasing Participation of Asian Americans & Pacific Islanders in Federal Programs (13216) | * Blocking Property of Persons Who Threaten International Stabilization Efforts in the Western Balkans (13219) * Waiver Under the Trade Act of 1974 With Respect to the Rep. of Belarus (13220) * Continuation of Export Control Regulations (13222) * Blocking Property & Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (13224) * Establishing the Office of Homeland Security & the Homeland Security Council (13228) * Waiver of Dual Compensation Provisions of the Central Intelligence Agency Retirement Act of 1964 (13236) * Adjustments of Certain Rates of Pay (13249) * Exclusions From the Federal Labor-Management Relations Program (13252) * Establishing the USA Freedom Corps (13254) |
| Source: National Archives and Records Administration, <http://www.archives.gov/> | |

1. We use the term “reinforced powers” to distinguish our concept from literature that discusses informal presidential powers or informal institutions. Our concept is meant to incorporate ideas from these studies, but also includes associated powers—indirect constitutional mechanisms that reinforce direct formal legislating or agenda-setting powers. [↑](#footnote-ref-1)
2. Payne et al. (2007) code for decree powers, budget provisions, veto and partial veto processes, and the power to convoke plebiscites. Shugart and Carey (1992) also measure control over the cabinet. Tsebelis and Alemán code for veto powers and show their own rankings plus those based on three other studies. In their model, the U.S. president garners a score of 2 on a scale where the median country (Venezuela) is coded with a 7. [↑](#footnote-ref-2)
3. Our separation of scope and force is similar to previous distinctions in the literature between proactive and reactive powers, but the formal and reinforced aspects suggest an aggregate relationship between the two that increases presidential power overall, rather than positing a trade-off. [↑](#footnote-ref-3)
4. This limit itself could be the topic of investigation. Why don't the legislatures vote more resources for themselves? [↑](#footnote-ref-4)
5. See Fisher (1985) for examples. [↑](#footnote-ref-5)
6. Cooper argues that the logic is flawed, since by making rules, the executive has also failed to follow the same constitutional provisions. [↑](#footnote-ref-6)
7. Additional types of orders typically associated with administrative rather than legislative matters include presidential determinations, memoranda, and notices. [↑](#footnote-ref-7)
8. West and Cooper ([1989](#_ENREF_71)) also note that the OMB lacks the legal authority to force compliance by agencies with these procedures, and there have been examples where the agencies have not followed OMB requests. The authors, however, argue that the president’s influence over the agency heads is generally sufficient to ensure compliance. [↑](#footnote-ref-8)
9. See Nelson ([1989](#_ENREF_56)). [↑](#footnote-ref-9)
10. These figures underestimate the Latin American unilateral actions, because they do not account for additional reinforced powers available to Latin American presidents, which have not yet been systematically collected. The main point, however, is still clear; while many Latin American presidents use unilateral authority more often, the U.S. presidents also issue a large number of directives. [↑](#footnote-ref-10)
11. Payne, et al. ([2007](#_ENREF_62)) ascribe the strongest partial veto powers to Argentina, Chile, and Ecuador. Tsebelis and Alemán ([2005](#_ENREF_69)) indicate that presidents in others countries also have strong partial veto powers. For example, they explain that the Brazilian president can promulgate non-objectionable parts of a bill. The partial veto can only be overridden by a majority of the house and senate, who vote jointly. [↑](#footnote-ref-11)
12. The partial veto can have a positive side. Samuels (2002) credits the elimination of much pork-barrel spending in Brazil to the partial veto, even though legislators are each empowered to submit amendments valuing about $1.5 million (see Ames 2002). Our point here, however, is that the partial veto prevents legislative action. [↑](#footnote-ref-12)
13. On “amendatory observations” see Alemán and Tsebelis ([2005](#_ENREF_3)). [↑](#footnote-ref-13)
14. We thank an anonymous reviewer for emphasizing how this relationship has recently evolved. [↑](#footnote-ref-14)
15. Nino also highlights the limited period of democratic rule in Argentina. [↑](#footnote-ref-15)
16. See Larkins (1998) for a review of Menem’s court packing. [↑](#footnote-ref-16)
17. A keen example regards the “gag rule.” In Rust v. Sullivan (1991) the Court upheld the Health and Human Services’ questionable interpretation of the statute to prevent clinics that receive federal funds from counseling with reference to abortion. The Congress wrote new legislation to overturn the rule, but President Bush vetoed the bill ([Clayton 1994](#_ENREF_15)). [↑](#footnote-ref-17)
18. Berry argues that presidents use signing statements to counteract legislative vetoes (and there is thus a positive correlation between legislative vetoes and the issuance of signing statements). [↑](#footnote-ref-18)