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Comparing Legislative Powers

A new comparative method focused on legislative operational rules and conventions

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Statement of Originality

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Abstract

The Parliamentary Powers Index (PPI) is the most recent and best-known index of legislative powers. Published in 2009, the PPI analysed 32 legislative powers, covering areas from executive removal to legislative staffing. Constitutional rules and a survey of subject experts were used to generate a score for each parliament. Despite its ubiquity in legislative studies, the Index has encountered criticisms for its approach. Scholars noted that it generated many tie scores between legislatures, making differentiation difficult, as well as containing a distinct bias towards parliamentary systems over others. One matter, Index ties, was addressed by the later Weighted Legislative Powers Survey, but that study retained many of the biases of the original PPI methodology.

This thesis uses a new methodology to address these issues and to create a more accurate portrayal of legislative powers by analysing the operational rules and conventions of legislatures. This analysis is supported by information from interviews with high-level legislative staff. The purpose of the thesis is to test this methodology alone and against the PPI, observing any changes to its outcomes. To complete this task, primary legislative powers are analysed to assign a range of scores to the primary legislative powers to create an overall score for each legislature. These scores will also be reinserted into the PPI to see how the method affects its outcomes.

The thesis shows that focusing in detail on the rules and conventions creates a more accurate understanding of legislative powers. It removed index ties while properly grouping legislatures. To assess legislative powers properly, rules and conventions must be a primary tool of analysis.

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Chapter One: Introduction

This thesis presents a new method within the field of comparative legislative studies to compare legislatures based on the institution's capacity to act as a check against the executive. To determine that capacity, the operational rules and procedures of the legislatures and their primary powers will be analysed to determine the nature of the legislative-executive relationship. From that analysis, a score range is derived for each legislature, which will be used to compare legislative powers against each other. This thesis defines primary legislative powers as legislative agenda control, the legislative process, oversight and scrutiny of the executive and executive removal. The primary legislative powers are considered integral to the institution's operation because, without these rules, the institution could not function.

This method will be compared against the Parliamentary Powers Index (PPI) from The Handbook of National Legislatures, using the new methodology to rescore six parliament's scores. The PPI is one of the most widely used resources in comparative legislative study, but its core findings have remained unchanged since its publication in 2009. From this new analysis, each legislature will receive a new score from a range of scores to better compare the legislatures against each other. A score from each of the selected questions will be reinserted into the PPI to determine the level of change from the current index score. That change will act as the measurement determining how the new methodology has affected the outcomes of the PPI.

A rules-focused approach will contrast the PPI's current methods to the new methods to see which version better represents legislative powers, how they work and how they compare against each other to show that the deficiencies of the PPI's method can be addressed while also improving the state of comparative study.

What is Legislative Power?

When comparing legislatures and their capacity to effect change, it is important to set the definition of "power". One way of determining legislative power is by understanding the function of a legislature. Packenham (1970) compared the different functions of legislatures by examining their operation in developing countries. He found that legislatures provide several functions that can give latent support to the executive, act as a rubber stamp for their proposals, or they could also act as a training centre for new politicians. He also found that legislatures served more traditional functions as a centre of law-making and administrative oversight.

The functions outlined by Packenham are a good starting point towards understanding legislative power through function, but Barkan (Barkan 2009, 2013) gives more weight to those functions by focusing on the tangible outputs of a legislature to understand its power through its capacity to control the actions of the executive through Horizontal Accountability tools. The best way to understand these powers is through the analysis of the rules and conventions of a legislature.

When comparing legislatures and their powers, it is also important to understand the origins of their legislative power to ensure the right rules are being analysed. This thesis will analyse the rules and conventions of Brazil, France, Germany, New Zealand, the United Kingdom and the United States of America. Each country has their origin for the source of its legislative power and authority.

Of the six legislatures, Brazil, France, Germany and the United States derive their rights and operational rules from entrenched constitutional articles or specified constitutional statutes. The only legislature that does not derive its legislative power directly from statute is the UK Parliament, which derives its power, known as supreme parliamentary sovereignty, from the Crown (Blick and Hennessy

2019, 26; U. K. Parliament 2019, sec. 1.4), which derives its power from God[1] (Bagehot 1867; Burgess 1992). Across these countries, legislative power is affirmed by the judiciary, which continually establishes its operational boundaries (Kommers 1994; Nevill 2005; Sweet 2007). In the United States, for example, the Supreme Court ruled on the limits of legislative powers in the landmark case McCullough v. Maryland, which entrenched the supremacy of federal law over state law. (Marshall 1819).

The United Kingdom's legislative power source differs from the others in this study. With no codified constitution, concepts such as legislative power are amorphous (Carroll 2021; Dr. Syed Raza et al. 2023), but as with the other legislatures in this study, legislative powers are upheld and affirmed through constant testing through the judiciary. In the same light, New Zealand also has a legislature that is run mainly on convention, as the Constitution Act 1986 confers legislative power to the Parliament. However, as the whole Act is not entrenched, it can be amended or repealed with a simple majority vote of the Parliament (Elkind 1987), which means the only thing preventing widespread ad-hoc constitutional change is a conventional expectation not to amend the Constitution Act 1986 unilaterally. Understanding the source of legislative power is integral to understanding the relationship between the legislature and the executive. Firm legal barriers, such as an entrenched constitution, could indicate a stronger legislature, with a more conventional system indicating a weaker legislature.

Understanding a legislature's function leads to understanding its legislative powers. A legislature whose function is not designed to challenge the executive will not have the legislative powers to do anything but its intended function; therefore, in understanding a legislature's functions and powers, one can better compare them against each other. There is no benefit in comparing an autocratic or authoritarian legislature against a democratic one because their primary functions are inherently different, meaning their primary powers are inherently different. Any comparison would not be on a level playing field in this situation. This, among many reasons, is why comparing legislatures is a complex subject for study.

Methods of Comparing Legislatures

Comparing legislatures is complex because it involves several important and competing dimensions of study. Comparative studies can focus on singular issues such as veto players, agenda setting, and private members' bills, while others can focus on entire systems of governance. Norton (1990a), for example, compiled a text comparing various legislative powers and concepts across several legislatures, while Bradshaw and Pring (1972) compared the rules and conventions of the US Congress and UK Parliament against each other. Some scholars have also compared systems of governance using terms derived from the works of Juan Linz, such as semi-parliamentarism and bi-cameralism, to describe the Australian legislative system (Ganghof, Eppner, and Pörschke 2018), while coalitional presidentialism describes Brazil's system of governance (Araújo 2009; De Barros and Gomes 2011; Hiroi and Rennó 2016).

Linz's definitions of systems of governance gained popular recognition, becoming well known in the world of comparative legislative study, even extending to popular media, where in the popular American television show, *The West Wing*, White House communications director Toby Ziegler says, "Half the faculty at Yale law describe the American presidential system as one of this country's most dangerous exports. Responsible for wreaking havoc in over 30 countries around the globe, it is a recipe for constitutional breakdown" (Sorkin 2005). This quote signifies the extent and importance of the

[1] Except in Scotland where it is argued that the source of sovereignty is the people. (Maccormick 2000, 729)

work Linz began; however, Linz intended his work to inspire new ideas and not to become the final observation on the matter (Linz 1990b).

Moving on from Linz, Mainwaring and Shugart began to identify both important cleavages within the classical Linzian theories and similarities in weaknesses between presidentialism and parliamentarism (Mainwaring and Shugart 1997). Specifically, those scholars noted that matters Linz considered prominent and detrimental features within presidential systems were more pronounced within Westminster-style parliaments, leading to reduced legislative checks on the executive (Mainwaring and Shugart 1997, 453). Furthermore, they noted that the American constitutional protection of checks and balances ensured that losing a presidential election does not deprive the losing party of policy formulation powers because a party that loses an election for the executive could still claim the legislature allowing some form of policy control and creation (Mainwaring and Shugart 1997, 454).

More scholars started to consider the role of constitutional and legislative operational rules within the Linzian definitions (Carey 2008; Cheibub, Elkins, and Ginsburg 2013; Cheibub and Limongi 2002; Cheibub, Przeworski, and Saiegh 2004; Elgie 2005). Elgie, for example, focuses on the changing direction of travel for scholars wishing to investigate the Linzian definitions. Elgie (2005) summarised the three waves of research on this subject, where first-wave scholars often contrasted the democratic legitimacy of the executive against the legitimacy of the legislature. In these cases, the legislature was considered either a check on the executive in parliamentary systems or a hindrance to effective governance under presidential systems. Second Wave scholars focused on more detailed issues of governance, executive powers and political parties. In contrast, the Third Wave focused on the nuances and relationships between the executive and legislature in both rule and convention (Elgie 2005, 108,110, 111, 115).

Elgie also noted the increasing number of scholars who saw that the Linzian definitions lack understanding of the differentiation, or fine print, within and between systems of governance (Elgie 2005, 112–14). Elgie agreed with the opinion of Kare Strøm by stating, “he acknowledges that to understand how systems work, we need to read the fine print of their constitutions and organizational rules” (Elgie 2005, 117).

Elgie’s examples all showed a move towards a more in-depth analysis of the internal operations of countries and their constitutions when analysing Linzian definitions. A notable thread throughout the studies is maintaining Linz’s attention to the powers of the executive and how those powers are affected by outside forces, including the legislature. Cheibub, Elkins and Ginsburg partially diverted from that trend by solely studying constitutions written across a span of 300 years, comparing their various executive and legislative powers to the Linzian definitions (Cheibub, Elkins, and Ginsburg 2013, 516).

While that work focuses on the executive’s relationship with the Constitution, it does mark a change from previous papers. Their study found that the Linzian definitions did not reflect the makeup of governance systems from the constitutions that they examined and that 230 constitutions were unable to be classified due to a lack of formal definitions of constitutional powers (Cheibub, Elkins, and Ginsburg 2013, 526). They concluded that academic focus on the classical definitions has resulted in a preoccupation with the limited scope of the Linzian definitions, resulting in less attention being paid to the relationship between the executive and legislature. (Cheibub, Elkins, and Ginsburg 2013, 539). They go as far as to challenge the ability of the Linzian definitions in their predictive capacity, noting that scholars should consider alternative concepts (Cheibub, Elkins, and Ginsburg 2013, 539–40).

When comparing agenda-setting rules, Tsebelis and Rasch (2011) looked exclusively at the capacity of legislatures to set their own agendas versus the executive's powers to set the legislative agenda. A similar theme is also seen in Tsebelis's (2002) veto players theory, which also looks at the capacity of the legislature to act as a check against the executive. Bradshaw and Pring also examine the ability of the legislature to act as a check against the executive as a central tenant of its comparison of the UK Parliament and the US Congress.

This section shows that comparative legislative studies have used several metrics to compare and measure the strength and power of a legislature, but the connection running through these comparative studies implicitly asks the same question about the executive-legislative relationship: "How much control does the legislature have over the executive?". Linz, for example, only analysed the legislature for its capacity to efficiently remove the executive, while Mezey (1979) classified legislatures by their ability to act as a check against the executive, amongst other factors.

His five classifications of legislatures depend on the underlying executive-legislative relationship, where the capacity for the legislature to act as a check against the executive is pivotal to its classification, but the next section will show how the most popular comparative index chose not to follow Mezey's methods, instead focusing on Linz, resulting in a wide-ranging comprehensive study that lacks nuance and detail on the rules and conventions of the legislatures under study.

The Parliamentary Powers Index

The Parliamentary Powers Index from *The Handbook of National Legislatures* (Fish and Kroenig 2009) evaluated legislatures based on their powers on criteria ranging from the ability of the legislature to remove the executive to the desirability of re-election to office. The authors relied on expert surveys to evaluate and score each legislature alongside expert analysis of constitutional rules. This work established a distinct move forward in comparative studies while maintaining a connection to classical comparative definitions and stands as the definitive comparative index.

Numerous academic works have cited the PPI on subjects such as legislative benchmarking, legislative indexing and constitution-making, amongst others (Çelik Ulusoy 2021; Ginsburg, Elkins, and Blount 2009; H Kara 2014; Högenauer and Howarth 2019; Ilonszki and Várnagy 2019; Ishiyama 2022; Joseph 2010; Schwindt-Bayer and Squire 2014; Sing 2010; Stapenhurst, Jacobs, and Cedric Eboutou 2019; Thomas 2021; Tusalem 2023; Wilson and Woldense 2019). In each of these publications, the authors note the importance of the index and use its scores or methodology in defining their theses while also noting the issues with the outcomes of the original index.

The PPI compared legislative powers from 158 national legislatures by analysing 32 dimensions of legislative powers. The authors also surveyed experts to answer the questions as well. This survey paralleled the dimensions with 32 questions where experts answered yes or no to each question, with extra information should they see fit (Fish and Kroenig 2009, 3). Each legislature was graded on whether it had the power in question in subject areas that focused on topics such as the level of legislative influence over the executive, the capacity of the legislature to manage its own affairs and other questions related to the day-to-day function of the institution.

From that analysis, legislatures received one of two scores. Legislatures received a score of 0 if they did not have the power or a score of 1 if they possessed the legislative power. After completing the analysis of the 32 dimensions, a final score between 0 and 1 was generated to indicate legislative strength.

The final outcomes ranked countries such as Germany and the United Kingdom as some of the strongest legislatures in the world, with countries like the United States, France and Brazil ranking

towards the middle of the pack (Fish and Kroenig 2009, 1). The Handbook was designed to be a snapshot of legislative powers from countries with more than 500,000 people between 2005 and 2007, but those scores continue to be cited in current publications.

The Index received criticism upon publication. Desposoto (2012) noted concerns with the number of tie scores between legislatures. In total, 24 sets of ties appeared amongst the 150+ legislatures, allowing for false congruencies between legislatures. He also criticised the explicit bias towards reactive systems. Four of the 32 survey questions ensured that reactive legislatures would receive affirmative scores, while non-reactives could not receive any or all of the scores. These four extra scores accounted for 12.5 per cent of the total index score; unsurprisingly, out of the 158 legislatures studied, the top 49 legislatures in the index are all parliamentary systems.

The scoring issues continue with the usage of only two numbers to describe the powers of a legislature. For example, countries such as France, Germany and the United Kingdom all received a score of 1 for PPI Question 18 on elected legislatures. To get an affirmative score for this question, legislatures had to satisfy the following statement, "All members of the legislature are elected; the executive lacks the power to appoint any members of the legislature (Fish and Kroenig 2009, 10, 240, 261, 713); the justification for granting a 1 to a legislature requires that it is "free of executive appointees" or, the upper chamber is, "largely ceremonial and possess little or no real legislative power" (Fish and Kroenig 2009, 10).

There are other criteria for allowing a 1, such as the title being an impotent honour, but the three legislatures mentioned above all have upper chambers that have legislative powers beyond the ceremonial. Those chambers can initiate or block pieces of legislation, and all are populated by appointees. The example above is just one of many questions that do not stand up to scrutiny. At the very least, the assignation of a 1 implies that these legislatures are equal to legislatures with elected upper chambers.

The PPI also used constitutions, or the closest document(s), as the basis to compare legislatures against each other, but do constitutions paint a full picture of legislative powers? Constitutions, where they exist, often give the framework for the usage of legislative powers, but they do not usually provide details on their operation.

Legislatures typically have operational rules and conventions that give greater detail to their corresponding constitutional powers, and an analysis of those rules shows who those powers benefit and their relative strengths and weaknesses. For example, Article 44 of the German constitution provides for parliamentary committees of inquiry, but a separate law provides the operational details to show what rights the legislature and executive have when initiating the legislative power; therefore, there is a difference between merely stating a legislature has a legislative power versus understanding the details of those powers.

This is why it is important to see how a rules-focused approach will affect the findings and outcomes of PPI, the best-known comparative index, because of the glaring issues touched upon in this section. This thesis will reanalyse seven questions of the PPI to show that a new method can change the current score and better reflect the true nature of the legislatures in question. This thesis will also remove the biased questions to set a level playing field for the six legislatures in question.

Outline of Thesis

This nine-chapter thesis will take an in-depth look at the rules and conventions of the legislature to show that an approach that looks at rules and conventions can paint a clearer picture of legislative powers. Chapters Two and Three will review relevant literature and explain the methodology.

Chapters Four through Eight will analyse the primary legislative powers, and the end of each chapter will use the new analysis to craft a range of scores based on the rules and conventions related to those questions. Chapter Nine will collate all the score ranges from the previous four chapters, present the new results, and conclude the thesis.

The next chapter will cover the current state of comparative legislative research, focusing on scholars who have come up with systems to define systems of governance and scholars who have focused specifically on legislatures. This will be followed by an analysis of literature focussing more on areas related to the primary legislative powers that this study will cover, including legislative rules and customs, veto-player theory, the legislative processes of different countries, oversight and scrutiny mechanisms across legislatures and the role of the individual legislator.

The third chapter will set out the new methods for comparing legislatures. This chapter will discuss which legislative powers will be compared alongside the legislatures selected for comparison, and the new score ranges. Here, the methods will show how information from the operational rules and procedures are used to generate a range of scores between zero and one, where zero represents a legislature that has high levels of executive benefits from the rules, while one represents a high level of benefit towards the legislature. The analysis of the rules will form the basis for the upper and lower score limits of each power. This also allows for flexibility within the range to address matters such as a minority government or the same party controlling both houses of the legislature, which will show the main differences between this method and the methods used by the PPI.

The fourth chapter will focus on agenda control and dissolution of the legislature. Until recently, this subject was not as intensely studied by scholars compared to other legislative powers, but it contains some of a legislature's most important rules and conventions. This chapter will look at different agenda-setting theory facets to show where benefits lie for the legislature or the executive. Here again, there is a split between the active and reactive legislatures, primarily in the areas of dissolution and agenda control, where active legislatures have legal protections against dissolution as opposed to their reactive counterparts, who have rules that grant the executive varying ability to dissolve the legislature. Also, business-setting committees make a significant difference in the benefits applied to either the legislature or executive in the apportionment of time.

The fifth chapter will focus on the legislative process and the capacity of organs of the legislature to affect the progress of legislation using veto-playing. In this chapter, the thesis will focus on rules that allow the executive to pass their legislation more easily or rules that allow the legislature to introduce legislation of their own accord or amend executive legislation, including the role of bill committees and if executive legislation receives any special treatment. As with previous chapters, there is a split between the active and reactive legislatures, where active legislatures are allowed to introduce their own legislation at a far greater rate than their reactive counterparts.

The sixth and seventh chapters focus on the capacity of the legislatures to provide oversight or scrutiny functions as well as investigatory powers. The sixth chapter focuses on legislative oversight and scrutiny powers. Here, the compulsory rules of the legislature will be examined alongside its interrogative functions. This includes both committee hearings and legislative question times. In this chapter, the longest of the thesis, oversight and scrutiny, will be considered by analysing concepts of Horizontal Accountability and case studies that show how there is a distinct and important difference between oversight and scrutiny where oversight grants a benefit to the legislature and scrutiny tends to grant a benefit towards the executive.

The seventh chapter will focus on the legislature's capacity to investigate the executive through case studies from each of the six legislatures. This PPI question focused on the idea that a strong legislature could induce a sense of fear in the executive when asked to give evidence or testify to their actions. The legislative case studies will feature legislatures that allow for specialised committees of inquiry and those that do not. This will show the differences in a legislature's capacity to allow or prevent an executive from avoiding scrutiny.

The natural conclusion to a discussion on the ability of the legislature to perform an oversight or scrutiny function is to consider the actions the legislature can take to remove the executive. The eighth chapter will focus on the ability of the six legislatures to remove the executive using operational and conventional means. This chapter will look at both confidence votes and impeachment as mechanisms of executive removal alongside some legislative-adjacent matters related to the process.

At the end of each chapter, a new range of index scores will be derived using the new methodology. At that time, each chapter will also address any errors or inconsistencies from the original analysis as part of the justification for the new score ranges. In addition to some concluding thoughts, the final chapter will pull together the score ranges from each legislature to produce a new, reweighted score for each country. An independent analysis of the seven scores will also be conducted. Based on this analysis, this chapter will show how this new methodology affects the PPI.

Conclusion

Arguably, every country on Earth has an institution that affects societal change through the collective decisions of members who were elected or appointed to the institution, exercising rights granted to it by tradition or law. Each of these institutions will act differently from one another. Some of the differences are almost imperceptible, while others are pivotal to the transformative nature of the institution.

The phrase "parliament" can apply to both the Bundestag and the Palace of Westminster, but that does not mean they are the same institution. Their individual rules and conventions define their roles far greater than their title, which means it only makes sense to compare the internal operation of an institution rather than its name. This chapter asked if this is the best question to ask, given that legislatures have several functions in addition to the traditional functions of law-making and oversight. This thesis contends that a new methodology that focuses on rules and conventions is the best for comparison and will provide the most accurate depiction of a legislature's ability to check the executive.

This chapter shows that there remains a great space for the study and comparison of legislatures. The trends of research in comparative politics have edged ever closer to a focused discussion on the operational rules and conventions that govern the legislatures. Comparing legislatures is a complicated undertaking because each legislature develops in a unique way, tailored to the uniqueness of each country's society.

To compare legislatures, researchers require culturally neutral criteria to create fair assessments. Care must also be given to the types of legislatures compared, specifically if legislatures should be segregated based on where the executive sits and underlying philosophies such as democracy or authoritarianism. With such a system, comparing legislatures becomes easier. These comparisons must also examine the relationship between the executive and the legislature, constitutional and operational rules and their conventions.

This is why the method presented in this thesis focuses on the ability of the legislature to act as a check against the executive. As opposed to the PPI's 32 disparate questions, this method will only

focus on the rules and conventions of the primary legislative powers that govern legislatures. Using a range of scores, this method will provide more nuance on the operation of a legislature from a more focused analytical approach. Ultimately, this method will be able to better determine a legislature's relative power compared against other comparable legislatures.

Chapter Two: Literature Review

Döring (1995) noted that parliamentary procedures are desirable for both practical scholars and political theorists to understand, specifically in relation to changing paradigms relating to legislatures and global political structures; legislative study is even more critical in the current era. Every subtle action within the walls of the legislative chambers can eventually translate into a vote, a motion or some other tangible action that may result in some form of societal change. Döring notes, "If procedures affect outcomes, it is important to try and link parliamentary structures to legislative output." (Döring et al. 1995, 15).

The PPI focused on expert opinion and constitutional articles to compare legislative powers. This chapter will show that focusing on operational rules and legislative conventions can provide a better understanding of legislative powers. First, this chapter will look at the logistics of comparing legislatures, including defining a legislature, how legislatures should be compared and why. This is followed by an analysis of the methodological underpinnings of previous comparative methods, specifically the work of Juan Linz and how the work of Michael Mezey. These are then examined to see which would have provided a better methodological underpinning for the PPI. The work of Mezey shows that it is better suited for comparing legislative power to Linz as it features more dimensions for comparing legislatures.

The second part of this review will look at literature related to the primary legislative powers, such as legislative production and agenda control, investigation of the executive and executive removal. Both sections will show that a different methodological approach and a focus on the rules allow for a greater comparative index, which is the main goal of this thesis. Finally, this chapter will look at legislative powers, such as legislative conventions and the powers of the individual legislator. The PPI overlooked these powers, but they play an important role in understanding the operation of legislatures and how they compare against each other.

Part One: The Logistics of Comparing Legislatures

Before comparing legislative rules and conventions, initial questions must be asked about the nature of a legislature, such as what a legislature is, why we should study it, and how. This section will look at the theoretical background in comparing legislation, starting with the first question, "What is a legislature?". This question is paramount to understanding the nature of a legislature and the proper way to compare them against each other.

Fasone (2019) investigated the nature of legislatures, noting that if a legislature is a body that "makes decisions", the voters in a referendum could be considered a legislature (Fasone 2019, 2). Of course, that "legislature" would not have the right to initiate its own legislation or enforce its pronouncements. This extreme example feeds into the concept that legislatures can be more than brick-and-mortar law-making institutions situated in the capitals of countries.

One definition of a legislature examined by Fasone emanates from Matthews v. The United Kingdom, a dissent from the European Court of Human Rights case to determine if the European Parliament was a legislature. The court agreed that the European Parliament was a legislature under Article One of the European Convention on Human Rights. Still, the dissenting opinion tempered that judgment when it defined a legislature as an institution that is self-standing and autonomous when fulfilling its legislative function and whose membership are entitled, by virtue of appointment or election, to propose, amend and pass legislation with the possibility of an executive veto. At the same time, the European Parliament contains some of those rights, but legislative initiation is not one of them (Fasone 2019, 9–10).

This definition means that legislatures can exist across jurisdictions both within and outwith a country (Fasone 2019, 3), but that definition could exclude upper houses that can be overridden by the lower house or if the lower house has greater legislative control, such as the right to initiate budget legislation (Fasone 2019, 7). In these cases, the individual houses combined form the legislature in a form of symmetrical bicameralism (Fasone 2019, 10).

Olson (1994) took a different tack and defined a legislature within the confines of a democratic system. He noted that the attributes of a legislature are that it is the primary institution within a democracy and government with the sole right to enact laws with a geographic spread of elected representatives. Legislatures are also uniquely defined by the procedures and organisations under which all members are considered equal (Olson 1994, 3–4). He also notes that legislatures are intended to be the most visible part of government. This allows it to publicise the actions of the executive that would otherwise be obscured. Additionally, the legislature is defined by its capacity to select or remove the executive (Olson 1994, 7–10).

From these two definitions, a legislature can be defined as an autonomous body whose members are entitled to initiate, amend and pass legislation, but the Olson definition expands on the Fasone definition to make the legislature the central facet of a democracy that creates visibility within the system and has the capacity to remove the executive, which begs the question are there differences between legislatures of different philosophical regimes, and if those legislatures can be equitably compared against each other.

Authoritarian versus Democratic Legislatures

Legislatures are ubiquitous worldwide, but they exist in countries with differing central political ideologies. Legislatures are the crucial defining factor of a democracy (Barkan 2013; Ornstein 1992), but 80 per cent of authoritarian regimes also have a legislature (Gandhi, Noble, and Svolik 2020); therefore, it is clear that the existence of a legislature in a country does not make that country a democracy, and it is important to identify the distinctions between legislatures in democracies versus legislatures in authoritarian regimes when considering comparing them against each other.

Definitions of authoritarianism have been covered by Glasius (2018), who states that authoritarianism can mean two separate things. In comparative politics, it refers to a regime without fair and free elections, while in political psychology, it refers to people who desire order and hierarchy while fearing outsiders (Glasius 2018, 516). This differs from definitions of democracy, which focus on free and fair elections as well as a social dimension that reflects the public perceptions and expectations of freedom and liberty (Dalton, Shin, and Jou 2007).

Law-making institutions in the two systems may seem similar, but there are specific differences in authoritarian regimes that place them in a different and lesser category. Scholars such as Mezey (1983) and Hunneus, Berríos and Cordero (2006) argue that authoritarian legislations, or “third world” legislatures in Mezey’s case, have little to no real influence on the production of legislation that holds very little public support and maintains their positions within a community through local activity to maintain levels of isolated support. Hunneus’ argument identifying the inability of the legislature to remove the executive is the key protection that authoritarian regimes are missing.

Wright (2008), however, takes a different approach, looking at the effect legislatures have on economic performance in authoritarian regimes. His work finds that there are two kinds of legislatures in authoritarian regimes: binding and non-binding. Binding legislatures allow for multiple veto players to affect social and legislative outcomes; these types of legislatures are found in countries with few natural resources, which means the authoritarian executive needs to appease the elites with veto

powers to keep capital within the economy. This differs from the non-binding legislature, in which the executive dominates and manipulates the actions of legislators by rewarding or punishing them to maintain their dominance in decision-making.

This work also coincides with findings from Gandhi (2020), who noted different ways of defining authoritarian legislatures, including the rubber stamp legislature that creates the illusion of democracy, the quasi-democratic legislature that achieves constituency desires in undemocratic ways, and without any measure of accountability. Some authoritarian legislatures, such as the Chinese or Russian legislatures, have strong committee structures, a feature noted (M. Mezey 1979, 112–31), but there are always statutes or other rules that prevent those committees from effecting change on the executive (Gandhi, Noble, and Svolik 2020, 1363).

Gandhi also stated the stark differences between legislatures in democratic and authoritarian systems. Democratic systems are defined by the legislatures' capacity to legislate, investigate and oppose legislation as well as free and fair elections, which are all backed by a constitution. Authoritarian legislatures are defined by their secrecy, lack of free and fair elections, high levels of legislative corruption and constitutional protections for the dominant political party protecting them from any oversight or scrutiny (Gandhi, Noble, and Svolik 2020, 1364–66).

Legislatures are the main legitimisation organ of the state. Given their ubiquity, it is important to understand what they are and how they work. This section shows that legislatures are not all the same, and it is important to note the differences between them when deciding what to compare. The mere presence of a legislature in a political system should not afford that system a title of democratic or authoritarian until an analysis of its rules and conventions has been conducted. As with the examples above, it is in those documents and traditions that truly determine the nature of a legislature and how it should be compared against another. Finally, it would not be equitable to compare legislatures of diametrically opposite central political philosophies because their functions are inherently different, which is why this thesis will focus on democracies.

Comparing Legislatures: Why and How?

When comparing legislatures, it is important to understand how to compare legislatures and why academics should compare legislatures. The "why" question is addressed by Leston-Bandeira and Judge (Judge and Leston-Bandeira 2021). First, they agree that "legislatures matter" (Judge and Leston-Bandeira 2021, 155), and to prove this, they answer two questions regarding the nature of legislatures, first on their function and tasks and second on their roles and organisations. This characterisation of legislatures means that legislatures are institutions that receive input in the form of elections and political party participation, as well as outputs governance and other outcomes in the legitimisation of the function of the state. The legitimisation of state function is a primary legislative role as it is needed to exercise and confirm state power (Judge and Leston-Bandeira 2021, 160,162). This definition of the function of a legislature moves the conversation to the "how" to compare legislatures.

Polsby and Mezey conducted some of the earliest works to classify legislatures and compare their powers. Their two studies covered broad swathes of institution types. Polsby (1975) compared the internal operations of several legislatures, including the US Congress and the UK Parliament, to show two extremes on his scale of legislatures. He described legislatures as either arena or transformative, with the United Kingdom Parliament being an arena legislature where the chambers focused more on debating than policymaking. The US Congress represented a transformative legislature focused on legislative outcomes by transforming the ideas that enter the institution rather than speaking towards an inevitable policy change.

Comparative Legislatures (1979) is a volume within a series of books written around the same time period to help advance new ideas in comparative legislative studies. Mezey's volume creates five classifications of legislatures based on examples from various legislatures, which compare the policy-making, deliberation powers, and levels of popular support. (M. Mezey 1979, 21). These classifications are Active, Reactive, Vulnerable, Marginal and Minimal.

Active legislatures have the highest level of policy formulation powers, typically on par with the policy formulation powers of the executive, along with generally broad levels of support within the population. Individual legislators are expected to table and progress their legislation through the legislative process, as the executive does not typically directly control the legislative agenda. Committees and plenary debates are very powerful tools of the legislature as they can be used to amend or end legislation no matter the originating branch. Conversely, party discipline and interaction with the executive before the policy initiation is low compared to other categories, such as reactive legislatures (M. Mezey 1979, 61).

Reactive legislatures have lower levels of policy-making powers than their active counterparts but enjoy broad levels of support from the population. These chambers have higher levels of executive domination in creating policy and control of the legislative agenda. Due to this, the deliberative function of the legislatures is more active than in other counterparts, but the executive is expected to maintain the integrity of their policy initiatives from the time the legislation is tabled to the time the legislation is enacted (M. Mezey 1979, 87).

Vulnerable legislatures typically have similar powers to active legislatures but lack broad levels of support, specifically from elites. An example given by Mezey regards the dissolution of the 1958 Thai Congress, which was received with apparent apathy amongst the people (M. Mezey 1979, 29). Vulnerable legislatures are typically under attack from the executive, who may level claims against their legitimacy (M. Mezey 1979, 27).

Marginal legislatures are similar to reactive legislatures, but they lack both broad levels of popular support and strong party structures. Unlike other counterparts, there is a dimension of executive cooptation of the legislative selection process, which greatly limits the independence of the legislatures. Marginal legislative committees lack the experienced staff that other legislatures have to properly provide a scrutiny or oversight mechanism, which is further neutered by the high levels of executive control of the legislative agenda. Marginal legislatures typically fail to use the oversight powers attributed to them, as their usage may construe a lack of confidence in the executive, which, if used, could see executive use of intimidation on members of the legislature (M. Mezey 1979, 113).

Minimal legislatures are the weakest of all legislative systems. These legislatures are typically found within authoritarian systems of government. Policymaking within these systems is the sole responsibility of the executive, and while containing a large committee structure, the executive is expected to dominate almost all facets of the legislative process (M. Mezey 1979, 132).

Mezey's work intended to advance the field of comparative legislative research by providing a common plane to compare differing societies' legislative systems. Mezey also noted concepts such as Jean Blondel's theory of "viscosity", which related to the ease with which the executive's agenda passes through a legislature as important in determining the policy-making strength of a legislature (M. Mezey 1979, 24).

His work was analysed by Arter (2006b), who addressed issues relating to legislators' influence and powers within the Mezian classifications. His work, along with others, created a new way of looking at the "Mezey Question". Instead of focusing on how much policy-making powers and levels of popular

support a legislature may have, Arter asks more specific questions related to the internal operations of the legislatures, including the legislative powers of members and committees in comparison to the executive (Arter 2006a). These questions shift the focus from treating the legislature as a singular unit to focusing on the operational rules and procedures.

Is Mezey Still Relevant?

Mezey's classifications were developed at the end of the 1970s, and some of the legislatures he used to define his system, such as the Supreme Soviet, no longer exist. Some countries, like Brazil, have changed their legislative and political systems from authoritarianism to democracy; therefore, it is only fair to question their relevance in the modern-day debate on how to compare legislatures.

Norton (1990b) addressed Mezey's classification of legislatures, noting that it was that he and Polsby created the most important systems at that time, but Mezey's classifications left out a function of the legislatures that better defined reactive legislatures; this was the concept of policy influencing, where a policy is a set of proposals to create a "recognisable whole", which based on tested or untested assumptions. (Norton 1990b, 177–80). To address this matter, Norton created an addendum to Mezey's classifications that address the differences between legislatures that could make policy, those that could not and those that had little to no policy impact.

There are three new categories, with one focusing on legislatures that can amend, reject or create policy, one where the legislature can suggest and modify policies but cannot substitute policies and one where the legislature has little to no influence on policy or its formulation. These new additions to the Mezian classifications allow for a better understanding of the differences between legislatures like the US Congress and the UK Parliament, where the US Congress has the telltale signs of a policy-making legislature, and the UK Parliament have the telltale signs of a policy-influencing legislature.

It is important to note that Norton did not discount any of Mezey's classifications; while this addition was created in 1984, the classifications still apply in the current debate on comparative legislative study. Legislatures like the ones found in the UK, New Zealand and France lean more towards a policy-influencing legislature due to the high levels of executive control over their operation and legislative output. This is contrasted by legislatures such as the United States and Brazil, whose legislatures do not just suggest policy but create policy of their own accord. Finally, there have been no significant changes to the Mezian classifications since its inception, merely supporting additions. The underlying idea of the classifications remains the same and relevant today.

Comparison Through Defining Systems of Governance

In contrast to Polsby and Mezey's works, Juan Linz's work is widespread in the world of comparative studies. The terms Presidential, Parliamentary and Semi-Presidential are well-known and well-used when referencing systems of governance and their legislatures with *Presidential or Parliamentary Democracy: Does it Make a Difference?* Often being cited as the paper that created the Linzian definitions and sparked the first wave of comparative political studies (Carey 2008; Cheibub and Limongi 2002; Elgie 2005; Mainwaring and Shugart 1997). The authors of the PPI are no different, as they placed Linz's ideologies at the very centre of the study's methodology. (Fish and Kroenig 2009, 2).

Between 1985 and 1994, Linz authored several papers on the subject of systems of governance. The core of his thesis, which he has focused on for several years, is the concept that parliamentary systems of governance are more stable than presidential or semi-presidential systems (Linz 1985, 1990a). Linz argued against presidential systems of governance, stating that they create a conflict of democratic legitimacy between the legislature and the executive. Another perceived failure of presidential

systems was a lack of a consolation prize for the candidate who did not win the election under a system he classified as "winner take all". Finally, the lack of the ability to remove the executive at will through a confidence vote is the greatest failing of the presidential system as it allows for unpopular leaders to remain in office.

According to Linz, the powers that hindered presidential systems found a solution within parliamentary systems. He even went as far as to quote Walter Bagehot in his recrimination of the American creation of a powerful head of state who also acted as the head of government (Linz 1990a, 53). Linz praised parliamentary systems for fusing the legislature and executive into one institution, thus removing the challenges to democratic legitimacy. Linz also argued that parliaments create greater opportunities to distribute ministerial positions through political coalition building and, most importantly, the necessity of the executive to maintain the confidence of the legislature.

Linz's findings received criticisms at the time, which will be addressed later in this chapter. In order to address these criticisms, he adjusted his theories to reflect the idea that his work was not intended to state, ipso facto, that any parliamentary system is more stable than any presidential system (Linz 1990b, 1). Additionally, he notes that there were different versions of both presidential and parliamentary systems, and crucially, several of the same weaknesses found within the presidential systems are also found within certain parliamentary systems, specifically noting Westminster-style democracies. He concludes his response with a call to keep researching the question, as his work should not mark the end of the debate but the beginning.

Juan Linz established an easy-to-understand system of defining systems of governance with little care for the role of the legislature conjoined with a bias against non-parliamentary systems of governance (Horowitz 1990). Linz's original articles focused on the powers of political parties, executive strength, and, to a far lesser degree, the relationship between the executive and the legislature. In each of his four main publications, Linz rarely refers to the legislature. When the legislature is mentioned, the institution is seen as either a tool whose sole purpose is to remove an executive in parliamentary systems or, in presidential systems, a democratic adversary. Therefore, using his definitions as the theoretical core for the PPI's methodology is questionable.

Issues related to comparing legislatures

The previous examples showed two types of comparative methods; however, the examples also show that there are issues related to comparing legislatures. Arter (2006b) noted many issues in comparing legislatures, specifically legislatures with different levels of development and procedure (Arter 2006b, 247). This does not preclude legislatures from comparison, as shown in the preceding examples, but comparison does require an equitable medium of comparison that ensures that when comparing legislatures, the systems have the same underlying principles, such as democracy or authoritarianism.

If legislatures are to be compared against each other, then it must be true that no legislature is exactly the same as another. This means that just having an institution that one calls a legislature does not mean it can be equally compared to another. Democratic and authoritarian regimes both have legislatures, but their functions are fundamentally different, specifically in relation to the legislative-executive relationship. Therefore, legislatures of the same type need to compare against each other to get the best description of their powers and how they compare against each other.

An equitable comparison also needs to ensure that all instances of overt or covert bias are accounted for and eliminated when comparing legislatures. When comparing legislatures, it is important not to impose a conscious or unconscious bias against any particular system of government. This is why it is important to ensure that comparisons are done against each similar institutions, not every institution.

Even within similar institutions, biases can appear from theoretical and methodological assumptions. Any comparison needs to justify its choices but also ensure that its choices do not unfairly benefit a particular ideology.

Finally, equitable comparison requires a strong medium of comparison, which can be found in the operational rules and procedures of a legislature, and when comparing legislatures, it is important to understand the medium of comparison, which can be individual legislators, constitutional rules or legislative rules. For the purposes of this method, the best medium of comparison focuses on legislature rules and conventions supported by constitutional rules. This form ensures the widest input for comparative powers within the same system, which ensures that the best level of detail and nuance is achieved when comparing legislatures while avoiding explicit and implicit biases. The analysis of the rules must be supported by expert practitioner interviews that will give pivotal insight into the operation of the legislative rules and convention.

This method of comparison will address the issues that Arter noted regarding different levels of development and procedural rules by ensuring that legislatures of the same levels of development and procedural growth are compared together. Linz's definitions rely on the relationship between the populous and the executive to establish its comparative medium of comparison. Without taking the rules of a legislature into account, he failed to take the "winner-take-all" rules of parliamentary systems, like the House of Commons, into effect when coming up with his definitions. These rules change the value-based outcomes of his definitions because the Commons had the same flaws as the presidential systems, which cancels out any perceived benefits. The PPI focused on rules alongside other matters, but the explicit bias in its methodology adversely affects the outcomes of the index. Two-thirds of Mezey's method, on the other hand, focuses on the applications of the rules within the legislature and is pivotal to a legislature's classification.

The Handbook of National Legislature and the Parliamentary Powers Index

The PPI ranked legislatures based on their powers on criteria ranging from the ability of the legislature to remove the executive to the desirability of re-election to office. The authors relied on expert opinion to evaluate and score each legislature alongside an analysis of constitutional rules, showing a distinct move forward in comparative studies while maintaining a connection to Linzian definitions.

Their study was both a practical evaluation of legislative powers and an attempt to create a deeper understanding of the nature of power, with one of the first lines of their book being, "Where is the power?". In their introductory chapter, the authors comment on the lack of scholarly work comparing legislatures and the idea of power. The pair stated that they are only interested in "official power", which they define as "power vesting in the government and organs of the state." (Fish and Kroenig 2009, 1).

The PPI compared legislative powers across 158 national legislatures using 32 dimensions[2] of legislative powers and a survey of local experts. The Index divided the questions into four sections that the authors identified as important legislative powers. Questions 1-9 cover the influence the legislature had over the executive on matters such as executive removal and what type of executive the country operates. Questions 10-19 cover the independence of the legislature, such as immunity from prosecution and its relationship with the judiciary. Questions 20-26 cover specific legislative powers, such as the power to appoint officials to government roles, and Questions 27-32 cover the administration of legislature.

[2] Questions are located in Appendix One

The creation of the index represents, to date, the most comprehensive compendium of legislative powers. Each country was evaluated with a dichotomous score for each indicator of legislative power, with each power having the same weight. Each power was divided into four groups and added together to produce a number reflecting the legislative strength of the respective legislature. Chapter Three of the Handbook compiles country scores alphabetically and from the highest score to the lowest.

The authors wanted to know where legislative power lies to give more detail to the classical Linzian definitions (Fish and Kroenig 2009, 2). A panel of local experts consulted on the 32 questions via a survey. Each legislature was graded on whether it had the power in question. For example, if a legislature could declare war, as asked in Question 20, that legislature would be granted an affirmative score of "1"; if not, it received a "0". To get an index score, the total points accumulated are divided by the total possible points (Fish and Kroenig 2009, 13). That system placed Germany, Italy and Mongolia as the top three strongest legislatures in the world, all receiving the same score of 0.84, with the UAE, Myanmar and Somalia receiving the lowest scores between 0.06 and 0 (Fish and Kroenig 2009, 756–57).

The authors believed that the dichotomous variable was best placed for gaining consistent scores throughout the index, even though they noted problems with the precision of the score. The authors believed that descriptions of the powers, with constitutional citations where possible, were enough to address the imprecise nature of their scoring system (Fish and Kroenig 2009, 4), which led to frequent index ties between countries, making it hard to use the scores in the index as a dependent variable, which was one of the authors' goals for the index (Fish and Kroenig 2009, 16). This new method will use a range of scores instead of a dichotomous variable to determine which will better reflect the benefits of the rules and conventions of the legislature.

Criticisms of the Parliamentary Powers Index

As with any wide-ranging publication of this nature, criticism joined the praise for the hard work put into creating the index. Chief among the criticisms was that their system resulted in too many index ties between legislatures, a bias towards parliamentary systems and a lack of nuance related to legislative powers. Chernykh, Doyle and Power (2017) addressed some of these issues by creating the Weighted Legislative Powers Score (WLPS). Using similar methodologies and the same questions as the PPI, the WLPS sought to address issues related to the PPI by allowing its experts to give different weightings to the original 32 questions.

The reweighting resulted in slight differences between the PPI and WLPS, specifically, the number of ties between countries in the index (Chernykh, Doyle, and Power 2017, 307). Additionally, the new scores rated some active and reactive systems higher after their PPI scores covering executive removal and inauguration were downgraded by local experts (Chernykh, Doyle, and Power 2017, 308–9).

The PPI and WLPS are comprehensive studies that utilise similar methodologies but leave a gap in the details of how legislatures operate. Both studies relied on expert opinion, but the role that opinion played in generating a score was diluted because it could only be distilled into a single variable, removing any important nuance. Both studies also relied heavily on expert academic opinion versus an exclusive focus on practitioner experience, which may be attributed to two reasons.

First, the PPI was conducted over two years between 2005 and 2007, with the HNL published in 2009. Despite the prevalence of various forms of electronic messaging, contacting thousands of legislators and staff worldwide without knowing the availability of internet access to a legislature would be daunting. Second, interviewing legislators or getting them to complete surveys requires some form of

elite access. Sending information to legislators may have been considered a waste of time when they already had access to experts in their respective fields, and those contacts would still require a large amount of time to consult.

The second issue regarding the PPI and the WLPS is the lack of differentiation between legislative systems. For example, Question Two of the PPI asks if members of the executive can also serve as members of the legislature. Despite experts in the WLPS downgrading its importance (Chernykh, Doyle, and Power 2017, 302), this question holds an essential distinction between the different legislative systems.

Of the 50 highest-scoring legislatures within the PPI, 30 allow members of the legislature to also serve as members of the executive (Fish and Kroenig 2009, 756–57). Members of the executive who serve in the legislature may have enhanced access to the agenda-setting and veto powers within the legislature, which may make the legislature itself a tool of the executive, diminishing its overall legislative strength.

A reanalysis of Question Two would have cascade effects across the PPI, changing overall scores as legislatures would lose several affirmative scores, lowering the final score. This is also the case for questions on executive accountability, confidence and legislative initiation. Question 14, for example, asks about executive gatekeeping. For many of the legislatures listed in the PPI, the answer is listed in the affirmative, but in countries with reactive legislatures, the executive could have exclusive access to agenda-control rules preventing non-executive legislators from tabling bills in certain policy areas, such as taxation, meaning the legislature acts as a policy processing tool for the near-exclusive use of the executive. This changes the legislative-executive relationship, a distinction not represented in the final PPI score.

The authors of the PPI are not ignorant of this fact. They directly address this issue by noting that this practice is the norm within parliamentary systems and, therefore, is not a problem that requires a solution (Fish and Kroenig 2009, 9). However, by ignoring this important distinction within parliamentary systems, many of the legislatures that received an affirmative response may require a negative or more nuanced answer.

For example, legislatures in presidential systems vary in their ability to initiate policy. Each one of those systems is individually scored based on that overt prohibition. In contrast, parliamentary systems can avoid a zero score despite having the same overt prohibitions on legislative policy initiation in their constitutional or internal operation documents. This problem cuts across both the PPI and WLPS as both studies overlook this issue in favour of enhancing other questions relating to scrutiny, oversight and dissolution (Chernykh, Doyle, and Power 2017, 304).

Other issues arising from the definitions within the PPI surround a legislature's ability to oversee the executive's actions. Questions Three and Five seek to understand a specific country's legislative rules of scrutiny and oversight, yet in the PPI, merely having a question time has the same weight as the ability to issue a legal summons to attend the legislature.

Where one is a request that can be ignored, another is a command that must be adhered to prevent negative consequences. Additionally, the powers of oversight are not the same as the powers of scrutiny. A committee with no control over the budgets or staffing of a government department is not the same as a committee that does, and their powers of interrogation into the executive's actions will have different consequences. Yet, in the PPI, they are both considered the same.

Under the PPI and WLPS, the executive's control of the legislature is either ignored or downplayed, resulting in potentially inaccurate scores for the legislatures in the index. Scholars have raised issues with the PPI's methodology, specifically on questions that may have given an advantage to parliamentary systems, along with issues regarding the frequency of legislatures receiving the same index scores (Chernykh, Doyle, and Power 2017, 307–8; Desposato 2012, 390). The WLPS attempted to address this issue; however, their ranking of legislatures remained highly correlated with the PPI because the WLPS used the same questions (Chernykh, Doyle, and Power 2017), but the WLPS also noted that the PPI did have a distinctive bias towards parliamentary systems**.**

Bias towards parliamentary-style legislatures also feature in criticisms of the PPI. Questions Two, Six, Eight and Nine from the first section of questions on the legislative-executive relationship are specifically biased towards parliamentary systems. They ask questions about the existence of a Prime Minister, the absence of a President or if a Minister can sit in the legislature. A parliamentary-style system can receive an affirmative score for each question, whereas non-parliamentary-style legislatures receive nothing. In total, these four questions can grant an extra 12.5 per cent only to the scores of parliamentary-style legislatures.

Finally, the PPI compares authoritarian and democratic legislatures on the same level despite their apparent differences and the lack of information from several authoritarian regimes, eliminating any practical knowledge one could gain from their index score. Mezey's classifications do not have any overt biases towards a particular legislative system as it seeks to classify legislatures without any value judgements on its validity.

Mezey or Linz?

Given the variety of comparative methods available to the authors of the PPI, would it have been better to use Mezian ideas in their methodology compared to Linz? In the first pages of the HNL, where its methodology is detailed, the authors acknowledged that Linz's definitions were not entirely accurate. Still, they continued to use Linzian terminology to describe and define their methods (Fish and Kroenig 2009, 1–3). The clearest sign that Linzian principles sit at the heart of their method is in four PPI questions that only give an affirmative score to legislatures that exhibit parliamentary functions, such as having a Prime Minister but not having a President, as seen in Questions Six and Eight. These questions align with Linzian concepts mentioned earlier in the chapter favouring parliamentary systems.

Linz's research focused on the relationship between the voters and the executive, with the legislature playing a secondary role, which transformed into an obstructive role if the legislature was not a parliament. Mezey's classifications of legislatures allow for more nuance and detailed analysis of the PPI because Mezey's methodology looked at several legislature functions and the relationship with the executive.

Mezey classifies legislatures by three criteria: policy formulation, public support, deliberation, and oversight, where policy formulation is the process by which policy is created (M. Mezey 1979, 6,23). Public support is the level of the local populace's support for the legislature as an institution amongst the average citizen and the elites (M. Mezey 1979, 27). Deliberation is the process by which the legislature debates and, potentially, amends policy proposals, and oversight is the capacity of the legislature to investigate and criticize the executive's actions in public to facilitate a change in policy or leadership (M. Mezey 1979, 48). These three categories are divided into subcategories relating to the power dynamic between the executive and the legislature. Each Mezian category contains subcategories that apply to each legislative definition. Compare that legislature-focused approach to Linz's work, which only considered the legislature's role in its executive removal role. If Fish and

Kroenig had considered using Mezey as their methodological core instead of Linz, their outcomes could have been considerably different and perhaps more accurate given the increased dimensions.

Both the PPI and Linz's definitions have overt biases towards parliamentary systems of government. These biases unfairly downplay other legislative systems based on cherry-picked information (Horowitz 1990, 74), which also taint the outcomes of comparative indices based on these ideological assumptions. Again, Mezey's classifications do not exhibit biases towards one legislative system or another, as it only seeks to classify legislatures based on set criteria. This means that if the HNL used the Mezian classifications as their methodological core, there would be no need for the four biased questions that favour parliamentary-style legislatures because that value judgment is not a feature of those classifications. Without those questions, the index scores would change, which would begin to paint a clearer picture of legislative powers. The usage of Mezey could have provided more detailed questions on the deliberative function of legislatures and policy formation than in sections one and two of the Index.

The Legislature: A Check Against the Executive

This section has ultimately shown that comparing legislatures requires a medium of comparison that is as equitable as possible, and it has also shown that it is important to compare similar types of legislatures that hold similar political philosophies. Within democracies, the defining feature of the legislature is its capacity to act as a check against the executive by maintaining democratic accountability for the people who elect the representatives to the institution.

Barkan (2013) makes an explicit distinction between the legislatures of authoritarian legislatures and democratic legislatures. He notes that elections are not the sole definer of democracy, and democracies require institutions of countervailing power, which can be used to neutralise authoritarianism (Barkan 2013, 252). Legislatures can be one of these institutions, given their capacity to legislate, provide oversight, allow for the individual power of legislators and represent the people. These legislative functions create a "tension" amongst other institutions, and this tension is primarily exhibited through the legislature as a check against the executive (Barkan 2013, 263). The main form of democratic accountability is found in the capacity of the legislature to act as a check against the executive and has been the bar for comparison, no matter the criteria or metric, both implicitly and explicitly.

Part Two: The Rules and Conventions of the Legislature

As far back as the 1830s, Jeremy Bentham noted that legislative procedural reform was necessary for a properly functioning society (Greaves 1931, 310). This thesis seeks to dig deeper into the rules and conventions of a legislature to find the structural underpinnings of that power. This new method will analyse the rules and conventions of the selected legislatures, but how is this different from the PPI's methodology?

The PPI asked 32 questions to find where the power lies in a legislature and sought these answers primarily from national constitutions and constitutional acts. These sources of information can determine the existence of a power but not its operational impact. Another way to think about the importance of rules is when considering the term football. The title of the game is not enough; one needs to know if they are playing on a football field or a football pitch. This is determined by the rules and conventions, which is why it is important to understand them when comparing legislatures.

Agenda Control and Veto Players

Everything from votes to debates depends on the allocation of time, and agenda control plays a central role in a legislature, but the PPI only tangentially addresses the matter of agenda control through

Question 27 on regular legislative sessions. All legislative systems have agenda setters and veto players, and while those players may emerge from different parts of the legislature, their effect is clear. They act as a primary barrier in the legislative process. Executive and opposition legislators must contend with either the agenda-setting barrier, veto players, or both. Mezey addressed these concepts through the levels of constraint a legislature could impose upon an executive in the policy-making process, with veto powers being the strongest (M. Mezey 1979, 25)

Agenda Control is central to legislatures' operation, but the control levels vary greatly between and within those systems. Döring (2001) conducted a study of the agenda-setting rules of 17 Western European parliaments, noting that parliaments have their own right to organise their business in order to balance the "right of the majority to govern and the right of the minority to be heard."(Döring 2001a). Döring's central question regarded the level of parliamentary output and the controversiality of the legislation and found that legislatures with higher levels or monopolistic levels of agenda control produced less legislation but that legislation tended to be more controversial (Döring 2001a). Brauninger and Debus' 2009 study also confirms this theory from their 15-year survey of four European parliaments, which showed that the legislative proposals and output of the United Kingdom were significantly less than those of Germany, Belgium and France (Bräuninger and Debus 2009, 819).

The level of agenda-control restrictions speaks specifically to a legislature's strength. Italy, like Germany, requires consensus when setting the agenda. The agenda-setting body, comprised of the leaders of all parties present in the Chamber of Deputies (Cox, Heller, and Mccubbins 2008), has a rule that requires 75 per cent of the group to agree with the agenda to have it considered in the chamber. This means that the Government and opposition must often agree to prevent paralysis (Cox, Heller, and Mccubbins 2008). While the executive also can govern by emergency decree, which gives them the power to circumvent the legislature in certain circumstances (Cox, Heller, and Mccubbins 2008), the report does note that the rate of failure for opposition legislation was vastly lower than other countries such as the United Kingdom and Germany (Cox, Heller, and Mccubbins 2008, 192).

The rules of the Bundestag and Italian Chamber of Deputies provide a more equitable division of agenda control to all parties in the legislature operated through informal agreements between parties (Sieberer 2006). The German system contains far more veto players than the system seen in the United Kingdom (Breunig 2014). The council of elders, committee chairs, and party leaders have varying levels of control over their agendas, which can create issues for both the executive and the legislature in the German system when passing legislation. This change may have resulted in the nearly 25 per cent success rate of legislation originating from non-executive members (Patzelt 1999).

Many legislatures grant the executive some form of agenda-controlling power, and this power can work against the legislature passing or tabling their legislation. Brazil and Italy, for example, grant the President the power to table legislative decrees, which have to be debated forthwith. This grants the executive large amounts of agenda-control power despite not having seats in the legislature (Amorim Neto, Cox, and Mccubbins 2016; Cox, Heller, and Mccubbins 2008). This contrasts with the German Chancellor, who has severely limited decree powers (Sieberer 2006), or the President of the United States, who has no formal agenda-setting powers within the US Congress (Philadelphia Convention 1787).

Latin American democracies grant some agenda-control powers to the executive, as their party tends to gain around 20 per cent of the seats in the legislature (Hiroi and Rennó 2016). This situation requires creating governing coalitions to grant legislators greater legislative opportunities. These coalitions increase the number of veto-platers, creating governability problems for the executive (Amorim Neto, Cox, and Mccubbins 2016; Hiroi and Rennó 2016). Even in these cases, Congress has the power to

amend the legislation as it sees fit, disrupting the intended wish of the President and nullifying any attempt to control the agenda.

Unlike the House of Representatives, which has stronger systems of control for the majority party, there are more nuanced questions on the powers of the Senate. Bach notes that procedures in the House of Representatives are used to expedite the passage of non-controversial bills (Bach 1990), but Smith (2013) put forward two competing theories in the same study to test the cartelization of the majority party in the US Senate.

Unlike parliamentary systems, the majority party in the US Senate does not have total control over maintaining the legislative agenda (Döring 2001a). Any senator can stall or stop a legislative package via filibustering or amending legislation on the chamber floor. Smith also noted the necessity of gaining minority support to ensure the passage of legislation. The usage of procedural motions to halt debate on controversial legislation is well-worn. While it was assumed that a vote on procedure worked to sidestep political scrutiny, their work shows that members of the public still connect their voting choice to a procedural motion (Smith, Ostrander, and Pope 2013).

Attention to the types of agenda control in each legislature is important in comparing their relative powers against each other. Agenda-setting committees that have to find consensus between the legislature and the executive are important and grant the legislature more power against the executive than a legislature that cannot set its own agenda. The PPI's lone question on this matter does not grasp the scale of the legislative power.

Veto Powers and Players

Legislatures have operational rules that grant certain members, or groups of members, the right to halt legislation initiation or stop legislation's progress outright. Tsebelis (1995, 2002; 1999) established a theory that identifies individuals, party groupings and legislative chambers that can affect the progress of legislation, which he termed Veto Players. His theory proceeded to use the number of veto players in a legislative system to craft a game that can determine a regime's or political system's stability (Geroge Tsebelis 1999, 529). Work from Nunnari (2011) and Hohendorf (2021) also shows that veto players hold a higher level of authority than other legislators, able to employ greater brinksmanship to affect change on the status quo. In this section, we will only look at one portion of his theory as this thesis does not seek to comment on links between legislative systems and political stability, but PPI left most of this detail out of Question 27.

Veto players can fall into one of three groups: collective, individual, or institutional veto players (George Tsebelis 2000, 2002). The prime example of an institutional veto player is a legislative chamber. In this role, the whole chamber acts as the veto player against other legislative chambers and the executive (George Tsebelis 2002, 19). In the United Kingdom, for example, both Houses of Parliament have the right to initiate legislation, but a combination of convention and statute allows the House of Commons to override the House of Lords if they choose to halt the progress of legislation. The same can be seen in the relationship between the Assemblée Nationale and the Sénat.

In Germany, the relationship is more complex, with the Bundestag and Bundesrat trading veto-playing powers against each other. The Bundesrat can play a larger veto-playing role through its constitutional rights that require the executive to place legislation with the Bundesrat before sending it to the Bundestag. Scholars have noted (Hohendorf, Saalfeld, and Sieberer 2021; Souris and Müller 2020) that, despite the impression that the Bundesrat is an almost apolitical space, it contains senior political actors of the governments of the 16 Länder who can act to halt the legislative programme of the

executive in the Bundestag. This has led to more concessions being found when the executive tables legislation (Hohendorf, Saalfeld, and Sieberer 2021, 937–38).

Collective Veto Players are commonly found as party political groupings in legislatures (George Tsebelis 2002, 38). This is where the executive can exert the powers afforded to it through the operational rules, but it also allows committees and parties in the legislature to exercise their rights as well. Finally, individual members can also act as veto players. These situations tend to occur when no party has a majority in a legislative chamber, or the majority is very weak.

