

CORPORATE PREROGATIVES AND LEGISLATORS' BEHAVIOR IN PANAMA

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INTRODUCTION

During the 1990s, Panamanian legislators have manifested an exceptional concern for exploiting the corporate prerogatives¹ they enjoy as members of the Legislative Assembly. What explains this behavior? This is an interesting question because mainstream explanations have not generally addressed this aspect of lawmakers' behavior. Indeed, while the predominant theory, based on the US experience, conceives legislators as "single-minded seekers of reelection,"² it says little about the exploitation of corporate privilege as a motivation for lawmakers' actions.

Recent scholarship has attempted to illuminate the logic of legislators' behavior in countries in which reelection is not allowed or less frequent than in the United States. Some authors have argued that members of representative bodies are motivated not only by a wish to retain their seats, but also by a desire to secure political advancement as permitted by the constraints and encouraged by the incentives of the system within which they operate. According to these analysts, political appointments and election to other offices constitute the principal means of securing advancement in these countries.³ Again, however, this revisionist literature does not generally address the issue of privilege exploitation by lawmakers.

This paper argues that while reelection or political advancement are hardly irrelevant motivations, Panamanian legislators are also strongly urged by a desire to establish, maintain, and expand their own corporate prerogatives in the short term. In other words, they wish to take advantage, to the degree possible, of the privileges and immunities they enjoy by virtue of their membership in a corporate group (the Legislative Assembly), to the exclusion of the rest of the population. This behavior, it is contended, is to a meaningful extent a function of institutional constraints and incentives.

¹ The term "corporate (or collective) prerogatives," used interchangeably with "corporate (or collective) privileges" refers to the prerogatives, such as legal privileges and immunities, enjoyed by legislators by virtue of their membership in a corporation (the Legislative Assembly), to the exclusion of the rest of the population.

² David Mayhew, Congress: The Electoral Connection (New Haven and London: Yale University Press, 1974), p. 5.

³ See, among others, Richard Katz, A Theory of Parties and Electoral Systems (Baltimore: Johns Hopkins University Press, 1980); Gary W. Cox, The Efficient Secret: The Cabinet and the Development of Political Parties in Victorian England (New York and Cambridge: Cambridge University Press, 1995); John M. Carey, Term Limits and Legislative Representation (New York and Cambridge: Cambridge University Press, 1996); Scott Mainwaring, The Party System and Democratization in Brazil (Stanford: Stanford University Press, forthcoming).

The paper's argument presupposes that formal and informal institutions contribute to shape political action, by constraining or stimulating political behavior.⁴ The unlikelihood of reelection, electoral volatility, and party controls are among the institutional constraints on legislators that orient their action towards short-term behavior. A stress on particularistic politics, the absence of efficient accountability mechanisms, and a legacy of corporatist populism are among the institutional incentives to behavior focused on exploiting privilege. The essay, in consequence, explains legislators' behavior partly as a function of institutional constraints and incentives.

After these introductory remarks, the paper will describe the privileges and immunities of Panamanian legislators. It will provide compelling evidence, in chronological sequence, of how lawmakers have striven to establish, maintain, and expand their corporate prerogatives during the current decade. Subsequently, an attempt will be made to interpret these developments in the light of the above-mentioned institutional constraints and incentives that contribute to shape Panama's political arena. In addition to summarizing findings, a concluding section will pose questions for further research as regards the theoretical and political implications of the phenomenon.

PRIVILEGES AND IMMUNITIES OF PANAMANIAN LEGISLATORS

Background

A chronological survey of legislative action in the 1990s provides support for the view that the behavior of Panamanian legislators is in significant measure oriented towards the establishment, maintenance, and expansion of their own collective prerogatives. Immediate antecedents of contemporary developments are found in the inception of a new constitutional regime in 1984. Introduced under military rule, this new regime placed the country's legislative power once again in the hands of a representative body designed along liberal democratic lines. The Legislative Assembly, as it was now called, was to be composed of legislators elected on a

⁴ As held, among other authors, by Kathleen Thelen and Sven Steinmo, "Historical Institutionalism in Comparative Politics," in Sven Steinmo, Kathleen Thelen, and Frank Longstreth, eds., Structuring Politics: Historical Institutionalism in Comparative Analysis (New York and Cambridge: Cambridge University Press, 1992); Robert Putnam, Making Democracy Work: Civic Traditions in Modern Italy (Princeton: Princeton University Press, 1993); Guillermo O'Donnell, "Delegative Democracy?" Journal of Democracy 5:1 (January

population basis for a five-year term, both in single- and multi-member constituencies. To provide for vacancies in the legislature, two alternates were to be elected concurrently with each legislator.⁵

At this time the Assembly emerged as a corporate body, protected from the law and from redress by citizens, and sustained by goods formally available only to its privileged membership, such as exceedingly high salaries, exemption from taxation, and other perquisites.⁶ According to the 1972 Constitution, as reformed in 1984, Panamanian legislators enjoy immunity from civil and criminal prosecution, except when caught *in flagrante delicto* or when a member voluntarily renounces immunity. The Assembly also holds the exclusive right to decide if a legislator will be prosecuted, in which case it must authorize the trial.⁷ While representative bodies have traditionally granted their members certain privileges and immunities in order to guarantee the effective performance of legislative duties,⁸ the case of Panama stands out for the magnitude these prerogatives have acquired, as specified in the Assembly's own rules of procedure (*Reglamento Interno*) and exemplified by legislative practice.

