# The Powers of American Governors

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# Chapter 2 The Roots of Executive Power

During his eight years as New Mexico's governor, Gary Johnson competed in the Ironman Triathlon World Championship, won the America's Challenge Gas Balloon Race, played guitar with Van Halen's Sammy Hagar, and helped save a house when massive wildfires struck Los Alamos.<sup>1</sup> Yet one accomplishment that consistently eluded him was convincing legislators in Santa Fe to pass the items on his legislative agendas. Session after session, many of Governor Johnson's policy proposals went nowhere. From the start of his administration, Johnson, a Republican with a background in business, openly clashed with a legislature led by Democratic political veterans. When he entered office in 1995, Johnson admitted that, "I have no expectations to get anything out of the Legislature. The bottom line is we do have different philosophies." The governor quickly highlighted these differences by vetoing a record-setting 200 bills passed by legislators, who retaliated by burying the bills that he wanted. By the end of that first year, Republican state Senator Skip Vernon observed that, "This guy couldn't pass Mother's Day through the Legislature."<sup>2</sup>

Little changed over the course of Johnson's governorship. The fate of the ambitious policy agenda that he announced in his 2001 State of the State address was emblematic of his frequent frustrations. He began his speech with a call for education vouchers that could be used in private schools. After Republican Representative Dan Foley introduced the governor's proposal as HB84, the legislature wasted little time killing it. The bill was defeated by a 9-4 vote in the House Education Committee, which then unanimously moved to table it. "It was dead when we got there; now it's blue and starting to smell," said Rep. Foley.<sup>3</sup> Johnson's proposals to implement

<sup>&</sup>lt;sup>1</sup>David Miles, "8 Years in the Life of Gary Johnson," Albuquerque Journal, Sunday, December 22, 2002, A14.

<sup>&</sup>lt;sup>2</sup>Bill Hume, "Johnson Vetoes Will Grade Session," *Albuquerque Journal*, Sunday, March 25, 2001, p. B2.

<sup>&</sup>lt;sup>3</sup>Albuquerque Journal, "School Vouchers Considered Dead," February 15, 2001.

merit pay for teachers and to ease the process for establishing charter schools also died. The national media gave Johnson much attention when the Republican triathlete called for drug legalization and a medical marijuana program, but legislators gave him few victories.<sup>4</sup>

The governor's push for a major reorganization of the executive branch was even less successful, with his calls for constitutional amendments meeting open hostility from the legislative branch. When Johnson asked for a change that would allow governors to appoint the Attorney General and the Secretary of State, Democratic Rep. Dan Silva of Albuquerque asked, "Is this a dictatorship that he wants to set up?"<sup>5</sup> Silva's colleagues answered his rhetorical question by ignoring Johnson's requests. Of the 21 policy proposals that Gary Johnson made in his 2001 State of the State address, four eventually passed and the other 17 died unceremonious deaths.

What is most surprising about Gov. Johnson's record of legislative failure, though, is how it stands in contrast to his history of success in budget negotiations. While his policy proposals made little progress, Johnson often exerted influence over the total size and critical details of the state's spending plan. New Mexico crafts its two-year budget during thirty-day legislative sessions convened in January of even-numbered years. In 2000, a month was not long enough for Johnson and his legislative opponents to negotiate a budget deal. Both branches paid a political price for the delayed budget, seeing their approval drop noticably in public opinion polls.<sup>6</sup> But later that spring, Gov. Johnson used his power to call the state's citizen legislators back to Santa Fe for a special session. As the standoff dragged on, legislators groused, took political heat, and ultimately gave in to many of the governor's demands. One legislator opined that such meetings "[C]ertainly are not special. They are absolutely routine and, in my opinion, very annoying."<sup>7</sup> The special session took legislators away from their day jobs, cost the government \$45,000 a day to run, and generated much political controversy. One legislator said, "I think it would behave all of us to be out of here by Saturday. I can just see a lot of really ugly newspaper stories if we're still in session on April Fool's Day."<sup>8</sup> Perhaps because of the legislators' hurry, they gave into Johnson's major fiscal demands and passed a budget that was described as a "political home run" for the governor.<sup>9</sup>

<sup>&</sup>lt;sup>4</sup>Steve Terrell and Mark Hummels, "Gaming compacts OK'd, most drug reforms not," *The Santa Fe New Mexico*, March 18, 2001.

<sup>&</sup>lt;sup>5</sup>Albuquerque Tribune, "House Kills Succession Measure," February 28, 2001, p. A4.

<sup>&</sup>lt;sup>6</sup>Albuquerque Journal, "Voters Unimpressed with Johnson, Lawmakers," March 19, 2000, p. A1

<sup>&</sup>lt;sup>7</sup>Albuquerque Tribune, "Only Thing Special about These Sessions Are Lessons," April 4, 2000.

<sup>&</sup>lt;sup>8</sup>Hummels, Mark. 2000. "They're back." The Santa Fe New Mexican, March 28, 2000.

<sup>&</sup>lt;sup>9</sup>Albuquerque Journal, 2000a. "Vetoes Enact Tax Reduction." Albuquerque Journal, April 22, 2000.

Juxtaposed against Johnson's many strikeouts with policy proposals, this budget success presents a puzzle about the roots of executive power: How can the same governor be successful in one realm while failing so miserably in the other? Are these two types of negotiations fundamentally different? Gov. Johnson's story deserves systematic scrutiny, and is far from the only puzzling pattern to emerge from a look at gubernatorial success and failure.

In Massachusetts in 2006, Republican Mitt Romney gave a State of the Commonwealth address meant to lay the foundation for his planned 2008 run for the presidency. One might have expected him to build a working relationship with the state's Democratic legislators and pile up policy successes to trumpet on the campaign trail. Instead, his far-reaching speech was an invitation to gridlock. It included 18 proposals, many of them taking up controversial issues such as state employee pension reform, abstinence education, a state takeover of failing schools, and work requirements for welfare recipients, reforms which Democratic legislators routinely oppose. In fact, though at least one of them was a recycled proposal that Gov. Romney had made and been denied in the past, that did not stop him from vowing to, "propose, again, mandatory parental preparation classes for parents of kids in failing schools."<sup>10</sup> It was not a shock to anyone in Boston's statehouse, then, that only three of Gov. Romney's bills passed in anything near their original form. The real question is, why would a governor who sought higher office choose the perilous path of asking for bills that he knew the legislature would not pass?

Another puzzle emerged from our look at governors in 2001. Leaders of two of the nation's mega-states, New York Gov. George Pataki (Republican) and California Gov. Gray Davis (Democrat), led statehouses that appeared primed to pass budgets on time. Both governors negotiated with full-time legislatures that employed thousands of staffers, including expert budget analysts. Yet the legislature's expertise and long sessions seemed to create a recipe for delay rather than deals. Gov. Pataki's \$83.6 billion budget allocated six billion dollars of new spending to popular programs like increased school aid, more money for the state university system, and tax rebates to farmers and senior citizens.<sup>11</sup> Still, he could not convince lawmakers to agree to such apple pie proposals. New York did not pass a final spending plan until October 25, well into its fiscal

<sup>&</sup>lt;sup>10</sup>Quotation from Gov. Mitt Romney in his State of the Commonwealth address, delivered on January 18, 2006 in Boston, Massachusetts.

<sup>&</sup>lt;sup>11</sup>Eric Durr, "Governor Unwraps Budget \$83.6 Billion Plan Includes School Aid Increase," Watertown Daily Times, Tuesday, January 16, 2001.

year.<sup>12</sup> Gov. Davis did not reach a deal with lawmakers until 25 days past the July 1st start of California's fiscal year. The Golden State's budget was late even though Davis' spending plan included a multibillion dollar boost for state schools that enjoyed broad bipartisan appeal.<sup>13</sup>

For observers of each state, these budget delays came as no shock. Between 1985 and 2005, 20 of New York's 21 budgets were adopted after the beginning of the fiscal year (McMahon 2005). In California, while Gray Davis's first two budgets were completed on time, this was the exception rather than the rule in a state where budgets were signed prior to the July 1st deadline in only four years from 1987 through 2009.<sup>14</sup> Yet both of these patterns should in some sense be surprising. Why do states with the nation's most professional legislatures miss their deadlines, even in relatively good fiscal times? Why is a governor's job harder when negotiating budgets with lawmakers for whom legislating is a full-time job?

Solving these puzzles requires a close look at the strategic nature of the games that governors play when they bargain with legislators. After conducting interviews with key players in these games, we used the tools of rational choice to turn their testimony about the goals that they pursue and the rules of statehouse bargaining into systematic predictions about the factors that can help make governors more or less successful. Some of these predictions, which we test in the chapters to come, formalize what other scholars have already noted. Yet our approach also leads us to set forth new contentions and some counterintuitive predictions, which are born out in our empirical analysis. And our models help us better understand why Gary Johnson, Mitt Romney, George Pataki, and Gray Davis won and lost when they did, revealing the roots of executive power.

### 2.1 Two Different Games that Governors Play

Whenever governors want to see legislation passed through their statehouses, they have to overcome their formal exclusion from most parts of the lawmaking process. Legislators monopolize everything from the introduction of bills to committee votes to floor debates. Yet governors are not without potent tools. State chief executives, like presidents, command the stage of American politics more

<sup>&</sup>lt;sup>12</sup>Jordan Rau, "New York Budget Gets \$500M Boost," Newsday (Melville, NY), Thursday, October 25, 2001.

<sup>&</sup>lt;sup>13</sup>Joan Hansen, "Strings still attached to school budget," *The Orange County Register*, Thursday, January 18, 2001.

<sup>&</sup>lt;sup>14</sup>California Department of Finance, "Chart P-1: Historical Data Budget Act Dates and Veto Information," Accessed at http://www.dof.ca.gov/budgeting/budget\_faqs/information/documents/CHART-P1.pdf/ on October 1, 2010.

than any single legislator (Neustadt 1960, Kernell 1986, Rosenthal 1990, Beyle 2004). Their policy priorities and the proposals that they make become news. Public events, particularly a State of the State address, focus legislators on the executive agenda and can pressure lawmakers into taking action. Governors can and do flaunt their veto pen, knowing that its use and even the threat of its use are critical to their influence over policy. They can leverage their control over the fates of bills that legislators covet into support for executive proposals, turning their negative power into a positive one. Even beyond their ability to sign and veto bills, state chief executives can offer plenty of invaluable favors to cooperative lawmakers. These tools provide an important counterbalance to the legislature's monopoly over the lawmaking process.

Our models of executive-legislative bargaining focus on these tools, the strategic choices a governor can make at the beginning of negotiations, and especially the potential endgame—that is what happens if the governor and legislature fail to reach a deal. Savvy players realize that there are different endgames to negotiations over a governor's policy proposals, on the one hand, and over the budget on the other. When legislators refuse to pass a governor's policy bill, nothing too terrible happens. State law in that area remains at the status quo, where it has been all along. If legislators can live with the existing policy, they can stonewall the governor's new bill or attempt to extract favors from the governor in exchange for passing it. The legislative monopoly truly matters in policy negotiations. Governors who have better tools to convince lawmakers to go along with their proposals will see more success than weaker executives, but ultimately all are at the legislature's mercy.

The endgame is dramatically different when it comes to the budget. If negotiations collapse, a serious political calamity looms. In most states, unlike in Congress,<sup>15</sup> a budget that is delayed past the start of the fiscal year triggers an automatic shutdown of the government (Grooters and Eckl 1998). In all states, it generates unfavorable press and puts serious political heat on the governor and legislators. Neither side can hold out in a stalemate for long. Public polls conducted

<sup>&</sup>lt;sup>15</sup>Continuing resolutions, although frequent in federal budgeting (Fenno 1966, Meyers 1997, Patashnik 1999), are not common or important considerations in state budget negotiations. Only nine states permit some form of continuing resolution (Grooters and Eckl 1998), and even these measures are labeled "minibudgets" (Connecticut), "interim budgets" (New York), or "stopgap funding" (Pennsylvania). None can become permanent, and the players in budget negotiations do not hope or fear that they will avoid crafting a new budget.

in California,<sup>16</sup> New York,<sup>17</sup> and New Mexico<sup>18</sup> have all demonstrated that a late budget cuts deeply into the approval ratings of both branches. Looking ahead to this endgame usually brings legislators to the bargaining table before calamity can strike. Since legislators cannot live with the status quo if they refuse to pass a budget, their advantage over governors dissipates dramatically in this realm. Both sides have incentives to deal, and budget bargaining becomes a staring match that patient governors often win.

The insiders who negotiate budgets and policy bills understand the differing dynamics of these two games. "You've gotta have a budget," notes Gary Hart, a longtime California state senator who also observed negotiations from the executive branch as Gov. Gray Davis' education secretary. "The governor's [policy] bill, you don't need that. But you do need the budget."<sup>19</sup> In Maryland, Democratic Gov. Parris Glendening pointed out the paramount importance of the budget endgame in a state where lawmakers are required to pass a budget on the 83rd day of a 90-day session: "If that deadline is missed, by law, all other action must be suspended. Both the legislature and the governor would lose, and the public simply would not have tolerated it. The Maryland culture is that the legislature meets for 90 days, and the budget is passed on time."<sup>20</sup>

Insiders also point out that the budget can be the exception to the rule of legislative advantage. Asked whether it was easier to move budget proposals than policy bills, Ohio Gov. Bob Taft (Republican) answered definitively, "Oh, that's very true."<sup>21</sup> In Kansas, Burdett Loomis, an

<sup>&</sup>lt;sup>16</sup>The time series of legislative and gubernatorial approval in California reported by the Field Poll reveals how severe these penalties can be. In the first two years of Governor Gray Davis's administration, 1999 and 2000, the branches reached budget deals before the start of the new fiscal year. During Davis's last two years, 2002 and 2003, negotiations dragged into September and August, according to (Wilson and Ebbert 2006, p. 276). In 1999 and 2000, the legislature's approval ratings remained essentially constant over the summer. But the legislature's approval ratings dropped from 45% to 35% from July to September of 2002 and from 31% to 19% from April to July of 2003 (Field Poll 2004, 2). Davis's already-low ratings edged downward as well in each of those summers (Field Poll 2003, p. 3).

<sup>&</sup>lt;sup>17</sup>When the 2001 budget deal in New York was delayed, 84% of survey respondents were "very concerned" or "somewhat concerned" about the budget, and 63% blamed both Governor Pataki and the state legislature (Quinnipiac 2001). In 2004, 81% of polled New Yorkers voiced concern over the state's late budget, and 46% said that it made them more willing to vote out incumbents (Caruso 2004).

<sup>&</sup>lt;sup>18</sup>When New Mexico's budget was delayed in 2000, Governor Gary Johnson and the legislative leaders all polled poorly and "New Mexico voters faulted Johnson and lawmakers almost equally for their failure to reach agreement during the session on a \$3 billion budget," according to *The Albuquerque Journal*, "Voters Unimpressed with Johnson, Lawmakers," March 19, 2000, p. A1.

<sup>&</sup>lt;sup>19</sup>Interview with Gary Hart, former California state senator and education Secretary, interview by telephone conducted by Thad Kousser, July 16, 2009.

<sup>&</sup>lt;sup>20</sup>Interview with Gov. Parris Glendening of Maryland, conducted by telephone by Justin Phillips and Thad Kousser, July 13, 2010.

<sup>&</sup>lt;sup>21</sup>Interview with Gov. Bob Taft of Ohio, conducted by telephone by Thad Kousser and Justin Phillips, October 1, 2009.

advisor to Democratic Gov. Kathleen Sebelius, remembers that, "Much of the governor's tenure was focused on the budget because the big policy changes coming from the legislature in a conservative direction, she would veto, and she figured out pretty quickly that they would kill her policy initiatives. So she turned to the budget."<sup>22</sup> For Gov. Sebelius, all of the action was in budget negotiations because this was the only venue in which she could successfully pursue her most important legislative goals. Indeed, when asked if the governor had been able to secure any significant agenda items through the policy game, Loomis responded, "Any major change was done in the budget process. I'm trying to think of a major change done through the regular bill process, and I can't think of a single one."

In this chapter, we formalize the intuition that our interviews, along with existing academic work, provide about how governors negotiate with legislators to get what they want. We present two simplified "games" that governors play with legislators, one meant to capture fights over policy proposals, the other tailored to the budget. Both adapt models from the game theory literature to our view of the roots of executive power and to the features of American state government.

Distinguishing between the policy and the budget game helps resolve the puzzle that began this chapter: Gary Johnson failed in his policy negotiations with New Mexico's legislature but succeeded in many of his budget battles because of the stronger bargaining position that governors have in the budget, especially when they are negotiating with legislatures that meet in short sessions. The policy game gives legislators a chance to refuse to pass executive proposals, because they can live with the consequences. Governors need to use the sticks and carrots at their disposal to convince legislators to come to the bargaining table and to pass the bills they propose. The most successful governors at this game will be the ones with sweeter carrots and sharper sticks. By contrast, budget bargaining is a staring match, with neither side able to hold out forever but both hoping to beat the other branch. The most successful governors will be the ones who are more patient than the legislators they stare at across table. Because of this, we contend, what governors bargain over (policy bills or the budget) often determines whether they will win.

Our primary point is that because these games end differently, they will be played differently from the start. This makes the strategic logic of game theory, which looks down a game tree at all

<sup>&</sup>lt;sup>22</sup>Interview with Burdett Loomis, Director of Administrative Communication to Kansas Gov. Kathleen Sebelius, 2004-2005, conducted by telephone by Thad Kousser, May 14, 2010.

possible final outcomes and works backward to see what moves players will make, a useful tool to apply here. Our models help to explain the puzzles that we began with and produce clear empirical predictions, which we test and explore in greater depth throughout this book.

### 2.2 The Policy Game

We fit our substantive arguments, about what governors want in the policy realm and how they go about passing their bills, into the framework of a classic game that has been used by other scholars to simplify the complex process of executive-legislative bargaining. We adapt and extend Romer and Rosenthal's (1978) "setter" model. This model considers how two players negotiate when one has the exclusive power to set the terms of a deal, while the other has only the power to accept or reject the deal. The setter model mirrors negotiations where legislators can offer bills, which governors must then either sign or veto. Because of this close fit, Kiewiet and McCubbins (1988) and Cameron (2000) apply the setter model to Congress, while Alt and Lowry (1994, 2000) adapt it to bargaining over the scale of state government. Building on these works, we take the basics of the setter model and add in what we see as the key strategic dynamics that unfold after governors publicly announce their policy agendas.