Individual veto players are featured more in the executive versus the legislature, such as a President with the power to veto legislation unilaterally (George Tsebelis 2002), but individual legislators can be veto players as well. Members of the United States Senate are some of the most famous individual veto players in this study, with their access to several operational rules such as holds on legislation and the filibuster, both of which can halt legislative progress. Understanding the relationship between the legislature and the executive and the legislature and the individual legislator is an important part of comparing legislative powers, which the PPI excludes but is necessary for accurate comparison.

The Legislature and Legislative Process

The production, initiation, and passage of legislation are important functions of a legislature, but of the 32 PPI questions, only two, 11 and 14, directly deal with the legislative process. Understanding the nuances of this process is pivotal in comparing legislatures. As Mezey noted, comparing legislatures based on their policy-making capacity is an appropriate criterion, and the following section looks at the literature on different legislative systems and their capacity to pass legislation. (M. Mezey 1979, 23). The PPI focused on two narrow areas of legislative production: legislative gatekeeping and decree powers. These two powers focus on executive privilege versus the rules of the legislature on the legislative process as a whole. The following sections will show that legislative production is wider than the two areas focused upon by the PPI, and their absences have led to a lack of detail that inevitably affects the outcomes of the index.

Legislative Initiation and Passage

In active systems, the right of legislative initiation is typically contained within the respective chambers, with the members of the legislature given the ability to present policy proposals. In some presidential systems, the powers of legislative initiation are shared between the executive and the legislature. Legislators in the American presidential system are often portrayed as having significantly stronger initiation powers than their colleagues in other legislative systems. The US Congress is associated with individual members having strong policy-making powers, increased relative powers on committees, enhanced procedural devices in their relative chambers and the collective ability to override executive vetoes (Bräuninger and Debus 2009; Döring 2001a; Norton 1990a). However, this does not mean US legislators are granted carte blanche in the legislative process.

In comparison, the reactive French legislature is driven by the direction of the executive (Huber 1992). Elgie described the French legislature as chambers that only “pass the laws that the government of the day wants it to pass.” (Elgie 2003, 162). This is in contrast to a quantitative study of the production and passage of legislation in the Brazilian Congress conducted by Gaylord (2012) that showed while the executive produced a majority of the legislative instruments, the content of those bills was greatly amended through the legislative process. This interaction with legislation was so great that the executive attempted to move their legislation out of committees to prevent frequent and permanent amendments to the legislation (Gaylord 2012, 58).

Tabling and Amending Legislation

In both active and reactive legislatures, legislation can be presented, amended and passed into law. The ability to do that and the influence of the executive on that process has been studied in both types of legislatures. The Legislative Effectiveness Score (LES) created by Volden and others quantified the almost imperceptible abilities of the individual legislator in the United States House of Representatives between the 97th and 109th Congress to rank the member's personal ability to pass legislation (Volden and Wiseman 2014c). Their work showed several important factors that impacted the effectiveness of a legislator, including if they were part of the majority party and if that legislator was a woman. This study created a viable testing template to which another legislature could adapt.

The concept of the LES has a foundation in the US presidential system, but others have looked at similar ideas in the United Kingdom regarding the legislature's ability to influence legislation. Several scholars have argued that members of the UK Parliament significantly influence the executive, countering ideas that the legislature is weak. (M. Mezey 1979; Norton 1990a; Russell and Cowley 2016; Russell, Gover, and Wollter 2016). Russell, Gover and Wollter (2016), for example, conclude in their study that the legislative initiative powers of British parliamentarians are not as weak as one would believe due to the skewed perceptions of the number of government victories regarding legislation.

They argue the high amount of government wins in the House of Commons come from un-substantive amendments to the government's own legislation and that these "housekeeping" or "tidying-up" amendments skew the reality of backbench influence on executive decision-making (Russell and Gover 2017; Russell, Gover, and Wollter 2016). Housekeeping amendments are not intended to change a bill but to correct small drafting or legal errors before they complete their legislative journey, which diminishes the importance of the victory. There is also evidence that the government privately capitulates to members' requests on their own legislation bills to prevent embarrassment or, even worse, legislative defeats (Russell, Gover, and Wollter 2016).

From that, they argue that Parliament is a negotiating body where the government constantly works with other members to get legislation passed, an idea also addressed by Norton (1990a). Mezey also addressed the issues related to the perceived weakness of British parliamentarians but countered that the customary requirement of the executive to consult with parliamentary groups indicated that the legislators may not have as little influence as once thought (M. Mezey 1979, 92). The idea that members of the legislature are constantly consulted is interesting, but it also infers that their input is, at best, advisory with no stated consequences for the executive should they fail to take on their suggestions.

Private Members' Bills

In reactive legislatures, the ability of legislators to independently introduce and progress legislation through the legislature is very different from their active counterparts because legislation initiated by non-executive members is treated differently than legislation initiated by the executive. Non-executive legislation in reactive legislatures are known as private members' bills, and they have greater restrictions on their passage. Some reactive legislatures, such as the New Zealand Parliament, contain fewer overt restrictions on legislators to introduce bills but rely on conventional party procedures to restrict access. (Spindler 2009).

The usage and procedures of private members' bills in the United Kingdom have been covered extensively by Holly Marsh and David Marsh. They address issues regarding the ability of MPs to halt the progression of private members' bills through the standing orders of the House. All bills tabled in the UK Parliament are technically the same in stature, notwithstanding whether the executive or a

backbencher tables the bill. This means that both are considered the same under the rules of the House, but the executive has exclusive rights to use specialized motions to protect the passage of their bill. In contrast, an individual member's bill can be halted by using several procedural devices ranging from using all the allotted time for the debating day to saying 'object!' at the end of the day's proceedings (Marsh and Marsh 2002, 94).

Brazier and Fox (2010) identify the significant issues regarding the procedures that govern the passage of legislation in the House of Commons and present ideas for reforming the private members' bill system in Westminster. They recommend several reforms, such as guaranteed passage for well-supported bills, allowing select committees to "endorse" bills, and creating a select committee on private members' legislation to determine the merits of members' proposals (Brazier and Fox 2010). Shota Moriue's 2019 work in relation to private members' bills in different legislative systems showed significant differences in the success rates of private members' legislation between the devolved nations of the United Kingdom, the Japanese Diet and the House of Commons.

Moriue's research showed the House of Commons had the lowest success rate regarding the passage of private members' legislation compared with the other legislatures studied. Out of their study of legislation introduced by backbench members, only 24 per cent of ballot-selected bills, 0.6 per cent of ten-minute rule bills, and five per cent of private member's legislation introduced in the House of Lords received Royal Assent between 1997 and 2016 (Moriue 2019, 4). Comparatively, 40 per cent of private members' legislation in the Scottish Parliament received Royal Assent between 1999 and 2016 (Moriue 2019, 5), 56 per cent received Royal Assent in the Welsh Assembly between 2007 and 2016 (Moriue 2019, 7), 60 per cent received Royal Assent in the Northern Irish Assembly between 1999 and 2016 (Moriue 2019, 8) and 50 per cent of non-Government legislation was passed in the Japanese Diet between 1946 and 2016 (Moriue 2019, 11).

There is space for arguments against comparing the output of sub-national legislatures against the national legislature, but the effects of legislation are the same across the jurisdictions. The executive still produced the lion's share of amendments in each of Moriue's examples, but the drastic difference in passage rates between the UK Parliament and the rest of the countries and nations studied show that the ability of a member of Parliament to pass legislation in their system does not need to be hampered because it is a parliamentary system. As Moriue notes, the cabinet of the Japanese Diet is based on the British system, complete with the concept of collective ministerial responsibility (Moriue 2019), yet this system allows nearly 50 per cent of all private members' legislation from both chambers to pass.

Questioning and Investigating the Executive

The ability to investigate and question the executive is very important in understanding a legislature's power, but also in comparing it against another legislature. A strong investigative capacity can help correct a social wrong, while a weak investigative power may only allow the legislature to act as a bystander to social injustice.

The PPI dedicates three questions to analyse the ability of a legislature to investigate the executive directly. They covered plenary question sessions, committee hearings and overt investigative powers, but the questions were all considered to have the same importance. The following sections show important differences in investigative powers and their importance in comparative study.

Plenary Questions Sessions

Ministerial plenary question sessions are a prominent feature of most reactive systems, with scholars studying their effectiveness in their scrutiny roles (Cole 1999; Federico 2011; Olivier and Martin 2011; Otjes and Louwerse 2018). Plenary questions allow non-executive members of a legislature to

interrogate, embarrass and potentially expose serious issues in government policy (Salmond 2004, 2014).

In their study of the questioning procedures within 17 European Parliaments, Russo and Wiberg (2010) found that all of the European parliaments studied allowed for written and oral questions to ministers, but none allowed spontaneous questions sessions that ended with a vote. Their work shows that despite the differences in legislative procedure, the ability of members of the legislature to question the executive is approximately the same across Europe, and their study also shows that a majority of legislative question sessions had a low potential for gaining information from the executive (Russo and Wiberg 2010, 225).

This finding supports the studies below regarding the effectiveness of written parliamentary questions as a potent tool for legislators to hold the executive to account. Despite the issues noted about the effectiveness of parliamentary questions, members of parliamentary systems can use this tool for a number of other reasons, such as increasing their personal status within the constituency, party or in the media (Russo and Wiberg 2010). This perspective paints the practice of ministerial questions as a tool that benefits the executive.

Cole (1999) notes in his work tracking the effectiveness of parliamentary questions in the UK Parliament that many scholars hold plenary questions in high esteem. Question time is viewed as a form of executive scrutiny that provides a public service; however, its effectiveness in increasing executive accountability in the United Kingdom was put into doubt as he cited a poll that 85 per cent of members of Parliament "did not rate the effectiveness of questions in influencing government policies and actions"(Cole 1999, 83).

Cole's work focused on the powers of the members of the Commons to question ministers on the activities and decisions taken by executive non-departmental bodies. Parliamentary question sessions provide a precise time and date for a member of Parliament to know when and where a minister will be in the chamber to take questions on their subject area. Cole finds that, despite the importance that many places on questioning, ministers may simply refuse to answer questions or deflect the question with a political counterattack (Cole 1999).

Backbench members lack the right to reply to the executive during plenary question sessions in Westminster. This practice ensures that government ministers can shape their responses to questions on their terms, allowing them to answer a question that does not provide any relevant information. As Cole wrote of the questioning powers in the House of Commons, "The culture and rules of the House of Commons combine to prevent PQs playing a major role in holding these bodies accountable." (Cole 1999, 98). Parliamentary questions have a contradictory dual purpose of being a very public form of executive scrutiny but not providing the strongest government accountability measures.

This dichotomy is borne out in the difference between oral question sessions and written parliamentary questions. Oral questions to government ministers tend to focus on embarrassment or promotion of the executive, depending on the persuasion of the questioning member, while written questions tend to seek detailed advice on policy matters (Olivier and Martin 2011; Saalfeld 2011). This procedure has existed in some legislatures for over a century (Jones 1973), well before the advent of electricity or mass communication, when question sessions were some of the only forums to gain valid information from a government source. An interesting question would be to consider the effectiveness of written parliamentary questions in the information age.

Oversight and Scrutiny

One way to determine efficacy is in the differences between oversight and scrutiny of the executive. These terms are used interchangeably in academic writing and legislation (Benton and Russell 2013; Defty 2020; Prime Minister 2017, sec. 156; Stapenhurst, Jacobs, and Cedric Eboutou 2019), but these two words have very different meanings. This section will set the difference between the two.

Scrutiny

Scrutiny is the process of examination of actions or statements of the executive. This can be achieved by asking questions of the executive, either in committee or on the floor of the House, or through conducting a study of public documents (Uhr 2001); while all oversight contains a scrutiny element, scrutiny is not oversight per se. Should the legislature find fault with the actions of the executive, under the powers of scrutiny, the legislature can publicly admonish the executive for their actions but cannot enforce a change in policy or action.

Scrutiny does include the ability to summon the executive, as forcing the executive to appear before a legislative body is an important part of gaining information. The action, or threat of summons, may be an indirect path to forcing a policy change by the executive, but the summons itself does not have a direct effect on the executive actions or policy. Scrutiny can be enhanced through the application of personal fines to compulsion rules. Fines, however, do not have the same weight as removal from office or imprisonment for lack of compliance with a request of the legislature. There was no discussion of what constitutes effective scrutiny of the executive by the authors of the PPI, but one example of effective scrutiny was detailed by focusing on the availability of question times and debate on parliamentary legislation (Uhr 2001, 11).

Oversight

Oversight of the executive by the legislature has been covered by several scholars, such as Ogul's (1976) observations on the lack of a then-existing model to deal with corruption and accountability in the legislatures of Germany, Japan and the United States, while another form of oversight is Horizontal Accountability.

Horizontal Accountability is the concept of oversight that allows an intra-state set of institutions the right to constrain the actions of the state and discourage abuses of power; furthermore, these actors could sanction a punishment on those who were found to abuse their authority (Fombad 2020, 69; Lemos 2006, 4). Horizontal Accountability is different from Vertical Accountability, which supposes that executive oversight can be performed through democratic practices such as elections to remove elected officials who fail to perform to the standards of the electorate. Oversight can be defined in different ways. Where Lemos defines oversight as a pro-active function of a legislature, Uhr defines oversight as a tool, primarily, for agencies of the executive to operate in institutions such as an Auditor-General and Ombudsman (Uhr 2001, 11–12). This is an interesting split in ideology as Lemos's definition is related to the operations of the Brazilian Congress, and Uhr's definitions were related to the conventions of the Australian parliament.

Oversight is different from scrutiny in a very specific way, where both scrutiny and oversight functions involve the ability to summon, examine and investigate the executive; oversight powers typically come with severe sanctions (Lemos 2006; Toral 2019). In the United States, committees and Congress have control of federal budgets, allowing the legislature to effect change without the consent of the executive and the threat of imprisonment for non-compliance. Despite the lack of budget control, the Brazilian Congress has the constitutionally backed threat of impeachment for failure to adhere to the Congress's requests.

Horizontal Accountability can be interpreted as a strong benefit for the legislature as proto-autocrats in Central and Latin America first sought to lessen or reduce the legislature's ability to conduct their oversight functions (Ruth 2018; Singer 2018). The South African assembly was another legislature sanctioned, this time by the South African Constitutional Court, for failing to provide strong enough oversight measures in the form of executive removal (Fombad 2020, 74).

Committees

Committees are a staple of all legislative systems. Their purpose, by and large, is to bring a deeper focus to legislation and matters of societal importance by accumulating relevant information and distributing reports. This next section will look at investigative committees and legislation-focused committees. The PPI only looked at the interrogative powers of committees and ignored their other purpose, proposing, scrutinising and amending legislation. Across legislative systems, committees have varying capacities to affect legislative progress and provide a tool of oversight or scrutiny for the legislature.

The Mezian classification of legislatures requires an analysis of the committee system within the legislature to classify a legislature properly. Legislatures with transient committee memberships and heavy influence from the executive are the main tenets of reactive, marginal and vulnerable legislative systems. In contrast, active legislatures see the opposite, with more “autonomous” committees with greater ability to affect the passage of legislation via agenda setting and veto powers. (M. Mezey 1979).

Scrutiny or Oversight: Committees of Investigation

When comparing committee powers, it may be better to divide their investigatory powers in terms of oversight and scrutiny, given the interchangeable use of the terms. An example of this interchangeability appears when comparing the intelligence agencies of Australia, New Zealand, Canada, the United Kingdom and the United States. These countries, known as The Five Eyes (FIORC 2017), form an intelligence-sharing alliance, but their capacity to scrutinise and oversee their respective intelligence communities is vastly different.

A report from the Australian parliament shows that four of the Five Eyes countries have committees that examine the work of the intelligence services, but of those countries, Australia, New Zealand and the United Kingdom all have codified restrictions on the scope of their investigative powers limiting their capacity to control the agency thorough amendment of budgets versus exert influence (Barker et al. 2017, 11,31,39). Only the committees of the US Congress had the highest amount of investigative powers, including control over budgets (Barker et al. 2017, 50). Despite these differences, the paper uses the term oversight to describe the powers of these countries' committees, regardless of their capacity to control.

The PPI asks a specific question on the capacity to oversee agencies that cover areas like intelligence, but it fails to make the difference between oversight and scrutiny. The legislatures in this report do not all have the same investigative powers. Finding and defining the differences between them would have provided a more accurate description of these legislatures' capacity to oversee or scrutinise the intelligence services.

Another example of the differences between oversight and scrutiny is seen in Committees of Inquiry. The PPI looks at the capacity of legislatures to investigate the executive, and some legislatures feature specialised investigative committees that have enhanced rules and compulsory powers to investigate the actions of the executive; although these committees are intended to be used in extremis, with their effectiveness being called in to question due to matters of trust (Młynarska-Sobaczewska 2022).

Other committees, such as the select committees of the House of Commons, have weaker rules that allow for a scrutiny function to be performed but stop far short of oversight, with some saying that those committees should be used to influence the executive and prioritise soft powers instead of their committee rules (Masterman and Murray 2022; H. White 2015). Again, as with committees that investigate the intelligence community's actions, understanding the committees' rules speaks directly to the committee's power. This analysis is missing in the PPI but is crucial in comparing legislatures.

Legislative Committees

Epstein (1997) studied the rules of legislative committee systems as well as the range of expertise and seniority of legislators in both the United States Congress and the Japanese Diet. The study found that the legislative systems with greater policy initiation powers can undermine the strength of the political party, as the actions of the individual in committee or their personal experience creates a greater opportunity for re-election than the success or reputation of the party.

Powerful legislative committees can create barriers to the passage of legislation for both the legislator and the executive, as they contain the rules to completely rewrite the bill and present it to the House before the original (Hiroi and Rennó 2016). To that end, Hiroi finds that the Brazilian Congress substitutes executive bills 60 per cent of the time instead of a 46 per cent substitution rate for bills that emanated from the legislature. This power creates a negative agenda control for the legislature despite a number of the legislators being part of a governing coalition.

Amorim, Cox and McCubbins (2016) found that Brazilian Presidents created ad-hoc legislative coalitions to govern because of the capacity of the legislature to amend executive-initiated legislation that enters the Brazilian Congress. The ability to progress legislation through a chamber requires the cooperation of party and chamber leadership, but in systems with strong committee structures and collaborative agenda setting, the ability to push or obstruct legislation is not explicitly tied to the power of the executive but rather, to the abilities of the legislator to influence the progress.

Suely et al. (2013) studied the importance of the legislators in the Brazilian Congress through the work of committee rapporteurs, who have the potential to act as agenda-setters in the Brazilian Chamber of Deputies. These individuals can negotiate legislative exit strategies for bills that enter the committee. This applies to all bills, including ones introduced by the executive.

There are many ways to investigate the executive, but the committee systems, with their overt tools to address matters of both legislation and investigation, have an advantage over the ability to ask questions. The PPI conflates question sessions and committee sessions, resulting in a potentially inaccurate depiction of a legislature's power. This thesis intends to address and correct that matter.

The Confidence Motion

The capacity to remove the executive is the ultimate sanction a legislature has in its arsenal, and understanding how the power works is integral to comparing legislative powers. In contrast to Linz, Mezey did not place a high value on the capacity to remove the executive. Huber writes on the power of the confidence motion in both its agenda-setting role and its connection to passing legislation in 18 European legislatures. He and others theorised that confidence motions "ensure that directly elected members of parliaments can control policymaking activities by the executive"(Huber 1996, 270).

To test his theory, Huber gamed a model to study the use of confidence motions as a strategic bargaining tool in passing the policy priorities of the UK Prime Minister. At the time, UK Prime Minister John Major's Maastricht treaty debates were an example of the executive's power to use confidence motions as a tool against intransigent, anti-European Union backbenchers who were forced a take-it-or-leave-it decision when used his singular right to initiate a confidence motion (Huber 1996, 1). The

backbenchers chose to either vote against the executive and risk a General Election or capitulate and allow the executive to win.

Some issues arise with the assumptions made in the model, specifically the ability of the majority members to veto legislation (Huber 1996, 274), but Huber rightly asserts that the choice to vote for or against confidence adversely affects the legislature far more than the executive. Huber's work shows that confidence motions work against the decision-making powers of the legislature, as voting for a confidence motion can result in electoral defeat, no matter if the member is part of the majority or minority party. In the end, this gives the executive in Reactive systems far more power than the executive in Active systems, where Huber notes the "inverse" power dynamic between the two types of legislatures (Huber 1996, 279–80). Huber is correct; however, understanding the procedures is paramount in understanding political interactions in parliamentary systems (Huber 1996, 280).

Willams (2011) studied the efficacy of confidence motions in advanced democracies, noting that confidence motions tabled against an executive had, on average, a five per cent success rate. It leads her to ask why the opposition persists in using the tactic if it does not achieve its desired goal. Her findings showed that opposition leaders used confidence motions as a signal to the public. This finding coincides with work by Fleming et al. (2022). These findings found that confidence motions are currently used to gain voters rather than remove the executive.

These two examples show both the idea that the executive has a great amount of control over confidence motions, so much control that opposition parties in parliaments use the tool as a protest more than a removal device. What is not clear is how the procedures of these chambers affect the efficacy of the motion, and that may provide much greater detail and accuracy when comparing legislatures, which is a further gap from the PPI.

Part Three: The Overlooked Powers

The final part of this chapter looks at the rules and legislative powers that the PPI overlooked. These powers cover matters such as legislative convention, the rights of the minority, and individual legislators' powers. These powers could also be used to show a degree of trade-off between the legislature and the executive. In some cases, it may be implied, as shown with conventions, or it may be explicit, as shown in the procedural powers of the legislative minority.

Convention: The Unwritten Rules

The PPI focused on expert opinion and a survey of constitutional rules to justify their index scores, but legislative conventions did not play an explicit role in the assignation of scores. Some legislatures, such as the UK Parliament, tend to operate under unwritten, unenforceable understanding between the executive and the legislatures. These conventions are often equated with operational rules despite some serious differences between the two.

Oliver (1994) investigated the origins of ministerial responsibility in the United Kingdom and the state of conventional expectations of the House of Commons when confronted with executive intransigence. Her investigation included the 1954 Crichel Down affair regarding errors made by civil servants and reporting bad information to Parliament, potentially with the knowledge of the Minister of State.

The Crichel Down affair established the conventional expectation that errors in the operation of an executive department should result in a ministerial resignation. Oliver argues that, over time, the conventional expectation of resignation has disappeared, leaving the legislature and country with no recourse to an executive who does not play by the rules. She notes that "Conventions rely on their efficacy on an accepted political ethos. There are, as will be seen, signs that such an ethos is no longer

strong." (Oliver 1994, 633). Oliver states that, in many cases, Parliament is the only organ of the state that can "control" the executive due to the relationship between the Parliament and the judiciary, which are both parts of the same Crown (Oliver 1994, 634). She concludes her thoughts by stating that conventional expectations have failed to grant Parliament or the country the ability to control the executive, who conversely argues that convention is integral to the unwritten constitution (Oliver 1994, 644).

In the intervening years, conventional protections have come under increased scrutiny and pressure. The Good Chap Theory is another convention that suggests that members of the executive are willing to act in an honourable way despite having near total control of both executive and legislative powers because they are "decent" and show a sense of "restraint all around" (Geidt 2022; Hennessy 1992; McCabe 2019; Saunders 2021).

The originator of the Good Chap Theory, Lord Hennessy, commented on the failure of the conventional system of restraint during the Brexit process alongside Andrew Blick. The pair start by analysing the speeches of then Prime Minister Theresa May as she indicated that "Parliament, the rule of law, the devolved institutions and other institutions were subordinate to the supposed popular will, to be interpreted and implemented by the UK executive." (Blick and Hennessy 2019, 9). They follow this up with further examples of the convention being swept aside for political expedience with references to the illegal prorogation of Parliament and the lack of respect towards the legislature or the Judiciary during the Brexit process (Blick and Hennessy 2019, 12), including the use of misinformation of official statistics (Blick and Hennessy 2019, 15)**.**

The pair argue that despite being developed to "constrain" against the executive (Blick and Hennessy 2019, 24), Parliament lacks the capacity to appropriately control the executive due to its lack of access to Royal Prerogative (Blick and Hennessy 2019, 25). In short, convention was not enough to constrain the executive. This point was accentuated in 2022 when Hennessy stated that Former Prime Minister Boris Johnson broke the basic tenets of the conventional system, such as upholding the ministerial code (P. Clark 2022). These examples show the importance of understanding the role convention plays in the operation of a legislature, as well as the limitations of their enforceability.

The Minority and Legislative Power

Bach (1990) and Smith (2013) have both conducted studies on the usages of certain congressional procedures in relation to the functions of the House of Representatives and the US Senate in securing procedural expediency and the powers of the majority, but what of the rights of the minority? Do rules affecting them also affect legislative power?

The PPI focused on rules related to the institution's operation as a whole, but more information on legislative power can be gained by understanding the rights of the minority parties. Legislatures can balance the numerical and electorally mandated power of the majority versus the rights of the minority. Similar procedural rules are employed in the American legislative system and used in US state legislatures. As Clark (2015) notes, the Texas State Senate, for example, has similar rules that allow their members to filibuster, but unlike the US Senate, the Texas Senate placed procedural checks against its abuse. The specific rules of the Texas Senate prevent a member from speaking off-topic, eating or drinking during the speech, or leaning on the podium for support. If these rules are broken three times, the speech ends immediately, and a vote is taken on the subject (J. H. Clark 2015). This is just one example of the importance of the procedural powers upon which a legislator can call. Others include roll-call voting, which can require every member physically to be present in the chamber to place a vote, and quorum requests that seek to see how many members of the legislature are present (J. H. Clark 2015).

Clark notes that most scholarly works tend to dismiss the policy-making powers of the minority party (J. H. Clark 2015). This focus may be attributed to the simple lack of members within the chamber to pass policy objectives (J. H. Clark 2015). After all, the title of "minority party" is descriptive more than anything else. However, in certain circumstances, as shown by Clark (2015) and Smith (2013), members of certain legislatures rely on the votes of minority members to pass legislation.

These implicit and explicit rules give powers to more senior members of the legislature, regardless of party affiliation (J. H. Clark 2015). This means that procedures in presidential systems across the United States ensure that the minority is allowed a chance to bring forward their own policy objectives and, in some cases, in conjunction with the timing of the legislature, can secure policy success on a far greater level than seen in parliamentary systems (J. H. Clark 2015).

Clark's study was of state legislatures, but it compares favourably with the picture at the national level, as showcased by Smith. Clark's study showed that, depending on the legislature, minority legislators had a 30 to 40 per cent chance of passing a bill (J. H. Clark 2015, 136). The closest comparator of minority legislation in the parliamentary system is the Private Members Bill, and those, on average, see a pass rate of about 10 per cent (Andrews 1978; Brazier and Fox 2010; Spindler 2009). By considering the role of the minority party, an important distinction is found between different legislative systems. This is important when comparing them, but it is not a feature of the PPI.

The Individual Legislator

One of the final ways to compare legislatures is through the powers of the individual Legislator. The PPI has no specific questions regarding the rights of the individual legislator in the chamber, but Questions 28-32 focus on matters related to individual legislators and their staff. This thesis looks at the influence of the individual in areas such as legislative production and agenda control, but is it important to include them in comparative study?

Patzelt (1999) described the relationship between the legislative rights of individual members of the Bundestag. He claimed that the powers of a legislator are clearly linked to the perceived effectiveness of the government, while Mattson's (1995) comparative study on the powers of an individual member in the parliamentary system stemmed from 19th-century ideals of a legislator who did not operate as a functionary of the party but as an individual actor.

The influence of the executive, combined with the increased power of the party, dampens the importance of the individual member in the parliamentary system or, as he puts it, "Members of Parliament are not considered as free representatives, but as puppets on their parties' strings." (Mattson 1995, 450). Mattson's impressions of members of Parliament also speak to their ability to act as an independent check on the power of the executive.

Lord Bryce (1921) lamented the conversion of the UK Parliament from a legislature of individuals to a legislature of parties, and Mattson continues on that theme, noting that the concept of a strong, individual legislative actor has fallen, replaced with political parties who drive the actions of the individual members in the parliamentary system—further stating that the focus on the party has led to a reduction of research on the powers of a member in the parliamentary system. This can translate into the strength of the legislature when looking at which individuals can yield the powers in question.

Conclusion

This chapter has looked at literature related to the primary legislative powers and has shown that there are gaps in the methodology of the PPI, which precipitates the need for a new method. First, this chapter looked at the logistics of comparison, including the definition of a legislature and the reasoning behind comparing them. Methods from Polsby, Linz and Mezey were examined, with

Mezey's methods having more dimensions for research than Linz's, which could lead to more accurate responses for a comparative method. Further gaps are found in the reliance on confidence motions as an effective check against the executive and the levels of independence a legislature has against executive interference in legislative production, showing that agenda control has a far greater legislative power to understand and compare.

This chapter found further gaps within the literature regarding the conflation of oversight and scrutiny powers of the legislature, especially in its investigative function. The chapter further shows that the PPI left gaps in the understanding of legislative conventions, the rights of the legislative minority and the power of the individual legislator.

Each section shows that, with a few more pieces of information, a greater description of legislative powers can be determined, which shows a further gap in how the PPI assessed legislative powers. The PPI sought to simplify the process of comparing legislatures by using simple yes-no questions, but this three-part chapter has shown that a more nuanced approach is required to address the scale of information available about the rules that back legislative powers. There are also factors that the PPI did not consider, which also play into assessing legislative powers compared against each other.

This thesis addresses the gaps identified in this chapter by using a rules-focused approach to assess legislative powers, advancing the work of the PPI alongside others to gain a more detailed assessment of legislative powers. The next chapter will explain how this thesis will assess legislative rules and conventions to compare legislatures.

Chapter Three: Methodology

Introduction

This chapter introduces the methodology used for the new comparison system. The first part of this chapter will address the legislative power selection criteria and the legislatures selected for study. The second section will explain how the operational rules and conventions analysis will be converted into score ranges. The final section will explain how the score ranges are converted into a singular score for this method and for comparison against the PPI.

The Research Question and Power Criteria

This thesis asks the following question:

- How would a change in the methodology of the Parliamentary Powers Index to a rules-focused approach affect its outcomes and findings?

Given that the PPI is the most well-known comparative index, it has been selected as a test for the new system. Some parts of the PPI's method have been altered to create a fair playing field. The rules-focused approach refers to the rules and conventions of the selected legislature versus the broad approach of analysing constitution/constitutional acts. The rules and conventions will focus on primary legislative powers, which this thesis defines as:

- Agenda Control (including dissolution)
- The Legislative Process
- Oversight and Scrutiny of the Executive
- Investigation of the Executive
- Removal of the Executive

These powers represent the primary levers of control over any legislature and represent the capacity of the legislature to act as a check against the executive. The criteria for each question are set by an amalgamation of rules and conventions found in each of the legislatures for each primary power. This allows for the nuances of the individual legislatures to be accounted for while comparing them against each other, ensuring that no unique variation of a primary power is omitted. These criteria are asked in "yes/no" formats with justifications. This method ensures that the full range of each power's usage is considered when comparing legislatures.

Agenda control is the first power to be considered due to its pivotal role in the operation of a legislature. The remaining powers cannot be activated or executed if there is no mechanism to move the motion. No investigation can take place if a committee or chamber does not grant the time, no piece of legislation can be moved if there is no time to make the motion, and the executive cannot be removed from office if the debate cannot commence. Agenda control is the lynchpin to the operation of any legislature. The criteria for comparison for Agenda control and dissolution will focus on rules related to the legislature's capacity to control its own timings, recall itself, adjourn itself for short periods and dissolution.

The legislative process is the second power to be considered due to it being a primary function of the legislature. Following on from the definitions of legislatures in the previous chapter, this power performs the legitimisation function of the legislature. The criteria for comparison for the legislative process are rules and conventions that restrict the legislature from initiating or passing legislation, as well as any structures designed to process legislation.

Oversight, Scrutiny and Investigation of the Executive represents the second and third powers to be considered due to their importance in carrying out the democratic function of a legislature by questioning or controlling the actions of the executive. This section will also consider powers related to the intelligence agencies as rules related to their operation are often different to other legislative committees. The criteria for comparison for this question look at the legislative structures for investigation and questioning of the executive, if the executive has any immunity from investigation, if the legislature has compulsory powers, and if the legislature has any restrictions on funding, questioning and regulating the executive.

The final power to be compared is executive removal. This power can be the ultimate sanction of a legislature and the most powerful tool of control against the executive; therefore, the criteria for comparison will focus on rules related to removal procedures and conventions and the capacity of the executive to avoid them.

This method differs from the PPI by putting agenda control at the top of the list for consideration instead of Executive Removal. The PPI did not have an explicit question regarding agenda control in the index; instead, Question 27 asked if the legislature regularly met. For comparison, the PPI had two questions related to removal, and of those two, Question Nine only applied to systems that can invoke a confidence motion in the executive. Removal of the executive is an important power, but it is the ultimate sanction, whereas Agenda Control is about the control and operation of a legislature.

Selection of Legislatures

As stated earlier, it is important to compare legislatures of the same political ideology; therefore, the six legislatures selected for study are all from democracies. This selection was made because the primary legislative powers of democratic legislatures are comparable against each other, while authoritarian legislatures typically have a vital and fatal difference in their rules that benefit the predominant political party.

The six legislatures below have also been selected to compare this method against the PPI, specifically their placement amongst each other and the differences in index scores. France and Brazil were selected because they represent two different kinds of legislatures that gained the same index score despite having substantially different operational rules and conventions. The German Parliament was selected because it is the highest-ranked legislature in the PPI, which is a good comparator for testing the new methodology. The parliaments of the United Kingdom and New Zealand were selected because their rules and conventions are far more similar than those of France and Brazil, but there is a large difference between scores. Finally, the US Congress is selected because, despite having some of the strongest rules that benefit the legislature, its ranking does not reflect that reality. These legislatures will provide a good test for the new methodology to see if the results stay relatively the same or if there are changes in the outcomes.

Index Ties

The Brazilian Congress of Brazil and the French Parliament are both ranked 60th and 63rd, respectively, but received the same scores in the PPI. This makes both countries an interesting case for study because their rules are very different, making their congruity puzzling. The Brazilian Congress is a bicameral legislature with two elected chambers.

The executive has access to some powers of legislative initiation, including decree powers, but the legislature controls its agenda through committees of both Houses. The Brazilian legislative environment is best described as coalitional presidentialism, where the executive relies on several

political parties within the legislature to form coalitions to create legislative majorities (De Barros and Gomes 2011).

Coalitional presidentialism indicates an increased amount of leverage that the legislature could use against the executive, which leads to the legislature gaining more influence in the creation and amendment of policy within the deliberative process. Despite the executive's substantial powers to control the agenda within the legislature, the legislators retain a significant capacity to affect policy formulation (Freitas 2016). This legislature primarily operates under established standing operational rules.

In contrast, the relationship between the legislature and the executive in the French Parliament features a greater benefit for the executive in areas of policy initiation and agenda control, but enhanced scrutiny rules benefit the legislature. The French Parliament is also bicameral, with one elected chamber and one unelected chamber. Both houses of the French Parliament have agenda-setting committees, but the powers of the executive are far stronger than seen in Brazil, which begs the question, why does the PPI give a tie score for two very different systems?

Executive Dominance and PPI Placement

The Parliament of New Zealand and the Parliament of the United Kingdom present two reasons for study: the lack of tie scores and chambers dominated by the executive. The unicameral New Zealand Parliament is ranked 32nd in the Index, while the bicameral UK Parliament is ranked 14th. These placements put New Zealand in the top 20 per cent of the PPI and the UK in the top 10 per cent. Both legislatures rely more on convention than written rules to operate their legislatures. There are some differences in the rules, for example, the existence of an agenda-setting committee in New Zealand versus no such committee in the United Kingdom, but overall, the two legislatures are very similar. Despite these similarities, the two are far further apart in the index than France and Brazil.

Both legislatures also demonstrate high levels of executive dominance. These levels of dominance are so pronounced that the UK has been called an "elective dictatorship" (Barendt 1997; Blackburn 2015; Geçer 2016; Hailsham 1976). Despite the high levels of executive dominance seen in both countries, their legislatures rank very highly in the PPI. The incongruencies between these two legislatures' scores show a need to test the new methodology on these legislatures to see if the differences between the scores remain and if they retain their placement among the other legislatures under study.

The Top Score

The German Parliament represents an interesting case study because it received the highest placement in the PPI with a score of .84, and it serves as a good test of the new methods to see the degree of change to its score, if any, after the methods applied to this legislature's rules and conventions. The German Parliament is a bicameral legislature with an elected and unelected chamber. Unlike other reactive legislatures in this study, the German Parliament has some of the largest trade-offs between the executive and the legislature, with rules such as executive removal and policy initiation shared between the two. This legislature primarily operates under established standing operational rules.

Accuracy of the Index

The United States Congress ranked 49th in the PPI out of 158 legislatures. It is also the highest-ranking, non-parliamentary legislature in the PPI, but does the PPI properly reflect the legislative powers of

Congress? The bi-cameral legislature, with two elected chambers, commands very strong powers of policy initiation alongside powerful oversight mechanisms. Unlike Brazil and other Latin American presidential systems, the executive does not contain broad legislative powers over policy initiation and control of the agenda. (Amorim Neto, Cox, and Mccubbins 2016). Here, the relationship between the legislature and the executive places Congress above the President, with the executive having no operational rules or trade-offs between the two, and yet, it is ranked only in the top third of legislatures.

Qualitative Legislative Powers Analysis and Legislative Power Score Ranges

This methodology is comprised of two parts: the analysis of the operational rules and conventions, including the entrenched constitutional articles as they set the boundaries for the operation of the legislature, and the application of that analysis to the criteria described earlier, which will be used to generate a range of scores using guidelines set out in this section.

Sources of Rules and Conventions

The first part of this method will analyse the rules of each legislative chamber alongside relevant entrenched constitutional articles. This approach will ensure that the relevant legislative powers of all chambers are considered when assigning score ranges. This is important in understanding powers such as dissolution or legislative production, where one chamber may have more control over the progress of legislation, such as the ability to halt its progress. Constitutional articles will continue to form a part of the method as they form the framework in which those rules operate. It will also form a test for the legislative rules to see if they fall within the set constitutional guidelines.

It is very important to note that not all legislatures are created the same, which means this method needs flexibility when considering which rules and conventions to analyse. In the case of legislatures without written constitutions, their standing orders and relevant laws will be analysed. Across the legislatures selected for study, some legislative powers are designated to just one chamber; in this case, only the rules and conventions of these chambers will be analysed to create a more accurate score.

Interviews

Interviews will replace the survey conducted by the original PPI. In contrast to the approach used by the PPI and WLPS, this thesis uses the purposive sampling method to supplement the content analysis with ten interviews from high-level, expert legislative staff who have first-hand knowledge of legislative rules and procedures, provided important context and background information on the rules and conventions of the legislatures. Any relevant information also formed part of the analysis of the selected questions.[3]

The PPI and this thesis both use additional expert sources to supplement the findings of the study. The difference between the two methods is in the utilisation of the expert sources. The PPI asked experts to fill out an expert survey limited to the 32 questions that comprise the index. This method limited the expert contribution by constraining the response to a simple yes or no answer; while additional information could have been provided, the country justifications and scores were almost exclusively based on the binary choice.

This method improves upon the PPI method by allowing the experts to give detailed advice, which is used to triangulate the content already analysed. In this case, the experts are not restricted by a simple binary choice but are part of a wider information-gathering system that allows for a more detailed

[3] In some cases, interviewees gave the similar answers, and their responses are not in this thesis.

analysis of the rules and conventions of a legislature, including political conventions that may not be written down. This allows for a more accurate analysis of a legislature and assists in comparing legislatures against each other.

Documentation and Interview Sources

The National Congress of Brazil (*Congresso Nacional do Brasil*)

The documents used to analyse this legislature are the 1986 Constitution and the internal rules of the upper and lower houses from 2020. The statute used for this legislature is law no 9.883, which created the Brazilian intelligence agency. Conventional information was provided through interviews with the clerk of joint committees, Rodrigo Bedritichuk. All documents were obtained from the website of the National Congress of Brazil. They were translated using Microsoft and Google Translate, in addition to the author's basic knowledge of the language.

The French Parliament (*Parlement français*)

The documents used to analyse this legislature are the 1958 Constitution, the Standing Orders of the Senate 2014, and the Rules of the National Assembly 2019. The statute used for this legislature is Ordinance 58-1100. Conventional information was provided through interviews with Anne Marquant of the Sénat finance committee and Romain Godet of the Constitution committee. All documents were obtained from the website of the Parliament of France and translated using the French Parliament website, Microsoft and Google Translate, in addition to the author's elementary knowledge of the language.

The German Parliament (*Der Deutscher Parliament*)

The documents used to analyse this legislature are the German Basic Law (Grundgesetz) and the Rules of Procedure of the German Bundestag and Bundesrat. All accessed from the German Parliament's website. Conventional information was provided through the book The German Bundestag Functions and Procedures. No interviews were conducted from this legislature, but the book above mentioned book provided a great deal of conventional information. All documents were obtained from the websites of the German Bundestag and Bundesrat. They translated using Microsoft and Google Translate, in addition to the author's elementary knowledge of the language.

The New Zealand Parliament

The documents used to analyse this legislature are the Standing Orders of the House of Representatives 2017. All documents were obtained from the website of the New Zealand Parliament. Conventional information was provided through the book Parliamentary Practice in New Zealand, 4th Edition and Erskine May. Further information was provided by the Clerk of the House of Representatives, David Wilson and Principal Clerk for Procedure for the House of Representatives, David Bagnall. The statute used for this legislature is the Intelligence and Security Act 2017.

The Parliament of the United Kingdom of Great Britain and Northern Ireland

The documents used to analyse this legislature are the Standing Orders of the House of Commons 2019 and the House of Lords 2017. Operational documents were obtained from the website of the Houses of Parliament and physical copies. Conventional information was provided through Erskine May, 25th edition, and the Companion Guide to the Standing Orders 2017 (House of Lords). Further information was provided by the Clerk of the House of Commons, Dr John Benger, and Clerk of Journals of the House of Lords, Chris Johnson. The statute used for this legislature is the Justice and Security Act 2013.

The Congress of the United States of America

The documents used to analyse this legislature are the 1789 United States Constitution, The Rules of the House of Representatives of the 166th Congress, and the Senate Rules 2013. All of the documents were obtained online from the US Congressional Website. Conventional information was provided through Jefferson's Manual and interviews with committee staff. The statute used for this legislature is the United States Code.

Legislative Power Score Ranges

Each chapter of this thesis will pose a set of criteria against which the operational rules and conventions will be tested. At the end of each chapter, the rules and conventions will be analysed using the criteria to determine if the rules benefit the legislature, the executive, or both parties. This process will take place across all legislative chambers, resulting in a low, medium and high score for each chamber. Constitutional articles and relevant statutes may also receive a score. These scores will be averaged to create a low, medium and high score for each chamber, and this will form a range of scores from which one can be placed back into the PPI, creating a new score for the legislature as a whole. A practical example of this method is shown in Appendix Two.

Currently, the PPI uses the dichotomous variables of 0 and 1 to indicate if a legislature has one of the 32 legislative powers identified by the authors. Should the PPI determine that a legislature commands the said power, that question is coded with a one. Legislatures determined not to have one of the 32 powers are coded with a zero. A Legislative Power Score is then derived by dividing all affirmative responses by the total number of index questions (Fish and Kroenig 2009, 13).

The authors believed that the dichotomous variable was best placed for gaining consistent scores throughout the index, even though they noted problems with the precision of the score. The authors believed that descriptions of the powers, with constitutional citations where possible, were enough to address the imprecise nature of their scoring system (Fish and Kroenig 2009, 4), which led to frequent index ties between countries, making it hard to use the scores in the index as a dependent variable, which was one of the author's goals for the index (Fish and Kroenig 2009, 16). This new method will use a range of scores instead of a dichotomous variable to determine which will better reflect the benefits of the rules and conventions of the legislature.

Determining the Beneficiary

To assign the score ranges, the operational rules, conventions, and relevant constitutional acts are individually assessed using a range between zero and one. A score of zero means the rules and conventions of a legislature exhibit a total benefit for the executive, while a one will represent a total benefit for the legislature. All legislatures will receive a low, mean and high score for each chamber and relevant constitutional article. In this method, the principal factor under consideration is not the frequency with which a power is used but which party has an advantage in its operation. This system ensures that the rules will set the limits of the ranges while the relevant conventions will advise how large the range should be. The scores will be assigned as follows:

Total Executive Benefit–- 0

If the rules of a legislature grant the executive the sole right to operate a rule without any input from the legislature, that is classified as a total executive benefit. Examples of these rules are seen in legislatures that grant the executive the sole right to trigger rules such as adjournment, confidence, or budget motions. In all cases, the legislature has no recourse to activate the same rule as the executive, placing the legislature at a distinct disadvantage. The legislative power will be assigned a "0" in these cases.

High Executive Benefit - .25

If the rules of a legislature allow the executive to use a legislative rule, but they are expected to consult with legislature/non-executive parties prior to usage, then that power is classified as a high executive benefit. Examples of this rule are similar to the criteria established for total executive benefits but with the added expectation of informal consultations. Examples of this would be the consultation of opposition parties when setting legislative agendas, the timing of adjournments and other similar matters. As with the previous score, the executive retains total authority to use the legislative rules. Legislative powers that fall under this section will be assigned a .25.

Shared Benefit - .5

If the rules of the legislature grant both the executive and legislature equal authority to operate rules, or either party must gain the agreement of the other parties to operate, the legislative power is shared. Examples are the ability to table legislation or the setting of legislative agendas. This example also applies to rules that require the executive and legislative agreement for certain actions to be taken. Examples of this are also rules to legislative agendas or codified power-sharing agreements. In these cases, neither side can activate a rule without the agreement of the other.

High Legislative Benefit - .75

If the rules of a legislature allow the legislature to use a rule, but they are expected to consult with the executive, then that power is classified as a high legislative benefit. Examples of this rule are the same as the criteria established for total executive benefits but in favour of the legislature, which means that legislative powers that fall under this section will be assigned a .75.

Total Legislative Benefit—- 1

If the rules of a legislature grant the legislature the sole right to operate a rule without any input from the executive, that is classified as a Total legislative Benefit. Examples of this are the same as the ones seen in total legislative benefit, and the legislative power will be assigned a 1.

Convention versus Rule

When comparing legislatures, it must be remembered that they are operated by written rules and conventions that simultaneously allow for rigidity and flexibility. Conventions are often found in the corresponding texts of legislative rules, such as *Erskine May's Treatise on Parliamentary Practice*, the companion to standing orders of the House of Commons or *Jefferson's Manual* in the US Congress. In this study, the Parliaments of New Zealand and the United Kingdom rely on convention more than the others, and unlike rules, constitutions or laws, conventions are solely based on precedent, which presents a quandary: what precedence should conventions have in determining new score ranges?

Enforcement of conventional rules depends entirely on the party that is expected to enforce said rules. All other parties have an expectation of action but cannot enforce the convention should the other side decide not to proceed with the tradition. It is only prudent to give precedence to rules that can be enforced versus conventions that cannot; therefore, operational rules will be considered above conventional expectations.

In practice, the method works as follows. Under the PPI methodology, two legislatures with the same apparent legislative powers would receive the same affirmative score if a constitutional rule or expert confirmed its existence without further analysis of the rules and conventions behind the power. This new method considers all related operational rules and conventions together to confirm a legislative power and generate a score.

This approach also recognises that legislatures are fluid entities, and their influence on the status quo may be tempered or enhanced by dynamic factors that can change the political composition of a

legislature during legislative sessions. As shown in the literature review, Voldens' (2014b) work on the LES and Berry and Fowler's (2018) work on the effectiveness of legislators in committee and flexibility enhances the final comparative outcome.

Scores can be selected from within the range to address issues such as the size of the executive party's majority in the legislature and the amenability of the executive to acquiesce to the requests of the minority parties, which can affect the relationship between the legislature and the executive, but the scores must be selected from within the limits established by the rules.

Index Scores

The legislative score ranges described above will show the broadest possible spectrum of scores for each question, the result of which will be used to assign scores to the seven primary powers, from which a singular index score will be found for each legislature. Under this method, a range can be established for each chamber of the legislature and relevant constitutional powers. A singular score from each chamber/constitutional range can be selected, such as the mean, which is the preferred method of this thesis. Other scores can be selected for a variety of factors, such as parliamentary party distribution in the chamber. Once a singular score is selected from each chamber/constitutional range, they are averaged against each other, which sets the final score for the chamber for that legislative power. Once that process is repeated for each legislative power, those scores are averaged against themselves, which results in a power score for the legislature. When compared against the PPI, the method will change to allow for the remaining PPI questions minus questions that provide an overt benefit to reactive legislatures.

Differences from the PPI Methodology

As noted in the Literature Review, the PPI had an overt bias towards parliamentary-style legislatures. For equity, this bias needs to be removed to compare the two methods fairly. Therefore, the four PPI questions, two, four, six and nine, will not be counted towards the new final score for reasons of bias.

Questions 13-18, 26 and 28-32 deal with matters not directly linked to the legislature's operation, such as the desirability for re-election or if members are immune from arrest. These rights are important to the individual but not pivotal to the operation of the whole, and they will not receive new scores.

Questions 11 and 19-25 will not receive new scores due to a dependency on a primary legislative power. These questions cover legislative powers, such as the ability to declare war or appoint judges. These questions are also important but require the application of agenda powers or investigatory rights to be activated. Therefore, if the primary legislative powers did not exist, then these powers would have no procedural avenue in which to operate. The final result will show a new PPI score for the legislature under study.

This method presents a new way of comparing legislatures. It is different from the PPI due to the existence of score ranges, expert interviews and the detailed analysis of operational rules and conventions. This method also deviates from the PPI by eliminating the overt bias in the methodology by not granting any overt advantages to one type of legislature. It is worth noting that a perception of a bias towards active legislatures can be perceived by this method, but that is at best, an implicit bias. This method does favour legislatures that have strong powers of self-management over legislatures that have weak powers of self-management. This implicit bias is not intrinsic to the design of the method.

The methodology of the Parliamentary Powers Index heavily relies on a country's constitutional rules and a survey of local experts. These two sources provide a good start for analysis, but the rules and

conventions of a legislature are also needed when conducting a detailed analysis. This thesis has changed the methods of the PPI by putting a greater emphasis on the rules and conventions of a legislature supported by practitioner interviews.

Conclusion

This chapter presents a new methodology to compare legislative powers and how that new method will affect the outcomes and findings of the PPI. As shown in the Literature Review, rules related to agenda control and legislative and investigative powers are important to the operation of the legislature, so they have been selected for study over other powers, such as the right to declare war or desirability of re-election. This new analysis will form the basis for the creation of a new range of scores.

At the end of each chapter, the scores from each legislative chamber will be assigned a singular score from the range of scores and compared against the original PPI question. In the concluding chapter, this system will be used in two different ways. First, it will compare primary legislative powers against each other, creating a new index based on the primary legislative powers. Second, those scores will be re-inserted into an adjusted PPI that will adjust for other matters, such as parliamentary bias, to see how a change in the methods affects the outcome of the PPI. This system allows for the details of the rules and conventions of the legislatures to play a greater role in the measurement and comparison of legislative powers.

The methodology of the PPI focused on expert opinion alongside content analysis of constitutions (Fish and Kroenig 2009, 1). From that analysis, an index score was derived. This method will differ from the PPI through a detailed analysis of legislative operational rules and conventions and demonstrating the benefits those rules provide to either side. Focusing on the rules and conventions related to the primary legislative powers and constitutional articles, alongside triangulated information from interviews, will paint a more intricate picture of their operation and extent. Once those rules have been identified, they will be analysed to determine whether their operation benefits the legislature, executive or both.

Chapter Four: Agenda Control

Döring (1995) notes that time is a scarce resource in a legislature; without a way to manage a legislature's time, there is no ability to hold a debate, call a vote or scrutinise the executive. In reference to reactive legislatures, he also notes that "Agenda control strives to achieve a delicate balance between the right of the majority to govern and the right of the minorities to be heard." (Döring 2001a, 147). Therefore, the operational rules that govern the agenda of the legislature are paramount to understanding the power dynamics between the legislature and the executive.

Questions 10 and 27 of the Parliamentary Powers Index asks, for Question 10, if the executive can dissolve the legislature, and for Question 27, if the legislature regularly sits. Both questions relate to legislative agenda control and can provide greater detail about legislative operations, which is why this chapter will examine several additional criteria. However, in contrast to the PPI, this thesis will cover these questions first. As Döring noted, time is very important in a legislature. This chapter will show that understanding which arm of the political organ controls the levers of time is pivotal to understanding the very basics of the legislative-executive relationship.

First, this chapter will examine the current state of each legislature's operational rules and conventions related to the progress of the legislation. This section will focus on comprehending the rules and their relationship with each other. Next, this chapter will analyse legislative operational rules and conventions, focusing on the six legislatures' agenda control and dissolution rules. Finally, each legislature will be analysed based on the information gathered in the previous section, looking at the following criteria:

Dissolution

- The legislature's capacity to be dissolved by the executive.
- The legislature's capacity to dissolve itself.

Agenda Control

- Regular sittings of the legislature.
- The existence of a business-setting committee.
- The ability of the legislature or executive to set the legislative agenda.
- The ability of the legislature or executive to adjourn the legislature.
- The ability of the legislature or executive to recall the legislature.

Finally, this information will be used to create a new range of scores to replace the current PPI score. Some concluding thoughts will follow this analysis. In addition to the analysis of dissolution and agenda control, this chapter continues to look at the trade-offs between the benefit of rules towards the executive or the legislature. Control of legislative timetables is a powerful tool; combined with the dissolution, they can provide legislative actors with outsized benefits.

Brazil

Dissolution

There are no articles within the constitution to allow any entity the ability to dissolve the Brazilian Congress, and under Article 85, the executive is prevented from proposing any action related to legislative dissolution as such a move would constitute an impeachable offence. The PPI stated that the Brazilian Congress of Brazil was immune from dissolution, citing Article 44 of the constitution, stating that each legislature has a duration of four years.

Agenda Control

Legislative sessions in the Brazilian Congress are constitutionally protected with set meeting dates and four-year fixed legislative terms. The legislature has control over its agenda unless the executive sends legislation under specific constitutional rules that can force a change to the legislative agenda. (Fish and Kroenig 2009, 98)

Article 57 of the constitution sets the dates that the Brazilian Congress sits every year. These dates are between 2 February and 17 July in the winter and 1 August and 22 December in the summer. Under Camara Articles 17 and 86, the President of the Camara determines legislative sessions in the Camara after consultation with the College of Leaders, which is a committee established under Camara Article 20 that consists of the leaders of the majority party, minority party, parliamentary blocks, and the leader of the executive supporting bloc of members. This group effectively sets the legislative agenda; however, Camara Article 20 states that their decisions should be taken by consensus whenever possible. If a consensus is not possible, the same Camara rules require a majority vote based on the proportion of seats in the chamber.

The executive can take control of the legislative agenda under Camara Article 204, which automatically starts debate on urgent provisional measures if no decision has been taken on the matter within 45 days. The President can invoke this power at any time during the legislative process.

Article 48 allows the Mesa of the Senado to set the agenda for a debate on the floor of the plenary. Senado Article 46 establishes The Mesa as a committee comprised of the President of the Senate, two Vice-Presidents and four secretaries. As with the Camara, political parties in the Senado can form parliamentary blocs, and the President of the Republic, under Senado Article 66(a), can appoint a member as “leader of the government”.

Senado Article 162, section 3, Title 7 details the daily timings of legislative sessions, including Article 163(2), which allows for the consideration of urgent executive legislation. While all urgent executive legislation starts in the Camara, the Senate is also required to consider the measure of which, like the Camara, amendments can be made to the proposal, and the measure can be voted down.

Both Houses of the Brazilian Congress are constitutionally bound to sit until draft budget provisions are considered under Section 5, Article 57(2). Under Article 57-6, Section 6, extraordinary sessions of Congress can be recalled by the President of the Senate in cases of a threat to national defence or to inaugurate the President and Vice-President of the Republic. Recalls can be initiated by the President of the republic, the presidents of either House of the Brazilian Congress and several members of both houses by majority vote.

France

Dissolution

The executive can unilaterally dissolve the Assemblée National. Under Article 12 of the Constitution, the President of the Republic can dissolve the Assemblée National after informing the Prime Minister and the President of both Houses. Should the National Assemblée dissolve, there are new elections between 20 and 40 days after its dissolution. There are no provisions to dissolve the Sénat. (Fish and Kroenig 2009, 242)

Agenda Control

Legislative sessions in both Houses of Parliament are constitutionally mandated and controlled by the executive committees of each House; however, there are extensive operational rules which give the executive priority over all other businesses, which grant them a majority of the time of the House and the power to recall the House at will.(Fish and Kroenig 2009, 242)

Article 28 of the Constitution states that Parliament will sit in one ordinary session once a year from the beginning of October to the end of June. That same Article allows each House to set the rules for sitting days and timings and extend sitting days if necessary. Article 29 allows for either the Prime Minister or the Assemblée, through a request of the majority of its members, to recall the Assemblée National to discuss a specific subject. This session is limited to the topic for which it was convened, and the session ends when the debate ends or twelve days after the beginning of the emergency session. The Prime Minister can request a new session of the Assemblée following an extraordinary recall session.

Under Article 48, the executive is guaranteed two weeks out of every month to debate their agenda, and one week out of four is reserved for question sessions. The opposition parties are guaranteed one day a month for topics of their choosing, and under Article 48(11), the executive is allowed to request a change to the set agenda.

The Conference of Presidents sets the timings for debates in the Assemblée National, excluding debates on executive legislation. This group, formed under Rule 47(1), is comprised of the President of the Assemblée, Vice-Presidents of the Assemblée, Committee Chairs, the General Rapporteur of the Finance Committee, the Chair of European Affairs, representatives of the executive and the other party leaders. The Conference is also responsible for setting dates for opposition debates. Under Rule 50(2), the executive can automatically extend the expected number of sitting days, while the President of the Assebmlée is only allowed to make the request to the House.

Decisions regarding the timings of the Sénat are determined by their Conference of Presidents, comprised of the President of the Senate, Vice-Presidents of the Sénat, the chairs of the political groups, the chairs of the standing committees, the chairs of any special committees, the chair of the Committee on European Affairs and the general rapporteurs of the Committee on Finance and the Committee on Social Affairs. Under Sénat Rule 29(3), the executive may participate in the deliberations but does not have a vote. Under Rule 29a(2), the Conference sets the legislative agenda with the approval of the executive at the beginning of each ordinary session. As with the Assemblée, the Conference is also responsible for setting dates for opposition-led debates.

Germany

Dissolution

The Bundestag is the only part of the Parliament that can be dissolved. Under the Basic Law, it can only be dissolved for an election. In all other cases, the Bundesrat cannot be dissolved. The PPI stated that the German Parliament was not immune from dissolution by the executive.

The Basic Law specifically dictate the circumstances under which the Bundestag is to be dissolved. Article 68(1) of the Basic Law states that the Federal President may dissolve the Bundestag 21 days after an executive loses a confidence vote. Article 63(4) also states that if no new Federal Chancellor is elected after 14 days, the Federal President also has the right to dissolve the Bundestag to hold new elections if an agreement is not reached between the Bundestag and the Federal President. The procedure also applies after votes of no confidence. Under Article 115h (3), the Bundestag cannot be dissolved during times of armed conflict. There are no provisions in the Basic Law to dissolve the

Bundesrat. Article 50 of the Basic Law establishes the Bundesrat and, as the composition of the chamber is not based on Federal elections but the existence of the States themselves, the Bundesrat cannot be dissolved as it permanently represents the matters relevant to the States.

Provisions related to dissolution are not found in the operation texts of either House as they are constitutionally mandated. Article 79 of the Basic Law requires a 2/3rds vote of both houses of the German legislature to amend the constitution.