Early in the first 1984 session the Judicial Committee of the Assembly, composed of both government and opposition legislators, met to draft the *Reglamento Interno* which, as national law, was to govern the proceedings of the legislature and confer special prerogatives upon its members.⁹ While Article 204 of the *Reglamento Interno* reiterated the immunity provisions of the Constitution, Article 203 indicated that legislators deserved "consideration and respect" from the authorities. As will later be seen, this stipulation has provided legislators with a justification to support the maintenance and expansion of their collective prerogatives. Article 31 assigned each lawmaker an assistant, a secretary, and a driver. Article 206 gave legislators postal, telephone, and telegraph franking privileges as well as the right to the duty-free import of a vehicle, for their

1994): 55-69; Scott Mainwaring and Timothy R. Scully, eds., Building Democratic Institutions: Party Systems in Latin America (Stanford: Stanford University Press, 1995).

⁵ Miguel Antonio Bernal, ed., Constitución de la República de Panamá de 1972 (Panama: IEPI, 1995), Arts. 140, 141.

⁶ I thank Martha Merritt for this observation.

⁷ Bernal, ed., Constitución de la República de Panamá, Arts. 149, 154.

⁸ See, for example, the US Constitution, Art. 1, Sec. 6.

⁹ The Judicial Committee of the Assembly which drafted the *Reglamento Interno* was composed by Ovidio Díaz, Rigoberto Paredes, Hugo Giraud, Harmodio Icaza, Virgilio Sáenz, and Celso Carrizo of the dictatorship bloc, and Jorge Rubén Rosas, Guillermo Cochez, and Francisco Artola of the opposition bloc. See República de Panamá, "Ley No. 49 de 4 de diciembre de 1984," in Leyes aprobadas por la Asamblea Legislativa, 1984, Vol. 5 (Panama: Asamblea Legislativa, 1984).

personal use, once every two years. It also entitled legislators and their families as well as alternates who acted in lieu of their principals the right to diplomatic passports.¹⁰ Assembly members were also given special vehicle plates, which translated into *de facto* immunity from citation for traffic violations.¹¹

While not contemplated in the *Reglamento Interno*, legislators' remuneration and ample access to funding also contributed to set them apart as a privileged group. In sharp contrast to Panama's minimum monthly wage, which towards the end of 1998 did not yet reach US\$300,¹² lawmakers' basic monthly salary was set at US\$5,000. To this was added a \$1,000 monthly fuel allowance and a \$1,000 expense allowance, all of which brought legislators' fixed monthly emoluments to \$7,000.¹³ Additionally, each legislator was awarded a \$4,000 staff allocation and substantial constituency appropriations (*partidas circuitales*) were made available to both government and opposition members for pork distribution purposes.¹⁴ These matters are stipulated in the annual appropriations bill submitted by the executive and approved by the Assembly.

The 1990-1992 Struggle for Immunity

The 1990s have witnessed a strengthening of legislators' collective privileges and immunities. During the early years of the decade, between 1990-1992, the Assembly reacted resolutely to the attempts of a more autonomous Prosecutor-General's Office (*Ministerio Público*) to hold legislators accountable for common crimes. Action by the Prosecutor-General

¹⁰ República de Panamá, "Ley No. 49 de 4 de diciembre de 1984." Diplomatic passports allow their bearers expeditious and unobstructed passage through ports of entry in Panama and, presumably, abroad as well. Information provided by former magistrate Guillermo Márquez Amado (3 September 1998)

¹¹ Information provided by former legislator Guillermo Cochez (4 September 1998).

¹² Juan Jované, "Panamá: ni desarrollo productivo ni equidad," *La Prensa*, 14 March 1998. The basic annual income of a legislator amounts to \$84,000. A Planning Office report released in mid-1998 calculated Panama's annual average per capita income at \$2,237 per annum. *El Panamá América*, 12 June 1998.

¹³ Compiled from information provided by former magistrate Guillermo Márquez Amado (3 September 1998), former legislator Guillermo Cochez (4 September 1998), University of Panama professor Salvador Sánchez González (7 September 1998), and legislator Marco Ameglio (11 September 1998). The issue of legislators' payments is generally regarded as a sheltered sphere and figures are not readily available. Emoluments are specified in a yearly resolution issued by the Assembly's board. In addition to these payments, between 1984-1994 the president of the Assembly received \$2,500 and each of the two vice-presidents \$1,250 monthly. After 1994, these supplementary payments were increased to \$5,000 and \$3,000, respectively. Information provided by legislator Marco Ameglio (11 September 1998).

¹⁴ Information received from former magistrate Guillermo Márquez Amado (3 September 1998) and former legislator Guillermo Cochez (4 September 1998).

against officers of the state was a new development in Panama, where during the 1968-1989 dictatorship public officials, including legislators, generally enjoyed *de facto* immunity owing to the *Ministerio Público*'s subordination to the military-controlled executive. In addition to constituting an effort to reinforce the privileged status of its members, the Assembly's response may also be understood as a reaction against the democratic requirements of accountability and equality before the law.¹⁵

The case in point between 1990-1992 was the protracted effort by the *Ministerio Público* to prosecute three PRD lawmakers, Balbina Herrera, Alberto Alemán Boyd, and Elías Castillo. At the time of their proclamation as elected legislators, shortly after the US invasion of 20 December 1989 but prior to the first meeting of the new Legislative Assembly on 1 March 1990, the three were under investigation for assorted crimes.¹⁶ When this was pointed out by the press, officials of the new civilian regime were quick to comment that they could only be prosecuted and tried if authorized by the Assembly. This interpretation held despite the fact that the legislative immunity period had not yet begun, given that, in accordance with Panamanian electoral law, elected officers also enjoy immunity from prosecution.¹⁷

When the *Ministerio Público* completed its investigation and sent it along an immunity suspension request to the legislature, on 26 June, four days before adjournment, Assembly officers complained that Prosecutor-General Rogelio Cruz had waited until the last moment to file his request. In the absence of legal precedents, handling the cases would be time consuming, they explained, for this was the first time the legislature received a formal request for immunity suspension. The legislature was now too busy to consider the request, said Assembly President Carlos Arellano Lennox, then of the Christian Democratic Party (PDC), but Prosecutor-General Cruz could order any arrest after 5 July, when the immunity period expired, as prescribed by the Constitution. Before the end of the immunity period, however, the accused legislators left the country, only to return after they were once again legally immune.¹⁸

¹⁵ I thank Rossana Castiglioni for this observation.

