Rethinking Crises and the Accretion of Executive Power: The "War on Terror" and Conditionality Evidence from Seven Political Systems

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External shocks to democratic systems are likely to threaten the stability of relations between the executive and the representative assembly. This article investigates the impact of the so-called “war on terror” on executive-assembly relations in comparative perspective. We analyze data from seven countries, which varied in terms of form of government, level of democracy, culture, social structure, and geographic location, to evaluate its effects. We find that whereas in some systems the “war on terror” altered the balance of power between the executive and the assembly, in other cases the extant balance of power was preserved. We postulate various conditions under which the constitutionally sanctioned balance of power is most likely to be preserved in times of crisis.

**Key words:** Carl Schmitt, constitutional dictatorship, executive-assembly relations, separation of powers, war on terror

To what extent has terrorism—for example, the terrorist attacks in New York, Washington, and London of September 11, 2001 (9/11), and July 7, 2005 (7/7), and the ensuing so-called “war on terror”—transformed the relationship between the executive and the assembly branches of government, not only in these two countries, but more generally? Specifically, did these events pave the way for a strengthening of the executive and a corresponding weakening of the assembly?

These are important questions because the political science literature (Cooper, 2005; Rossiter, 1948; Schmitt, 1922/2005) has long recognized that critical events

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(war, civil wars, terrorist attacks, and other crises) may contribute to a strengthening of the executive. In order to cope with crises, governments often need to act quickly and resolutely, and the executive is better equipped in these tasks than the assembly. Moreover, by effectively managing crises, executives accrue greater legitimacy in the eyes of citizens. Armed with higher levels of legitimacy, executives are able to institutionalize their enhanced powers in the “living,” if not the formal, constitution.

In contrast to this line of thinking most famously and more forcefully advocated by Schmitt (1922/2005), following Dicey (1908) and Rossiter (1948), we argue that the constitutional order and the constitutionally sanctioned balance of power between the executive and the assembly branch can be preserved in spite of critical events. Evidence to support this contention is provided in the remainder of this article. For now, suffice it to state that an earlier investigation of the effects of the terrorist attacks of 9/11 and 7/7, and the ensuing “war on terror,” showed that the executive did not always strengthen nor did the assembly weaken (••, 2010). In three of seven cases (Russia, Britain, and the United States), terrorist threats, attacks, and the war on terror led to an increase of executive power and to a weakening of the assembly. In one case, the “war on terror” provided the justification for the expansion of executive power but did not lead to a weakening of the assembly (Australia), at least while the government enjoyed majorities of seats in both assembly chambers. In one case (Italy), the balance of power between the executive and the assembly branch remained intact. In two further cases, the assembly moderately enhanced its strength (Israel) while in Indonesia both the executive and assembly weakened as the balance of power remained unchanged.

This evidence is of some importance, not only because it challenges and refines conventional wisdom as represented by Schmitt (1922/2005) and Rossiter (1948). Both these scholars regarded the causal relationship between crises and the accretion of executive power as necessary and unavoidable. Contrastingly, we see the relationship as conditional; that is, it depends on the presence of various conditions, some favoring the emergence of a stronger executive in times of “exception,” and others constraining the realization of such an outcome.

In the first section of this article, we posit that “Western” constitutions based on liberal ideas not only institutionalize separate powers for executives and representative assemblies but also require some notion of balance between these institutions. While the point of equilibrium may vary from country to country, depending on how executive-legislative relationships are institutionalized, critical events do not inevitably lead to accretions of executive power, regardless of how institutional power is configured. In the second section, the discussion focuses specifically on the works by Schmitt and Rossiter, who posit such a causal link. In addition to reviewing these scholars’ theoretical propositions, we examine some of the examples that are discussed in the literature to support this supposed causal link. In the third section, we introduce evidence that points to a different conclusion. Leaving aside historical cases in which prospective critical events led to the creation of specific institutional arrangements designed to prevent a priori the emergence of stronger executives or sovereigns, four of the seven cases provide no evidence of changing executive-assembly relations and/or empowering stronger executives. Rather, the causal link between crises
and executive accretion is at best conditional. That is, the causal connection operates some of the time under some specific conditions, but it does not work everywhere and all the time. Building on this evidence, in the fourth section, we discuss some of the conditions that we believe are responsible for the expansion of executive power in times of crisis. Finally, we discuss the implications of these research findings and sketch out a tentative developmental research agenda for the future.