Agenda Control

Control of Bundestag sessions is guaranteed via Article 39(3) of the Basic Law and is not under the direct control of the executive. The Bundesrat also controls its sessions without direct control from the executive. (Fish and Kroenig 2009)

The agenda of the Bundestag is governed by its President. This person is elected for the full term of the Bundestag and cannot be removed (Linn and Sobolewski 2015, 25). The President of the Bundestag acts as both Chief executive of the Bundestag and chair of the Plenary meetings. The President plans sessions under the advice of the Ältestenrat, a council consisting of the President, Vice-Presidents of the Bundestag and 23 other members of all the parties represented in the Bundestag by each party's proportion of seats. The government minister also attends meetings but cannot vote. Under Bundestag Rule Six, this group is not a decision-making body but a committee that negotiates to come to a conciliatory conclusion on the agenda of the week and parliamentary session. Their decisions are not final until the Bundestag agrees upon them. Under Rule 20, the Bundestag can accept, reject or amend the proposals of the Ältestenrat. Any member can attempt to amend the proposal.

Rule 21(2) governs the right of recall. This rule compels the President of the Bundestag to convene the House if 33 per cent of the membership, the Federal President, or the Federal Chancellor requests such action. In both the powers of recall and agenda setting, the Bundesrat seeks compromise in the management of the chamber's time.

The Bundesrat's right to hold legislative sessions is not found under Article 50 of the Basic Law. The chamber is a constitutional guarantee that direct appointees of German State governments populate. Their sittings are determined by the Permanent Advisory Council established under Bundesrat Rule Nine. This organisation is comprised of representatives from the German states who determine the business for the upcoming session. As with the Ältestenrat, the executive sits in on the meetings to give their view of the direction of business and to learn about the progress of their bills in that chamber (Bundesrat 2022a).

New Zealand

Dissolution

The House of Representatives can be dissolved by the Governor-General if requested by the executive, and, typically, the request is a formality, meaning the executive has total control over the dissolution of the House(McGee 2017, 144). There are few safeguards against arbitrary dissolution; however, it is theorised that if an executive requests a dissolution of the legislature before passing a finance bill for the year, or if dissolution was requested in the middle of a confidence debate, the Governor-General might reject that call (McGee 2017, 128). These theoretical arguments do not involve non-executive members of the legislature as they play no part in determining dissolution. (Fish and Kroenig 2009, 485)

Agenda Control

Legislative sessions of the House of Representatives are set in law, fixing each legislative term at three years with a legal requirement to meet within six weeks after a general election with a customary understanding that the House must meet before the end of the financial year to pass an appropriations act. Timings for sittings are set in standing orders, and the Business Committee sets business. (Fish and Kroenig 2009, 486)

Nearly all business in the House of Representatives is organised by the Business Committee. Formed under Standing Order 77, the committee is comprised of members of every party in the House of Representatives. Each party sends one representative to the committee, which negotiates with other parties to establish a parliamentary agenda. Each member has one vote that is equal to the proportion of members of their party in the House of Representatives, but under Standing Order 78, the committee must make unanimous or near-unanimous decisions when making their determinations for House Business.

Business on sitting days in the House of Representatives is determined by Standing Order 65, which arranges business in the following manner:

1. General Business
2. Government Orders
3. Private and Local Orders
4. Members' Orders

While the Business Committee is responsible for the arrangement of Members' Orders under SO76, the executive has sole rights to arrange business under "Government Orders". This part of the sitting day is comprised of debates on prime ministerial statements, executive legislation, international treaties and motions. Members' Orders are limited to matters related to private members' legislation. If a matter is not reached on its given day, it is automatically moved to the following days, sitting under SO 73.

During sittings of the House, SO 41 requires that the executive be present during the entirety of the sittings of the House. Standing Orders dictate that the House sits from Tuesday to Thursday weekly, but Monday and Friday sittings can be agreed upon by the Business Committee under SO 47(2)a.

Only a member of the executive is permitted to move the adjournment under Standing Order 49(2), and only the executive has the power to recall the House of Representatives under SO55(1); however, this must be done in consultation with all parties in the House. The House can only be prorogued by request of the Prime Minister to the Governor-General. The Prime Minister can do this at any time; however, prorogation has fallen out of common use in New Zealand (McGee 2017, 143). Should the House be prorogued, the business of the House is not affected by prorogation unless it is attached to the length of the current session (McGee 2017, 146).

United Kingdom

Dissolution

Unique to this study, when dissolution occurs in the UK Parliament, the House of Commons has no members, and the House of Lords does not meet. The Lords retain their titles as they are assigned for life and are not subject to election (U. Government 1958, 1999). The executive retains their titles and continues to manage the operation of the country; however, they are not allowed to announce new policies during an election period (Kelly 2019). (Fish and Kroenig 2009, pt. 714)

Rules governing the dissolution of Parliament are found in the Dissolution and Calling of Parliaments Act 2022. Section 2 of the Act guarantees the executive's right to use the royal prerogative to unilaterally dissolve the Parliament. This Act also makes dissolution immune from judicial oversight. Section Four of the Act maintained five years as a fixed term of a parliament.

Agenda Control

(Fish and Kroenig 2009, 715)Both Houses' operational rules and conventions grant the executive control over legislative sessions. Standing Order 9(2) in the House of Commons grants executive members the sole right to adjourn the Commons before the day's business is completed. The Speaker has some rights to adjourn the House under Standing Orders 9(7) and 46, but that is only to adjourn the House if there is a grave disruption or danger to the members.

Standing Order 14(1) and Standing Order 27 grant priority to executive business priority over all others and exclusive control of the setting legislative agenda. Non-executive members are able to table motions and legislation for debate, but their business cannot be debated as it must come after the completion of all government business and the adjournment of the House.

Sessional recesses are set via Standing Order 25, which grants the executive the sole right to process their recess timings to a vote with no debate. The standing orders do not grant non-executive members this protection, and they would also require the executive to grant time for a vote. Once a recess has begun, only Standing Order 13 allows the Commons to be recalled; however, only the executive can make the request, as the Speaker of the House is not allowed to consider a request for recall from any non-executive member of the House. Finally, Parliamentary sessions of both Houses are controlled by the executive via their prerogative rights to end sessions of Parliament via the Meeting of Parliament Act 1870. While the House sits regularly, the executive has the sole guarantee to set the timetable and determine if the House will continue to sit.

Under Standing Order 14(2), the largest and second-largest opposition parties are afforded 20 days per parliamentary session to choose a topic for debate, and under Standing Order 14(4), 35 days can be allocated to the Backbench Business Committee to allow for debates led by backbench members. This time is not protected as the executive must grant the Backbench Business Committee and opposition parties the time to have their debate.

In regard to the House of Lords, the rules governing the agenda are conventional but governed by practices similar to those of the House of Commons. Section three of the Companion Guide to the House of Lords states that the executive has exclusive rights to set the length of a Parliamentary session, also granting them the right to adjourn the House (Lords 2017, sec. 3). The executive also has exclusive conventional rights to set the timings for each legislative day, although there are no explicit standing orders related to this power. Of the small number of standing orders that govern the Lords, Standing Order 16 grants the Lord Speaker the right to recall the House of Lords in consultation with the executive.

United States of America

Dissolution

The American executive has no power to dissolve the legislature. No constitutional article allows the executive to commit such an act. (Fish and Kroenig 2009, 718)

Agenda Control

Both Houses of Congress hold regular legislative sessions. These sessions are mandated by the 20th Amendment to the Constitution, which states that Congress must meet at least once per year, and Title 2 of the United States Code sets the dates. Both Houses have procedures that govern the operation of legislative sessions. The House of Representatives operates by placing all legislation and motions on three different calendars, one being for legislation requiring public expenditure, one for all remaining legislation and one for private business. The Senate has one calendar for all of its business, but its most influential agenda-setting feature is the filibuster, which allows any Senator to speak for an unlimited amount of time. The executive plays no official role in the organisation of congressional business. (Fish and Kroenig 2009, 718)

Control of the time of both Houses is governed by operational rules. In the House of Representatives, Rule 14 governs the order of each legislative sitting, with Rule 13 dictating which items of legislation will come to the floor of the House. Under Rule 13, Committees and their chairs are obligated to place approved bills on one of the two calendars within seven days of approval. Senate Rule 7 governs the order of the sitting day; however, there is only one Calendar of Bills and Resolutions, which, under Rule 26(10b), Committees must populate the calendar with approved bills within seven calendar days of the committee hearing. The executive has no overt role in setting the agenda of either House.

The House of Representatives has greater control over the progress of bills that come to the floor of the House. Every bill that leaves a committee must first pass through the House Committee on Rules before returning to the floor. This committee provides the specific rules that are applied to the bill for its debate on the House floor. This committee can also amend bills before they come to the floor. If the lead committee on a piece of legislation requests, the Committee on Rules may allow a hearing to consider the request of the lead committee. After the hearing, the committee consults the majority party's leadership and other committee chairs to determine if a special rule is required (Committee on Rules 2022).

These rules can allow for any germane amendment to be tabled and debated for five minutes or a variation of that time. Rules can also be drawn up to prevent certain amendments from being tabled. The most restrictive rule is the “Closed Rule”, which prevents any amendments from being heard on the floor of the House bar amendments from the originating committee (Rules 2022). The Senate does not have any restrictions on the tabling of amendments. This means senators may table amendments to bills that are unrelated to the subject matter but must be debated.

Both Houses have the power to set their own recess dates, but under Article 1(5) of the constitution, both Houses must agree if they plan on adjourning for longer than three days. Under House Rule 1(12), the Speaker can adjourn or recess the House for several weeks. However, under Title 2, section 638(640) and 638(641)f, the House of Representatives may not adjourn for longer than three days during the month of July until it has approved a budget or reconciliation bill for the upcoming year.

Senate Rule 22 grants recess motions precedence over all other businesses. This allows a member of the Senate or 16 or more Senators to table a motion for the House to adjourn, even if there is an ongoing vote or debate. Senate Rule 60 allows for the Majority Leader and Minority Leader to agree to recall the Senate, while House Rule 1(12)(e) allows the same with the Speaker of the House making the call in consultation with the Minority Leader.

Article 2(3) of the constitution grants the executive powers to extraordinarily convene or adjourn Congress, but any President has never used this, and its legality has been questioned as Congress would seemingly have to agree to be convened as well.

Analysis: Dissolution

The literal meaning of dissolution is the same across all legislatures, as it signals the closure of a legislative body in part or whole and the cessation of its legal authority (Bulmer 2017). Across history, this has been accomplished through both peaceful and aggressive means, but in modern times, the practice relates to the ending of a legislative term, usually in preparation for an election. Four of the six legislatures in this study regularly dissolve, while two are legally protected from dissolution. Of the four, three grant the executive the exclusive right to dissolve the legislature, while one shares the power between the executive and the legislature.

Executive Dissolution

France, New Zealand, and the United Kingdom all employ operational and conventional rules that grant the executive exclusive control to dissolve the legislature. In France, the President of the Republic has the constitutional right to dissolve the Assemblée Nationale before a planned election, and while the President is expected to consult with the Presidents of both Houses, there is nothing the legislature can do to counter the decision. When this power was first placed in the constitution, it was seen as "by far most important presidential power" (Lowenstein 1959, 217).

In New Zealand and the United Kingdom, the Monarch has the prerogative to dissolve the legislature; however, in practice, it is only the Prime Minister in both countries who can utilise this prerogative to unilaterally dissolve the legislature, while the Governor-General has the conventional expectation to consider the current state of business in the legislature, the executive remains the only organ of the House to initiate dissolution (McGee 2017, 128).

In all three of these examples, the legislature cannot prevent the executive from dissolving the legislature. The legislatures of New Zealand and the UK both lack the ability to prevent being dissolved against their will, and the French Parliament, while having some capacity through motions of confidence, cannot challenge the power of Presidential dissolution. In this form of dissolution, the executive has the ultimate agenda-setting and veto-playing power in giving itself the final word against an intransigent legislature regarding its dissolution.

For example, this form of dissolution allows an executive in France, the UK or New Zealand to use dissolution as a threat against the legislature regarding a piece of legislation. Article 49.3 of the French constitution is a good example of this tactic, as it places the legislature in a weak negotiating position. The Article allows the Prime Minister to convert any piece of legislation to a confidence motion, which, if lost, would trigger an election, dissolving the House. The legislature's only options are to capitulate to the executive or risk their seats with an early election. Executive dissolution gives the legislature no constitutional or legislative tools to mitigate the outcomes, which shows the overwhelming weight of those rules in practice.

Shared Dissolution

The Bundestag is the only legislature in this study that shares dissolution powers between the legislature and the Executive. The Federal President does not have the right to use their dissolution powers unilaterally and must wait for the Bundestag to act as only the constitutional procedures related to executive removal trigger the possibility for dissolution. Until those procedures have been concluded, the Federal President has no authority to dissolve the Bundestag. Therefore, the role of the executive is wholly tempered by the legislature's wishes. If the legislature does not wish to be

dissolved after a motion of no confidence or a new election, it can elect a new chancellor who will create a new government. If the executive fails to do that, they inherently understand that they played a role in their own dissolution.

While there is a constitutional way to dissolve the Bundestag, the Bundesrat is a completely different matter. As established by the Basic Law, there is no constitutional method for dissolving the chamber. This is likely due to various historical instances, such as the Third Reich's elimination of its predecessor and the dissolution of the German States in 1934 (Gunlicks 2003). Any executive who sought to dissolve the Bundesrat would require a constitutional amendment, which requires the agreement of the Bundesrat to be enacted.

No Dissolution

Finally, dissolution of the legislature is not an option for any actor within the American and Brazilian systems, as the notion is inherently unconstitutional. The Brazilian legislature has established constitutional procedures for the removal of the executive and the order of succession if they are removed. The legislature is not affected by the removal or departure of the President, as the two are separate and equal branches of government. Given this relationship between the branches of the Brazilian government, there is no need for dissolution.

In the same vein, the United States Congress also cannot be dissolved. There are no articles within the constitution to institute any such action. Even during election periods, all members retain their titles until they, or their replacements, are sworn into office after the election cycle.

Comparative Analysis

In academic discourse, dissolution is often placed with other operational tools, such as executive removal; however, dissolution is better seen as an agenda-setting tool. This agenda-setting tool, across the six legislatures that utilise dissolution, primarily benefits the executive as it can be considered a powerful check against the legislature, as seen in the French example.

Goplerud and Schleiter (2016) conducted an in-depth study on the powers of dissolution across European legislatures. They argued that dissolution is "one of the most consequential yet poorly measured aspects of constitutional variation among parliamentary democracies." (Goplerud and Schleiter 2016, 1). To better understand dissolution powers, the pair created a comparative index of European parliamentary dissolution procedures. They focused on these procedures as a potential dependent variable for comparing legislative strength.

The pair looked at five powers related to dissolution to compare the relative strength of the parliaments. They crafted an equation that gave scores to any political actor that could trigger or initiate dissolution proceedings in a legislature. They formed an equation that resulted in a number between 0 and 10, creating the range for their index. The powers they evaluated are the agenda-setting role of the actor who desires dissolution, the trigger that enacts dissolution, the collective institutional barriers to the initiation, the time constraints to initiation and any constitutional conditions that must be met (Goplerud and Schleiter 2016, 431). The fewer barriers between agenda setting and the trigger indicate a stronger dissolution power for the intended actor, and of course, the more barriers to initiating a dissolution, the weaker the dissolution powers (Goplerud and Schleiter 2016, 432).

Using this system, the President of France received a score of 9.03/10, the Prime Minister of Germany received a 2.50/10, the Bundestag received a 1.75/10, and the Federal President received a 5/10. Finally, the House of Commons received a 4/10. This score is interesting because the United Kingdom and other countries received scores based on different versions of their constitutions. The score of

4/10 was applied because of the changes made by the Fixed-Term Parliaments Act 2011 to give the legislature more control over dissolution. Before this Act, the executive controlled all aspects of dissolution, which garnered a score of 10/10 for the Prime Minister (Goplerud and Schleiter 2016, 436). As this paper was written in 2016, it can be safely assumed that any new score for the United Kingdom would now be returned to 10/10 for the Prime Minister.

While Goplerud and Schleiter only looked at reactive legislatures, it is important to see the differences between legislatures that allow dissolution and those that do not in comparative studies. Further studies can use their work to see if the powers of dissolution affect the production of legislation and its perceived efficacy.

Analysis: Agenda Control

Control over the matters debated and decided in a legislature is one of the most important rules that political actors can obtain. Across the legislatures, legislative agendas are set in very different ways. France, Germany, Brazil and New Zealand all have committees to set the legislative agenda in part or in full, while The United States and the United Kingdom allow the agenda to be set, in part or in full, by the majority party or the executive. The ability to control when the House rises, or returns is also an important tool within a legislature, with the legislatures exhibiting a variety of rules spanning from collaborative recess and recalls to total executive control over the sittings of their respective chambers.

Agenda Control versus Agenda Setting

When discussing the capacity of a legislature to set its own agenda, there must be a discussion over what is meant by agenda control and agenda setting. Agenda setting can be defined as two different activities. One type of agenda-setting speaks to the capacity of the legislature to respond to matters arising from society by placing legislation on the legislative agenda. Seeberg (2022) writes on this type of agenda-setting from the perspective of the opposition changing the policy priorities of the executive in the United Kingdom. In contrast, as defined by scholars including Döring (2001b) and Tsebelis (2002), Agenda Control inspects and analyses a legislature's operational rules to determine levels of executive dominance in a legislature.

For purposes of this section, the focus will be on the agenda control and setting functions as set out by Tsebelis, Doring and others, and while the importance of influential agenda-setting is understood, there is a higher chance with influential agenda setting that exogenous factors can influence an agenda change more than internal legislative forces.

Agenda Control as a measure of executive dominance fits well with this thesis and focuses on the operational and conventional rules of the legislature. For example, Rasch (2011) notes that agenda-setting is the combination of operational rules and the politics of the legislative actors. Their definition of agenda control also works well because it has three distinct dimensions. These dimensions are defined as institutional, partisan and positional. The institutional dimension focuses on the operational rules of a legislature to seek out solidified benefits for the executive, the legislature or both. The partisan dimension focuses on how the control of the majority affects the ability to control the agenda. Finally, the positional dimension focuses on situations where the executive may be in a position to influence agenda control but does not control the agenda outright (George Tsebelis and Rasch 2011, 2). Focusing on these dimensions of agenda control can also show how these rules and conventions affect the policy and nature of legislative systems.

Agenda Control between active and reactive legislatures also provides an interesting vein of research on both legislative operation and policy outcomes. Work on determining the strength of the executive

in setting the legislative agenda and the subsequent passage of legislation showed that, in reactive legislatures, the executive has an advantage over the legislature, but the existence of a coalition and the strength of legislative committees affects the capacity of the executive to pass their legislation (Bräuninger, Debus, and Wüst 2017; Döring 2001b).

Plenary Agenda Controls

This section will cover aspects of the three dimensions of agenda control. First, this section will look at the different ways that plenary control is established in the legislatures. This will be followed by rules that guarantee time for legislative progression control of adjournments and recalls.

Across the six legislatures, there are two ways to set the legislative agenda. Either agenda-setting committees or unilateral agenda control through legislative or executive actors. Agenda-setting committees are a feature of both the active and reactive legislatures in this study, but their presence does not always guarantee a singular benefit for either side, as business committees can range from being forced to find a consensus to having only partial control of the agenda.

In Brazil, the executive does not contain the overt power to control the normal agenda of either House, with the Mesas of both Houses serving as the business setting committee. In both Houses, political agreements are key to the smooth operation of the agenda. Confidence and supply agreements are weaker than coalition agreements but pivotal in ensuring the executive's agenda comes to the floor of the House. This gives the executive partisan powers to secure more favourable outcomes but leaves the legislature with institutional and positional powers that tilt the balance of powers in favour of the legislature, which can secure their policy agenda alongside the legislative wishes of the executive. Perhaps this can be seen in past high success rates of bills that passed with Presidential approval, which was around 85% between 1988 and 2006 (Benvindo 2019), indicating a high level of agreement between the executive and the legislature during that period.

In France, sessional control of the Parliament is ostensibly in the hands of the agenda-setting committees; however, the examination of the rules shows that the executive benefits from guarantees to set their legislative timing and veto power over other proposals. Rules of both Houses ensure that the executive gets final approval of the agenda as set forth by both Houses' executive committees. With approval powers in the Sénat and Assemblée, the executive can ensure their timings over all other legislators (Hayward 2004). Other parties are free to apply for a debate on a matter of their choosing once a month, but outside of this, the powers of the legislature are very limited. These rules show that the executive in France has the positional, institutional and partisan advantage. Using these benefits of strong agenda control powers, the executive can extract concessions from the Parliament to achieve its goals (Brouard 2011).

In Germany, overall control over the sessions and timings of the Bundestag is handled by the President of the Bundestag with the advice of the Ältestenrat. Conventionally, this group must work by consensus, as several Bundestag rules allow for just one member to object to the passage of the agenda. Again, the coalitional nature of the Bundestag is shown in the rules that govern its sessions. The executive will have an advantage based on the nature of any pre-legislative coalition agreement, but the executive's wishes could be overridden due to the aforementioned Bundestag rules. Those same powers can be used against the opposition should the executive require them as well, as compromise is the main goal of agenda-setting in the Bundestag. Agenda Control in the Bundesrat operates in a similar fashion to the Bundestag, with the Permanent Advisory Council performing the same role as the Ältestenrat.

Unlike the other reactive legislatures in this section, the Bundestag has more veto players, which leads to stronger agenda-setting powers for the legislature; however, this does not mean the executive fails or struggles to get its legislation passed. Hönnige and Sieberer (2011) write that stable majorities formed by coalitions can form a check against the agenda-setting powers of the legislature. Again, the concept of fairness is seen in their analysis of the Bundestag, as the non-majority parties can grind the business of the chamber to a halt by calling votes and taking up debating time in the Chamber (Hönnige and Sieberer 2011, 28). Here, for different reasons, concessions play a part in the management of chamber time, showing that the executive may benefit from partisan and positional advantage, but the strong institutional powers create a system that allows the majority to govern but the minority to be heard.

The House of Representatives in New Zealand does not mirror the agenda-setting powers of the UK Parliament, allowing their rules to create a more equitable relationship between the executive and the legislature while ensuring the executive benefits from oversized positional, institutional and partisan control of the agenda. The Business Committee of the House of Representatives allows for every party in the House of Representatives to play a role in the operation of the House, and every decision about the agenda for the week or year must be approved unanimously or near-unanimously by the committee (McGee 2017, 202). Those operational rules do return some institutional power to the legislature, but the executive has exclusive competence of their own time, including the right to fast-track legislation.

Every year, the committee must take account of annual events such as the Prime Minister's Statement, budget debates and annual reviews from committees (McGee 2017, 190). Additionally, the leader of the House, the executive's business manager, also participates on the Business Committee to ensure the Business Committee is aware of the executive's agenda plans (McGee 2017, 126).

The UK Parliament does not have business committees in either House, granting the executive total positional, partisan and institutional control of the agenda. The closest corollary to a business committee in either House are the "Usual Channels", which is the colloquial term for avenues of communication between the Chief Whips of the parties in the legislature. This communication tool allows the non-executive parties to make requests to the executive to alter the agenda or set timings for debates (Lords 2017, 3.2; U. K. Parliament 2019, 4.3). The system is informal, without an enforcement mechanism. Given that the usual channels is a completely conventional tool for the opposition, the executive control of the business is "guaranteed" (Qvortrup 2011, 83), but in 2019, the executive briefly lost control of parliamentary time on certain days, but here the executive's control of parliamentary time is still apparent as the executive could have pulled the debate to which the motion was attached. They tacitly allowed the debate to go ahead by not preventing it.

Commons Standing Orders 14(1) and 27, and Lords' Convention govern the legislative agenda of their respective Houses. Without these rules, specifically in the Commons, non-executive members would be able to table their legislation ahead of the executive, propose timings for recesses and set the timings of debates, including votes of confidence.

Opposition parties in the House of Commons have a conventional expectation to set the agenda occasionally. Erskine May states that the executive often consults the largest opposition parties and, on lesser occasions, minor parties and individual members on agenda matters. The rules and conventions of the House give total control of the agenda to the executive (U. K. Parliament 2019, 18:11). These rights are contrasted with the relatively small opportunities found in conventions and rules offered to non-executive members, often with high barriers to operation.

The House of Lords, as expected, has fewer written rules regarding the subject of sittings, and the few rules that do exist mirror the House of Commons's executive powers. One main difference is that the Lord Speaker does not retain the same circumstantial right to adjourn the House as is found in the Commons. The business of the Lords does have a reciprocal effect on Commons business as they can affect the speed of the legislative process, which can hamper the executive's timings on the ending of sessions and recesses.

In an interview with Chris Johnson, Clerk of Journals of the House of Lords, he said that the business of the Lords depends on the business of the Commons, with government business factoring into when the Lords rises for recesses. Mr Johnson specifically cites a 2007 Joint Committee report that agreed the Lords should complete their work in a "timely manner". This implies that the Lords will work to ensure the executive can get its agenda through both Houses without extreme difficulties.

Both houses of the US Congress have a strong set of institutional, positional and partisan agenda control powers separate from the executive. Unlike the Brazilian Congress, it does not feature large multi-party majorities, but informal intra-party coalitions allow for the executive to influence the outcome of legislation related to their policy priorities.

Both the House and the Senate have rules that govern the placement of legislation and motions on specific Calendars once they pass out of committee; therefore, the ability to control the agenda exists between the committee chairs, who are able to determine the order and consideration of business in their committees and the leadership of the chambers. In the House, the work of Cox and McCubbins (2007) coincides with comments of a senior congressional committee staffer, who states that the leader of the majority party is responsible for setting the agenda, but the committee chairs and the Speaker also play a conventional control role with influence bouncing between the two.

The Senate operates in a more conciliatory manner than the House. By granting more veto-playing powers to the minority party, the Senate, and the lack of a powerful singular figure such as the Speaker, the capacity to control the agenda is severely reduced, and given that any member of the Senate, under Rule 19, has the right to speak for an unlimited amount of time dramatically changes the dynamic between the individual legislator and the institution. A filibuster is a tool that can be exploited by the minority party to gain concessions from the majority or simply frustrate the prospects of the majority's policy agendas. It is because of the perceived abuse of this procedure that calls have risen to remove it from Senate procedures (Tausanovitch, Berger, and Clark 2019).

Ballard (2022) notes in his work on agenda control in Congress that the House of Representatives uses positive agenda powers due to the institutional rules that grant the majority party the ability to set the agenda and the partisan powers to enforce their decisions. The Senate, on the other hand, has strong negative agenda-setting powers, as minority coalitions or individual senators can halt the process of legislation through the filibuster, tabling nongermane amendments to legislation, or placing a "hold" on legislation (Ballard 2022, 337). This means that the agenda typically requires unanimity to proceed or negotiations between senators (Ballard 2022, 349).

Guaranteed Time

Another aspect of agenda control is found in operational and conventional rules that allow groups within the legislature to have guaranteed debating time, increasing the chances of that legislation becoming an Act. This is found in Brazil, France, New Zealand and the United Kingdom. Throughout legislatures that feature guaranteed time, the executive is often given control of the legislature to introduce their legislation, while the non-executive parties are confined to debates on salient matters and some legislation initiation.

In Brazil, the executive has one procedural tool to its advantage: urgent legislative procedures that allow the executive to take control of the legislative agenda within 45 days if their legislation has not been debated and a vote had. While this power may seem to give the executive a high degree of control, the legislature retains several important powers, including the power to amend or reject the law. Additionally, the measure fails if the urgent provision is not considered within 60 days.

Legislative sessions in the French Parliament are constitutionally mandated; however, operational rules detail how much time per week must be assigned to each grouping in the Parliament. The executive is granted the lion's share of the time every month to initiate and progress their agenda through the House. Leaving non-executive parties with two days a month to debate topics of their choosing. A similar situation is found in the New Zealand legislature, which grants urgency to the executive along with guaranteed time for their legislation. Again, non-executive parties have dedicated time, but the lack of a majority makes passing legislation difficult.

In the UK, the Commons and the Lords provide time for non-executive members to introduce and debate their legislation, but the executive controls the lion's share of debating time. Chris Johnson said that many of the non-executive bills from the Lord's pass, but all bills must pass both Houses. In the Lords, non-executive legislation can be debated on any day, but in the Commons, non-executive legislation can only be debated on specified Friday sittings between 0930 and 1430. The operational rules of the House allow members to table legislation without limit, meaning an ever-growing queue of legislation forms to be debated on one of the 13 Fridays per session.

Again, under Standing Order 14, the two largest opposition parties are offered 20 sitting days per session to table and debate on a matter of their choosing. This cannot be used to introduce legislation directly, and while it is seen as guaranteed time, several clerks, including John Benger, Clerk of the House of Commons, confirmed in an interview that the executive retains control of the distribution of those debates.

Adjournment Control

Control of the adjournment is a pivotal tool in agenda control. Here, there is a clear difference between active and reactive legislatures as the executive typically has greater control over the timings of the legislative sessions, and within those legislatures, the United Kingdom is shown to have the greatest control.

Adjournments are the simplest and most frequent way a legislature ends its proceedings for a short duration of time. All of the six legislatures allow for short breaks in the legislative calendar at weekends and public holidays. Recesses are another category of legislative breaks and tend to last for longer than three days. Adjournments can also be a tool in the legislature to halt debates or stop legislation progress in countries such as the UK. While all of the six legislatures have set times for the length and duration of a full legislative term, legislatures like the United States and Brazil have specific protections against adjournments for specific reasons, such as the failure to pass budget legislation that has not been passed. Additionally, Article 1(5) of the US Constitution prevents Congress from adjourning without the agreement of each House. On the other end of the spectrum, the executive in the Assemblée has the right to demand an extension to the legislative day; while this is not the same as adjourning, it has the same effect of controlling the agenda of the House.

The UK Parliament and New Zealand Parliament set the timing of periodic recesses to the motions tabled within it. While any member can table a motion for a periodic adjournment, the operational rules of both Houses of the UK Parliament and the New Zealand House of Representatives give the executive the sole right to move a motion on recesses without debate in addition to being the only

actor in the House that has the right to end the session for the day. This contrasts with the US Congress, which allows any member to move the adjournment.

A convention that is unique to Westminster reactive legislatures is the ability of the executive to end a legislative session at will. This is called prorogation. Prorogation is unique among the legislatures under study because its operation does not end a legislative term; it simply ends all legislative business and allows the executive to set a new legislative agenda. Prorogation in the New Zealand Parliament does not automatically stop the legislative process at the end of the session, and it is not a normal practice, with the last prorogation occurring in 1991 (McGee 2017).

An example of the executive's powers to control the timing of the legislative session in the UK Parliament was shown in 2019. The United Kingdom voted to leave the European Union in June 2016, but the process by which the country would leave the bloc was not clear. Members of the House of Commons were not able to come to a definitive answer on the terms of leaving, with legislative factions wanting to leave without a deal, called a hard Brexit, some wanting a deal based on a second referendum and those desiring a short-term solution known as "soft Brexit". Chapter Four states that Prime Minister Boris Johnson MP expelled 21 members from his parliamentary party, removing his parliamentary majority. Without the ability to pass motions confidently, non-executive members hatched plans to override the operational rules to take control of the legislative agenda.

To avoid this legislative reality, the executive unilaterally prorogued Parliament to prevent debate and any loss of agenda control. Members could only rely on theatrics as they attempted to prevent the Speaker from leaving his chair to proceed to the House of Lords to receive the message from the Crown that the legislative session had ended. The UK Supreme Court later undid this action in cases brought by Gina Miller, Joanna Cherry QC MP, and others (Hale et al. 2019). Despite that victory, Parliament was prorogued a second time in October of the same year, which laid the groundwork for an extraordinary general election brought forward by new legislation known as the Early Parliamentary General Elections Act 2019. Furthermore, the Dissolution and Calling of Parliaments Act 2022 now prohibits the judiciary from interfering with prorogation.

Recall Control

In line with the ability to adjourn, legislatures have the power to recall themselves for extraordinary sessions. This is another form of agenda control; however, the differences between the legislatures are not split between active and reactive chambers. The Brazilian Congress, for example, can be recalled by either the executive or legislature, so the benefit between the two is shared, but the same is found in the Parliament of France.

In Germany, the Bundestag itself is in control of its sessions and timings, with a third of the members, the Chancellor or President, having the ability to recall the chamber outside of normal sitting times. The coalitional nature of the Bundestag tips agenda control in the hands of the executive but allows the opposition to activate the recall motion.

The UK and New Zealand have rules granting the executive the unilateral right to recall the legislature, with no overt rights granted to the non-executive parties. Examples of this are found in the House of Commons, with frequent calls to recall the House being ignored or rejected by the Speaker.

Unlike the United Kingdom and New Zealand counterparts, the US executive has no overt powers to alter the timings of legislative sessions of the US Congress. Instead, they must ask permission before entering the legislature or addressing the membership. Even the constitutional articles that grant the President the right to request the House to convene or adjourn in extraordinary circumstances are untested, and their legal effectiveness has been called into question. The articles which allow the

President to convene or adjourn Congress conflict with articles that command each House of Congress to agree to adjournments that are longer than three days; therefore, if the President wanted to adjourn Congress extraordinarily, they would still require the approval of Congressional leadership of the Speaker of the House and the Leaders of the Senate to agree to a recall date meaning the President's ability to recall the House is just a request (A. J. White 2020).

Parliamentary Powers Index and New Ranges

This chapter has analysed the operational rules and conventions related to Questions 10 and 27 of the Parliamentary Powers Index. These questions have focused on the dissolution of the legislature and control of the legislative agenda. Question Ten asked legislative scholars if their legislatures had fixed terms or if they had the power to self-dissolve. If a legislature could claim either option, they would receive an affirmative score, while a zero score was assigned to a legislature if the executive had the sole power to dissolve the legislature (Fish and Kroenig 2009, 8). Question 27 focussed on the singular topic of regular legislative sessions. The authors stated that a regularly meeting legislature has a better chance to "exercise its authority" (Fish and Kroenig 2009, 12). They also set a minimum sitting time of six months, which is long enough to satisfy the requirement for an affirmative score.

Questions 10 and 27 of the PPI provided an opportunity for deeper investigation, specifically Question 27, which is why this thesis has added further criteria to this analysis with a focus on agenda-setting tools in a legislature.

The PPI Scores: Question 10

The Parliamentary Powers Index question on dissolution is one of the most straightforward questions in the index. The analysis only requires attention to which political actors have control over the relevant operational rules and procedures. Table One shows the current PPI score for each of the six legislatures under study.

Country	**PPI Score**	**Reasoning**
Brazil	Affirmative (1)	Constitutionally fixed legislative terms
France	Negative (0)	Presidential Dissolution
Germany	Negative (0)	Presidential Dissolution
New Zealand	Negative (0)	Executive Dissolution
United Kingdom	Negative (0)	Executive Dissolution
United States	Affirmative (1)	Constitutional protection

Table 1

Dissolution **Brazil** Original PPI Score: 1	
Dissolution Control	N/A; the legislature cannot be dissolved
Chamber	**Range Mean**
Constitution	1
Deputados	1
Senado	1

Table 2

The PPI did affirm that the legislature was immune from dissolution by the executive. Table Two shows that Brazil's constitution does not allow for the dissolution of the legislature. Since there are no legal ways to dissolve the legislature, as mooting the prospect could be considered an impeachable offence,

no range can be determined for this question other than a score range that reflects the absence of any executive power to dissolve the legislature.

Dissolution **United States of America** Original PPI Score: 1	
Dissolution Control	N/A; the legislature cannot be dissolved
Chamber	**Range Mean**
Constitution	1
House of Representatives	1
Senate	1

Table 3

The PPI did affirm that the legislature was immune from dissolution by the executive. The constitution of the United States does not allow for the dissolution of the legislature. Table Three shows that since there are no legal ways to dissolve the legislature, as mooting the prospect could be considered an impeachable offence, no range can be determined for this question other than a score range that reflects the absence of any executive power to dissolve the legislature.

Dissolution **France** Original PPI Score: 0	
Dissolution Control	The president has unilateral authority to dissolve Parliament
Chamber	**Range Mean**
Constitution	0.125
Assemblée	0.125
Sénat	0.125

Table 4

The PPI did not affirm that the legislature was immune from dissolution by the executive. Table Four shows that, given that the President of the Republic needs only consult with the legislature before dissolution, the new PPI range is between 0 and .25 for the Constitution and Assemblée because the consultation may affect the President's thinking, but it is not integral. The only saving grace for the legislature is that the President of the Republic can only dissolve the Assemblée once a year. This gives some strength back to the legislature but does not counter the overwhelming force a unilateral dissolution can bring. Finally, as the Sénat cannot be dissolved, it could receive a score of one across the range; however, as it cannot properly operate without the Assemblée, it will also receive the same dissolution score as the other parts of the French legislative system.

Dissolution **Germany** Original PPI Score: 0	
Dissolution Control	Federal President via a motion from the Legislature or Chancellor
Chamber	**Range Mean**
Basic Law	0.625
Bundestag	0.625
Bundesrat	1

Table 5

The PPI stated that the Bundestag was not immune to dissolution by the executive due to Article 68 of the Basic Law; however, under those powers, the executive does not work unilaterally. Table Five shows that Germany's dual executive comes into play as Article 58 of the Basic Law does not require the Federal President to obtain the signature of the Federal Chancellor to dissolve the Bundestag. Here, the constitution protects the legislature from arbitrary dissolution and requires the agreement of the legislature to dissolve itself. Outside of Articles 66 and 68, Article 39 fixes elections every four years, which also fixes dissolution dates outside of confidence votes.

Looking at the detail of the dissolution rights under the Basic Law, this analysis shows that the rules benefit both the executive and the legislature with a slight advantage to the legislature as its tacit agreement must be gained before the Federal President has the power to dissolve the Bundestag.

Finally, the powers to dissolve the Bundestag give the Federal President a choice, which means that person is not required to dissolve the Bundestag if they see fit. The new analysis of the rules under Question Ten shows a more shared benefit of the powers of dissolution between the executive and the legislature due to the coalitional nature of the Bundestag. Also, it is not likely that these rules can be easily changed, given the coalitional nature of politics in Germany and the requirement of the States to agree to the proposal; any attempt to amend the constitution would require near total agreement, both legislatures and the constituencies.

The new legislative powers score range for this question is between .5 and .75 for the rules of the Bundestag and the Basic Law because the executive has the power to start the dissolution process but requires the agreement of several political actors to follow through with the action. The Bundesrat cannot be assigned a range for this question as there are no variations on the rules related to its existence outside of a constitutional amendment that it agreed to dissolve itself. Even in that case, the Bundesrat would control the process.

Dissolution **New Zealand** Original PPI Score: 0	
Dissolution Control	Executive Control
Chamber	**Range Mean**
House of Representatives	0.125

Table 6

The PPI did not affirm that the New Zealand parliament was immune from dissolution by the executive. Table Six shows that this new analysis does not contradict the initial finding. Control over the operational and conventional rules lies with the executive and Governor-General, who will, in all but the most extreme cases, dissolve the legislature at the whim of the executive. As a result of this, the range for dissolution is between 0 and .25.

Dissolution **United Kingdom** Original PPI Score: 0	
Dissolution Control	Executive Control
Chamber	**Range Mean**
House of Commons	0.125
House of Lords	0.125

Table 7

The PPI did not affirm that the UK Parliament was immune from dissolution by the executive, which remains the case under the new analysis. Table Seven shows that the new range for the UK Parliament

stands between 0 and .25 as the conventional nature of the Parliament allows for an executive to be pressured into dissolution, but the choice ultimately remains with the executive, who has control over the prerogative powers. Finally, the score also remains between 0 and .25 for the House of Lords as they cannot sit when the Parliament is dissolved.

PPI Score: Question 27

Country	Score	Reasoning
Brazil	Affirmative (1)	Constitutional Protection
France	Affirmative (1)	Constitutional Protection
Germany	Affirmative (1)	Constitutional Protection
New Zealand	Affirmative (1)	Operational Rule Protection
United Kingdom	Affirmative (1)	Convention
United States	Affirmative (1)	Constitutional Protection

Table 8

Sittings versus Agenda Control

Question 27 of the Parliamentary Powers Index asks a straightforward question regarding legislative sessions, and Table Eight shows the justification for their scores. This thesis, along with the work of other scholars, shows a need to dive deeper into the idea of legislative sessions. Focusing on agenda control allows for a more nuanced and detailed perspective on the operation of a legislature. The previous sections showed the detail and the effect of the operational and conventional rules related to agenda control. This section will now break those rules down into seven parts.

Legislature	Brazil	France	Germany	New Zealand	United Kingdom	United States
Regular Sittings	**X**	**X**	**X**	**X**	**X**	**X**
Business Committee	**X**	**X**	**X**	**X**		
Executive Agenda Control	**(x[4])**	**X**		**X**	**X**	
Legislative Agenda Control	**X**	**X**	**X**			**X**
Adjournment Control Exec				**X**	**X**	
Adjournment Control Leg	**X**	**X**	**X**			**X**
Recall Control Exec	**X**	**X**	**X**	**X**	**X**	
Recall Control Leg	**X**	**X**	**X**			**X**

Table 9

Table Nine above shows the different criteria for determining legislative benefit. First, the table confirms that every legislature regularly sits. Second, it shows which legislatures have business-setting

[4] Medidas provisonias

committees that give the legislature total or partial control of the agenda and help determine the greatest beneficiary of the rules. Under the subject of business committees, some legislatures grant guaranteed time to certain legislative groupings, which will be used to determine benefits. Control over the adjournment is an important part of agenda control, which is also broken down between executive and legislative control. Finally, control over the levers of recall is also broken down between executive and legislative control. These functions are key to determining the extent to which the rules benefit either the legislature, executive or both.

Agenda Control **Brazil** Original PPI Score: 1	
Regular Sittings	The Constitution sets the sitting dates of the Brazilian Congress.
Business Committee?	Both chambers have agenda-setting committees.
Executive Control of the Agenda	The executive can take control of the agenda but cannot set the agenda under urgency procedures.
Legislative Control of the Agenda	Both Houses of the Brazilian Congress have control of the agenda outside of urgency motions.
Executive Control of Adjournment	The executive cannot adjourn the Brazilian Congress.
Legislative Control of Adjournment	The constitution sets adjournment times for the legislature.
Executive Control of Recall	The executive can recall the legislature.
Legislative Control of Recall	The legislature can recall itself.
Chamber	**Range Mean**
Constitution	0.625
Deputados	0.625
Senado	0.625

Table 10

The PPI affirmed that the Brazilian Congress regularly sits. Table 10 shows that the balance of operational rules of the Brazilian Congress favours the legislature, but the ability of the executive to utilise urgency motions grants an opportunity for guaranteed time for their legislation to be conducted. Outside of that specific power, the legislature retains a high degree of control over its own agenda with its immunity from executive adjournment and shared control over the rules regarding the recall. The new range for this question is between .5 and .75 for all parts of the Brazilian system.

Agenda Control France Original PPI Score: 1	
Regular Sittings	The Constitution sets the sitting dates of the Parliament.
Business Committee?	Both chambers have agenda-setting committees.
Executive Control of the Agenda	The executive has exclusive control of its own time.
Legislative Control of the Agenda	Both Houses of Parliament have control of the agenda outside executive time and are subject to executive approval.
Executive Control of Adjournment	The executive cannot adjourn Parliament.
Legislative Control of Adjournment	The constitution sets adjournment times for the legislature.
Executive Control of Recall	The executive can recall the legislature.
Legislative Control of Recall	The legislature can recall the legislature.
Chamber	**Range Mean**
Constitution	0.375
Assemblée	0.375
Sénat	0.375

Table 11

The PPI affirmed that the Parliament regularly sits. Table 11 shows that a further examination of the agenda-setting rules of the Parliament clearly benefits the executive. Both Houses have agenda-setting committees that create the order of business, but those committees must give deference to the agenda priorities of the executive. The executive is also guaranteed a majority of the time for debate during the legislative session, but both the legislature and executive have the right to initiate a recall. Finally, the executive does not have the exclusive right to adjourn legislative sessions. Due to these factors, the potential new PPI range is between .25-.5 for all three parts of the French legislative system.

Agenda Control Germany Original PPI Score: 1	
Regular Sittings	The Constitution sets the sitting dates of the Parliament.
Business Committee?	Both chambers have agenda-setting committees.
Executive Control of the Agenda	The executive does not have control of the agenda.
Legislative Control of the Agenda	Both Houses of Parliament have control of the agenda outside of executive-controlled time and are subject to executive approval.
Executive Control of Adjournment	The executive cannot adjourn Parliament.
Legislative Control of Adjournment	The constitution sets adjournment times for the legislature.
Executive Control of Recall	The executive can request a recall.
Legislative Control of Recall	The legislature can request a recall.
Chamber	**Range Mean**
Basic Law	0.625

Bundestag	0.625
Bundesrat	0.625

Table 12

The PPI affirmed that the German Parliament sat regularly. Table 12 shows that, in terms of agenda control, the operational rules clearly grant both the executive and legislature advantages. The executive does not control the business committees of both Houses, and the legislature cannot be arbitrarily adjourned. The capacity for recall is shared between the legislature and the executive. This analysis puts a legislative power range between .5 and .75 for the constitution and the legislature.

Agenda Control **New Zealand** Original PPI Score: 1	
Regular Sitting	Sitting times of the House of Representatives are set in the Standing Orders.
Business Committee?	The House has an agenda-setting committee.
Executive Control of the Agenda	The executive has exclusive control of its own time.
Legislative Control of the Agenda	The legislature has control of the agenda outside of executive-controlled time.
Executive Control of Adjournment	The executive can adjourn Parliament.
Legislative Control of Adjournment	The legislature cannot adjourn Parliament.
Executive Control of Recall	The executive can recall the Parliament.
Legislative Control of Recall	The legislature cannot recall the Parliament.
Chamber	**Range Mean**
House of Representatives	0.375

Table 13

The PPI affirmed that the House of Representatives of New Zealand regularly sits. Table 13 shows that the executive has exclusive rights to determine its own agenda in the plenary time that it controls. The legislature is allowed to set its agenda for non-executive business, but executive business can take precedence over other business. Outside of setting the legislative agenda, the executive has the exclusive competence to recall the House and initiate adjournment motions and prorogation; however, in the case of prorogation, the use of the power has fallen in recent years. The preponderance of the operational rules and conventions benefits the executive, but the existence of a Business Committee that must make unanimous decisions in order to set the agenda grants some level of benefit to the legislature, which at its highest could extract concessions from the executive to allow it to progress its business. Therefore, the range for the powers under Question 27 is between .25 and .5.

Agenda Control United Kingdom Original PPI Score: 1	
Regular Sittings	Sitting times of the House of Commons are set in the Standing Orders and convention in the House of Lords.
Business Committee?	There is no agenda-setting committee in either house.
Executive Control of the Agenda	Operational and conventional rules in both chambers allow the executive the sole right to set the agenda.
Legislative Control of the Agenda	Non-executive members cannot set the agenda in either chamber.
Executive Control of Adjournment	The executive can adjourn Parliament.
Legislative Control of Adjournment	The legislature cannot adjourn Parliament.
Executive Control of Recall	The executive can recall the Parliament.
Legislative Control of Recall	The legislature cannot recall the Parliament.
Chamber	**Range Mean**
House of Commons	0.125
House of Lords	0.125

Table 14

The PPI affirmed that the UK Parliament regularly sits, but examining the rules of the House showed that the executive controls the legislative agenda. Table 68 shows that, with the absence of an agenda-setting committee, non-executive members of the House are relegated to asking if the executive can reallocate some of its time to individual policy priorities. These requests, while frequent, rarely result in a substantive debate. Even though the rules that grant the executive agenda control also grant the opposition parties 20 days for debate, the executive must still apportion the debating time to those parties, but there is no enforcement mechanism if the executive fails to do so—the executive controls when the House adjourns and if the House can be recalled. In the House of Lords, a similar situation arises, but its administration is based on convention as opposed to operational rules. Despite the exceedingly rare aberration where the legislature managed to take brief control of the parliamentary time, the rules place the impetus on the executive to control the agenda of the UK Parliament, which results in a mean score of 0.125 for each House of Parliament.

Agenda Control United States of America Original PPI Score: 1	
Regular Sittings	The US Code sets the sitting dates of the Congress.
Business Committee?	There are no agenda-setting committees in either House.
Executive Control of the Agenda	The executive cannot set the agenda.
Legislative Control of the Agenda	Both Houses of Congress can control the agenda through individual agenda setters.
Executive Control of Adjournment	The executive cannot adjourn Congress.
Legislative Control of Adjournment	The constitution sets adjournment times for the legislature.
Executive Control of Recall	The executive cannot recall the legislature.
Legislative Control of Recall	The legislature can recall itself.

Chamber	Range Mean
Constitution	0.875
House of Representatives	0.875
Senate	0.875

Table 15

The PPI affirmed that the US Congress regularly sits. Table 15 shows that there are no agenda-setting committees in either House of Congress. In place of business committees are the operational rules that grant individual committees the right to pass bills directly to the floor of either chamber. The power to adjourn and recall the House is the exclusive right of the legislature.

The only avenue available to the executive is their relationship with the leaders of the legislatures and, in the case of the Senate, individual senators who can help advance their legislation and priority goals. Should the executive gain the legislature's agreement, their policies can be fast-tracked, but the opposite is just as feasible for an executive and legislature that are at loggerheads. Given these realities, the mean score for powers under this question is between .875 for all three parts of the US legislative system.

Conclusion

This chapter examined the operational rules for agenda control and dissolution, which correspond with Questions 10 and 27 of the Parliamentary Powers Index. First, each of the operational rules of each legislature was detailed, followed by an analysis of those rules. The analysis was divided into three parts, covering different agenda control rules, including the right to dissolve the legislature. Table 16 below shows the mean score for each question in this chapter with its original PPI score. The first question looked at dissolution powers, where the reactives showed the largest changes. Again, this chapter took the rules of the upper houses into account, strengthening some scores of reactive legislatures.

Question 10		
Country	**Scores (Mean)**	**Original PPI Score**
Brazil	1	1
France	0.125	1
Germany	0.79	1
New Zealand	0.125	1
United Kingdom	0.125	1
United States	0.875	1

Table 16

In terms of dissolution, reactive legislatures provide the largest space for change as they are the only legislatures understudy that allow motions to dissolve the legislature as part of its normal electoral operation. Across the four reactive legislatures, only the Bundestag exhibited rules that allowed the legislature some protections against executive dissolution. Each of the other legislatures allows the executive some degree of unilateral dissolution by the executive. Active legislatures did not show any legal routes for dissolution; therefore, a range was not created for them.

For Question 27, regular legislative sessions are addressed through the prism of agenda control powers. In this case, four criteria were selected to analyse the strength of a legislature. These were the presence of a business committee, control over adjourning the legislature and control over recalling the House. Here, there are some stark differences between all of the legislatures. Between the active legislatures, the Congress of the United States only allows the legislature the rules to

manage its agenda, leaving the executive to use its soft powers to get its policy priorities through Congress, while the executive has greater agenda control powers in the Brazilian Congress through their urgency motions. The executive in Brazil is also allowed to recall the legislature, a power not found in the United States. Table 17 shows a variety of scores across both reactive and active legislatures due in part to the existence of business-setting committees.

Question 27		
Country	**Score (Mean)**	**Original PPI Score**
Brazil	0.625	0
France	0.375	1
Germany	0.71	1
New Zealand	0.325	1
United Kingdom	0.125	1
United States	0.875	1

Table 17

Reactive legislatures are expected to be different in their approach to agenda control. All the legislatures, bar the United Kingdom, have business-setting committees that allow the legislature some form of control over House business. Of course, there were varying degrees to which the legislature was allowed to set its own agenda. The United Kingdom is the only reactive legislature that allows the executive total control of the agenda. There is a similar breakdown for adjournment and recall rights as all legislatures, bar the United Kingdom, allow non-executive members to recall the House and higher protections against arbitrary adjournments. Only the United Kingdom and New Zealand have the powers to prorogue the House at a time of the executive's choosing, giving them a powerful agenda-setting tool.

The PPI presented two simplistic questions regarding the powers of legislatures. Question 10 on dissolution was not amended, as the original question was the only question that could be asked. The influence of the executive on dissolution is important and should be studied further. Question 27 should have focused more on agenda control, an important topic in the field of veto players. The new parliamentary power score ranges now reflect the role the executive can have on the legislatures' agenda control rules in addition to the legislature itself. Agenda control is seemingly overlooked in place of more exciting topics such as executive removal or executive oversight, but from this analysis, this thesis contends that understanding agenda control, including dissolution powers, is central to understanding the strength of the legislature because it does not matter if a legislature can override a presidential veto, or declare war or remove a prime minister if the legislature cannot put the motion on the agenda.

Chapter Five: The Legislative Process

Legislative production forms a primary function of a legislature; therefore, the operational rules and procedures associated with its operation are integral to understanding the legislative-executive relationship and comparing them against other legislatures. The criteria for analysis will look the following:

- The existence of initiation restrictions.
- Legislation from different sources receiving different treatment.
- The existence of dedicated bill committees.
- The ability of the legislature to override executive vetoes.

First, this chapter will examine the current state of each legislature's operational rules and conventions related to the progress of the legislation. Next, this chapter will analyse legislative operational rules and conventions that confer veto powers to individuals and institutions to affect the progress of legislation through the legislature. Finally, each legislature will be analysed based on the information gathered in the previous section using the criteria. This information will be used to create a new range of scores to replace the current PPI score. Some concluding thoughts will follow.

Current State of Operational Rules and Conventions

Brazil

Individual members and party groups in both houses of the Brazilian Congress have the right to table legislation with some restrictions. The legislative process requires the agreement of both houses of the Brazilian Congress and the executive to promulgate laws. The executive has exclusive competence to table legislation in specific areas. The PPI stated that there is executive gatekeeping in Brazil, citing Article 61 of the Brazilian constitution.

Constitutional and Operational Rules

Article 61 of the Constitution sets out the limits for both the executive and legislature in terms of tabling legislation. It states that legislators, or committees, in both Houses can table legislation on any subject except for the ones reserved to the executive. Under Article 61-1, the President has exclusive rights to table bills related to the armed forces, civil services, the Public Ministry and Public Defender's office. The executive and the legislature also have the right to initiate proceedings on constitutional amendments.

Under Article 62, the constitution grants the President powers to create provisional measures (medidas provisionais) that have the same status as ratified laws except for certain matters such as nationality, citizenship, political rights and the budget. The executive must put these measures before the Brazilian Congress, starting with the Camara, and if no action has been taken on the provisional matters within 45 days, the agenda of both Houses of Congress stops to consider them at once if the matter is not resolved within 45 days. The provision can be extended for another 60 days, after which the measure loses its legal effect. The legislative powers of both the executive and the legislature are tempered by Article 48 of the constitution, which states that “except for matters relating to impeachment, all legislation must pass the legislature and be approved by the President with extremely limited exceptions related to vetoes.”

The primary deliberative organ of the Brazilian Congress are the committees of both Houses. Under Article 58 of the constitution, these committees have the right to discuss and vote on bills unless ten per cent of the respective House disagrees. In conjunction with the leaders of both Houses, the

Presidents of the Senado and Camara are responsible for forwarding all bills and motions tabled in their chambers to at least one of its committees, with most bills and motions directed to several committees with one taking the lead. The chair of each committee appoints a rapporteur, under Camara Rule 41 and Senate Article 89, who will oversee the bill as it processes through the committee. Their opinion will help form the committee's opinion on the final bill. Bills can also be amended in committees of both Houses under Camara Article 125 and Senado Article 133. At the end of the committee process, successful bills can be moved to the main chamber for debate and voting or sent directly to the next stage in the legislative process, either the opposite chamber or the President's desk. Article 90 of the Senado Rules and Article 22 of the Camara Rules detail the powers afforded to each chamber's committees, making them the first stop in legislative consideration and oversight of the executive.

The President of the Republic has the right to veto legislation in part or in full under Article 66 of the Constitution. Under this Article, the President can only veto a bill that they consider unconstitutional or contrary to the public interest. Within 15 days, the bill will be sent back to Congress, where it will be considered under a joint session where they can make changes or send the bill back to the President. Should the President fail to sign a bill, the President of the Senate has the power to sign bills into law.

France

Legislators in both houses of Parliament possess the right to initiate legislation; however, the Constitution reserves certain legislative initiative rights to the executive. In addition to those rights, the executive also has sweeping powers to halt debate on individual legislators' bills and direct bills to the Constitutional Council if they believe the bills contravene their constitutional rights. (Fish and Kroenig 2009, 242)

Constitutional and Operational Rules

Article 20 of the Constitution states that the executive has the right to determine the conduct and policy of the nation, but under Article 39, both the executive and legislators have the right to table legislation and, under Article 40, legislation from non-executive members, known as private members' bills (propositions du loi), and amendments from non-executive members are deemed invalid if they reduce public revenue or increase public expenditure. Government bills (projets du loi) are not affected by this Article. Both the executive and the Presidents of both Houses can move to consider bills inadmissible under Article 41 of the Constitution, which means the legislature could declare an executive bill inadmissible under the Constitution. Should there be a disagreement between the legislature and the executive, the matter is moved to the Constitutional Council. This Article is supported by Assemblée Rule 93 and Sénat Rule 45.

Under Assemblée Article 43, all bills tabled in the Parliament are moved either to a standing committee of the initiating House or an ad-hoc committee that the executive or legislature can create at will. The main purpose of these committees is to examine and amend legislation to determine if it should return to the initiating House for further debate. Bills are assigned to committees by the Presidents of both Houses under Sénat Rule 16 and Assemblée Rule 85. Committees in both Houses assign rapporteurs to each bill under Sénat Rule 19a and Assemblée Rule 86. They are responsible for steering the bill through committee and plenary debate. These members are also responsible for monitoring the bill if it becomes law.

Amendments tabled to bills in committee are subject to pre-scrutiny under Assemblée Rule 98-1 and Sénat Rule 44a, and under Assemblée Rule 100, executive amendments are taken before non-

executive amendments. Under Assemblée Rule 101, all executive legislation is automatically granted a Second Reading, whereas non-executive legislation requires the agreement of the executive before proceeding to Second Reading. The executive also has access to initiate accelerated legislative procedures, bypassing normal time limits on waiting times between tabling and debate under Article 42 of the Constitution. However, these procedures can be halted if the executive committees of both Houses agree.

Under Article 45, all bills emanating from Parliament must have the same text; should there be differences in the texts, a joint committee is convened, and their findings cannot be challenged without the consent of the executive. Should an agreement not be made between the two houses, the Assemblée takes the final decision on the contents of the bill. Under Article 61, all bills and acts of Parliament can be referred to the Constitutional Council by the executive or the legislature. All debate on any active bill is halted while a bill is under consideration by the Constitutional Council.

Finally, under Article 10 of the Constitution, the President of the Republic must sign all bills into law. Under the same act, the President has 15 days to sign the act or return the bill, in part or whole, to the Parliament to reconsider the legislation. The executive also has the right to refer bills to the Constitutional Council, under Article 41, which must decide on the matter within eight days. There is no capacity for the legislature to overturn a veto as the procedure creates the opportunity for a recursive loop of rejection and amendment to vetoed legislation.

Germany

Both Houses of Parliament have the right to table legislation without restriction; however, the Bundestag and Bundesrat operate differently from each other in terms of what they table and which members of the legislature are allowed to table legislation. The PPI affirmed that the German Parliament had the power to table in all policy areas except for areas that were exclusively reserved to the Länder.

Constitutional and Operational Rules

The core principle surrounding the tabling of legislation in the Bundestag is the five per cent principle. Rule 76 only allows legislation to be tabled if it has a minimum of five per cent support of the membership or one parliamentary group. Non-executive members of the Bundestag are not prevented from tabling legislation; members and parties not aligned with the executive also have the capacity to amend legislation in committee, where they have considerable rights to adjust the agenda and table amending legislation under Rule 61; however, committees will still have executive-based majorities as the composition of committees is based on the composition of the House under Rule 57.

Under Bundestag Rule 80, the President of the Bundestag is responsible for forwarding all bills and motions tabled in the Bundestag to at least one of its committees, with most bills and motions directed to several committees, with one taking the lead. Under Rule 65, each committee will appoint a rapporteur, a committee member who will oversee its passage and make the final recommendation to the committee on whether the bill should pass back to the Bundestag for Second Reading.