¹⁶ Herrera was accused of conspiring to commit murder; Alemán of embezzlement and electoral fraud; and Castillo of embezzlement. A case against a fourth PRD legislator, Mario Rognoni, was never formalized. *La Prensa*, 4 February 1990; *El Panamá América*, 7 February 1990.

¹⁷ Brittmarie Janson Pérez, "El pueblo luchó y los políticos claudicaron," *La Prensa*, 19 March 1998; information provided by legislator Marco Ameglio (11 September 1998).

¹⁸ *La Prensa*, 27 June 1990, 2 July 1990, 4 September 1990.

Notwithstanding the absence of the accused, the Judicial Committee of the Assembly met during the legislative recess to consider the prosecutor-general's request. The committee decided in favor of suspending the PRD legislators' immunity and presented the plenum with this recommendation after the legislature reconvened on 1 September.¹⁹ In the meantime, however, a row about the distribution of the directing positions of the Assembly ensued within the governing coalition. The Christian Democrats, who held a relative majority of seats, wished to maintain control of the presidency of the legislature while the other government parties advocated rotation of the position among the coalition members.²⁰ When the Christian Democrats refused, it was reported that the remaining parties in the coalition struck a deal with its erstwhile opponents: the PRD would cast the decisive vote for MOLIRENA's Alonso Fernández Guardia to assume the presidency of the Assembly in exchange for guaranteed immunity.²¹

Heated controversy over legislators' immunity characterized this new legislative period. When discussion of the Judicial Committee report requesting immunity suspension began, PRD legislators argued the petition was not only unconstitutional but also demonstrated the administration's proclivity toward political persecution. The party's representatives engaged in filibuster and blackmail tactics, accusing lawmakers in the governing coalition of a diversity of crimes ranging from embezzlement to rape. While President Fernández declared the Assembly in permanent session until the matter was decided, the debate dragged on endlessly and bitterly. At one point legislators Herrera, Alemán, and Castillo voluntarily renounced their immunity; Prosecutor-General Cruz, however, later informed that the waivers were not valid due to a legal technicality. When Herrera and Alemán (but not Castillo) "corrected" their waivers the Christian

¹⁹ La Prensa, 13 July 1990, 25 July 1990. The nine members of the Judicial Committee were Raúl Ossa, Gloria Moreno, Raquel Lanuza, and Domi Luis Montenegro (PDC); Miguel Cárdenas and Leo González (MOLIRENA); Aurelio Alba (Arnulfista); Marco Ameglio (Liberal Auténtico); and Alberto Alemán Boyd (PRD). All except Alemán Boyd (PRD) voted in favor of recommending immunity suspension. La Prensa, 25 July 1990; information provided by legislator Marco Ameglio (11 September 1998).

²⁰ As of September, 1990, the government coalition in the Assembly consisted of the Christian Democratic, MOLIRENA, Arnulfista, and Liberal Auténtico parties. Together they held 51 of the still incomplete Assembly's 58 seats, as follows: Christian Democratic Party: 26; MOLIRENA: 13; Partido Arnulfista: 7; Partido Liberal Auténtico: 5. All 7 opposition seats belonged to the PRD, the military dictatorship's party. Compiled from Electoral Tribunal data.

²¹ La Prensa, 4 September 1990, 8 September 1990. This September 1990 deal set the stage for productive collaboration between the PRD and the MOLIRENA, Arnulfista, and Liberal government factions in the legislature. Thanks to PRD support, these parties obtained control of the directing positions of the Assembly in 1990-1991, 1992-1993, and 1993-1994. Information provided by legislator Marco Ameglio (11 September 1998). See also Latin American Newsletters wire, 24 September 1992; La Prensa, 30 December 1992.

Democratic chairman of the Judicial Committee requested a vote to confirm the suspension of immunity. The PRD bloc then walked out of the Assembly hall and broke the quorum. This blunt action concluded the debate, for according to the *Reglamento Interno* a break in quorum automatically brought a permanent session to an end.²²

Even though the Assembly failed to decide on the issue of legislative immunity, Prosecutor-General Cruz ordered the arrest of legislator Castillo after the immunity period was over, on 5 January 1991. Throughout Castillo's captivity the PRD bloc in the Assembly repeatedly demanded his release on constitutional and legal bases. In response to these protests and, more generally, in reiteration of the corporate privileges and immunities of the members of the Assembly, the legislature introduced important elaborations on the immunity thesis, included within the wide-ranging reform of the *Reglamento Interno* that was approved in May 1992. As corollary to this approval, in June 1992 Castillo was set free and reassumed his legislative seat.²³

The corporate prerogative of legislative immunity was indeed strengthened by the 1992 reform. The law was now rewritten to say that while either citizens or the prosecutor-general could solicit the prosecution of legislators, a suit against a lawmaker required that proof of the denounced misdeed be presented. Moreover, suits by citizens required depositing an unspecified bail bond with the *Ministerio Público*. Needless to say, these new requirements placed significant obstructions to the filing of complaints against legislators.²⁴

As stipulated by the 1992 reform, upon receipt of an accusation against a legislator, the prosecutor-general must immediately file it with the Assembly, where it is assigned to the Judicial Committee. If the committee believes a formal investigation is merited, it recommends the suspension of immunity, which must be decided upon by the plenum. Otherwise, the committee

²² *La Prensa*, 4 September 1990, 7 September 1990, 11 September 1990, 18 September 1990, 19 September 1990, 20 September 1990.