#### 2.2.1 What do Governors and Legislators Want?

We build our model of negotiations over policy proposals in a governor's public agenda from first principles, beginning with what motivates each player. By "public agenda," we mean the proposals that governors make in high-profile announcements designed to draw press and voter attention to their ideas.<sup>23</sup> State of the State addresses are the primary sources of such announcements, though governors can use other forums to make them.

What do governors aim to gain when they make these public pronouncements? We assume that they care about the policies that they ultimately extract from legislators, but also about what they are seen asking for. When a governor evaluates how satisfied she is with negotiations, she takes into consideration both the final policy outcome and whether the position that she took in her public agenda reflects her sincere preferences (i.e., her ideal outcome).

What sources of leverage do governors have at their disposal to achieve their aims? Our

<sup>&</sup>lt;sup>23</sup>What we exclude from this definition are bills that a governor might support but only pushes for in informal negotiations with legislators, or agency-backed bills upon which the governor stakes no public political capital.

assumption is that they can credibly promise to do favors (i.e., make side payments) to legislators who cooperate by passing the bills that the governor proposes, though some governors are better positioned than others to help legislators. When a state chief executive includes a policy proposal in her public agenda, this elevates the stakes of negotiations because it conveys the implicit promise that she will dole out the carrots at her disposal (or withhold her punishing sticks) if legislators send the bill to her desk.

Legislators care about the side payments that governors can make, but of course they too care about policy outcomes. Unlike governors, they cannot offer favors to get what they want out of the other branch. The source of their power is their exclusive ability to author and pass legislation, an agenda-setting advantage that allows them to decide whether they are better off taking the governor's approach to a policy question and earning the promised side payment, or forgoing these favors to pass a bill that more closely reflects legislative priorities.

We turn our intuitions about these motivations and powers, informed by our interviews, into formal assumptions. Abstracting the process of executive-legislative negotiations into its key features, we construct a model that provides predictions about when the branches will deadlock and when they will be able to reach a deal, and who will shape the details of that deal. Our first necessary simplification is to think of policy bargaining as a battle between two unitary actors, the governor and the legislature. Of course, neither branch always acts as one. Within the executive branch, opinionated cabinet officials, competing advisors, and the governor sometimes want different things, and legislatures can contain as many policy preferences as they have members. Yet by the time a single policy proposal has made its way into the governor's public agenda, executive rivalries have been settled, and a pivotal legislator or bloc of legislators will emerge to guide the branch's response on this policy dimension. By assuming that there are only two players in this game, a governor and the legislature, we following the approach of Kiewiet and McCubbins (1988), Alt and Lowry (1994, 2000), Cameron (2000), Kousser (2005) and many others.<sup>24</sup>

 $<sup>^{24}</sup>$ Krehbiel's (1998) pivotal politics model makes the critical point that bargaining models should also consider the positions of legislators who control veto overrides and who can filibuster legislation in the Senate, while Cameron (2000) explores the importance of veto overrides. While filibusters and similar delaying tactics are rare in the states, veto overrides (and their anticipation by governors) do play a role in negotiations. Since their threshold to override a veto varies across states, we measure this potential for each state in our dataset empirically and take it into account elsewhere in our model, while maintaining the simplifying assumption of a unitary legislature. Other models (Tsebelis and Mooney 1997, Sin and Lupia 2008) consider the formal implications of bicameralism, another important path for future consideration in models of state politics that we ignore here for the sake of tractability.

Our second abstraction of reality is to think of bargaining over a bill as taking place on a single, spatial dimension. This dimension can be represented by a line, with each player's preferred policy ("ideal points" denoted by  $G^*$  and  $L^*$ ) indicated as a point on the line. Another point on the line, SQ, represents the location of the status quo, the existing policy such as criminal sentences of a given length, current school testing procedures, or, the lack of a program to address some policy challenge. New proposals can move the status quo in any direction and by any amount.

#### 2.2.2 What do Governors and Legislators Know?

Since this is a game of complete information, both players know each other's preferences. Governors, should they choose to do so, have the opportunity to vet their proposals with key legislators in advance of making them public. Alternatively, governors (and their advisors) may be able to predict the legislature's response based on their prior experiences. But governors, administrators, and legislators generally know pretty well where each other stands, even if they do not agree. If legislators cannot figure out exactly what a governor wants from her public prouncements, they will have plenty of opportunities to do so.

The branches also know each other's powers. To counter the legislature's formal power over the agenda, the governor possesses a collection of formal and informal powers that we conceptually combine into the ability to make a single side payment of value S to a legislature that passes her proposal, intact. Representing the sticks and carrots at a governor's disposal, S can be measured on the same spatial scale that we use to gauge policy movements. Governors use it to pay off legislators for bending to their policy will, just as legislators on the floor make a side payment to committee members in Krehbiel's (1991) model of congressional organization. The value of S can vary across governors. This "power to persuade" (Neustadt 1960) depends on concrete, measurable factors, giving strong governors the ability to buy more policy concessions by offering a larger Sthan weaker governors can offer.

#### 2.2.3 The Power of the Veto Pen

What are these carrots and sticks, and what separates strong from weak governors? One crucial source of leverage that governors can use to compel cooperation is their control over the bills that legislators want to pass in other policy realms. Gubernatorial advisors and legislators alike tell us that the best way for a governor to secure support for her own high-profile public proposals is to signal her support for other pieces of legislation which, though they may not seem as important to the state, are just as critical to the careers and policy goals of legislators. Former California State Senator Pat Johnston, who served in key committee roles through four governors' administrations, observes that "This is a bill driven process, so that's how we measure success here. Legislators, lobbyists, everyone focuses on getting bills passed and getting them signed by the governor, so a governor is able to use that concern to get some support for the governor's own agenda."<sup>25</sup> In New York, two close observers of Albany politics note that "Bills are the currency of the legislature, and passing bills into law is the primary measure of a legislator's achievement. Any doubts? Check the achievements claimed in the biographies legislators write about themselves" (Feldman and Benjamin 1988, p. 280).

Because a governor can sign or veto any legislator's bills, she possesses a negative power which she may, even without making an implicit quid pro quo offer, turn into positive support for her own bills in the legislature. "How does a governor get something out of the legislature?" asks Bill Whalen, chief speechwriter to California Governor Pete Wilson from 1995-1999. "First, a governor has the veto, so he can say 'I want this. You may not, but do you want your bill? Here's what will happen if you don't work with me'."<sup>26</sup> Wilson's communications director, Dan Schnur, summarizes this transaction with "It is power to veto legislation that gives a governor the power to get legislation."<sup>27</sup> In their national look at the powers of governors, Beyle and Ferguson (2008, p. 216) write that "the governor can offer support on a member's 'pet legislation' in exchange for that members support for the governor's initiatives." The veto is the key to the governor's leverage in this exchange.

Although all governors in the United States posses the veto, this power is not perfectly constant across governors.<sup>28</sup> Because vetoes may be overridden, governors will have a stronger bargaining position generally when their party controls enough seats in the legislature to prevent a

<sup>&</sup>lt;sup>25</sup>Interview with former California state senator Pat Johnson, conducted by Thad Kousser in Sacramento, June 22, 2009.

<sup>&</sup>lt;sup>26</sup>Interview with Bill Whalen, chief speechwriter to Gov. Peter Wilson, conducted by Thad Kousser, Palo Alto, California, May 21, 2010.

<sup>&</sup>lt;sup>27</sup>Interview with Dan Schnur, communications director to Gov. Pete Wilson, conducted by telephone by Thad Kousser, July 7, 2009.

<sup>&</sup>lt;sup>28</sup>North Carolina was the last state to grant its governor veto power, doing so in 1996. Currently, governors in 44 states possess some form of the line-item veto, although the specifics of this authority vary in the important ways that we will discuss in Chapter 7 (Council of State Governments 2010, 201-202).

veto override. A governor whose party holds an override-proof majority will also be in a stronger bargaining position if she resides in one of the 43 states which grant the governor line-item veto authority over spending provisions. Governors who can credibly threaten to veto a key legislator's bill or line out that legislator's favored spending will be better positioned to compel cooperation on their own policy proposals. Larry Thomas, who advised Republican Governor George Deukmejian in California, concludes that "I think what matters most is the partisan mix between the legislature and the governor. If the governor has even a minority of Republicans, but he still has enough to sustain a veto, then this helps."<sup>29</sup>

#### 2.2.4 The Power of Small Favors

A second set of powers that governors can use to extract what they want out of legislatures resides in their ability to do all of the invaluable little favors that make legislators want to work with them. When governors attend fundraisers for legislators, travel to their districts to campaign for them, consult them about commission appointments and state-funded local projects, or simply socialize and take pictures with legislators, they are building the good will that can turn into support for executive proposals.

Rosenthal (1990) terms these "the powers of provision," noting that, "Any legislator who says he needs nothing from the Governor's office is either lying or stupid." Governors can dole out small but important favors that provide concrete benefits to lawmakers in their districts. Pete Wilson aide Dan Schnur observes that "If you can sign their bills, work out the amendments necessary to get it signed, give them a signing ceremony instead of a signing statement, they will cooperate with you." California Gov. Gray Davis explains that, "It's important to give public recognition to legislators. They work hard on their bills, so when you want to sign one you can do one of two things. You can sign the bill and send out a press statement, or you can go down and do a press event in their district. If you go to Fresno, really make an effort, a legislator likes that."<sup>30</sup>

Governors elsewhere need not even exert this much effort to hand out a valuable carrot to legislators. "Often in Maryland, they send identical Senate and House bills, and a key question becomes 'Which bill gets signed by the governor'?" reports Gov. Parris Glendening. "They all

<sup>&</sup>lt;sup>29</sup>Interview with Larry Thomas, press secretary and campaign manager to California Gov. George Deukmejian, conducted by telephone by Thad Kousser and Justin Phillips, June 30, 2009

<sup>&</sup>lt;sup>30</sup>Interview with Phil Trounstine, communications director to Gov. Gray Davis, conducted by telephone by Thad Kousser, July 8, 2009.

wanted to go back to their district to say it passed and it was my bill, so we'd make a determination on these—about 20% of bills—of whose we'd sign, and this can help, strengthen your relationship with that legislator."<sup>31</sup> As Gov. Glendening's quote makes clear, governors can dole out these small favors selectively, using them to reward or withholding them to punish legislators. Bill Hauck, who served as chief of staff to two California Assembly Speakers and as deputy chief of staff to Gov. Pete Wilson, recalls that, "Every legislator has needs, and while you don't want to indulge them to any great extent, you pick and choose."<sup>32</sup>

#### 2.2.5 Powers Erode over Time

All governors can offer favors small and large, or make veto threats. The importance that legislators will attach to these favors—and thus the governor's prospects of winning legislative game—depends upon both the magnitude of what a governor can promise, and how long she can promise it. At the beginning of an administration, governors and legislators alike foresee a long relationship in which the governor will have plenty of time to repay legislators who cast tough votes in favor of her bill. This is part of the mechanism by which governors can expect a honeymoon period during their first year in office.<sup>33</sup> By contrast, when a governor is nearing the end of her term in office and viewed as a potential lame duck, she will have dramatically less time to follow through on her offer to make it up to legislators, leaving her with a smaller side payment to offer.

"For any governor in any state, and for the President, you are never as powerful as you are on the day of your inauguration," remarks Gov. Gray Davis. "You start at the peak of your power, and then it just goes downhill from there."<sup>34</sup> Prior academic study of governors also finds this dynamic at play. Margaret Ferguson's analysis of gubernatorial success in the 1993-94 session found that "executive success wanes over time...This supports the traditional 'bank-account' theory of chief executive clout" (Ferguson 2003, p. 172). Put in the terms of our formal model, the value of side payment S that a governor can offer to cooperative legislators declines as she moves from the beginning toward the end of their administrations.

<sup>&</sup>lt;sup>31</sup>Interview with Gov. Parris Glendening of Maryland, conducted by telephone by Justin Phillips and Thad Kousser, July 13, 2010.

<sup>&</sup>lt;sup>32</sup>Interview with Bill Hauck, former chief of staff to Assembly Speakers Willie Brown and Bob Moretti and deputy chief of staff to Governor Pete Wilson, conducted by telephone by Thad Kousser and Justin Phillips, June 25, 2009.

<sup>&</sup>lt;sup>33</sup>Another mechanism that may drive any "honeymoon effect" is that newer governors are often more popular, a factor that we hold constant in our empirical analysis.

<sup>&</sup>lt;sup>34</sup>Interview with Gray Davis, conducted by telephone by Thad Kousser, XXX 2009.

#### 2.2.6 Power Grows with Popularity

The size of the side payment that governors can offer to legislators should also be shaped by their approval ratings. Popular governors can make more potent payments, we contend. A governor with high approval ratings is going to be a bigger draw at a fundraiser or campaign rally. Pictures with popular governors will appear on legislative campaign materials, while members will run against a governor—even one of their own party—who is unpopular. "I think if a governor has strong popularity ratings, he's got a bigger bully pulpit," concludes Ohio Gov. Bob Taft, who saw his popularity rise and fall over the course of his administration. "If a governor is strong and popular, whether or not he's going to use the electoral power that gives him, legislators still think that he might use that either for or against them in their reelection."<sup>35</sup>

The potency of the punishments that a governor can impose also depends upon her popularity. It was possible for Arnold Schwarzenegger to campaign against six vulnerable Democrats in the lead-up to California's 2004 election, when his 65 percent approval helped convince them to veer right in their voting patterns (Kousser, Lewis, and Masket 2007). By 2010, with his popularity dipping to 22 percent,<sup>36</sup> he stayed off the campaign trail and did not wield as much influence with legislators. Finally, popular governors can more credibly threaten to veto bills that legislators favor, promising to take the heat for doing so unless legislators go along with executive bills. In our view, the way that popularity inflates the value of these sorts of favors is the tangible path of "political capital" linking approval ratings to policy achievement. Popularity can sweeten a governor's carrots and sharpen her sticks, changing the value of the *S* that she can offer.

The testimony of those close to governors supports this assumption. According to Deukmejian aide Larry Thomas, "The higher the approval ratings, that is a time for a governor to aggressively pursue his agenda and have a legislature that is a little off balance, a little fearful of how popular the governor is, a little concerned about how the governor will exercise his power. That gives a governor an easier road. As that erodes, the legislature becomes less responsive to a governor, less willing to do what he says."<sup>37</sup> Phil Trounstine, communications director to Califor-

<sup>&</sup>lt;sup>35</sup>Interview with Gov. Bob Taft of Ohio, conducted by telephone by Thad Kousser and Justin Phillips, October 1, 2009.

<sup>&</sup>lt;sup>36</sup>Mark DiCamillo and Mervyn Field, "Schwarzenegger and the State Legislature Both Get Very Poor Job Ratings." Field Poll Release No. 2346, July 14, 2010.

<sup>&</sup>lt;sup>37</sup>Interview with Larry Thomas, press secretary and campaign manager to California Gov. George Deukmejian, conducted by telephone by Thad Kousser and Justin Phillips, June 30, 2009.

nia Gov. Gray Davis, puts it in similar terms. "As long as he [the governor] is popular, he can help legislators by helping them get reelected, raise money, sign their bills, help allies get jobs and appointments. As he loses popularity, he can't deliver money, he can't deliver voters, isn't getting the same kind of respect in the media. Popularity breeds influence, and a lack of popularity breeds a decline in influence."<sup>38</sup>

#### 2.2.7 The Implicit Stakes of a High-Profile Policy Proposal

When a governor elevates a proposal by including it in her public agenda, we assume that she is promising to pay legislators a set value of S if they pass the bill and nothing if legislators pass a different version or do nothing.<sup>39</sup> Longtime California legislator Pat Johnson observes that, "when he [the governor] announces a proposal, that elevates its importance." Larry Thomas spoke similarly of the items in Gov. Deukmejian's State of the State address. If a proposal was in the speech, "It was what he wanted and what he was willing to put his prestige on the line for."<sup>40</sup>

While it may vary from strong to weak governors, S is constant across all of the proposals that a governor makes in her speech. Because doing small favors or restraining her veto pen does not hurt a governor, paying the cost of S does not factor into a governor's utility calculation for each proposal. However, since the game that we describe here is played many times simultaneously with the many proposals contained in a governor's public agenda, we assume that the governor has a fixed pot of favors to draw from and that making many proposals can deplete the value of S in each game. In each game, though, paying S is akin to anteing up in a poker game: governors put the offer of this side payment on the table every time they include an item in their public agenda.

How does a governor judge whether or not she won at the end of the game? We assume that she cares about policy and budgetary matters, but also about whether she took a position,

<sup>&</sup>lt;sup>38</sup>Interview with Phil Trounstine, communications director to Gov. Gray Davis, conducted by telephone by Thad Kousser, July 8, 2009.

<sup>&</sup>lt;sup>39</sup>The rationale behind the way that the payment of S is structured—with the legislature receiving all of S if it passes the governor's proposal in a close approximation of its original form but nothing if lawmakers send the governor a compromise more to their own liking—is that the State of the State or other public announcement serve as a clear focal point for where the governor has staked her political capital. We assume that governors and legislators may bargain over the details of policy informally, but do not have the opportunity to negotiate over how much in favors the governor might pay for a specific compromise on every item in the governor's agenda. One possible extension of the model could loosen this assumption, allowing legislators to extract policy concessions from the governor in exchange for a smaller payment of favors, which would give legislators "half-a-loaf" of favors when they pass a bill that gives "half-a-loaf" of policy to the governor. We do not explore that extension formally here.