Separation of Powers

As Friedrich (1933) put it, the doctrine of a separation of executive and assembly powers has been one of the main tenets of Western constitutionalism, linked as it is to notions of democratic rights and popular sovereignty. Advocated by Locke (1980) and later on by Montesquieu (1748/1989), the separation of powers was most graphically institutionalized in the U.S. Constitution, in the Chartelle Constitutionelle adopted in 1814 by Louis XVII of France, in the constitutions of several Länder before the German unification, and in many of the contemporary constitutions—including those of the countries examined here.2

While the basic idea of a separation of powers is that the assembly, the executive, and the judicial branches perform separate roles and functions, in fact they overlap to some degree so that power is shared and the powers of one branch are in varying degrees checked and balanced by other branches, nowhere more so than in the United States, where Congress’s assembly power is affected by the president’s ability to recommend and veto congressional legislation. Similarly, Article 39 of the Fifth French Republic’s Constitution assigns the assembly power to the assembly (parliament) and to the executive (prime minister), who both have the right to initiate legislation, as well as to the president (Article 10), who has the power to ask the parliament to reopen the debate on a law or on a part thereof. In Italy, the 1948 Constitution provides both the government (i.e., the executive) and the parliament (any member thereof) with the capacity to introduce bills, but it requires the president to promulgate them after they are approved in both chambers of the parliament, which he may refuse to do (Article 74).

Constitutional arrangements in different countries, then, institutionalize, constitutionalize, and actually constitute various specific equilibria or balances of power between the executive and the representative assembly. Thus, in some systems, the executive can set the agenda for assembly committees, whereas in others, assemblies have few tools to oversee government activity and decisions, thereby providing for greater opportunities for the executive to push its agenda through the assembly and avoid assembly/parliamentary scrutiny and oversight (Pelizzo & Stapenhurst, 2012). Ergo, under such conditions, the executive is stronger vis-à-vis the assembly than it is in those settings where the assembly enjoys extensive agenda-setting and oversight capacity. Formal institutional arrangements, of course, only tell part of the story. Some assemblies can make more effective use of their oversight tools to scrutinize the executive than others with a wider set of tools. Both the U.S. and Italian cases (Owens, 2010; Pelizzo, 2010) support this conclusion.3 In fact, earlier studies conducted by these scholars reveal that in spite of the fact that the U.S. Congress has a greater oversight capacity than the Italian parliament, in the course of the war on terror it was a
remarkably less effective overseer of government war-on-terror-related policies than its Italian counterpart. As these two cases demonstrate, specific constellations of contextual, historical, and institutional conditions can offset the impact of formal constitutional dispositions.

While acknowledging that institutional politics involves more than constitutional dispositions, constitutional arrangements nonetheless remain an important focus of our investigations: Importantly, they embody power. They establish the point of equilibrium between the executive and the representative assembly. This is an important point because it acknowledges that the impact of critical events on executive strengthening at the expense of the assembly will to some extent be mediated by institutional equilibria. In short, just because executive strengthening as a consequence of crisis is perhaps a very frequent outcome does not mean that it is inevitable. Crises demand institutional responses, which often amount to the concentration of (emergency) powers in the hands of an institution that is mandated to tackle the crisis, which is typically the executive. But, regardless of the frequency with which executives expand their power in times of crisis, there is nothing inevitable about it. The case of Indonesia (Schneier, 2010) makes perfectly clear that although the war on terror launched in the wake of 9/11 induced an institutional response, it did not alter the balance of power between the executive and the assembly in the country. Rather, the institutional transformation that took place in Indonesia was quite different from what occurred elsewhere: Instead of reshaping the balance of power between the executive and the *Dewan Perwakilan Rakyat* (*DPR, or People’s Representative Council*), the crisis transformed the pattern of civil-military relations and greatly expanded the role and importance of the military, which had somewhat decreased with post-Suharto democratization.

A second reason why crisis is not an automatic trigger for executive strengthening at the expense of a representative assembly is that three separate institutional changes are conflated into an assumed single process. Concentration of (emergency) powers, executive strengthening, and a shift of power in executive-assembly relations toward the executive are not one and the same phenomenon. Once again, the Indonesian case is informative. As Schneier (2010) demonstrates, while the need to cope with the terrorist threat expanded the military’s power, it did not expand either the president’s or the executive’s power, and it certainly did not tilt the balance of executive-assembly power toward the executive. In other words, institutional response, concentration of power, and executive strengthening are distinct processes that may or may not occur independently from one another—a point that is also supported by the analyses of both the Israeli and Italian cases (Friedberg & Hazan, 2010; Pelizzo, 2010).

The third reason why the supposed causal link between crisis and executive strengthening is suspect is that the latter notion is underspecified. Executive strengthening, as used by other scholars (e.g., Cooper, 2005; Rossiter 1948), conflates into a single notion the quite distinct phenomena of *absolute* and *relative* executive strengthening. That is, it is assumed that in times of crisis the executive acquires new powers (emergency powers), and that by doing so it becomes more powerful in absolute terms, and therefore that an executive more powerful in absolute terms is also more powerful in relative terms vis-à-vis the assembly. This is a logical fallacy, for it cannot be automatically assumed that executives that
are stronger in absolute terms are also stronger in relative terms vis-à-vis their assemblies. Indeed, to understand this, one only needs to imagine that an assembly’s powers may also expand in emergencies to realize that while the powers of the assembly and the executive may increase in absolute terms in critical times, their power relation to one another may remain unchanged. Accordingly, in our analysis, we treat these phenomena—institutional response to crisis, absolute executive strengthening, and relative executive strengthening—as distinct phenomena. In doing so, we show that while each of these states adopted counter-terrorism measures, the so-called “war on terror” expanded absolute executive powers in some cases (the United States, Britain, Russia), while in others (Indonesia, Italy) it did not. More importantly, contra Schmitt (1922/2005), the adoption of these anti-terror measures in response to critical events did not necessarily create the conditions that transformed those states’ balances of executive-assembly relations or establish a new constitutional equilibrium embodying the emergence of the “sovereign.”