²³ *La Prensa*, 5 January 1991, 26 February 1991, 12 March 1991, 23 April 1991, 28 April 1991, 3 May 1991, 5 June 1992; República de Panamá, "Ley No. 7 de 27 de mayo de 1992"; information provided by University of Panama professors Miguel Antonio Bernal (6 September 1998) and Salvador Sánchez González (7 September 1998); information provided by a confidential source. Another argument that served to support the release of Castillo was that he had already been under "preventive" imprisonment for an amount of time equivalent to the minimum prison term for embezzlement. Information provided by legislator Marco Ameglio (11 September 1998).

²⁴ República de Panamá, "Ley No. 7 de 27 de mayo de 1992," Art. 78; information provided by University of Panama professor Salvador Sánchez González.

rejects and files the complaint. The same procedure applies when, acting *sua sponte*, the Prosecutor-General requests immunity suspension for investigative purposes.²⁵

The 1992 reform also prescribed the nullity of any judicial process in which the legislator in question had not previously waived his/her immunity or the proceedings had not been authorized by the Assembly. For investigative purposes a legislator's immunity may only be suspended for a maximum period of two and a half months. An indictment must be formalized within this period, except if the Supreme Court requests a once only, two and a half month extension to broaden the case.²⁶ Given the overburdening of Panama's judicial system, it is highly unlikely for an indictment to be formalized within such a short term.

The *Ministerio Público* must thus have authorization from the Assembly before it begins investigations against a legislator. Once the investigation is completed, the report must be sent to the Assembly before the case is tried. After the indictment is formalized the Supreme Court must rule within a one month period. Except as a result of a judicial ruling or when caught *in flagrante delicto*, a legislator may not be arrested unless expressly authorized by the Assembly.²⁷

The January arrest of Elías Castillo proved to be the high point in the *Ministerio Público's* battle against the Assembly. Thereafter, several factors combined to assert the legislature's corporate prerogatives as regards immunity from prosecution. Among these were the PRD's belligerence, the party's acquisition of a majority of seats in the January 1991 partial legislative elections,²⁸ enlistment of foreign support for their cause,²⁹ the rapid erosion of the *Ministerio Público's* credibility, and the breakdown of the governing coalition in April 1991, which promoted further cooperation between the remaining government parties and the PRD.³⁰ In all appearances, however, the most significant factor was generalized support among both government and opposition legislators for upholding the "principle" of legislative immunity.

²⁵ República de Panamá, "Ley No. 7 de 27 de mayo de 1992," Arts. 77, 78, 80.

²⁶ República de Panamá, "Ley No. 7 de 27 de mayo de 1992," Art. 94.

²⁷ República de Panamá, "Ley No. 7 de 27 de mayo de 1992," Arts. 79, 81.

²⁸ As a result of electoral irregularities in May and the US invasion of December, 1989, partial legislative elections were celebrated in January 1991. The PRD and its allies (PALA, Liberal) acquired five of the nine contested seats in these elections of 27 January 1991. *La Prensa*, 30 January 1991.

²⁹ In March, 1991, Humberto Peláez, President of the Latin American Parliament (PARLACEN) and deputy Walter Márquez, member of the Human Rights Subcommittee of the Venezuelan Congress, visited legislator Castillo in prison. *La Prensa*, 12 March 1991.

³⁰ Information provided by legislator Marco Ameglio (11 September 1998). In April 1991 the Christian Democratic Party withdrew from the government coalition. The Arnulfista, MOLIRENA, and Liberal Auténtico parties remained in coalition until the electoral campaign of 1994.

Legislator Castillo, as noted above, remained in prison for a year and a half after which he returned to the Assembly.³¹ Although Prosecutor-General Cruz requested the prosecution of legislator Herrera, charges against her were eventually dropped, ostensibly for lack of strong evidence.³² As regards the cases against legislator Alemán, these were left dormant.³³

Conceptual Stretching: Variations on the Immunity Theme

In the face of attempts to hold legislators accountable for transgressions of the law, the Panamanian Assembly has consistently sprung to the defense of its members, protecting them through collective action against prosecution. The legislature has repeatedly held that its members enjoy a special legal status and acted firmly to maintain it. Both under the previous (Endara) and current (Pérez Balladares) administrations, the Judicial Committee has recurrently dismissed charges against both government and opposition legislators.³⁴ In other instances it has neglected to consider serious complaints. No action was taken, for example, in June 1991, when the acting mayor of Panama City complained that legislator Alberto Alemán Boyd had obstructed a police operative and assaulted a local *corregidor* (district magistrate). Such permissiveness was also demonstrated towards Balbina Herrera after authorities accused her of inciting violent disturbances during the official visit of US President George Bush in June, 1992.³⁵

The Assembly has also maintained that immunity is transferable to a legislator's property. When the house of legislator Gerardo González (PRD) was searched under warrant in 1992, the legislature issued a statement protesting violation of González's "immunity."³⁶ In reply, Prosecutor-General Cruz contended that immunity did not apply to a legislator's belongings. But the "transfer of immunity" argument has held: when in 1992 the automobile of legislator Miguel

³¹ At the time of this writing it was not clear whether Castillo's trial was still pending or if his case had been dismissed by the Supreme Court. Information provided by legislator Marco Ameglio (11 September 1998) and a confidential source.