<sup>&</sup>lt;sup>40</sup>Interview with Larry Thomas, press secretary and campaign manager to California Gov. George Deukmejian, conducted by telephone by Thad Kousser and Justin Phillips, June 30, 2009.

in her public agenda, that reflects her "sincere preferences." A governor's sincere preferences (at least as we conceive of them) may be intrinsic and thus reflect her long-held political ideology or governing philosophy. Alternatively, and perhaps more cynically, these preferences may be induced by the demands of voters, key interest groups, or campaign contributors. Regardless of their origins, governors receive some benefit from signaling these preferences in their public agendas. In this way, a governor resembles Mayhew's (1974) position-taking members of Congress. In our model, the governor's utility is the sum of her spatial policy payoff and a potential bonus that she receives if she asked for her ideal outcome in her public pronouncements. The policy payoff can be calculated as the spatial distance between the final outcome,  $x_F$ , and the governor's ideal policy,  $G^*$ . Making the standard assumption that governors have "tent utility," that one increment of policy movement away from their ideal has the same impact upon their utility no matter which direction it goes and where on the spatial policy dimension it occurs, we can calculate the governor's policy payoff as  $-|x - G^*|$ . A governor's utility declines the farther the final bill gets from her ideal. Governors add to this a "position-taking bonus" of value B that they receive if and only if their proposal  $(x_G)$  reflects their sincere position (when  $x_G = G^*$ ). The governor receives this benefit even if the proposal does not become law.

#### 2.2.8 The Payoff of Position-Taking

Including a position-taking bonus in our model reflects what we often heard from those involved in crafting State of the State addresses, who reminded us that it served both as a chance for governors to make proposals that legislators would be receptive to and for them to outline and signal their political philosophies, no matter what lawmakers might think. Sometimes governors play to the audience in the legislative chambers in front of them, and sometimes they pitch their proposals to the state's voters, to their key allies, and even to a national audience. Considering how this public payoff can affect a governor's strategies can also explain some curious patterns in their behavior. When the value of B is larger than what a governor could hope to gain by making a more modest proposal that is acceptable to the legislature, she will simply ask for what she wants even knowing she has no hope of getting it.<sup>41</sup> "We called it the 80/20 rule," remembers Bill Whalen. "In your

<sup>&</sup>lt;sup>41</sup>This is the formal rationale in our model for why governors sometimes lose, instead of always pitching a proposal that legislators will accept. Other formal models use incomplete information (Cameron 2000) or uncertainty about legislative preferences and vote-buying resources (Saiegh 2011) as rationales for bargaining failures. While we do

State of the State, you'd hope that 80 percent of what you ask for gets in play, and that 20 percent of it passes...some of it is a wish list of items designed to appeal to your base. You know they will be dead on arrival."<sup>42</sup> Kevin Eckery, another Gov. Wilson aide, noted that "Even if he couldn't accomplish it, Pete wasn't going to let the bastards stop him from talking about it."<sup>43</sup>

#### 2.2.9 The Legislature's Goals and Tactics

What determines the legislature's utility? We assume that lawmakers care both about the spatial location of the final policy outcome, and about whether they receive the side payment S for passing the governor's proposal in its original form. Assuming that they evaluate policies just like governors do, though from the vantage point of their own ideal law, the policy portion of the legislature's payoff is  $-|x - L^*|$ . Since we arbitrarily locate  $L^*$  at 0 on the line, this can be simplified to -|x|. Legislators can add to this the side payment of value S that they receive if and only if the bill that they pass  $(x_L)$  matches up with the executive proposal (when  $x_L = x_G$ ). If the side payment is large enough, legislators will pass a governor's bill even when they know they could pass a bill more to their liking and force the governor to sign it (but in doing so forego the side payment). In some cases, legislators will have an incentive to grudgingly pass a bill that makes them worse off than status quo in policy terms, in order to stay in a governor's good graces and gain the side payment.

The structure of our game follows naturally from way that a State of the State address or another public announcement by the governor begins interbranch negotiations. The governor begins by making a proposal,<sup>44</sup> either a sincere one in which she asks for her ideal policy or a more strategic, modest proposal that will be more amenable to the legislature. (Another way to think about a governor's choice between a sincere or a strategic proposal is that she can decide to be uncompromising—asking for her ideal public position, whether or not it reflects what is in her heart of hearts—or to make a proposal intended to be accommodating to the legislature. This phrasing, uncompromising vs. accommodating is analogous to the sincere vs. strategic dichotomy.

not dispute that these mechanisms could play a role in the states, and encourage further empirical research to see whether state-by-state variations in proxies for these concepts predict gubernatorial performance, they are outside of our model.

<sup>&</sup>lt;sup>42</sup>Interview with Bill Whalen, chief speechwriter to Gov. Peter Wilson, conducted by Thad Kousser, Palo Alto, California, May 21, 2010.

<sup>&</sup>lt;sup>43</sup>Interview with Kevin Eckery, communications director to Gov. Pete Wilson, conducted by Thad Kousser in Sacramento, May 5, 2009.

<sup>&</sup>lt;sup>44</sup>Another possible option the governor has is to introduce nothing in a particular policy area. Of course, since we do not get to observe these roads not traveled in a State of the State speech, we cannot analyze the effects of this decision.

We opt to use the latter dichotomy, however, since it is more common to the bargaining literature.) The legislature can choose to completely ignore the governor's proposal—ending the game right then and there and leaving policy at the status quo—or respond either by passing the governor's bill  $x_G$  or by sending a proposal of its own,  $x_L$ . Then the governor decides whether to sign or veto the bill, resulting in a final policy outcome x. We do not consider the potential for a veto override, which will only occur when the legislature completely hijacks a governor's proposal and takes policy in the opposite direction.<sup>45</sup> This is a single-stage game,<sup>46</sup> and the extensive form of the game is depicted in Figure A.1 in the appendix to this chapter. To summarize its relationship to past models, we take the basic setter game of Romer and Rosenthal (1978), as it is applied to interbranch bargaining in Cameron's most basic model (2000, p. 90-94), and add the following features: 1. A first stage in which governors float their proposals, 2. The promise of side payment for the legislature if it passes the executive proposal, and 3. A position-taking bonus for governors

who propose their ideal policy.

#### 2.2.10 The Logic that Drives the Game

Using these assumptions, we build a game that predicts a unique policy outcome given the positions of each player and existing policy, as well as the relative sizes of the side payment that the governor can offer to a cooperative legislature and the position-taking bonus that she can earn with a sincere proposal. In the appendix to this chapter, we characterize the subgame perfect Nash equilibrium.

In plain language, that means we obtain our predictions by assuming that each branch plays its best possible move at any point in the game, looking toward the endgame and maximizing its utility. This imposes some discipline about how we must think about bargaining, guiding us to start from the last move, considering the rational choice that each player will make at every stage of the game. When the legislature puts a bill on the governor's desk, the governor looks ahead to maximize her utility, not behind her at what might have been. She cannot carry a grudge about the process that got it there or compare it to her ideal policy. She must compare it to the status quo. If

<sup>&</sup>lt;sup>45</sup>An override will only occur if the legislature disagrees so strongly with the governor's proposal that it goes its own way with a bill that makes the governor worse off than the status quo, sends it to her desk for a certain veto, then overrides it. In our view, this now ceases to be a "governor's bill": it is an expression of the legislature's will that it is free to make—given its monopoly over the power to craft bills—whether or not the governor takes up the issue in her State of the State.

<sup>&</sup>lt;sup>46</sup>Cameron (2000) introduces a multistage model of sequential veto bargaining to explore when presidents may attempt to veto bills in order to bend legislators to their will.

the bill would make her better off than she is under existing policy, she will sign it. Knowing this, legislators can take advantage of their agenda-setting ability to send the governor a bill that is just barely acceptable to her—anything that makes her at least as well off as the status quo—if that shifts the bill much closer to the legislature's ideal policy. Or legislators can pass the governor's bill intact, and accept her side payment. Their third option is to simply do nothing, if they will be better off under the status quo. When they do choose to pass a bill, lawmakers will weigh the value of the side-payment against the policy gains that they could extract by passing a proposal amended to their liking.

Anticipating the legislature's decision calculus, a governor may chose to pitch her initial proposal somewhat toward the legislative ideal, hoping that an attractive proposal coupled with a side payment will be enough incentive to convince the legislature not to go its own way or ignore the proposal entirely. Or, if the governor concludes that her cause is fruitless—either because her weakness keeps the side payment small or because there is a large ideological gulf between the branches—she will make a sincere demand for her ideal policy to collect the position-taking bonus, knowing that it will fail.

The appendix compares these utility calculations explicitly in order to derive a prediction about how play will unfold and what the final result will be—a gubernatorial victory, a compromise forced by the legislature, or a failed proposal—under different bargaining situations. Each situation represents different relative values of  $G^*$ ,  $L^*$ , SQ, S, and B. Examining how the predicted outcome will change when one of these variables shift, holding all others constant, yields the comparative static results that drive our empirical hypotheses. We can see, for instance, how the game will change when a governor can offer a larger side payment or when the branches' policy desires grow further apart. Here, we summarize the main theoretical predictions of the model:

(a) Governors often must pitch their proposals strategically in order to convince legislators to pass them intact, or even to address the proposal at all. What governors ask for will depend as much upon the bargaining position in which they find themselves as it will on their political philosophies.<sup>47</sup> Sometimes they will be free to demand what they want, but in many situations,

<sup>&</sup>lt;sup>47</sup>Bill Whalen, chief speechwriter to California Gov. Pete Wilson, made an observation that fits closely with this theoretical prediction: "What a governor asks for in a State of the State is more a function of the times in which he lives than it is of who he is as a person." Interview conducted by Thad Kousser in Palo Alto, California, May 21, 2010.

they will be forced to propose what they think they can get.

(b) When the governor wants to move policy a different direction from the status quo than the legislature does, but cannot make a large enough side payment to persuade legislators to budge very far, she will be best off proposing her ideal policy and then watching it die.

(c) When both branches agree on the direction that policy should move, but disagree over the amount, some bill changing the status quo will be passed and signed into law.

(d) If the governor wants to move policy in the same direction as the legislature, but can only offer a small side payment, the legislature will dictate the terms of the deal. In this situation the governor again asks for exactly what she wants, while legislators pass a bill that reflects their branch's ideal policy.

(e) If both branches agree on the direction that policy should move, but the legislature favors a more extreme policy shift, there will be numerous opportunities for a deal. Depending on the exact spatial alignment and upon the governor's desire to take a popular position, the governor may get everything she wants, she may propose and sign a compromise bill, or she may ask for her most preferred outcome but sign the legislature's ideal bill.

(f) Stronger governors who can offer a larger side payment are less likely to see their proposals fail and less likely to be forced into compromise with the legislature.

(g) When a governor faces a legislature that is further away from her ideologically scale, she will be less likely to secure passage of her proposal.

To provide a more concrete sense of what drives these general findings, in Figure 2.1 and the discussion below we look at what can happen in policy areas where the governor and legislature want to move in different directions from the status quo (the case described in point b. above). We consider the predicted outcomes under two different situations: when a governor is just on the other side of the status quo from the legislature  $(G_1^*)$  and when the governor is located at a more extreme position, relative to the legislature  $(G_2^*)$ . A governor at the first location wants a policy that is between the status quo and SQ + S, the furthest point that she could convince the legislature to move toward by offering a side payment S. Any governor located in this policy space can convince the legislature to pass her ideal policy. She'll propose a bill located at  $G_1^*$  in her State of the State, and for the legislature, passing it intact will be its best move. The legislature cannot propose any bill that it favors located to the left of SQ, because it makes the governor worse off, thus guaranteeing her veto. If the legislature ignores the governor's request entirely, policy stays at the status quo and legislators gain nothing. By passing the governor's bill, the legislature earns a side payment that more than compensates for its policy losses, because the rightward policy shift is smaller than S by definition for any bill in the (SQ, SQ + S) interval. The governor knows that she can "buy" her ideal policy from the legislature in exchange for S, and thus proposes it. For strong governors who are able to offer a larger S, this interval is larger, giving them more opportunities to propose successful bills.



Figure 2.1: Predictions for Two Hypothetical Governors, when the branches want to move existing policy in opposite directions.

Now consider the dilemma of a governor located at  $G_2^*$ . She cannot convince the legislature to pass her ideal policy, because the value of the side payment she can offer is not enough to make up for the policy loss that the legislature would suffer (because her ideal is located to the right of SQ + S). However, she can make a strategic proposal at SQ + S, which the legislature then passes to curry her favors.<sup>48</sup> But in doing so, she would be giving up the position-taking bonus B that would come if she asked for her ideal policy, knowing full well that the legislature would reject it and pass nothing. To resolve her dilemma, she calculates whether the payoff she gets by moving policy from SQ to SQ + S (this payoff turns out to be S) is larger than the bonus that she foregoes, B. Governors in this situation will make the compromise proposal when S > B, and this proposal will become law. But when S < B (or, arbitrarily, if they happen to be equal), the position-taking incentive is greater than the incentive to offer a policy compromise, and the governor makes a proposal located at  $G_2^*$  in her State of the State. It fails in the legislature, as she knew it would. Policy stays at the status quo, but the governor's utility rises because she made her point.

<sup>&</sup>lt;sup>48</sup>Arbitrarily, we assume that legislators pass a governor's proposal (and that governors sign the legislature's bill) when it makes them indifferent between doing so and taking another course of action. The results would not fall apart, though, if we were to change this assumption: governors (or the legislature) could sweeten the deal by some tiny value to make their opponent just a bit better off in cooperating with them.

It is important to note that, again, we see stronger governors having a better chance at making a successful proposal. Holding B constant, a governor who can offer a larger side payment S is more likely to satisfy the S > B condition that leads her to make a successful proposal, albeit one that is not her perfect policy. Stronger governors who meet this condition know they can buy larger policy concessions from the legislature, so they make a strategic, modest policy proposal, which passes. Weaker governors cannot get legislators to move as far, so their best play is to ask for their ideal and watch it die. Whenever governors find themselves wanting to move policy in a different direction than the legislature prefers, their chances of success are higher when the S that they can deliver is larger.

The strategic calculus that this model sets up for governors who want to move policy in a different direction than the legislature can help explain the patterns of introductions and passage that we observe in cases of divided government. In the face of policy disagreement, governors have to estimate their own power to get things done and compare it with the payoff they will receive from fighting the good fight, but losing. Consider the case of Illinois' Gov. George Ryan, a Republican negotiating with a Republican Senate but a lower house that was firmly under the control of powerful Democratic Speaker Mike Madigan. By 2001, after his approval ratings had collapsed to 31 percent, Ryan was out of political capital with lawmakers. Recognizing that most of his policies would be at odds with the House's priorities, and that he did not have the power to bend them to his will, Gov. Ryan asked for his policy wishlist. He delivered a State of the State containing ten ambitious proposals, asking for annual student testing, the elimination of red tape from the education bureaucracy, universal pre-school, reform of the state's tollway system, a major ethics bill, and a consolidation of bonding authority that would have taken power away from 16 local authorities. All of these failed, handing Gov. Ryan victories only on two less ambitious proposals and a compromise bill to conform state law with a US Supreme Court decision. Facing dim prospects, Gov. Ryan asked for a lot and saw little success.

In 2010, when his popularity with the public and standing with the legislature had fallen dramatically after a series of bruising budget fights, California Gov. Arnold Schwarzenegger went a similar route with some of his legislative proposals. Statehouse journalists characterized his final State of the State address as "an ambitious wish list," reporting that "California legislators quickly dismiss some of his key proposals for practical or ideological reasons."<sup>49</sup> Another governor in his lame duck term, Oklahoma's Frank Keating, took a similar approach with Democratic legislators. He began his legislative agenda with a call for worker's compensation reform, which Senate Judiciary Committee Chair Brad Henry quickly announced would not be granted a hearing,<sup>50</sup> and passed only 22 percent of his proposals that year.

What all of these cases show is that during divided government (or when there is a great deal of ideological distance between the branches), chief executives who are in weak bargaining positions—due either to a short time remaining in office, low popularity, or soured relations with legislators—often make sincere, ambitious proposals, and fail. By contrast, New Hampshire's Democratic Gov. John Lynch faced a legislature in which Republicans controlled 65 percent of the seats in 2006. But serving in his first term, and with his approval ratings at 69 percent, he was able to secure the passage of two-thirds of his public agenda.

In our appendix, we explore what will happen when governors and legislators both want to move policy in the same direction, though by different amounts. In all subsets of this situation, some bill changing the status quo and making both branches better off will pass and be signed into law. The final outcomes may be at the governor's ideal, the legislature's ideal, or some other point, but we never see complete failure. This points out the importance of ideological agreement to a governor's prospects. Since the model predicts that a complete failure will occur only when governors and legislators disagree on the right direction to move on a particular issue, a governor can expect to be more successful in general when the faction controlling the legislature has policy preferences that are closer to hers. This suggests an empirical prediction about how the level of ideological agreement between the branches should affect gubernatorial success.

*Hypothesis 1*: A governor negotiating with a legislature located closer to her on the ideological spectrum should have a greater chance of passing a policy proposal in her public agenda, all else equal.

Empirically, we measure this ideological distance between the branches by either the share of seats held by members of the governor's party (averaged across both legislative houses) or by the

<sup>&</sup>lt;sup>49</sup>Michael Rothfeld, "In State of the State Address, Arnold Schwarzenegger Unveils an Ambitious Wish List," *Los Angeles Times*, January 7, 2010.

<sup>&</sup>lt;sup>50</sup> The Daily Oklahoman, "Worker's Comp Bill Won't Be Considered," February 21, 2001.

presence of divided government. While the partisanship of lawmakers and the governors may not be a perfect proxy for ideological proximity, this is the same sort of rough metric used by governors and their advisers. When asked why Kansas Gov. Kathleen Sebelius did not expect to win on many of her legislative proposals, her communications aide Burdett Loomis replied "Because she was down almost 2-1 in both houses."<sup>51</sup>

Another consistent pattern is that stronger governors will be more likely to get their way. We have shown in Figure 2.1 that when governors disagree with legislators about which way to move policy, stronger governors are less likely to propose a sure-to-fail bill. In the appendix, we show that when the branches both want to move policy in the same direction, governors who can offer larger side payments are better able to tempt legislators into passing gubernatorial proposals rather than countering with a legislative alternative. The ability to offer a larger S leads to fewer half-a-loaf compromises and thus a greater chance of complete success. The empirical prediction that follows is that each of the three factors that, according to our interviews, should determine a governor's value of S will affect her chances of success.

*Hypothesis 2*: A governor who can credibly threaten to veto a legislator's bill without being overridden should have a greater chance of passing a policy proposal in her public agenda, all else equal.