Executive Power and Crisis: The Historical Experience

Political science literature (Dicey, 1908; Mayhew, 2005; Rossiter, 1948; Schmitt, 1922/2005) has long recognized that critical events (i.e., war, civil wars, terrorist attacks, and other crises) may contribute to a strengthening of executive power. However, it has paid less attention to

- whether the executive becomes stronger because it acquires new emergency powers only for the duration of an emergency;
- whether it becomes stronger vis-à-vis the assembly because the latter may not be adequately equipped to scrutinize government activities in times of crisis;
- whether the strengthening of the executive vis-à-vis the assembly amounts to a permanent transformation of the constitutionally sanctioned balance of executive-assembly power; and
- whether it is justified to view the emergence of a stronger executive power as the emergence of what Schmitt calls the “sovereign.”

In response to an “exception”—or critical event—Schmitt argues that political order cannot be maintained by constitutional provisions alone, but by an extra-constitutional authority, a “sovereign” who enjoys a monopoly to decide . . . whether there is an extreme emergency as well as what must be done to eliminate it. Although he stands outside the normally valid legal system, he nevertheless belongs to it, for it is he who must decide whether the constitution needs to be suspended in its entirety. (1922/2005, p. 7)

Influenced by Schmitt, Rossiter made a similar argument a few years later:

In time of crisis constitutional government must be temporarily altered to whatever degree is necessary to overcome the peril and restore normal conditions. This alteration invariably involves government of a stronger character; that is, the government will have more power and the people fewer rights—a “constitutional dictatorship.” (1948, p. 5)
However, while Rossiter argued that crises were responsible for a temporary expansion of executive power, others (e.g., Cooper, 2005) see critical events—at least in the United States—serving to accelerate a long-term secular trend toward executive strengthening, transforming a Congress-dominated system into one dominated by an increasingly plebiscitary president.

Be that as it may, by failing to distinguish between absolute and relative executive strengthening, and by conflating temporary and permanent increases in relative executive power, these writers draw the mistaken conclusion that each successive crisis induces an inexorable racheting up of executive power. At least some historical examples contradict the inevitability of this process.

The Republic of Rome appointed dictators to cope with an emergency at hand, but only for six months. Jewish law allowed halakhic authorities to set aside parts of the God-given Torah law . . . and included the power to suspend ordinary laws, promulgate emergency measures, and resort to extra-legal sanctions that had not been authorized under ordinary law. . . . [When crisis was perceived to be severe enough] . . . the appropriate Jewish authorities could act in a manner that amounted to violation of the fundamental law of the Torah. (Gross & Ni Aolain, 2006, pp. 113–114)

In medieval times, Italian city-states appointed condottieri (warriors) or noblemen as podestà or capitani del popolo to cope with internal turmoil or external threats—saviors who often became the rulers (Signori) of the cities that they had been asked to protect. The Third French Republic’s Constitution (1870–1940) also provided for new government powers and functions in the event of a crisis or state of emergency (pouvoirs pleins), whereas under Article 48 of the Weimar constitution (1919–1933),

if in the German Reich the public security and order are significantly disturbed or endangered, the President [may] utilize the necessary measures to restore public security and order, if necessary with the aid of armed force. For this purpose, he may provisionally suspend, in whole or in part, the basic rights established in Articles 114, 115, 117, 118, 123, 124, 153.

In sum, from Jewish law to the Roman Republic and the Italian city-states of the Renaissance, from the French Third Republic to Weimar, there have always been institutional provisions for the concentration of power in the event of an emergency, which is why scholars have supposed the existence of a causal link between critical events and the accretion of executive power. For this reason, too, Rossiter (1948) termed such arrangements, much as the Schmittian sovereign, as “constitutional dictatorship.”