³² *La Prensa*, 29 December 1990, 26 February 1991; information provided by confidential sources.

³³ *La Prensa*, 12 March 1991, 28 April 1991, 3 September 1996; information provided by former legislator Guillermo Cochez (4 September 1998), University of Panama professor Miguel Antonio Bernal (6 September 1998), and a confidential source.

³⁴ *La Prensa*, 7 October 1994, 29 August 1995, 23 December 1995, 20 August 1997.

³⁵ *La Prensa*, 15 June 1991, 16 June 1992; UPI wire, 6 July 1992.

³⁶ Gerardo González is the current president of the Assembly. Originally elected in 1997, he was reelected on 1 September 1998 after an amendment to the *Reglamento Interno* permitting a president to serve two consecutive terms was approved in February 1998. República de Panamá, "Ley No. 16 de 17 de febrero de 1998" (*Gaceta Oficial* No. 23.486 de 19 de febrero de 1998); *La Prensa*, 2 September 1998.

Bush (PRD) was stopped in a roadblock under suspicion of carrying contraband, the lawmaker defended his immunity, as well as that of his vehicle, at gunpoint. An automobile reportedly owned by the same legislator was involved in a similar incident in 1997.³⁷

In fact, only under pressure from more powerful external actors has the Assembly acquiesced in suspending the immunity of its members. The details of pressure exertion and resistance by the Assembly give additional support to the view that protecting corporate privilege is a major concern of Panama's legislature. Only two examples exist of immunity suspension by the Assembly; both occurred in 1994, in response to strong demands the legislature was unable to resist.

In November 1993 legislator Anel Ramírez (PALA, a PRD ally) was entrapped in a DEA sting operation and arrested in Miami. Brought before a US federal judge, Ramírez admitted he had employed public funds to purchase 150 kg of cocaine, stored the narcotics in his house, and used his vehicle to transport the drugs. This he had felt confident he could get away with, Ramírez declared, because the general view among his colleagues held that the immunity prerogatives of the *Reglamento Interno* guaranteed the inviolability of a Panamanian legislator's property. As a result of the international implications of the case, but only after lengthy procrastination, the Assembly voted to strip Ramírez of immunity in April 1994. It was the first time the legislature suspended the immunity of one of its members.³⁸

In November 1994 legislator Mario Miller (PRD) was caught *in flagrante delicto* by Panamanian police officers as he allegedly proceeded to extort money from a group of businessmen. Although his arrest was initially prevented by the intervention of fellow legislators, Miller turned himself in hours later.³⁹ Now claiming that it had the right to determine the flagrancy of a crime,⁴⁰ the Assembly immediately demanded that the case be transferred from the *Ministerio Público*. Among the most vocal defenders of Miller's right to immunity were Balbina

³⁷ *La Prensa*, 16 June 1992, 22 June 1992, 4 April 1997, 20 April 1997.

³⁸ Reuters wire, 20 October 1993, 25 October 1993, 6 April 1994; *La Prensa*, 27 December 1993, 24 February 1994, 15 March 1994, 6 April 1994, 29 August 1994; Betty Brannan Jaén, "El juicio de Anel Ramírez," *La Prensa*, 4 September 1994.

³⁹ *La Prensa*, 22 November 1994, 24 November 1994. While newspaper reports spoke of "legislators," the only one they identified by name was Aris de Icaza, who won his seat on the opposition Partido Renovación Civilista (PRC) ticket but later switched to the government coalition.

⁴⁰ An editorial in *La Prensa* dated 17 May 1995 complained that a recent amendment to the Judicial Code had given the Assembly the right to determine the flagrancy of a crime imputed to one of its members.

Herrera (PRD), now president of the Assembly and Miguel Bush (PRD), now chair of the Judicial Committee.⁴¹

When the battle over the legality of Miller's arrest began to linger, it was reported that President Ernesto Pérez Balladares (PRD) demanded that the government bloc in the Assembly suspend the legislator's immunity. Political observers commented that the accused legislator had incurred President Pérez Balladares' enmity and that the chief executive wished to use the case as an example of what was in store for legislators who wavered from his line. Be that as it may, only at the president's insistence did the legislature reluctantly agree to the suspension of Miller's immunity.⁴²

As the above examples demonstrate, Panama's Assembly has shown a firm determination to uphold the corporate prerogatives of its members as regards immunity from prosecution. While legislating to make it practically impossible to hold legislators accountable for misdeeds and dismissing complaints against lawmakers on the rare occasions that they make their way to the Judicial Committee, the Assembly has also extended the corporate prerogative of immunity to include legislators' property. Only when coerced by more powerful political actors, such as the executive or agencies of the US government, has the Assembly acquiesced in turning in one of its own for criminal prosecution.

The Expansion of Privilege

Maintenance and expansion of lawmakers' immunity is not the only form legislative concern for corporate prerogatives has taken in the 1990s. The Assembly has also manifested a keen interest in augmenting the privileges enjoyed by its members. As is the case with legislative immunity, in most instances the legislature has succeeded in expanding these privileges except when this has meant running into trouble with a more powerful actor.

As noted above, the Assembly's *Reglamento Interno* prescribes legislators' access to goods denied to the rest of the population, such as franking privileges, the duty-free import of

⁴¹ *La Prensa*, 29 November 1994, 30 November 1994, 1 December 1994, 2 December 1994, 3 December 1994, 23 March 1995, 22 November 1995, 8 December 1995.