The Bundesrat's legislative role is constitutionally protected as the executive must first table all their bills with the Bundesrat under Article 76 of the Basic Law. This ensures the Länder has the first right of refusal if they have an issue with the contents of a bill. Additionally, all bills emanating from the Bundestag, from either the executive or the legislature, must also be submitted to the Bundesrat. Those bills take one of two forms: consent bills or objection bills. Under Article 77 of the Basic Law, bills that do not encroach on areas where the States normally legislate do not require the explicit

consent of the Bundesrat, whereas bills that fall into that category do require consent under Article 77.

Should the Bundesrat withhold their consent to a bill that encroaches upon their jurisdiction, the chamber can stop the progress of the bill where bills that do not encroach upon their jurisdiction may be objected to, but the Bundestag can override the objection. The Bundesrat can also initiate legislation of its own will; however, legislative initiatives emanating from the Bundesrat require a majority vote of that House to begin the legislative process (Bundesrat 2022b).

Both Houses have the right to convene a mediation committee to discuss differences on matters within the bill, which are held in private. Committees of the Bundesrat, like their Bundestag counterparts, are assigned legislation that can emerge from the executive, Bundestag or the Bundesrat itself. It also has the power to amend bills in its committees. Unlike the Bundestag, committees of the Bundesrat do not always contain legislators from the individual states that they represent, as it is common for civil servants of the respective states to attend these meetings (Gunlicks 2003, 347). The Basic Law does not prevent legislators from tabling legislation related to public expenditure. Article 113 of the Basic Law states that any law seeking to increase budget expenditures or reduce Federal revenues requires the approval of the executive. The Bundestag does not have explicit rules relating to public expenditure bills, but the Basic Law still governs them. Under Constitutional Article 78, a bill becomes law once it passes both Houses of Parliament or just the Bundestag without objection from the Bundesrat.

New Zealand

While there are no explicit prohibitions on tabling legislation, the operational rules grant the executive guaranteed time to debate and pass their legislation in addition to several other rules that grant an advantage. Non-executive legislators in the House of Representatives can table legislation. Individual political parties internally decide which legislation is brought forward, but the executive must approve any legislation that requires public funding. (Fish and Kroenig 2009, 485)

Constitutional and Operational Rules

Standing Order 257 describes the five types of bills that can be tabled in the House of Representatives. Executive bills are classified as government bills, and non-executive bills are classified as members' bills, also known as private members' bills. Non-executive bills are moderated by the use of a ballot system that randomly selects eight members who can start the legislative process (McGee 2017, 397). Non-executive bills are guaranteed a hearing twice a month. Each political party has an internal selection system to decide which members will be able to vote for time slots in the private member's bill ballot (Spindler 2009). Executive bills are tabled by a government minister and discussed on specific days as set out in Standing Orders. Should a member of the executive wish to postpone the consideration of their bill, they may notify the clerks of this change, but non-executive members are not afforded this convenience unless agreed by the Business Committee under SO 74 (McGee 2017, 397).

At First Reading, a debate takes place on the bill. This debate determines if the House wants to consider the matter any further. Amendments can be taken against the First Reading of the bill, but they may not halt the progress of the bill. A vote to progress the bill is taken at the end of the debate. Should the vote be successful, the bill is transmitted to a select committee, which is considered clause by clause. Amendments to the bill can be tabled. The committee can divide the bill into several separate bills.

All bills are directed to an appropriate select committee for scrutiny and amendment. SO 295 allows for the member moving the bill to indicate to which committee they believe their bill belongs. The primary work of a committee is the scrutiny and amendment of legislation; under SO 299, the committee has the sole power to determine if a bill progresses to the next stage of the legislative process. SO 301 and 302 allow committees to get opinions from other committees and split singular bills into two separate bills. Committees must report on all bills within six months of reception under SO 303.

After the committee stage, bills receive a Second Reading and provided it passes out of that stage; the bill receives a final Third Reading. Once a bill passes through the Third Reading, it is passed out of the House of Representatives and sent to the Governor-General to receive their signature.

The executive retains the sole power to speed its legislation through the legislative process using the urgency procedure under SO 57. This rule allows for certain bills to be considered within a single day. SO 58 requires that the House must agree to the motion. Additionally, under SO 278, the executive has the right to co-opt any piece of non-executive legislation. Finally, under SO 334, the executive has the right to veto any legislation that infringes on its exclusive right to authorise the spending of public money. The Governor-General, acting under the authority of the Monarch, must sign all bills into law. This is called Royal Assent.

United Kingdom

The standing orders of both Houses, along with their corresponding texts, set the standard for what all members can table. As the executive are also members of the legislature, they are bound by the same rules. In the House of Lords, these rules rely more on custom as there are fewer prohibitions to the tabling of legislation, whereas, in the Commons, the rules are far stricter; however, members in both Houses are bound by the same restrictions on tabling legislation that incurs a public cost. Other Standing Orders prevent backbench members from tabling legislation for specific periods after the beginning of a session. Both Houses have the same legislative process. (Fish and Kroenig 2009, pt. 715)

Constitutional and Operational Rules

First Reading occurs when a bill is tabled, and it is at Second Reading that the first debate takes place on the content of the bill. In both Houses, amendments are not allowed to be tabled against the bill's content but allows for a reasoned amendment to be levelled against the bill as a whole. Should that amendment pass, the bill would stop its process, as a Reasoned Amendment is fatal to a bill (U. K. Parliament 2019, 28.47).

Members of the House of Commons, who are not members of the executive, are restricted in their capacity to table legislation. While members can present bills at any time, those bills cannot propose a new tax. Standing Orders 48 through 50, 52, 59 and 60 prevent members from tabling legislation that would incur a public charge, such as a new tax, as this is reserved to the executive. Should a non-executive bill require public money, the executive retains the sole right within the Commons, through Standing Order 52, to approve resolutions allowing public money to be spent on private members' bills. This gives the executive the sole right to approve any bill requiring expenditure. Through Standing Order 23, members can also present bills and give a speech asking for the House's permission to present the bill. Once presented, the bill is subject to the same rules as other non-executive legislation.

Members of the House of Lords have fewer explicit rules against the tabling of legislation; however, they are prevented from tabling legislation on taxation or money in the same fashion as backbench members of the House of Commons. Unlike the Commons, there is no explicit prohibition on the

timing of non-executive legislation; however, the government ministers within the Lords may table motions to re-arrange the legislative agenda with the agreement of the House (Lords 2017), but the Lords is statutorily prevented from halting the progress of public spending bills (UK Parliament 1911).

Select Committees of both Houses do not review legislation that passes Second Reading. Instead, through Standing Orders 83A and 84A, the executive has the exclusive right to create ad-hoc committees that are tasked with reviewing a bill line-by-line and, if necessary, amending the bill. Any amended bills are brought back to either House for Report Stage, where further amendments and new clauses can be added to the bill. A bill can be re-committed to a committee at this stage if the House approves the motion. The final stage of the legislative process for both Houses is Third Reading. In the House of Commons, no amendments can be tabled to the content of the bill, but a reasoned amendment can be tabled against the bill. In the House of Lords, amendments to the content of the bill are allowed at Third Reading.

Once a chamber completes its deliberations on a bill, that version is sent to the opposite chamber for consideration. This process continues until both chambers can agree on the content of the bill. When that occurs, the Monarch must sign the bills into law. This is called Royal Assent. There is no functional right of veto to the executive in the UK Parliament.

United States of America

Members of both Houses of the US Congress are permitted to table legislation in any area without restriction from the executive. The executive does not have any power to directly table legislation in Congress. The executive requires a sponsor from within the legislature to bring their legislation through Congress. Some restrictions exist in the operational rules of both Houses against the content of amendments to legislation, but that is the extent of legislative restrictions. (Fish and Kroenig 2009, 718)

Constitutional and Operational Rules

Members of both Houses can table legislation on any subject. Legislation tabled in both Houses is usually automatically read the first time, which begins the legislative process. From tabling, all legislation is assigned to a committee; however, the process can be halted. Under House Rule 16 and Senate Rule 14, both Houses have the capacity to reject legislation at the first or Second Reading before it is sent to one or more committees for consideration. These committees have the power to amend legislation with the ultimate power to advance or halt its progress under House Rule 10 and Senate Rules 17 and 26. All bills that are submitted to the House of Representatives are considered the property of the House and cannot be amended by anyone other than the House (Olezek 2018, 2). All bills submitted to the Senate are also considered the property of the Senate, but senators can request that the Senate not progress with their bill, effectively ending the bill (Olezek 2021, 1).

While the constitution does not grant the executive the right to exclusive competence in any legislative area, Article 2 allows the executive the right to recommend legislation to Congress for their consideration. The executive branch can send its draft legislation to Congress through a surrogate legislator who can table the bill where the words "by request" are attached to the draft to show that it has come from outside of the legislator's office (Olezek 2018, 2021). It is then up to the legislature to amend the draft and progress it out of committee (Sullivan 2007). The executive also sends draft budgets to Congress, using the same procedure to consider their provisions.

All legislation passed by Congress must pass through both Houses; therefore, legislation that originates in one House must be passed to the other before being sent to the President for their

signature. As legislation can originate in both Houses of Congress, each chamber has mechanisms to convene committees to consider differences between the versions of bills that are passed from each chamber. House Rule 22 and Senate Rule 28 allow both chambers to disagree and convene a conference committee. While there is no limit on how long the committee can sit, if the House's negotiators, under Rule 25, have not found a solution within 25 sitting days or 45 days of the commencement of the committee, the House will appoint new negotiators to the committee.

Once passed by the legislature, the President has the opportunity to sign or reject the legislation under Article 1 of the Constitution. Should the President reject the legislation, both Houses of Congress can override the veto via a two-thirds vote.

Analysis

The determining factor in passing legislation in each of the legislatures are the various veto players, and the focus of this analysis will be the basics of veto player theory. Recognising that the majority of its use is in game theory, this section will focus on a smaller portion of the theory, namely the rules that create veto players. This approach is supported by Ganghof (2003), who looks at the downsides of veto player analysis. In that paper, he notes that some veto players are not the same as others, and the assignation of the veto player title needs to be justified (Ganghof 2003, 5).

It will then look at the different institutional barriers to tabling and passing legislation, including initiation of legislation, any restrictions thereon, differing tiers of legislation, whether or not a legislature has dedicated bill committees and the capacity for the legislature to override any executive vetoes. Veto players will be identified specifically, looking at whether those players are based in the legislature, the executive or shared between the two. Through this process, a differentiation between legislatures can be discerned, which will lead to the next section on reanalysing the PPI.

As the Literature Review states, Veto Players can fall into one of three groups: collective, individual and institutional veto players (George Tsebelis 2000, 2002). Veto Players within legislatures have access to several Veto Powers through operational rules or conventions. This chapter has isolated five specific veto powers from the legislatures under study that define the executive and legislative relationship. These Powers are initiation restrictions, the tiering of legislation, the existence of dedicated bill committees and the ability to override an executive veto.

Initiation restrictions are rules and conventions that prevent members from tabling legislation in certain areas or require a member to obtain a minimum sponsorship threshold to table their legislation. Tiering of legislation refers to any convention or rule that automatically treats legislation tabled from one legislative group more advantageously than another. Dedicated bill committees refers to any legislature that automatically sends bills to standing committees for analysis and amendment. Finally, the ability to override an executive veto refers to any rules or conventions that allow that action to occur.

Operational Veto Player Benefits

Country	*Restrictions*		*Tiered Legislation*	*Dedicated Bill Committee?*	*Override Veto*
	Initiation Threshold	*Legislative Prohibition*			
Brazil	*N/A*	*Executive*	*Executive*	*Legislature*	*Legislature*
France	*N/A*	*Executive*	*Executive*	*Legislature*	*N/A*
Germany	*Executive*	*Executive*	*N/A*	*Legislature*	*N/A*
New Zealand	*N/A*	*Executive*	*Executive*	*Legislature*	*N/A*
United Kingdom	*N/A*	*Executive*	*Executive*	*N/A*	*N/A*
United States	*N/A*	*N/A*	*N/A*	*Legislature*	*Legislature*

Table 18

Table 18 above shows the Veto Player benefits across the legislatures. Rules on legislative initiation and prohibition restrictions in this study exclusively benefit the executive, allowing them to control, in part or in whole, the output of the chamber. This is followed by the tiering of legislation, which also benefits the executive by ensuring an easier legislative process than non-executive-initiated legislation. Dedicated bill committees are the first sign of advantage for the legislature, where these committees are expected to amend legislation without the express permission of the executive. Finally, the right to override a veto is only seen in active legislatures. This reflects the reality of these systems that keep the head of government outside the legislature.

Initiation Restrictions

The legislatures under study show two types of initiation restrictions: legislative prohibition and initiation thresholds. Legislative prohibitions exist where non-executive members are not allowed to table legislation in certain areas, while the initiation threshold prevents a singular member of the legislature from tabling any legislation, no matter the content.

Legislative Prohibition

The legislatures of Brazil, France, New Zealand and the United Kingdom ban individual members from tabling legislation in certain areas, while the United States does not have any restrictions. This ban ensures that the executive is the only entity that affects change in areas such as the public finances, but it also ensures that the executive must approve any other legislation which requires public money.

These restrictions have been shown, in work conducted by Akirav (2022), to have a chilling effect on non-executive legislative production, as his work showed that members from the House of Commons must rely primarily on non-legislative tools to attempt to affect change on a policy level as the initiation restrictions to table legislation are very high.

Scholars have also noted that non-executive legislation in New Zealand that is eventually debated in Parliament is used more as a campaigning tool during election years to indicate their desire to be reselected and affect their placement on party lists under the MMP system (Bowler 2010; B. D. Williams and Indridason 2018). This indicates that despite knowing their legislation has a low chance of becoming law, it has a secondary purpose in enhancing their role within the party.

The initiation restrictions in France and Brazil are weaker than seen in Westminster parliaments, but the results of the weaker restrictions are expectedly different between the two legislatures. Vigour (Vigour 2013, 226) notes that the tabling of non-executive legislation is not a priority of members and not an effective use of their time because they have a greater chance of making a change to legislation in committee. Rodrigo Bedritichuk noted in an interview that nearly 80 per cent of the legislation emanating from the Brazilian Congress is from the executive, but work conducted by him sees a more equitable distribution of legislation, with a third coming from each the executive and the two houses of the Brazilian Congress when budget legislation is excluded. He also notes that legislators can table constitutional amendments to change the status quo (Bedritichuk 2019, 4–6).

Initiation Thresholds

The German Parliament is the only legislature in this study that has an initiation threshold. Sobolewski and Linn (2015) write that approximately two-thirds of legislation tabled in the German Parliament is tabled by the executive and that the agreements that are met outside of the legislature before the first sitting of a new Bundestag set the positions of the executive as well as the legislative goals limiting opportunities to table and advance non-executive legislation.

Unlike other reactive legislatures in this study, the executive in Germany has a constitutional requirement to first table their legislation with the Bundesrat, and the Bundesrat must present any legislation to the executive in the first instance (Hohendorf, Saalfeld, and Sieberer 2021, 927); however, this does not constitute a true restriction on tabling legislation. It is merely a restriction on the freedom of the executive to act, which is unique.

Tiered Legislation

Brazil, France, New Zealand, and the United Kingdom have a tiered legislative structure that affords different sets of rules for legislation tabled by the executive versus legislation tabled by non-executive members. France, New Zealand, and the United Kingdom treat executive-initiated bills differently from bills tabled by non-executive legislators. This system allows executive-backed legislation the freedom to avoid the pitfalls of any restrictions on initiation. Brazil is the only active legislature in this study that employs a form of legislative tiering through the executive's constitutional right to introduce urgent legislation that can take over control of the agenda, but this will be addressed further in the next chapter.

In the French Parliament, in addition to the rules stated above, the executive retains the right to halt any non-executive legislation by declaring it inadmissible under the constitution. All executive legislation is automatically granted a Second Reading. In contrast, non-executive legislation requires executive approval before passing to the next stage. Should the Sénat version of a bill not match the Assemblée's version of a bill, the executive has the exclusive right to amend the bill or just ignore the Sénat to implement the Assemblée's version of the bill.

The New Zealand House of Representatives executive also retains full rights to approve legislation with a financial element. This, along with rules that allow the executive to co-opt non-executive legislation, greatly benefits the executive at the expense of the non-executive members of the legislature. It is in these rules that the executive benefits from these restrictions. Executive bills are placed at a higher importance than non-executive bills, with nearly all executive legislation being enacted every year and a small percentage of non-executive bills surviving to become law (McGee 2017, 357, 359).

Work from Brauninger, Debus and Wust (2017) on legislative procedure showed that institutional settings, or operational rules, influence the progress of legislation (Bräuninger, Debus, and Wüst 2017,

547). From that work, they found that executive bills in the UK Parliament have the highest chance of acceptance, at 94 per cent, with France and Germany having executive acceptance rates of 64.8 and 87.4 per cent, respectively; however, for private member's bills, France had the lowest chance of passage at 1.3 per cent, while the private member's bills from the UK Parliament have the highest chance of passage at 4.6 per cent. These low chances of success also coincide with opinions that refer to private members' legislation as "pseudo-legislation because of its low success rates (Solvak 2013, 42).

Another form of tiering in reactive legislatures occurs between legislation initiated by the upper house versus the lower house. In the House of Lords, for example, the greatest hindrance towards the progression of any bill emanating from that chamber is the fact that all bills must pass through both Commons. In addition to the initiation restrictions mentioned earlier, statute can intervene to benefit the executive, as the Parliament Act 1949 allows for the Commons to ignore the will of the Lords if their proposed legislation was in their election manifesto and if the Lords refuse to agree to Commons amendments within two sessions of the start of the legislative process (UK Parliament 1949, sec. 2). Similar institutional veto-playing powers are also seen in other upper chambers in this study, such as the Sénat and the Bundesrat.

An argument could be made that a system of tiered legislation exists in the United States Congress through the "by request" procedures. As this is the only way for the executive to table legislation, the mere presence of "by request" could be perceived to protect that legislation from amendment and have a greater chance of passage, but research conducted by Kernell, Larocca, Volden and Wiseman (2021) showed that this was not the case.

Their work, which covered over 1,400 pieces of executive-submitted legislation, showed that the executive was far more reliant on the legislature to steer their legislation through the House and that legislation was not immune to amendment, so much so that the executive threatened to veto the very legislation they submitted through their surrogates (Kernell et al. 2021, 35). The work showed that bills initiated by executive surrogates only passed 17.8 per cent of the time using the optimal surrogate in the House of Representatives and eight per cent of the time using optimal surrogates in the Senate (Kernell et al. 2021, 32–33).

Furthermore, the executive does not solely use the "by request" system as any entity can submit legislation to a US legislator, and they can introduce that legislation under the "by request" procedure. This gives the sponsoring legislator some distance from the content of the bill (Olezek 2018, 2021). The defining factor in the passage of the legislation was not rules but the ability to control the agenda, but this will be covered in the next chapter.

Dedicated Bill Committees

Of the six legislatures in this thesis, all but one send motions and legislation tabled on the floor of their respective chambers to a dedicated bill committee. These committees exist primarily to review and amend legislation in addition to holding hearings on relevant issues under their jurisdiction. The legislatures of Brazil, France, Germany, New Zealand and the United States all have dedicated bill committees for this purpose. Additionally, each House of these legislatures has operational rules that automatically send legislation to one or more committees of the House, with one member being placed in charge of the passage of the bill. This is not part of American Congressional rules. These committees all possess the ability to amend or stop the progress of legislation, complete with professional staff and protection in the operational rules, but their influence is not the same across the board.

The US Congress is a prime example of a legislature with powerful, dedicated committees. Committees of both houses provide the largest barrier to the passage of all legislation, including the executive. Both individual members and those representing the executive must contend with the whims of the chair who controls a committee's resources and time, which include public hearings to gain the opinion of relevant government agencies and ultimately consider any amendments to the bill (Cox and McCubbins Matthew D. 2007).

Given the high barrier to passage, many pieces of legislation "die" in committee, but there are provisions in both Houses via rules, 15(2a1) in the House and 17 in the Senate, to discharge a bill from committee, that action requires at least 30 legislative days to pass before it can be activated, and according to senior congressional committee staff, has a very low rate of success.

Work conducted by Volden and Wiseman (2014b) on the effectiveness of legislators in the House of Representatives also shows the importance of being a majority party member and passage of bills out of committee as the most important part of the legislative process. They note in their studies that nearly all of the bills that enter congressional committees are never granted passage, with only 11.5 per cent of majority bills even being considered by the committee as opposed to 7.3 per cent for the minority party. Even fewer bills of the majority, 7.3 per cent, pass out of committee, which, according to Volden and Wiseman, was three times the number allowed for minority bills in 2014 (Volden and Wiseman 2014a).

Work from Curry (2019) also shows that dedicated bill committees and their staff in Congress are responsible for influencing and shaping legislation. His work shows that despite the procedural advantages a committee chair may have, individual members are also able to exert their influence through the committee process, including the drafting of legislation.

The only advantages afforded to either the executive or legislature come in its composition. Should the legislature have majorities consisting of the same political party as the President, the ability to pass legislation could be easier, but this is not a guarantee. President Barack Obama's wide-reaching American healthcare reforms received heavy amendments from a Congress with Democratic majorities in both Houses (Carlsen and Park 2017; Chait 2010).

Senior congressional committee staff confirm that political party cohesion in the United States is weaker than seen in parliamentary democracies (Cox and McCubbins 2007; English 2003), as there is not an automatic assumption of loyalty to pass the policy priorities of an allied executive. Legislators are socially linked to their party leadership but expected to produce tangible benefits in their districts (Grant and Rudolph 2004; J. D. Griffin and Flavin 2011). This means, according to a senior congressional committee staffer, that an individual committee chair has a greater chance of advancing their personal policy goals before the party's policy goals. Conversely, the party may seek to circumvent committees' chairs by controlling a bill through the Rules Committee in the House of Representatives.

In Brazil, the prevalence of coalitions in both Houses of the Brazilian Congress means the executive must keep many different factions' content, or else those legislative factions can flex their procedural muscles and initiate policies against the will of the executive (Praça, Odilla, and Guedes-Neto 2022, 63).

These powers came under scrutiny during the beginning of the presidency of Jair Bolsonaro, who seemingly broke with convention and attempted to rule by executive fiat; however, he was stalled due to the coalitional nature of the Brazilian Congress (Milz 2019). The result of this attempt at subverting the Brazilian Congress has seen both Houses pass laws and constitutional amendments to

grant the legislature more powers, making it harder for the executive to pass legislation in the Brazilian Congress and spend public money (Reuters 2019).

Work from Limongi, Freitas, Medeiros and Luz (2022) appears to confirm that at the end of his presidential term, he was unable to advance his agenda in the same way as his predecessors, showing that he initiated fewer provisional decrees as the previous three administrations. Their work showed that the legislature was a vital veto player, stating that because the provisional decree falls within 120 days, it depends on the "explicit manifestation of the majority, it cannot be used with the anticipation of congressional behavior." (Limongi et al. 2022, 34).

In the Bundestag, the operational rules also allow the opposition to affect legislation through the tabling of amendments, and once a bill is in committee, there is a 60 per cent chance that it will be amended (Stratmann and Baur 2002). Bundestag Rule 60(2) allows 1/3rd of the committee, or a parliamentary group, to request an extraordinary committee meeting, giving another benefit to the legislature. There are no stipulations on the usage of this rule, which allows all parties to activate these rules if they see fit. Rule 62(2) also allows for five per cent of the membership of the Bundestag or a parliamentary group to force a committee to report on a bill if it has been in the committee for 10 sitting weeks. This prevents any party from holding a bill in committee in perpetuity to stop any legislative progress.

The Bundesrat's role in legislation is equally important as well. Removing the capacity of the executive to force through legislation against its will routinely should it encroach on areas reserved for the German states. Their committees, which mirror Bundestag committees, have a more bureaucratic function as those committees can be staffed by state civil servants or members of the different state executives. Despite the design of the Bundesrat, it is still a chamber where political priorities can dominate.

The Finance Committee, for example, is not just a committee of Länder representatives but a committee of the finance ministers of the 16 Länder (Souris and Müller 2020). All government legislation has to go through this committee before coming back to the main chamber of the Bundesrat for a vote. Within these committees, finance ministers from across Germany work to gain an advantage, not just for one Länd but for whole regions of Germany (Souris and Müller 2020, 455). This shows a greater advantage within the Bundesrat in affecting the outcome of legislation, including executive-initiated legislation.

In Parliament, the work of committees is seen as the most important part of French legislators' time in Paris, and the work of committees is primarily focused on legislation. When asked, members of the Assemblée Nationale graded their work in committee as the most important and rewarding part of their legislative time (Costa, Schnatterer, and Squarcioni 2013; Vigour 2013). Members who participated in the LEGIPAR study between 2009 and 2012 noted their ability to work on the content of legislation. As legislation takes up nearly 3/4ths of the committee's time (Vigour 2013, 226), their ability to amend legislation also affects their perception of their work. Members felt they had little to no influence on executive-initiated bills (Vigour 2013, 230).

Members are also divided over the usefulness of their contribution to the legislative process. While right-wing members table more legislation, left-wing members tend to table more amendments to legislation (Costa, Schnatterer, and Squarcioni 2013, 269); however, the changes of 1958 have all but dissolved the legislature's ability to table any legislation or amendments without the approval of the executive leading to their feeling of the lack of any real influence on the legislative process (Costa, Schnatterer, and Squarcioni 2013, 271).

In the New Zealand House of Representatives, the primary purpose of their select committees is to review and potentially amend legislation. According to the Clerk of the House of Representatives, David Wilson, committees spend around 70 per cent of their time on legislation, with the other 25 per cent focused on scrutiny. The operational rules tangentially benefit the government as all bills have a six-month limit before they are automatically sent back to the chamber. This prevents the committees from holding up legislation for political purposes.

The United Kingdom, unlike the other legislatures, creates ad-hoc committees to review and amend legislation on a case-by-case basis. The executive has exclusive access to rules that allow them to create multiple committees for their legislation, but those same rules prevent the creation of multiple committees for non-executive legislation (U. K. Parliament 2019, secs. 28.57, 28.66). The chair is impartial and does not control the agenda of the meeting, and it is not likely that any amendment can be added to the bill without prior approval of the executive granting a significant benefit towards the executive.

Thompson (2016) covered the work of Public Bill Committees (PBCs) by specifically looking at their capacity to affect a change in legislation. Covering legislation tabled between 2000 and 2010, she looked beyond the committee's formal outputs and focused most of her analysis on verbal promises made by the executive in committee to non-executive members. Examining changes to bills made by amendment, non-executive members successfully passed 88 amendments out of 17,000 in PBCs between 2000 and 2010 (Thompson 2016, 42). This showed a success rate of 0.5 per cent for non-executive members, but she also looked at promises made by members of the executive and counted those towards the total number of amendments passed in committee. She was able to identify changes made to companion texts of the bill changes made by the executive during and after committee stage. In total, she identified nearly 2,000 changes made to legislation or its associated texts as a result of committee debate (Thompson 2016, 43).

Her analysis also looked at the opinion proffered by several academics and members of Parliament that PBCs were powerless and ineffective because they actively refused the help of any members with expertise in a matter (Thompson 2016, 39). To combat this, she looked at every committee member and assigned them a code depending on their background. Using this method, she determined that over half of the committees she studied contained members with some expertise in the subject they were debating (Thompson 2016, 40). With this information, she determined that committees contained a high level of expertise. This, combined with experts giving oral evidence, provided greater levels of scrutiny to the bill. Thompson also looked at committees of the House of Lords. There, she found even higher levels of change (Thompson 2016, 44). Through this analysis, she finds that the assumption by academics and legislators that PBCs are powerless and ineffective was "at best exaggerated and at worst misleading" (Thompson 2016, 46). However, she demonstrated the influential capacity of non-executive members but detailed how the operational rules benefit the executive.

Outside of the 88 non-executive amendments passed by committees, the 2,000 legislative changes, Thompson notes, required the approval of the executive to be enacted. If the executive decided not to uphold their commitment, the non-executive members of the committee could attempt to pass the measure on their own; however, should the measure fall afoul of an initiation restriction or the debating time expire, they could not employ any procedural rules to act as a backstop against the promise of a government minister, as seen in the Bundestag or Assemblée National.

Additionally, she conflated expertise with interest; while many members can volunteer to participate on a bill committee, their interest in a subject is not the same as expert knowledge. There is a place

for the importance of influence in legislatures; it cannot substitute an enforceable rule. Without these enforceable rules, the executive clearly benefits.

Executive Veto

Executive veto rules vary greatly between active and reactive legislatures, with significant differences between the reactive legislatures as well. Of the reactive legislatures, France is the only legislature that contains the right to return legislation to the President who vetoed it, but a majority of vetoes of legislation are sent to the constitutional court, adding another layer not under consideration in this thesis (Sylvain 2009). The remaining reactive legislatures are part of political systems that do not allow the legislature to reverse a veto because the executive does not have the right to reject legislation passed by the House.

The obvious exceptions are the United Kingdom and New Zealand, with their joint head of state (U. K. Parliament 2019, 30.36). In the United Kingdom, the monarch technically has the right to reject legislation that comes from the Parliament, but this power has not been used since the reign of Queen Anne in 1707 (Patrick, Johnson, and Sandall 2011, 644). In modern times, the executive in both legislatures have access to rules to halt legislation far before the point of promulgation, and since the preponderance of legislation emanating from these legislatures are executive initiated, a veto mechanism would essentially ask the executive to veto itself.

Of the active legislatures, Brazil has a greater use of the Presidential veto along with greater usages of the legislative reversal, and while the US Congress can also reverse presidential vetoes, this happens less frequently as in the Brazilian Congress. Rodrigo Bedritichuk notes in an interview that veto sessions frequently happen in Brazil as the executive is constitutionally obligated to pass or veto legislation within a limited amount of time. For example, President Bolsonaro infamously vetoed legislation to provide emergency aid to several groups during the height of the COVID-19 pandemic, some of which were overridden along with measures on payroll tax exemptions (Reuters 2020). The Presidential veto was overturned along with several other initiatives from the legislature that the President declined.

Vetoes in the United States are a much different affair, with only 105 Presidential vetoes between 1989 and 2022 (United States Senate 2023). Here, as in Brazil, the legislature's capacity to override the executive provides a clear trade-off between the two terms of legislative production. The President's influence on the progress of legislation is found in the Statements of Administration Policy, which clearly signify what legislation the President supports or what legislation they will veto. Studies have shown that these statements do influence legislation; furthermore, veto overrides from Congress are rare (Stuessy 2019, 2–5). Despite the rarity of its usage, the existence of the rule allows for a more balanced relationship between the legislature and the executive.

Parliamentary Powers Index and New Ranges

This chapter has analysed the operational and customary rules related to the passage of legislation. This chapter aligns with Question 14 of the Parliamentary Powers Index, which asked a question regarding the capacity of the executive to "gatekeep" or withhold access to the production or passage of legislation from the legislature. This chapter expanded on that idea by looking at the whole legislative process to see how the rules benefit the different participants in the legislative process.

This chapter employed the concept of veto players to identify the rules and entities within the legislature that can affect the progress of legislation. This is different from the PPI approach, which only looked at a singular issue, executive gatekeeping, to determine the strength of a legislature. In the justification for their scores, the authors of the PPI stated that "Common areas in which the

executive can engage in such "gatekeeping" over the legislative process are the domains of law on taxation, public expenditures, and government debt. In such cases, the executive is said to have gatekeeping authority, and the answer to the item is negative." (Fish and Kroenig 2009, 9).

With this statement, they determined the criteria for gatekeeping in their index, but by the end of their justification, they make the following exception for reactive legislatures, "If the leading party or coalition of parties that make up the government is usually the source of legislation, and it is difficult for rank-and-file members to introduce bills that have a good chance of passage without the government's backing, one might say that the executive holds informal gatekeeping authority. In fact, this is the way legislative politics normally works in parliamentary systems. However, such informal power does not count as a gatekeeping authority here. The answer to the item is affirmative so long as the legislature can initiate bills in all policy jurisdictions." (Fish and Kroenig 2009, 9).

With those two statements, they created two tiers of legislatures for the index, where reactive legislatures received far fewer instances of gatekeeping because the authors ignored the power of the executive within the legislature to practice gatekeeping. To ignore the operational rules, or conventions, that grant the legislation of the executive an advantage over the legislation of non-executive members is a major feature of reactive legislatures and speaks to the relationship between the two.

Country	**PPI Score**	**PPI Reasoning**
Brazil	Negative (0)	The president has exclusive rights to initiate certain bills.
France	Affirmative (1)	The legislature can initiate bills in all areas.
Germany	Affirmative (1)	The legislature can initiate bills in all areas.
New Zealand	Affirmative (1)	The legislature can initiate bills in all areas.
United Kingdom	Affirmative (1)	The legislature can initiate bills in all areas.
United States	Affirmative (1)	The legislature can initiate bills in all areas.

Table 19

As seen in Table 19 above, the Brazilian Congress is the only legislature of the six under study that did not receive an affirmative score from the PPI. This is due to the inability of the legislature to initiate bills on specific matters, but if the same rules were applied evenly between the remaining legislatures, France, Germany, New Zealand, and the United Kingdom should all lose their affirmative score because each of those legislatures has similar or more severe restrictions on both initiation and content of bills. Only the United States Congress ensures no restrictions on what a member can table. The criteria employed in this re-analysis of these legislative powers show the nuances between the different scores.

New Parliamentary Scores Ranges

Brazil Original PPI Score: 0	
Initiation Threshold	There is no barrier to any member tabling legislation or a motion within the rules of either House.
Restrictions on Tabling?	The executive has exclusive competence to table legislation related to the budget, civil service and the armed forces.
Tiered Legislation	There is no difference between legislation tabled by legislators and the executive.
Dedicated Bill Committee	All bills and motions are sent to at least one standing committee.
Override Veto	The legislature can override an executive veto.
Chamber	**Mean**
Constitution	0.625
Deputados	0.625
Senado	0.625

Table 20

Table 20 shows that the Brazilian Congress's coalitional nature benefits the legislature, but the executive retains considerable benefits with their constitutional initiation rights and medidas provisionais. Bills related to taxation, the civil service or the armed forces must come from the President, but there is no requirement to pass the legislation. There are no further initiation barriers on legislation from members of the Brazilian Congress. This is tempered by the ability of the Brazilian Congress to amend or vote down the legislation, which puts the balance of power for this question back with the legislature.

Legislative committees of both Houses receive all legislation and are tasked with reviewing and amending that legislation. The totality of legislative and constitutional powers benefits both the legislature and the executive. The codified rules allow the executive to introduce legislation in the House, but it is heavily tempered by the legislature, which is required to pass the measures. The executive, in effect, must ask permission to get their legislation passed, whereas the legislature can override an executive veto or line-item veto with further constitutional powers to bypass a presidential veto in the most extreme of circumstances. This benefits the legislature more than the executive, but some strong initiation restrictions still exist in this system, putting the legislative powers range between .5-.75 with a of .2mean5 as no chamber has a distinct advantage over the other.

France Original PPI Score: 1	
Initiation Threshold	There is no barrier to any member tabling legislation or a motion within the rules of either House.
Restrictions on Tabling?	The executive has exclusive competence to table taxation and government spending legislation.
Tiered Legislation	Legislation from the executive takes precedence over non-executive legislation.
Dedicated Bill Committee	All bills and motions are sent to at least one standing committee.
Override Veto	The legislature cannot override an executive veto.
Chamber	**Mean**

Constitution	0.125
Assemblée	0.125
Sénat	0.125

Table 21

Table 21 shows that the constitutional and operational rules of the Parliament give a greater benefit to the executive in terms of legislative initiation and legislative priority through tiering. The executive has access to a far wider selection of operational rules that allows them to manipulate the operation of Parliament to ensure the passage of their legislative agenda. Article 20 of the Constitution states clearly that it is the sole responsibility of the executive to determine the policy of the nation. From this article, subsequent constitutional articles and operational rules of tabling legislation for both Houses of Parliament are designed.

The PPI noted that there was no gatekeeping in the French Parliament, but given the number of rules that give the executive exclusive rights to table and progress their legislation through both Houses of Parliament and the explicit prohibitions on non-executive members submitting bills that affect the public finances, it is hard to see how that is not the case. Using this new criterion, it is clear that gatekeeping exists in the French Parliament. These restrictions seemingly overpower the dedicated bill committees, as shown by the opinion of French lawmakers. With that in mind, the new score range for this question is between 0 and .25 across all three systems for the extreme limits on the initiation powers of the legislature and the great powers afforded to the executive.

Germany Original PPI Score: 1	
Initiation Threshold	Members cannot table a bill unless they have the support of at least five per cent of members of the Bundestag.
Restrictions on Tabling?	Non-executive members must gain the executive's agreement to table legislation related to public expenditure.
Tiered Legislation	No operational rules that protect the executive.
Dedicated Bill Committee	All bills and motions are sent to at least one standing committee.
Override Veto	The Federal President does not have the power to veto legislation.
Chamber	**Mean**
Basic Law	0.375
Bundestag	0.375
Bundesrat	0.375

Table 22

Table 22 shows that the Houses of the German Parliament are not carbon copies of each other, representing two specific functions in the German legislative system. The Bundestag is the popular chamber, and the Bundesrat is the unelected chamber representing the Länder. Both have strong constitutional protections to conduct their different tasks. That difference is seen in the initiation restrictions in the Bundestag with the five per cent threshold. This barrier does not exist in the Bundesrat, but a barrier exists for them in the requirement that all bills started in the Bundesrat must be sent to the executive before the Bundestag can consider them. While there is no explicit tiering of legislation, the executive is free from the restrictions placed on non-executive legislation. Bill committees, in both Houses, are powerful tools that are not explicitly in the hands of the executive, creating a more balanced legislative environment.

Unlike the other reactive legislatures in this study, the Bundesrat can veto legislation that comes from the Bundestag, which gives it far more authority than other reactive legislatures, putting it on par with the Senate and Senado. Of course, this is not a blanket veto as it only applies to legislation that affects the Länder, but it also includes the annual budget and all financial legislation.

There is a capacity for gatekeeping through operational rules requiring executive agreement on legislation incurring a public cost. Based on the analysis above, this thesis places the legislative powers score range of Question 14 for the Bundestag between .25 and .5, as the executive benefits outweigh the legislative benefits. Still, the legislature has a considerable number of opportunities to make their opinions known and have higher chances to place their policy goals on the agenda. The Bundesrat receives a score range between .5 and .75 as the executive may not have control over the operation of that chamber, and it has the power to unilaterally stop the progress of Bundestag bills that require its consent. The range for the Basic Law is between .25 and .75 to accommodate for the strength of the executive in this system but acknowledge the rights of the Bundesrat.

New Zealand Original PPI Score: 1	
Initiation Threshold	There is no threshold for tabling legislation.
Restrictions on Tabling?	There are restrictions on tabling legislation.
Tiered Legislation	Executive legislation receives different rules than private members' legislation.
Dedicated Bill Committee	All bills and motions are sent to at least one standing committee.
Override Veto	There is no function for an executive veto.
Chamber	**Mean**
House of Representatives	0.125

Table 23

As there are no overt rules to prevent tabling of legislation, the range could be higher, but the executive only requires two operational rules to thwart any non-executive attempt to pass legislation. Table 23 shows that the executive has the power to stop legislation at any time if it is determined to breach operational spending rules, which means the entirety of the executive's ability to stop legislation lies with both the timing of legislative sessions and using their financial veto. The only option available to non-executive members is to lobby the executive for support, an example of executive gatekeeping. Further rules within the non-executive parties also create a conventional barrier to non-executive legislative passage, which acts as another barrier to tabling legislation. The presence of dedicated bill committees allows for those bills to be heard, but the same rules apply that give the executive an advantage in that arena as well. Given the hostility of this legislative environment to non-executive legislation, the range for this question is between 0 and .25, with a mean score of .125.

United Kingdom Original PPI Score: 1	
Initiation Threshold	There is no threshold for tabling legislation.
Restrictions on Tabling?	There are restrictions on tabling legislation.
Tiered Legislation	Executive legislation has protected debating time.
Dedicated Bill Committee	Bills are considered in ad-hoc committees.
Override Veto	There is no function for an executive veto.
Chamber	**Mean**
House of Commons	0.125
House of Lords	0.125

Table 24

The PPI score affirmed that the executive had no legislative gatekeeping authority, stating, "The legislature can initiate bills in all policy areas." (Fish and Kroenig 2009, 715). The House of Commons and the House of Lords have different powers related to the ability of members to table legislation; however, there are different prohibitions on members of the legislature tabling certain types of bills.

Table 24 shows that the rules of both Houses act as a severe restrictive tool against the legislature. While the legislature itself has no formal restrictions on what it may legislate, the non-executive members within are limited in what they can table. There are clear tiers between the executive and non-executive legislation, and the executive has exclusive access to rules allowing multiple ad-hoc bill committees. Non-executive members have no access to these rules, which provides a further disadvantage. As with the New Zealand Parliament, the UK Parliament has no veto mechanism, but the executive benefit from rules and conventions that can prevent the passage of non-executive legislation before promulgation.

Despite having fewer overt restrictions against non-executive members of the chamber, the House of Lords contains the same restrictions on legislation as the House of Commons; furthermore, these restrictions are codified in legislation in the Parliament Acts 1911 and 1949, gaining a benefit for the executive. The House of Commons acts as a veto player against the House of Lords, which makes it exceedingly difficult for the Lords to have their bills complete the legislative process, with many ending their legislative journey in the House of Commons, awaiting the executive to permit time for the bills to progress.

In practicality, the Commons and Lords are two very different institutions that are governed by the same conventions, laws, and key operational rules that all greatly benefit the executive, which means a range of between 0 and .25 with a mean score of .125 fits best for this legislature.

United States of America Original PPI Score: 1	
Initiation Threshold	There is no barrier to any member tabling legislation or a motion within the rules of either House.
Restrictions on Tabling?	There are no restrictions on tabling.
Tiered Legislation	There is no difference between legislation tabled by legislators and the executive.
Dedicated Bill Committee	All bills and motions are sent to at least one standing committee.
Override Veto	The legislature can override an executive veto.
Chamber	**Mean**
Constitution	0.875
House of Representatives	0.875
Senate	0.875

Table 25

The legislative process in the US Congress is the least restrictive of all the legislatures in this chapter. Table 25 shows that there are no restrictions on initiation and that there are no types of bills that a member may present. Members of the legislature can only present legislation, and while members presenting bills from the executive are allowed to indicate this on the face of the bill, it does not grant any procedural benefit to the executive. All bills, no matter their sponsor, are sent to at least one legislative committee where amendment is possible and expected, and finally, Congress has the power to override an executive veto.

The conjunction of these operational rules places the executive at a distinct disadvantage as they cannot directly influence the passage of their legislation in a vacuum; there will always be the capacity for legislators on both sides of the political divide to offer resolutions in place of political gains. Should the executive exercise the veto powers, they have to contend with a largely unified legislative chamber that can override their decision. As the executive remains at a disadvantage throughout the legislative process, the range for rules under this question is between .75 and 1.

Conclusion

This chapter has covered the passage of legislation in the six legislatures by analysing each House's operational and conventional rules. First, this chapter examined the current state of each legislature's operational rules and conventions related to the progress of the legislation. Then, this chapter analysed the operational rules and conventions, focusing on the four criteria of the legislative process, including legislative restrictions, tiering, dedicated bill committee and veto right through the lens of institutional veto powers.

Table 26 below shows the new legislative score ranges as opposed to the scores from the PPI. The differences between the two scores show a more detailed assessment of the legislative process in the six legislatures compared to the more focused approach adopted by *The Handbook of National Legislatures*.

The reactive legislatures have had the largest changes from their original because this chapter did not afford the advantage that the PPI gave to those legislatures, and this thesis included the rules of the upper chambers in the methodology. Conversely, the Brazilian Congress received the largest change as it now received a score range where the original PPI afforded it nothing.

Country	Mean	Original PPI Score
Brazil	0.625	0
France	0.125	1
Germany	0.5	1
New Zealand	0.125	1
United Kingdom	0.125	1
United States	0.875	1

Table 26

It is clear that it is not correct to treat reactive legislature as a singular unit, as the authors of the PPI did. Their index ensured that reactive legislatures received a greater score than other legislatures despite exhibiting the same characteristics. That bias provided an inaccurate depiction of the legislative process in the six legislatures under study and potentially the remaining legislatures in the Parliamentary Powers Index. The addition of these criteria gives a much deeper depiction of the legislative process in these countries.

This chapter has yielded interesting information regarding the division of power in a legislature in terms of legislative production. In cases where a legislative initiation restriction exists, the veto powers benefit the executive, but the existence of dedicated bill committees and veto override powers give a balance to the legislature where they exist. Additionally, this chapter has shown the veto-playing powers of upper chambers in their capacity to halt the progress of legislation.

Chapter Five: Legislative Oversight and Scrutiny

One of the primary functions of a legislature is to examine and investigate the policies and actions of the executive. This function is carried out, in part, through operational rules that allow for oversight or scrutiny of their actions. The subject of executive oversight and scrutiny is complex, and PPI does not attempt to untangle the various rules and conventions that underpin the legislature's ability to interrogate and sanction the executive.

At present, both Questions Three and Five combine matters of differing importance in the same question to discern a single score. Question Three places the right to question times on the same level as the legal right to summon the executive, and Question Five considers a legislature's ability to fund an agency of coercion at the same level as being able to question the executive on the activities of those agencies. In order to create a better understanding of these powers, the chapter will take a more focused investigation of the oversight and scrutiny authority of the legislatures.

First, this chapter will examine the current state of each legislature's operational rules and conventions related to oversight and scrutiny of the executive. This section will focus on the comprehension of the rules and their relationship with each other. Next, this chapter analyses the rules and conventions, focusing on rules related to questions to the executive, committee powers, and compulsory powers. Additionally, this section will look at the agencies of coercion and the capacity of the legislature to perform an oversight or scrutiny function, is integral for comparing legislative powers.

To reanalyse these rules, this chapter will look at several new criteria related to the rules and conventions of the legislatures, which is shown in Table 27 below. Rules and conventions related to compelling the executive to attend the legislature or committees. Additionally, rules and conventions related to the questioning of the executive either in committee or on the floor of the House will also be analysed. As the right to compel is not equal to the right to question, compulsion powers will be considered above questioning powers for scoring. This chapter will split the PPI's criteria for legislative control of the agencies of coercion by looking at each part independently. This will provide a deeper understanding of the relationship between the legislature and the agencies.

Compel and Sanction	Executive Question	Agencies of Coercion
Can the executive be invited to committees?	Can the executive be Questioned in the legislature?	Can committees question the agencies of coercion?
Can the legislature summon the executive to committee	Are there plenary question sessions?	Can the committees fund the agencies of coercion?
Can the executive attend committees at will?	Frequency of question sessions in the legislature?	Can the committees regulate the agencies of coercion?
Can the executive convene committees at will?	Does the executive get the last statement in question sessions?	Can the committees investigate the agencies of coercion?
Are committee rules codified or convention?		Can the committees publish the findings of investigations of the agencies of coercion?
What is the ultimate sanction for refusal?		

Table 27

Finally, each legislature will be analysed based on the information gathered in the previous section. This information will be used to create a new range of scores to replace the current PPI score. Some concluding thoughts will follow this. This chapter will show that there is a distinct difference between scrutiny and oversight and that oversight rules provide a greater level of benefit to the legislature.

Current State of Operational Rules and Conventions

Brazil

Committees and Compulsory Rules

The Brazilian Congress have rules allowing the partial oversight of the executive in both the institution as a whole and its committees. The Constitution grants both houses of the Brazilian Congress the right to have committees and, among other rights, the powers to summon the executive. (Fish and Kroenig 2009, 95)

Article 58 of the Constitution grants both houses of the Brazilian Congress the power to create committees that are primarily responsible for examining legislation tabled in their respective chambers and investigating other areas of executive and social policies under their purview. Camara Article 23 and Senado Article 79 both state that the composition of committees will be based on the composition of parties and parliamentary blocs in the chamber.

Article 50 and Article 58 of the Constitution grant both Houses of the Brazilian Congress the right to summon any member of the executive to attend the chamber or committee meeting. This right is supported in the Camara by Article 23 and Article 90 of the Senado Federal Rules, which grant the powers of summons to parliamentary groups and committees. The executive also has the right to attend any committee meeting with the permission of the Mesa of the respective House. Finally, the executive committees of each house may send for records or papers from the executive. Failure of the executive to give truthful information or comply with the order within thirty days constitutes an impeachable offence.

The rules of the Camara and Senado are both extensions of the rights granted by the Constitution as they both contain the same powers related to the summoning of the executive and oversight of government spending. Both Camara Article 23 and Senado Article 90 mirror the same rules granting the chamber powers to summon ministers, monitor government spending, request testimony from citizens and monitor government budgets.

Agencies of Coercion

There are committees in both houses of the Brazilian Congress which oversee executive “agencies of coercion”, but the focus of this section will be the joint Congressional Committee on Intelligence, known as the CCAI. (Fish and Kroenig 2009, 95)

Law 9.883 of 7 December 1999 created the Agência Brasileira de Inteligência (Brazilian Intelligence Agency/ABIN). Article Six of that act grants the Brazilian Congress the right to control and supervise intelligence activities through the Commissão Mista de Controle da Atividades de Inteligencia (Joint Committee for the Control of Intelligence Activities/CCAI).

The CCAI membership includes the majority and minority leaders of both Houses and the Chairs of the Foreign Relations and National Defence committees of both Houses as well. The leadership of the committee is swapped between the chairs of the Foreign Relations and National Defence committees.

Under a single paragraph in the law, the Senado is also granted the right to have the approval of the Director-General of the ABIN and other senior officials. Rules passed by both Houses grant the joint committee the right to examine intelligence budgets and suggest amendments to intelligence-related bills. As with other committees, the committee also has the right to request written information from the executive and hear testimony. Refusal of either by the executive can be treated as an impeachable offence.

France

Committees and Compulsory Rules

The Parliament of France has committees that cover set areas of public policy, primarily through the scrutiny of legislation. Both Houses of the legislature also have committees that have the right to regularly examine the operations of the executive, with both Houses operating under institutional/organic laws that complement the Constitution. Ordinance 58-1100 (1958) sets out the privileges afforded to each committee of Parliament, whether they be special (ad-hoc) or permanent. Article 5a states that the committee may summon any person whom the committee deems unless the subject is confidential and a matter of national security. Failure to comply with this law is punishable by a €7500 fine.

Rules in the Sénat are tied to Ordinance 58-1100; however, the rules in the Assemblée are more explicit. In terms of government scrutiny, the executive retains powers to access all committees, and under Rule 40, the executive can convene a meeting of any committee at will. Rule 45 also guarantees them the right to speak at all committee meetings if they request, but the legislature has the right to demand the executive's appearance at a committee hearing under Rule 45. Committees of both Houses are also responsible for legislative scrutiny, which will be covered in Question 14.

Plenary Question Time

As a reactive legislature, regular question sessions are a feature of both Houses, with questions to the executive taking place in committee and the plenary. (Fish and Kroenig 2009, 241)Questions sessions in both Houses are guaranteed by Article 48 of the Constitution, which secures one week, out of every four weeks, for scrutiny of the executive in the legislative chambers. In the Assemblée National, Rule 133 sets out the terms for legislative scrutiny. Under Rule 133, the opposition will get 50 per cent of the questions asked to the executive, and every parliamentary grouping will get at least one chance to ask a question. In addition to getting at least half of the questions, the opposition gets to ask the first question of the executive. Under Rule 135, members can table written questions that the executive has a month to answer unless they deem it against the public interest to answer the question.

The Sénat allows questions to the executive once a week on current events under Rule 75. The executive committee of the Sénat, known as the Conference of Presidents, controls the distribution of questions and time. Under Rule 77, the Sénat has oral questions to the executive every Tuesday morning, and if 30 senators agree, oral questions can become a debate.

Written questions in both Houses are governed by Rule 74 in the Sénat and 135 in the Assemblée. These rules allow for members of both Houses to table questions to the executive and set a time limit of two months in both Houses for a response. Should the executive fail to respond in the Sénat, the answer can be transformed into an oral question under Rule 75, but in the Assemblée, the executive can claim an answer is not in the public interest or ask for another month to respond. Upon failure to receive a response, the group leader who tabled the question may place a public notice that the

question was not answered in the official journal under Rule 135, to which the executive has ten days to respond.

Agencies of Coercion

Both Houses of Parliament uses a joint intelligence committee to examine the work of the intelligence services.(Fish and Kroenig 2009, 241) Article 6f of Ordinance 58-1100 sets the membership of the joint intelligence committee known as the Parliamentary Intelligence Delegation at four members. Four are drawn from the Assemblée, and four members are drawn from the Sénat along with the chairs of the Internal Affairs and Defence Committees. Like others in both Houses, this committee has the authority to request information from the Prime Minister, but that information cannot contain information on ongoing intelligence operations. The Prime Minister is also expected to report to the committee twice a year, with other defence and intelligence officers reporting as requested.

Germany

Committees and Compulsory Rules

Both houses of the German Parliament have committees that are primarily responsible for examining legislation tabled in their respective chambers. Article 43(1) of the Basic Law provides the Bundestag with the right to require any member of the executive to attend the chamber. This right is supported in the Bundestag by Rules 42 and 68, which grant the powers of summons to parliamentary groups and committees. Rule 42 allows for parliamentary groups, or five per cent of the membership of the Bundestag, to summon the executive, while Rule 68 allows committees to summon the executive to their hearings.

Basic Law Article 53 serves as the operational rule in the Bundesrat, which grants that chamber and its committees the right to compel the executive to attend their sessions, but it also grants the executive the right to attend the chamber of their own volition. Bundesrat committees serve a similar function in the German parliamentary system.

Plenary Question Time

The German Parliament has executive question sessions, with question sessions occurring every week and questions to the Chancellor once every three months for two hours. Unique in this study is that every member of the Bundestag must be placed on a committee. (Fish and Kroenig 2009, 262)

Both Houses have the constitutional right to question the executive. Bundesrat Rule 19(1) provides the right for members of that chamber to address questions to the executive, while Rules 100, 101,102,103,104, 105, 106 and Appendix Four and Seven of the Bundestag provide the rights for members to question the executive on a weekly/quarterly schedule. Bundestag questions to the executive are broken into two parts: weekly questions to the executive and quarterly questions to the Federal Chancellor.

Both question sessions allow all legislators to ask two questions of the executive, allowing the legislators the right to reply during the session (Linn and Sobolewski 2015, 57). Members are also allowed to table urgent questions as well as written questions to the executive. Bundestag Rules 100 through 104 allow members to ask targeted questions in a process known as large questions and small questions. These questions, which are separate from executive question times, give the legislature another avenue to scrutinise the executive's actions. Any member of the Bundestag or parliamentary group can put forward this request to the executive. The executive, under Rule 102, can refuse to answer the large question, but if the executive fails to respond within three weeks, the matter can be

tabled for debate on the floor of the Bundestag if requested by a parliamentary group or five per cent of the legislative membership. The small question only allows for written question submissions to the executive.

Agencies of Coercion

The Parliamentary Oversight Panel, which examines intelligence operations, is guaranteed by the Basic Law. The Bundesrat also plays a role in monitoring the agencies of coercion with their commensurate committees that examine legislation that emanates from the Bundestag. (Fish and Kroenig 2009, 262)

For the agencies of coercion, the constitutionally mandated committees of the Bundestag are specifically designed to ensure the role of the Bundestag in the decision-making process related to defence, foreign affairs, and intelligence. These committees often hold their meetings in secret as their contents are classified (Deutscher Bundestag 2022).

Article 45d of the Basic Law created the Parliamentary Oversight Committee for the German intelligence services. Supported by the Control Committee Act, this committee is specifically designed to monitor German intelligence operations through its ability to request information from the intelligence services under section four of the Control Committee Act. The executive is not allowed to refuse the request of the committee unless the request is outside of the remit of the intelligence services (Bundesministerium der Justiz 2009). This committee, created in 2009, also has the exclusive rights to scrutinise decisions relating to restrictions on Article 10 of the Basic Law on the confidentiality of interpersonal communications (Deutscher Bundestag 2016). Unlike other Bundestag committees, the Control Committee cannot request a Committee of Inquiry.

While the Control Committee is the statutory body that scrutinises the intelligence services, two other organs also perform a heightened scrutiny function. They are the G10 Commission and the Confidential Committee. The Confidential Committee is comprised of ten members of the Budget Committee of the Bundestag who have the authority to be alerted if the intelligence services exceed their budget (Dietrich 2016, 405). The second body is the G10 Commission, which approves domestic surveillance. Experts lead the commission, and members of the legislature do not have to participate on the committee. (Dietrich 2016)

New Zealand

Committees and Compulsory Rules

Committees in the House of Representatives do not explicitly shadow an executive department, but they retain the power to examine the operations of the executive in those departments. Committee powers to scrutinize the executive are limited. While the House has the power to summon individuals to the bar and committee under SO198 and 199, members of the House of Representatives are exempted from these rules (McGee 2017, 329). However, executive members, through SO 214, have the right to attend committee sessions as all members are allowed to attend committee sessions if granted by the committee. Members, including executive members, are granted the automatic right to attend a committee if their legislation is under consideration. Civil servants must also get permission from the executive before giving any evidence to a Select Committee.

All select committees under SO 190 and 198 have the powers to initiate investigations into their relevant subject areas, but in the case of Foreign Affairs, Finance and Justice, their powers of investigation are limited to legislation on the agencies of coercion and the examination of their funding with no control of departmental spending or budgets.

Plenary Question Time

The House of Representatives features daily plenary question sessions alongside regular committee meetings. Question sessions are the primary avenue for legislators to scrutinize the work and actions of the executive. Committees also have the power to scrutinize the work of the executive but lack the power to summon members of the executive to give evidence. The primary function of the select committees is to scrutinize legislation and procedures.(Fish and Kroenig 2009, 485)

Parliamentary questions, including oral question sessions, are guaranteed through Standing Orders 66, 388-390. These orders set the daily timings for questions and the rules for asking questions of the executive. SO 388 restricts questions to Ministers to their ministerial responsibility and any motions or legislation passing through the House under their name. SO 389 allows for questions to be asked of members who are not ministers but are responsible for ministerial departments or legislation. This occurs when the executive enters into an agreement with another political party to oversee a specific executive department but is not beholden by collective responsibility outside of their ministerial area of responsibility (Key, Turia, and Flavell 2014). SO 390 states that questions need to be concise and focus on the subject matter of the question at hand. Argumentative language is not permitted, nor are references to proceedings conducted in private.

Agency of Coercion

Legislative scrutiny of the agencies of coercion is conducted within four House committees, with the Intelligence and Security Committee scrutinizing covert operations. As with the previous questions, the committees perform a scrutiny function with full oversight of all government agencies under the executive's authority. (Fish and Kroenig 2009, 485)

The Intelligence and Security Committee is a statutory body under the Intelligence and Security Act 2017. This body is chaired by the Prime Minister, and by law, the Leader of the Opposition must also be on the committee as well as between five and seven members who are specially selected by the Leader of the Opposition with the approval of the Prime Minister to sit on the committee (Prime Minister 2017, sec. 194). The leaders of the other opposition parties are also consulted on the nominations. The Prime Minister is also allowed to nominate members after consultation with other parties of government. The House of Representatives receives final approval of the membership with the capacity to veto any name.

This committee is chaired by the Prime Minister except for any financial review of the covert services (Prime Minister 2017, sec. 198). All members are cleared to hear and read confidential information. The committee's main functions are to examine the policy, administration and expenditure of the covert services, conduct an annual report, and consider any legislation concerning the covert services (Prime Minister 2017, sec. 193). The committee is not permitted to investigate ongoing covert activity or consider complaints regarding covert activities, and the Prime Minister can direct matters to the committee for consideration.