Although widely accepted, then, the historical evidence shows that the assertion that a crisis leads automatically to executive strengthening and to an automatic tilting of the constitutional balance of power toward the executive—frequently accompanied by accusations that the stronger executive is a manifestation of Schmitt’s sovereign—is mistaken. Both the Roman dictators and the Renaissance podestà differed from Schmitt’s sovereign in one basic respect: They were not sovereign. Schmitt’s sovereign, whose existence may be constitutionally sanctioned, has the power to suspend and eliminate the constitution. Roman dictators had many powers, but they did not include abrogating the constitution.
Contemporary democratic constitutions have also granted emergency powers to the executive, but only for as long as there is an emergency. Thus, U.S. President Abraham Lincoln and later Franklin Roosevelt claimed and exercised exceptional powers, respectively, during the U.S. Civil War and World War II, which were probably illegal, but they were ultimately legitimated by what Dicey calls “acts of indemnity” to legitimate action, including illegal action, already taken by the executive (Dicey, 1908; Gross, 2005), rescinded, or left unchallenged. Moreover, democratic constitutions often mandate some constitutional bodies, either the assembly or the judiciary, to oversee government activities and to decide whether the country is in an emergency. Hence, under these conditions, even if the executive is stronger in absolute and possibly in relative terms in times of crisis, its power is nonetheless subject to some scrutiny and its expansion is not permanent. In other words, they are different from Schmitt’s sovereign and they do not establish a new constitutional order.

Executive Power and Crisis: The Contemporary Experience

Having failed to grasp the difference between what are in effect distinct phenomena, and having become content with the notion that critical events lead automatically to an increase or expansion of executive power, crises, critical events, and exceptions have not always led to these outcomes. Moreover, just because there is evidence of such an outcome in one political system does not necessarily mean that the outcome will be replicated in executive-assembly relations everywhere. The evidence presented here tells a different story.

Besides the United States, there are other cases where jihadist terrorist attacks and the ensuing “war on terror” resulted in increasing executives’ power at the expense of national assemblies. Analyzing the British case, Shephard (2010) shows that (a) the British executive created new powers for itself in response to the 7/7 attacks and the implementation of its counterterrorist policies, which had the effect of increasing its power vis-à-vis Parliament; (b) the government made attempts to avoid scrutiny and oversight; (c) Parliament was an inactive and ineffective overseer of Prime Minister Tony Blair and his cabinet on issues pertaining to the “war on terror”; and (d) these power accretions eroded the government’s legitimacy, shortened Blair’s tenure in Downing Street, and forced the subsequent Brown government to recalibrate parliamentary relations.

The Russian case (Remington, 2010) also demonstrates a strong causal link between terrorist attacks and an increase in presidential/executive power, with Russian President Vladimir Putin using terrorist attacks as a pretext to centralize power in his executive “at the expense of the autonomy of parliament and of regional governments” (p. ••). Regardless of whether Putin’s institutional reforms were really implemented to cope with terrorist threats, he enhanced his executive power at a time of crisis.

The U.S. case demonstrates a similar outcome, although the details are different from both Britain and Russia (Owens, 2010). The long-term trend in the 20th century to strengthen presidential/executive power at the expense of the U.S. Congress was accelerated by the 9/11 attacks and by George W. Bush’s presidentialist or presidency-centered theory of government, which relegated Congress’s supposed coequal role in the United States’ separated system and viewed the
legislature as an obstacle to decisive government. However, the trend to further executive strengthening was compounded by Congress’s unwillingness to undertake effective oversight of the Bush administration, typically deferring to the president, not challenging executive misinformation, and in some instances not making effective use of the information it had been given.

In all three cases, then, the executive exploited terrorist attacks to expand its power, avoid assembly scrutiny, and tilt the balance of executive-assembly relationships toward the executive. However, terrorist attacks and the ensuing “war on terror” did not have this effect everywhere.

Although the government led by Prime Minister John Howard certainly strengthened the executive in Australia in response to the terrorist attacks in Bali (2002 and 2005), Jakarta (2004), and elsewhere, and sought to avoid parliamentary scrutiny, its counterterrorist efforts were kept in check, at least until the 2004 elections, because Howard’s party did not control a majority of the seats in the Senate (Larkin & Uhr, 2010).

The experience in Indonesia demonstrated an even sharper contrast with Britain, Russia, and the United States. As Schneier’s analysis (2010) shows, the impact of 9/11 and other terrorist attacks did not lead to an increase in either executive or assembly power. “If the Indonesian experience were representative of emerging democracies,” concludes Schneier, “it would seem as if strong international pressures to act [arising out of 9/11 and the “war on terror”] could erode the powers of both the elected parliament and the chief executive” (p. 236). As this analysis shows, the chief beneficiaries of the crisis were the Indonesian military.

Finally, two other cases demonstrate, respectively, a (slight) shift in power to the assembly and away from the executive, and no change in the institutional balance of power. In spite of the Israeli government’s tendency to exploit its access to information to avoid Knesset scrutiny of its counterterrorism policies, the assembly played a greater role in shaping relevant legislation introduced by the government. Moreover, the Knesset expanded its oversight capacity by developing and adopting new oversight tools. Friedberg and Hazan (2010), then, find “a modest but perceptible shift . . . in the balance of power” (p. ••). In Italy, the Berlusconi governments proposed several emergency decrees and bills to fight the financing of international terror organizations or to participate in international U.S.-led military missions. However, the Italian parliament debated, amended, and effectively scrutinized government actions and decisions even more carefully than it had done before and, despite the threat of terrorist attacks in Italy, there was no evidence to suggest that these terrorist threats and government pressure led necessarily to a strengthening of the executive.