*Hypothesis 3*: A governor serving in her first term should have a greater chance of passing a policy proposal in her public agenda, all else equal.

*Hypothesis* 4: A governor with higher approval ratings should have a greater chance of passing a policy proposal in her public agenda, all else equal.

Our model also highlights the importance of B in the S > B calculus that governors use to determine when to make a sincere but hopeless proposal and when to pitch a safer, more strategic bill. A larger position-taking bonus makes it more likely that the political gains from positiontaking outweigh the policy gains from making a proposal that legislators will accept. Thus, a higher B leads to more "dead-on-arrival" proposals.

<sup>&</sup>lt;sup>51</sup>Interview with Burdett Loomis, Director of Administrative Communication to Kansas Gov. Kathleen Sebelius, 2004-2005, conducted by telephone by Thad Kousser, May 14, 2010.

While there are a variety of circumstances that may shape the size of the *B* term, one of these ought to be presidential ambitions. Gov. Mitt Romney's State of the State address in 2006 illustrates this point. Recall that in his speech aimed more at the White House than at the Massachusetts statehouse, Gov. Romney called on the Democrat-dominated legislature to pass proposals that he knew they would not like. The motivation behind his approach was not lost on statehouse observers. Covering his abstinence education proposal, one journalist wrote that, "Romney, who is considering a possible presidential bid and looking for the support of social conservatives, made yesterday's announcement at Boston Latin School, which brought in the program three years ago and where it has sparked controversy among some parents."<sup>52</sup> Those commenting on the stringent welfare-to-work requirements that he proposed, "hinted that Romney's urgency may have more to do with welfare reform being a hot issue for the 2008 presidential race, with which Romney continues to flirt."<sup>53</sup> None of this national position-taking, though, did him any good in Boston; legislators there passed only 18 percent of his proposals. We expect that this pattern will be repeated across the country for governors with presidential ambitions.

*Hypothesis 5*: A governor who seeks the presidency—and thus places a higher value on the public position that she takes on an issue—should have a lower chance of passing a policy proposal in her public agenda, all else equal.

Each of these hypotheses is driven by an exogenous factor, a measure of preferences or power that governors and legislators both know at the beginning of the legislative session, when the governor is finalizing her public agenda. But the model also points out the endogenous nature of what governors propose, and the importance of what they ask for in determining what they get. How should we treat the nature of a gubernatorial proposal—its scale, the direction in which it seeks to move policy, and whether or not it fits with the legislature's preferences—in our empirical analysis? A close examination of our model shows that it does not make consistent predictions about what governors propose when they are stronger or weaker. When the branches are ideologically proximate, stronger governors ask for items more to their liking. Yet if the governor is at the extremes relative to the legislature, a higher S means that she will ask for less.<sup>54</sup> Since we cannot

<sup>&</sup>lt;sup>52</sup>Andrea Estes and Tracy Jan, "State Widens Teaching of Abstinence," Boston Globe, April 21, 2006, p. A1

<sup>&</sup>lt;sup>53</sup>Kimberly Atkins, "Gov to Pols: Big Bucks Riding on Welfare Bill," Boston Herald, Thursday, March 16, 2006.

 $<sup>^{54}</sup>$ If the governor's S was small, then she would not hesitate to engage in position taking and ask for her true policy preferences.

be certain of which situation occurs empirically for every bill, we do not know how a governor's strength will affect what she asks for on that bill. But we do know that this strategic choice of what she asks for determines what she will get, making it important to control for the nature of each proposal (i.e., its distance from the status quo) when analyzing its chances of success.

Finally, because this game predicts what will happen with a single bill, it is appropriate to test it at the level of gubernatorial proposals rather than by gauging success on a governor's entire agenda. Since we gather bill-specific data for our regression analysis, we take this approach. Still, one of our substantive assumptions about side payments—that their value can be depleted if a governor proposes bill after bill—does yield a testable prediction about how the total size of a governor's agenda affect the prospects of each bill in that package. Asking for many bills requires governors to ante up a potential payment of S over and over again. There should be some limit on the number of times that they can do this before they begin to erode the "bank account" of their political capital. At some point, they will be overdrawn, leading to a prediction that a governor who calls for a lengthier agenda will face poorer prospects for each item on that agenda. This prediction is consistent with what others have seen looking at governors. Using a slightly different measure of the scope of a governor's agenda, Ferguson (2003, p. 161) finds evidence in the 1993-94 session for the hypothesis that "leaders possess a limited amount of political capital, and to be successful, they must pick priorities carefully, focusing on only a few key issues." In a few states, Rosenthal (1990, p. 97) observes an inverse relationship between the size of a governor's agenda and its success. We posit that this link should hold true across many states and eras.

*Hypothesis 6*: A governor whose public agenda contain more items should have a lower chance of passing each individual policy proposal in that agenda, all else equal.

## 2.3 The Budget Game

Budget negotiations between governors and legislatures unfold much differently. The need to pass a spending plan every year or biennium brings the legislature to the bargaining table. With legislators unable to set the terms of a deal, governors should generally have more influence over the size of the budget and its critical details. We base our argument in strategic logic and interviews, but this is also a point that Alan Rosenthal's close observation of governors led him to make: "Probably the governor's greatest power of initiative is in the domain of budgeting" (1990, p. 8). This is an area of relative strength for American executives. Additionally, because the bargaining dynamics of a budget standoff are so different from negotiations over policy bills, different factors should determine a governor's level of power. With both sides at the table, what matters most is who can stay at the table longest, who can win the staring match of a budget stalemate. In this contest, "blinking" means signing or passing a proposal that closely reflects the demands of the other branch. Whoever is most eager for a get-out-of-town budget will have to yield concessions to get it. As a consequence, governors who are the most patient, relative to the legislators they face, will win the budget game.

We make a straightforward application of the "divide the dollar" models outlined in Rubinstein (1982, 1985) and Osborne and Rubinstein (1990), which we describe more formally in Kousser (2005, chap. 6) and Kousser and Phillips (2009). As a consequence, this section presents a much briefer summary of the logic that drives this game and the empirical hypotheses that it suggests. Like the policy game, it is highly simplified, lacking the detailed discussion of the appropriations process contained in many descriptive analyses of state budgeting (cf. Garand and Baudoin 2004, National Association of State Budget Officers 2002, and Rosenthal 2004). Yet this abstraction is useful for conveying the logic of our argument in a simple, direct manner.

At the heart of budget bargaining is the give and take between governors and legislative leaders that occurs at the end of a session or when the deadline to pass a budget approaches. Everything else—from the governor's release of her budget plan in January through the introduction of budget bills and the legislative hearings held on them—is just a skirmish. Those exercises give each branch an important opportunity to stake out their values and spell out their wish lists, impressing constituents and courting interest groups. They convey the ideal divisions of the budget dollar that governors and legislators seek. Yet they do not represent moves in our budget game. In the legislative game, what a governor proposes at the outset of the session is critical because if legislators are not tempted by it, they will not come to the bargaining table. With the budget, legislators must eventually come to the table, freeing the governor to make a public proposal in January that sincerely reflects her budget priorities.

Like all states, the key bargaining over the budget in California takes place late in the legislative session. Tom Hayes, who served as Budget Director for Gov. Pete Wilson described for us the typical process. At the start of the legislative session, the governor would lay out his initial budget proposals, all of which closely reflected his fiscal priorities and governing philosophy. According to Hayes, the governor was not particularly concerned with getting his proposals into the budget bills that were crafted in legislative committees. Instead he waited for the negotiations between the "Big Five," the governor and the top Democratic and Republican leaders from the Assembly and Senate. These negotiations typically take place behind closed doors as the deadline for a new budget approaches. Hayes also told us that it is in this setting where the most contentious budgetary issues are resolved and where the proverbial dollar is divided among the key players. The consequential strategic bargaining in California, as in most states, takes place late in the session, while January proposals and legislative reactions are often dismissed as opening acts of "Kabuki theater."

Consequently, we treat a governor's initial budgetary proposals as statements about how she would like to divide the figurative dollar of a budget,<sup>55</sup> while the real bargaining begins much later. In the most natural application, the game begins with the legislature proposing how to divide the dollar. Because this bargaining takes place informally rather than through the legislative process, the governor could also begin negotiations. Yet since Kousser and Phillips (2009) demonstrate that the logic of the game would be the same and the division of the dollar would remain largely unchanged if the governor moved first, we proceed with the legislature moving first by sending the governor a budget proposal. This offer generally comes on the eve of the end of the legislative session or the fiscal year, meaning that any delay in reaching a final agreement will be costly to both branches. Faced with this offer, the governor either accepts and signs the budget sent to her, or delays agreement and sends the game into its next stage. The governor begins the second stage with a counteroffer, but even if the legislature immediately accepts it, the agreement has been delayed one round and both sides receive a payoff that is discounted. That is, they suffer political and even personal costs for failing to pass the budget on time, and would have been happier to have made the same deal before the deadline. Of course, by holding out longer, a governor might extract a better deal than she was first offered by the legislature, which is where strategic calculations come

<sup>&</sup>lt;sup>55</sup> "Dividing the dollar" is a flexible analogy that can be used to describe any bargaining situation in which gains by one side must be accompanied by sacrifices from the other party. In the context of budgeting, a division of the dollar could mean moving the overall level of state spending closer to what the governor prefers than what legislators favor, or funding a program desired by the governor (and thus leaving less money to fund programs favored by the legislature).

into play. When they make these calculations, both sides know each others' "discount factors," which depend on how patient each branch can afford to be.

In formal terms, the discount factor is denoted by  $\delta$ . The division of the dollar is represented as an offer of  $(X_L, X_G)$  and  $X_L$  can fall anywhere in the interval [0, 1], with the legislature offering the governor something between nothing that she wants (0) and everything she asked for (1). Rounds of play are numbered as T = 0, 1, 2, ... Rounds of alternating offers continue until one player accepts the other's proposal. For every round that a bargain is delayed, the utility a player receives from her or his portion of the dollar is equal to that portion multiplied by  $\delta$ . Assuming that this discount factor remains constant from round to round, we designate the value of an agreement in round t to  $P_G$  and at the beginning of the game as  $X_G \delta^t$ .

What does this mean for the deals that governors will be able to extract out of legislatures? Suppose a governor is intent on winning a tax cut. If she is very patient, with a  $\delta$  set at 0.9, she will be indifferent between winning a tax cut of \$90 million in an on-time budget or one of \$100 million if it is delayed one round (since the utility of a delayed \$100 million is 0.9\*\$100 million=\$90 million). Legislators can take advantage of their chance to make the first move by extracting a small concession. Yet if the governor is much less patient, with  $\delta = 0.6$ , legislators can turn the power to move first into a real advantage, proposing a mere \$60 million tax cut because they know the governor fears a budget stalemate. Of course, legislators also worry about this sort of gridlock, and discount the value of future deals just like the governor does. Consequently, if legislators make a proposal that gives the governor too little of what she wants in the first round, she will make a tough counteroffer and dare legislators to either accept it in the second round or incur further delays (and discounting) by sending the game into a third round. Legislators who look toward the endgame can predict this. Seeking to avoid such a dead end, they will sacrifice some of what they want early in the process, making the governor a fair first offer that she can accept. When both branches know that they will suffer if the budget is late, the rational play will be to compromise early.

Driven by this logic of making early concessions to avoid a stalemate, the budget game yields a unique subgame perfect equilibrium.<sup>56</sup> The proof behind this prediction is outlined by

<sup>&</sup>lt;sup>56</sup>Since the Nash prediction is quite vague in this case—any division of the dollar can be reached in the first round in equilibrium, because players can make threats that are not credible—Osborne and Rubinstein (1990) employed Selten's (1975) notion of a subgame perfect equilibrium, which requires that best responses be played at every point

Osborne and Rubinstein (1990, 45) and traced out for the state politics application by Kousser (2005, 233-37) and Kousser and Phillips (2009). If both players face the same discount factor, the game will end in the first round as the legislature proposes an offer that gives lawmakers a first mover advantage, which the governor accepts to avoid delay. As a quick calculation of the payoffs demonstrates, the first mover' advantage that accrues to the branch making the initial offer is small when both players are relatively patient, and not tremendously large even when they are in a hurry to pass a budget. When both branches discount payoffs that are delayed one round by a factor of 0.9, the first mover receives 53 cents of the dollar and the other branch gets 47 cents. Even when the discount factor equals 0.7, the division of the dollar is still a fairly equitable 59 cents to 41 cents.

The implication for executive power is that, in the budget game, governors will not face a severe bargaining disadvantage because they lack the formal power to move first. Both branches bargain in the shadow of a late budget and the political penalties it can bring. Legislators know they must secure the governor's signature to get what they want out of the budget. They cannot simply ignore her requests, because they cannot afford to live without a budget deal. This grants governors leverage that they lack when they pitch the bills they want to legislators. In contrast with the policy game, governors can expect to get something out of budget negotiations no matter how much they disagree with legislators or how weak they are politically, because of the nature of the process. Both branches fear the potential endgame of a budget stalemate, a shared dread that puts governors in a stronger bargaining position.

That is why governors like Gary Johnson can do better in the budget than in their policy proposals, and why there is much give-and-take between the branches in this realm. That does not mean that governors dictate the terms of budget bargaining, only that it fits with the "alternating offers" dynamic of Rubinstein's game. Ohio Gov. Bob Taft, asked if there are logrolls on the budget, made it clear that the fiscal plan reflected both his and the legislature's priorities. "We had our items that we wanted to be in the budget, and they had their items. You had to work with the legislative leadership, and if it was something very important to them, I needed their support for things I wanted in my budget, so there was give and take in that relationship. As

in the game that begins a subgame (see Morrow 1994). Subgame perfection generally refines the set of acceptable equilibrium strategies and, in this case, generates a unique prediction.

long as it wasn't horrible public policy."<sup>57</sup> The timing of the budget—its place on the annual (or biennial) "must-do" list in every state, and the incentives to complete it on time—are what drives this dynamic.

*Hypothesis* 7: A governor's chance of passing a proposal will be greater if it is a budget proposal rather than a policy bill.

#### 2.3.1 Which Governors Perform Best in Budget Bargaining?

A given governor should do better in the budget than in policy negotiations, but which sorts of governors will perform better than others in fiscal bargaining? In a staring match model of budget negotiations, the final division of the dollar is driven by patience. This directs our attention to the factors that determine the relative patience—and thus the relative power—of the two branches. While the basic model assumes that governors and legislators possess the same patience level, this assumption may not always hold true. Governors could be more patient than the legislators that they bargain with, signified by G > L (or perhaps even less patient). The formalized extension of the basic Rubinstein model that is applied to states in Kousser (2005, p. 160-61) and Kousser and Phillips (2009) spells out the implications for budget bargaining when governors can outwait legislators. It shows that if the governor's advantage in patience is large, it will swamp the advantage that the legislature obtains by moving first.

To get a sense of how this changes outcomes, go back to our example where both branches had a discount factor of  $\delta = 0.9$ . In this case, the legislature captured 53 cents of the dollar while the governor took 47 cents. If we keep the governor's patience level high but make the legislature less patient, with a discount factor of  $\delta = 0.7$ , this slight shift has a dramatic effect: Legislators would control 27 cents, and the governor 73 cents of the dollar, even when the legislature moves first. Governors who are a bit more patient than legislators can, under this model, reap large rewards in budget bargaining. What, then, determines patience levels?

#### 2.3.2 Governors Can Wait to Secure their Legacies

In our model of the policy game, we made the argument that a governor's ability to deliver carrots and sticks to legislators erodes over the course of their time in office. In budget negotiations, though,

<sup>&</sup>lt;sup>57</sup>Interview with Gov. Bob Taft of Ohio, conducted by telephone by Thad Kousser and Justin Phillips, October 1, 2009.

governors on their way out the door should wield significant power. In their "legacy years"—when they negotiate their last budget before leaving office, and executive term limits make them ineligible to run again—governors will be at their most patient. With nothing to lose in the short term from a delayed budget, and everything to gain in their legacies, they can stubbornly dig in until legislators give them what they want. Lacking any fear of electoral punishment, governors will be free to stall, while many of the lawmakers they negotiate with will be eager to pass a budget on time and turn their attention to campaigns. This dynamic delivered California's Republican Gov. Arnold Schwarzenegger his biggest budget victories in his final year in office. Negotiating with Democratic leaders who were not inclined to help out the unpopular governor, Schwarzenegger demanded severe spending cuts, pension reforms, and a ballot measure to enact a constitutional spending cap in the summer of 2010. Then, he simply waited. With a 22 percent approval rating,<sup>58</sup> Schwarzenegger could not rely on his political capital to pressure legislators, but he knew that as summer turned into fall, legislators eager to resolve what became the state's longest budget standoff would eventually cut a deal. After locking down their chambers for 20 hours in early October, legislators emerged with a deal that included pension reform, a spending cap, and no new taxes. Celebrating these victories, Gov. Schwarzenegger recalled that, "I have been fighting to fix California's broken budget and pension systems since I came into office."<sup>59</sup> Because of the dynamics of budget bargaining, he was not able to win them until he was about to leave office.

*Hypothesis 8*: A governor serving in her "legacy year" should have a greater chance of passing a budget proposal, all else equal.

#### 2.3.3 Governors Can Outwait Part-Time Legislatures

Governors should also have an advantage in patience when they negotiate with part-time "citizen" legislatures, compared with governors of states with more professionalized statehouses. The rationale here is that, in addition to political costs that both branches pay when there is budgetary gridlock, lawmakers serving in a less-professionalized legislature face private costs of delay. These costs will decrease the legislature's patience and advantage the governor.