⁴² *La Prensa*, 29 November 1994, 30 November 1994, 1 December 1994, 2 December 1994, 3 December 1994; information provided by former magistrate Guillermo Márquez Amado (3 September 1998), University of Panama professor Miguel Antonio Bernal (6 September 1998), legislator Marco Ameglio (11 September 1998), and confidential sources.

vehicles, and the use of diplomatic passports. The 1992 reform that so meticulously addressed the issue of legislative immunity also gave postal, telephone, and telegraph franking privileges to alternates and made it easier for them to acquire duty-free vehicles. Diplomatic passports were assigned to alternates, whether or not they had ever replaced their principals, as well as to alternates' spouses. A 1998 amendment to the *Reglamento Interno* included every alternate's dependent children among the beneficiaries of diplomatic passports.⁴³ According to political observers, pressure from lawmakers and alternates, who were constantly after more prerogatives, motivated this expansion in privilege.⁴⁴

Additions to already existing corporate prerogatives have not gone unnoticed by the public. Legislators, however, have been steadfast in denouncing protests as part of a "discrediting campaign" orchestrated against the Assembly as well as in defending their privileges.⁴⁵ When, as a result of investigations by the Comptroller General's Office, a scandal over the sale of duty free automobiles by members of the Assembly broke out in 1994, legislators rallied in their own defense. Predictably, no legal action was taken.⁴⁶

In 1995 the legislature attempted to add a cellular telephone franking privilege to its members' prerogatives. Public disapproval became so widespread after the measure passed the third reading, with support from both government and opposition legislators, that Assembly President Balbina Herrera (PRD) asked President Pérez Balladares to veto the new privilege. Provided with yet another opportunity to pose as champion against corruption, the chief executive obligingly consented.⁴⁷

In 1996 lawmaker Alberto Alemán Boyd (PRD) presented an "honors" bill officially recognizing the preeminent status of legislators in the republic. As anticipated above, Alemán claimed the bill was justified as a development of the *Reglamento Interno* clause indicating that legislators deserved "consideration and respect" from authorities.⁴⁸ Since the Alemán bill

⁴³ República de Panamá, "Ley No. 7 de 27 de mayo de 1992," Art. 95; República de Panamá, "Ley No. 16 de 17 de febrero de 1998," Art. 44.

⁴⁴ Information provided by former legislator Guillermo Cochez (4 September 1998), University of Panama professor Miguel Antonio Bernal (6 September 1998), and legislator Marco Ameglio (11 September 1998).

⁴⁵ See, in this regard, *La Prensa*, 23 June 1991, provided by Brittmarie Janson Pérez, and 28 December 1994.

⁴⁶ *La Prensa*, undated issues, 1994; information provided by former magistrate Guillermo Márquez Amado (3 September 1998), former legislator Guillermo Cochez (4 September 1998), University of Panama professor Miguel Antonio Bernal (6 September 1998), and legislator Marco Ameglio (11 September 1998).

⁴⁷ *La Prensa*, 30 June 1995.

⁴⁸ República de Panamá, "Ley No. 49 de 4 de diciembre de 1984," Art. 203.

reiterated the *Reglamento Interno* provision that legislators must enjoy “at a minimum, the same prerogatives, emoluments, and allowances as do ministers of State,”⁴⁹ it was reported that the Assembly’s members were after a \$3,000 monthly pay increase, from \$7,000 to \$10,000. Some time earlier President Pérez Balladares had increased ministers’ salaries from \$5,000 to \$10,000 monthly. While the “honors” bill was approved despite public indignation, the legislators’ pay increase expectations were frustrated after the chief executive ordered a reduction in minister’s salaries to \$7,000 per month.⁵⁰

As this section’s chronological survey shows, under both administrations in office since 1990 government and opposition legislators in Panama have been bent on protecting the corporate prerogatives they instituted in their favor in 1984. Whenever possible, lawmakers have also attempted to expand them as well. Yet the establishment, maintenance, and expansion of collective privilege as a motivating force behind lawmakers’ behavior remains to be explained. The following section constitutes an endeavor in this regard, on the basis of the institutional constraints and incentives that might foster this behavior.

INSTITUTIONAL CONSTRAINTS AND INCENTIVES

This section contends that, as posited by institutionalist theory, an attempt to explain the behavior of Panamanian legislators should take into account the constraints and incentives that Panama’s formal and informal institutions exert on lawmakers. Although institutional factors do not fully account for the phenomenon, they do help explain it to a meaningful extent. While findings are still preliminary and require more rigorous testing, the argument here advanced is that institutional constraints and incentives contribute to direct legislators’ collective action toward a short-term concern for establishing, maintaining, and expanding their corporate prerogatives. This concern may be understood at least partly as a result of the uncertainty of continued incumbency within an institutional context that promotes particularistic behavior. In this endeavor, uncertainty-increasing constraints (unlikelihood of reelection, high electoral volatility, and party control over legislators) will be examined alongside incentives promoting particularism

⁴⁹ República de Panamá, “Ley No. 49 de 4 de diciembre de 1984,” Art. 205.

⁵⁰ *La Prensa*, 3 December 1996, 5 December 1996.

(a focus on “low” politics, weak accountability mechanisms, and the corporatist legacy of the military dictatorship).

Constraints

It may be argued that the short-term horizon evident in the behavior of Panamanian legislators is at least partially the result of the uncertainty of the political system within which they operate. In this regard, the low probability of retaining legislative office is the most salient issue. While Panamanian lawmakers are allowed to serve consecutive terms in office, the country’s reelection rate is quite low. In effect, although lawmakers actively seek reelection, only a limited number succeed in their aspiration. Indeed, only 10 percent of incumbents retained their seats in 1989/1991.⁵¹ In 1994, 70 percent of the 1990-1994 legislature ran for office again but only 18 percent of the total Assembly membership, or 26 percent of those nominated, retained their seats.⁵²

Reelection is, moreover, contingent upon party nomination. Even incumbency for the duration of the five-year period cannot be taken for granted, given the recall mechanism constitutionally vested on parties (but not constituents). Both these features are linked to intense electoral volatility and party control over legislators.