So, as measures were taken and legislation was passed in each political system to counter terrorism, the case studies included in the previous Owens and Pelizzo (2010) research project demonstrate variable institutional responses to the terrorist threat. In some cases, counterterrorism measures went hand in hand with an expansion of executive power in both absolute and relative terms (Russia, Britain, and the United States). In one case (Australia), the expansion of power in absolute terms did not translate into a reconfiguration of executive-assembly power until the governing party took control of both chambers. And, in three cases, the executive failed to accrue power vis-à-vis the assembly: In Israel,
the assembly became (slightly) stronger vis-à-vis the executive, whereas in Italy and Indonesia, the “war on terror” did not alter executive-assembly relations.

**A Study in Conditionality**

Comparative analysis of the cases presented suggests that different conditions explain the absolute and the relative strengthening of executive power. The British, Russian, and U.S. cases all involved direct terrorist attacks on domestic populations, including those living in major power and population centers. So it is easy to understand why executives in those political systems responded so forcibly and decisively to events, and why executive power increased in absolute terms. Although Australian citizens were attacked, this did not occur on home soil; however, the political impact on the Howard government and Australian public opinion was palpable and undoubtedly explains that country’s strong response and thus the *absolute* increase in executive power. It seems Indonesian, Israeli, and Italian executives—also subject to actual or threatened attacks—already possessed sufficient executive powers. So there was no significant *absolute* power accretion. Ergo, there is no unmitigated causal effect of a direct terrorist attack on the absolute increase in executive power.

Regardless of whether terrorist attacks are actual or foiled, at home or abroad, electorates expect their democratically elected governments to respond, as a result of which the executive may enhance its power, including in relation to the assembly, thus resulting in a shift of the balance of executive-legislative power. Facing the prospect of threats, support for political liberties—and, by extension, their concern about the government increasing its security powers and curtailing civil liberties—tends to decline (Davis & Silver, 2004; Huddy, Feldman, Taber, & Lahav, 2005). In all the political systems in our sample, government and popular perceptions of the probability of a terrorist attack were high in the post-9/11 period.

Even so, the nature of executives’ responses to terrorism in different political systems will also depend on prevailing attitudes toward and perceptions of certain types of threat “rooted in collective experiences of what to fear and how to engage with security issues” (Edwards & Meyer, 2008, p. 14). These are likely to include different countries’ experiences with and lessons learned from previous home-grown terrorist attacks as well as earlier formative experiences of authoritarian or intrusive government, and identification with the United States. But, again, in the context of the “war on terror,” these particular conditions are likely to interact with other unrelated conditions producing no direct causal link with absolute increases in executive power. Britain, Israel, Italy, and Russia have all experienced home-grown terrorism. Yet, our case studies uncovered different patterns of executive power accretion. Similarly, our sample exhibited different levels of identification with the United States, varying from strong in the cases of Israel and Britain to weaker with respect to Russia and Indonesia. Different countries also vary in their sensitivities to privacy and civil liberties issues, the use of extensive and intrusive surveillance technologies, and maintaining a separation between law enforcement and military strategies to counter terrorist activities (Archik, Ek, Miko, & Woehrel, 2006; Brodeur, Gill, & Töllborg, 2003; Crelinsten, 2009). Where these sensitivities are high, assembly members and
courts are likely to insist on protections in writing new legislation and regulations. Sensitivity to privacy and civil liberties issues and the use of extensive and intrusive surveillance technologies is particularly strong in Australia, Britain, and the United States (Cole & Dempsey, 2006; Cuthbertson, 2006; Hocking, 2004; Starmer & Weir, 2002). Compared with these countries, Israel and Italy and, even more so, Russia and Indonesia have weaker traditions of legally institutionalized and enforced civil liberties and human rights protections, and long traditions of strong state action against terrorism (Bova, 2003, pp. 261–263; Spotts & Wieser, 1986). Again, however, attitudes toward civil liberties themselves are not causally linked to the accretion of executive power in our sample.