As Squire and Hamm (2005) document, the range of legislative professionalism across the

<sup>&</sup>lt;sup>58</sup>Mark DiCamillo and Mervyn Field, "Schwarzenegger and the State Legislature Both Get Very Poor Job Ratings." Field Poll Release NO. 2346, July 14, 2010

<sup>&</sup>lt;sup>59</sup>Shane Goldmacher, "Legislators Sweat the Small Stuff," Los Angeles Times, October 9, 2010,

American states is astonishing, meaning that different governors sit across the bargaining table with very different sorts of opponents. Some highly professionalized chambers resemble the U.S. House of Representatives: they meet in lengthy sessions, their members are well paid, and the legislature employs numerous nonelected staff. In states such as New York, California, and Michigan, there are few, if any, restrictions on the number of days the legislature may meet; as a result, lawmakers are in session much of the year. Furthermore, legislators serving in these chambers receive annual salaries in excess of \$75,000, as well as generous per diems (Council of State Governments 2005). These lawmakers can therefore treat legislative service as a career and do not need second jobs, even though the session length makes holding a second job close to impossible. Most state legislatures, however, are notably less professionalized. In these chambers, the number of days that legislators are allowed to meet is often constitutionally restricted. On average, regular sessions are limited to approximately 90 calendar days per year; in extreme cases, sessions are constrained to no more than 60 or 90 days biennially. Compensation for service in most chambers is also low or nonexistent. To support themselves and their families, legislators in citizen chambers usually hold second jobs to which they must return soon after the legislative session.

As a result, members of a part-time body face high opportunity costs when they fail to reach agreement on a budget with the governor. In the absence of such an agreement, legislators are usually forced into what may be a time-consuming special session and are prevented from pursuing their private careers or personal lives. The prospect of leaving their day jobs to resolve budget conflicts should make members impatient. Governors, however, pay much lower private costs when they veto a budget at the end of a session. They may force a special session, stalling whatever private, travel, or governing plans they might have,<sup>60</sup> but because all governors are paid well to do their job full-time, they can endure round after round of negotiations. They will be more patient, and can reap the bargaining rewards of this patience. We therefore expect professional chambers to be able to match the governor's endurance, whereas part-time bodies will be vulnerable to threats of a veto and extended negotiations, and give in to governors early.

Participants in gubernatorial negotiations with the less-professional legislatures point out

 $<sup>^{60}</sup>$ Legislatures in 30 states have the authority to call their own special sessions (Council of State Governments 2000), but they are often forced to do so by a governor's veto. Although special sessions are not often called to resolve legislative-executive conflicts, the threat of a special session is not unimportant. Delayed bargains are off the equilibrium path of Rubinstein's basic model, but they are weapons that do not need to be unsheathed to be powerful.

the paramount importance of this dynamic. A senior advisor to Oregon Governor John Kitzhaber, a Democrat, remarks that, "As session goes on, the wait is in our favor."<sup>61</sup> Remembering his battles with Maryland's hybrid citizen-professional legislature to pass a budget in time for the 83rd day of session, Gov. Parris Glendening concludes, "A governor's power grows as we get to the 83rd day, no question about it."<sup>62</sup> This asymmetry in patience explains why Gary Johnson was able to extract so many concessions from New Mexico's citizen legislators when he called them back into a special session after they had returned home to their jobs as real estate agents, professors, ranchers, and lawyers.

It also helps to solve one of the puzzles that began this chapter, which asked why states like New York and California could not pass budgets on time. Legislators in those full-time bodies can afford to hold out in budget standoffs longer than their colleagues in part-time bodies, because they face only political and not personal costs when budgets are late. These states are emblematic of a larger pattern. In 2007, five of the six states in which a budget standoff dragged on past the beginning of the next fiscal year—California, Illinois, Michigan, Pennsylvania, and Wisconsin had professional legislatures that typically met at least 20 months in a two-year biennium.<sup>63</sup> The patience of those legislators should turn into bargaining power, while governors will have the upper hand in negotiations with part-time legislatures.

*Hypothesis 9*: A governor negotiating with legislators who serve in shorter sessions should have a greater chance of passing a budget proposal in her agenda, all else equal.

Finally, the divide the dollar framework of our model has an implication for the link between the scale of a governor's agenda and the predicted success of each item in it. There are only so many cents to go around in this zero sum game, so a governor winning a figurative amount in concessions from the legislature must determine how to allocate this across her agenda. If she has enough power to get, say, five items in negotiations with the legislature, she will have to pick and chose which ones to press for. That will make the success rate for a governor who asks for five things to start off with higher than the rate of a governor who asked for ten. This produces a

<sup>&</sup>lt;sup>61</sup>Interview senior advisor to Oregon Governor John Kitzhaber, conducted by Thad Kousser in Salem, Oregon, July 8, 2001.

<sup>&</sup>lt;sup>62</sup>Interview with Gov. Parris Glendening of Maryland, conducted by telephone by Justin Phillips and Thad Kousser, July 13, 2010.

<sup>&</sup>lt;sup>63</sup>Personal communication between the authors and Arturo Perez of the National Conference of State Legislatures.

hypothesis that parallels a prediction of the policy game.

*Hypothesis 10*: A governor whose public agenda contains more items should have a lower chance of passing each individual budget proposal in that agenda, all else equal.

# 2.4 Can Governors Accomplish their Policy Goals through the Budget?

Because governors have a built-in advantage in budget negotiations, why not attempt to achieve all of their legislative goals through this process? If they often lose at the policy game, why not simply change the game? Our interviews taught us that governors and their advisors do recognize the strategic advantages of the budgeting process. In some instances, they seek to shift their proposals toward it. Yet legal and procedural constraints prevent them from freely moving any policy idea into the budget, forcing them to play the difficult game of policy negotiations.

The testimony of top advisors to California governors shows that they perceived the advantages of the budget process, and sometimes even sought to blur the lines between budget and policy, but saw the limits of this approach. "The budget is a governor's point of leverage," says Tim Gage, who served as budget director to Democratic Gov. Gray Davis. "The budget has become the vehicle for lots of policy proposals; they are introduced to the legislature in the context of the budget, or in budget trailer bills. Pushing policy through the budget is a practice that has gone on as long as I've been involved in the process...it's an opportunity for the governor to advance those proposals. That being said, the legislature sometimes pushes back and runs those bills through the normal committee hearing process."<sup>64</sup> "If we could put it in the budget, we'd have more leverage," explains Joe Rodota, cabinet secretary to Republican Gov. Pete Wilson.<sup>65</sup>

However, Maryland Governor Parris Glendening makes the critical point that, precisely because the budget must move every year, any achievement gained through budgeting is more vulnerable to being undone in the near future than is a policy victory. "Well, the budget is easier," Glendening allows, "but it is harder to get major substantive changes out of the budget process. You can push an amendment through one year, but the committee chairs pay pretty close attention

 $<sup>^{64} \</sup>mathrm{Interview}$  with Tim Gage, Director of Finance to California Gov. Gray Davis, conducted by telephone by Thad Kousser, July 9 2009.

<sup>&</sup>lt;sup>65</sup>Interview with Joe Rodota, cabinet secretary to California Gov. Pete Wilson, conducted by telephone by Thad Kousser, July 16 2009.
and they can change things the next year."<sup>66</sup>

A final constraint on this strategy is a legal one, though its application is far from universal. In Ohio in 2001, the 226-page bill enacting the state's corrections budget contained a single sentence that took away collective bargaining rights from employees of the Ohio School Facilities Commission. In our conceptual framework, this was a policy proposal snuck into budget language (though we do not know whether the proposal originated in the governor's office or the legislature). To the Supreme Court of Ohio, this was a violation of the state's single-subject rule. The court rejected the argument that the policy shift belonged in a budget bill because it had fiscal implications. "Such a notion, however, renders the one-subject rule meaningless," the Court wrote, "because virtually any statute arguably impacts the state budget, even if only tenuously."<sup>67</sup>

While Ohio's decision does not affect other states, it puts yet one more obstacle in the way of governors who try to win by changing the game. If they attempt to shift their policy proposals into the budget process, governors risk running afoul of the committee chairs who jealously guard their legislative turf, of future lawmakers who can make annual changes through the budget, and of courts seeking to keep regulatory and fiscal legislation distinct.

# 2.5 Conclusion

This chapter presents two contrasting theories of the logics that drive bargaining when governors ask for policy bills, on the one hand, and budget concessions on the other. The models diverge because of the different endgames of each process. Since legislators can get away with burying a governor's policy bills but are unable to survive without passing a state budget, governors should have a better chance of success with their budget demands. Yet this first-order hypothesis, that what governors bargain over determines what they get, is not our only empirical forecast. The two models also make separating predictions about what factors will—and what factors will not determine the success of gubernatorial proposals made through each process.

In budget negotiations, it is the twin predictors of patience—whether a governor is in her legacy year and the legislative session length—that drive the outcomes of our staring match model.

<sup>&</sup>lt;sup>66</sup>Interview with Gov. Parris Glendening of Maryland, conducted by telephone by Justin Phillips and Thad Kousser, July 13, 2010.

<sup>&</sup>lt;sup>67</sup>Opinion of Chief Justice Thomas J. Moyer, quoted in Ohio Office of Public Information, "Court Hold Collective Bargaining Amendment in Appropriations Bill Violates Single-Subject Rule," accessed at http://www.sconet.state.oh.us/PIO/summaries/2004/1215/031010.asp in July 2011.

By contrast, governors will do better at the policy game when their party controls more seats in the legislature and when they have more political capital because they are popular or because they are serving in their first term. Their policy bills should fare worse when their presidential ambitions cause them to care more about signaling their policy preferences than about asking for what legislators are likely to give them. In both types of negotiations, governors who include more items in their agendas will have a lower chance of passing each one.

It is also important to ask what factors should be irrelevant, according to our models, in determining a governor's power through each process. Governors who are more popular or who serve in their first terms should not do any better in budget bargaining, because it is their patience rather than side payments that allow them to win a fiscal staring match. Perhaps most surprisingly, our model predicts that governors do not need to have more allies in the legislature to do well in the budget. Controlling a committee or access to the floor is less vital, since the legislative majority cannot ignore the budget in the way that they ignored Kansas Gov. Kathleen Sebelius' policy bills. The necessity of passing a state spending plan brings them to the table whether they are the governor's partisan allies or not, and even a Democratic governor in a red state like Kansas can succeed through the budget. In the policy game, patience should not matter, as scholars examining the "setter" model have shown formally.<sup>68</sup> The implication for state politics is that citizen lawmakers should be just as likely to reject a governor's policy bills as their full-time counterparts are, since all American legislatures possess a monopoly over the legislative process.<sup>69</sup>

In Table 2.1 we summarize the factors that should systematically shape the fates of governors policy and budgetary agendas. Of course, all of the predictions contained in this table are about the general patterns that should appear in an analysis of the fate of scores of executive proposals. None are deterministic, iron laws. Some governors succeed against all odds, passing legislative items through an unfriendly legislature even though their popularity is low and their time in office in running out. Other governors can fail even when they possess every systematic advantage. Because politics is an intensely personal art, the persuasive skills of governors still have much to do with their levels of success. When he governed California, Ronald Reagan turned his star power into

<sup>&</sup>lt;sup>68</sup>Primo's (2002) formal investigation of Romer and Rosenthal's (1978) setter model finds that, even when it is extended to multiple stages of bargaining, discount rates do not factor into the equilibrium, concluding that, "impatience and time preferences may not be key features of political bargaining" (Primo 2002, p. 421).

<sup>&</sup>lt;sup>69</sup>This prediction runs contrary to Ferguson's (2003, p. 173) finding on legislative professionalism and executive success; her work finds that "Professional legislatures actually bolster the legislative success of the governor."

	Policy Bills	Budgetary Proposals
Legislative Session Length	none	-
Governor's Legacy Year	none	+
Legislative Seat Share (Governor's Party)	+	none
First Term Governor	+	none
Public Approval	+	none
Presidential Ambitions	-	none
Total Number of Proposals	_	-
Proposal is a Budget Item		+

Table 2.1: Predicted Effects on Chances of Success for a Governor's Proposal.

political capital that often bought him success with a Democratic legislature. "Reagan had Tuesday morning legislative time, every member got 5 minutes," recalls his personal aide, Sal Russo. "Some would come and talk about their bill, some would bring their sister in law who loved his movies, some would bring the Cucumber Queen from their district, and some wanted to come and tell him a joke....I think legislators saw that and felt like they got a fair shake out of him. So they wanted to give him a fair shake back, and that's an important currency with the legislature."<sup>70</sup> After following Reagan's path from Hollywood to Sacramento, Gov. Arnold Schwarzenegger famously erected a smoking tent in the courtyard of his capitol office in Sacramento, and invitations to it became a prize for state legislators. Schwarzenegger credited it for his early bipartisan success so much that in a visit to Washington in 2007, he advised President Bush to build one himself, saying "People come in there, Democrats and Republicans, and they take off their jackets and rip off their ties, and they sit down and smoke a stogie, and they talk, and they schmooze....to the President, I say: Get yourself a smoking tent."<sup>71</sup> Late in his administration, however, Schwarzenegger gave up his personal ties to legislators, and with it much of the good will to support his agenda. "I remember the day when all the Republican caucus wore nametags," says one veteran lawmaker, "because they had never met the governor and they wanted him to know who they were."<sup>72</sup> These

<sup>&</sup>lt;sup>70</sup>Interview with Sal Russo, personal aide to Gov. Ronald Reagan and deputy chief of staff to Gov. George Deukmejian, conducted by telephone by Thad Kousser, July 20, 2009.

<sup>&</sup>lt;sup>71</sup>Marc Sandalow, "Follow California's Lead, Governor Tells DC," San Francisco Chronicle, February 27th, 2007.

<sup>&</sup>lt;sup>72</sup>Remarks by former state Senator Sheila James Kuehl at the "Rebooting California" conference, Loyola Law School Los Angeles, September 24, 2010.

personal, idiosyncratic factors no doubt play an important role in determining whether a governor succeeds in the legislature. Governors who make use of smoking tents may do better than our model would predict, while those who require nametags will underperform.

Another caveat is that there may be other important systematic influences on gubernatorial success that are not featured in our models and which do not appear in Table 2.1. We do not presume that we have captured every dynamic at work in a statehouse. For instance, in an extension of the budget bargaining model, Kousser (2005, chap. 6) shows how legislative term limits can strengthen a governors hand, a finding that is clear present in many empirical investigations including analyses of budgets (Kousser 2005), qualitative case studies (Powell 2007), and surveys of legislators (Carey et al. 2006), legislative leaders (Peery and Little 2003), and lobbyists (Thompson and Moncrief 2003). Governors might be less powerful in states where legislative leaders hold more power over their houses, a factor that is also linked to professionalism (Clucas 2007). Even though we have included some of the factors that make up Beyles (1983, 2004) index of gubernatorial power in our models, others, such as a governors appointment powers or the presence of separately elected state-level officials, might help determine their influence. Our theory does not contain the entire catalog of potential gubernatorial powers. Because the research designs that we present in the rest of this book focus on testing the hypotheses presented in this chapter, we cannot exhaustively test every potential power. We control for some of these important factors where appropriate, and leave the investigation of other promising hypothesis for future research.

We also recognize that our model will not perfectly predict gubernatorial success because some governors will not play the strategic game perfectly, and others will not play the one we have in mind. The real political world often veers off the equilibrium path, as players lack the perfect information and calculations to play games perfectly. A governor might overshoot, sending proposals to the legislature that are too ambitious or attempting to hold out for a budget victory that she is not patient enough to win. This is why statehouse reporters use the term "political miscalculation" so frequently, and such mistakes can lead to gubernatorial defeats that our model fails to predict. Governors may also be following their own strategic logics rather than ours. We do not presume that our assumptions about their motivations and tactics apply to every governor across the nation in every era. No abstract model will be able to capture the full range of executive strategies.

All of these important, hard-to-measure factors will play a role in determining when governors win or lose. Yet underlying the fluctuations in success that they bring, we argue, are basic patterns that link party control, political dynamics, and the institutional features of statehouses to the fate of executive proposals. Working through the logic of strategic bargaining in the specific context of state politics provides clear hypotheses about the causal patterns that should shine through once random variation in personal charisma and persuasive powers wash out. If the predictions hold true, we will have answers for the puzzles that began this chapter. If governors across the country meet with more success on the budget items contained in their agendas than they do on their policy proposals, this will explain why New Mexico's Gary Johnson could win fiscal concessions but not pass his bills. If bill passage rates fall whenever a governor aspires to the Oval Office, this will show why Mitt Romney saw so many failures when he launched a legislative agenda designed to take him from Boston, MA to Washington, DC. And we will have a better understanding of why states like New York and California have chronic budget delays (and why their budgets have a stronger legislative imprint) if full-time legislatures across the country are more likely to stymie a governor's fiscal proposals when they wait patiently during the budget "staring match." By empirically investigating patterns in gubernatorial success, we will see whether the theories presented in this chapter teach important lessons about the roots of executive power.

# 2.6 Appendix

In the main text, we introduced the form of the policy game, the players, and summarize the intuition behind the main findings. In Figure 2.2 below, we present the game in extensive form and include the payoffs for the governor and the legislature. We also define the variables that we use as shorthand for spatial locations, offers, and payments.



#### Notation:

SQ is the status quo policy  $G^*$  is the governor's ideal policy  $L^*$  is the legislature's ideal policy X is any bill  $X_G$  is the governor's proposed bill  $X_L$  is the legislature's responding bill S is the side payment offered by the governor to the legislature if  $X_G$  is passed B is the position taking bonus that the governor receives if  $X_G = G^*$   $U_G(X) = -|G^* - X|$  is the spatial component of a governor's utility  $U_L(X) = -|L^* - X|$  is the spatial component of the legislature's utility

Figure 2.2: Policy Game in Extensive Form, with definitions of variables.

The players make offers over a single dimension, and have utility functions that are the sum of tent spatial utility<sup>73</sup> plus any side payment or position-taking bonus. Arbitrarily, we assume that legislators pass a governor's proposal (and that the governor signs the legislature's bill) when it makes them indifferent between doing so and taking another course of action. When a governor is indifferent between the outcome that will occur if she makes a sincere proposal of a bill at her ideal and the utility from making a strategic proposal that the legislature can accept, she makes the sincere proposal. These arbitrary assumptions do not strongly affect the results. In Proposition 1, we characterize the subgame perfect Nash equilibrium that gives predicted outcomes for different spatial arrangements of players and relative values of S and B.