United Kingdom

Committees and Compulsory Rules

Committees of both houses are conventionally required to reflect the political composition of their respective chamber. In the House of Commons, committee chairs can be from political parties representing the executive and the opposition parties. This is done on a proportional basis, but the executive has the customary right to select which committees will be chaired by their party or the

opposition. Committee hearings typically culminate in creating a report to which the executive is expected to respond but not required to implement (U. K. Parliament 2019, 38:54).

Committees have significant rights to compel members of the public to attend hearings, produce documents and testify under oath; however, those powers are almost entirely outwardly facing. Erskine May 38.34 is clear that members of Parliament and the executive cannot be summoned. A further convention, known as the Osmotherly Rules, places restrictions on civil service members to be summoned by a committee and their ability to give evidence to parliamentary committees (Horne 2015).

Erskine May 15.3 states that both Houses of Parliament have the right to find any person or party in contempt, which, if found guilty, could result in arrest and imprisonment in the most extreme circumstances (Hansard 1880), but that power is effectively defunct (U. Parliament 1999). SO 138 prevents members of either the Commons from being summoned to the House of Lords without the express permission of the chamber, but an agreement between the Houses allows for members of either House to attend committee meetings if requested.

Should a member of the executive act in such a way that a committee disagrees, the committee can start procedures within their respective chambers to consider a contempt motion. This process can involve the committees on Standards and Privileges of both Houses, which, unique among committees, can compel legislators to attend. Individual members can also petition the Speaker to move motions of contempt against any individual, including members of the executive. The threshold for contempt is high but under the control of the legislature.

Plenary Question Time

Both the Houses of the UK Parliament have regular plenary question sessions; however, the House of Commons is the only part of the UK Parliament with committees examining executive department's operations. (Fish and Kroenig 2009, 714)

Plenary question sessions operate under Standing Order 9(1). The timings for these questions are highly regimented by the Speaker, usually lasting between 30 and 60 minutes. Members are chosen by ballot to ask one question of the executive, but spokespersons from opposition parties can expect to ask more than one question. The executive gets to make the final comment to all questioners during question sessions in either House, as non-executive members are not offered the right of reply. Furthermore, members indicate their questions at least a week before the question sessions, which are publicly available. Question sessions that last longer than an hour are 15 minutes for “Topical” questions, which allow for a more spontaneous question period.

House of Lords Standing Orders protect time on the plenary agenda for questions to the executive every day bar Friday. This satisfies the requirement for regular question sessions; however, Lords are unable to question members of the executive who are members of the House of Commons and vice versa. The House of Lords operates its own committees, but they do not examine the operation of executive departments. Both Houses can table written questions to ministers under conventional rules laid out in Erskine May. Members of both Houses have no restriction on the number of questions they can table (U. K. Parliament 2019).

Agencies of Coercion

The Intelligence and Security Committee is a joint statutory committee of the House of Commons and House of Lords that receives and examines the information of past actions of the intelligence services and issues reports to parliament, pending approval of the Prime Minister (Intelligence and Security

Committee of Parliament 2021). The PPI score affirmed that Westminster had powers under this question by stating, "Parliamentary committees have effective powers of oversight over the agencies of coercion." (Fish and Kroenig 2009, 714). Following on from the previous questions, the scrutiny rights of these committees are not different from many of the other parliamentary committees. They cannot summon the executive or subpoena evidence from the executive, but they retain the powers to accuse members of the executive of contempt; however, as explained in the last section, these powers are not often used. The committees are not responsible for allocating departmental budgets, nor can they gain early sight of sensitive information. Like all other committees, these committees can produce reports from their inquiries to which the government is expected to respond but not implement any recommendations.

United States of America

Committees and Compulsory Rules

The US Congress has regular committee sessions where the executive can be summoned to give testimony along with federal employees; however, there are no regular plenary question sessions. Committees in both Houses serve an oversight function on executive departments as established in American law and the operational rules of both chambers. Committees also have powers to review, amend and draft legislation (Fish and Kroenig 2009, 717). Committees of Congress have strong powers of oversight in relation to the agencies of coercion.

Congressional committees are not explicitly laid out in the Constitution; however, Title Two of the US Code creates the legal framework for congressional committees to exist. These laws came into effect in 1933; before that time, committees were an ad-hoc creation of the Congress, likely deriving their rights from Article 1(5) of the constitution that allows each House of Congress to administer itself in the way they deemed fit. Committees in both Houses are governed by Title 2 of the US Code, which allows committees to assist Congress in the analysis, appraisal, and evolution of laws enacted by Congress. Title 2, 190m also grants committees subpoena powers, while Title 2 U.S.C 191 allows any member of Congress the ability to administer oaths to witnesses. Both Houses are empowered to enforce their subpoenas under Title 2, 192, which makes ignoring a congressional subpoena a contempt against Congress and a misdemeanour with a fine between $100 and $1000 and a potential jail sentence between one month and one year.

The Speaker sets the membership in the House of Representatives under House Rule 1(11). Under that rule, the Speaker must seat committees that reflect the political composition of the chamber, which grants a majority in every committee to the majority party in the House of Representatives. Rule 10(1) establishes their standing committees, and each is imbued with the powers outlined in Title 2. These laws, in combination with other rules such as 10(2b1b), grant each committee significant oversight powers of executive agencies.

Committee membership in the Senate is conducted by a motion of the Senate under Senate Rule 24, which also allows for individual votes on committee chairs if necessary. Senate Rule 25 establishes their standing committees, which also have statutory powers under Title 2. Those laws, combined with Senate Rules 26 and 26, grant all committees of the Senate the powers of executive oversight and subpoena. Both Houses, under House Rule 10 and Senate Rule 17, have the powers to review, amend and draft legislation in their respective areas of oversight, but those rules will be covered in detail in Chapter Seven.

Agencies of Coercion

Both Houses of Congress have specialised select committees with overlapping oversight authority of the American intelligence agencies. (Fish and Kroenig 2009, 717) Both Houses also feature select committees that exclusively oversee the operations of the intelligence services.

House Rule 10(11a) establishes that the composition of the House Permanent Select Committee on Intelligence consists of 22 members, of whom 13 will be from different political parties. The committee must also have a member from the following committees of the House: Appropriations, Armed Services and Judiciary, with the Speaker and minority leaders as ex-officio members. Rule 10(11b1) grants the committee oversight of the Central Intelligence Agency, the Department for National Intelligence, the National Intelligence Program and other intelligence operations. The committee is also solely responsible for intelligence appropriations, which grant this committee control over intelligence budgets.

The Senate does not have explicit measures within its operational rules to create the Senate Intelligence Committee to oversee the intelligence services. Instead, the committee is created from Senate Resolution 400, which, under section three, grants the committee oversight and budgetary control of the CIA and its director, the Defense Intelligence Agency, the National Security Agency and all other American intelligence operations. Section two of the resolution states that the committee will have 15 members, with eight coming from the committees on Appropriations, Armed Services, Foreign Relations, and the Judiciary, with seven coming from the Senate at large. Those seven members are split between the majority and minority parties in the Senate, with four going to the majority and three to the minority party. The members from Senate committees must be from the majority and minority parties. As with the House Intelligence Committee, the Senate Committee is solely responsible for intelligence appropriations under Section 12 of the resolution.

Analysis

This section will analyse the different rules regarding legislative compulsory powers and their sanctions. This will focus mostly on how a committee of a legislature can compel the executive to provide information or attend a session when requested. All of the legislatures have some form of scrutiny over the executive, including the agencies of coercion, but again, there is a clear distinction between active and reactive legislatures. Table 28 shows the division of legislative powers, including the capacity of a committee to initiate an operational rule or convention, which will aid in determining if a legislature possesses powers of scrutiny or oversight.

Country	***Oversight vs Scrutiny***	***Legislative Question Sessions***	***Compulsion***	***Regulation***	***Investigation***	***Funding***
Brazil	*Partial Oversight*	*No*	*Yes*	*No*	*Yes*	*No*
France	*Enhanced Scrutiny*	*Yes*	*Yes*	*No*	*Yes*	*No*
Germany	*Enhanced Scrutiny*	*Yes*	*Yes*	*No*	*Yes*	*No*
New Zealand	*Scrutiny*	*Yes*	*No*	*No*	*Yes*	*No*
United Kingdom	*Scrutiny*	*Yes*	*No*	*No*	*Yes*	*No*
United States	*Oversight*	*No*	*Yes*	*Yes*	*Yes*	*Yes*

Table 28

Compulsion and Sanction

The ability of a legislature to compel the attendance of a person or the production of information, whether they be a member of the public or a member of the executive, is central to its capacity for oversight or scrutiny. Each legislature has a de facto capacity to request the attendance of a person, but of the six legislatures under study, only four have an explicit statutory right to demand the attendance of a member of the executive and produce records backed up by strong sanctions. The active legislatures led the way with the strongest compulsory powers, followed by the reactive legislatures of France and Germany. New Zealand and the United Kingdom have the weakest compulsory powers of the six, with no explicit operational right to compel the executive to attend a committee or the legislature.

The Brazilian legislature contains oversight rules that favourably benefit the legislature. The constitutional right to summon the executive is a powerful tool, but compounded with the risk of impeachment, the power of summons takes on new weight, which does not give the executive much room to manoeuvre if they do not want to give evidence to a committee of the Brazilian Congress. Even political allies of the executive exercise their oversight rights against the executive; however, they do so at a far lower level than the opposition parties (Lemos 2006, 34).

The constitution provides a powerful ultimate sanction on the executive for failure to provide information or oral evidence to the legislature. Spohr and da Silva (2018) surveyed thirteen years of oversight from the Foreign Affairs committees of both Houses of the Brazilian Congress to find that the opposition primarily used the tools of oversight as a form of both information gathering and influence on executive decision-making (Spohr and Silva 2018, 602). This also rang true for the legislature's request and usage of summons, with the opposition making the most requests for ministerial appearances (Spohr and Silva 2018, 606,607). These findings also coincide with information from an interview with the Coordinator of Joint Committees in the Brazilian Congress, Rodrigo Bedritichuk, on the way that the opposition uses their oversight rights. He noted that members of the executive often asked for certain requests to be delayed so they could not breach rules that would leave them open to impeachment.

Regarding their ability to question or gain information from the executive, members of both Houses utilised their rights to elicit information from the executive both from information requests and by summoning the executive to committee sessions. These requests are important as the sanction for not responding to the question within 30 days is a crime of responsibility, an impeachable offence (Lemos 2006, 20). As both Houses have the same constitutional tools at their disposal, they tend to act as a preventative measure, acting in a policing role towards the executive's policies as opposed to a punitive role. This is operated through confirmation hearings and the amendment of legislation in addition to their other constitutionally secured rights (Lemos 2006, 30).

In the United States, Congressional committees form some of the most powerful organs of that legislature, conducting a majority of the oversight work. As with Brazil, strong compulsion rules are a formidable tool of Congressional committees. The compulsory powers of Congress are based both on the statute and the operational rules of both Houses; these rules apply to all citizens and residents of the United States, including the executive, despite their attempts to evade those laws.

In 2006, US Attorneys Harriet Miers and Joshua Bolten were fired from the Bush administration. The actions of the executive came under Congressional scrutiny because an impression of political bias was given from their dismissal. Senator Chuck Schumer moved to subpoena the files in early 2007 to gain access to the documents of their decision-making process related to the firings due to fraught initial meetings between the White House officials and Congress (Peterson 2011, 113).

President Bush offered a compromise that allowed certain emails of his choosing to be revealed to Congress, but Miers and Bolton could not give testimony to Congress. This was not agreed upon by congressional leadership, and subpoenas were issued. The executive branch refused the subpoenas, claiming exemption through executive privilege, which led to the Judiciary Committee of the House of Representatives holding Miers and Bolten in contempt of Congress, opening them up to the legal realities mentioned earlier.

The contempt powers of Congress have been in a grey area for over two hundred years, with courts both agreeing with its ability to use its powers against individuals, including the executive, but in limited ways (Peterson 2011), and this usage of the powers would not be any different. The contempt powers of Congress are reliant on the US Attorney for the District of Columbia to enforce the order. There is a convention that the Judiciary does not enforce congressional contempt orders; however, this trend broke when Steve Bannon, a former aide to President Trump, was found guilty of contempt after failing to adhere to a Congressional subpoena (Levine 2022).

As the Judiciary did not enforce the will of Congress, the committee turned to the courts to get a legally binding decision to get Miers and Bolten to testify to Congress (Peterson 2011, 114). The court partially sided with Congress, stating that "Harriet Miers is not immune from compelled congressional process; she is legally required to testify pursuant to a duly issued congressional subpoena from plaintiff; and Ms. Miers may invoke executive privilege in response to specific questions as appropriate."(Peterson 2011, 115).

Peterson (2011) argues that Congressional contempt and executive privilege cannot exist at the same time, but one side should not be able to trump the other. He also argues that the courts should be used sparingly as most people asked to produce information for Congress usually comply. Even though the executive tends to comply with committee requests, the legal backing for that request gives the legislature a powerful backstop to compel intransigent individuals.

Moving towards Europe, the French Constitution and statutes grant compulsion rights to the legislature backed by fines, but the executive sweeping committee-establishing rights giving a benefit to both. An interview with staff from the Sénat Finance and Constitution Committee confirmed that the rules regarding compulsion apply to any person, including executive members. Anne Marquant of the Sénat finance committee also noted that failure to comply could result in an inquiry, while both Ms Marquant and Mr Godet of the Constitution committee agreed that the Sénat preferred to use the risk of embarrassment over the compulsion to compel the executive to attend legislative hearings.

In Germany, the committees of both Houses have the power to summon the executive. These powers are constitutionally guaranteed and supported by legislative rules and, in some cases, legislation. Bundestag committees' compositions are based on the party composition of seats in the chamber, which gives an advantage to the executive; however, the most important scrutinising powers of the committee do not require a majority of the membership to activate.

Compulsion rules do not require the consent of the majority to be initiated; five per cent of the committee or a parliamentary group can request the presence of the executive, and the executive cannot block the motion (Linn and Sobolewski 2015). This grants significant legislative powers to the legislature and conforms to the principles of fairness for the opposition within the Bundestag.

Conversely, the executive has the right to attend any committee meeting in the Bundesrat or Bundestag, which gives it a benefit as well. It is important to note that compulsion powers are not often activated as the executive can send a civil servant in their place (Linn and Sobolewski 2015, 39).

Ultimately, the failure of the executive to comply with a compulsory demand would constitute a violation of the constitution.

Looking towards the Westminster-style legislatures, they contain no overt ability to summon the executive, which was a central theme of Question Three; instead, both rely on making a request of the House to gain executive attendance. Both legislatures can hold individuals in contempt, but the bar to trigger the rules is high and difficult to achieve.

The lack of enforceable compulsory powers severely inhibits both legislatures from having any real sense of oversight of the executive and can be considered a benefit to the executive. The executive retains benefits from their ability to control when and if they appear in committees and what written evidence the committee sees because committees in both parliaments must ask permission to ask questions of the executive or obtain information from them. Additionally, the Osmotherly Rules in the UK and Standing Orders in New Zealand create a barrier to committees, as civil servants are not allowed to give evidence on government policy independently. Instead, they are expected to take the lead of the Minister and give very narrow answers to questions asked of them (Cabinet Office 2014, 4–5). For example, the Epidemic Response Committee was set up in New Zealand to scrutinise the executive's management of the COVID-19 pandemic.

The committee, chaired by the Leader of the Opposition, was given the rare compulsory powers by the House of Representatives, which the committee used to attempt to gain access to legal advice from the Attorney General regarding lockdown measures. The Attorney General did not comply, and the Speaker of the House cited precedent from 1875 and 2003 to justify his decision against the committee, stating that the legal advice was the property of the person who drafted said advice, and it would be their choice to absolve themselves of their privilege to release it publicly (Edgeler and Geddis 2020, 2–3). An answer was not reached as the committee was dissolved in June 2020 (Edgeler and Geddis 2020). In this example, even with the rare granting of compulsory powers, the executive was able to avoid scrutiny.

Despite the inability to compel members attendance, both Houses of the UK Parliament and the New Zealand House of Representatives can hold any person or party in contempt of either House. These powers signify the only legislative rules that are ostensibly within the total remit of the legislature that can force an action upon a member of the executive. Erskine May, which is a relevant text in both legislatures, states that any act or omission that impedes either House in their functions would constitute a contempt act, giving both Houses an option against Ministers who refuse to attend committees or provide evidence (U. K. Parliament 2019, 15.2).

It is difficult to bring a motion of contempt before either House. In both the Commons and Lords, the matter is treated as a matter of privilege from which members can request a debate, but in the Commons, the Speaker has sole authority to grant time for debates on contempt, which they are expected to use sparingly (U. K. Parliament 2019, 15.32). The matter is slightly different in the Lords as the daily business allows time for privilege requests every day (Lords 2017). Until very recently, the motion was rarely used, but the process has been initiated thrice since 2018.

The most recent usage of the House of Commons sanctions procedures occurred in April 2022 when Prime Minister Boris Johnson MP received a fixed penalty notice for breaching the law during restrictions to prevent the spread of the coronavirus pandemic. At the beginning of 2020, at the start of the COVID-19 pandemic, governments around the world passed sweeping restrictions on personal movement and interaction to mitigate the spread of the virus. The UK Government was no exception to this trend, and from the spring of 2020 to the summer of 2021, the United Kingdom implemented

restrictions on personal interactions. These rules specifically prevented large groups of people from gathering indoors as that would likely increase the spread of the virus, for which there was no vaccine.

In late 2021, after restrictions had been lifted, images emerged in the British media that insinuated large gatherings had taken place in Number 10, Downing Street, violating the laws written in Downing Street (AFP 2022). Boris Johnson denied that he had participated in any gatherings or that any "parties" had occurred. Despite the insistence of the then Prime Minister, more evidence emerged, culminating in a Cabinet Office report that proved the Prime Minister lied about the parties at Number 10. After several requests, the Metropolitan Police began an investigation into the matter, culminating in Boris Johnson receiving a fixed penalty notice to pay a fine of an undisclosed amount for attending parties at his official residence during coronavirus restrictions (Osborne 2022).

The Ministerial Code at the time stated that any member of the executive who is found to have misled the House must either correct the record at the earliest possible time or resign their position (U. Government 2019); however, the Prime Minister is the arbiter of the Ministerial Code and is under no obligation to enforce it. In essence, Boris Johnson had to decide if Boris Johnson broke the Ministerial Code and enact punishment on Boris Johnson if he believed he, Boris Johnson, had broken the code.

In January 2022, the fixed penalty notice changed the legislative environment as it was indisputable that he broke the law and may have lied to the House, a contemptable offence. The motion for debate was not whether Prime Minister Boris Johnson should be held in contempt but whether the Prime Minister's case should be sent to the Privileges Committee for them to consider the facts and suggest a response. This was the first time a Prime Minster had been assigned a fixed penalty notice, and while at least one Conservative member tried to argue the notice was not a breach of the law and, thereby, requiring no further action, most noted a different problem regarding the conventional expectations of the house and their applicability in the modern era (Commons 2022). The debate ended with a motion to send the Prime Minister's case to the Privileges Committee, which passed without a vote in April 2022. In June 2023, the Privileges Committee presented its findings to the House.

The Privileges Committee found that Mr Johnson had misled the House on several occasions and was disingenuous in his interactions with the committee (Privileges 2023, 71,73). The Committee ultimately found that he committed a contempt when he misled the House and he should be suspended (Privileges 2023, 75), but before the Committee presented its findings to the House, Boris Johnson resigned as an MP (BBC 2023). The final committee report recommended that he be suspended for 90 days, which would have allowed his constituents to ask for a recall petition. If 10 per cent of his constituents support the petition, there would be a by-election, of which he could have re-stood as a candidate (UK Parliament 2015). The House of Commons voted to support the report's recommendations later that month despite Mr Johnson's resignation.

Comparative Discussion

The compulsory rights of the six legislatures are split down the active/reactive line. The active legislatures feature strong compulsory rules with severe sanctions, while the reactives are split, with two having overt compulsory rights and two relying on convention. The scholarly study of compulsory rules and procedures in reactive legislatures is scant. Regarding the four reactive legislatures in this study, most of the literature briefly covers compulsory rules along with the other powers of committees in legislatures.

The French Parliament and the Bundestag both have extensive constitutional and statutory rules to compel the executive to attend committee sessions. Both Houses of the French Parliament have access to statutory laws that compel the government to provide records and give evidence in front of

committees. The most recent of these laws, La loi organique relative aux lois de finances (Organic Law relative to the laws of finance), was passed in 2001. This law increased Parliament's capacity to participate in the budget process and specifically granted more powers to the budget oversight committees of both Houses (Rabrenovid 2009). The previous regime, set up after the 1958 constitution, removed the power of the legislature to table amendments to the budget proposals of the executive instead, replacing it with a single vote option granting an increased benefit to the legislature, introducing a new trade-off between the executive and the legislature.

The Westminster legislatures, however, have no statutory backing to any motion or order that attempts to compel a member of the executive to attend a committee or provide evidence. This lack of statutory backing puts these Westminster-style legislatures at a distinct disadvantage because they are relying on a conventional expectation that the executive will comply with their requests. Should the executive fail to comply, the legislature faces an uphill battle to force a member of the executive to accede to their request. This can culminate in a motion of contempt, but that motion would require members of the executive party to vote to discipline themselves, which may not be in their best political interests. In the United Kingdom, the matter of granting stronger powers to the committees of both Houses has been the subject of several papers and reports (Atkinson 2017; Gordon and Amy 2012; Norton 2000).

The concept of the compulsory powers of Parliament has been directly challenged by Richard Gordon QC and Amy Street (2012), who argue that both Houses of Parliament lack the power to compel any person, especially the executive, in practice as either House of Parliament cannot enforce their decisions against a person who does not comply with a parliamentary order. Atkinson (2017) also notes that a combination of convention, via the Osmotherly Rules and Standing Orders in the House of Commons, actively prevents the legislature from compelling the executive to give evidence to a committee or provide records should they be demanded. The 2022 Ministerial Code debate accentuates these points.

During the 2022 contempt debate, the Leader of the Opposition noted that the Prime Minister, in his failure to adhere to the conventional expectations of the Commons, "eroded" the status of the House of Commons and "weakened" democracy (Commons 2022, Column 353). He also noted that the conventions were based on honour and that the Prime Minister used those conventions to "cover up his misdeeds" (Commons 2022, Column 356). Other members of the House, including the Green MP Caroline Lucas, noted the issues with the convention and the executive policing itself (Commons 2022, Column 379). Convention was further tested as the Chair of the Privileges Committee, Chris Bryant MP, an opposition member of the Commons, was forced to stand down by members of the governing party before they would consider allowing the Prime Minister to be investigated by the Privileges Committee (BBC 2022b; Commons 2022, Column 365; Frodham 2022; Lilly 2023).

All of the legislatures under study and their committees have a customary or codified right to request the appearance of the executive, and under normal circumstances, the executive will appear without the need for additional action. Therefore, it could be argued that compulsory powers are not needed, but codified compulsory rules provide a greater benefit to the legislature to ensure the cooperation of the executive.

The differences between the Miers/Bolton affair in the United States and Bori' Johnson's contempt motion in the UK are clear examples of the difference between a request to attend and a statute-backed request to attend. Where the American affair revolved around the application of contempt laws with a definite sanction, the British affair revolved around placating an executive and their party to ensure the best environment for his investigation. Under their terms, the legislature was only

allowed to ask any questions about the Prime Minister's behaviour. The difference is the underlying sanction. The American executive initially resisted a Congressional subpoena but constantly sought to seek compromises throughout the process because, in this case, the legal backing to the legislature's request put the executive on the back foot, which culminated in a judicial ruling in favour of the legislature, while the UK executive simply ignored the requests for debate because there was no sanction for non-compliance with convention. This allowed the executive to stall any action until the best possible conditions could be arranged for the Prime Minister. While both systems expect compliance with a request, only one is enforceable.

Plenary Question Sessions

The capacity to question the executive is a fundamental feature of a legislature's scrutiny function. As shown earlier, committees in each legislature allow for periodic questioning of the executive, but the PPI equated plenary question times alongside the compulsory rights of a legislature to affirm if a legislature had the power under Question Three. Plenary question times are an important part of reactive legislative life, but they are separate from the compulsory rules seen in committees; therefore, this section will focus only on analysing plenary question sessions.

In France, question sessions are a constitutionally protected feature of the legislative day with no outright benefit for the executive in the operational rules. All members are granted two minutes to ask and respond to questions. This system grants both the questioner and the executive the right to reply if they see fit should they have enough time remaining. The Assemblée has the power to convert oral questions to urgent debates, and the opposition is granted at least half of the allocation of questions during question time. Conversely, the executive is bound to answer the questions with few avenues to avoid scrutiny.

In Germany, questions to ministers are weekly, with quarterly questions to the Chancellor, but again, in those questions, the legislature gains a benefit over the executive as they are allowed two questions per member of the Bundestag. This grants the right of reply to every member, which changes the dynamic of the question session. In the Bundesrat, there are no departmental questions, but members have the constant right to pose questions to the executive on any matter on the agenda or any matter on which they have made the executive aware beforehand.

In contrast, the United Kingdom and New Zealand feature the most frequent question times in this study but have rules that benefit the executive. The operational rules for New Zealand's House of Representatives protect the timings for questions in the chamber but benefit the executive as further rules limit the scope of what non-executive members of the legislature are permitted to ask the executive. As with most parliamentary democracies, question sessions feature heavily as the main interrogative tool of non-executive members to scrutinise the executive; however, the executive has no legal responsibility to the House for the veracity of their responses. In New Zealand, the executive's only responsibility to the House is through its "political responsibility" to be factual with their statements, with similar conventions in the United Kingdom (McGee 2017, 591; U. K. Parliament 2019, sec. 22.23).

Question sessions that only allow one reply per backbencher benefit the executive, as they know they will have the final word on the subject. This allows the executive to avoid answering the question or level a political attack on the member without fear of recrimination in the chamber. By ensuring that every member gets two questions, the member is allowed the last word on a subject and the greatest opportunity to get a substantive answer from the executive. This also further benefits the legislature executive to work harder as their answer to the first question may force the executive to give more information than they originally intended, increasing the powers of scrutiny for the chamber.

On the other hand, written questions typically comprise the majority of questions tabled to the executive in reactive legislatures. These questions can provide detailed answers to important queries that can give the legislature information to enhance their position or expose the failures of the executive. In France, written questions can be tabled at any time, are seen as an act of an individual member and are important because they provide an important perspective on a specified issue as they can explain an administrative doctrine (de Dios and Wiberg 2011, 362). Germany limits the number of written questions to just four written questions per month, which drives parliamentary groups to table coordinate their tabling schedules to maximise political effect (Höhmann and Sieberer 2020, 230). Written questions in the Westminster parliaments of the United Kingdom and New Zealand do not have an explicit limit on the number of questions that can be tabled, but in the United Kingdom, members are limited to seven questions to be answered on a specific day. The specific difference between the reactive legislative written questions procedures relates to the obligation of the executive to reply in a timely matter, if at all.

Reactive legislatures also have procedures to create question sessions or debates based on urgent requests from members of the legislatures to gain answers from the executive. In the Westminster parliaments, these requests are fielded by the Speaker of the House, who has the sole discretion to grant the requests, but in the Parliaments of France and Germany, a request of a small percentage of members can create a debate on the floor of the House which has been seen as a positive tool for scrutiny in the Bundestag (Hünermund 2018).

Comparative Discussion

Each of the reactive legislatures in this study features operational rules that allow legislators to table and ask questions of the executive. The differences between them come in the frequency of oral questions to the executive, the response times related to written questions, the ability to raise urgent questions and what the result of the questions provides. These differences will show the balance of benefits between the legislature and the executive. This will also show if these tools are a form of oversight or scrutiny of the executive.

Starting with written questions. France and Germany both have operational rules that compel the executive to respond to questions. Members of both parliaments can convert their written questions into oral questions on the floor of the House should the government not answer the questions submitted. The operational rules of both parliaments also limit how long the executive has to respond to questions, which benefits the executive (Garritzmann 2017, 13).

New Zealand and the United Kingdom do not have these guarantees within their operational rules. In the case of the UK Parliament, both Houses can table questions to respond on a specific day. However, suppose that day comes, and no response arrives. In that case, there is no sanction upon the government for failing to respond or a codified relief function for the member who asked the question, which is the same case for the New Zealand House of Representatives.

It is argued that parliamentary questions, in the Westminster system, provide an inescapable chance for the executive to respond (Martin 2016); however, written questions do provide an escape for the executive with the lack of sanction for not answering outside of conventional expectations. Without the guarantees found in the parliaments of France and Germany, the ability to table questions in the Westminster parliaments, specifically the UK Parliament, have shown less effective scrutiny powers (Cole 1999; Ojha and Mishra 2010).

When considering oral question sessions, a notable difference between the reactive legislatures is the frequency of question times. In France, they are held up to twice a week (de Dios and Wiberg 2011),

whereas Germany holds question sessions once per week for the cabinet and three times a year for the Chancellor. Contrast that with the daily question sessions in the Westminster parliaments, with Prime Minister's questions being the week's main attraction in the House of Commons. Here, the frequency of question times in the Westminster system could be a powerful tool for the opposition in the legislature, as there are many opportunities to present alternatives to the executive's policies and actions (Garritzmann 2017, 18).

Others have argued that question time has lost its scrutinising function of the executive to just becoming political entertainment that offers no real answers to the questions asked (Melleuish 2019; Salmond 2014, 338; Shephard and Braby 2020). Ministerial question times in Westminster parliaments benefit the executive more than the rest of the legislature as the executive is offered, on average, upwards of two responses to a solitary question with the interrogation of the Prime Minister by the Leader of the Opposition and the leader of the second-largest party, taking up a majority of the time available to the remainder of the legislature (Martin 2016).

Contrast that with the question sessions in the Assemblée and Bundestag, which grant time to every member of the legislature, and each member is granted two questions from the executive. While this gives the executive the last word, the member can build their point and defend their position should the executive provide a less than substantial reply. The lack of a substantive reply has been noted in New Zealand as substandard ministerial responses do not provide information to the chamber (Roycroft 2018, 20).

The UK Parliament, specifically, has seen a dramatic change in the purpose of questions over the past century. McCulloch (1933) noted that parliamentary questions from both Houses served as a "control" over the executive, acting as a form of policy initiation (McCulloch 1933, 972). Question times were also used in a vastly different way, where members would use spontaneous supplementary questions to piggy-back off of the members' questions to continue to press a point to the executive (McCulloch 1933), Where members could expect a combination of tabling written questions, asking oral questions and public engagement could lead to the creation of new policies of legislation (McCulloch 1933, 976). From this perspective, question time in Westminster systems has vastly changed since then, becoming a highly political affair that does not often result in policy change or legislation. Instead, being chastised for the lack of substantial reply from the executive.

Agencies of Coercion

All of the legislatures under study have some ability to scrutinize, examine or oversee the operations of the agencies of coercion with operational rules and conventions similar to other legislative committees. The exception for each legislature, bar the US, is the existence of an external joint committee to scrutinise or oversee the operation of the intelligence services. These intelligence committees' formation, history and operation speaks to their capacity to provide effective oversight.

The history of oversight of the intelligence services in Brazil is more complex and fraught than seen in the United States. The military dictatorship actively used the National Information Service (Serviço do Nacional Informações) to practice domestic surveillance and use the intelligence services as a tool of control and fear against anyone opposed to the military regime (Gonçalves 2014, 586). This tainted history stayed with the intelligence services after the restoration of democracy in the early and mid-1980s.

The 1988 Constitution did not create a clear link between the legislature and oversight of the intelligence services; an initial solution was found with the creation of the Ministry of Defence in 1999, which allowed the Brazilian Congress to have some form of oversight of civil and military police forces

(Garcia 2014, 489, 495). Before this time, Article 142 of the constitution placed the operation and administration of the armed forces under the "supreme authority" of the President of the Republic (Garcia 2014, 494). The 1999 Act also created the ABIN and CCAI, which placed far more authority in the hands of the legislature, but scholars (Garcia 2014; Gonçalves 2014) have noted that the committee lacks resources and personnel to handle the complex and taxing work of intelligence oversight. This is compounded by the ever-present problem that voters do not rank oversight of the intelligence community as a high priority, meaning the oversight conducted by legislators may not be the primary concern.

In the US Congress, the standing committees that cover areas of coercion may be subject to the pitfalls described for the Brazilian Congress, but both Houses have specialised committees to oversee and address intelligence operations that are designed to be as bipartisan as possible. This is best seen in the mandated composition of the select committees that oversee the intelligence agencies. These committees are not comprised of random legislators but members from the most important committees of both Houses of Congress. Additionally, its composition is designed to give the majority party a single-seat advantage, which belies its importance by ignoring normal conventions related to committee composition. These committees are more than a political tool; they play an active role in overseeing the county's most powerful weapons.

The formal history of intelligence oversight in the United States began after World War II when the US Government created the Central Intelligence Group, which later became the Central Intelligence Agency. In 1947, President Harry S. Truman signed the National Security Act that created the Central Intelligence Agency, the National Security Council and the Secretary of Defence, along with other offices and agencies (Miller 2012; Quigley 2019). The legislation around the act was noted for its weak language regarding the scope of its authority. The lack of certainty regarding the remit of the agency led to the fears, even from Truman himself, that the agency could become an American "Gestapo" (Miller 2012, 124). These fears were not completely unfounded as the agency acted without effective legislative oversight throughout the 1960s and was found responsible for several intelligence disasters, such as the disastrous Bay of Pigs invasion, where the CIA backed Cuban rebels to topple the Communist Castro regime (Miller 2012; Quigley 2019) and Operation Northwood, which planned to have the CIA stage domestic terrorist attacks, including the murder of astronaut John Glen, to foster support for a war with Cuba. This plan was only prevented because it was rejected by the Secretary of Defense, Robert McNamara (Miller 2012, 122).

This lack of effective oversight led to President Gerald Ford creating two commissions, the Church Commission, led by Senator Frank Church, and the Pike Commission, led by Representative Otis Pike (DeVine 2018; Miller 2012; Quigley 2019). The remit of both of these committees was to investigate allegations of domestic spying on opponents of the Vietnam War and other covert activities conducted by the American intelligence services. The Church Commission was seen as a "functional and bipartisan" (Quigley 2019) affair, which resulted in a report that made several revelations, including further attempts to assassinate foreign leaders such as Patrice Lumumba of Congo, the Diem brothers of Vietnam, and of course, continuing to attempt to assassinate Cuban leader Fidel Castro (Miller 2012, 123). The commission also noted that the CIA was cooperative, but Congress was more reluctant to ask questions and investigate the agency. The aftermath of the Church Commission report was the creation of the Senate Select Committee on Intelligence in 1976. This was followed by the creation of the House Permanent Select Committee on Intelligence in 1977 (Quigley 2019).

While the Church Commission created a balanced report, the Pike Commission was never published. The commission had issues accessing important documents and found the intelligence community and the Ford Administration to be less than helpful in attaining its information. To make matters even

more confusing, a year after the start of the commission, both Republicans and Democrats voted to prevent its publication. A copy was leaked to the Village Voice newspaper, which published the report (Quigley 2019).

The two intelligence committees described above have the primary authority to oversee the intelligence services and pass the legislation that sets levels of funding through guidance to the Appropriations Committee. Before the creation of the SSCI and HPSCI, the intelligence services were overseen by a subcommittee of the Armed Services Committee. In the wake of the September 11th attacks, the 9/11 Commission suggested that a joint congressional committee on intelligence be created; while this was ignored at the time, members of the House appropriations committee could also sit on the HPSCI, which is a small move towards integration (DeVine 2018; Quigley 2019).

In France, the committees of the Parliament perform a strong scrutiny function of the agencies of coercion with committees in both Houses that scrutinize the operation of those executive agencies, and the Parliamentary Intelligence Delegation performs the primary functions of intelligence oversight with rules that benefit the legislature as opposed to the executive.

The Parliamentary Intelligence Delegation, unlike other parliamentary committees, does not have to mimic the political configuration of the Assemblée and Sénat, with only four regular members of both Houses being allowed to sit on the committee. The remainder is filled by committee chairs, which may give an advantage to the executive; however, the committee's powers, unlike other committees, explicitly state how often the Prime Minister and their Government members are expected to report to the committee. Furthermore, the committee has access to monitor finances and reports on the state of the intelligence services.

The only tool the executive has to prevent information from being sent to this committee is if it is part of an ongoing operation. This is far stronger than other committees where the executive can prevent any information they deem to be "sensitive" from being sent to a committee that summoned the information. While this group have far greater access than other parliamentary committees, it cannot affect changes to policy or operational budgets.

In the German Parliament, the Control Committee seems to lack the authority of the other committees, but it still can play a role in monitoring the intelligence services. The rules benefit the legislature, as they provide an important oversight role. The committees that oversee the agencies of coercion have access to classified material, and their agreement must be reached if the executive wishes to deploy the Bundeswehr. The Control Committee's capacity to perform an oversight function has been challenged in the newspaper Frankfurter Allgemeine Zeitung, referring to the oversight agencies of parliament as "Toothless Windbags" and DER SPIEGEL calling the oversight functions the "assembly of the clueless" (Dietrich 2016).

This was attributed to several intelligence failures, including a scandal involving the Nazi domestic terrorist groups and revelations from former NSA employee Edward Snowdon (Dietrich 2016, 398). Some reports have suggested that the committee is understaffed and unable to deal with complaints about the use of the powers of the intelligence services (Fischer 2012). This suggestion is echoed by Dietrich (2016), who notes that there are several barriers to effective oversight of the intelligence services in Germany. Among them are vague legislation, which creates many avenues for avoiding scrutiny and a general lack of expertise among the legislators who may not know what questions to ask of the intelligence services. However, as the Control Committee has the power to publish its findings and members independently can produce minority reports, they have a form of sanction as they can release information that the executive would prefer to stay secret.

The United Kingdom and New Zealand are similar in their approaches to the committees covering the agencies of coercion. Both the House of Commons and the House of Representatives have committees that shadow the work of the agencies of coercion, but their capacity to regulate and fund those agencies are non-existent. In order to regulate or fund the agencies of coercion, the legislature would need a reliable avenue to place legislation on the table and propose and pass changes to government expenditure.

In both Wellington and Westminster, the executive has effective control over both of these avenues, with their agreement required to progress any legislation or amendment change. In New Zealand, the executive can veto any financial proposal that the legislature proposes; in the House of Commons, the appropriations process is not debatable or amendable, and amendments that incur a change in the public expenditure can only be tabled by the executive.

While not explicitly operated by the executive, the Intelligence and Security Committee of the UK Parliament is still subordinate to the executive, which has the sole right to distribute information and de facto approve members. Barber (2017) noted several issues with the committee's operation, including the membership being “establishment figures” who are on the Privy Council. Of course, at the time, the committee also contained Angus Robertson MP, who was the leader of the Scottish National Party, hardly a figure of the establishment. More seriously, he noted that the committee was very reliable for the executive (Barber 2017, 53); however, in the interim, the committee has also broken away from the executive, specifically on Russian influence in the UK elections and political parties.

A serious split between the executive and the committee involved the publication and investigation relating to a Report on Russian influence by the ISC. The investigation into the report started in 2017 with a remit to investigate the depths to which the Russian Government has reached in manipulating the UK's political system(I. and S. C. of Parliament 2020). This report was released in 2020 after several years of obstruction from the Prime Minister (Dearden 2019). The report covered several areas of interest, including needed legislative reforms related to the intelligence community, disinformation, oligarchs and Russian influences in the 2016 Brexit campaign to leave the European Union.

The government's response in July 2020 focused on “key themes” rather than the content of the report (H. Government 2020). The period between 2015 and 2020 provided some of the greatest political and social turmoil in recent British history, and the Russia report could have shed some light on the potential origin of that instability. Instead, the executive used their power to prevent the legislature from conducting their scrutiny function by prohibiting the release of that information. The initial report took eight months to complete but three years to release. Combined with the inability to compel evidence, it shows that the committee performs a weak scrutiny function.

The executive effectively operates the Intelligence and Security Committee of New Zealand. The executive serves as the chair of the committee, and the executive has the sole right to determine who should be on the committee and controls the output of the committee. The committee has no right to investigate or have knowledge of ongoing activity from the covert services. Defty (2020) claims that the committee has the power to “oversee” the intelligence agencies, but the 2017 Intelligence Act only grants the committee the right to “examine” the expenditure and administration of the intelligence services. Here, an examination is not well defined, and there is nowhere in the act that allows the committee to make a recommendation on the level of appropriation, just analyse the operation of the intelligence services. The committee is also able to scrutinise any legislation related to intelligence, but this shows that the committee serves a scrutiny function as opposed to an oversight function. Any member of the House could attempt to amend related appropriations

legislation related to the intelligence services, but the executive's right to veto unapproved financial amendments makes that power moot.

Comparative Discussion

The reactive legislatures of the countries under study show a clear ability to scrutinise the actions and administration of the agencies of coercion, specifically the intelligence community; however, the operational rules prevent them from performing an effective oversight function as none of the legislatures under study has any control over the appropriation of funding for the any of the government departments that they shadow or regulate their operations.

All of the reactive legislatures have the legal right to examine the administration and expenditure of their respective intelligence services. Additionally, all of the intelligence committees have the right to scrutinise legislation related to the intelligence services. Germany and France diverge from New Zealand and the UK in their ability to summon the executive to speak and give evidence. The German Parliamentary Control Committee also has the added advantage of independently releasing information to the public (Dietrich 2016, 409). This power would have drastically changed the situation relating to the Russia Report in the UK. While each of the legislatures has the operational rules to scrutinize the intelligence services, they start to lose their potency if they seek to investigate the intelligence community.

Both the UK and New Zealand can only examine the administration of the intelligence community, both being prevented from conducting an inquiry into ongoing activities of the IC. Finally, none of the committees has the power to "regulate or fund" the intelligence community or any government department. The furthest may be, again, in France and Germany, with their capacity to suggest amendments to budget bills, but the efficacy of that power is unclear from any research. Again, the UK and New Zealand have no ability to regulate or fund any government agency as these are under the control of the executive. The matter of effective oversight is left to the scholars, but with these committees lacking a majority of the criteria stated by the authors of the PPI, it is hard to say that they have effective oversight of the agencies of coercion.

In the active legislatures, several congressional committees provide partial or total oversight of the agencies of coercion with operational rules of both legislatures granting strong compulsory rights against the executive. The United States Congress allows for total oversight of the actions of the coercive agencies because it includes controls over the funding of these agencies. This allows congressional committees to approve spending and investigate any action that falls under their purview. The Brazilian constitution prevents the legislature from controlling agency budgets and, therefore, can only provide a partial oversight function whilst retaining the capacity to regulate, question, and investigate the agencies.

Oversight or Scrutiny

This section has sought to examine the legislative operational rules in relation to their capacity to either scrutinise or oversee the executive's actions. The previous sections show that there are differences in the rules between oversight and scrutiny, but also, within those rules, there is a spectrum of oversight and scrutiny, with some active legislatures having partial oversight and some reactives having enhanced scrutiny.

All of the committees from the two active legislatures have the power to enact most, if not all, of the following criteria to "question, investigate, regulate and fund" the agencies (Fish and Kroenig 2009, 7). The committees of the United States Congress can conduct investigations, question, regulate and fund the intelligence services, while the Brazilian Congress can do everything but direct funding, as

that is the prevue of the executive. It is clear from the operational rules of these two legislatures that they exhibit a full or partial oversight function of the executive.

The four reactive legislatures show a range of scrutinising powers between them. France and Germany both have enhanced scrutiny rights, as exhibited by their constitutional rights to summon the executive by adding fines for non-compliance. New Zealand and the United Kingdom both lack the powers of summons but have increased opportunities to question the executive on the floor of the House and committee. None of the four reactive legislatures possesses the capacity to regulate or fund any agency of the executive directly, but France and Germany are both allowed to submit amendments to the government budget for consideration. This is not a feature of the legislatures of New Zealand or the United Kingdom.

The information gathered shows a clear difference between the roles of the various parliaments. Active legislatures are designed to ask questions of the executive and prevent the executive from moving forward with their plans should the legislature disagree. Both active legislatures have rules requiring specific committees to agree before the executive can conduct business. This is contrasted by the reactive legislatures who, to varying degrees, are expected to ask questions and use soft-power tactics such as embarrassment to scrutinise the work of the executive, but the operational rules of the various legislatures are designed to give the executive the advantage in advancing its goals.

Parliamentary Powers Index and New Ranges

This chapter has analysed the operational rules and conventions related to Questions Three and Five of the PPI, focussing on oversight and scrutiny of the executive. Question Five specifically focuses on oversight of the agencies of coercion. Question Three combined two concepts: the capacity to question the executive regularly and the power to summon the executive. Ideally, these powers should be considered separately as the ability to summon the executive is completely different to the expectation that the executive participates in regular questioning sessions as question sessions are short, fast political discussions where committee appearances are slow, interrogative conversations between legislators and the executive, but as there is only one question available to rescore, in this case, compulsion and sanction rules will be considered alongside questioning rules to generate a singular score range for Question Three. Compulsion and sanction rules will be given precedence over questioning rules because questions cannot be asked if the executive does not arrive to answer them.

Question Five does not suffer from the same forced congruence as Question Three, but it does leave much for the reader to interpret as the authors' test for “effective” legislative oversight of the agencies of coercion, going as far as to give examples of “effective oversight”, but stopping short of defining effective oversight itself. This leaves the reader to determine if the scores are appropriate personally. Another issue with Question Five is how to place and score the intelligence committees of the six legislatures. While each legislature has a committee(s) that performs a scrutiny or oversight function of the intelligence community, every legislature, bar the United States, has a singular external legislative committee that performs that function for the legislature. France and Germany’s intelligence committees were created by statute, which obtained their authority through their constitutions. The United States has two intelligence oversight committees, one in each chamber; therefore, they can be counted in the House of Representatives and Senate ranges. New Zealand and the United Kingdom propose a problem as they do not have a constitution, and their joint intelligence committees are not formally part of any legislative chamber.

To best address the issue of gaining an accurate range for Question Five, both New Zealand and the United Kingdom will have an extra section added to their ranges to reflect the work of their intelligence and security committees. Both committees were created by statute but are not subject to

the operational rules of either parliament. The role of the ISC for both countries could be represented in the constitution score, but these countries have no codified constitution; therefore, the only way to represent this important committee is to create a separate range for the committee to be placed alongside the other ranges for Question Five. This will be the only time this thesis requires the addition of a range to create a more accurate representation of the application of rules.

In order to assign score ranges, this section will first show the issues with the current justifications for scores in the PPI. Then, the next section will cover the six legislature's compulsory, sanctioning and questioning powers together to assign new score ranges for each one. That will be followed by a section repeating that process for operational rules related to the agencies of coercion. As a reminder, compulsion rules will take precedence over the rules for questioning when determining the ranges. The final section will show how a singular score from the new ranges could change the existing PPI score.

The PPI Scores: Question Three

Country	**PPI Score**	**Reasoning**
Brazil	Affirmative (1)	Has Summons and Questioning Powers
France	Affirmative (1)	Question Sessions
Germany	Affirmative (1)	Committee Questioning
New Zealand	Affirmative (1)	Committee Questioning
United Kingdom	Affirmative (1)	Weekly Question Times
United States	Affirmative (1)	Committee Questioning

Table 29

Table 29 shows the current justifications for PPI Question Three. There are several issues with the assignation and justification of scores for Question Three of the PPI and the justification for the assignation of scores. The PPI notes that a legislature will receive an affirmative score if it meets one of the following traits (Fish and Kroenig 2009, 6):

- The legislature can "force" the executive to explain its policies and uses the power frequently or;
- The legislature has regular question times.

The question must receive a zero score if:

- There is no question time or;
- The legal summons powers are not exercisable.

The first issue related to this question is the use of the word "force" because it is not clearly defined. This lack of definition creates a situation where a conventional expectation of compliance to attend the legislature is equal to legal and constitutionally backed compulsion rights. These two things are different: one is a request, and the other is a command. A request can be refused without sanction; a command cannot.

The second issue with the justifications for Question Three is its weighting of question times at the same level as compulsory powers of the legislature. Question times and compulsion are two very different things, with one being a tool of scrutiny designed for frequent usage and the other being a punitive measure to be used in extremis. These powers would have been better evaluated as two separate powers.

Instead, the combination of these powers assigns scores incorrectly and produces a false equivalence between unrelated legislative rights, creating a situation where a legislature that has questions times but no executive compulsion rights is granted the same score as a legislature with both the legal right to summon the executive and plenary question times or a legislature that has the legal right of summons and questions the executive in committee. Question times may provide both entertainment and information. They do not rely on the power of "force" to operate, as opposed to the powers of summons, which do rely on a far stronger power of "force" to operate.

In many ways, this question also favours reactive legislatures, but the inclusion of summons powers allows for other systems to be considered. So, a reactive legislature may have received an affirmative score based solely on the existence of question times and not the operational rules related to their compulsion rules. Still, in the case of an active legislature, they will receive the exact same score despite having stronger rules.

Committees and Compulsory Powers of the Legislature

Country	***Invite the Executive to Committee***	***Summon the Executive?***	***Committee Summon the Executive?***	***Executive attend committee at will?***	***Executive convene a committee at will?***	***Codified or Custom?***	***Ultimate Sanction***
Brazil	*Yes*	*Yes*	*Yes*	*No*	*No*	*Law*	*Executive Removal*
France	*Yes*	*Yes*	*Yes*	*Yes*	*Yes*	*Law*	*Fine*
Germany	*Yes*	*Yes*	*Yes*	*Yes*	*No*	*Law*	*Fine*
New Zealand	*Yes*	*No*	*No*	*Yes (legislation)*	*No*	*Custom*	*N/A*
United Kingdom	*Yes*	*No*	*No*	*Partial*	*No*	*Custom*	*N/A*
United States	*Yes*	*Yes*	*Yes*	*No*	*No*	*Law*	*Imprison ment*

Table 30

Table 30 shows the compulsory powers of the six legislatures. The operational rules under investigation show if the legislature has the capacity to request or summon the executive if a committee can summon the executive if that rule is backed by custom or law, and the ultimate sanction for refusing the request or summons of the legislature. The table above reflects the data and analysis of the operational rules and procedures of the legislatures under study.

Executive Questions

Country	*Question the Executive*	*Plenary Question Sessions*	*Frequency of question sessions*	*Last Word?*
Brazil	*Yes*	*No*	*N/A*	*N/A*
France	*Yes*	*Yes*	*Monthly*	*Shared*
Germany	*Yes*	*Yes*	*Monthly*	*Shared*
New Zealand	*Yes*	*Yes*	*Weekly*	*Executive*
United Kingdom	*Yes*	*Yes*	*Weekly*	*Executive*
United States	*Yes*	*No*	*N/A*	*N/A*

Table 31

Table 31 above shows the questioning powers of each legislature. Every legislature has the capacity to question the executive, but, as discussed earlier, the reactive legislatures have dedicated question times, which increase its scrutiny function. Rules covering the frequency of questions and if the legislator gets the final word when asking questions are also investigated. Here, the active legislatures are able to control their time to speak in committee, which gives them the right to have the last word, should they choose.

Brazil **Committee and Compulsory Rights**	
Invite the Executive to Committee	The legislature can invite the executive to attend the legislature or committee meeting.
Summon the Executive	The legislature has the right to summon the executive.
Executive attend committee at will	The executive does not have the right to attend committees at will.
Executive convene committee	The executive cannot convene committees.
Basis for Compulsory Rules:	Powers of summons are secured via the constitution
Ultimate Sanction for non-compliance:	Failure to comply can be grounds for impeachment.
Question Sessions	
Question the Executive	The legislature can question the executive in committee.
Plenary Question Time	There are no plenary question times.
Frequency of Question Sessions	Question sessions are scheduled by legislative committees.
Last Word?	The executive does not have the right to have the last word when questioned.
Score Range Original PPI Score: 1	
Chamber	**Mean**
Constitution	0.875
Deputados	0.875

Senado	0.875

Table 32

Table 32 shows high levels of benefit for compulsory and questioning powers for both Houses of the Brazilian Congress as secured by the constitution, which culminates in the highest range of scores for the legislature. The original justification for the Brazilian Congress's PPI score did not include any mention of sanctions or executive benefits in the legislature related to committees. Here, the operational rules continue to benefit the legislature as the executive may only attend committees if they request permission from the Mesas of the respective House.

The PPI also did not make reference to the sanction for the executive ignoring a summons to attend, which could result in executive removal. In this case, the operational rules regarding compelling the executive to attend a committee of the legislature, or the legislature itself, benefit the Brazilian Congress. In effect, the codified rules of both houses and the constitution make the executive report to the legislature, with the addition of the risk of impeachment for ignoring a summons or lying to a committee being the tipping point towards partial oversight. In cases of oversight, the executive's only advantage is their legislative coalitions. Even then, these agreements may fall apart due to the popularity of the executive.

France **Committee and Compulsory Rights**	
Invite the Executive to Committee	The legislature can invite the executive to attend the legislature or committee meeting.
Summon the Executive	The legislature has the right to summon the executive.
Executive attend committee at will	The executive can attend committees.
Executive convene committee	The executive can convene committees.
Basis for Compulsory Rules:	Powers of summons are secured via the constitution
Ultimate Sanction for non-compliance:	Monetary fines can be issued for non-compliance.
Question Sessions	
Question the Executive	The legislature can question the executive.
Plenary Question Time	There are plenary question times.
Frequency of Question Sessions	Weekly
Last Word?	Either the legislator or the executive can have the last word.
Score Range Original PPI Score: 1	
Chamber	**Mean**
Constitution	0.625
Assemblée	0.625
Sénat	0.625

Table 33

The PPI gave the Parliament an affirmative score for Question Three, noting constitutional articles that secured times for plenary questions. Based on that analysis, the compulsory powers were not considered under the PPI analysis, which raises the question of whether the Parliament deserved to receive an affirmative score from the PPI. Here, a large issue with the PPI emerges as what counts toward an affirmative score.

Table 33 shows that the operational rules under Question Three of the PPI are shared between the legislature and the executive, but the rules give the majority of the benefit to the legislature in regard to legislative question sessions and compulsory rights. Both houses are required to compile committees that reflect the political composition of the House, which can act as a variable soft-power benefit for the executive in either legislature as they may not be the same party as the President or Prime Minister. Parliament performs a scrutiny function through its question sessions, which are constitutionally guaranteed, but its true strength comes from the sanctions for non-compliance with compulsion orders.

The Assemblée, in particular, has specific rules granting the executive the right to convene committee meetings at will. For this reason, an argument can be made that the score for the Assemblée could be reduced to 0.25, but that would indicate the operational rules are in the control of the executive, which is not the case. An argument can also be made for using a different, lower score instead of the mean; this can be addressed in the next section. This new analysis shows the shared benefit that both the legislature and executive are afforded through the constitution, culminating in the medium range of scores for the legislature.

Germany **Committee and Compulsory Rights**	
Invite the Executive to Committee	The legislature can invite the executive to attend the legislature or committee meeting.
Summon the Executive	The legislature has the right to summon the executive.
Executive attend committee at will	The executive can attend committees.
Executive convene committee	The executive cannot convene committees.
Basis for Compulsory Rules	Powers of summons are secured via the constitution.
Ultimate Sanction for non-compliance	Failure to comply is a violation of the Constitution.
Question Sessions	
Question the Executive	The legislature can question the executive.
Plenary Question Time	The legislature has dedicated plenary question times.
Frequency of Question Sessions	Question sessions are monthly and quarterly for the Chancellor.
Last Word?	Either the legislator or the executive can have the last word.
Score Range Original PPI Score: 1	
Chamber	**Mean**
Basic Law	0.75
Bundestag	0.875
Bundesrat	0.75

Table 34

Table 34 shows that the rules and conventions of the German Parliament show that it has enhanced scrutiny powers. The Bundestag has constitutionally protected question sessions for the legislature that allows every member to ask two questions with deadlines on the executive for a response, and though its scrutiny role is most pronounced through its committee system. The German Parliament

continues to meet the requirements of the PPI, which assigned an affirmative score to the Bundestag because of the existence of executive questioning in standing committees of the Bundestag.

Similar to France, the executive can attend any committee by invitation or at will, but it does not have the right to convene any committee meeting unilaterally. Compulsory powers are constitutionally protected for both chambers. Failure to comply with a compulsory request of the legislature is a violation of the constitution, and it can be argued that failure to participate in the interrogative process could warrant the dismissal of a minister or removal of the whole executive. This new analysis shows that the rules from the Constitution and the Bundesrat allow for the sharing of compulsion rights with a benefit towards the legislature due to the executive's constitutional rights of attendance, counterbalanced by strong compulsory rights of both chambers. The Bundestag can gain the highest range of scores because of the increased rights during question time, which is not seen in the Bundesrat.

New Zealand **Committee and Compulsory Rights**	
Invite the Executive to Committee	The legislature can invite the executive to attend the legislature or committee meeting.
Summon the Executive	The legislature does not have the right to summon the executive.
Executive attend committee at will	The executive cannot attend committees at will.
Executive convene committee	The executive cannot convene committees.
Basis for Compulsory Rules:	N/A
Ultimate Sanction for non-compliance:	N/A
Question Sessions	
Question the Executive	The legislature can question the executive in committee.
Plenary Question Time	There are plenary question times.
Frequency of Question Sessions	Daily
Last Word?	The executive has the right to the last word on the question.
Score Range Original PPI Score: 1	
Chamber	**Mean**
House of Representatives	0.125

Table 24 shows that the New Zealand House of Representatives lacks the right to summon the executive without explicit instruction from the House of Representatives, but the PPI gave the legislature an affirmative score, citing the ability of committees to question the executive regularly.

The lack of compulsion rights gives a large benefit to the executive, who has no requirement to adhere to a request of a parliamentary committee, and while ministers regularly attend committee hearings, the choice remains with the executive, leaving the legislature with no recourse should a member of the executive seek to break with convention.

Question sessions in the House of Representatives have a foundation in Standing Orders, but those orders restrict the actions of members of the legislature, providing further benefit for the executive. This new analysis shows that the low level of benefit for the legislature is afforded through the

standing orders and conventional rules, culminating in the low range of scores for the legislature between 0 and .25.

United Kingdom **Committee and Compulsory Rights**	
Invite the Executive to Committee	The legislature can invite the executive to attend the legislature or committee meeting.
Summon the Executive	The legislature does not have the right to summon the executive.
Executive attend committee at will	The executive cannot attend committees at will.
Executive convene committee	The Executive cannot convene committees.
Basis for Compulsory Rules:	N/A
Ultimate Sanction for non-compliance:	N/A
Question Sessions	
Question the executive	The legislature can question the Executive.
Plenary Question Time	There are plenary question times.
Frequency of Question Sessions	Daily
Last Word?	The executive has the right to the last word on the question.
Score Range Original PPI Score: 1	
House of Commons	0.125
House of Lords	0.125

Table 35

Table 35 shows that the UK Parliament has almost no capacity to compel the executive to attend committee with no operational rules to summon the attendance of the executive in the main chamber or committee, but the PPI assigned an affirmative score to the UK Parliament only citing question times in the House of Lords as justification.

The lack of real compulsion powers gives a powerful benefit to the executive, who can dictate the terms of their legislative interrogation, and as shown, if they even turn up to a hearing. In contrast, the legislature is left with conventional expectations the executive will make time to be held to account with no sanction if the executive refuses to cooperate, which is not an equal playing field.

The questioning rights of both Houses are also conventional and do not guarantee a response from the desired minister or department. Even though they are more frequent than other reactive legislatures, they do not provide enough benefit to counter the lack of compulsion rights. This new analysis shows the low level of benefit to the legislature afforded through the standing orders and convention, culminating in a low range of scores for the legislature between 0 and .25.

United States of America **Committee and Compulsory Rights**	
Invite the Executive to Committee	The legislature can invite the executive to attend the legislature or committee meeting.
Summon the Executive	The legislature has the right to summon the executive.
Executive attend committee at will	The executive can attend committees.
Executive convene committee	The executive cannot convene committees.
Basis for Compulsory Rules:	Powers of summons are secured via statute.