In democratic political systems, the outcomes of debates about a country’s response to terrorist attacks are mediated by the system’s rules, which affect relationships among governmental institutions and how politics and government are conducted. Different regimes optimize risks that policy “errors” may occur against decision-making efficiency. From the perspective of the early 20th century, Bryce (1921) viewed the presidential system as riskier than the parliamentary system because of the discretion available to a single leader who is chosen to be president (see also Lijphart, 1999; Linz, 1994; Scheuerman, 2008; Shugart & Carey, 1992; Stepan & Skach, 1993). Even so, since all national assemblies tend to delegate extensive powers to the executive in times of crisis, an equal and opposite argument may also be made: that assemblies, in which party discipline is typically stronger (assuming opposition parties actually oppose the governing party), are unwilling to assert themselves or challenge executive assertions of new powers, especially in times of crisis. Still, to focus exclusively on differences between presidential and parliamentary systems—which assumes such distinctions are easily drawn when in reality they are not—is to ignore other significant institutional differences. These may include bicameralism, presidential powers, separation of powers, federalism, assembly rules and organization, assembly party discipline, qualified majorities, institutional vetoes, as well as the role of the courts, partisan composition of executives and assemblies, the “partyness” of a given system (Strøm, 2003), the ideological distance between governmental players, and the extent to which they are internally cohesive—all of which might reasonably influence the extent of executive strength in formulating counterterrorism policies and the balance of executive-assembly relations.

In all our case studies, it was very clear that the executives were the primary players, many of whom were examples of what Strøm (2003, p. 77) calls “dictator” players whose “consent is both necessary and sufficient.” Even in the U.S. case, where Congress enjoys significant agenda-setting powers, it was clearly President Bush who in public, by engineering fear of terrorism and proposing new legislation, and in secret, by the use of executive decrees, played the dominant role in “certifying issues and setting priorities” (Jones, 2005, p. 33)—although a quiescent Congress supporting the president was also significant when it came to new legislation and oversight. This was also the case in each of our parliamentary as well as the two semi-presidential systems (Russia and Indonesia). Especially on national security issues, executives will almost always have more and better information, and be more expert.

Still, as our project demonstrated, these executive advantages did not necessarily preclude assembly influence or lead inexorably to tilting relations toward
the executive. As Pelizzo (2010) demonstrates, the Italian state already had a considerable arsenal of counterterrorism weapons on its statute books well before 9/11, and with a governmental system that provided many institutional and partisan veto points—a strong bicameral system, a multiparty coalition government, divided political opposition, a tight government majority in the Senato (under Prodi), and considerable and growing popular hostility to Italian participation in U.S.-led military interventions in Afghanistan and Iraq—the balance of executive-legislative relations remained stable. In Australia, a different configuration of institutional and partisan factors constrained executive power: Although public support for the Howard government’s counterterrorism policies and the U.S.-led “war on terror” was higher than in Italy, bicamerality, federalism, and the government’s lack of a majority in the Senate until the 2004 elections combined to allow the Australian Parliament to assert itself to a degree that was generally impossible for the British Parliament. In Britain, as in Australia, with the official single-party opposition supporting most of the Blair and Brown governments’ counterterrorism policies, even as public opposition to British involvement in Iraq grew, it did not influence government policy, although it did shorten Blair’s premiership. Yet, on some issues, most notably on detainee rights (Russell & Sciara, 2007), British bicameralism served to restrain the government. In a further contrast, an assembly’s partisan composition proved vitally important. Despite Israel’s constant preoccupation with counterterrorism, which yields almost monopolistic powers to the executive and national security forces, the necessity of multiparty governments representing broad spectrums of ideological positions and the country’s developing political culture embracing more diverse participation in the unicameral Knesset’s deliberations combined to restrain somewhat the executive’s power in a manner foreign to the unicameral Russian Diet, dominated by Vladimir Putin’s well-disciplined United Russia party.

Our argument for the importance of conditionality in explaining the impact of governmental responses to terrorism on absolute and relative executive power rests not only on the configurations of institutional and party arrangements within political systems but also on the influence exercised by individual political leaders in times of crisis (Hargrove & Owens, 2003; Riker, 1986). Hitler in the context of the crisis of the Weimar Republic is an obvious example. The Nazis controlled 44% of the seats in the multiparty Reichstag. Yet, following the Reichstag fire in 1933, 84% of German legislators voted to delegate their powers and effectively make Chancellor Adolf Hitler dictator of Germany. Equally, Churchill and Roosevelt in the context of resistance to Nazism and Imperial Japan in the Second World War point to the importance of individual leaders. Faced by the same crises, passive leaders might have opted for the status quo.

The leaders of our sample of systems were all very strong agenda setters, often because of the “war on terror” policies they pursued. The exceptions are Israeli Prime Minister Ariel Sharon and Indonesian presidents Megawati Sukarnoputri and Susilo Bambang Yudhoyono, in the sense that after 9/11 other leaders of Israel or Indonesia would not have allied themselves to the United States in the same way that these leaders did. All the other leaders—Blair, Putin, Berlusconi, Howard, and, of course, Bush—made a personal difference, exciting controversy as they did. Bush and his closest advisors brought to the U.S. presidency a very distinctive “presidentialist” notion of presidential power, which was disrespectful of the role
of the Congress (and the courts) in the United States’ separated system. Had
Al Gore become U.S. president in January 2001, it is likely that presidential-
congressional relations and U.S. policies would have been different. All of the
other leaders—again, with the exceptions of Sharon and the Indonesian
presidents—personally allied themselves with George Bush and the U.S.-led “war
on terror,” most particularly Blair and Howard, and to a lesser extent Berlusconi.
In varying degrees, their connections with Bush and their determination to appear
as strong leaders in the so-called “war on terror” encouraged these leaders to
pursue counterterrorism policies that relegated and sometimes ignored their
respective national assemblies, most notably Blair (Shephard, 2010). Although
much more wary of Bush and the United States, the actions and leadership style of
the abrasive Putin also beg the question whether another Russian leader would
have so forcefully and deftly exploited that country’s distinctive traditional self-
image as weak, threatened, vulnerable, and besieged over the terrorist episodes to
generate high approval ratings and push through his centralizing, personal rule
agenda at the expense of the Duma and other governing institutions (Remington,
2010).