**Proposition 1**: A subgame perfect equilibrium to the complete information policy game is:

when  $G^* \in (\infty, L^* - S)$  and  $S \leq B$ , gov proposes  $x_G = G^*$ , leg passes  $x_L = L^*$ , gov signs  $L^*$ when  $G^* \in (\infty, L^* - S)$  and S > B, gov proposes  $x_G = L^* - S$ , leg passes  $x_L = L^* - S$ , gov signs  $L^* - S$ when  $G^* \in [L^* - S, L^*]$ , gov proposes  $x_G = G^*$ , leg passes  $x_L = G^*$ , gov signs  $G^*$ when  $G^* \in (L^*, 1/2SQ]$  and  $S \geq G^*$ , gov proposes  $x_G = G^*$ , leg passes  $x_L = G^*$ , gov signs  $G^*$ when  $G^* \in (L^*, 1/2SQ]$  and  $S < G^*$  and S > B, gov proposes  $x_G = L^* + S$ , leg passes  $x_L = L^* + S$ , gov signs  $L^* + S$ when  $G^* \in (L^*, 1/2SQ]$  and  $S < G^*$  and  $S \leq B$ , gov proposes  $x_G = G^*$ , leg passes  $x_L = L^*$ , gov signs  $L^*$ when  $G^* \in [1/2SQ, SQ)$  and  $S \geq SQ - G^*$ , gov proposes  $x_G = G^*$ , leg passes  $x_L = G^*$ , gov signs  $G^*$ when  $G^* \in [1/2SQ, SQ)$  and  $S < SQ - G^*$  and  $B \geq S - 2G^* + SQ$ , gov proposes  $x_G = G^*$ , leg passes  $x_L = 2G^* - SQ$ , gov signs  $2G^* - SQ$ when  $G^* \in [SQ, SQ + S]$ , gov proposes  $x_g = G^*$ , leg passes  $x_L = G^*$ , gov signs  $G^*$ when  $G^* \in [SQ, SQ + S]$ , gov proposes  $x_g = G^*$ , leg passes  $x_L = SQ + S$ , gov signs SQ + Swhen  $G^* \in (SQ + S, \infty)$  and S > B, gov proposes  $x_G = G^*$ , leg passes  $x_L = SQ + S$ , gov signs SQ + Swhen  $G^* \in (SQ + S, \infty)$  and  $S \leq B$ , gov proposes  $x_G = G^*$ , leg passes  $x_L = SQ + S$ , gov signs SQ + S

To show how these predictions occur in equilibrium, we separately analyze the interaction between the players for three unique different spatial arrangements: 1. When both branches wish to move policy in the same direction, but the governor favors a more extreme departure from the status quo than the legislature does ( $G^* < L^* < SQ$ ), 2. When both branches wish to move policy

<sup>&</sup>lt;sup>73</sup>One increment of policy movement away from the governor's ideal has the same impact upon her utility no matter which direction it goes and where on the spatial policy dimension it occurs.

in the same direction, but the governor favors a less extreme departure from the status quo than the legislature does  $(L^* < G^* < SQ)$ , and 3. When the players want to move policy in different directions  $(L^* < SQ < G^*)$ , which we address in the main text. We do not address the symmetric and thus redundant cases in which  $G^* < SQ < L^*$  or  $SQ < L^* < G^*$ .

Figure 2.3 illustrates the first case, where a governor desires an extreme policy shift. In this situation, a governor will never veto a bill, because either  $x_G$  or  $x_L$  will be to the left of SQand thus make the governor better off. Knowing this, the legislature can always pass a bill at its ideal policy  $x_L = L^*$  and see it signed into law. But the legislature will be willing to be bought into policy to the left of  $L^*$  for a side payment S, so long as that payment exceeds the policy loss,  $-|x_G|$  (or simply  $x_G$ , since  $G^* < L^*$ ). A governor with an ideal point like  $G_3^*$ , located to the left of  $L^* - S$ , has the opportunity to make a strategic proposal for a bill at  $x_G = L^* - S$ . The legislature will pass this proposal if it prefers it to the utility it gains from passing its ideal, or is at least indifferent. The legislature compares the utility of passing the governor's proposal ( $x_G = L^* - S$ ) and receiving a side payment (S) to passing its ideal policy  $x_L = L^*$ . The legislature will pass  $x_G = L^* - S$  iff:

 $U_L(x_G) \ge U_L(x_L)$  $-|L^* - x_g| + S \ge -|L^* - x_L|$  $-|L^* - (L^* - S)| + S \ge -|L^* - L^*|$  $-|S| + S \ge 0 \text{ since } L^* = 0$  $-S + S \ge 0 \text{ since } S > 0$  $0 \ge 0$ 

Since this condition is met, the legislature will pass the governor's strategic proposal, and the governor knows it. Will the governor make this strategic proposal at  $L^* - S$ , or will she instead make a sincere proposal of  $x_G = G_3^*$ ? The governor knows that if she makes a sincere proposal, the legislature will instead counter with  $x_L = L^*$ , because  $G_3^* < L^* - S$ , making the policy costs to the legislature for passing  $x_G = G_3^*$  greater than the side payment S. Thus the governor does not maximize her spatial payoff, but receives a position-taking bonus that may be enough to compensate. She compares her total payoffs, and will make sincere proposal  $x_G = G_3^*$ iff:

$$U_G(L^*) + B \ge U_G(L^* - S)$$
$$-|G_3^* - L| + B \ge -|G_3^* - (L^* - S)|$$

$$\begin{split} -|G_a^*|+B &\geq -|G_a^*+S| \text{ since } L^*=0\\ G_a^*+B &\geq G_a^*+S \text{ because } G_a^*<0 \text{ and } G_a^*+S<0\\ B &\geq S \end{split}$$

In plain language, a governor will make the sincere proposal—knowing that it will not pass the legislature in its original form, and that she will be forced to sign a compromise measure at the legislature's ideal—when the position-taking benefit B outweighs the policy cost to her equal to S. By contrast, a governor will make a strategic proposal of  $x_G = L^* - S$  when B < S. In this case, the legislature will pass  $x_G$  in its original form. What does this tell us about what to expect from stronger and weaker governors? Holding constant the locations of  $G_3^*$ ,  $L^*$ , and SQ, as well as the value of B, a stronger governor able to offer a side payment S > B will make a more modest, strategic proposal than a weaker governor, but see it pass into law. A weaker governor for whom S does not outweigh B will make a more extreme proposal, but will see it fail and be forced to sign a compromise bill more to the legislature's liking. By similar reasoning, a governor who cares more about her public positions (and thus has a larger B, all other factors equal) is more likely to be satisfy the  $B \ge S$  condition, leading to a sincere proposal and a compromise at the end of negotiations.



Figure 2.3: Predictions for Two Hypothetical Governors, when the governor favors a more extreme departure from the status quo than the legislature does.

Our second spatial arrangement, when  $L^* < G^* < SQ$ , can be further divided into two regions: when the governor is closer to the legislature's ideal point than to the status quo, and when the governor is closer to the status quo. In the first region, both branches will do quite well, but the legislature knows that if it passes a bill at its ideal policy, the governor will have to sign it because it will make her better off than the status quo. That gives the legislature leverage, and the opportunity to choose whether to pass its ideal policy or to allow itself to be "bought off" by an executive side payment and pass the governor's ideal policy. When is it in the legislature's interest to pass  $L^*$ ? It will do so when the spatial loss it would have to incur by passing  $G^*$  outweighs the value of the side payment S that the governor offers for passing her ideal policy. Since we arbitrarily set  $L^* = 0$ , the spatial loss of a movement from  $L^*$  to  $G^*$  is  $G^*$  itself. The legislature will thus pass  $L^*$  whenever  $G^* > S$ , and the governor will sign it because it makes her better off than the status quo. More formally, the legislature will pass  $L^*$  iff:  $U_L(L^*) > U_L(G^*)$ 

 $\begin{aligned} -|L^* - L^*| &> -|L^* - G^*| + S \\ -|0| &> -| - G^*| + S \\ 0 &> -G^* + S \\ G^* &> S \end{aligned}$ 

When, instead, S is larger than or equal to  $G^*$ , meaning that the governor's side payment is enough to make up for the legislature's spatial policy loss, lawmakers will pass  $G^*$ , which the governor happily signs.

Can the governor do better here by making a strategic proposal? In the case where she gets her ideal policy, no. But when  $G^* > S$ , the governor might be able to do better than being forced to sign  $L^*$ . The governor could propose a policy at  $L^* + S$ , making the legislature indifferent between passing that bill and passing its own ideal (and, because of our tiebreaking rules, the legislature would thus pass the governor's proposal). Yet for the governor, the cost of making this strategic offer and winning a policy gain of S is that she loses the position-taking bonus B. She will do this only when the policy gain is greater than the position taking loss, then; if and only if S > B. Under these conditions, the governor proposes  $L^* + S$ , the legislature passes the bill, and the governor signs it.

The calculations become more complex—but the logic is similar—in the second region of the  $L^* < G^* < SQ$  spatial arrangement, when the governor is closer to the status quo. Here, the governor can credibly threaten to veto  $L^*$ , and in fact will veto anything to the left of  $2G^* - SQ$ (the point that makes her indifferent between signing the legislature's bill or reverting to the status quo). Proposing a bill at that point will be the legislature's best play from a policy standpoint, but it might prefer to pass a bill at the governor's ideal point and reap the side payment as a reward. Again, the legislature compares these two plays and will pass  $G^*$  iff:  $U_{L}(G^{*}) + \geq U_{L}(2G^{*} - SQ)$ -|-G^{\*}|+S \ge -|2G^{\*} - SQ| -G^{\*} + S \ge -2G^{\*} + SQ S \ge -G^{\*} + SQ S \ge SQ - G^{\*}

When, instead, the side payment is not large enough to make up for the legislature's policy loss (when  $S < SQ - G^*$ ) the legislature will stick with its best policy outcome by passing a bill at  $2G^* - SQ$ , which the governor grudgingly signs. Again, can the governor do better here by making a strategic proposal? The governor might be able to do better than being forced to sign  $2G^* - SQ$ , by giving up the position-taking bonus B in exchange for the policy gains that would come from proposing  $L^* + S$ , which the legislature would then accept. She will do this only when the policy gain is greater than the position taking loss, then; if and only if the gain of moving from  $2G^* - SQ$ to  $L^* + S$  outweighs B. Since both positions are to the right of zero (where  $L^*$  is located), the policy gain is  $L^* + S - (2G^* - SQ) = L^* + S - 2G^* + SQ = S - 2G^* + SQ$ . Therefore, when  $S - 2G^* + SQ > B$ , the governor proposes  $L^* + S$ , the legislature passes the bill, and the governor signs it.

Now consider the case of a governor with an ideal point like  $G_4^*$ , which is located in the  $[L^* - S, L^*]$  interval. She will be able to propose her ideal policy,  $x_G = G_4^*$ , and get it. We have already demonstrated that the legislature will pass  $x_G = L^* - S$  in its original form, so any bill located in the  $[L^* - S, L^*]$  interval, and thus closer to the legislature's ideal, is an even better deal making the legislature strictly better off than countering by passing its ideal policy. Since the governor knows that her sincere proposal  $x_G = G_4^*$  will become law, there is no reason to make a strategic offer closer to the legislature's ideal. She proposes  $x_G = G_4^*$ , receives her position-taking bonus, and it becomes law. What this shows is that both branches can be very happy when they want to move policy in the same direction and are ideologically proximate. Looking across many potential policy areas, and holding SQ, B, and S constant, we are more likely to see successful gubernatorial proposals more often when the distance between  $L^*$  and  $G^*$  is smaller. Also note that for stronger governors possessing a larger S, the  $[L^* - S, L^*]$  interval is larger. When this is the case, holding the locations of  $G^*$ ,  $L^*$ , and SQ constant,  $G^*$  is more likely to be located in the  $[L^* - S, L^*]$  interval, where she asks for and gets her ideal. Here, stronger governors are more

likely to make sincere proposals, a comparative static prediction that moves in the opposite of the direction it moved in the case of the more extreme governor  $G_4^*$ , located far beyond the  $[L^* - S, L^*]$  interval. This highlights the complicated relationship between a governor's strength and whether she asks for her ideal or makes a more strategic proposal. Still, the consistent pattern here and in the cases addressed in the main text is that stronger governors have more opportunities to make proposals that will pass in their original form.

# Chapter 4

# **Gubernatorial Success**

Many of the chief executives in our study proposed headline-grabbing education reforms in their State of the State addresses. These governors fought hard to move their reforms through the legislature, but not all emerged victorious. Democrat Roy Barnes, for instance, called upon Georgia lawmakers to end the practice of "social promotion" in public schools by expanding use of highstakes standardized testing.<sup>1</sup> Nearly two months to the day after announcing his proposal, Gov. Barnes was seated at a teacher's desk in front of a classroom full of third-graders, signing his bill into law.<sup>2</sup> The governor's rapid success occurred despite strong opposition from black lawmakers and civil rights leaders who feared that minority students would be disproportionately hurt. Republican Gov. Robert Ehrlich of Maryland, also made public education a centerpiece of his State of the State, though he pursued his goals through the budget. Ehrlich called on lawmakers to make record financial investments in the state's primary and secondary schools as well as its colleges and universities. Ultimately, the governor secured much of what he originally asked for, even though he confronted a legislature controlled overwhelmingly by the opposition party. Indeed, his large education investments were initially dismissed by Democratic lawmakers, including an Appropriations Committee member who responded to the governor's proposal by saving, "He's spending money like a drunken sailor, and I apologize to self-respecting drunken sailors out there."<sup>3</sup>

<sup>&</sup>lt;sup>1</sup>Social promotion is the practice of advancing a failing student to the next grade level to keep him with his peers. The governor asked that all third, fifth, and eighth grade students be required to pass a standardized test before being advanced to the next grade level.

<sup>&</sup>lt;sup>2</sup>James Salzer, "School Reform Signed," Atlanta Journal-Constitution, April 10, 2001, C1.

<sup>&</sup>lt;sup>3</sup>Andrew A. Green, "Ehrlich seeks 12% increase in budget - Proposal includes no new sales, income taxes," *The Sun*, January 18, 2006.

Though he fought just as hard for his education agenda, Gov. Gary Locke of Washington, did not enjoy the success of governors Barnes or Ehrlich. In his address, Locke unveiled an overhaul of the state's education laws that, according to the *Seattle Times*, would "influence everything from what students eat to how teachers get paid."<sup>4</sup> Locke's proposals asked lawmakers to abolish the current education code and to design a new teacher compensation system based on knowledge, skill, and performance. While he secured early support from some of his co-partisans in the legislature, Locke's proposals failed to even make it out of the House Education Committee. By summer, a local newspaper had already declared the governor's education proposals "dead and gone."<sup>5</sup>

Cases like these can help us test the hypotheses generated by our bargaining models. Our formulation of the policy game, for instance, predicts greater success for Gov. Barnes as opposed to Gov. Locke. When he proposed his education reforms, Barnes enjoyed a great deal of political capital—he was a popular first term governor—and his party controlled nearly 60 percent of the seats in the legislature. Locke, on the other hand, was not in a particularly enviable bargaining position. He was a second term governor, his popularity was beginning to decline, and though his co-partisans controlled one chamber of the legislature, the other was in the hands of Republicans. Similarly, our models suggest that Gov. Ehrlich would outperform Locke. While Ehrlich also faced partisan obstacles, he made the strategic decision to pursue education reform through the budget process, capitalizing on the bargaining advantages enjoyed by chief executives in budgeting.

Of course, there are limits to the usefulness of such paired comparisons, particularly when one needs to evaluate the effects of multiple potential determinants of bargaining success. In the cases of education reform presented here, Gov. Locke may have done poorly relative to governors Barnes and Ehrlich because of his low political capital, compounded by his decision to play the policy as opposed to the budget game. Alternatively (or additionally) he may have done poorly because his education proposals were larger in scope than those of the other governors, potentially making them very difficult to pass, *no matter* the bargaining circumstances. Unfortunately, there are just too many "moving parts" in these sorts of comparisons to draw much in the way of conclusions.

To overcome this obstacle, we track the outcomes of the over one thousand policy and bud-

<sup>&</sup>lt;sup>4</sup>David Postman and Ralph Thomas, "Locke Insists on Solutions: Schools, Roads Head Second-Term Action List," *Seattle Times*, January 11, 2001, A9.

<sup>&</sup>lt;sup>5</sup>David Ammons. "Yet Another Legislative Session Will Begin Today," *The Columbian*, July 16, 2001.

getary proposals that we identified in our sample of State of the State addresses, combining these into a single dataset. For each, we ask whether legislators eventually passed what the governor proposed, either in its original form or in a half-a-loaf compromise, or whether the proposal died somewhere in the legislative process. These data form the core of a rich dataset of case studies that allows us to simultaneously evaluate the effects of several potential determinants of gubernatorial bargaining success. In this chapter, we detail our data collection process, explaining how we track bargaining outcomes. Using these data, we present baseline measures of gubernatorial success. These answer important questions about the frequency with which governors successfully shepherd their proposals through the legislative process and the extent to which bargaining success varies across governors. We then employ regression analysis to systematically evaluate the predictions of our bargaining models, testing whether and how the determinants of gubernatorial success vary across the budget and policy games. The regression results not only tell us which factors meaningfully shape bargaining outcomes, but also allow us to estimate the magnitude of their effects.

# 4.1 Tracking Gubernatorial Proposals

Before we can empirically evaluate our hypotheses, we need to know the final outcome of each of the 1,088 proposals that we identified in State of the State addresses. To track proposals, we take advantage of searchable archives of statehouse journalism as well as state legislative databases. These sources allow us to identify the bills that contain State of the State proposals, chart their legislative histories, and determine whether their final disposition represented for the governor a victory, a defeat, or a half-a-loaf compromise.

For each proposal, we began by searching for newspaper coverage using LexisNexis Academic and Newsbank. These sources provide electronic access to the archives of several major newspapers in each state. Journalistic coverage of the State of the State address and the proceeding legislative session were crucial for coding outcomes. First, newspaper stories helped us ascertain salient details of gubernatorial proposals. Within the structure of a State of the State address, a governor is unable to devote much time to presenting the particulars of each agenda item. Media coverage of the address and subsequent coverage concerning the progress of individual proposals enable us to fill in the blanks. Second, journalists also often provide informed, qualitative assessments as to how closely a particular bill matched the governor's original proposal. We augment these periodic assessments with "wrap-up" articles, which are published at the end of the legislative session and highlight the governor's significant legislative achievements and failures.