Ultimate Sanction for non-compliance	Failure to comply can be grounds for fine or imprisonment.
Question Sessions	
Question the Executive	The legislature can question the executive in committee.
Plenary Question Time	There are no plenary question times.
Frequency of Question Sessions	Question sessions are scheduled by legislative committees.
Last Word?	The executive does not have the right to have the last word when questioned.
Score Range Original PPI Score: 1	
Chamber	**Mean**
Constitution	0.875
House of Representatives	0.875
Senate	0.875

Table 36

Table 36 shows that the US Congressional committee system remains a powerful tool of the legislature that the executive cannot easily ignore, which grants a high level of benefits to the legislature. The PPI simply noted that the executive regularly "interpellated" in Congress, and for this, it was afforded an affirmative score. Nothing is cited to back up the claim, as the authors may have assumed their audience would be familiar with the US Constitution. With the powers of summons and subpoena guaranteed in both the operational rules of both Houses and US law, the legislature benefits from not just the powers to ask questions in committee but also issue sanctions for failures to comply. This new analysis shows the high level of benefit that both Houses of Congress are afforded through the Constitution, culminating in the highest range of scores for the legislature.

Unlike the Brazilian Congress, the executive does not have any constitutional or customary authority to attend committee meetings of the legislative committees. This gives the legislature greater independence when performing its constitutional duties. Finally, the ultimate sanction for not attending a congressional summons or providing evidence through a subpoena could result in imprisonment, but the primary barrier to exercising these powers is the willingness of the Attorney General to process the order. Recently, the courts have mostly backed the legislature in their pursuits of information from the executive branch of government. However, this remains a partial weakness of the American compulsory powers, providing a pathway for the executive to delay divulging the requested information.

PPI Score: Question Five

Country	Score	Reasoning
Brazil	Negative (0)	Presidential Control
France	Negative (0)	Presidential Control
Germany	Affirmative (1)	Effective Oversight
New Zealand	Affirmative (1)	Effective Oversight
United Kingdom	Affirmative (1)	Effective Oversight
United States	Affirmative (1)	Effective Oversight

Table 37

"Effective Oversight"

The largest problem with Question Five of the PPI is the phrase "Effective Oversight". Table 37 shows the current justifications for their PPI scores. For a legislature to get an affirmative score, the PPI states that the agencies of coercion must report directly to the legislature, or the legislature must be able to "oversee" the agencies with the power to question, investigate, regulate and fund the agencies. Only in this situation would a legislature receive an affirmative score. The legislature would receive a zero score if it did not have these powers. While the PPI is not clear on what they consider effective oversight, they are very clear on what should get an affirmative score.

The confusion comes from the dispersion of affirmative scores of the legislatures under study. France and Brazil were not afforded affirmative despite having the legislative infrastructure in place to satisfy at least two of the question's requirements. Both France and Brazil established their intelligence committees several years before the publication of the HNL. This is contrasted with New Zealand and the United Kingdom, both being granted an affirmative answer, while neither legislature could satisfy any of the requirements of question bar one, examination of operations. Both committees are controlled by the executive either through the chair or through the right of final approval. The affirmative score for the United Kingdom presents a larger concern because the UK Parliament did not have an Intelligence and Security Committee until after the passage of the Justice and Security Act 2013, four years after the publication of the Handbook. Until then, there was no effective scrutiny or oversight of intelligence operations by a committee of either House.

Agencies of Coercion

Effective oversight of the agencies of coercion forms the basis for Question Five of the PPI. Table 38 shows the original benchmarks for effective scrutiny with the addition of the ability of the legislature or committee to publish their reports independently.

Country	***Question***	***Funding***	***Regulate***	***Investigate***	***Publish***
Brazil	*Yes*	*Partial*	*No*	*Yes*	*Yes*
France	*Yes*	*Partial*	*No*	*Yes*	*Yes*
Germany	*Partial*	*Partial*	*No*	*Yes*	*Yes*
New Zealand	*Partial*	*No*	*No*	*Yes*	*No*
United Kingdom	*Partial*	*No*	*No*	*Yes*	*No*
United States	*Yes*	*Yes*	*Yes*	*Yes*	*Yes*

Table 38

Brazil Agencies of Coercion Original PPI Score: 0	
Question Agency of Coercion	Yes
Fund Agency of Coercion	Partial, can present amendments to budgets
Regulate Agency of Coercion	No
Investigate Agency of Coercion	Yes
Publish Agency of Coercion	Yes
Chamber	**Mean**
Constitution	0.625
Deputados	0.625
Senado	0.625

Table 39

Table 39 shows that the committees of the Brazilian Congress cannot regulate executive agencies, but legislators can amend budget legislation. This applies to all of the agencies of coercion, specifically the CCAI, which acts as a partial oversight function for the intelligence community. This new analysis shows the shared level of benefit that both Houses of the Brazilian Congress are afforded through the constitution. The regulation of the agencies of coercion is constitutionally under the control of the executive, so it is impossible to place the range any higher as the legislature does not totally benefit from the operational rules.

What is apparent from the analysis of the operational rules of both houses of the Brazilian Congress under Question Five is that the legislature indeed has partial oversight rights of the agencies of coercion. The constitutional articles that granted these committees power were added as constitutional amendments in 1994 and 1999. This amendment replaced the original wording that placed the total responsibility for oversight of the agencies of coercion in the hands of the President of the Republic (Congresso Nacional 1992).

Since these changes were made before the publication of the PPI, the question must be asked why the PPI claimed the Brazilian Congress did not have effective oversight powers. The authors provided no citation for their assertion, as stated before, but evidence of strong oversight powers was evident in both the constitution and legislative operational rules at the time the PPI was published in 2009. These operational rules and laws provide a shared benefit between the executive and the legislature.

United States of America Agencies of Coercion Original PPI Score: 1	
Question Agency of Coercion	Yes
Fund Agency of Coercion	Yes
Regulate Agency of Coercion	Yes
Investigate Agency of Coercion	Yes
Publish Agency of Coercion	Yes
Chamber	**Mean**
Constitution	0.875
House of Representatives	0.875
Senate	0.875

Table 40

Table 40 shows that the US Congress is the only legislature of the six under study that can boast the ability to fund and regulate the executive agencies, including the agencies of coercion. The funding

and regulation authority is derived from the Constitution, even granting the legislature the right to set the Federal budget for the year. There is a customary expectation that the executive sends their recommendations to Congress, but the two are expected to find a compromise. The PPI affirmed that the US Congress has "effective" powers of oversight of the agencies of coercion for Question Five. The operational rules of both Houses and the Constitution give benefit to the legislature. This new analysis shows the high level of benefit that both Houses of Congress are afforded through the Constitution, culminating in the highest range of scores for the legislature.

France **Agencies of Coercion** Original PPI Score: 0	
Question Agency of Coercion	Yes
Fund Agency of Coercion	No, executive veto
Regulate Agency of Coercion	No
Investigate Agency of Coercion	Yes
Publish Agency of Coercion	Yes
Chamber	**Mean**
Constitution	0.625
Assemblée	0.625
Sénat	0.625

Table 41

Table 41 shows that the executive and legislature's operational rules for committee scrutiny are split. The committees for the agencies of coercion cannot fund or regulate the agencies directly, but they are able to investigate and question. Committees such as the Parliamentary Intelligence Delegation have superior operational rules and authority compared to other parliamentary committees, with the remaining committees that monitor the armed forces, national finances and constitutional law lacking the same in-built expectations of cooperation and independence from the executive, which makes them weaker.

This new analysis shows the shared level of benefit that both Houses of Parliament are afforded through the constitution, culminating in the medium range of scores for the legislature. Overall, the range shows that the benefits are shared between the legislature and the executive, with the legislature having some more guarantees via the intelligence delegation.

The PPI noted that there were no oversight functions of the agencies of coercion, stating no operational or constitutional rule. This is confusing as, at the very least, the weaker committees were established in both Houses at the time of publication, but the Parliamentary Intelligence Delegation was not created until 2009, with its first meeting in 2013. The operational rules related to Question Five show a shared benefit between the legislature and the executive, with a slight benefit towards the legislature regarding the scrutiny of the agencies of coercion and a benefit for the executive regarding the legislative committee independence.

Germany Agencies of Coercion Original PPI Score: 1	
Question Agency of Coercion	Yes
Fund Agency of Coercion	Partial; committee approval is needed for budget
Regulate Agency of Coercion	No
Investigate Agency of Coercion	Yes
Publish Agency of Coercion	Yes
Chamber	**Mean**
Basic Law	0.625
Bundestag	0.625

Table 42

Table 42 shows that the constitutional and operational rules for the Bundestag require the agreement of committees before the passage of the budget or the deployment of the Bundeswehr, which meets the requirements for investigation and regulation. This new analysis shows the shared level of benefit that the Bundestag is afforded through the constitution, with an increased benefit toward the legislature as it grants that institution a level of independence not seen in other reactive legislatures. The range reflects this arrangement culminating in the medium to high range of scores for the legislature.

The Bundestag also plays a central role in scrutinising the intelligence services with significant rules that allow an enhanced scrutiny function of the intelligence services. The PPI affirmed that the Bundestag had effective powers of oversight of the agencies of coercion, and this analysis shows that the rights established in the Basic Law and legislative rules back that concept. The new analysis of these operational rules and conventions shows a shared benefit towards the legislature. While the Bundestag does not have total control over executive agencies, the legislature is granted high levels of authority.

New Zealand Agencies of Coercion Original PPI Score: 1	
Question Agency of Coercion	Yes
Fund Agency of Coercion	No
Regulate Agency of Coercion	No
Investigate Agency of Coercion	Yes, with executive approval
Publish Agency of Coercion	Yes, with executive approval
Chamber	**Mean**
House of Representatives	0.125
Intelligence and Security Committee	0.125

Table 43

Table 43 shows that the operational rules for the House of Representatives benefit the executive. The select committees of the agencies of coercion focus primarily on legislation related to foreign affairs, finance and justice, and they are limited in their scrutiny powers. While they can scrutinise the actions of executive agencies that fall under their remit, they cannot do anything more than report on their findings. As the executive claims total control of financial oversight of the executive agencies (McGee 2017, 499), there is no scope for parliamentary committees to enforce any action contrary to the will of the executive. The Prime Minister chairs the Intelligence and Security Committee, and the committee is limited in what it can investigate. It may only examine the activities and funding of the intelligence services but has no role in the application of that money. This new analysis shows the low

level of benefit to the House and ISC through the standing orders and customary rules, culminating in the lowest range of scores for the legislature.

The PPI assigned an affirmative score to the House of Representatives, stating that it had "effective oversight over the agencies of coercion, but it seemingly lacks any of the benchmarks identified within the PPI. Additionally, no other related committees can independently investigate the agencies of coercion, as executive agreement is required when requesting documents or persons to question. Under the new analysis, it is abundantly clear that the operational rules and conventions benefit the executive, leaving the legislature with a range between 0 and .25.

United Kingdom **Agencies of Coercion** Original PPI Score: 1	
Question Agency of Coercion	Yes
Fund Agency of Coercion	No
Regulate Agency of Coercion	No
Investigate Agency of Coercion	Yes, with executive approval
Publish Agency of Coercion	Yes, with executive approval
Chamber	**Mean**
House of Commons	0.125
House of Lords	0.125

Table 44

Table 44 shows that the Intelligence and Security Committee of the UK Parliament is nearly identical to the New Zealand version of the committee. While the legislation states that the committee has the authority to oversee the intelligence community's operation, administration policy and expenditure, there are no provisions in the legislation to perform anything more than a scrutiny function. The Prime Minister does not chair the committee. The Prime Minister is required to authorise the committee's membership and output. Conversely, the ISC is not subject to the operational rules of either House, and neither House of Parliament can administer the committee independently. This new analysis shows the low benefit level to the Commons and ISC through the standing orders and customary rules, culminating in the lowest range of scores for the legislature.

The PPI asks for "effective" oversight of the executive. While the committees of the Commons clearly have the right to question the agencies of coercion, they are not responsible for the regulation or funding of those agencies, and when considering the severe restrictions on the legislature to compel executive agencies to give evidence or appear before committees, the investigation powers are weak. These powers show a high level of post facto scrutiny but almost no level of executive agency oversight, which benefits the executive but fails to meet the criteria set in the PPI.

Despite this lack of any firm scrutiny or oversight powers, the PPI gave the UK Parliament an affirmative score despite not meeting any of the benchmarks required for an affirmative score. The new analysis of the operational rules and conventions for Question Five shows a near-total benefit for the executive, with the legislature relying on only a customary expectation that the executive will provide the information requested.

Conclusion

This chapter examined the operational rules for covering oversight and scrutiny powers of the legislature. First, each of the operational rules of each legislature was detailed, followed by an analysis of those rules. The analysis was divided into three parts: the ability to question, the ability to compel

and whether or not the operational rules conveyed the ability to scrutinise the executive or oversee their actions.

Active legislatures contained the strongest forms of executive oversight, with the United States containing the strongest oversight rules, including the ability to adjust the budgets of executive agencies. Brazil shows partial oversight, with impeachment as the ultimate sanction against the executive not cooperating with the legislature. The reactive legislatures all showed some form of strong scrutiny powers but could not directly affect the agencies of coercion. The main difference between the reactive legislatures was their ability to summon the executive. France and Germany both had strong statutory powers to force the executive to attend committees, while the conventional rules of the United Kingdom and New Zealand both exhibited strong executive powers to repel any unwanted request from the legislature.

The ability to question the executive has a higher prevalence in the reactive legislatures where the executive sits in the chamber with the other members of the legislature. This proximity to the executive may be assumed to create a stronger environment for scrutiny. Still, the two legislatures with the most frequent question times, the UK and New Zealand, have rules that greatly benefit the executive, leaving the legislature with only expectations that conventions will be upheld. At the same time, France and Germany both provide a balanced approach to questioning the executive.

The scrutiny or oversight of the agencies of coercion also follows the trends shown above. Active legislatures have a far greater ability to question, investigate, regulate and fund those agencies. None of the reactive legislatures in this study showed the capacity to do all four of those tasks. Normally, reactive legislatures can question and investigate past cases but not regulate or fund the agencies. The main difference between the reactive and active legislatures occurred between the levels of scrutiny and oversight. Where scrutiny allows a legislature to watch and comment on the actions of the executive, oversight allows a legislature to amend or stop an executive from acting. Tables 45 and 46 below shows the new score ranges with their corresponding PPI score. Its scores better reflect the legislative-executive relationship.

Compulsion Powers PPI Question Three		
Country	**Mean**	**Original PPI Score**
Brazil	0.875	1
France	0.625	1
Germany	0.79	1
New Zealand	0.125	1
United Kingdom	0.125	1
United States	0.875	1

Table 45

Agencies of Coercion PPI Question Five		
Country	**Mean**	**Original PPI Score**
Brazil	0.875	1
France	0.625	1
Germany	0.625	0
New Zealand	0.125	1

United Kingdom	0.125	1
United States	0.875	1

Table 46

The largest changes were found in France, New Zealand and the United Kingdom. The creation of the Parliamentary Intelligence Delegation in France allows for the legislature to receive a score range where it received none from the original PPI. The delegation only came into force in 2013, which accounts for the lack of score from the original PPI. The remaining legislatures have ranges between .5 and 1 for scrutiny or oversight powers. The PPI conflated many different parts of the concepts of legislative oversight of the executive. Primarily the ability to question the executive versus the ability to summon them. This chapter has shown that oversight and scrutiny are two different ideas that provide two different resolutions. While all oversight is scrutiny, not all scrutiny is oversight.

Chapter Seven: Investigation of the Executive

In 2017, the Weighted Legislative Powers Survey sought to reweight the Parliamentary Powers Index by reweighting each legislative power of the PPI. The study results provided insights into what scholars thought were the most important powers any legislative should have. At the top of this list, which included the right for legislators to be elected and executive dissolution powers, was the right to investigate the executive (Chernykh, Doyle, and Power 2017, 302). Investigation of the executive is an important function of a legislature, and with the right rules structure, it can reveal information about the activities of the executive, which could lead to removal or reduction in popularity.

This chapter will continue to discuss the rules and conventions related to legislative committees by analysing legislative investigatory powers, which show that, while all legislatures under study can engage in some form of investigation of the executive, Committees of Inquiry provide a unique rule set that gives greater benefits to the legislature.

This also coincides with the concept from the PPI that the executive must fear investigation from the legislature is central to its efficacy, which allows this chapter to analyse investigatory powers using the following criteria, some of which was used in the last chapter.

- The capacity to create ad-hoc legislative investigative committees.
- The ability to create committees of inquiry.
- The initiation threshold to create a committee of inquiry.
- If the legislature has compulsory rights.
- The ultimate sanction for executive refusal of a legislative compulsory order.

First, this chapter will examine the current state of each legislature's operational rules and conventions related to the investigatory powers of the legislature against the executive. Next, this chapter focuses on the investigative powers of legislatures related to the criteria. Finally, this information will be used to create a new range of scores to replace the current PPI score. In this section, an assessment of the "fear" of investigation will be derived based on the criteria set by this chapter. Some concluding thoughts will follow this.

Current State of Operational Rules and Conventions

Brazil

The Brazilian Congress and its committees have specific rights from the constitution to investigate specific matters through its ability to convene parliamentary investigative committees, known as Comissão Parlamentar de Inquérito (Parliamentary Committees of Inquiry/CPI). These committees in both Houses operate under different rules, allowing them greater legal authority. (Fish and Kroenig 2009, 95)

The investigative powers of the Brazilian Congress are contained under Section 7 of the Camara Rules and Article 146 of the Rules of the Senado. Both Houses require a third of their respective chambers to approve a motion establishing an investigative committee. Article 36 of the Camara Rules gives the committee sweeping powers to summon individuals, their records and statements and conduct their investigation under the rules of the Brazilian criminal code; the executive is not exempted. Once completed, the committee submits their report to the House, where the Camara must vote on the outcome within five sitting days. In addition to the House, the committee submits their report to the Public Prosecutor's Office or the Attorney General, with a record of any civil or criminal actions found. A copy of the committee's report is also sent to the executive, where they are to adopt disciplinary or administrative sanctions if necessary. The Senado's rules mirror the Camara's rules apart from Article

146 of the Senado's rules, which prevents committees of inquiry from being established on the Camara dos Deputados, the Judiciary or the Brazilian States.

France

Both Houses of Parliament can create specialised Committees of Inquiry with specific laws to interrogate the committee's subject. There are no limits on who the committees can investigate and, if asked, are compelled by law to participate. (Fish and Kroenig 2009, 241)Both Houses conduct parliamentary investigations under Article Six of Ordinance 58-1100. It states that the Committee of Inquiry's main purpose is to gather facts or information on the management and operation of public services and national enterprises and to report their findings to the House, which initiated the investigation. They are not allowed to conduct investigations into cases that are undergoing trial in court. Membership of the committees reflects the breakdown of political party representation in their respective chamber; however, as these are temporary committees, they have a lifespan of six months and cannot be re-constituted within twelve months of their dismissal.

In the Assemblée, under Rule 141, the creation of a Committee of Inquiry requires a draft resolution to be passed after debate. Members of the opposition parties can table the resolution, but they can only request one inquiry per legislative session. Should that request be granted, the debate on the motion is granted simultaneously. Should the motion pass, the Committee of Inquiry falls under the rules outlined in Ordinance 58-1100. The Sénat rules are similar to the Assemblée rules; however, inquiries are limited to once per parliamentary year per political grouping in the Sénat.

While the other committees of both Houses have compulsory powers, Committees of Inquiry carry the weight of criminal charges if an individual wishes not to acquiesce to a Committee of Inquiry's request. Under Article 6(3) of Ordinance 58-1100, a person who fails to testify before a Committee of Inquiry is subject to a €7500 fine and two years in prison. Giving false testimony to a Committee of Inquiry is also a crime, resulting in further criminal proceedings. Under the same rules, however, the legislature cannot receive certain confidential materials.

Germany

The German Parliament's committee structure allows both Houses to investigate the executive independently. The Bundestag has specific powers under Article 44 of the Basic Law to investigate specific matters through its ability to convene specific committees of inquiry, which the Committees of Inquiry Act further protect. The Bundesrat also has the ability, under Bundestag Rule 42, to summon the executive to the chamber. The PPI affirms that the German Parliament has the right to conduct independent investigations of the executive based on Article 44 of the Basic Law.

The powers of legislative investigations are contained within Article 44 of the Basic Law and the Untersuchgusausschussgesetz (Committees of Inquiry Act). Signed into law on 19 June 2001, the Act sets in law the rights of the committee to investigate subjects as designated by a Bundestag motion. Similar to the rules regarding executive removal, a Committee of Inquiry requires only 25 per cent of the members of the Bundestag to agree to a motion for its formation. The motion itself must be precise, as the law does not allow the committee to deviate from the parameters of the initiating motion (Deutscher Bundestag 2001, sec. 3).

The inquiry committee has the right to appoint a special investigator to act as the lead member for the committee's investigation. Members of the committee are also privy to classified information in relation to their investigation. As with other committees of both Houses, the inquiry committee has the power to summon individuals based on their constitutional and legislative rules, but the inquiry

Act also allows for the summoning of witnesses under criminal law with a fine of up to €10,000 if they fail to attend or testify[i]. There are no exemptions from this rule under the German criminal code, which means the executive, including the Chancellor and Federal President, can be interrogated based on the request of a Committee of Inquiry (Deutscher Bundestag 2001, secs. 16, 50).

New Zealand

The House of Representatives is limited in its capacity to investigate the executive. The House can investigate the executive through its select committees or ad-hoc committees created for a specific purpose. As covered in the previous chapter, committees have no compulsory rights against the executive. (Fish and Kroenig 2009, 485)

The House of Representatives has the inherent right to begin an investigation on any subject it wishes, but the most common form of investigation is conducted in committee (McGee 2017, 494). Standing Order 191 allows all select committees to initiate inquiries into their subject areas. These can take on two forms: Formal and Briefing.

Formal inquiries are determined by terms of reference drafted by the committee and normally include the participation of witnesses and experts. These sessions culminate in a report to the House. Briefings are more relaxed sessions that do not require the participation of witnesses and independent advisers and do not result in a report to the House. These sessions can be considered the first step toward a formal inquiry (McGee 2017, 493).

Select Committees of the House of Representatives do not all have the right to subpoena evidence or summon witnesses. Committees without these powers must have them conferred by an order of the House. The power to subpoena evidence and the power to compel individuals are considered two separate powers, meaning a committee must request both powers (McGee 2017, 494). Should the House see fit, it could pass an order to summon or request documents from government bodies or public servants; however, this is not the normal convention.

Select Committees that have the power to subpoena documents and summon persons of interest can use the power of their own accord, and while members of the executive cannot be summoned to a committee, their papers or records could be requested if the committee sought to use their conventional rights. In this case, the executive has few avenues to avoid producing the information requested from the committee.

The executive has the right to claim that the information is confidential; however, the committee could report the executive's intransigence to the House, and the House could order the executive to send a redacted copy of the information. Should the executive continue to ignore the order of the House, that person could be held in contempt of the House (McGee 2017, 496). Should a committee not have the powers of summons or subpoena, they must send a report to the House making a special request for the Speaker to use the powers of summons or subpoena.

Should any person be found in contempt of the House, the House of Representatives has the right to punish that person. The list of punishments available to the House ranges from issuing an apology, censure, criminal trial and suspension, but the ultimate punishment is imprisonment(McGee 2017, 794). This creates a possibility that a member of the executive who failed to comply with an order of the House could face censure or a criminal trial, but the most common result of a contempt order is a written apology to the requesting committee or the Speaker (McGee 2017, 801).

United Kingdom

Investigatory powers are vested in both the Commons and the Lords, and both Houses have delegated some of their authority to their respective committees. Both the Commons and the Lords operate a clear system for obtaining information from members of the public. Standing Order 135(1) in the House of Commons and Lords Companion 11.19 both state that committees have the powers "to send for persons, papers and records"; however, this convention does not extend to the executive. Erskine May 38.33 states that members of the Commons, including Government Ministers, may not be summoned by a committee; furthermore, Ministers are protected from a committee's right to request information, and the executive can attend if they wish to accede to the request. Officially, the House of Lords forbids members of the Lords from being summoned to the Commons (Lords 2017, 11.20), but Clerk of the Journals of the House of Lords, Chris Johnson, confirms that convention is superseded by an agreement between both Houses allowing members to appear before either's Houses' committees.

Both Houses can hold any person or party in contempt of either House, including the executive. These powers signify the only legislative rules that are ostensibly within the total remit of the legislature that can force a member of the executive to action. Erskine May 15.2 states that "any act or omission that impedes either House in their functions would constitute a contempt act, " giving both Houses an option against members of the executive who refused to attend committees or provide evidence. As there is no definitive list of what constitutes contempt, almost any action could be levelled as a charge against either the public or members of the executive. Should the executive be charged with contempt, there is no risk of imprisonment or fine. Despite the inherent right to imprisonment and fines, parliamentary committees in 1967 and 1999 concluded that the imprisonment powers are defunct (U. Parliament 1999, 3–4). Erskine May demonstrates three main ways to punish members: suspension from the House, suspension of their salary or expulsion (U. K. Parliament 2019, 11.30).

One alternative investigatory tool available to the legislature is to present a Humble Address to the Crown, asking them to have their government produce the information request. Erskine May 7.31 states, "The long-standing practice of the House has been that papers should be ordered only on subjects which are of a public or official character."(U. K. Parliament 2019).

United States of America

The US Congress and its committees have the power to initiate investigations of the executive through the powers noted in the previous section and US law. Committees are imbued with several important powers that allow Congress to summon, prosecute and arrest individuals who ignore an order of the committee or Congress. As with the previous oversight powers, there are no opportunities for the executive to overtly avoid investigation. (Fish and Kroenig 2009, 717)

While both Houses have the power to create ad-hoc committees, the standing committees operate as the main interrogative organ of Congress. Title 2, in addition to the powers granted in Question Three, also sets out the limits of legislative inquiry. The subpoena powers of Title Two also extend to the ability of the House to acquire papers and records of any individual. Under Title Two, Section 193, it is illegal to provide false testimony or documents to any Congressional committee save for reasons of personal disgrace, which must be agreed upon by the committee or House in charge and failure to appear or produce papers results in the convening of a grand jury.

No explicit rules or laws prevent the executive from being subpoenaed by a committee or providing documentation in an investigation. The executive has the power of declaring executive privilege to prevent documentation and evidence from the executive branch from being transferred; however,

this can be challenged in court, as with the case of the United States v. Nixon, where the President was forced to turn over internal communications during the investigations into his impeachment (Wex Definitions Team 2020).

Analysis

The previous section shows that all the legislatures under study can engage in forms of investigation of the executive, and those investigations can take place under specified rules, by an ad-hoc committee, or under the rules of a standing committee. However, there is a difference regarding what information a committee can demand from the executive versus how that information can be held back. For example, select committees in Westminster systems or departmental committees in the others have differing levels of authority to gain information from the executive than Committees of Inquiry.

Committees of Inquiry have a wider remit to investigate with a narrow focus on a specific matter, including the actions of the executive. Committees of Inquiry in this study have more compulsory and sanction powers than the typical committees, with the addition that minority parties can initiate their creation. This benefits the legislature more as majority approval is not required to conduct an investigation into the majority-backed executive.

General Executive Investigatory Powers

All legislatures in this study have investigative powers, such as the right to compel individuals to give evidence and possible sanction should that request be ignored. The following three legislatures provide an investigatory function primarily through standing committees, but it can also occur in ad-hoc settings as well. Westminster-style legislatures grant a greater benefit to the executive when a select committee, or the chamber, decides to conduct an investigation, while the US Congress grants a greater benefit to the legislature.

Committees of the New Zealand House of Representatives have the right to initiate an inquiry into matters related to their subject area, but there are severe restrictions on the investigatory powers of those committees relating towards the executive. Only one committee has the explicit right to call for persons, papers and records of its own accord, and that committee, the Privileges Committee, only oversees the actions of individual members.

The Right Honourable Winston Peters MP, Minister for Foreign Affairs and Racing came under investigation by the Privileges Committee when allegations of undeclared donations emerged in 2008 to his political party, New Zealand First (RNZ 2008; Staff 2008). Mr Peters denied the allegations to the Privileges Committee of the House. The Privileges Committee obtained phone records between Mr Peters and racing industry representatives that contradicted Mr Peters' claims against impropriety (New Zealand Parliament 2008a). The committee recommended his censure and that he update his register of interests to include the undeclared donations, which the House approved in September 2008 (New Zealand Parliament 2008b).

In this case, the Privileges Committee used both their compulsory powers of members of the legislature and members of the public to gather the information they required to make their decision, but Winston Peters was not investigated for his actions as a member of the executive but for political donations also, the investigation required the de facto agreement of the executive coalition of which he was a part.

In the UK Parliament, outside of the Committees on Privileges and Standards, Select Committees lack any enforceable compulsory powers, which severely inhibits the Parliament from having any semblance of oversight of the executive from which they derive a benefit. The executive is free to

choose whether it will appear before a committee that has requested their attendance or what written evidence the committee sees.

In contrast, Select Committees have no enforcement mechanism to compel attendance and must ask permission for access to executive documents, which the executive can simply ignore. In 2022, the Home Secretary and Justice Secretary exhibited this ability to avoid scrutiny by cancelling their long-standing appointments to give evidence to the Home Affairs Select Committee and Joint Committee on Human Rights, respectively, with little notice (Cherry QC MP 2022; MP, Patel 2022). It is possible for a committee to petition for a contempt motion against a member of the executive who acts in this manner, but it is not a direct, enforceable consequence of these actions.

Since 2015, the Humble Address to the Crown procedure has been used more by the Commons to investigate the executive, but the executive has found ways to avoid scrutiny through this mechanism. One example of this is the appointment of Evgeny Lebedev to the House of Lords. Evgeny, now Lord Lebedev, is a Russian-born citizen of the United Kingdom whose father has ties to the former Soviet KGB (Turner 2022).

Members of the Commons took issue with Lord Lebdev's familial connections and his appointment to the House of Lords, and on 29 March 2022, the House of Commons passed a motion to publish all documents related to the appointment of Lord Lebdev to the House of Lords (House of Commons 2022). Despite a successful motion requesting a Humble Address, the executive only produced some of the documentation requested, with heavy redactions (Cabinet Office 2022). The Paymaster General laid a ministerial statement at the same time indicating that the Government is independently applying Freedom of Information rules alongside the Osmotherly Rules when deciding what information should be released to the public (Ellis 2022, 2).

The statement further established the Government's position, "A Humble Address to Her Majesty is a message from Parliament to make its desires and opinions known to the Crown and is related to the exercise of Her Majesty's Royal Prerogative. This link to the Royal Prerogative supports the need for Her Majesty's Government to respond to such an Address to consider any adverse effect concerning the exercise of other powers by Her Majesty, such as the awarding of honours and dignities by the Crown." (Ellis 2022, 3).

In response, the Speaker of the House of Commons, Sir Lindsay Hoyle MP, indicated that the House retained the right to request any and all papers from the Government using the Humble Address procedure, stating that "The House's power to order the Government to provide the information it requires includes the power to require information it would not be possible to publish for legal or other reasons elsewhere." (Hoyle 2022, 2). However, the Speaker did not pursue the matter any further, noting the existence of the redacted report and the ability of members to address issues with the redactions with the Speaker. The exchange between the Speaker and the executive laid the boundaries of authority of the Commons, with the executive producing what information it saw fit and the Commons unable to extract more information despite their displeasure with what the executive produced. This effectively neutered the perceived advantages of using a Humble Address as the executive used the Crown as a shield from enacting any part of the Addresses' request with which they did not agree.

In the US Congress, the balance shifts towards the legislature, where standing committees act as the primary venue for investigatory hearings into the actions of the executive, but either House can form ad-hoc investigatory committees, such as the House of Representatives investigation of the January

6th attack on Congress. These committees are initiated by the majority party in the legislature. The minority can choose to participate if they desire.

As all committees have the same powers, committees investigating the executive retain the same powers of subpoena and summons with severe penalties should the orders not be followed. The only avenue available to the executive is to challenge requests of the legislature in court. This was covered in the last chapter. In recent years, the United States Congress has become hyper-partisan, resulting in questions being asked of its investigatory powers by legislators such as Richard Brodsky (2015), who slated the Benghazi hearings for being "ineffective" and too partisan.

On September 11, 2012, the American embassy in Benghazi, Libya, came under attack from local forces led by Ahmed Abu Khattala, a senior leader of the militant group Ansar al-Sharia. The assault on the compound resulted in the deaths of Sean Smith, an information management officer from the US Foreign Service, CIA contractor Tyronne S Woods, CIA Contractor Glen Doherty and Ambassador J. Christopher Stephens (Clinton 2012).

Between 2012 and 2015, the Senate Intelligence Committee and four committees of the House of Representatives conducted 10 investigations of the actions of the executive, specifically the Secretary of State, Hillary Clinton, for her decision-making tactics during an attack on a US Embassy in Benghazi, Libya that resulted in the deaths of four Americans including the American Ambassador to Libya J. Christopher Stevens. The last committee to investigate Secretary Clinton began in 2015 despite protests from the Speaker of the House. Evidence implying the executive branch withheld important information from previous inquiries moved his hand to grant the new committee.

On 8 May 2014, the House of Representatives passed a motion to establish the committee with 232 votes in favour, including seven Democrats (Clerk 2014). The committee reflected the political composition of the House of Representatives, with a majority for the Republican party. The Democrats agreed to participate in protecting against "abuses" from the Republican-led committee that were seen in previous hearings on the matter (Wasson and Lillis 2014).

This new, Republican-led committee focused on the actions of Secretary Clinton, but due to comments made by a Republican congressman, Kevin McCarthy, stating that the committee was working because Clinton's poll numbers were dropping during her bid to become the 44th US President, reflected poorly on the intent of the committee to investigate as opposed to persecuting (Weigel 2015).

With the House of Representatives backing, the committee was afforded a professional staff and the power to subpoena witnesses; the committee began its work to uncover the events that led to the attack on Benghazi and the deaths of four Americans. This work included oral testimony from the Secretary of State, Hilary Clinton and her associate, Sydney Blumenthal. In public session, the committee questioned Secretary Clinton for nearly 11 hours over her response to the attack on Benghazi (ABC News 2015).

The committee concluded its work on December 7, 2016, with several recommendations. Among these recommendations was that diplomatic security be reviewed with greater attention to important days, such as 9/11, which could draw more attention and violence (Gowdy 2016, 409–10). The report also recommended that the executive branch should report back to Congress a "clear statement of intentions rationale, plan and strategy" regarding new foreign operations. The committee also recommended that the rules of both Congressional Houses should be amended to cut the salaries of federal officials held in contempt of Congress, along with changing laws in relation to the enactment of federal subpoenas and deposition powers. The report also contained an appendix tabled by

representatives Jim Jordan and Mike Pompeo, impugning the work of the Department of State under Secretary Clinton and the Obama Administration (Gowdy 2016, 416).

Committees of Inquiry

Committees of Inquiry (COI) differ from standing committees in several ways. COIs tend to have stronger rules than their standing committee counterparts. For example, they can use the rules of criminal procedure during their investigations, having a time-limited, focused investigation (Yamamoto 2007; Zauli 2010). COIs are also noteworthy because they can grant the minority the right of initiation through operational rules or convention (Yamamoto 2007, 40–42), which stands in contrast to investigations by standing committees, which requires majority approval to initiate investigations.

Three legislatures in this thesis feature COIs, and this section will analyse their operation through recent investigations of the executive. From Brazil, a Senado investigation into the actions of President Jair Bolsonaro's government handling of the COVID-19 pandemic. From France, a Sénat investigation into the increasing use of private consulting firms in the operation of state functions, and finally, from Germany, a Bundestag investigation into the role of the executive in the collapse of Wirecard. Each of these investigations produced serious questions for the executive, with the Brazilian investigation leading to an arrest. This will show the tangible benefits a Committee of Inquiry can confer to the legislature.

Brazil suffered greatly during the initial years of the COVID-19 pandemic, with the highest official death and infection toll outside of the United States of America (Organization 2023). Brazilian President Jair Bolsonaro encountered fierce criticisms for his downplaying of the severity of the virus (Béland et al. 2021; Phillips 2022; Ricard and Medeiros 2020). The Senado approved a committee to investigate executive actions during the pandemic and how it sought to protect the people of Brazil on 27 April 2021. The final report totalled over 1200 pages and resulted in the arrest of one person.

The conclusions of the report focused on several areas, including Bolsonaro's direct promotion of discredited pharmaceutical treatments, fake news, xenophobia, failures to procure vaccinations in a timely manner, failures to protect Brazil's indigenous population from infection and charges of bribery in the accusation of vaccinations. The committee stated that these failures of the Bolsonaro government resulted in "hundreds of thousands of deaths and tens of millions of contaminations" (Federal 2021, 1272), which resulted in the committee forwarding their findings to the International Criminal Court, recommending President Bolsonaro be charged with crimes against humanity (Federal 2021).

The final Senado report stated that President Bolsonaro's promotion of discredited pharmaceutical treatments, such as Hydroxychloroquine and Ivermectin, to treat symptoms of the Coronavirus and promoting herd immunity over vaccination was in direct contradiction to the recognised medical consensus. The President was also found to have abandoned the state of Amazonas, where they stated that the executive allowed the Amazonian health system to collapse, turning the residents of Amazonas into "guinea pigs" (Federal 2021, 1278).

The report also investigated vaccine procurement. This section of the report was damning as it showed both failures to quickly procure vaccines which could have saved lives, and high-level corruption when the vaccines were finally purchased. The committee found that the executive suffered from "unjustifiable and intentional delay" in purchasing the vaccine CoronaVac from Sinovac (Federal 2021, 1276). Had the executive purchased them in time, Brazil would have been one of the first countries in

the world to begin its vaccination programme. The report believes that the delay cost approximately 12,663 lives between March and May 2021.

The final and most damning section of the report covered the irregularities and bribes involved in the purchase of the Covaxin vaccine by officials in the Ministry of Health. The committee found several irregularities in the paperwork needed to import the vaccine and the agreed price. Where the publicly stated price for each vial of the vaccine was announced at $1.34, the contracted price was stated to be $15 per dose, and another public declaration put the price at $10 per dose (Federal 2021, 1280). Additionally, the Leader of the Government in the Camara dos Deputados, Ricardo Barros, did not alert the Federal Police when he was made aware of severe issues in invoicing, including erroneous payments to companies unrelated to the purchase of the vaccine (Federal 2021).

The committee found that a contracting company, Precisa Medicamentos, falsified purchasing documents, and the bank that guaranteed Precisa's credit did not exist, leading to an accusation of corruption in the Ministry of Health. That finding led to the committee naming Roberto Ferreira Dias, a director of the logistics ministry, of corruption by asking for bribes from at least six people and companies to facilitate the importation of life-saving vaccines (Federal 2021, 1282). The committee found that Mr Dias agreed to receive one million Brazilian reals in exchange for paying 18.9 million more reals over the contracted rate to import the vaccine.

In the French Parliament, Committees of Inquiry have the strongest investigatory rules in both Houses. The most recent example of a parliamentary committee investigating the executive is the Sénat investigation into the Macron government's usage of private consulting firms to recommend and sometimes enact executive policies. While this practice is common in other democracies, senators criticised Macron for not using the well-trained and funded French civil service. The culmination of that report resulted in the investigatory committee laying legal charges against one company, MacKinsey, for failing to pay any French tax.

On 27 October 2021, senators from the Communist, Republican, Citizen and Ecologist groups tabled a motion to create an investigatory committee into the growing influence of consulting firms on public policy. The committee intended to discover if the use of private firms resulted from "the failure of the public authorities" and discover who actually implements the executive's policies. (Assassi 2022). The motion was approved by the Law Commission of the Sénat on 2 November 2021, with its first meeting on 25 November 2021 (Sénat 2021).

The investigatory committee presented its findings on 16 March 2022. Among the findings, the report noted that, at a minimum, the French executive spent over one billion euros on private firms such as Accenture, Bain, Boston Consulting Group and McKinsey, among others (Sénat 2022). With ministries increasing their reliance on them between 2018 and 2022, consultants cost the state between €1,528 and €2,168 per day (Sénat 2022, 14). The committee referred to the usage of private firms as a "reflex" instead of using the resources provided by the civil service (Sénat 2022, 9). The committee found that firms such as McKinsey received €4 million to revamp the national fund for family allowances in 2021.

While the work was originally slated for completion in 2019, the executive brought McKinsey on board in 2020 for their expertise. The committee also found that private firms coordinated large swathes of the COVID-19 response. The company Citwell organised the distribution of masks, while McKinsey coordinated the vaccination program between November 2020 and February 2022. McKinsey's management of the program went as far as McKinsey coordinating the day-to-day operations of officials from Public Health France (Sénat 2022, 11–12).

A more interesting result of this report showed that three companies out of the ten operating in France receive nearly 75 per cent of government funding. These companies are Citwell, Accenture and McKinsey. The committee also addressed ethical risks, pointing out issues with conflicts of interest in advising several clients at once. A culture of private firms hiring former civil servants and firms giving away their services for free to gain a foothold in the minds of executive decision-makers (Sénat 2022, 15). While being used increasingly by the executive, these firms are free from public scrutiny or oversight; however, these firms have a considerable influence on the execution of executive policies, which gives them an enhanced level of influence in executive decisions.

The report concluded with proposals to publish who the state contracts with for its consulting purposes and to regulate and strengthen rules around consulting firms and their relationship with the state (Sénat 2022, 18). The report also found that McKinsey has seemingly failed to pay corporation tax despite giving evidence to the committee that it does (Sénat 2022, 219–20). Using its statutory powers, the committee sent a team of investigators to the ministries for economy and finance to investigate the claims, where they found McKinsey had paid no corporation tax over the past ten years. The French financial authorities are investigating these claims. Additionally, giving false evidence to an investigatory committee is a crime, and the committee laid charges against McKinsey in March 2022 (Reuters Staff 2022).

The Bundestag's Committee of Inquiry is designed to help opposition parties hold the Government accountable (Linn and Sobolewski 2015). These committees, supported by legislative rules, specific laws and constitutional protections, ensure that the executive cannot ignore the will of even a small fraction of Parliament. As with the Brazilian Congress, a conventional expectation exists against the abuse of CPIs. The power to compel testimony from the highest levels of the executive gives responsibility to the legislature that runs in line with the German Parliamentary system's concept of fairness to all sides in the legislature.

A recent example of the work of a Committee of Inquiry is the investigation into the collapse of the transaction company Wirecard. Wirecard was a German financial technology company facilitating financial transfers between consumers and merchants. Despite being an apparent success story in Germany, the company encountered issues with its accounting in 2008 and 2020, when the firm collapsed (Schnell 2019). The firm's collapse sent shockwaves through Germany and the global fintech world as Wirecard seemed to be at the peak of its influence. The collapse centred around gross fraud that showed the company lied about having €1.9 billion in assets.

On 1 October 2020, the Bundestag approved the creation of a Committee of Inquiry to investigate the collapse of Wirecard and the conduct of the Federal Government in relation to the collapse. The work of the executive will be the focus of this section.

The committee found that Wirecard benefited from a combination of failures of government oversight and government favouritism. Being one of the most successful German fintech companies ever, Wirecard was a success story; however, success brought heightened scrutiny into their operations. In 2008, the company blamed financial irregularities on a rogue employee and brought in the accounting firm EY to report their earnings (McCrum 2020). When further accusations were laid by Dan McCrum of the Financial Times, the company again resorted to declaring that the criticisms of their business model was an overt attempt to lower their stock price for short sellers (Gottschalk 2021, 1602). This is where the German financial watchdog Bundesanstalt für Finanzdienstleistungsaufsicht (BAfin) became involved in the investigation.

Instead of investigating Wirecard, BAfin investigated the FT journalists who were reporting the story (Gottschalk 2021, 1621–22). The parliamentary committee later learned that officials at BAfin traded in Wirecard stock and contracts for difference, creating a conflict of interest (Gottschalk 2021, 155,1401). Additionally, the committee learned that BAfin only had five certified auditors in the agency. The remainder of the staff was not certified to perform the investigations needed to oversee the company. Finally, the company was outside the direct prevue of oversight agencies as Wirecard classified itself as a technology company, not a bank. Wirecard classified itself as a technology company despite owning a bank which became the second largest bank in Germany.

Using their compulsory powers, the committee called both Olaf Schulz, the then Finance Minister and Angela Merkel, the former Chancellor of Germany (Gottschalk 2021, 107). Both were questioned in a private session, but the content of the meeting was released in the committee report. Merkel was called into the committee because of a 2019 trip to China, where she lobbied for Wirecard to buy a Chinese transaction company. Had Wirecard been able to make this purchase, the company would have had a direct connection to Asian markets. Wirecard's lack of a direct connection to Asian markets was the reason for its eventual collapse as the company fabricated revenue from non-existent third-party companies located in Dubai, Singapore and the Philippines. The fake revenue from the third parties was reported as real money on their earnings statement. The discovery of that fraud by KPMG, a new firm brought in after the initial accusations, brought about the end of the company.

The committee criticised Chancellor Merkel for promoting Wirecard just months before its collapse, and questions were raised regarding her relationship with the lobbyist, Karl-Theodor zu Guttenberg (Gottschalk 2021, 1659–61), a former member of the German cabinet. In this case, the questions circled around access to the Chancellor and if she travelled to China to lobby for Wirecard.

The committee closed its proceedings in June 2021, and the Bundestag approved the report on 25 June 2021. The report coincided with criminal investigations into the CEO and management of Wirecard. While the executive was not charged with any crimes, they were criticised for not using their full legal powers to oversee Wirecard, with the CDU/CSU stating that the SPD were more focused on "protecting their chancellor candidate instead of the committee's work. The SPD and FDP criticised Angela Merkel's part in the affair.

Comparative Discussion

The rules and conventions of investigatory committees indicate that their function is to obtain and distribute information in the public interest, and the two types of committees in this chapter show that there are differences in the ability to obtain and distribute that information. The previous section showed that legislatures without COIs had mixed results in obtaining information. The UK and New Zealand legislatures encountered barriers when attempting to obtain the information, or the sanction mechanism left the executive relatively unscathed. In the case of the House of Commons, the requested information provided was redacted, with no recourse within the rules to obtain the additional information. The US Congress had the opposite reaction to the Westminster-style legislatures in obtaining information with an overtone of political bias. COIs, on the other hand, uncovered vast amounts of information through the operational rules afforded to them, resulting in the discovery of bribery or tax evasion.

Country	*Create ad-hoc Investigatory Committees.*	*Committees of Inquiry?*	*Initiation Threshold to create COI*	*Compulsory Rights*	*Ultimate Sanction for Refusal*
Brazil	*Yes*	*Yes*	*33%*	*Yes*	*Impeachment*
France	*Yes*	*Yes*	*51%*	*Yes*	*Fine and Imprisonment (CPI only)*
Germany	*Yes*	*Yes*	*25%*	*Yes*	*Fine*
New Zealand	*Yes*	*No*	*N/A*	*No*	*N/A*
United Kingdom	*Yes*	*No*	*N/A*	*No*	*N/A*
United States	*Yes*	*No*	*N/A*	*Yes*	*Imprisonment*

Table 47

Table 47 shows the criteria that will inform this chapter's creation of new score ranges. It shows that each legislature can create ad-hoc investigatory committees, but only three have the right to create committees of inquiry. The table shows that committees of inquiry greatly benefit the legislature, combined with powerful compulsory and sanction rights.

Keppel (2022) investigated the role of Committees of Inquiry in strengthening the legislature's ability to control the Government and building on previous work that looked at a three-dimensional approach to the interactions between the executive and the legislature through the lens of committees of inquiry. He found that the work of committees can positively affect executive scrutiny through the public nature of the hearings, specifically in Germany, as well as the partial implementation of the recommendations. Keppel notes, however, that measuring the effectiveness of committees of inquiry and legislatures as a whole can only be done through a qualitative approach, with generalised comparisons failing to meet the nuance of the system (Keppel 2022, 20). The three legislatures under study meet Keppel's criteria in part or in full, exerting a form of control over the actions of the executive by asking questions such as:

- Can a parliamentary minority demand an investigation, or what rights do the parliamentary minority have regarding investigations?
- How often is a parliamentary inquiry used in a legislative period?
- How extensively must files and documents be submitted to a Committee of Inquiry?
- Are there restrictions on committees of inquiry that prevent complete oversight?

The investigative rules of the three legislatures in this section coincide with Keppel's criteria. Companies associated with the executive were unable to resist the demands of the committees to see tax paperwork or shipping invoices, and members of the executive faced both legislative and statutory sanctions should they refuse to participate in the investigation. The committees faced few restrictions in their initiation or execution of their rules, with the Brazilian case resulting in arrests. Furthermore, the executive willingly participated in the investigation, but an overt political objective did not taint the investigations.

Of the three legislatures that did not feature committees of inquiry, the committees of the United States Congress had the strongest investigatory rules, but the information gained from the investigation is called into question. Despite nearly a dozen committee hearings on Benghazi, the investigations continually discovered no new evidence of malfeasance or negligence by the executive. This shows that the investigations were not used to gain information but to enact other goals potentially political.

The UK and New Zealand legislatures relied on conventional investigatory rules that worked in different ways. In New Zealand, members of the executive suspected of impropriety were sent to the Privileges committee without delay, while in the UK Parliament, the process was bogged down by the executive, with both legislatures relying on convention to investigate the executive.

Accountability in the UK Parliament is an amorphous, undefined topic (Bennister and Larkin 2018). Vernon Bogdanor (1997) wrote on matters relating to ministerial responsibility and parliamentary accountability, noting that Parliament expected ministerial resignation for failure to fulfil conventional expectations. He cites a 1994 report stating, "ministerial preparedness to resign when ministerial responsibility for failure has been established lies at the heart of parliamentary accountability" (Bogdanor 1997, 72). However, he goes on to write that parliamentary accountability was weak, noting the conclusions of a report into failures at the Ministry of Defence. Bogdanor noted that the executive's interpretation of ministerial accountability allowed ministers and civil servants to provide misleading information without sanction, removing Parliament's ability to perform its conventional constitutional duty.

Bognador's point is accentuated by the struggles surrounding the convention of the Humble Address. The cases show the high bar required to use the Commons' contempt powers and the inability to gain access to executive information easily. Unlike other active and reactive legislatures, it lacked the ability to directly summon the information through constitutional or legal means because, despite the House passing motions, the executive still resisted sharing the information or stalling until Parliament prorogued (Bienkov 2022).

In contrast, David Wilson, Clerk of the New Zealand House of Representatives, said in an interview that the Privileges Committee members tends to act as a force for the legislature rather than their political ideologies. While those leanings may still be apparent, it is contrasted by a desire to maintain "fairness and egalitarianism", which is represented in New Zealand culture and forms part of the reasons that Privilege Committee motions are "always adhered to.".

Contrasted to the Westminster systems, the myriad congressional investigations into the tragic events in Benghazi showcased the power of that legislature to compel the executive to participate in the committee despite overt signs the hearings were a political stunt. The Congressional rules forced the executive's accountability to the legislature because, unlike the Westminster-style parliaments, the executive does not enjoy immunity from compulsory orders of the legislature. In the case of the Benghazi investigation, Secretary of State Hillary Clinton could only delay her participation in the hearing, but she had to participate.

In this case, the legislature used its investigatory tools to attack a political opponent more than address the subject despite several other congressional investigations. The Leader of the Congressional Republican party at the time stated in relation to the committee, "Everybody thought Hillary Clinton was unbeatable, right? But we put together a Benghazi special committee, a select committee. What are her numbers today? Her numbers are dropping. Why? Because she's untrustable. But no one would have known any of that had happened had we not fought." (Dionne Jr. 2015).

While the American system does not rely on honour to compel the executive to testify, it relies on honour for the system not to be abused. For each example of a strong committee investigation by the United States, there is another example of a committee hearing designed solely to gain political points by damaging political opponents, which clearly abuses those very strong investigatory rules.

These cases show the stark differences in the trade-offs between legislatures that have compulsory powers and those without. Maintaining executive accountability in either legislative system is important, but in the systems that rely on the honour of the executive, recent examples have shown they have a much harder time performing even a scrutinising role unless there is a deep-seated culture of fairness.

The PPI Scores: Question Four

Country	PPI Score	Reasoning
Brazil	Affirmative (1)	A constitutional right to investigatory committee
France	Affirmative (1)	"Legislature can investigate the executive."
Germany	Affirmative (1)	A constitutional right to investigatory committee
New Zealand	Affirmative (1)	"Legislature can investigate the executive."
United Kingdom	Affirmative (1)	Select Committees and Standing Orders
United States	Affirmative (1)	"Legislature can investigate the executive."

Table 48

This chapter has looked at the investigatory powers of the legislature against the executive. For this question, the legislatures under study all had the capacity to create ad-hoc committees, as seen in the US House of Representatives, but only three can create specialised investigatory committees. The original justifications for Question Four stated that investigations into the executive did not have to be frequent, but the executive should "have grounds to fear parliamentary scrutiny for the item to be affirmed." (Fish and Kroenig 2009, 7).

Table 48 shows that each of the legislatures received an affirmative score; however, the study did not state how any of the legislatures created a sense of fear in the executive through their investigatory powers. There are at least two ways to address their requirement of "fear". First, the authors could have been established from their cohort of survey respondents if they believed that the executive feared scrutiny from the legislature, but there is no indication that there was a serious attempt to gain this information. Alternatively, the authors could have cited what rule or combination of rules could create fear in the executive. This lack of definition means the concept of fear is not actually explored in the PPI; it is only mentioned.

The legislatures under study show that fear of investigation comes from the sanctions tied to compulsion. Legislatures that can initiate Committees of Inquiry gained vital information and testimony from the executive with some tangible results. Whether it was corruption, mismanagement of government funds, or bad judgment calls, specialised investigatory committees produced valuable information for the legislature and voters. The American case also shows how fear of non-compliance results in the participation of the executive to the point of potential abuse of the legislative power.

Contrast that with the two reactive legislatures that relied primarily on convention. These two legislatures had two different results, both requiring the agreement of the executive to proceed, but in the case of the House of Commons, the executive ignored and changed conventions to prevent any further investigation into the appointment of the peerage, and in New Zealand where the sanction was to register the financial interest under investigation. These examples show that the fear element was minuscule, given the information gained from the committee and the sanction.

There was also an inconsistency in the justifications for each legislature's score. Three legislatures had justifications that cited either constitutional articles or standing orders, while the remaining three had a boilerplate response, "Legislature can investigate the executive". The lack of constant citation for the assignation of scores can lead to a lack of proper understanding of the difference between legislatures and the rights and responsibilities awarded to their members. A reader of the index without any prior knowledge of any of the legislatures could assume that the investigatory conventions of New Zealand and the United Kingdom were equal to the investigatory rules of France and Germany, which would be a gross inaccuracy.

Parliamentary Powers Index and New Ranges

This chapter looked at a legislature's capacity to investigate the executive as well as the element of fear the legislature can foster in the executive when an investigation looms. The Committees of Inquiry provided the best investigatory rules of any legislature. It gives both the minority and majority parties the right to initiate actionable sanctions for non-compliance that can create fear in the executive if granted. The investigative rules of the US Congress are also daunting, but their use of political tools rather than investigatory tools greatly diminishes their influence. This does not, however, reduce its capacity to induce fear in the executive because non-compliance can be punished by law. The legislatures of New Zealand and the United Kingdom rely on conventional executive compliance to complete their investigations. Despite the possibility of contempt, the rules benefit the executive, which limits the fear factor.

New Legislative Score Ranges

Brazil Original PPI Score: 1	
Create Ad-Hoc Investigatory Committees.	Yes
Investigatory Committee?	Yes
Threshold for activation of Investigatory Committee	33 per cent of the initiating chamber
Compulsory Power	Yes
Ultimate Sanction for Refusal	Impeachment
Chamber	**Range Mean**
Constitution	0.875
Deputados	0.875
Senado	0.875

Table 49

Table 49 shows that the rules and conventions of the Brazilian Congress benefit the legislature to a high degree. On their own, the committees of the Brazilian Congress represent a formidable cheque against the executive, but the specialised investigatory committees are a powerful tool indeed. Given the minority can independently initiate the work of the committee, the executive can be put under immense pressure should the legislature decide. The ultimate sanction for failure of compliance, impeachment, is a severe enough punishment to create a real sense of fear for the executive should they not want to participate. All parts of the Brazilian Congress have the same investigatory powers, so the scores between all of them are between .75 and 1.

France Original PPI Score: 1	
Create Ad-Hoc Investigatory Committees.	Yes
Investigatory Committee.	Yes
Threshold for activation of Investigatory Committee	Majority of the initiating House.
Compulsory Power	Yes
Ultimate Sanction for Refusal	Fine and Imprisonment
Chamber	**Range Mean**
Constitution	0.625
Assemblée	0.625
Sénat	0.625

Table 50

The PPI noted that the French Parliament did not specify the powers granting independent investigation of the executive. Despite having strong powers once initiated, Committees of Inquiry of both Houses are limited by the vagaries of both internal legislative coalitions and strong legislative rules that benefit the executive. Table 50 shows that both Houses have the capacity to initiate ad-hoc committees, but in a similar fashion to Brazil, it is easier to initiate an investigative committee. Unlike Brazil, the approval requires the agreement of a majority of members, but operational rules from both Houses grant each opposition party one investigatory committee per year, which further restricts the legislature, but one that is not insurmountable.

Ordinance 58-1000 provides the investigatory committees with powerful tools to demand information from the executive as well as compel their attendance. The same ordinance also makes non-compliance a crime that incurs a fine and imprisonment, but the executive benefits from the rules preventing the transmission of secret documents with a Committee of Inquiry.

Despite the strong powers, the requirement on the initiators of the committee to get a majority vote to initiate the committee gives the executive a real chance to veto the creation of any committee to which they are opposed. Additionally, opposition parties are limited in the number of committees they can initiate. These combine to slightly reduce the effectiveness of these committees in the legislature to benefit the executive. The new range for all three parts of the French Parliamentary system is .5-.75.

Germany Original PPI Score: 1	
Create Ad-Hoc Investigatory Committees.	Yes
Investigatory Committee.	Yes
Threshold for activation of Investigatory Committee	25 per cent of Bundestag
Compulsory Power	Yes
Ultimate Sanction for Refusal	Impeachment
Chamber	**Range Mean**
Constitution	0.875
Bundestag	0.875

Table 51

Table 51 shows that, in the Bundestag, there is little deviation in the powers afforded to the legislature through the Basic Law and subsequent legislation on the matter of committees of inquiry. These committees force the executive to cooperate with the requests of the legislature under criminal

penalty should they fail to comply. The rules under consideration for this question show that this benefits the legislature, specifically the opposition parties. This question continues to meet the requirements of the PPI, as Article 44 of the Basic Law has not changed since the PPI was first published.

The inquiry rules heavily benefit the legislature as these rules surpass the rules under Question Three, as failure to comply could be a criminal act. For example, the aforementioned Committee of Inquiry into the Wirecard scandal had both the finance minister, Olaf Scholz, and the Federal Chancellor Angela Merkel, before the committee (Reuters 2021), where they were interrogated by a committee led by Die Linke (the Left), an opposition party. The committee also received evidence from Wirecard's auditors EY (O'Donnell and Kraemer 2021). While those legislators and private companies may have provided their evidence willingly, the committee's powers to summon and obtain records clearly impact its expectations to obtain the requested information. Table 41 shows that the powers afforded to the legislature under Question Four of the PPI heavily benefit the legislature over the executive. The new legislative powers score range for Question Four is between .75 and 1 for both the Bundestag and the constitution.

New Zealand Original PPI Score: 1	
Create Ad-Hoc Investigatory Committees.	Yes
Investigatory Committee?	No
Threshold for activation of Investigatory Committee	N/A
Compulsory Power	No
Ultimate Sanction for Refusal	N/A
Chamber	**Range Mean**
House of Representatives	0.125

Table 52

Table 52 shows that the conventions of the House create significant barriers to investigating the executive. The customary expectation that fairness will reign supreme means the House will likely rely on that convention until it fails. The lack of these powers fails the test of fear as the only committee with compulsion rights can only investigate a member in the role as a legislator, not a member of the executive. While this may result in an action that can affect the executive, that link cannot always be directly drawn.