Table 1 summarizes our findings. Armed with only seven cases, and more
variables than cases, we lack the degrees of freedom necessary to embark on a
more systematic analysis of the empirical conditions that impacted the absolute
and relative growth of executive power in the context of the “war on terror.” It
may also be that there are simply too many idiosyncrasies in these different
political systems, and that conditions overlap, to allow systematic analysis.
Nonetheless, while conditionality is clearly important—the relationship between
causes and effects is conditional—no single condition is associated with execu-
tive strengthening or the disruption of extant executive-assembly relations in
these systems. Or, put another way: Happily, crises do not lead inevitably to the
emergence of Schmitt’s “sovereign,” although Putin’s personal rule comes pretty
close. As a number of the cases demonstrate, to a greater or lesser extent, demo-
ocratic forces, manifested through national assemblies, remained in play, as did the
courts, mediated by constellations of different contextual, historical, institutional,
and political conditions present in different governmental systems. Executive
strengthening occurred in some of the cases but not in others, and the conditions
that were responsible for the strengthening of the executive in some cases were
not present in others. That is, we have uncovered a double conditionality: one
present in the relationship between crises and executive strengthening, and the
other in the finding of different individual conditions.14

Ipso facto, if conditions matter only in combination with other conditions, then
it follows that the next step in this research agenda is to investigate the impact of
constellations of institutional, political, and situational conditions on executive
strengthening. Important as institutional rules are, they are not the only deter-
minants of political outcomes. Further research, therefore, will need to pay
greater attention to how they interact with political and situational conditions.

Notes

1The present analysis focuses on Australia, Indonesia, Israel, Italy, Russia, Britain, and the United
States, political systems that provide considerable variation in their forms of government: parliamen-
Table 1. The Impact of Institutional and Political Arrangements on Changes in the Strength of Executive Power in Response to Terrorism and the “War on Terror”

<table>
<thead>
<tr>
<th></th>
<th>Absolute increase in executive power from t to t+1</th>
<th>Relative increase in executive support publicly expressed for Bush “war on terror”</th>
<th>Level of executive support nationally from t to t+1</th>
<th>Executive party had partisan majorities nationally</th>
<th>Executive party had majorities in national assembly</th>
<th>Bipartisan support for executive’s WOT policies</th>
<th>Government regime type</th>
<th>Institutional and popular perceptions of the probability of a terrorist attack</th>
<th>Strong executive leader</th>
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<td>Australia</td>
<td>+</td>
<td>H</td>
<td>B</td>
<td>Mostlyb</td>
<td>Y</td>
<td>Strong</td>
<td>Y</td>
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<tr>
<td>Indonesia</td>
<td>+</td>
<td>NC</td>
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<td>Israel</td>
<td>NC</td>
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<td>Y</td>
<td>H</td>
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<td>Y</td>
<td>6</td>
<td>Y</td>
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<tr>
<td>Italy</td>
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<td>NC</td>
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<td>Russia</td>
<td>Y</td>
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<tr>
<td>Britain</td>
<td>Y</td>
<td>+</td>
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<td>United States</td>
<td>Y</td>
<td>+</td>
<td>NA</td>
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<td>Y</td>
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Note: WOT = war on terror; + = increase; – = reduction; NC = no change; Y = Yes; N = No; H = high; M = medium; L = low; B = bicameral; U = unicameral.

*bThese are inverted Freedom House scores, where 7 is the highest score.

**These are Howard’s liberal/national government did not have a Senate majority until 2004.

*Partisan control of Congress changed in 2002 and 2006. However, Republicans controlled both chambers between 2003 and 2006.
tary (Australia, Israel, Italy, and Britain), separated (United States), presidential (Indonesia), and semi-presidential (Russia). There is some variation in the structure of the assembly (e.g., Italy, Britain, the United States, Australia, and Indonesia have bicameral assemblies, whereas Russia and Israel are unicameral), and the partisan composition of governments in Australia, Britain, the United States, and Russia is usually based on one party, whereas Italy and Israel are multiparty coalitions. The different countries’ histories of terrorist attacks also vary: Australia and the United States had virtually no such experience, whereas Indonesia, Israel, Italy, Russia, and Britain did. How directly these countries were affected by jihadist terrorist attacks, which provided justification for embracing the “war on terror,” also varied, as does their geographical location and sociocultural composition.