We supplement journalistic coverage with information from state legislative databases. These databases provide very detailed information about bills, including summaries, the full text, a list of sponsors, and the bill's legislative history. Histories tell us whether a particular bill was signed into law and, if not, where in the legislative process it died.

Ultimately, we were able to gather definitive information on the fates of nearly 90 percent of the proposals from our sampled State of the State addresses. Using this information we code each proposal as a "pass," "compromise," or "failure." We code a proposal as having passed if a bill that closely resembles what the governor originally wanted is signed into law. Relatively minor deviations from the original proposal do not lead us to categorize the final outcome as a compromise. For instance, in 2006 Gov. Pataki of New York asked for a law requiring that all criminal offenders provide a sample to the state's DNA database. The bill that the legislature ultimately passed differed in minor ways from Pataki's proposal—it required that all felony offenders submit a DNA sample, but only mandated that 17 types of misdemeanor offenders do so. Since the list of misdemeanor offences in the final bill is broad and includes the most common entry level convictions (such as petty larceny), we treat this proposal as a full pass.

A proposal is coded as a compromise if the enacted bill gives the governor only some of what she originally wanted—compromise bills all fall *meaningfully* short of the governor's initial proposal. For example, in 2006 Utah Gov. John Huntsman used his State if the State address to recommend a series of proposals aimed at reforming what he viewed as Utah's antiquated tax code. One of these reforms was the elimination of the sales tax on food, which had initially been adopted as temporary fix for the state's frequent revenue shortfalls during the Great Depression. Unfortunately for the governor, Republicans in the state Senate disagreed and after a protracted negotiation Huntsman was only able to get the legislature to agree to a reduction in the food tax from 4.75 to 2.75 percent. This outcome moved policy in the direction preferred by the governor, but fell far short of what he called for in his State of the State address, making this a clear compromise. As is evident from these examples, determining whether an enacted bill is a pass or compromise requires a qualitative judgement on our part. Usually, however, the appropriate coding was relatively unambiguous and our efforts were made easier by the assessments contained in local newspaper coverage.

Finally, a proposal was coded as a failure if a corresponding bill never reached the governor's desk or if we did not find any journalistic coverage of a proposal (after the State of the State address) or any corresponding bills in the legislative database. The assumption that the absence of information means a failure seems reasonable given the thorough nature of our searches. Moreover, that a non-trivial share of proposals in the State of the State address seem to go nowhere is consistent with our theoretical model which predicts that governors will, at times, make dead-on-arrival proposals as a means of signaling their true policy preferences to voters and key constituencies. It is also consistent with our interviews of former governors and their staff, many of whom indicated that it is fairly common for items to be included in State of the State addresses that the governor knows in advance to be unpalatable for legislators. This assumption does not, however, have any effect on our substantive results.

# 4.2 Baseline Measures of Gubernatorial Success

How effective are governors at winning legislative approval for the proposals in their State of the State addresses? The answer to this question is a crucial first step in establishing the importance of governors as lawmakers. Are governors "legislators in chief" as some have claimed or are their strategic disadvantages simply too much to overcome? Our data enable us to provide systematic insight into this question, telling us not only the share of gubernatorial proposals that become law but the amount of variation in bargaining success that exists across governors.

We begin with aggregate data on gubernatorial success.<sup>6</sup> Of the 1,088 proposals we identified in State of the State addresses, 41 percent eventually passed, 41 percent failed, and 18 percent ended in some form of half-a-loaf compromise. Combining the pass and compromise categories reveals that state chief executives get at least some of what they want in approximately six out of every ten proposals. If we exclude (from our dataset) proposals about which we have no information, governors are modestly more successful bargainers.

Success does not appear to vary much by year or issue area. Governors secured either a full

<sup>&</sup>lt;sup>6</sup>The measures of gubernatorial success reported here combine both budgetary and policy proposals.

pass or a half-a-loaf compromise on 55 percent of their proposals in 2001 and on 63 percent in 2006. A difference of means test shows that this modest improvement between years is not statistically significant. Success is also fairly constant across each of the nine policy categories we identified in Chapter 3, with one clear exception—political reform. When governors propose changes to existing constitutional, fiscal, or electoral rules they are usually ignored by the legislature. Indeed, only 27 percent of such proposals pass with another 6 percent ending in compromise. In each of the remaining categories governors received at least some of what they wanted on a majority of agenda items.

Not surprisingly, if we disaggregate the data we uncover wide variation in bargaining success across governors. Here, we report legislative achievement using two metrics. The first is a governor's *batting average*, which tells us the share of a governor's agenda that was adopted by the legislature and signed into law, counting compromises as half a success. The second metric is what we refer to as a governor's *impact score*. These scores are a function of the number of items passed as well as their policy significance. Neither batting averages nor impact scores tell the full story of executive achievement, but both provide an instructive look at how a governor fared during a legislative session, drawing on the same clear signs of success that statehouse reporters often use when they evaluate chief executives.

Figure 4.1 reports batting averages. The y-axis lists (by year) all sampled governors in descending order from the highest to lowest average. The name of each governor is reported along with her partisan identification ("D" for Democrats and "R" for Republicans) and the postal abbreviation of her state. The x-axis is the batting average which has a possible range of 0 to 100 percent. In our sample, the mean was 52 percent, with governors distributed nearly throughout the full range of possible values. The governors with the highest batting averages are Barnes (2001) and Purdue (2006) of Georgia, both of whom won passage for nearly 90 percent of their proposals. At the other end of the spectrum are governors Pataki of New York (2001) and Romney of Massachusetts (2006) who had batting averages of 16 and 21 percent respectively. Interestingly, no governor secured the passage of everything she asked for in her State of the State address and no governor was completely shut out. This means that even the most popular and strategically advantaged chief executives were defeated on some proposals and that those with the fewest carrots and sticks still had enough power to secure the adoption of at least a small portion of their agenda.



Figure 4.1: Batting Averages, by Year & Governor

How do these batting averages compare with those reported elsewhere in the state politics literature? Unfortunately, there have been surprisingly few efforts to systematically quantify gubernatorial legislative achievement. Those that exist, however, tend to find higher levels of success than we do. Rosenthal (1990) reports batting averages for ten governors from the late 1980s, nine of which had a success rate between 75 and 95 percent. Fording et al. (2002) conduct a similar exercise for 37 governors in 1999, uncovering a mean batting average of 73 percent—again, well above the 52 percent in our sample. However, there are reasons to believe that the numbers reported in the existing literature are inflated. Rosenthal relies on the success rates reported by governors and their staff (who probably have an incentive to overstate their achievements or to ignore Rosenthal's inquiry if they were unsuccessful), while Fording et al. count half-a-loaf compromises as a full pass and remove from the denominator those proposals for which they lacked information.<sup>7</sup>

While batting averages nicely summarize the proportion of a governor's agenda that was enacted, they can obscure important aspects of gubernatorial success. As Alan Rosenthal notes (1990, p. 41), "The governor's scoreboard or batting average standard is a deceptive one. It does not distinguish qualitative aspects of the measures proposed. The governor may have won the little ones, but lost the big ones." In other words, batting averages tell us nothing about the policy significance of the proposals that the governor was able to shepherd through the legislature. They also tell us nothing about the number of enacted proposals. A governor can receive a very high average by putting forth an agenda that consists of a handful of relatively minor proposals and getting the legislature to agree to most of them. This was the case with Kathleen Sebelius of Kansas (2006). Gov. Sebelius offered only eight proposals in her State of the State address, most of which represented relatively uncontroversial or modest policy changes such as increasing prison sentences for sex offenders and exempting industrial machinery from local property taxes. Gov. Sebelius had little trouble getting most of her agenda adopted, and at the end of the legislative session had a batting average of 75 percent, the fifth highest in our sample. By this metric she was quite a success. However, it is hard to argue that Gov. Sebelius was 3.5 times more successful than Gov. Romney of Massachusetts or twice as successful as Democratic Gov. Granholm of Michigan. Though most of Romney's ambitious and controversial legislative agenda went down to defeat, he

<sup>&</sup>lt;sup>7</sup>Ferguson (2003) and Ferguson and Barth (2002) conduct very thorough studies of gubernatorial success using data on governor's bills for all 50 states during the 1993-1994 legislative sessions. Unfortunately, they do not report descriptive statistics for gubernatorial success.

did manage to secure the passage of nearly as many proposals as Sebelius, including a major health care reform package aimed at providing health insurance coverage to all state residents. Granholm, who had a meager batting average of 35 percent, also secured as many full passes as Sebelius. These include proposals with a significant policy impact, such as a \$2.25 increase in the hourly minimum wage and a bill creating a required core curriculum for all Michigan high school students.

Heeding these warnings, we also present impact scores—a novel and alternative quantification of gubernatorial achievement. These allow us to better encapsulate the ambition of a governor's enacted program by taking into account qualitative differences in successful proposals. These scores give governors points for each of their accomplishments, with more points assigned when they win bigger and more complete victories. Impact scores are calculated by totaling the number of gubernatorial proposals that the legislature passed, weighting each by its policy significance and whether or not the governor was forced to compromise. Remember, the policy significance of all proposals in our sample was coded using a scale ranging from 1 to 5 (see Chapter 3). If the significance of a proposal was coded a "4", full passage counts for 4 impact points. If the proposal reaches the governor's desk as a compromise, it counts for half as much as a full pass. When a proposal fails, it does not matter how ambitious it was; it counts for nothing. Because there is no denominator that divides accomplishments by the number of proposals, governors are not numerically penalized for pursuing lengthy agendas as they are with batting averages.

Figure 4.2 reports impact scores. All sampled governors are again listed in descending order from the highest to lowest batting average, though the y-axis now shows impact scores. Again, we observe wide variation in gubernatorial achievement. While the mean impact score across all governors is 28, the range extends from a high of 61 for Republican Gov. Lingle of Hawaii (2006) to a low of 4.5 for Democratic Gov. Dean of Vermont (2001). The five most successful governors all had scores above 50. On average, each member of the "top five" secured the full passage of 18 proposals from his or her State of the State address as well as 7 compromises. The list of full passes for each of these governors includes at least one significant proposal (coded as a 4 or 5). The five least successful governors, on the hand, all had impact scores below 15 and averaged fewer than 3 full passes and 3 compromises each. Only one of these governors—Ryan of Illinois—secured the passage of a significant proposal.

A comparison of figures 4.1 and 4.2 demonstrates that any ranking of governors by bar-

			20	01				
Barnes (D–GA)		•••••••••••••						
Hoeven (R–ND)		• • • • • • • • • • • • • •						
Glendening (D–MD)			• • • • • • • • • • • • • • •					
Owens (R–CO)					•••••••••••••••••			
Wise (D–WV)						• 🖶 • • • • • • • • • •		
Leavitt (R–UT)			•					
Perry (R-TX)					• • • • • • • • • • • • • • • •			
Holden (D-MO)		• • • • • • • • • • • • • •						
Locke (D–WA)		•••••••••••••••••••••••••••••••••••••••						
Easley (D-NC)		• 🖶 • • • • • • • • • • •						
O Bannon (D–IN)			•••••••••••••••••••••••••••••••••••••••					
Graves (B–KS)				• • • • • • • • • • • • • • • • • • • •				
Dean $(D-VT)$	🖶							
Shaheen (D-NH)		<b>.</b>						
Musarove $(D-MS)$		-						
Taft (B_OH)			<b>.</b>					
$(\Pi = O \Pi)$			<b>.</b> A					
Davis (D, CA)			· · · A. · · · · · · · · · · · ·					
Keating (B_OK)		· · · · · · · · · · · · · · · · · · ·						
Engler (R. MI)		· · · · <b>A</b> · · · · · · · · ·						
				•				
	•			••••				
Ryan (R-IL)	↓ · · · · · · · · · · · · · · · · · · ·							
Busn (R-FL)								
Siegeiman (D-AL)	······································							
Cayetano (D-HI)		•						
Pataki (R–NY)		•						
			00	06				
Porduo (P. CA)			20	00	<b>.</b>			
Perdue (R-GA)		•			<b>..</b>			
				•				
Barbour (R-MS)		•		••••				
Sedellus (D-KS)		•	•					
			····•					
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Murkowski (R–AK)								
Bush (R-FL)								
Huntsman (R–UT)		•••••••••						
Riley (R–AL)			••••••••••••••••					
Lynch (D–NH)				••••				
Schwarzenegger (R–CA)		•••••••••••••••						
Lingle (R–HI)						•••••••		
Pataki (R–NY)				• • • • • • • • • • •				
Blunt (R–MO)			••••••					
Daniels (R–IN)		•						
Owens (R–CO)				•••••••••••••••••••••••••••••••••••••••				
Ehrlich (R–MD)				•				
Henry (D–OK)			••••					
Freudenthal (D–WY)								
Blagojevich (D–IL)	•••••							
Richardson (D–NM)				••••••••••				
Granholm (D-MI)		•••••••••••••••••						
Douglas (R–VT)		•						
Romney (R–MA)		••••						
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Figure 4.2: Impact Scores, by Year & Governor

gaining success is somewhat dependent upon the measure used. The correlation between batting averages and impact scores, while a statistically meaningful .38, is far from perfect. Some governors who appeared to do quite well when we look only at batting averages, perform poorly on their impact score and vice versa. In 2006, Gov. Sebelius had one of the highest batting averages but one of the fifth lowest impact score. Gov. Lingle of Hawaii, on the other hand, finished the 2006 legislative session with a fairly pedestrian batting average of 50 percent, but had the largest impact score of any chief executive included our sample. Overall, it seems reasonable to conclude that governors who scored well on both measures had a very successful legislative session, not only winning the passage of a sizable share of their agenda, but also securing a set of accomplishments that should have a large impact on status quo policy. Likewise, it seems fair to conclude that governors who scored poorly on both measures were unsuccessful.

Overall, our data reveal that governors are often able to get at least some of what they want out of the legislative process. Whether the amount of gubernatorial achievement reported in figures 4.1 and 4.2 makes governors "legislators in chief" is ultimately a subjective assessment. For us, the data indicate striking evidence of gubernatorial strength, especially in light of the inherent disadvantages that chief executives face in the American separation of powers system. To be sure, we find gubernatorial influence to be uneven—some governors appear to be much better than others when it comes to shepherding their proposals through the legislature. Exploring the determinants of this variation is our next task.

## 4.3 Determinants of Success

How do governors get what they want out of the legislature? Why are some chief executives so much more successful than others? The models that we developed in Chapter 2 argue that success will depend on the particular bargaining game that a governor is playing—the budget or policy game—and the resources that she can employ. A governor should do best when making budgetary proposals, particularly if she is more patient than the lawmakers with whom she is negotiating. When bargaining over policy proposals, however, her patience should matter little. Instead, success should depend on the ideological distance between the governor and the legislature as well as the governor's ability to make side payments to lawmakers. To evaluate our hypotheses, we estimate regression models in which the units of analysis are individual agenda items, meaning that we have a total of 1,088 observations. Because our bargaining models predict what will happen with a single bill, it is appropriate to test our hypotheses at the level of individual gubernatorial proposals rather than by gauging success on a governor's entire agenda via batting averages or impact scores. The dependent variable in each model is coded 0 if the proposal failed, .5 for a compromise, and 1 if the governor secured a full pass. The regression results tell us whether a statistically significant correlation exists between each explanatory variable and gubernatorial success, holding constant (or "controlling for") all of the remaining variables in the model. In addition to telling us the statistical strength of this relationship, the regressions reveal the direction and size of the correlation.

As dictated by our hypotheses, the regression models capture the patience of players, the ideological distance between the branches, the ability of the governor to make side payments, and the size of the governor's total agenda. We also include a dichotomous variable (*Budget Proposal*) that indicates whether a proposal is budgetary. When we expect the effect of a variable (such as gubernatorial popularity) to differ in the budget and policy games, the variable is included in the regression model on its own and is also interacted with *Budget Proposal*.<sup>8</sup>

The regression models also control for other features of each agenda item that may affect its probability of passage. These include the proposal's significance, the ideological direction in which it would move the status quo, and its subject matter. Finally, we add a variable indicating whether the proposal was made in 2001 as well as a measure of state fiscal health. We often heard from our interviewees that it is easier for governors to move their legislative agendas when the state is not experiencing a budget deficit, a dynamic also observed in Ferguson's (2003) analysis.

We report in full the results of two regression models in Table 4.3, which appears in the appendix of this chapter. Both models are estimated as ordered logits and use standard errors clustered by state year.<sup>9</sup> The two models are identical with one exception—the first does not include a measure of a governor's public approval. A problem with estimating the effects of gubernatorial approval is that the necessary data are somewhat sparse. We very rarely have data for governors in

<sup>&</sup>lt;sup>8</sup>The coefficient on the uninteracted variable tells us the relationship between the variable and gubernatorial success in passing policy proposals. To determine the effect of the variable in the budget game one needs to add the coefficient on the uninteracted variable to the coefficient on the interaction term.

<sup>&</sup>lt;sup>9</sup>In our analyses of negotiations over the size of government (see Chapter 5) we rely upon multi level models. We do not use such models here given the difficulty of estimating ordered logits using a multi-level approach.

the first year of their first term nor do we have consistent data for many smaller states (particularly in 2001). Rather than drop all observations for which we have no approval data (approximately 18 percent of our sample), we simply estimate a first model that excludes this variable. Fortunately, there are only minor differences across models.<sup>10</sup>

In the paragraphs below we discuss the explanatory variables employed in our empirical analysis, the manner in which each is operationalized, and our results. Since the regression coefficients reported in Table 4.3 are order log-odds coefficients (and not easy to substantively interpret), we use our regression results to generate predicted probabilities. These show how the likelihood of gubernatorial success changes when we alter the value of a single variable of interest, holding all others constant. Unless otherwise stated, our predicted probabilities are calculated by setting all of the continuous variables at their means and all dichotomous variables to zero. This essentially means that we assume a "typical" governor and a "typical" strategic environment. Table 4.1 concisely reports predicted probabilities for our key explanatory variables.