SO 156 and 157 ensure that the House must agree to activate the compulsion rules. Given that a majority of the House will either form the governing political party or be in a legislative agreement with that party, the chances of strong investigatory powers being authorised against the executive's wishes are slim. Despite the fairness expectation, it does not rise to the same level as other legislatures, specifically in the realm of inducing fear in the executive. Therefore, the range for the powers under Question Four is between 0 and .25.

United Kingdom Original PPI Score: 1	
Create Ad-Hoc Investigatory Committees.	Yes
Investigatory Committee.	No
Threshold for activation of Investigatory Committee	N/A
Compulsory Power	No
Ultimate Sanction for Refusal	N/A
Chamber	**Range Mean**
House of Commons	0.125

House of Lords	0.125

Table 53

Investigation of the executive by either House of the UK Parliament can occur in a Select Committee, but Table 53 shows that the rules and conventions of both Houses favour the executive by allowing them to ignore invitations to provide written or oral evidence to a committee. The same is the case for creating an ad-hoc committee to investigate a particular matter, as a significant portion of the executive-backed majority would need to agree to the request. The executive has cited convention and law to protect itself from any demand of either House to attend committee or produce papers in full. The lack of any real compulsory authority or sanction by the House severely decreases the fear element of this question.

The only real power in the hands of the legislature is the threat of contempt, but the procedures related to finding a government minister in contempt of either House of Parliament have high conventional barriers to pass, effectively requiring the agreement of members of the governing party to obtain a majority in order to pass the motion, and should the motion pass, there is no direct punishment for being held in contempt. For these reasons, the operational rules and conventions have resulted in a range between 0 and .25 for this question for the House of Commons and House of Lords.

United States Original PPI Score: 1	
Create Ad-Hoc Investigatory Committees.	Yes
Investigatory Committee.	No
Threshold for activation of Investigatory Committee	N/A
Compulsory Power	Yes
Ultimate Sanction for Refusal	Fine or Imprisonment
Chamber	**Range Mean**
Constitution	0.875
House of Representatives	0.875
Senate	0.875

Table 54

Table 54 shows that the operational rules of both Houses of Congress allow for the creation of ad-hoc investigatory committees alongside their powerful standing and select committees. Standing and select committees of both houses have strong interrogative tools, which may explain the lack of the ability for the members of either House to unilaterally create investigatory committees.

Despite the powers available to the committee, committees of either House cannot begin an investigation without the consent of legislative leadership, which removes a great deal of authority from the individual legislator. As shown earlier, the capacity for abuse of the system is rife, with the majority having extraordinary powers to use the investigatory tools of Congress against their political rivals.

The capacity for abuse does not detract from the strength of congressional powers. In fact, it enforces the new ranking, as Congress can use its subpoena and compulsory powers to instil an element of fear in the executive; however, this evaluation should serve as a plea to Congress to respect the power it possesses as opposed to the other six legislatures understudy.

Despite the capacity for abuse, the powers of investigation continue to benefit the legislature. The new range for this power is between .75 and 1 across all three parts of the US legislative system, as the powers are only limited by the willingness of the actors to use them.

Conclusion

This chapter covered the operational and conventional rules related to investigation of the executive. First, each of the operational rules of each legislature was detailed, followed by an analysis of those rules. The analysis was divided by legislatures that allowed the independent initiation of investigative committees and legislatures that did not have that option but contained investigatory powers. Finally, the concept of executive fear of investigation was discussed.

Table 55 below shows the mean scores from the new score ranges against the scores from the PPI. In terms of investigative powers, the Westminster legislatures are subject to the largest changes from their original scores due to the lack of a committee of inquiry or any system to allow the legislature to initiate an investigation into the executive without explicit consent of the executive and for a heightened reliance on convention to act as a check against the executive.

Country	Scores (Mean)	Original PPI Score
Brazil	0.875	1
France	0.625	1
Germany	0.875	1
New Zealand	0.125	1
United Kingdom	0.125	1
United States	0.875	1

Table 55

The legislatures that have operational rules that allow the initiation of Committees of Inquiry often ensured that minority parties of the legislature had some guarantee to the initiation of the committees through rules and conventions. The COIs shown in this section worked as a powerful tool to scrutinise the actions of the executive. Each legislature also ensured strong compulsion rights to back up the work of the committee.

The remaining legislatures provided a mix of strong and weak investigatory rules offered to the main legislative body. The reactive legislatures showed a diminished capacity to investigate the executive independently, with the operational rules benefiting the executive by giving them a de facto veto on any requests to create an ad-hoc investigatory committee.

Furthermore, the remaining reactive legislatures in this section lacked any compulsion rights that could be used against an intransigent executive, instead relying on convention to conduct any investigation. The one active legislature in this section veered from the trend of the reactive legislatures but retained the issue regarding the agreement of the majority to approve an ad-hoc committee or the approval of a committee chair to allow an investigation into the executive.

The results of the cases from the six legislatures show that where the legislature has weak legal investigatory authority, the executive actively avoided scrutiny. Whereas, in the cases of strong investigatory powers, the executive participated, sometimes in private sessions, but always capitulated to the requests or demands of the committee. This shows the serious benefits that strong investigatory powers can achieve, which backs up the opinions of those scholars who ranked it as the number one legislative power in the WLPS.

Chapter Eight: Executive Removal

The ultimate sanction for a democratic legislature is the forced removal of the executive from office. In active legislatures, removal is typically the result of legislative investigation, while in reactive legislatures, it can be the result of political decision based on the real or perceived executive's loss of popular support. This chapter will examine each of the legislature's operational rules and conventions related to executive removal. Next, it will look at five criteria regarding executive removal, including the rights to remove the executive and any prohibitions associated with those rules. Finally, the new method will be used to determine a score for each legislature. The five criteria are:

- Can the legislature remove the executive?
- Does the legislature require executive approval to proceed with removal motions?
- Can the executive initiate a confidence motion on itself?
- Does the legislature need to find a replacement executive before moving a removal motion?
- Are the removal powers of a legislature secured by law or convention?

The chapter concludes with the results showing that while executive removal powers are a well-known procedural device, their practical application is rare and, in the case of reactive legislatures, an executive tool. The analysis of the operational rules and conventions will show that active legislatures have a greater capacity to initiate removal procedures than reactive legislatures, but overall, the use of removal powers in most of the countries under study is very rare.

The PPI affirmed that every legislature, bar one, in this chapter, can remove the executive; however, there are some disparities in the six legislatures examined in this study that show significant differences in the rights of the legislature to remove the executive, including the right to initiate the process.

Current State of Operational Rules and Conventions

Brazil

Rules of executive removal are completely under the control of the Brazilian Congress. These powers are guaranteed in Articles 51, 52, 85, and 86 of the 1988 Constitution that places the power to remove any member of the executive in the Camara dos Deputados and the power to convict any member of the executive with the Senado Federal or Supreme Federal Court. The operational rules of each legislative chamber support the constitutional rules.(Fish and Kroenig 2009, 94)

66 per cent of the membership of the Camara are required to pass an impeachment motion against the President, Vice-President, or ministers of the government. If the measure passes, the Senado the tries the case under terms set by the Camara. The executive has no direct role in the operation of these procedures, and the President's powers are suspended when their trial starts. Further rules specify actions that could be considered impeachable, including the President acting in any way that could be construed as unconstitutional.

The executive is subject to two forms of impeachment. Impeachment proceedings that have a criminal element must begin in the Camara via a request from the President of the Federal Supreme Court under Title 6, Article 217 of the Camara rules while, under Article 281 of the same chapter, any citizen can accuse the President of the Republic, and their subordinates, of impeachable acts. Accusations of a criminal nature reported by the President of the Supreme Court are automatically sent to the Constitution, Justice, and Citizenship Committee of the Camara and will hear from the accused or their lawyer within 10 sitting days. The committee submits their opinion on the case within five sitting days, which they can agree to process the accusation to the plenary or deny the claim. Should the claim be

accepted, the plenary will have a debate on the matter with a roll-call vote of its members. If two-thirds of the membership agrees to the accusation, the President is impeached and suspended from office, losing all of their constitutional powers, but their trial is not held in the Senado. In cases of criminality, the President would be tried in the Supreme Federal Court.

For matters not of a criminal nature, any citizen of Brazil can accuse the executive of impeachable acts by submitting a signed and notarized statement of their accusation with physical evidence or a way to locate evidence of impeachable activities to the President of the Camara. If the President of the Camara accepts the application, the Chamber then creates a special committee whose composition is based on the proportion of seats each party/congressional block has in the Camara.

Should the President of the Camara refuse the application, the Chamber gets an opportunity to vote on their decision. As with the previous procedure, should two-thirds of the membership vote for the accusations, the President is impeached, but in cases of constitutional malfeasance, the matter is forwarded to the Senado Federal for trial under Chapter 2 Section 3, Article 86 of the constitution.

Whether the case is tried in the Federal Supreme Court or the Senado, the case can last no longer than six months, and if the case ends without a resolution, the President is automatically acquitted and free to return to their duties. Should the case be heard in the Senado, the President is removed from office and banned from public office for eight years if two-thirds of the membership agrees to remove the President.

France

The legislature can remove both the President of the Republic and the Prime Minister. This reactive legislature has the power to initiate procedures to remove either the Prime Minister or the President using two different means. The powers of executive removal are found in Articles 49(1) and (3) of the 1958 Constitution and are supported by legislative operational rules. (Fish and Kroenig 2009, 241)The executive can table confidence motions in itself in regard to its speech detailing its legislative agenda for the year, finance bills and social security bills. The executive can also make any piece of legislation a matter of confidence at any time during its passage; however, this can only be used once per session. Should the executive choose to make a bill a matter of confidence, under Assemblée Rule 155(1), all debate on that bill stops for 24 hours. Members of the legislature can table motions of no confidence within the 24-hour window.

Constitutional Article 49(2) allows the Assemblée Nationale to table motions of no confidence in the Prime Minister and their cabinet, who acts as the chamber's executive. Ten per cent of the membership must sign the motion before it can be tabled. If the measure comes to a vote, only the Aye votes are counted. Should the executive lose any motion of confidence, the Prime Minister and their cabinet are all removed from office under Assemblée rule 157 and Article 50 of the Constitution. As the Prime Minister and cabinet sit in the Assemblée Nationale, there are no provisions in the Sénat for motions of no confidence.

The codified powers of executive removal allow both Houses of the French Parliament to initiate procedures to remove the President of the Republic via Articles 67 to 68-3 of the Constitution, which allow the French Parliament to be convened into the High Court and for members of French Parliament to form and sit on the Court of Justice of the Republic.

The Constitution states the President of the Republic cannot be held liable for any action that they commit during their time in office acting in their official capacity as President; however, should one of the Houses decide, the President of the Republic can be tried for breaches of duty. Only one House is

needed to initiate the motion to remove the President of the Republic with a 2/3rds vote, but it requires the agreement of the other House, which means, if the Sénat decides to remove the President of the Republic, the Assemblée Nationale must also agree. That agreement must be obtained within 15 days of the originating House agreeing to the removal motion. If both Houses agree to the removal motion, the French Parliament of France is convened as The High Court.

The High Court consists of both Houses of the French Parliament sitting as one, with the President of the Assemblée Nationale sitting as the presiding officer. It has one month to decide to remove the President, which requires a 2/3rds vote to pass. Only the votes to remove the President shall be counted among those voting. If that motion passes, the removal is carried out instantly.

Should any member of the executive be accused of a crime while in office, they are subject to Article 68-1 of the Constitution, which allows them to be tried before The Court of Justice of the Republic. Under the same article, the Court of Justice of the Republic consists of 15 judges: 12 are parliamentarians, six from each House of Parliament, and three are judges from the highest court in France, the Court of Cassation, one of whom will preside over the case.

Germany

Powers of executive removal are solely contained within the Bundestag. These powers are guaranteed by the German Basic Law, which is enforced through the operational rules of the Bundestag. Germany's executive is split between two offices, the office of the Federal Chancellor (Bundeskanzler/in) and the Federal President (Bundespraesident/in). Both are capable of being removed from office, but only the Bundestag may remove the Chancellor.(Fish and Kroenig 2009, 262)

Articles 67 and 68 of the Basic Law cover executive removal. Article 67 states that 25 per cent of the membership of the Bundestag is required to trigger a motion of no confidence; however, this also requires that the members tabling the motion also have a replacement candidate for Chancellor at the same time as they bring forward the motion. This procedure is known as a constructive vote of no confidence. This is reinforced through Bundestag Rule 97(1), which stipulates the requirements to table the motion. The obverse of this procedure is Article 68(1) of the Basic Law, which allows the executive to move a motion of confidence; however, it does not have the requirement of declaring a potential successor Chancellor candidate as the current Chancellor would remain in place if victorious.

Should the Bundestag remove an executive, the Bundestag has 21 days to elect a new Chancellor to nominate to the Federal President. This process is conducted under Article 63 of the Basic Law. This is also the same procedure that is used after a vote of no confidence. Should that time pass, with no new chancellor elected, the Federal President can call a new election. The same process applies to the executive should they lose a motion of confidence in themselves. Should the Bundestag not be dissolved after a successful vote of no confidence, Article 81(1) of the Basic Law allows the Federal President, after a request from the Federal Government and, with the agreement of the Bundesrat, to declare a legislative emergency which allows the Government to bypass the Bundestag if it rejects any piece of legislation. This system is designed to allow for a dissolution of the Bundestag should the membership fail to provide a constitutionally appropriate reason for dissolution. This is usually found in the Chancellor's failure to pass important legislation.

The role of the Federal President of Germany is more than a ceremonial position. This office appoints judges, civil servants, and other federal officials and acts as an arbiter to the request for the dissolution of the Bundestag. Article 61 of the Basic Law grants either chamber the right to initiate impeachment proceedings against the Federal President. The motion itself must be supported by 25 per cent of the membership of the Bundestag or 25 per cent of the vote of the Bundesrat before being debated in the

initiating chamber. Should the measure receive a two-thirds vote in favour of impeachment, the motion is then moved to the Federal Constitutional Court for trial. Should the President be found guilty, they have the right to remove the President from office; therefore, each chamber of the German Parliament has the independent right to initiate removal procedures in the executive, with the Federal Court getting the final right to convict or acquit.

New Zealand

The rules of executive removal in New Zealand are not placed in the operational documents of the House of Representatives but in the corresponding document, *Parliamentary Practice in New Zealand* (2017). Only the executive has guaranteed rights to initiate removal procedures, with the non-executive members of the legislature relying on customary expectations to have opportunities throughout the legislative year to remove the executive. (Fish and Kroenig 2009, 485)

Executive removal in New Zealand is encapsulated in the concept that confidence is the responsibility of the executive to maintain; therefore, the executive is at constant risk of losing the confidence of the House and must continue to prove that it retains the confidence of the House. This is described as a negative or "circular" concept where the executive must maintain confidence by winning votes on important pieces of legislation. Should the executive lose or was likely to lose votes on pivotal policy initiatives, that would indicate that the executive had already lost the confidence of the House, and they should resign on their own accord. Like other Westminster systems, an executive losing a confidence vote does not mean its immediate removal from office. Should an executive lose a confidence vote, there are several avenues available to them, such as the renegotiation of political coalitions or resignation to trigger a new election, but these choices are left to the executive alone. (McGee 2017, 127–28).

Unlike the other Westminster-style legislature in this thesis, non-executive members have no direct procedural function to initiate removal procedures (McGee 2017, 129). Instead, removal motions are always amended to executive-led motions or legislation currently under debate (McGee 2017). Some are traditionally treated as de facto confidence votes, such as the annual debate on the executive's legislative agenda and legislation related to executive spending plans. Again, this operates under the negative principle that the executive has the confidence of the House until it does not (McGee 2017, 130).

The executive also has the explicit capacity to question confidence in itself through legislation or an independent motion on the subject (McGee 2017, 131). This represents the only outright example of an organ of the House that can unilaterally create the conditions for executive removal. No explicit limit exists on how often the executive can use this customary procedure. They are only bound by convention.

The opposition has no explicit procedure allowing it to create the conditions to remove the executive, and no statutes or standing orders force an executive that lost a confidence vote to leave office. It is theorised that only the Governor-General can unilaterally remove the executive should they choose not to leave of their own accord following a vote of no confidence (McGee 2017, 127)

United Kingdom

As with New Zealand, the United Kingdom does not have a formal procedure to forcibly remove the executive from office should they lose a confidence vote. The conventions of the UK Parliament grant the House of Commons the right to challenge confidence in the executive, leaving the House of Lords with no formal or informal role in the process. (Fish and Kroenig 2009, 714)

Despite popular belief, the executive losing a motion of no confidence does not automatically force the removal of the executive in the UK Parliament. There is no operational rule that states the executive must vacate their office if they lose a confidence motion in the Commons. As with other Westminster-style parliaments, the executive is in sole control of the initiation and timing of confidence motions, with no commensurate enforceable measure available to the opposition should they wish to initiate a confidence debate.

This long-held convention exists because of the personal prerogative the Monarch uses when selecting the Prime Minister who serves at their pleasure (Hicks 2012; Wang 1934). That prerogative means the Prime Minister can only be unilaterally dismissed at any time by the monarch, but since the British monarch customarily does not act without the advice of their Prime Minister, it is highly unlikely that the monarch would unilaterally remove the executive, which means there is no direct way to force out an executive who loses a confidence motion in the House of Commons.

For executive removal conventions to be triggered, a confidence motion must be tabled; while any member of the Commons can table a confidence motion, convention only grants the leader of the largest opposition party, also known as the Leader of the Opposition, the power to table the motion with any hope that the Government will permit time for the debate (U. K. Parliament 2019, pt. 18.44).

Under Commons rules, the executive controls the timetable of the House, but convention states that they will "always accede to the demand from the Leader of the Opposition to allot a day for the discussion of a motion tabled by the official Opposition which, in the Government's view, would have the effect of testing the confidence of the House.", however; it goes on to state that, "In allotting a day for this purpose, the Government is entitled to have regard to the exigencies of its own business, but a reasonably early day is invariably found." (U. K. Parliament 2019). In addition to direct confidence motions, legislative losses on the King's Speech, finance bills, or other bills designated as important by the executive could also be considered de facto confidence motions (Kelly 2013; Winetrobe and Seaton 1995).

United States of America

The rules of executive removal are completely under the control of Congress. The Constitution vests the rules of executive removal in the legislature in the form of impeachment, which is decided by both the House of Representatives and the Senate, which acts as a quasi-judicial court. The procedures governing impeachment procedures of both Houses are conventional. (Fish and Kroenig 2009, 717)

The impeachment process, which can trace its origins to the English parliament (Congress 2021; Hamilton, Madison, and Jay 1787), is more customary than other congressional procedures, with its past precedent being detailed in Chapter 53 of Jefferson's Manual and Section 170 of the Senate Manual. In addition to the President of the United States, any senior federal employee, such as judges, may be impeached.

Article 1 of the Constitution places the power of impeachment in the House of Representatives. Any member of the House of Representatives can initiate impeachment procedures by tabling articles of impeachment, while members of the public are limited to requesting investigations into possible impeachable offences. There is no limit or maximum to the number of articles levelled against any member of the executive. Once the articles are placed on the agenda, the debate takes place on the merits of the articles, and a vote is conducted on each article of impeachment. Articles of impeachment only require a simple majority to be approved. Any article that is voted against falls and the executive is exonerated of those charges. Any successful article is then passed to the Senate for trial.

The Senate acts as the court for the trial of anyone that the House of Representatives has impeached. For cases involving the President of the United States, The Chief Justice of the Supreme Court presides over the session, with the Senate acting as the jury. They first hear from a group of legislators representing the House of Representatives and acting as a prosecutor for the impeachment. The executive is allowed their own representation, and this person is typically a lawyer hired by the executive. The Senate determines the procedure for considering the evidence and hearing witnesses during the trial in each instance of an impeachment trial (Trautman et al. 2019). These customary rules lie in the manuals of expected customary practice, Jefferson's Manual and the Senate Manual.

Once representations are completed, the jury begins their public deliberations and votes on the articles under consideration. A two-thirds vote is required to convict the executive on any article of impeachment. Should the executive be convicted, a second vote is taken, which has the capacity to ban the person from holding public office for the rest of their life.

Analysis

The six legislatures in this study all have powers conferred upon them to either initiate removal procedures or independently carry out the removal process, either through constitutional authority or conventional expectations. Of the six legislatures covered by this study, Brazil, France, Germany, and the United Kingdom have all impeached or removed Presidents or Prime Ministers from office or expected the executive to leave office after they lost a confidence vote. The most recent was the impeachment and removal of Brazilian President Dilma Rousseff in 2016, while President Donald J. Trump was twice impeached in 2020 and 2021.

Despite these powerful tools, most of the legislatures in this study have rarely, if ever, used their removal powers. The US Senate, for example, has held impeachment trials for three presidents four times[ii] , but the legislature has never found the political will to forcibly remove a President from office in its 300+ year history. The Bundestag has removed three Chancellors, but two of the removals were instigated by the executive to trigger elections, and the New Zealand House of Representatives has also never used their removal powers against the executive in nearly a century.

In this study, there is a clear distinction between the removal procedures of active and reactive legislatures. The two active legislatures have clear procedures to investigate claims related to executive removal and have the right and rules to remove the executive without any interference from the executive, who is relegated to a secondary player in the proceedings. The main difference between the two legislatures is the level of detail in the constitutional rules that allow the legislature to pursue removal.

In contrast, the reactive legislatures form an interesting variation on a theme. The German and French parliaments have very clear constitutional rules regarding the removal of the executive through confidence motions and impeachments. France, with its dual-executive, is particularly clear on how either the President or Prime Minister is to be removed from office should the legislature decide, and while the two Westminster-style parliaments are unsurprisingly similar in their removal processes with variations in the initiation of the process.

Unlike active legislatures, the executive in reactive legislatures plays the leading role in determining if the procedure is to be activated. In every reactive legislature studied, the executive has a greater ability to trigger their own legislative removal process than the rest of the legislature, or in some cases, no independent mechanism to trigger executive removal.

The key difference between active and reactive legislatures is the role of the executive in the removal process. The executive in active legislatures is forced to use its soft power to cajole legislative allies

into siding with them, whereas, in reactive legislatures, their rules allow the executive to activate their own removal procedures as a tool against an intransigent legislature, such as the usage of Article 49.3 in France, which shows a clear distinction between who the operational rules benefit in both types of legislatures. These differences are important in understanding the differences between legislatures when comparing them.

Active Legislatures

The rules of the active legislatures represent a clear path to executive removal that can only be operated by the legislature via constitutional and legislative rules that indicate what happens if initiated. Brazilian constitutional rules allow for little ambiguity in the management of these rules, and legislative procedures of both Houses do not allow for any variation on this theme. The rules are clear and concise, benefiting the legislature.

The powers of executive removal in the United States also allow for little ambiguity regarding the management of removal procedures dictating the role of both Houses. For both executives, Impeachment is a serious political charge for which they have no formal way to stop the process once it commences.

The executive in both countries must rely on the coalitions that they create in both Houses of the legislature. Should the executive have an ally in the office of President of the Camara or Speaker of the House, the impeachment process can be slowed down as that person is a pivotal actor in the process. For example, a rejection of an application by the President of the Camara could also indicate that they believe there are not enough votes in the Camara to overturn the decision protecting the executive.

Since the impeachment process is more customary than proscribed in the US, there are more opportunities for legislative leadership to advance or halt the progress of an impeachment process. As with all other motions and legislation, anything tabled in the House of Representatives must be sent to the corresponding committee. Jefferson's Manual dictates all articles of impeachment must be transmitted to the House Judiciary Committee (Wickham 2013, pt. 323). Only after the committee adopts the articles can any debate begin; therefore, should the committee not wish to consider any articles of impeachment, the motions are null until activated.

The Brazilian Congress has impeached and removed two presidents since the end of the military dictatorship and the re-introduction of democracy. The most recent removal example was President Dilma Rousseff, but former President Jair Bolsonaro also had threats of impeachment. Unlike President Rouseff, he found protection from impeachment from within the legislature.

President Rousseff fell afoul of the Brazilian Congress just after the beginning of her second term in 2014. A corruption investigation colloquially called Lava Jato (Watts 2017) exposed a massive money-laundering scheme involving the state-owned oil company Petrobras where company funds were channelled to political parties, including Roussef's Partido dos Trabalhadores (Worker's Party) with the main charge against President Rousseff being that she was aware of the corruption and therefore guilty of a "crime of responsibility (Rattinger 2017). After 37 attempts, the President of the Camara and staunch opponent of Rousseff, Eduardo Cunha, accepted the impeachment application and began the procedures that would eventually see her removed from office (Avritzer 2017).

The impeachment of Rousseff came at a time of political instability in Brazil, which placed public opinion against her, her party and anyone linked with Lava Jato. Just two years later, Eduardo Cunha would himself be removed from office by order of the Supreme Court for obstructing the investigation into Lava Jato and for accusations of intimidating a member of the Brazilian Congress (Nunes and Melo

2017). He was sentenced to 15 years in prison in 2022 (Gallas 2017). The impeachment that Cunha triggered has also stirred a debate regarding the viability of impeachment as a form of executive removal in active legislatures.

Societies that believe in the due process of the law have a potential conflict when it comes to the quasi-judicial nature of a legislative chamber acting as a court. Even though this court only acts when adjudicating the removal of an executive (Perlingeiro 2016, 332), the executive is expected to have the same rights as any other person under trial, which includes the right to a fair and impartial jury. In this way, Brazil and the United States constitutions have created unique legal arenas in which impeachments can be heard but not appealed (Perlingeiro 2016, 334,339).

The Brazilian constitution specifically mandates that members of the Brazilian Congress operate as independent actors, but political realities mean that legislators may act in the best interests of the country or the best interests of their political party. Furthermore, there is an issue with the lack of legal experience when trying a case of impeachment in the Senado, as there is no requirement upon Brazilian legislators to have specialised training in the subject (Perlingeiro 2016, 339). These matters have led to calls to completely rework the theory of impeachment in Brazil and the United States, as the process could be construed as a violation of a person's civil rights (Perlingeiro 2016).

Impeachment applications were also laid against former President Jair Bolsonaro for his handling of the COVID-19 pandemic and vaccine purchases. These claims could have represented both a crime of responsibility and a criminal offence leading to an investigation (Ostrovsky and Lyons 2021). In July 2021, a bipartisan coalition of politicians and campaigners applied to the Camara dos Deputados to begin impeachment procedures against President Bolsonaro, but the President of the Camara and ally of President Bolsonaro, Arthur Lira, has publicly stated he would not proceed with any impeachment applications (Brito 2021).

Unlike Brazil, the American impeachment process has always been an amorphous subject because the American constitution does not have detailed criteria for removal. The removal rules were originally conceived to allow for the executive to be removed from office for actions that broke the public trust so greatly that they could no longer be trusted to govern with honour. Hamilton (1787) noted that the Senate, not the Supreme Court, would be the best arena in which to judge the merit of the accusations of the House of Representatives as the Senate could act as an independent jury compared with the justices of the court at the time, but there has been a move from criminality as the driver for removal to political gain.

The first president to be impeached but not removed was Andrew Johnson. At the end of the American Civil War, Congress initiated the reconstruction, which intended to rebuild the American South and include formerly enslaved people as part of the new society. This angered those in the South who were still amenable to slavery and white supremacy. With the assassination of President Lincoln in 1865, Andrew Johnson took control of the reconstruction programme as President, but as a suspected white supremacist himself, he was seen to be holding the process back (Benedict 1973; S. M. Griffin 2019, 428, 430). Congress thought that this apparent obstruction constituted an impeachable offence, but legislators defended Johnson by stating that he had not committed any crimes, which meant he did not commit an impeachable offence. It was not until Johnson suspended Secretary of War Edwin Stanton, in violation of the Tenure of Office Act, which required the President to gain Senate approval for any cabinet office removal or replacement, that his opponents were able to convince enough legislators to vote against him in 1868 (Whittington 2000). The vote against Johnson failed by just one vote, and he was able to remain president until 1869.

104 years later, Richard Nixon, the 37th President of the United States, found himself embroiled in a criminal investigation relating to a break-in at the Democratic National Committee headquarters located at the Watergate Complex in Washington, DC. It was later discovered that those who perpetrated the break-in were directly connected with the Republican Committee to re-elect the President, which triggered both a Senate and House investigation into the matter. That investigation found that the White House attempted to use executive agencies to cover up and obstruct the investigation. These investigations resulted in articles of impeachment, which, if successful, would mean Richard Nixon would be the first President to be removed by the Senate.

In this case, congressional parties worked together to find the most partisan way to investigate the charges as the Democrats controlled the House of Representatives, and it was best to avoid the impeachment looking like a partisan activity (S. M. Griffin 2019, 433). To facilitate bipartisanship, the House Judiciary Committee created an investigatory committee headed by a well-respected Republican congressman, John Doar, and staffed by people who were known to be non-partisan experts in their field. The committee took evidence from both parties in private. Notably, these sessions had no leaks to the press (Altshuler 2000). The special investigators were also selected on their merits and non-partisanship. Archibald Cox and later Leon Jaworski were both highly regarded lawyers, with Jaworsky being a former President of the American Bar Association.

These attempts at bipartisanship were important in securing trust in the system, but congressional Republicans could still halt the process and prevent the House from even considering the charges. This barrier finally fell upon the emergence of a recording of Richard Nixon in the Oval Office of the White House directly instructing the CIA to shut down the FBI investigation into Watergate (S. M. Griffin 2019, 435). The “Smoking Gun” tape explicitly linked Richard Nixon to criminality in ordering the obstruction of a federal investigation. After the emergence of the smoking gun, the articles of impeachment were agreed upon by the House Judiciary Committee.

The articles of impeachment against Nixon consisted of three charges: violation of his oath of office by ordering the Watergate break-in and obstruction of justice by the executive in the investigation; abuse of power by using executive agencies to violate the constitutional rights of his political opponents by personally, and through surrogates, gaining access to their income tax information from the Internal Revenue Service; having the Federal Bureau of Investigation and Secret Service surveil political opponents; having the Central Intelligence Agency spy on political opponents interfering with federal and congressional investigations; and ignoring congressional subpoenas (Trautman et al. 2019). These charges were agreed upon by the House Judiciary Committee (Granberg 1980), but despite the vote of the House Judiciary Committee, the articles of impeachment were never debated on the floor of the House of Representatives because Nixon resigned from office on 9 August 1974 after members of his party told him he needed to resign for the good of the country (Rich 1974).

The impeachment of President William Jefferson Clinton was the first impeachment passed by the House of Representatives and Senate trial since the trial of President Andrew Johnson. In this case, President Clinton was accused of perjuring himself in two federal investigations regarding women who had accused him of sexual harassment or with whom he had a sexual relationship. His smoking gun moment was when he lied under oath regarding a sexual relationship with a White House intern. The lies were also considered an obstruction, with which he was also charged (House of Representatives 1998).

In this case, the House of Representatives was again controlled by his political opponents, the Republicans, who failed to create a bipartisan environment under which to investigate the evidence and charges against the President. Instead of creating a non-partisan investigatory committee, the

House Judiciary Committee, under the leadership of Representative Henry Hyde, opted to create two committees divided on party lines. These committees did not cooperate, and leaks from evidence gathered from the committee were frequent (Altshuler 2000, 748). The House Judiciary Committee also veered from bipartisanship by nominating Ken Starr as its chief investigator. Unlike Cox and Jarowski, Ken Starr had a long history of opposition to President Clinton and personal involvement with the sexual harassment case; additionally, Starr also considered running as a Republican Senate candidate less than two years before he was appointed by the House Judiciary Committee (Altshuler 2000, 750). This brought his neutrality into serious question. There were also issues with the report that Starr produced. The bipartisan staff investigating the Nixon impeachment drafted a document that clearly explained what they considered the limit for an impeachable offence, but the Starr report had nothing of the sort. This means it lacked the core methodology behind its recommendations for impeachment, exposing the decision to accusations of partiality (S. M. Griffin 2019, 437).

Despite the various issues with the implementation of the impeachment process, the House of Representatives passed two articles of impeachment—one Article on lying to a grand jury and the second on obstruction of justice. With the passage of these articles, the Senate was to sit as a court of impeachment for the first time in over a century. The Republican party also controlled the Senate. To get the two-thirds required for removal, the Republicans required Democrats to vote for removal as well.

As with the process in the House of Representatives, the Republicans rejected any attempt at setting up a bipartisan procedure for the trial. Instead, they fought to get witness testimony on the floor of the House from one of the women involved in the federal case (Tiefer 1999). To agree on the final procedure for the impeachment trial, Senators met informally in the old Senate chambers in an off-the-record session (Tiefer 1999, 414). The partisan nature of the process in the House affected the public opinion of President Clinton. Riding on that public opinion, the Democrats attempted to move a motion in the Senate to end the impeachment trial altogether. This measure lost 55-44 but served as an early indicator that President Clinton would not be removed by the body (S. M. Griffin 2019, 438; Tiefer 1999, 415). Clinton survived the impeachment vote by a vote of 50-50 on the first charge of perjury and 45-55 (United States Senate 1999) on the second charge of obstruction of justice.

Up to this point, there has been a clear indicator that legislators would support impeachment motions with clear evidence of criminality. In the case of Nixon, the criminal element gave his supporters enough cover to be ready to vote him out of office, but he removed himself. This unwritten requirement is not what Hamilton intended for the impeachment process. The criminality requirement means that other non-criminal but equally serious actions could go unanswered. The example has been given of a theoretical President who, within the rules of their office, requires a religious test for employment in the Federal Government. This is not a crime, but it would be an impeachable offence (S. M. Griffin 2019, 422).

This is where the Johnson and Clinton impeachment attempts failed, as they were both seen to be political (Altshuler 2000; S. M. Griffin 2019). Noteworthy is that during the Clinton impeachment hearing, there was a split between the Senators who wanted to bring the White House intern to the floor of the Senate to testify. Senators who identified as senior or moderate members of the Republican party prevented the motion from passing, where junior Republican senators voted to hear testimony. A divide had formed between those who wanted the bar for impeachment to be tied to criminality and those who wanted to tie it to non-criminal issues. These matters changed during the Presidency of Donald Trump.

The case of Donald Trump, infamously the first American President to be impeached twice, presents a potential paradigm shift in American impeachment politics. Whereas the other impeachments depended on clear criminality, Trump's impeachment relied on hyper-partisanship. The charges for the first impeachment stem from a phone call between the President of Ukraine, Volodymyr Zelenskyy and President Donald Trump, where he intimated to the Ukrainian President that he should find damning evidence against the son of his presumed opponent in the upcoming 2020 presidential election in exchange for military support. The details of that call were leaked by Lt. Col. Alexander Vindman, who was present during the call (Goldstein 2020, 489). This information represented a breach of public trust, and the Democrat-controlled House of Representatives impeached Trump, but the Republican-controlled Senate failed to remove him. The Senate worked hard to protect the GOP President from further evidence being heard in the trial and unilaterally put forward procedures to speed up the impeachment trial (Trautman 2020).

A year after the 2020 impeachment trial, Trump was again impeached by the House of Representatives following an insurrection at the US Capitol during the certification process of President-elect Joeseph R. Biden Jr. Following on from a rally where Trump and his associates lied to their supporters spouting unfounded claims of voter fraud, a mob descended on Congress, breaking through the perimeter barriers, breaking into the building with the clear aim of forcing the legislators and Vice-President of the United States to install Donald Trump as President of the United States. There were several fatalities from Capitol Police and one person associated with the insurrection (States 2022, sec. 204).

In the following days, the House of Representatives laid a singular article of impeachment against Trump regarding the insurrection, which eventually moved to the Senate. Even though the Democrats controlled the Senate, and Trump was no longer President, the Democratic leadership still found it important to hold him to account for the events of January 6th due to the 2/3rds removal requirement. 10 Republican senators voted to remove Trump, but a majority of Republican senators voted against impeachment on the grounds that he was no longer President. (Trautman 2022). The final vote was ten short of finding Trump guilty of inciting an insurrection against the United States Government, with 57 senators approving the motion and 43 voting against.

This failure to remove Donald Trump from office marked the clearest change from previous impeachments. Where there was clear evidence of corruption from Trump via a transcript of the Ukrainian call, the Republicans ignored the evidence and unquestioningly followed the word and demands of Trump, decrying the pivotal piece of evidence (McKee, Evans, and Clark 2022, 37). Only one Republican senator voted against Trump, but media reports state that nearly 30 Republican senators wanted to vote for impeachment but did not do so because the votes were public. Senator Lamar Alexander even publicly noted that he thought Trump was guilty but still voted to acquit him (McKee, Evans, and Clark 2022).

Comparative Discussion: Active Legislatures

In both legislatures, rules and conventions benefit the legislature, where the executive is forced to foster a congressional environment to survive impeachment, perhaps through the appointment of patronage appointments to political allies (Praça, Odilla, and Guedes-Neto 2022). The executive's chances are also affected by exogenous factors such as popularity, which, if too low, makes securing legislative support even harder. Despite the variations in the usage of these rules in both countries, the legislature retains the sole right to initiate and carry out removal procedures. These rules both remove the executive from office and can ban them from standing from office again. They have no appeal process; the decision is final. Therefore, the executive must rely on the goodwill of the legislature to survive the ordeal.

In the case of President Rousseff, Eduardo Cunha had no reason to protect President Rousseff against impeachment, but it has been alleged that Cunha told Rousseff that he would drop the impeachment procedures in exchange for a halt to an investigation into himself by the Camara ethics committee (Avritzer 2017, 355). President Bolsonaro, on the other hand, had to keep his coalition happy because the votes of the centrist block of members could override the protections of Arthur Lira. These examples also show that congressional alliances are not permanent, and their breakdown in the past has forced the removal of Presidents (Rattinger 2017).

In the United States, the tradition of executive removal in Congress is extremely different to the tradition of the Brazilian Congress. Presidents are seemingly under constant threat of impeachment, but no Senate is willing to convict. Until recently, this has been attributed to a conventional threshold for blatant criminality, as seen with the aborted Nixon removal, but this American convention may be over as recent impeachments have not resulted in removal despite similar Nixonian indicators of criminality.

The United States Congress has impeached 20 people in the history of the country, three of whom were Presidents. Despite that number, the Senate has never seen fit to convict and remove a President. Contrast that number with the Brazilian Congress, which has impeached a quarter of its Presidents since 1986. This difference may be rooted in the histories of the two countries. Where the United States has been a stable democratic country for over 300 years, Brazil has seen societal, political and legislative upheaval at least once a century since its inception in 1822, going from empire to presidential republic to dictatorship and liberal democracy. The most recent political change, from dictatorship to democracy, happened in the 1980s, well within the living memory of current legislators and voters. Perhaps there is an almost civic duty to remove a dangerous or corrupt President.

Reactive Legislatures

Removing the executive is a key defining feature of reactive legislatures, with confidence motions central to Linz's definitions of governance. In Germany, for example, both the executive and the legislature have the right to initiate procedures on executive removal against both the Federal President and the Chancellor, but the legislature has several barriers to initiating the procedure, including finding 25 per cent of the Bundestag to support the motion and, most importantly, finding a person to stand as the new chancellor. The first of these requirements, the 25 per cent threshold, may seem like a low number, but in the last twenty years, no single party has won more than 41 per cent of the seats in the Bundestag (Carr 2021), which makes getting to 25 per cent a much harder challenge. In essence, the rules force the opposition to create a new coalition in the Bundestag just to move the motion.

The second challenge for the legislature is to find a person to lead that coalition. The strongest and largest group will likely have one of the most popular political leaders in the country. The new Chancellor candidate would have to command similar levels of popular and legislative support as any negotiations to move a motion of no confidence would invariably include some informal conversations about the nature of the next executive's agenda. The main risk of tabling a motion of no confidence is not that the measure is successful but that the Bundestag rejects the new Chancellor candidate, which means any party that opts for a motion of no confidence is also opting for a potential new election.

The executive has fewer obstacles to executive removal as the rules of the Bundestag, and the constitution simply states the executive needs to table a motion of confidence in itself. From this point, the options are much clearer for the executive. New elections are held if the executive loses a confidence vote and a new executive cannot be formed within 21 days. The risks are far fewer to the executive as it has a far more direct path towards accomplishing its goals. This has been proven

throughout the history of the Bundestag, as the executive has initiated the majority of successful executive removals.

Germany is unique amongst the reactive legislatures in this thesis as it provides the most avenues for the legislature to oppose motions of confidence. The matters regarding dissolution will be touched upon in this chapter but covered in greater detail in chapter eight. The executive is constrained because convention states they cannot trigger a confidence motion in themselves to dissolve the Bundestag for opportunistic reasons such as good poll numbers or bad election results.

That convention also states that a Chancellor may only seek dissolution if they believe that they can no longer win votes in the chamber; in other words, they cannot create a coalition to govern. This is known as materielle Auflösunglage (Heckötter and Spielmann 2006). The Federal President of Germany is also conventionally required to hold any request for dissolution to three tests that prove that the Chancellor is incapable of governing before they agree to dissolution (Heckötter and Spielmann 2006, 10). This is the case because it is possible for the German Chancellor to resign at any time. This would also trigger a dissolution event should the Bundestag not be able to elect a new Chancellor within the constitutional time limits.

The Bundestag invoked the first usage of the confidence procedures post World War Two to remove Chancellor Willy Brandt. Chancellor Brandt's Social Democrat Party (SDP) did not emerge as the largest party in the Bundestag after the 1969 elections, but he was able to form a coalition with the Free Democratic Party (FDP) to govern, but defections in the early 1970's all but eliminated his majority (Döring and Hönnige 2006, 14). In 1972, this created an opportunity for the opposition Christian Democratic Union (CDU) to table a motion of no confidence in Brandt to replace him with Rainier Barzel, leader of the CDU. This measure failed, but just a few months later, in September 1972, after Brandt's majority had fully evaporated, he asked for a confidence vote in himself, which he lost. Despite losing the election, Brandt secured victory in the subsequent November election to recreate his original coalition. In this case, there were no constitutional questions about the legitimacy of the request to dissolve the Bundestag. Brandt had lost his majority and his ability to win votes in the chamber.

1982 and 1983 saw the usage of both the constructive vote of no confidence and the confidence vote procedures. In October 1982, the FDP-SDP coalition, led by Helmut Schmidt, had suffered several resignations due to planned economic reforms, which created an opportunity for the CDU to craft a new coalition between the CDU, CSU (Christian Social Union) and the FDP. To assume the position of chancellor, the CDU tabled a motion of no confidence in Chancellor Schmidt. That motion was successful, and Schmidt left office; however, Kohl publicly stated that he desired a new election within a year of his election in the Bundestag, but the Basic Law guarantees the length of parliamentary terms (Döring and Hönnige 2006, 15). The only way to secure an early election would be to dissolve the Bundestag, and the only way to dissolve the Bundestag requires a confidence vote in the current Chancellor to fail. Of course, since Kohl had just been elected Chancellor by a majority of the Bundestag, he had majority support in the House to pass his important legislation. This meant that he would fall afoul of the standing constitutional conventions regarding dissolution; however, this did not prevent the governing coalition from tabling a motion of confidence in themselves. They intentionally lost this vote to trigger a vote in 1983. Several members of Parliament challenged this move as an infringement upon their constitutional rights as Kohl commanded a stable majority (Döring and Hönnige 2006; Heckötter and Spielmann 2006, 8). In this case, the Constitutional Court found that coalition collapse was highly likely as Kohl's 1982 coalition was set under the pretence of an election within the year (Heckötter and Spielmann 2006, 11–12).

The most recent usage of the confidence motions in the Bundestag is considered, by some, to be a 'coup d'état' (Reutter 2006) as the conditions for dissolution of the Bundestag were more constitutionally dubious than the 1983 case. In 2005, Chancellor Gerhard Schroder's SPD suffered local election losses in Germany's largest Land, North Rhine-Westphalia, where the party had won just four years earlier. With only a year left in his term, he declared that within an hour of the announcement of the local result, he would call for an early election (Döring and Hönnige 2006, 16). In a similar case to Helmut Kohl, Gerhard Schroder was not suffering from materielle Auflösunglage as he had not lost a single vote on pivotal legislative goals, and he intended to stand for re-election, which means he did not think he had lost the confidence of the Bundestag. Finally, he also intimated that his party's losses in North Rhine-Westphalia constituted a powerful enough defeat, similar to a loss in the Bundestag (Heckötter and Spielmann 2006). Despite having a stable Bundestag, the Federal President agreed to dissolution after Schroder lost his confidence vote.

This result was again challenged in the Constitutional Court by members of the Bundestag, who claimed that their constitutional rights were being infringed as they were entitled to finish out the remainder of their parliamentary term. The initiation of confidence procedures and subsequent dissolution of the Bundestag meant their terms would be artificially ended. While this is acceptable if a Chancellor is removed from office using the normal rules and conventions, the accusers asserted that the confidence vote was artificial to create the best opportunity for Schroder (Apel, Körber, and Wihl 2005, 1245). The Constitutional Court disagreed, stating that the procedures were followed correctly and any political agreements were not for them to consider (Heckötter and Spielmann 2006, 12–13).

Confidence protocols in Germany grant many avenues to the legislature to oppose its implementation, but the organs of the state have, so far, supported the executive/governing coalition when they desire a confidence vote that leads to dissolution. While there are other options for the legislature, such as electing a new Chancellor to prevent the current one from requesting dissolution or granting more powers to the Bundestag to dissolve itself (Reutter 2006), the current constitutional framework provides an advantage to the executive.

In France, the powers of executive removal in the French Parliament are, on paper, balanced between the legislature and the executive, accommodating its semi-presidential system with the split executive between the office of the President of the Republic and the office of the Prime Minister.

Removal of the Prime Minister can be achieved through several legislative avenues, including the legislature voting down their legislative agenda speech and any piece of legislation the executive places as a matter of confidence. The members of the Assemblée are the only legislators who can remove the Prime Minister, which, if successful, requires the immediate resignation of the Prime Minister along with their entire cabinet. On the other hand, the President of the Republic has much stronger constitutional protections from removal, with the two-thirds barrier to initiation and removal.

In the case of the Prime Minister, the constitutional and operational rules benefit the legislature; however, in the case of the President of the Republic, it is the opposite. Information from interviews from both Anne Marquant of the Sénat Finance Committee and Romain Godet of the Sénat Constitution Committee said the powers of impeachment are "very theoretical" and may be "unrealistic". This may explain why there have been 24 Prime Ministers since 1958 but only nine Presidents (Elysee 2022; Gouvernement.fr 2022).

France presents the opposite confidence environment to Germany. Since 1958, there has only been one successful motion of no confidence in the Assemblée Nationale. In October 1962, members of the Assemblée voted to remove Prime Minister Georges Pompidou in opposition to measures that would bring universal suffrage to France. President Charles du Gaulle, who introduced these measures, attempted to bring universal suffrage to France via a referendum under Article 12 of the constitution (Jakubiak 2018, 38). These measures failed, and the attempt to sidestep the legislature led to the loss of parliamentary support for De Gaulle's party, which already lacked a parliamentary majority. That lack of majority allowed legislators opposed to universal suffrage to table a motion of no confidence in the Prime Minister.

280 Deputies voted to initiate the debate on removal; as that number far exceeded the 58 required to initiate the debate, de Gaulle dissolved the Assemblée and held new elections (République Française 2022). His party won a majority, and he returned Pompidou to office as Prime Minister. This marked a serious change in both French legislative norms and practices. Before the Fifth Republic's creation, the legislature's operational rules did not benefit the executive. Both the Third and Fourth Republics allowed the legislature to remove the executive for legal and political reasons (Jakubiak 2018, 34).

Even though the Fourth Republic abolished the Senát's ability to remove the Prime Minister, the Assemblée Nationale was still able to obstruct the executive's agenda. The creation of the Fifth Republic gave the executive the unilateral right to dissolve the legislature, which, in effect, neutered the power of the legislature to obstruct the executive's agenda (Jakubiak 2018, 35). Despite the change in power dynamics between the legislature and the executive, Prime Ministers were still expected to have a ceremonial confidence vote at the beginning of their term in office to allow for the approbation of the legislature. In Pompidou's third year, he decided not to continue with this tradition. This was also the year that his party did not have a majority in the Assemblée (Jakubiak 2018; Nicolas 2009). Here, the legislative convention collapsed to political realities as allowing the confidence motion could trigger France's first and only forced removal.

In this instance, one portion of the constitutional rules overrode another. Unlike Germany, in the French legislative system, the President of the Republic can unilaterally dissolve the Assemblée Nationale at nearly any time.[5] This sweeping power neutralizes the ability of the legislature to operate these powers independently. This has also been shown in the number of removals, or attempts at removal, for both countries. Germany has five attempts at removal, two aborted attempts, one removal by legislative action and two from executive request. Compare this with France, which has seen an attempt at removal against every single Prime Minister bar one. Only three of those attempts have ever gone to a vote, and only one of those votes against Pierre Bérégovoy came close. Outside of those attempts, only Pompidou was ever forcibly removed from office (Jakubiak 2018).

This shows that the confidence procedure in France has been reduced to a protest motion against an executive who can, at any time, force legislators out of their positions and on the streets asking for the support of the people, whereas the confidence procedure in Germany is a legislative procedure that could lead to the actual removal of the executive.

The New Zealand House of Representatives and the Parliament of the United Kingdom both have the strongest protections for the executive against removal, with the defining feature of both countries being the lack of a direct procedural vehicle for executive removal. This means all parts of the removal process are under the control of the executive.

[5] Except in wartime or if the country is under siege.

David Wilson, Clerk of the House of Representatives and David Bagnall, Principal Clerk for Procedure of the House, both agreed in interviews that executive removal is exceedingly rare in New Zealand, with the last forced removal occurring in 1928. This is due to a heavy reliance on convention and the aforementioned negative concept of confidence, which requires the executive to continually prove it retains the confidence of the House through the passage of its legislation. Should the executive lose its ability to pass legislation, Bagnall references the Cabinet Manual, which directs the expectations of an executive who loses the House's confidence and the Governor-General's expectations. Unlike the United Kingdom, the expectations of the Governor-General are clear, but like the UK, they are not enforceable by Parliament (Cabinet Office 2017).

Removal of the executive by the UK Parliament is almost as rare as removal in the NZ House of Representatives. The most recent successful confidence motion in the House of Commons was in the Government of Prime Minister James Callaghan MP. His removal was the result of several factors, including a lack of a parliamentary majority and a polarising policy that divided his party, but the final decision to initiate removal procedures remained with him.

Callaghan became the Prime Minister in October 1976 after the resignation of Harold Wilson MP, but quickly lost his small parliamentary majority by 1977, which precipitated a confidence motion from the Conservative party under Margaret Thatcher MP, forcing his Government to form a pact with the Liberal Party to defeat the motion and stay in Government (Mitchell and Williamson 2022, 346). Forming this pact created tensions within Callaghan's Labour Party, who were habitually voting against the policy initiatives of their own leadership, including the main tenets of the Liberal-Labour Pact, devolution for Scotland and Wales (Mitchell and Williamson 2022, 345, 347).

The pact Callaghan signed with the Liberal Party only lasted until the middle of 1978, leading Callaghan to move a confidence motion against himself in December 1978. The Liberal Party and other opposition parties voted for the motion, but split votes between the opposition parties allowed Callaghan to survive the second motion in 12 months (UK Parliament 1978).

The third and final confidence motion against the Callaghan Government came after two national referendums on devolution in Scotland and Wales. The referendums would have introduced higher levels of self-government to both nations, but members of the Labour Party opposed the concept of devolution as a whole. During the passage of the bill, a Labour MP was successful in passing an amendment that required over 40% per cent of the voting population to vote for any referendum to be valid. Neither referendum met the requirement, but the Callaghan government was presented with a new strategy (Dewdney 1997; Mitchell and Williamson 2022, 347).

The 40 per cent amendment required the Government to table a motion in order for it to nullify the enacting legislation (U. Parliament 1978a, sec. 85(2), 1978b, sec. 80(2)). The Government was told it could table the legislation but instruct its members to vote against the motion. This would allow devolution to move forward in Scotland, where the measure passed but failed to meet the 40 per cent threshold (Mitchell and Williamson 2022, 352). The Government did not take up this deal and opted for a confidence debate tabled by the Conservative Party instead, which focused on both the handling of the referendum and other matters of government policy. In this case, the executive did not win the debate, losing by just one vote, and Callaghan called an early general election the next day (U. Parliament 1979).

This experience is interesting for a number of reasons; despite the final result, the Government still retained a large amount of control despite the lack of a majority. Throughout 1978, the Callaghan Government seriously considered unilaterally dissolving Parliament and calling an election. Dorey

(2016) writes that Prime Ministers remain the sole decision-maker in calling an election, which could result from one of five reasons from a traditional five-year term concluding to finding the best timing to create the best electoral result for their party (Dorey 2016, 96–97). He considered several factors to decide if the country would go to an election; the most important among these was the party's popularity (Dorey 2016, 101–2). He found that his party was lacking support in English constituencies. That reality, combined with mediocre opinion poll numbers, showed that any election would likely result in, at best, a hung parliament. If that were the case, he would have to work with the minority parties, of which he could not guarantee their agreement (Dorey 2016, 103).

These factors, amongst others, contributed to Callaghan's decision not to call an election in the autumn of 1978 (Sheppard 2013). Despite his difficulties in the House of Commons, he controlled his electoral future and if a confidence motion could be successful. Throughout that year, the Callaghan government made several deals with Liberal and Northern Irish parties to maintain his power. Only when he decided he was no longer willing to make deals did the final motion win.

Another interesting but short-lived feature of the UK Parliament was the Fixed-Term Parliaments Act. This gave the House of Commons increased powers to bring about an executive removal and greater control over the dissolution of the House, but with the repeal of that Act in 2022, the executive removal procedures are, once again, completely conventional like New Zealand The now-repealed Act represents an interesting case as the first large-scale piece of legislation to give the legislature some control of removal rights.

From its origins in the Conservative-Liberal Democrat coalition government, the Fixed-Term Parliament Act had two purposes. Explicitly, it was designed to constrain the powers of the executive to dissolve parliaments and trigger confidence motions in themselves, but the Act's implicit purpose was to provide a legal constraint on the coalition government that would make an early parliamentary election far more difficult to initiate (Blick 2016; Norton 2014, 2016).

This was deemed necessary as the historically majoritarian legislature normally has one party in full control of the operational rules of parliament, including executive removal procedures (Schleiter and Belu 2016). The creation of the first non-wartime executive coalition meant that the UK was briefly a proportional legislature that required more negotiation to table and pass policy initiatives (Schleiter and Belu 2016, 38). This Act solidified specific legal pathways that would dissolve the legislature when an executive lost the confidence of the House or the House desired an early election. Before the Act, the executive confirmed that there was no impetus upon the executive to dissolve the House or trigger an election if they lost a confidence motion (Blick 2016, 26). The Act removed the importance of implied convention that some considered to have the same constitutional weight as law (Norton 2016, 4), which brought concern from members of the UK Parliament during the passage of the bill and moves to overturn the legislation started as early as 2014 (Norton 2016).

The main concern about the Act is that it constrained the UK's unwritten constitutional system. Some believe the main feature of Britain's constitutional arrangements is its "flexibility"(Craig 2018, 504; Schleiter and Belu 2016, 42). This flexibility allows the legislature to make changes to constitutional Acts with a simple majority vote of both houses and utilise conventions when necessary. Another concern was that the Act itself could be undone due to the remaining flexibility of the system, which some saw as the inevitable outcome of the FTPA (Schleiter and Belu 2016). Between 2015 and 2019, the Act was invoked twice.

The 2015 General Election was the first election in modern British history triggered by statute and not an executive decision (UK Parliament 2011). The second usage of the Act occurred in 2017 when Prime

Minister Theresa May MP became the first Prime Minister in history to table an early general election motion in the House to gain a larger majority to support legislation to implement the United Kingdom's departure from the European Union.

This measure was supported by the Labour Party exactly as was predicted by Labour MP Chris Bryant, who, in a 2011 debate during the passage of the bill, noted that while the minority party could oppose the request, they would be labelled cowardly; therefore, the inferred safeguards of the FTPA would be trumped by claims of dishonour (Rossiter, Pattie, and Johnston 2020). The motion passed with the required two-thirds majority.

By 2019, the Act encountered its most serious challenge as legislation was passed to circumvent its rules. This led some to call that moment the true end of the FTPA (Bull 2019; Rossiter, Pattie, and Johnston 2020) when the act prevented Prime Minister Boris Johnson from unilaterally dissolving Parliament and calling an election after he lost his parliamentary majority when he removed over 20 members of his parliamentary party after they failed to support his position on a treaty to leave the European Union (Culbertson and Taylor 2019).

To avert this impasse, the executive tabled the Early Parliamentary General Election Bill, which temporarily overrode the 2011 Act, allowing for the dissolution of parliament via a simple majority of members agreeing to the measure (UK Parliament 2019). This measure was agreed upon by the Liberal Democrats and the Scottish National Party outside of the legislature and passed by a simple majority of the House,

2019 showed that, through control of the legislative agenda, the executive could override and later repeal the Act, as seen in 2022. This also means the executive never had real constraints placed on their capacity to eliminate the Act at will, meaning that the true intent of the Act, executive control, was a failure. As most of the elections in the United Kingdom in the past 120 years have been held at the best possible time for the incumbent government (Schleiter and Belu 2016), it was not surprising that it was repealed so quickly.

Presidents, Prime Ministers and Removals

Across the reactive legislatures, the executive is normally easy to define as the head of government as the sole executive, but, in the case of Germany and France, the head of state also plays significant roles in certain legislative proceedings, which also allow for the legislatures in these countries to have the power to remove, both the President and the Prime Minister/Chancellor.

The main issue in determining operational rule benefits in France is how to split the dual executive's removal powers versus those dedicated to the legislature. The Prime Minister has several in-built legislative events to create de-facto removal opportunities, but there is only one legislative opportunity per ordinary session to create an intentional removal scenario. Upon a defeat in the Assemblée, the Prime Minister and their Government are constitutionally bound to resign en masse, but the House is not automatically dissolved for an election. A similar issue remains with the President of the Republic.

Should the President of the Republic be removed from office, in the much more complex procedure noted earlier, that would not mean the dissolution of the Assemblée or new elections. The greater threat comes from an intransigent House that holds back the executive's agenda. In this case, the President has the power of dissolution, which, in effect, is a more powerful tool for the executive than executive removal is for the legislature because executive removal begets executive replacement, where dissolution is an easier and faster process as it does not require the explicit consent of the legislature.

For Germany, the delineation of executive authority is clearer as the Federal President plays a smaller role. Outside of the removal of the Federal Chancellor, the Basic Law allows for the Federal President to be removed by a motion of either House of the German Parliament. The motions again require the 25 per cent threshold with a 2/3rds majority needed to pass the motion. This runs in line with the concepts of balance within the German parliamentary system, which provides the legislature with a viable opportunity to move their motion but gives the executive a high barrier from arbitrary removal.

Comparative Discussion: Reactive Legislatures

Since the 1990s, scholars such as Huber (1996) have called into question the efficacy of removal powers in European parliaments, and this section has shown the difficulty in triggering removal procedures in reactive legislatures. This may be the reason why, in the entirety of the Bundestag's existence, there has been only one successful opposition-led confidence motion that has successfully removed a Chancellor (Linn and Sobolewski 2015, 66), which is contrasted against the five occasions where the executive has moved a confidence motion in itself with the most recent executive "self-removal" vote occurring in 2005 (Linn and Sobolewski 2015, 67), and France has seen even fewer removals, as the President can override the will of the French Parliament by unilaterally dissolving the legislature, and New Zealand has seen no successful executive removals since 1928 (McGee 2017, 128).

With the passage of the Dissolution and Calling of Parliaments Act 2022, the British executive regained its conventional powers over confidence motions, including, in the most extreme circumstance, if it would accept the request for a debate. Non-executive party leaders, excluding the leader of the opposition, did not gain any further conventional rights to request confidence debates, as seen by an attempt in 2018, which was ignored by the executive who provided no time for a debate, as only the leader of the largest opposition party has the conventional right to table such a motion, but there is no requirement to accept the request. (U. K. Parliament 2019).