High electoral volatility is among the most salient features of Panama’s legislative politics. Between the last two elections, 1989/1991-1994, the net change in parties holding Assembly seats was 61 percent. The corresponding figure for 1984-1989/1991 was 55.5 percent. It may be convincingly argued that such issues as electoral manipulation, highly prevalent under military rule, have wielded a distorting effect on these figures. It may also be said that party switching by legislators, a factor that might reduce the net effect of volatility on actual legislative turnover, is by no means unknown in Panama. The fact remains, however, that membership in the legislature changes dramatically over time,⁵³ a factor that doubtless reduces the likelihood of continued incumbency.

⁵¹ Partial legislative elections were held in January 1991. See note 28, above.

⁵² *La Prensa*, 31 August 1994.

⁵³ 206 individuals have been elected to the Panamanian Assembly since 1984; of these, only 20, or 10%, were ever reelected.

To marked variation in electoral outcomes must be added the control that parties exercise over nominations and their capacity to revoke a legislator's mandate. There are no independent candidacies to the Panamanian Assembly; only duly registered parties may present candidates for election. Nomination, moreover, has traditionally been controlled by the party leadership. Legislators not in good standing with the directorate are unlikely to secure nomination for reelection. Parties may also recall legislators who, in the directorate's view, fail to follow the party platform.⁵⁴ Although recall has been infrequent, the fact that it has been exercised at least twice since 1984 lends plausibility to the view that it may be effectively employed to shorten an elected legislator's incumbency.⁵⁵

Low reelection rates, high volatility, and party control partially explain the uncertainty surrounding legislative careers. These constraints produce rapid turnover in the protected zone of the Legislative Assembly, which in turn contributes to focus legislators' attention on the short-term exploitation of corporate prerogatives. Additional incentives promoting this behavior, however, are yet to be examined.

Incentives

Even as electoral realities and party controls constrain Panamanian legislators, behavior directed towards the establishment, maintenance, and expansion of corporate prerogatives is bolstered by at least three salient institutional traits: a focus on "low" politics, weak accountability mechanisms, and the corporatist legacy of the military dictatorship. These incentives favor the predominant concern with particularism evident in the behavior of Panamanian lawmakers.

While theoretically vesting supreme lawmaking authority in the Assembly, Panama's Constitution of 1972 and, more significantly, day to day political practice effectively bar proactive involvement by the legislature in consequential political issues. "High" politics – policy making on budget preparation, organization of the administration, economic planning, and international relations, among others – are essentially the preserve of the executive. However, on issues pertaining to "low" politics – including constituency service and the Assembly's own corporate

⁵⁴ Bernal, ed., *Constitución de la República de Panamá*, Arts. 140, 145.

⁵⁵ In 1987, legislator Omaira Correa (PALA, a PRD ally) suffered recall after she defected from the dictatorship camp. In 1994, after allegedly being caught *in flagrante delicto*, the PRD revoked legislator Mario Miller's

prerogatives – the legislature generally enjoys autonomy.⁵⁶ For instance, even though the Assembly does not have a significant say in overall budget design, it does prepare its own budget and makes certain adequate funding is available for its activities, particularly among them pork allocation through the so-called *partidas circuitales* (constituency appropriations), a well-known funding source for legislators' individual socio-economic advancement and the maintenance of clientelistic relationships. The political system, indeed, privileges particularistic behavior.

Weak accountability mechanisms also contribute toward this end. Panama's judicial system is notoriously inefficient and overburdened.⁵⁷ The generalized climate of impunity this has produced provides an additional incentive for self-seeking behavior by legislators. Moreover, citizen initiatives such as recall and referenda are non-existent.⁵⁸ Citizens, in effect, are only able to hold legislators accountable at election time, once every five years. As long as lawmakers follow the party line and do not step out of their constrained sphere of action, they are virtually guaranteed a free hand in maintaining and expanding the exclusive enjoyment of certain collective goods for the duration of their incumbency.

The corporatist legacy of the military regime (1968-1989) has also influenced Panamanian politics and, consequently, the attitudes of legislators. To secure support for the regime the military granted special prerogatives to key constituencies, among them the members of the appointed Legislative Council as well as the Assembly of *Corregimiento* Representatives that exercised symbolic legislative power between 1972-1984. Similar to those enjoyed by current legislators, these prerogatives included recourse to diverse funding sources and permanent state pensions, diplomatic passports, and special license plates, among others.⁵⁹

mandate. José Blandón Figueroa, "Revocatoria partidista vs revocatoria ciudadana," *El Panamá América*, 2 June 1998.

⁵⁶ See Bernal, ed., *Constitución de la República de Panamá*, Arts. 153, 158, 159, 178, 179, 195, 264, 266, 268, 272. On the executive's monopoly over "high" political issues and the Assembly's incapacity to involve itself in these matters, see, additionally, Ricardo Arias Calderón, "Consulta y propuesta demócratas cristianas (2. Sociedad civil y Estado, desarrollo y participación)," *El Panamá América*, 3 March 1998; "Reelección: ¿Todos o nadie?," *El Panamá América*, 10 May 1998; "La patria joven contra la reelección: 3. Proyectar un futuro alterno," *El Panamá América*, 14 June 1998; "¿Estamos consolidando nuestra democracia?," *El Panamá América*, 26 July 1998.

⁵⁷ Public perception of corruption in the judicial system is broad. See US Department of State, "Panama Country Report on Human Rights Practices for 1997," http://www.state.gov/www/global/human_rights/1997_hrp_report/panama.html.