In his Second Treaty of Government, Locke (1980) noted that governments well constituted are those governments that put the assembly and the executive power in different hands (ch. XIV, p. 159). Montesquieu’s doctrine of the separation of powers is discussed in Book XI of his Spirit of the Laws (1748/1989). In each state, he noted, there are three sorts of powers: assembly power, executive power over things depending on the right of nations, and executive power over things depending on civil rights (1748/1989, p. 156).

Evidence from West Africa also points to a similar conclusion: political will, rather than lack of oversight tools/capacity prevents representative assemblies from effectively overseeing executives (Africa All Party Parliamentary Group, 2008; Balde, 2009; Coulibaly, 2006; Ebo & N’Diaye, 2008; Ondo, 2008).

On the roles of political parties in accounting for the discrepancy between the provisions in constitutional documents and constitutional reality—what continental constitutional lawyers call the formal and the material constitution—see Finer (1949).

By comparing the balance of executive and assembly power before and after a crisis, it is possible to assess whether and to what extent critical events lead to any shift in that balance. A transition is the interval of time between the crisis or collapse of a political regime and the establishment of a new regime.

The rise of the signoria in Renaissance Italy supports Schmitt’s (1922/2005) notion that critical events lead to stronger executives and/or to emergence of the sovereign. The transition from republicanism to signoria was either due to the fact that the condottieri who had been hired to protect the city became the lords of the city or because the faction supporting a specific individual prevailed over the competing factions. According to Sismondi, “we have now arrived at a new epoch in the evolution of the commune. The result of fact is that the head of the victorious faction is given full powers of the Podestà for a term which allows him to become indispensable to the State....[L]ords come and go, it is true....but the lord remains, and ultimately a principality is established” (1906, p. 233). As under the Roman dictators, “dissension at home and danger abroad, then necessitated a concentration of power in a single hand [in the Italian republics]” (p. 235). Centuries later, Latin American caudillos used their armies to protect cities from external attacks and “the strong man could subdue his own people and make them observe some measures of righteousness, some regard to public decency and public order” (Wolf & Hansen, 1967, p. 226). Power, however, was not always so concentrated in the face of crises. In the Venetian Republic, a Council of Ten was established in 1310 (Hazlitt, 1966, pp. 554–555; Norwegian, 1977, pp. 190–199).

Article 48 is universally regarded as the key cause of the Weimar constitution’s failure. “In its vagueness and lack of effective limitations and controls,” wrote Morgenthau (1949), “that article, intended for the protection of the republic, became the instrument by which the parliamentary regime was transformed into a presidential dictatorship which enabled Hitler to make himself dictator by quasi-constitutional means.”

Although Roman dictators Italian podestà were generally initially appointed for a fixed term, because they were subsequently seen as serving their cities well, they were frequently appointed for life. “The dictator, called in for a term by common consent of the weary people, maintained peace with his hand and so tried that he was re-elected or even nominated for life....the military despotism only gradually became dynastic” (Sismondi, 1906, p. 256).

Although he stands outside the normally valid legal system, he nevertheless belongs to it, for it is he who must decide whether the constitution needs to be suspended in its entirety” (Schmitt, 1922/2005, p. 7).

Some scholars have argued that Machiavelli’s accidente is the antecedent of Schmitt’s exception, or of what we call here critical event. However, there is a major difference between Machiavelli and Schmitt. For Schmitt, the crisis leads not only to the expansion of executive power but also, crucially, to the suspension of the constitutional order. Machiavelli, however—borrowing from Aristotle—was more optimistic in that a crisis could create the condition for the preservation, even the improved functioning, of a constitutional order. “When danger is imminent,” wrote Aristotle, “men are alarmed, and they therefore keep a firmer grip on their constitution.” See McCormick (1993, p. 893).

Clearly, direct attacks on home soil place the executive under great pressure to take swift and decisive action, which executives are better able to take than assemblies. Indeed, it is almost inconceivable that executives would leave assemblies to take action first. By making the first move,
moreover, executives give themselves additional legitimacy to expand their power and/or to institutionalize such power expansion. Direct attacks are also more likely to induce a rally around the flag effect, which is bound to benefit a singular executive rather than a collective assembly. Although none were successful, Italy was subjected to attempted attacks.

As Guicciardini noted, “It is a great error to speak of the things of this world absolutely and indiscriminately, and to deal with them, as if it were, by the book. In nearly all things, one must make distinctions and exceptions because of differences in their circumstances. These circumstances are not covered by one and the same rule” (1970, p. 42).

References


Linz, Juan J. (1994). Presidential or parliamentary democracy: Does it make a difference? In Juan J. Linz & Arturo Valenzuela (Eds.), The failure of presidential democracy (pp. 91–105). Baltimore, MD: Johns Hopkins University Press.


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