Should the executive reject the request of the Leader, the legislature has no recourse to appeal the decision. Furthermore, it is understood that this is the de facto status of procedures related to executive removal in the House of Commons. While the convention is not the same as law, it is often held in as high regard as law; therefore, it has been argued that any executive that loses a confidence motion would, as a matter of honour, instantly request a dissolution and election from the Queen, (Norton 2016, 4–5). It is this commitment to the convention that weakens the potential of the British legislature, enhancing the power of the executive.

The main difference between Westminster-style legislatures and other legislatures in this study is the absence of a written constitution. The advantage of a written constitution is its rigidity. Where the unwritten British constitution relies on its flexibility to quickly address legislative and political issues arising at the moment, other countries such as France and Germany have drawn out procedures to create a clear boundary for constitutional actors.

This means that if constitutional actor(s) 'A' decides to table a confidence motion in France and Germany, a certain set of actions must take place, but that same action in the United Kingdom and New Zealand relies on the executive sticking with tradition and actively choosing not to abuse their powers over executive removal. The matter of convention over the law was addressed in the debate on the passage of the FTPA, where the executive acknowledged that they did not have to leave office under the pre-2011 conventions if they lost a confidence vote. In August 2019, the Prime Minister of the UK, Boris Johnson MP, confirmed that was the case under the FTPA as well when addressing rumours of a confidence motion. He stated, "If MPs pass a no-confidence vote next week, then we

won't resign. We won't recommend another government, we'll dissolve parliament, call an election between November 1-5." (Matthews 2019).

In France and Germany, the legislature and the executive cannot deviate from the established procedures because those procedures are a matter of constitutional law, and an amendment would be required to change them, but in Westminster systems, the established custom is only as strong as the last person who used them. A similar scenario was seen in France with Pompidou's refusal to give the Assemblèe their customary confidence vote in 1962. In that case, political expediency trumped convention because of the fear that Pompidou would lose the confidence vote if he put it to the Assemblée, where constitutional law would take over the procedure in the legislature. A similar matter occurred in the United Kingdom.

In July 2022, Prime Minister Boris Johnson indicated his intention to resign as Leader of the Conservative Party and Prime Minister of the United Kingdom; however, this did not trigger a general election, just a leadership contest within his Conservative party. The same day, Leader of the Opposition, Sir Keir Starmer, tabled a motion of no confidence in the Prime Minister and the Government. Convention stated that the executive acceded to Sir Keir's request because he was the only member conventionally allowed to expect a debate on this subject. The executive, instead, refused to honour the convention, stating that Labour's motion "didn't pass the test" and that it was not "constitutionally correct" (BBC 2022a; Hansard 2022). Sir Keir and the Commons had no appeal to the rejection from the executive here, as in 1963 France, political expediency overrode conventional expectations. Eventually, the executive tabled a motion of confidence in themselves at a time of their choosing and on a motion to which they agreed. Nonetheless, the executive rebuffed the conventional expectations from the opposition, leaving them with no options to initiate the debate on their own.

Furthermore, because of the United Kingdom's majoritarian nature, the executive's ability to face political sanction for not complying with custom is only as strong as their backbenchers' and political supporters' belief in the conventions. A particularly charismatic leader could convince their party and populace that the convention should change or not be enforced.

Other additional outside factors play into executive removal that can be more powerful than the options available to the legislature. In reactive legislatures, political parties can hold internal votes to elect and remove their party leaders. In a procedure that is outwith the legislature's jurisdiction, executives are bound by the internal expectations of the party in addition to the demands of the legislature and the public. Unlike the legislature, political parties are private organisations with their own sets of rules for electing and removing their leadership.

The United Kingdom has only had nine removals in nearly 300 years, and only two have occurred within the last 120 years (Norton 2016, 6), showing a distinct infrequency of usage over the last century. In contrast, since the Second World War, 14 prime ministerial resignations have occurred via extra-legislative action, which can be directly linked to a political leader's weak standing in their party. For example, prime ministers Tony Blair, Theresa May, Boris Johnson, Liz Truss and Margaret Thatcher all resigned as a result of internal party pressure without initiation of legislative procedures, but the result of their departure was the removal and replacement of the head of government conducted as part of a private procedure outside of the rigours of public scrutiny.

This shows the astounding amount of control, at least in the United Kingdom, that exists in political parties to select the head of government for the country unilaterally. This is not a phenomenon isolated to the United Kingdom; however, the resignation of the executive due to internal political pressures is far less common in countries like France or Germany, where resignations are more often

related to electoral defeats, for example, the resignation of Angela Merkel as leader of the CDU in 2020 did not require her to resign as Chancellor of Germany at the same time (Hill 2018). The rules of the reactive legislatures in this study show that, while the operational rules and conventions of the various legislatures are different, they all inevitably benefit the executive.

Comparative Discussion: Executive Removal

Looking at the operational rules and their inherent benefits, the active legislatures in this study grant more authority to the legislature to trigger removal procedures, while the reactive legislatures place the lion's share of the benefit with the executive.

The impeachment powers found in the US Constitution only benefit Congress, but their reluctance to use the totality of the powers weakens the threat of the proceedings. To date, no American President has ever been removed via impeachment. This creates an interesting dichotomy where the risk of removal is ever-present as three presidents have been impeached, but removal seems a step too far for the US Congress and considering all of the rules related to executive removal in Brazil and the strength of the legislature in the process the benefit towards the legislature is high but, despite the rights afforded to the legislature, they are still hampered as those in charge of the legislature may choose not to use them. However, in Brazil, the legislature may override the rule of the President of the Camara, which again shows the inherent benefits of their rules.

This coincides with scholarly work that found a greater link between executive removal and presidential approval ratings in presidential democracies, where scholars note the reluctance of legislators to use their removal powers in active legislatures such as Colombia, Brazil, Peru and the United States against a popular president (Hinojosa and Pérez-Liñán 2006; Llanos and Marsteintredet 2021).

In the case of the impeachment of President Bill Clinton, the legislature seemed persuaded to protect the President from perceived political abuse of the legislature's impeachment powers using the "so what" defence that attempts to disarm the threat of impeachment by combining the public apathy/hostility towards the abuse of the system and the implication that more people in the legislature may fall foul of the heightened bar for scrutiny in future; however, this same defence was ineffectual in defending Nixon who had lost popular support which gave the legislators from his party the political backing to remove him without going through the rigours of impeachment (Hinojosa and Pérez-Liñán 2006, 659).

Executive removal in active legislatures inherently requires legislators to put aside political ambitions to consider the allegations against the executive fairly, but it has been noted that, in recent years, active legislatures in North and South America are more likely to protect the executive when they have strong legislative allegiances (Llanos and Marsteintredet 2021, 2).

Additionally, the bar to impeach in active legislatures is far higher than found in reactive legislatures, wherein reactive legislatures typically rely on gathering a majority against the executive; active legislatures require super-majorities to remove the executive (Llanos and Marsteintredet 2021, 3). Despite the clear weaknesses of the impeachment system, it still functions as a tool of the legislature. For example, studies have found that over the past 40 years, 24 presidents of Latin American legislatures have been removed from office either through legislative actions or due to the risk of legislative action (Llanos and Marsteintredet 2021, 7).

For reactive legislatures, scholars have studied confidence powers in several parliamentary democracies, and they all conclude that the executive removal powers in these legislatures are primarily a tool of the executive to protect themselves from an intransigent legislature. While there is

agreement that parliamentary confidence is a negative concept that requires the executive to retain the loyalty of the chamber to operate (Cheibub and Rasch 2021; Lento and Hazan 2021), the real risk to executives in reactive legislatures is not the opposition initiating procedures to remove the executive, but the executive perceiving its parliamentary confidence to be waning (Cheibub and Rasch 2021). Perhaps this is achieved through backbench rebellion or the collapse of majority coalitions (Schleiter and Evans 2021). This does mean that, while the procedures have some force, the majority of the rules still benefit the executive in all of the reactive cases under study in this paper and other countries examined in different studies.

While the legislature has the risk of removal to threaten an executive, in all countries in this study, the executive has easier access to the removal powers with far fewer initiation risks. An index of executive confidence power from Schleiter and Evans ranks executive confidence powers between 0 (weakest) and 10 (strongest) through an analysis of the specific operational legislative rules related to executive removal. The criteria include the powers of initiation, the margin required to pass the motion, the risk to the executive if it loses the motion and the restrictions on the executive on initiation.

Schleiter and Evans show that operational rules in the European Union legislatures overwhelmingly benefit the executive by allowing them to adjust the parameters of coalition agreements before they fall apart (Schleiter and Evans 2021); however, they also show that those same operational rules allow for the executive to force coalition partners into a take it or leave it scenario by making a piece of legislation a confidence matter or simply tabling the motion themselves (Schleiter and Evans 2021, 7).

This supports the findings in this thesis by noting the enhanced risk of opposition parties attempting to table confidence motions in countries such as Germany and France, where the Schleiter-Evans index places France above Germany, with France receiving a score of 6.16/10 and Germany receiving a score of 5.40/10 due to stronger French powers for the executive. Germany's powers are also strong, with the constructive vote of no confidence, but the German executive lacks the powers to dissolve the legislature unilaterally. These scores coincide with this thesis, where the Assemblée has fewer executive removal initiation procedures as compared to the Bundestag. This is mainly due to the powers of dissolution that the executive contains in France (Cheibub and Rasch 2021).

Parliamentary Powers Index and New Ranges

Country	***Remove the Executive***	***Executive approval required?***	***Executive Confidence motion on itself?***	***Require legislature to find Replacement?***	***Law or Convention***
Brazil	*Yes*	*No*	*No*	*No*	*Law*
France	*Yes*	*No*	*Yes*	*No*	*Law*
Germany	*Yes*	*No*	*Yes*	*Yes*	*Law*
New Zealand	*Yes*	*Yes*	*Yes*	*No*	*Convention*
United Kingdom	*Yes*	*Yes*	*Yes*	*No*	*Convention*
United States	*Yes*	*No*	*No*	*No*	*Law*

Table 56

This chapter has looked at the operational and conventional rules regarding executive removal. Table 56 shows the five criteria that will be used to determine legislative score ranges. Of the six legislatures

under examination, only two have removal procedures that benefit the legislature totally. While Question One asks for "other agencies", it fails to consider the role the executive can play in executive removal motions. Only the United States, Brazil and Germany have removal processes that do not require the implicit agreement of the executive to initiate removal procedures. France, New Zealand and the United Kingdom present a far more complicated issue for the PPI. None of the three countries allows the legislature to independently remove the executive without the collapse of the governing coalition/internal party support or tacit agreement from the executive to begin the proceedings; this does not fully meet the qualifications for obtaining an affirmative "1" in the PPI.

With a more focused approach to analysing the operational and conventional rules of the six legislatures, this study has found that while a very powerful tool, a legislature removing the executive is exceedingly rare. With Brazil being the only country under study that regularly removes the executive, the remaining legislatures have not forcibly removed an executive in the past forty years.

New Legislative Score Ranges

Brazil Original PPI Score: 1	
Remove the executive	The Brazilian Congress can remove the executive.
Executive approval required	Executive approval is not required to initiate proceedings.
Require the legislature to find a replacement	The Brazilian Congress does not need to find a replacement before removing an executive.
Executive removal motion on itself	No, the executive cannot initiate a proceeding to remove itself in the legislature.
Law or Convention	Impeachment is guaranteed through the Constitution.
Chamber	**Range Mean**
Constitution	0.875
Deputados	0.875
Senado	0.875

Table 57

Table 57 shows that the conventional and operational rules of both Houses of the Brazilian Congress grant a benefit to the legislature. The Brazilian Congress can remove the executive via impeachment procedures; it does not require the legislature to find a replacement, as seen in Germany; the executive has no power to initiate removal proceedings in itself in the legislature. These findings coincide with the findings of the PPI, which only cited constitutional articles related to impeachment. The findings show that the Brazilian Congress can receive the highest range of scores as the powers to remove the executive are totally within their competence.

United States Original PPI Score: 1	
Remove the executive	Congress can remove the executive.
Executive approval required	Executive approval is not required to initiate proceedings.
Require the legislature to find a replacement	Congress does not need to find a replacement before removing the executive.
Executive removal motion on itself	No, the executive cannot initiate a proceeding to remove itself in the legislature.
Law or Convention	Impeachment is guaranteed through the Constitution.

Chamber	Range Mean
Constitution	0.875
House of Representatives	0.875
Senate	0.875

Table 58

Table 58 shows that, similar to Brazil, the constitutional and operational rules of the US Congress also benefits the legislature. Congress can remove the executive via impeachment procedures; it does not require the legislature to find a replacement, as seen in Germany; the executive has no power to initiate removal proceedings in itself in the legislature. These findings coincide with the findings of the PPI, which only cited constitutional articles related to impeachment. The findings show that Congress can receive the highest range of scores as the powers to remove the executive are totally within their competence.

Germany Original PPI Score: 1	
Remove the executive	The Bundestag can initiate removal proceedings against the Chancellor.
Executive approval required	The approval of the executive is not required to initiate proceedings.
Require the legislature to find a replacement	The Bundestag is required to find a replacement Chancellor candidate before tabling the motion.
Executive removal motion on itself	Yes, the Chancellor can call a confidence vote in itself; it does not need to find a replacement.
Law or Convention	Confidence motions are guaranteed through the Constitution.
Chamber	**Range Mean**
Basic Law	0.375
Bundestag	0.375

Table 59

Table 59 shows that the removal procedures of the German Parliament represent a clear path to executive removal that can be operated by both the executive and legislature via constitutional and legislative rules that clearly indicate what happens if initiated. The Basic Law and the Bundestag's operational rules do not allow for any variation on this subject. The powers are clear and concise, allowing both the legislature and executive to take advantage of the rules available to them. The lynchpin to this system seems to be the requirement that any confidence motion requires the movers of the motion to have a candidate for chancellor ready to take over should they be successful.

The executive seems to have an advantage over the legislature because that body does not require a replacement Chancellor when moving a motion of confidence in itself. Still, anyone other than the Chancellor who moves the motion needs to find a Chancellor candidate to coalesce around. That person needs to be able to create a new government or potentially prepare for a new election should no new candidate be found.

Of the reactive legislatures, the Bundestag has similar rights to remove the executive as seen in the US and Brazil, and, upon reanalysis, this question continues to meet the requirements set by the PPI in terms of the removal of the Chancellor. The Federal President can also be impeached, but the Federal President does not hold the same constitutional status as the French or American Presidents; therefore, the operational rules related to the impeachment of the Federal President were not

included in the final averaging of scores because the final presidential removal decision is made in the German Constitutional Court, not the legislature.

The main difference between Germany and the two active legislatures in the study is the procedural and legislative barriers to the non-executive members of the legislature to initiate the procedures while allowing the executive far simpler procedures. This by no means indicates that the Bundestag cannot initiate the procedures independently. It means that the executive is far more likely to use these powers against the legislature than the reverse option, as evidenced by the most recent usages of the removal powers.

The findings show that the Bundestag can receive a low to medium range of scores as the powers to remove the executive are shared between the two bodies, with a clear advantage to the executive as they do not have the added requirements to find a replacement Chancellor.

New Zealand Original PPI Score: 1	
Remove the executive	The House of Representatives can remove the executive.
Executive approval required	Convention only allows confidence motions on certain executive motions.
Require the legislature to find a replacement	The House of Representatives does not need to find a replacement before removing an executive.
Executive removal motion on itself	Yes, the executive can table a motion on itself.
Law or Convention	Removal procedures are conventional.
Chamber	**Range Mean**
House of Representatives	0.125

Table 60

United Kingdom Original PPI Score: 1	
Remove the executive	The House of Commons can remove the executive.
Executive approval required	Executive Approval is required to initiate proceedings.
Require the legislature to find a replacement	The Commons does not need to find a replacement before removing an executive.
Executive removal motion on itself	Yes, the executive can initiate confidence procedures in itself.
Law or Convention	Removal procedures are conventional.
Chamber	**Range Mean**
House of Commons	0.125

Table 61

Tables 60 and 61 shows that New Zealand and the United Kingdom have similar procedures related to the removal of the executive, and it is clear that both legislatures lack the independent ability to remove an executive and require the agreement of the executive to initiate the motion. Political conventions in both countries show that the executive's agreement is automatically assumed, which deems it sufficient to be considered in this study. Unlike Germany, the legislature is not required to find a replacement for the Prime Minister before tabling a confidence motion, but, as with all reactive legislatures in the study, the executive can table a motion of confidence in itself.

The results of the new analysis show that the conventions of the House of Commons can receive the lowest range of scores due to the benefits offered to the executive to retain control of the timing of

the debate and the limited capacity of the legislature to activate the procedure and, as the House of Representatives operates in the same fashion as other Westminster-style legislatures, it is not surprising to see the rules benefit the executive in this manner while providing the non-executive members little recourse to remove the executive. Given the new analysis, the lowest range of scores is also assigned to the House of Representatives.

This contrasts with the PPI, which affirmed that both the House of Commons and the House of Representatives have the legislative power to remove the executive despite the lack of legislative control over the initiation procedures.

Whether it is The New Zealand House of Representatives' lack of any independent triggering mechanism to remove the executive or the House of Commons' requirement that the executive finds time for a debate request from the Leader of the Opposition, the rules of both legislatures benefit the executive as, in the case of New Zealand, the opposition must wait for legislative opportunities from the executive and members of the House of Commons are limited to just one member of the opposition being able to ask permission to remove the executive.

Additionally, these legislatures are exposed to externalities such as internal political party conflict that can, outwith the legislature, completely alter the nature of national politics. The authors of the PPI may have meant to refer to the parliamentary grouping of party members who can vote to remove the party leader, but this process is not legislative, as the other members of the executive are not allowed to participate.

France Original PPI Score: 0	
Remove the executive	The French Parliament can remove the executive. The Assemblée Nationale can remove the Prime Minister.
Executive approval required	Executive Approval is not required to initiate proceedings on removal.
Require the legislature to find a replacement	The French Parliament does not need to find a replacement before removing an executive.
Executive removal motion on itself	Yes, the Prime Minister can initiate a proceeding to remove themselves in the legislature.
Law or Convention	Impeachment and removal through confidence are guaranteed through the Constitution.
Chamber	**Range Mean**
Constitution	0.375
Assemblée	0.375
Sénat	0.375

Table 62

Table 62 shows that PPI's assessment of the French Parliament has some serious errors. The PPI noted that the legislature had no role in the removal of the executive, citing that only the High Court of Justice can try and convict the President. This does not sync with the current constitutional articles, which state that the High Court comprises members of both Houses of Parliament and is convened in the Assemblée, which inherently gives the legislature the right to try and remove the President. This study has confirmed that these provisions were in the French constitution when *The Handbook of National Legislatures* was published. The original authors likely combined the concept of the High Court with the Court of Justice of the Republic. Both are used to try a president for removal, but one is used for criminality versus political violations of the president's office. With the advantage of readily

available translations, it is clear that the Parliament can remove both the President and Prime Minister.

Since 1962, no other motion of no confidence initiated by the legislature has been successful, although several attempts have come close and, as seen in other reactive legislatures, the executive could trigger a confidence vote in itself. Given its powers of dissolution, this seems less likely. It is now accepted practice that motions of no confidence are more of a protest as opposed to a serious threat against the executive; with extensive coalitions operating in the Assemblée, the practical risks to the executive are very low; therefore, the constitutional and operational rules for the Assemblée and the Constitution can receive a low to medium range of scores as the powers are there to be used but other constitutional powers, such as dissolution of the Assemblée override its effectiveness.

The same range is also set for the Sénat because of its ability to trigger the removal of the President of the Republic. A case can be made for the lowest range of scores, but since the Constitution still contains the powers of impeachment and removal, this study cannot justify that action. This means that, while not impossible, the chances of successful removal of the executive are highly improbable, as confirmed in interviews.

Conclusion

This chapter has conducted a new analysis of executive removal rules and conventions for the legislatures under study. First, each legislature's rules and conventions were described individually, then those conventions and rules were analysed in their respective legislative type, either active or reactive, using five criteria. From there, this chapter analysed the differences between the legislatures within each system, followed by applying the new information and analysing the score assigned to each legislature in the study.

As expected, there was a clear difference between the rights of active and reactive legislatures regarding executive removal powers. Overall, executive removal rules and conventions in active legislatures favoured the legislature, while removal rules in reactive legislatures favoured the executive. This chapter showed that while active legislatures retained strong removal powers over the executive, formal and informal coalitions within legislatures offered protections to some executives from removal. Reactive legislative rules clearly benefited the executive as they had a far greater ability to use the rules of removal for themselves than non-executive members of the legislature.

Using the new methodology, all legislatures received a new score range for Question One, which better reflects the rules and conventions under question. Table 63 shows the new score ranges and the original PPI scores. The reactive legislatures received the largest changes between scores, with the Parliaments of the United Kingdom and New Zealand receiving scores that range closer to zero, reflecting the operational rules and conventions that grant a greater benefit to the executive in initiating removal.

Country	Scores(Mean)	Original PPI Score
Brazil	0.875	1
France	0.375	0
Germany	0.375	1
New Zealand	0.125	1
United Kingdom	0.125	1
United States	0.875	1

Table 63

The powers of executive removal in the six legislatures pose the question of whether removal is a threat or if it ever was. This question cannot be answered simply through an examination of the operational rules but also an analysis of the usage of the rules. While the risk of removal is ever-present, all but one of the legislatures under study have found ways, either through the rules or through convention, to escape any frequent usage of the powers outside of the most extreme cases.

This chapter has found that removal does not represent a Sword of Damocles-style threat to the executive in active or reactive legislatures because the executive has greater control over the operational rules related to removal or the legislature does not possess the political will to carry out a removal, which also brings its efficacy into question, especially as Linz's work linked removal to the strength of democratic institutions.

Chapter Nine: Final Results and Conclusions

This chapter concludes this thesis by presenting an overview of the previous chapters and answering the research question. In answering that question, this chapter will use two exercises for comparison. The first will only compare the legislatures against the primary legislative powers as proof of the new methodology. Second, this section will reinsert the results of the new analysis of the primary legislative powers into the remaining PPI scores to show how those scores can change the final PPI score to create a more accurate comparative index and better reflect the legislative-executive relationship.

The scores from both exercises better reflect the relationship between the legislature and the executive, which is a measure of legislative power utilised by the first section of the PPI, but it also better achieves the goal of the original PPI in asking where the power lies. The rescoring exercise achieves this goal by giving greater importance to the seven questions but keeping a majority of the original PPI questions. The rescoring addressed the issues of index ties, bias and inaccuracy that other scholars noted in the original work.

This thesis tests a new method of comparing legislatures by analysing operational and conventional rules. This new analysis sought to determine if the executive or legislature benefited from the rules of the legislative system and convert that analysis into a range of scores between zero and one. This method is tested against the Parliamentary Powers Index. This comparison is carried out by reanalysing the scores of six countries to see if this method resulted in different outcomes from the PPI, and each chapter showed a significant difference between the findings of the PPI and the findings of this method indicating a significant contribution to the current academic literature on this subject.

Part One: Chapter Review

This thesis started with a discussion on comparative methods and the sources of legislative powers. Looking at the work of Kommers, Nevil and Sweet, five of the six legislatures derived their legislative powers from a written constitution with support from the judiciary. The works of Bagehot, Burgess, and Caroll showed that the UK Parliament derived its powers from the Crown. The remainder of the chapter focused on different comparative methods and the trend towards studying rules and conventions through a discussion of Elgie's three waves of comparative legislative study, which showed a trend moving away from the works that focused on a distinct move from large-scale, executive-focused comparative research, like Linz, towards localised research focused on the rules and conventions of legislatures.

The second chapter reviewed the relevant literature related to this thesis. First, the chapter looked at the logistics of comparing legislatures including the nature of legislatures and early comparative methodologies from Michael Mezey and Nelson Polsby, where the chapter examined Mezey's five classifications of legislatures, which fit in well with Polsby's earlier work defining legislatures as either arena or transformative. After this, the works of Juan Linz were discussed to cover his famous definitions of systems of governance. After these methods were discussed, this chapter conducted an in-depth analysis of Fish and Kroenig's Parliamentary Powers Index. This section looked at the methodology of the index as well as its criticisms. The section ended with a discussion of whether the PPI should have used Mezey instead of Linz to form its methodological core. Mezey was shown to be the better method, given its focus on legislatures and increased dimensions for legislative study.

The remainder of the chapter dug deeper into the literature related to some of the PPI dimensions. Here, questions were asked on the importance of the minority in the legislature as questioned by Bach and Clark, while Döring, Cox and Neto showed the different arguments around Agenda Control. This was followed by a discussion on unwritten rules and conventions in the legislature by looking at the

work of Crowe. Work looking at the legislative process followed by looking at the work of Huber, Elgie and Gaylord on the legislative-executive relationship. Mourie's research on the House of Commons and the Japanese Diet gave helpful examples of the success rates of non-executive legislation in the legislature. This section also looked at academic work on legislative questioning rules from Cole, Olivier and Martin. The next chapter discussed the methodology for this thesis, describing, in detail, how the data would be used to reweight the PPI.

The first thematic chapter, Chapter Four, focused on dissolution and Agenda Control. In this chapter, using a definition of dissolution from the works of Bulmer, Lowenstein showed that giving the executive the right to dissolve the legislature, in this case, the Parliament, was considered the most important presidential power. Golperud and Schleiter's work on dissolution and legislative powers was also analysed in this chapter. This work showed the barriers upon the executive towards dissolving a legislature. This work also showed a direct connection between dissolution powers and the benefits they give to the executive or the legislature.

The second part of this section focused on Agenda Control. The section showed the importance of controlling the timings of debates and votes on the House floor. Benvindo's work showed that extra-legislative agreements are key for the legislature to retain control of the agenda, while Brouard showed the reverse in relation to the French executive. In effect, Hönnige and Sieberer showed that the more veto powers a legislature had, the greater control it had over its agenda, which is shown by the Miller-Cherry case in the United Kingdom, which needed the members of the public and the House of Commons to overturn a prorogation by the British executive.

Chapter Five examined rules and conventions of the legislative process. This chapter looked at several criteria. Akirav, Bowler, Williams and Vigour gave good examples of the first criteria, which focused on any rules restricting legislators from tabling bills. They showed that, unsurprisingly, restrictions had a cooling effect on non-executive legislation. Brauniger, Debus and Wust showed that placing tabled legislation on different tiers benefited the executive in ensuring their legislation gets passage. Cox, McCubbins, Volden and Wiseman, amongst others, showed the strength of US Congressional committees to showcase the criteria of dedicated bill committees. This was also shown in the German Parliament. This was contrasted by Thompson, who showed that the legislature needed to rely on executive promises when bills went to a committee. This chapter advances the literature by finding that the legislatures in this study with high initiation restrictions also have strong veto powers that benefit the executive. Conversely, dedicated bill committees and veto-override powers can provide a sense of balance in legislative production by passing amendments or nullifying an executive veto.

Chapter Six looked at the rules and conventions related to legislative oversight and scrutiny. These questions looked at rules related to compulsion and questioning alongside rules on the governance of the agencies of coercion. Again, there is a clear split between the Active and Reactive legislatures. Lemos, Sphor and da Silva showed that the Brazilian Congress actively used their constitutionally protected rules to compel and gain information from the executive. This was attributed to the sanctions for non-compliance, which is impeachment.

The US does not have the same sanctions, which was shown by Peterson and Levine, who gave good examples of the threat of contempt against an intransigent executive. Marquant and Godet from the Sénat that compulsion powers, while available, were not preferable to use, with their sanction being an inquiry in some cases and a fine in others. The United Kingdom and New Zealand both had the weakest compulsion rights, as shown by Edgler and Geddis' analysis of the halted work from the New Zealand 2020 Covid Committee. From the UK, work from Gordon and Street explained that the conventional Osmotherly rules gave the executive the capacity to avoid scrutiny from the legislature,

while Garritzman showed how the rules of plenary questions in the UK benefited the executive as well. The second section of this chapter focused on the Agencies of Coercion. Here, Barber, Gonçalves, DeVine and Quigley discussed the history of legislative monitoring of these agencies, showing that only a small number of legislatures can do more than post-facto examinations of these agencies. Only the US Congress can affect the funding of these agencies directly.

Chapter Six addressed gaps in the literature regarding the differences between legislative oversight and scrutiny. The PPI and other comparative literature conflated the concepts when analysing the investigative powers of the legislature, and this thesis advances the work of Ogul and others in showing that there is a demonstrable difference between oversight and scrutiny and that it is important to distinguish between rules that allow oversight and rules that allow scrutiny to provide a better comparative methodology. Establishing if a legislature has the right to scrutinise or oversee is important in its capacity to investigate and control the executive.

This method has also advanced the conversation on concepts of Horizontal Accountability, as introduced by Fombad and Lemos, to better define effective oversight in countries like the United States and Brazil that feature strong constitutionally backed rules to constrain the actions of the executive through a variety of effective means, including impeachment. This method also advances the debate on the nature of oversight, which can also be applied to the agencies of coercion as well. Uhr had different interpretations of what oversight could be, as he believed it was conducted solely by arms-length agencies, but this thesis shows the importance of a legislative-based investigative check on the executive.

Chapter Seven looked at the rules and conventions related to the investigative powers of the legislature. Here, case studies from each of the legislatures from recent investigations were used. These studies included the Senado's investigation into the executive's mismanagement of the COVID-19 pandemic. France and Germany's investigations into the executive's relationship with companies that either took public money without paying taxes or were found to be fraudulent. A New Zealand investigation into a member of the executive for undeclared donations. A House of Commons investigation into the appointment of a member to the House of Lords by the executive and the Benghazi investigation by the US House of Representatives. Each case showed the differences in the strength of legislatures that have strong compulsion powers to ensure compliance versus legislatures like the United Kingdom that were all but ignored in their requests for information by the executive.

Chapter Eight, the last thematic chapter, looked at rules and conventions related Executive Removal. In this chapter, Active legislatures were compared against Reactive legislatures. Active legislatures use impeachment as their means of removal. Pelingerio's work showed that Brazilian impeachment procedures were far stricter than those of the American system, as the constitution clearly establishes the terms for removal. This is in contrast to the American Hamiltonian impeachment system, which looked at the Senate as an impartial, quasi-judicial arbiter in removal matters. Griffin and Altschuler showed that conventional impartiality was important during the impeachment of Richard Nixon, but Tiefer, Goldstein, Trautman and Griffin all showed that the Hamiltonian ideal has fallen to political expediency, as shown with the Clinton and Trump impeachments. Hinojosa, Perez, Llanos and Marsteintredet showed the same issues with executive soft power in Brazil with Presidents Rousseff and Bolsonaro.

The Brazilian Congress is the only active legislature in this study to remove the executive with any frequency, with the US Congress having never utilised that right. This method has shown that the US system, while having constitutional backing, is far more conventional than Brazil's, which has explicit constitutional and operational rules leading to removal procedures. The difference between the active

and reactive legislatures is found in the rules and what prohibitions those rules place on the legislature's right to remove the executive. Despite the infrequency of usage, the active legislatures retain a greater ability to remove the executive. This does not mean that the process would move faster in active legislatures versus reactive legislatures, but there are fewer barriers to activation in active legislatures, which afforded them a benefit.

Reactive legislatures, on the other hand, have a different issue as the removal rules almost always benefit the executive, and in the Westminster legislatures, the convention created even more protection against removal from the legislature. Germany was a particularly interesting case as Heckötter and Spielmann noted both the codified and conventional protections against arbitrary executive Removal, but Reutter noted that the judiciary failed to uphold precedent when challenged to overturn a removal triggered by the executive. Scheiter and Evans, of course, made the point very clear that removal was, in some form, a tool of the Executive in reactive legislatures.

The reactive legislatures featured two types of removal mechanisms: codified and conventional. Hönnige and Döring's work gave examples of the Bundestag and its codified removal procedures. The Parliament also codified its procedures, but interviews and work from Jubiak showed that removal in France was also governed by convention. The chapter later showed that the UK Parliament and the NZ House of Representatives' removal rules are completely controlled by convention, as evidenced by Blick, Wilson and Norton's various works on the UK Parliament.

The findings of Chapter Eight advance the works of Huber by identifying the specific removal rules that benefit the executive or the legislature while contradicting Linz, who portrayed confidence motions as a benefit to the legislature as a quicker, more democratic means of removal versus impeachment. The chapter also showed that removal rules from reactive legislatures showed a clear lack of effectiveness due to codified protections from rules and conventions towards the executive, but active legislatures showed weakness as well.

Part Two: The Final Results

This thesis introduces a new methodology that focused on a legislature's operational rules and conventions versus just using constitutional rules and expert surveys, while this method also uses expert knowledge but in the form of interviews with high-level legislative staff who provide important background to the rules and conventions. This method is compared against the methods of the Parliamentary Powers Index, removes questions that gave an explicit advantage towards reactive legislatures, which levelled the comparative playing field and changed the way legislatures received scores by reanalysing seven PPI questions that were pivotal to its operation.

Rules-Based Approach

This thesis takes a different perspective than the PPI by examining constitutional articles alongside operational rules and conventions. The extra detail and expert interviews allowed for a more thorough analysis of legislative powers. This detail was beneficial because the original PPI only analysed constitutional articles and the results of expert surveys. The result of those surveys meant the justification for scores in the PPI had to gloss over important information relevant to the analysis. By refocusing on rules and conventions, this method allows for a complete assessment of the rules and conventions of the legislatures without ignoring important factors within those rules and conventions.

Findings and Outcomes

In this section, two exercises are presented, showing different ways to interpret the new analysis of the legislative powers. The first part compares each legislature only using the mean from the score ranges of each thematic chapter compared against the seven PPI questions that mirror primary legislative powers. The second part will show how the seven scores change the total PPI scores. Both

exercises address the matters raised in the Literature Review regarding the placement of legislatures while better reflecting the legislature's powers and relationship with the executive. The scores better reflect the legislative-executive relationship with legislatures that have higher amounts of control over their primary functions at the top of the table, and legislatures with lower amounts of control at the bottom. These findings also advances the conversations on areas such as executive dominance and legislatures where convention has a prominent role in its operation. Compared to the PPI, this method sees active legislatures with the highest scores, and when the scores are reinserted into the PPI, active legislatures see a significant rise that index as well.

Primary Legislative Powers Scores

Legislature	Scores (Mean)	Point Change	Original PPI Seven Scores
United States	0.89	-.11	1
Brazil	0.79	-.8	0.71
Germany	0.65	-.21	0.86
France	0.41	-.16	0.57
New Zealand	0.16	-.55	0.71
United Kingdom	0.13	-.58	0.71

Table 64

Table 64 above shows the scores from the six legislatures under study and the corresponding scores for each. Using the new methodology, this analysis removes all other PPI questions and averages the scores of the seven primary legislative powers against each other. The table shows that the active legislatures of the United States and Brazil have the highest scores, followed by the reactive legislatures of Germany, France, New Zealand and the United Kingdom. These scores are to be expected as the active legislatures in this study have constitutional protections that benefit the legislature, giving a disadvantage to the executive, whereas the conventions and rules of the UK and New Zealand parliaments grant a greater benefit towards the executive. For example, the active legislatures of the United States and Brazil both exhibited total, or near total, control of important primary legislative powers such as agenda control and investigatory powers.

These scores reflect the fact that Germany and France have constitutional protections for their legislatures, allowing for enhanced scrutiny and agenda setting, but the rules and conventions of those legislatures also grant the executive an equal or greater degree of benefit in areas such as executive Removal and legislative production. Conversely, the Parliaments of New Zealand and the United Kingdom are at the bottom of the list as both legislatures have conventional and/or codified protections for the executive branch for almost all of the primary legislative powers. The executive in these legislatures has total, or near-total, control of the legislative agenda and production, combined with exceptional rules that allow the executive to actively avoid scrutiny; the convention-led legislature grants a disproportionate benefit to the executive at the expense of the legislature, which is reflected in the scores.

Almost all the legislatures' scores have declined against the combined scores of the original seven PPI questions. Legislatures such as the United Kingdom and New Zealand show the largest drops, while the Brazilian Congress shows an eight-point increase in its average score. There are no index score ties between the legislatures, and their grouping reflects legislatures with similar powers.

New PPI Scores

Score Ranges	Score (Mean)	Point Change	Original Score
Germany	0.78	-.06	0.84
Brazil	0.70	+.14	0.56
United States	0.69	+.3	0.63
France	0.62	+.6	0.56
United Kingdom	0.60	-.18	0.78
New Zealand	0.50	-.19	0.69

Table 65

Table 65 above shows the new PPI score ranges from the six legislatures alongside the original scores. These scores incorporate the seven reanalysed scores with the remaining scores of the PPI. This approach has changed the original scores of the six legislatures, with Brazil receiving the largest increase and New Zealand receiving the largest decrease. The rescoring has resulted in no index ties between legislatures and better reflects the legislative-executive relationship.

The legislatures are also better grouped amongst each other; for example, Brazil and France no longer have the same index score, and the new scores better reflect the legislative/executive relationship for each legislature. Furthermore, the French Parliament's score is now much closer to the UK Parliament, which also makes sense when considering their similar rules and conventions but different methods of Agenda Control. In the original index, France and the United Kingdom are over 20 points apart, but now the score ranges between the United Kingdom and France are within a difference of one and two points across the range. This means while not creating a tie, this system can give a good example of the similarities and groupings between legislatures and compare legislative powers.

Reincorporating the seven questions into the remaining 28 PPI questions gives a better representation of the legislative-executive relationship but also places that relationship in line with other questions asked by the PPI that are not integral to the operation of the legislature. Unlike the original PPI methodology, not all questions are equal under this method. The seven questions selected are integral to the operation of a legislature, but they do not speak to issues of electoral integrity or other democratic pillars. This rescoring gives a better understanding of the legislature's capacity to use the powers mentioned in the remainder of the PPI, which gives the PPI a stronger case to show where the power lies and the strength of a system of governance.

The differences between the first and second exercises are very clear. While both exercises better reflect the legislative-executive relationship by measuring the operational rules and conventions of the legislature, the first exercise only looks at the seven questions to see how they benefit the legislature, the executive or both. Those questions do not directly speak towards democratic legitimacy but could be used to determine legislative strength, given the nature of the questions.

Matters such as the relationship between the judiciary and the legislature or the electoral system are not part of the first exercise, which precludes it from discussions of democratic legitimacy. Having a strong executive does not, in itself, mean a country has a weak democracy. For example, France, New Zealand and the United Kingdom round out the bottom of the scale in both exercises, but this corresponds with work from scholars regarding the levels of executive dominance in those chambers, specifically the United Kingdom, where executive dominance of the legislature is expected as the operating norm over the use of any legislative hard powers (Baker 2013; Hayward 2004; Norton 2018, 21; le Roux 2014; Taylor 2019; H. White 2015; Zecca 1993, 430).

The second part has a stronger case for use as a determiner of democratic legitimacy, as the remaining PPI scores have questions that address wider matters, such as the judicial-legislative relationship and

the relationship between the elections and the legislature. As stated in the methodology, these questions were not pivotal to the operation of the legislature, or their operation was reliant on one of the seven questions and were not reanalysed. Combined with the scores from the seven questions, those scores better represent the legislative-executive relationship and the country's relationship with democracy.

New PPI Score Ranges

This section will look at each legislature individually to show the change between the original score and the scores from the range. Second, this section will look at the new ranges and old scores together to show where the differences lie. Again, a range of scores is used to represent the dynamic nature of a legislature, which, during a term, may see members resign, die or change party. A legislature is not a static institution.

The Tables

Each table shows the following information. The left-hand side of the table shows the name of the country and level of the mean score for each question. The original PPI score is also on this axis to show the original score for each question. Across the top, each question under study is shown with the range of scores underneath each question. After that, the remaining scores from the PPI are shown. After removing the four biased questions, these scores are divided by 28, the highest possible score, to determine a new score. The next box shows the original PPI Score, with the final box showing the difference between the two.

Brazil

	Q1	Q3	Q4	Q5	Q10	Q14	Q27	Remaining PPI	Highest PPI	New Score	Old Score	Difference
Mean	0.875	0.875	0.875	0.625	1	0.625	0.625	14	28	0.70	0.56	0.14
Original PPI Scores	1	1	1	0	1	0	1					

Table 66

Table 66 shows the new score ranges and new PPI Scores for the Brazilian Congress. The mean score of .70 generates a 14-point increase from the original score of .56. The score was drawn from the new range of scores between .67 and .72.

The PPI assigned affirmative scores to five of the seven questions under study. This new method shows that the legislature shows a range of scores that benefit the legislature, with some benefit to the executive in specific areas.

The legislature controls most agenda-setting and veto-playing powers, but the executive's constitutional rights to use provisional measures provides them with a significant agenda-setting tool. The executive also has exclusive competence over certain legislative matters, but the legislature retains a viable route to amending or halting legislation they oppose.

The Brazilian Congress benefits from partial oversight rights with a more restrained capacity to oversee the agencies of coercion. The executive, again, retains constitutional guarantees to oversee the agencies of coercion and the administration of the civil service. Executive removal completely benefits the legislature, with the Brazilian Congress benefiting from constitutional protections allowing the legislature the right to initiate and prosecute the executive, leading to their removal from office, and the legislature cannot be legally dissolved.

Overall, this new range of scores shows that the legislature retains high levels of oversight but not total oversight. For legislative production, the executive shares several legislative rules with the legislature. These scores show a trade-off between the legislature and the executive that, overall, benefits the legislature.

France

	Q1	Q3	Q4	Q5	Q10	Q14	Q27	Remainder	Highest PPI	NEW Score	Old Score	Difference
Mean	0.375	0.625	0.625	0.625	0.125	0.125	0.375	14	28	0.62	0.56	0.06
Original PPI Scores	0	1	1	0	0	1	1					

Table 67

Table 67 shows the Parliament's new score ranges and new PPI Scores. The mean score of .62 generates a 6-point increase from the original score of .56. The score was drawn from the new ranges of scores between .59 and .64.

The PPI assigned affirmative scores to four of the seven questions under study. This new method shows a range of scores that provide some levels of power sharing between the executive and legislature, indicating trade-offs exist in the rules and conventions that grant some benefits to the legislature for investigation, high levels of executive dominance in legislative production, removal rights and agenda control.

Agenda-setting and veto powers are technically shared between the legislature and the executive, but the executive has sole control of their business, which the legislature must work around. The legislature has fewer options to control the legislative agenda, but those rights are protected within the operational rules. The executive also has exclusive competence over certain legislative matters, but the legislature retains a route to amending legislation.

The Parliament benefits from the right to scrutinise the executive through plenary questions and investigative committees. Rules related to executive removal benefit the executive with operational rules and conventions that allow the Prime Minister to force through legislation using confidence votes in themselves, and the President of the Republic can unilaterally dissolve the Assemblée National, forcing an early election. The legislature also has operational rules that allow them to initiate confidence votes in the executive, but convention means the legislature is not expected to impeach the President of the Republic.

Overall, this new range of scores shows that the legislature has enhanced scrutiny rights under its investigative authority, but the conventional expectation that sanctions not be used works in favour of the executive, who has the ultimate threat of dissolving the legislature. For legislative production, the executive shares nothing with the legislature as it controls its own time, and the legislature must be cognizant of the executive's desires when setting its own agenda.

Germany

	Q1	Q3	Q4	Q5	Q10	Q14	Q27	Remainder	Highest PPI	New Score	Old Score	Difference
Mean	0.375	0.79	0.875	0.625	0.79	0.5	0.71	18	28	0.78	0.84	-0.06
Old PPI Scores	1	1	1	1	0	1	1					

Table 68

Table 68 shows the new score ranges and new PPI Scores for the Parliament. The mean score of .78 generates a 6-point decrease from the original score of .84. The score was drawn from the new ranges of scores between .74 and .82.

The PPI assigned affirmative scores to all but one of the seven questions under study. This new method shows that the range of scores for the legislature shows a degree of trade-offs between the legislature and the executive, indicating higher levels of legislative benefit in investigatory powers and agenda setting with executive benefits in executive removal and legislative production.

The operational and conventional rules in the Parliament share benefits between the legislature and the executive in nearly every area. Agenda-setting rights are in the hands of the legislature, but since the agenda in the Bundestag is conventionally set by consensus, it can be considered a shared right. Both the legislature and the executive are restricted in their capacity to table legislation with the five per cent rule, but there are no overt prohibitions to tabling.

The Parliament benefits from the right to scrutinise the executive through plenary questions and investigative committees with strong compulsory powers. Executive removal benefits both the executive and legislature, but the executive is granted an advantage through the constructive vote of no confidence.

Overall, this new range of scores shows that the legislature has enhanced scrutiny rights under its investigative authority with sanctions under the legislature's control alone. For legislative production, the executive controls many rules to progress the passage of bills, but the committee system creates opportunities to affect change.

New Zealand

	Q1	Q3	Q4	Q5	Q10	Q14	Q27	Remainder	Highest PPI	New Score	Old Score	Difference
Mean	0.125	0.125	0.125	0.125	0.125	0.125	0.325	13	28	0.50	0.69	-0.19
Old PPI Scores	1	1	1	1	0	1	1					

Table 69

Table 69 shows the new score ranges and reweighted PPI Scores for the Parliament. The mean score of .50 generates a 19-point decrease from the original score of .69. The score was drawn from the new ranges of scores between .46 and .53.

The PPI assigned affirmative scores to all but one of the seven questions under study. This new method shows that the range of scores of the legislature are now closer to zero except Q27 on Agenda Control, which indicates some sharing of responsibilities. This indicates that, across the board, there are high levels of executive dominance in this legislature.

The operational and conventional rules in the House give partial or total benefit to the executive in every area. The legislature has a business-setting committee but does not control executive business; it must work to operational rules to protect executive time.

Scrutiny powers of the legislature are hampered by conventional rules that prohibit the compulsion of the executive to select committee hearings, but select committees are authorised to consider legislation tabled before the House. No written rules allow the legislature to initiate executive removal

independently, and the executive has the sole right to initiate dissolution. The House of Representatives operates under a more conventional structure, where members expect the executive to behave with honour and not abuse their strong legislative rights.

Overall, this new range of scores shows that the legislature has scrutiny rights under its investigative authority, but due to the lack of any real sanction and reliance on convention for enforcement of expected sanctions, the executive benefits greatly in this system. For legislative production, the executive controls almost all of the rules relating to the progress and passage of bills.

United Kingdom

	Q1	Q3	Q4	Q5	Q10	Q14	Q27	Remainder	Highest PPI	New Score	Old Score	Difference
Mean	0.125	0.125	0.125	0.125	0.125	0.125	0.125	16	28	0.60	0.78	-0.18
Old PPI Scores	1	1	1	1	0	1	1					

Table 70

Table 70 shows the new score ranges and reweighted PPI Scores for the Parliament. The mean score of .60 generates an 18-point decrease from the original score of .78. The score was drawn from the new ranges of scores between .57 and .63.

The PPI assigned affirmative scores to all but one of the seven questions under study. This new method shows that the range of scores of the legislature are now closer to zero, indicating high levels of executive dominance across all seven subject areas.

The operational and conventional rules in the UK Parliament strongly benefit the executive. Nearly all of the agenda-setting and veto powers are singularly controlled by the executive, with no independent business-setting committee controlling any facet of the legislature's debating time.

Scrutiny powers of the legislature are impeded by conventional rules that prohibit the compulsion of the executive to legislative committee hearings, and those same committees are not guaranteed the right to consider legislation tabled before the house. There is no explicit right to executive removal, with the executive controlling the operational rules relating to both a debate on the matter of confidence in itself and the unquestionable powers of dissolution.

Conventional rules do create some latitude for non-executive members to influence certain outcomes or win concessions on legislation, but this is entirely within the gift of the executive to grant. The House of Lords plays a weak agenda-setting and veto-playing role in the legislature, with its capacity to slow down the progress of legislation from the House of Commons, but statutory and conventional rules limit the scope of its ability to do this.

Overall, this new range shows that the UK Parliament is an institution that benefits the executive. Non-executive members have few avenues to initiate and progress legislation through Parliament. Regarding investigatory rights, the executive again benefits from a lack of enforceable rules and a reliance on convention.

United States

	Q1	Q3	Q4	Q5	Q10	Q14	Q27	Remaining PPI	Highest PPI	New Score	Old Score	Difference
Mean	0.875	0.875	0.875	0.875	1	0.875	0.875	13	28	0.69	0.63	0.06
Old PPI Scores	1	1	1	1	1	1	1					

Table 71

Table 71 shows the new score ranges and new PPI Scores for the Parliament. The mean score of .69 generates a 6-point increase from the original score of .63. The score was drawn from a range of scores between .66 and .71.

The PPI assigned affirmative scores to all of the seven questions under study. This new method shows that the range of legislative scores remains near their original PPI score, indicating high levels of legislative control across all seven subject areas.

This new analysis reflects the legislature-executive relationship across both Houses of Congress. There are no major changes in the scores outside of the variation created by the new method. The operational and conventional rules in Congress strongly benefit the legislature. Nearly all agenda-setting and veto-playing powers are singularly controlled by the legislature, with no operational rules granting the executive any control of either House.

The Constitution and further statutes grant Congress extensive oversight powers that allow for control over the funding of executive agencies and strong compulsory powers. The legislature controls all matters relating to removing the executive, and the legislature cannot be legally dissolved.

The table above shows that the US Congress is a legislature that the legislators control from within. There are no prohibitions on the initiation and progress of legislation, and it has access to strong investigative tools that help it perform its oversight role. The executive has no direct role via operational rules to affect the progress of legislation or investigations.

Outcomes

This thesis has shown that analysing the operational rules and conventions of legislatures provides a detailed picture of the legislative-executive relationship. Of the seven primary legislative powers, rules related to agenda control and dissolution give the greatest indication of legislative strength and is one of the most important legislative powers to control. The three strongest legislatures have agenda control scores of .6 or higher and dissolution scores that are no lower than .7. These scores mean the legislature controls most, are able to independently set their priorities and are difficult to dissolve in the case of reactive legislatures and cannot be dissolved in the case of active legislatures. Countries with agenda control and dissolution scores below these levels indicate high levels of executive control of the legislature despite higher scores for other powers, such as investigatory or scrutiny powers. The differences between France and Brazil give a good example of how this method acts as a better medium of comparison.

Under the PPI, France and Brazil had the same index score, but using this new method, Brazil received a score of .79 while France received a score of .41. In terms of oversight and scrutiny scores, France and Germany were close indicating high levels of enhanced scrutiny powers under the control of the legislature, but it is the agenda control and dissolution powers that determined the main differences between the two. In France, these powers benefit the executive, while in Brazil, they benefit the

legislature. This, combined with stronger Brazilian executive removal powers, pushed Brazil ahead of France.

Compared to the original PPI, this method has shown how the new scores better reflect the legislative-executive relationship. The seven questions focused on the investigative and legislative powers of the legislature as opposed to secondary powers such as the ability to declare war and desirability to re-election for members. This method has not resulted in any index ties, which means the groupings of legislative scores better reflect the benefits each system offers.

Another interesting outcome is the understanding of the role of executive removal in legislative strength and comparison. In contrast to previous systems, executive removal plays a far more reduced role in determining legislative strength given the high bar for initiation and hesitance to use removal in active legislatures, while in reactive legislatures, rules benefiting the executive make it much harder for the legislature to remove the opposition unilaterally. These scores also show the importance of the rules in comparison to executive removal, where France and Germany have the same scores for executive removal but vastly different scores for agenda control.

This thesis has presented a new methodology within the field of comparative legislative studies which shows that focusing only on the rules and conventions of a legislature eliminates a perception of bias, which allows this method to be applied to all types of democratic legislatures, no matter if they are classified under Linzian or Mezian definitions. In short, this method asks a simple question: who benefits from the rules and conventions of the legislature? That question can now be answered without favour towards one system across all systems.

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Appendix One

Parliamentary Powers Index: Survey Questions	
Influence over Executive	
1	The legislature alone, without the involvement of any other agencies, can impeach the president or replace the prime minister.
2	Ministers may serve simultaneously as members of the legislature.
3	The legislature has powers of summons over executive branch officials and hearings with executive branch officials testifying before the legislature or its committees are regularly held.
4	The legislature can conduct independent investigation of the chief executive and the agencies of the executive.
5	The legislature has effective powers of oversight over the agencies of coercion (the military, organs of law enforcement, intelligence services, and the secret police).
6	The legislature appoints the prime minister.
7	The legislature's approval is required to confirm the appointment of ministers; or the legislature itself appoints ministers.
8	The country lacks a presidency entirely or there is a presidency, but the president is elected by the legislature.
9	The legislature can vote no confidence in the government.
Institutional Autonomy	
10	The legislature is immune from dissolution by the executive.
11	Any executive initiative on legislation requires ratification or approval by the legislature before it takes effect; that is, the executive lacks decree power.
12	Laws passed by the legislature are veto-proof or essentially veto-proof; that is, the executive lacks veto power, or has veto power but the veto can be overridden by a majority in the legislature.
13	The legislature's laws are supreme and not subject to judicial review.
14	The legislature has the right to initiate bills in all policy jurisdictions; the executive lacks gatekeeping authority.

15	Expenditure of funds appropriated by the legislature is mandatory; the executive lacks the power to impound funds appropriated by the legislature.
16	The legislature controls the resources that finance its own internal operation and provide for the perquisites of its own members.
17	Members of the legislature are immune from arrest and/or criminal prosecution.
18	All members of the legislature are elected; the executive lacks the power to appoint any members of the legislature.
19	The legislature alone, without the involvement of any other agencies, can change the Constitution.
	Specified Powers
20	The legislature's approval is necessary for the declaration of war.
21	The legislature's approval is necessary to ratify treaties with foreign countries.
22	The legislature has the power to grant amnesty.
23	The legislature has the power of pardon.
24	The legislature reviews and has the right to reject appointments to the judiciary; or the legislature itself appoints members of the judiciary. The legislature reviews and has the right to reject appointments to the judiciary; or the legislature itself appoints members of the judiciary.
25	The chairman of the central bank is appointed by the legislature.
26	The legislature has a substantial voice in the operation of the state-owned media.
	Institutional Capacity
27	The legislature is regularly in session.
28	Each legislator has a personal secretary.
29	Each legislator has at least one non-secretarial staff member with policy expertise.
30	Legislators are eligible for re-election without any restriction.
31	A seat in the legislature is an attractive enough position that legislators are generally interested in and seek re-election.
32	The re-election of incumbent legislators is common enough that at any given time the legislature contains a significant number of highly experienced members.

Appendix Two

Legislature A has the right to remove the executive, but it is not guaranteed by law; it is only guaranteed by convention. Legislature A has a constitution, codified operational rules for both chambers and conventional expectations. The constitution and operational rules grant the executive the right to trigger removal proceedings itself but require the legislature to ask the executive for permission to initiate proceedings should they want to remove the executive.

Legislature A	
Remove the Executive	The legislature can remove the executive.
Executive Approval Required	The legislature requires executive approval to start proceedings.
Law or Convention	Removal is affirmed by convention.

Legislature B has the right to remove the executive, and it does not require the approval of the executive to initiate proceedings as the constitution guarantees the removal rights. It has a constitution, codified operational rules for both Houses and conventional expectations. The operational rules of both chambers clearly define their roles in the proceedings. The executive has no right to initiate removal proceedings. It only has conventional expectations that the powers will be used responsibly.

Legislature B	
Remove the Executive	The legislature can remove the executive.
Executive Approval Required	The legislature requires no approval to start proceedings.
Law or Convention	Removal is guaranteed through the Constitution.

The analysis of the rules of these two legislatures shows the different levels of benefit between them and the legislative-executive relationship. To generate new scores, all of the criteria for the question are considered together to formulate the ranges.

Table A1 shows the scores that would be assigned for Legislature A. The constitution and rules of the legislature all grant a total benefit to the executive, while the legislature only has access to conventional expectations. Those executive conventions are unenforceable, meaning that the convention grants a high level of benefit to the executive as well. The convention does allow the legislature to have an expectation their requests will be answered without recourse to any action should the convention not be honoured. The lowest score that can be assigned to this legislature is 0 because of the benefit the rules grant to the executive, while the highest score that can be assigned is .25, which reflects the unenforceable conventional expectations of the legislature.

Legislature A Executive Removal			
Range	**Low**	**Mean**	**High**
Constitution	0	0.125	0.25
Chamber 1	0	0.125	0.25
Chamber 2	0	0.125	0.25

Table A 1

Table A2 shows the scores that would be assigned for Legislature B. Rules of their constitution grant the legislature sole operation of removal powers and exclude the executive from initiating

proceedings. Here, the reverse of Legislature A is seen as the rules grant a total benefit to the legislature because the executive must rely on convention to ensure that removal powers are not abused, which gives the legislature a high level of benefit. The lowest score that can be assigned to this legislature is .75, which reflects the conventional expectations afforded to the executive, while the highest score would be 1, which reflects the benefit the rules grant to the legislature.

Legislature B **Executive Removal**			
Range	**Low**	**Mean**	**High**
Constitution	0.75	0.875	1
Chamber 1	0.75	0.875	1
Chamber 2	0.75	0.875	1

Table A 2

The examples above show how this method differs from the PPI. Instead of a dichotomous variable, the new score ranges reflect the full scale of executive or legislative benefits regarding the primary powers of a legislature. Due to how some legislative systems are organised, some countries may not be able to give three scores. This is addressed in the next section. Some variation in this method will emerge to account for unique codified arrangements of some legislatures.

In this example, Px represents the current primary legislative power, such as agenda control or investigatory powers. Cx represents the scores from each chamber, x represents the number of chambers, and if applicable, the relevant statutes/constitutional articles. This process is replicated for each of the primary powers, and once all seven powers have their average scores, those scores are averaged against each other, which is coded LPSn. To compare this method against the PPI, the same method is used with addition of the unanalysed/removed questions, that number is coded as LPSr.

New Question Score Formula:
Qx= (Cx)/x
Q1= (.125+.125+.125)/3
New Legislature A ER Mean=.125

Table A 3

Table A3 shows that, for executive removal, Legislature A had two chambers with relevant rules related to the question and a corresponding constitutional article. The mean score was selected from the range of scores, resulting in three scores of .125. To generate one score, the three scores are averaged against each other to generate one score, which results in .125 for executive removal of Legislature A.

Score Formula (Seven Questions)
LPSn = (AC+D+LP+OS+Co+I+ER)/7
LPSn = (.125+1+.25+.5+.25+.825+**.125**)/7
LPSn = .45

Table A 4

Table A4 shows the formula for the new method that has assigned a score to each legislative power culminating in a final Legislative Power Score based on the primary legislative powers identified by this thesis.

- AC- Agenda Control

- D- Dissolution
- LP- Legislative Process
- OS- Oversight and Scrutiny
- Co- Agencies of Coercion
- Investigation of the Executive
- ER- Executive Removal

This new method of calculating an index score will answer the primary question of this thesis by adjusting the scores of a selection of questions more precisely than simply converting an affirmative score to a zero score.

New PPI Score Formula:
LPSn = (Q1+Q3+Q4+Q5+Q10+Q14+Q27+LPSr)/28
LPSn = (**.125**+.5+.25+.875+1+.25+.125+15)/28
LPSn = .65

Table A 5

Table A5 shows the reintegration of the new score of .125 into the PPI score. The process of obtaining a new question score will also take place for the remaining six questions from Legislature A. This example assumes that the process has been completed, resulting in the scores shown in the Table. The remaining unanalysed PPI questions total 15, are added to the seven question scores and are divided by the new PPI total of 28, resulting in a new PPI score of .65.

Despite the changes in the number of questions and the seven re-worked scores, a majority of the new PPI score will be based on the remaining questions that did not receive any adjustments. In order to rectify this question and test the veracity of the methodology, this method can also be used on just the seven reworked questions of the PPI by taking the seven new scores from the selected questions and averaging them against each other. An example of this is seen in Table Eight below, which generates a final score of .45. This method can also show two realities where legislative powers are considered against each other in isolation and one where the scores are reinserted into the PPI to affect a change on the final index score.

[i] Within the limits of Section 22 of the Act

[ii] President Donald J. Trump was impeached in 2020 and 2021