⁵⁸ Blandón Figueroa, "Revocatoria partidista vs revocatoria ciudadana," *El Panamá América*, 2 June 1998.

⁵⁹ República de Panamá, "Ley 45 de 10 de octubre de 1984, por la cual se reconocen derechos a los legisladores de los períodos 1978-1980, 1980-1982 y 1982-1984," (*Gaceta Oficial* No. 20.195, 30 November 1984); *El Panamá América*, 22 July 1998.

When an Assembly along liberal-democratic lines was reintroduced in 1984, still under military rule, the corporate mentality was already very much a part of Panama's political reality. Moreover, the overthrow of the military regime by invading US forces did not translate into a profound break with the populist authoritarian style of the previous period. The fact that the military's Constitution of 1972 remained in force, as did authoritarian and particularistic legislation introduced under the dictatorship is, in effect, further indication of the endurance of the corporatist mindframe among Panama's politicians.

Institutionalist theory holds that institutions shape political outcomes by structuring political behavior.⁶⁰ As an important dimension of the latter, legislators' behavior is at least partly fashioned by the workings of a system's institutions. This view appears to be corroborated in the case of Panama, where such features as the unlikelihood of reelection, high electoral volatility, party controls, an emphasis on "low" politics, weak accountability, and the legacy of militarism help understand legislators' overriding concern for exploiting their own corporate prerogatives.

CONCLUSIONS

The main theoretical implication of this paper is that reelection (or, more generally, political advancement), while an important concern for lawmakers, may not be the only major motivating force behind legislators' actions. The institutional constraints and incentives of a political system may also encourage other behavior. Lawmakers, for instance, may also be guided by a desire to exploit their corporate prerogatives as fully as possible during their incumbency. While institutional factors do not completely explain this type of behavior, they do contribute to a better understanding of its causes.

This hypothesis is drawn from an examination of contemporary legislative politics in Panama, where throughout the 1990s legislators have expanded the privileges and immunities they enjoy as a corporate group, to the exclusion of the rest of society. More specifically, Panamanian lawmakers have insisted on ensuring their immunity from prosecution for transgressions of the law as well as on maintaining and expanding such privileges as exceedingly high salaries, exemption from taxation, and other perquisites. While this hypothesis requires further testing, preliminary research indicates that this behavior may be related, among other factors, to such

institutional features as a low reelection rate, high electoral volatility, party control over legislators, an emphasis on “low” politics, weak accountability, and the corporatist legacy of a populist military dictatorship.

The political implications of the phenomenon are also clear, at least for the Panamanian case. Behavior oriented towards the establishment, maintenance, and expansion of corporate prerogatives fosters consensus-building and cooperation among legislators, albeit for purposes contrary to democratic prescriptions. The establishment, maintenance, and expansion of corporate prerogative runs counter to the democratic requirements of accountability and equality before the law. In consequence, legislative action directed toward the exploitation of privileges and immunities may be expected to undermine the democratic system and reduce its quality. It may thus be validly argued that the poor esteem in which the Assembly is held by the Panamanian public may to some extent be attributed to the inordinately self-seeking behavior of its members, as has been indicated by opinion polls and even recognized by some members of the legislature.⁶¹

This study also opens interesting opportunities for comparative research. Validation of the hypothesis here advanced requires, at a minimum, further investigation. Comparative examination of legislators’ behavior in established democracies and post-authoritarian regimes (where it is still an emerging topic) is also warranted. Historical comparison within cases should also contribute to this effort. In the case of Panama, a comparison between pre- and post-dictatorship legislative behavior would be particularly rewarding.

⁶⁰ Robert Putnam, Making Democracy Work: Civic Traditions in Modern Italy (Princeton: Princeton University Press, 1993), pp. 7-8.

⁶¹ According to an opinion poll among Panama City residents, published in La Prensa on 16 September 1990, 58% of respondents thought the Legislative Assembly did not adequately perform its functions (*no cumple con su función*). In July, 1995, 39% of respondents thought the current Assembly was worse than the previous one (La Prensa, 20 August 1995). On 9 December 1995, another La Prensa poll indicated that 64% of respondents thought the Assembly’s performance was either “poor or very poor.” In a 1996 opinion poll conducted for the Electoral Tribunal, only 5% of respondents expressed trust in the Assembly; 42% believed it was the most inefficient of Panama’s political institutions and 56% thought it the most corrupt. See “Fortalecimiento de los partidos políticos en Panamá” (Panama: Dichter & Neira, 1996), provided by magistrate Eduardo Valdés Escoffery. According to *Latinobarómetro 1996*, 73% of Panamanian respondents expressed distrust of the Assembly; this was the highest rate of distrust expressed against a Panamanian institution. See El desafío democrático: reflexiones de las sociedades centroamericanas ante el resultado del Latinobarómetro 1996 (San José: PNUD, 1997), p. 47. In March 1997, 81% of those surveyed thought there was corruption in the Assembly. La Prensa, 22 March 1997. During discussion of the 1996 “honors” bill legislator Víctor Méndez Fábrega (Movimiento Papa Egoró) is reported to have said that “the large amount of benefits and privileges of legislators have produced the hatred and general repudiation of the people against this branch of government.” La Prensa, 4 December 1996.

Other features particular to the Panamanian case also merit more in-depth exploration. Two of these, which are obviously related, are the low reelection rate and high electoral volatility. Within this context, the fact that some of the most vocal defenders of corporate prerogative are among the few legislators that have procured reelection is also puzzling. All these issues raise interesting questions about the relationship between voter expectations, institutional design, legislator turnover, and legislative action. For the understudied subject of Panama's legislative politics, they also constitute a promising research arena.