#### 4.3.1 Budgetary vs. Policy Proposals

We begin by considering whether governors are more likely to succeed at passing budgetary proposals. Remember, governors should be relatively advantaged when playing the budget as opposed to the policy game. When bargaining over the budget lawmakers cannot ignore the governor—a new budget must be passed and the failure to do so risks a government shutdown and serious political calamity. This brings lawmakers to the negotiating table. In the policy game, legislators are free to ignore or stonewall the governor. As a result, it may be difficult for the governor to even get lawmakers to the bargaining table, let alone get them to enact her proposed policy changes.

Our data support this expectation even without regression analysis. Of the budget proposals in our sample 66 percent ended in either a full pass or a compromise, while the same can be said for only 54 percent of legislative proposals. Indeed, most governors (though not all) had a higher batting average for budgetary items than they did for policy proposals. If we dig a bit deeper, our data suggest that the difference between these success rates is driven (at least in part) by governors'

<sup>&</sup>lt;sup>10</sup>In results not reported here we estimate logit models that employ a dichotomous coding of the dependent variable—failures are assigned a value of zero and any success (whether a full pass or a compromise) is assigned a value of one. In these models, our finings remain largely unchanged, suggesting that the results we discuss here and display in the appendix are not driven by our approach to distinguishing between passes and compromises.

ability to secure compromises on budgetary items. There is only a very small and insignificant difference between the share of budgetary and policy proposals that end as full passes. The big difference is in the ability of chief executive to secure compromises—27 percent of budgetary items end in an compromise, compared to only 12 percent of policy proposals. This is consistent with our expectation that legislators will often ignore gubernatorial policy proposals but are forced to come to the table and negotiate over budgetary items.

To evaluate our hypothesis more fully, we turn to our regression results. These tell us whether a budgetary proposal is more likely to succeed, even after controlling for other potential determinants of bargaining outcomes. It may be, for instance, that we observe a higher success rate for budgetary items because they tend to represent smaller changes to status quo than do the policy proposals. After taking such factors into consideration, however, we still find that chief executives are more likely to win passage of budgetary proposals. This is indicated by the positive and statistically significant coefficient on *Budget Proposal* in both of regression models.

To show the size of this difference, we turn to predicted probabilities. Assuming a typical governor and bargaining environment, the probability of securing either a full pass or a compromise on a budget item is between 5 and 11 points higher than securing the same on a policy proposal (depending on whether we use Model 1 or Model 2 from Table 4.3). If we assume a less favorable bargaining environment for policy proposals—an unpopular governor whose political party controls a relatively small share of the seats in the legislature—the difference grows to 15 points.<sup>11</sup> The governor only does better on policy proposals when she either enjoys numerous strategic advantages in the policy game or experiences large disadvantages in the budget game (i.e., is negotiating with a very patient legislature). On average, though, we find strong and robust evidence that governors do better on budget items.

Because this is such a strong effect and so central to our argument, it is worth considering alternative explanations of gubernatorial strength in budget bargaining. One possibility is that governors only *appear* to do better in budgeting because it is in this game, rather than in policy negotiations, that weak governors offer compromise agendas. If this were true—if budgetary agendas reflected strategic bargaining situations, whereas policy agendas reflected governors personal

<sup>&</sup>lt;sup>11</sup>Assuming the governor's popularity and her party's legislative seat share are both one standard deviation below the mean.

preferences—it would cast doubt upon our finding. But in fact, as Chapter 3 demonstrates, we see exactly the opposite pattern. There is much more evidence that governors' policy agendas are shaped by their bargaining circumstances than are their fiscal agendas. Insiders also tell us that, when it comes to the budget, governors have the freedom to shape their agendas as they see fit.

A second alternative explanation is that most budget proposals are, by their very nature, divisible, while many policy proposals may not be. A proposal such as the one made by Maryland's Gov. Parris Glendening in 2001 to "provide \$45 million to expand Community Parks and Playgrounds over the next 3 years" could easily be cut into compromise of a \$20 million expansion. While this outcome would be less than ideal for Gov. Glendening, it would still allow him to secure a partial legislative victory. If many executive policy proposal are not divisible (meaning that no possible compromise exists), similar deals cannot be struck. This might then translate into more failures in the policy negations.

Our very strong impression, though, after reading hundreds of executive policy proposals is that potential compromise outcomes exist in nearly all cases. Still, this potential concern calls for a more systematic analysis. We hired two research assistants (who had not previously been involved in this project) to code the divisibility of policy proposals in our dataset. In particular, they were told to code a proposal as indivisible if they could not anticipate a possible compromise.<sup>12</sup> Research assistants were not told in advance the actual outcomes of the proposals they were coding. Working independently, they found low rates of indivisibility, even among policy proposals that ultimately ended as failures. Additionally, and perhaps most surprisingly, governors and legislators were able to reach compromises on a large percentage of the proposals that appeared to our coders to be indivisible (indeed, among the policy agenda items that our assistants coded as indivisible, the share that ultimately ended as compromises was statistically indistinguishable from the share that ended as failures). For instance, in his 2001 address, Alaska Gov. Tony Knowles called for marketing North Slope natural gas and supplying it to Alaska communities, a proposal linked to the eventual construction of a natural gas pipeline. Our coders judged this an indivisible proposal, apparently judging that gas would either be marketed and sold through a pipeline or not. But when legislators responded with a bill to study the issue and prepare a report about the state's

 $<sup>^{12}</sup>$ We focused exclusively on policy proposals because budget items are, in essence, always divisible. Research assistants coded the 284 policy proposals that ended as failures as well as the 71 that ended as compromises.

participation in the complicated public/private partnership that would be required, the end result was a clear compromise. This suggests to us that elected officials are quite skilled at unearthing compromises even when none seemingly exist. After undertaking this analysis, we are even more confident that differences in the nature of budget and policy proposals are not driving our results.

#### 4.3.2 Bargaining Patience

While governors are more likely to emerge victorious when negotiating over budgetary proposals, our model of the budget game predicts that their success will still vary across states, largely as a function of the relative patience of the players. We expect governors to do well in the budget game during their legacy year, that is, their last year office. During this year, governors have little to lose from a late budget, making them very patient bargainers. Similarly, we anticipate that governors will be most successful in budget negotiations when they bargain with a legislature that meets in short sessions (i.e., citizen legislatures). In these chambers, lawmakers typically maintain careers outside of legislative service and pay high opportunity costs if the governor vetoes their budget and calls them in to a special session. Such opportunity costs are not paid by lawmakers in more professionalized legislatures. Dan Schnur, former communications director to Gov. Pete Wilson, suggests lawmakers in professionalized chambers actually prefer long stays in the capitol. When discussing California lawmakers, he notes, "They love being in Sacramento. The average assembly member is anonymous in his own district, but he is a celebrity in Sacramento. They have lobbyists paying attention to them, the press; everyone knows their name."<sup>13</sup>

To test for the effects of patience we use two variables. The first is a measure of session length, operationalized as the number of legislative days that lawmakers met during the relevant year.<sup>14</sup> In our sample, the average number of legislative days is 83, ranging from a low of 19 (New Hampshire, 2001) to a high of 274 (New York, 2001 and 2006). The second is a dichotomous variable indicating whether a governor is in her legacy year. Our sample includes five such governors.

Each of our regression models show that as session length increases the probability that a governor will secure the passage of a budget proposal meaningfully declines. For the typical governor, with session length set to its mean, the probability of securing a full pass on a budgetary

<sup>&</sup>lt;sup>13</sup>Telephone interview of Dan Schnur conducted by Thad Kousser, July 7, 2009.

 $<sup>^{14}</sup>$ These data were obtained from the *Book of the States*. Where necessary calendar days have been converted to legislative days by multiplying by .75.

item is 32 percent. If we change nothing about the governor or the bargaining environment except decrease the length of the legislative session to that of New Hampshire, the probability of a pass rises to 38 percent. If on the other hand, we increase session length to that of New York, the chance that the governor will secure a full pass falls to 17 percent. Lengthy sessions (about one standard deviation above the mean) eliminate the normal advantages the chief executive enjoys in budgeting, pushing the probability that the governor will be able to secure a full pass for a budget item below that of a achieving a full pass for a policy proposal.

While our results show that governors are less influential in the budget game as session length increases, it is possible that patience is not the driving force behind this relationship. Legislatures that meet in long sessions also tend to possess an increased intelligence capacity (Rosenthal 1990). That is, they usually have a large staff dedicated exclusively towards fiscal policy and a revenue-estimating capability that is independent of the executive branch. These features may reduce the governor's traditional informational advantages and enhance legislative independence and assertiveness in budget negotiations (National Conference of State Legislatures 2005). To test for this possibility we estimated regressions that also include a measure of legislative staff. While we do not present these results here, the inclusion of a measure of staff has no effect on our results increases in legislative staff do not decrease the probability of gubernatorial success in the budget game, but increases in session length do.<sup>15</sup> Thus, we are comfortable concluding that legislative patience counteracts executive power in state budgeting.

We do not anticipate that legislative patience will shape outcomes in the policy game. Unexpectedly, however, there is some evidence of a statistically significant (though modest) positive correlation between session length and the probability of passing a policy proposal. This effect is not particularly robust, since it is only present in Model 2. Ferguson's (2003) analysis of State of the State success in 1993-94 also found a positive link between legislative professionalism and

<sup>&</sup>lt;sup>15</sup>In models not reported here, we also examine the potential effect of legislative term limits, an electoral law that much prior research has shown to shift power from the legislative to the executive branch (Thompson and Moncrief 2003, Peery and Little 2003, Kousser 2005, Carey et al. 2006, Powell 2007). The research design that we employ in our analysis here, though, is not a strong one for testing the effects of term limits. Instead of observing states both before and after the implementation of term limits, as much prior work does, we look at them in 2001 and 2006, when most term limit laws had already been implemented. Our cross sectional test, then, simply compares states with term limits to those without. When we included a term limits variable in our models, its estimated coefficient was substantively miniscule (-0.02) and statistically weak (yielding a test statistic of 0.13). None of our other results changed. We omitted the term limits variable from our final models, because the weakness of our research design prevents them from shedding any new light on the impact of term limits.

gubernatorial success in the policy realm. Why might session length lead to increased success for gubernatorial policy proposals? One possible reason is that there is simply more agenda space and more time for the consideration of gubernatorial policy proposals in a lengthy session. In short sessions, the legislature is in a frantic race to beat the clock, and the clock often wins. Short sessions in states like New Mexico (which in even numbered years only meets for 30 days) are frequently cited as a reason that many popular bills fail. When complaining that several proposals backed by the powerful business lobby died in the 2006 legislative session, John Carey, president of the Association of Commerce and Industry of New Mexico, said, "Some things just didn't make it through the whole process...Thirty days is a short period of time," while Terri Cole, president and CEO of the Greater Albuquerque Chamber of Commerce, noted that many bills "died more from the clock running out of time rather than full debate."<sup>16</sup> It is likely that governors experience the same frustrations. Ultimately, however, we are cautious about drawing much of a conclusion from this result, given that the finding is not robust across regression model and given that its substantive magnitude is fairly modest. Furthermore, in Chapter 8 we observe that California governors have become less successful in policy negotiations after the legislature there professionalized and increased its session length.

Regression results also provide modest support for our hypothesis concerning chief executives in their legacy year. They consistently show that governors do better in the budget game during their final year of service (though this fall short of statistical significance in the model that includes popularity). Surprisingly, however, we find that legacy-year governors also do better when negotiating over policy proposals and that this effect is statistically significant in all estimations. This is the opposite of what we had anticipated. We discuss this result more fully when we consider the effects of side payments on gubernatorial bargaining success.

### 4.3.3 Ideological Agreement

We next turn to our expectations about how the partial partial partial of the legislature should shape bargaining outcomes. While the legislature always faces incentives to negotiate and compromise with the governor in the budget game, no similar incentives exist in the policy game. As a result,

<sup>&</sup>lt;sup>16</sup>Mike Tumolillo, "Given more time, the Legislature could have done even more for business in New Mexico. As it is, leaders call it a successful session," Albuquerque Tribune, February 27, 2006, B1.

a governor's ability to shepherd policy proposals through the legislature should depend greatly upon ideological agreement between the branches. As we show in the policy game, if the governor proposes a bill that both branches prefer to the status quo, some form of this bill will pass and be signed into law. The final outcome may be at the governor's ideal, the legislature's ideal, or some other point, but we would not expect to see failure. This means that a governor negotiating with a legislature located closer to her on the ideological spectrum should have a greater chance of passing a policy proposal.

Empirically, we measure distance between the branches using the share of legislative seats held by members of the governor's party, averaged across the two legislative houses. (Elsewhere we simply use the presence or absence of divided government; this choice has no meaningful effect on our results). Larger values on this measure should indicate a smaller ideological distance between the governor and legislature. While the partisanship of lawmakers is an imperfect proxy for ideological proximity, this is the same sort of rough metric used by governors and their advisers. It is also a metric that is employed throughout the state politics literature.

The governors in our sample confronted a diverse set of partisan environments. On average, the governor's party controlled 52 percent of the legislative seats. In ten state years, however, this number was 35 percent or less, making the governor's party a small and relatively powerless legislative minority. The chief executive facing the most dire circumstances was Mitt Romney whose Republican party controlled fewer than 14 percent of the seats in the Massachusetts legislature. At the other end of the spectrum, the governor's co-partisans controlled 65 percent or more of the seats in eleven states, making the governor's party the only game in town. Democrat Bob Wise of West Virginia faced the most enviable position—79 percent of the lawmakers in his state were also Democrats.

As anticipated, our results show that chief executives who bargain with ideologically similar legislatures do better. The coefficient on our measure of seat share is positive and statistically significant, indicating that as the share of seats controlled by the governor's party increases, so does the probability that the governor will successfully shepherd a policy proposal through the legislative process. Besides being statistically significant, this effect is substantively quite large. Moving from the partian bargaining environment faced by Mitt Romney to that of Bob Wise (holding all else constant), more than doubles the probability of a full pass, from 16 to 38 percent. Having a large partisan majority, while clearly useful, does not guarantee success. This is consistent with observations made by our interviewees, many of whom noted that governors' agenda items are often blocked within the legislature by the more ideological members of the governor's own party. In talking about the struggles of recent California chief executives, Phil Trounstine, former communications director to Gov. Gray Davis, commented that "Gray Davis' biggest problem was not the conservatives, but John Burton [President Prop Tempore of the state senate] and the liberal Democrats. Arnold Schwarzenegger's biggest problem was not Democrats, but conservative Republicans."<sup>17</sup>

Since the "winner" of the budget game should largely be a function of the patience of the players, we do not expect the ideological distance between the governor and legislature to matter much (or at all) when it comes to shaping the likelihood of gubernatorial success on budget proposals. This means that we should observe a negative coefficient on the interaction between seat share and the budget dummy variable. Indeed, the regression results confirm our expectation. The interaction term is negative in both of regression models, reaching statistical significance in Model 2. The size of this interaction effect means that the probability of gubernatorial success in budget bargaining changes only marginally as the governor's party gains legislative seats. For budget items, moving from the partisan bargaining environment faced by Mitt Romney to that of Bob Wise (holding all else constant) has no significant effect on the probability of bargaining success.

#### 4.3.4 Side Payments

Absent ideological agreement in the policy game, the governor needs to induce lawmakers to the bargaining table by offering side payments. In Chapter 2, we argue that the size of the side payments a governor can make are affected by three factors. The first is whether or not she can credibly threaten to veto lawmakers' pet bills. Remember, bills are the currency of the legislature—"every member has a dozen or so pieces of legislation that he wants to get signed [by the governor] at the end of the session."<sup>18</sup> A governor who can use veto threats as bargaining chips should have

<sup>&</sup>lt;sup>17</sup>Phil Trounstine, communications director to Gov. Gray Davis, interview on phone by Thad Kousser, July 8, 2009.

<sup>&</sup>lt;sup>18</sup>Interview with Tom Hayes, Director of Finance to California Gov. Pete Wilson, conducted by telephone by Thad Kousser, July 16, 2009.

a greater chance of passing her own policy proposals. Of course, the credibility of such threats depends upon the governor's party occupying enough seats in the legislature to sustain her veto. A governor's popularity with voters and the amount of time she has remaining in office should also affect the size of side payments she can offer. A popular governor can do more to help supportive lawmakers, while a governor who is near the beginning of her administration can make more and larger promises because she has a longer period of time in which to repay legislators. Again, we do not expect these variables to have much of an affect in the budget game.

To test the effect of veto threats we rely on our existing measure of the share of legislative seats controlled by the governor's party. Certainly the more seats her party controls, the greater the probability that the governor will be able to sustain her vetoes. In results not reported here, we replace the measure of seat share with a dichotomous variable indicating whether the governor has a sufficient number of co-partisans in both legislative chambers to uphold her vetoes.<sup>19</sup> This alternative measure produces only minor differences in our results. Because seat share and having a veto proof majority are correlated conceptually and empirically we do not include both in the same regression model. In our data, the correlation between the governor's seat share and a veto proof majority is .72.

To evaluate the effect of popularity we use the approval ratings of governors obtained from U.S. Officials' Job Approval Ratings (JARs) database. JARs is a repository for job approval ratings obtained largely from state-specific public opinion polls. This variable is operationalized as the share of survey respondents who report "approving" of the job the governor is doing. For each governor, we use the last poll conducted before she delivered her State of the State address. We do this to minimize the possibility that the governor's approval rating will be shaped by the proposals included in her speech or by events and policy debates that occurred during the legislative session.

Unfortunately, JARs does not contain approval data for nine of our sampled governors from 2001.<sup>20</sup> Subsequent efforts to locate these missing data through internet and newspaper searches came up empty—there were simply no (publicly reported) opinion polls conducted about voters' attitudes toward these chief executives. The governors for which we are missing approval data

<sup>&</sup>lt;sup>19</sup>In our sample of states, the share of votes needed to override a gubernatorial veto ranges from a bare majority to 67 percent.

<sup>&</sup>lt;sup>20</sup>There is no missing data for 2006 largely because a single national polling firm, SurveyUSA, conducted a monthly survey in all 50 states asking respondents to evaluate, among other things, the performance of their governor.

tend to be from relatively small states with less professionalized legislatures and often in the first year of their first term. The non-random nature of these missing data is potentially problematic for our regression analysis since they result in a slightly biased sample. For this reason we report Model 1 (which excludes our approval measure). Even beyond issues of missing data, however, the effect of public opinion may be hard to estimate in the cross-sectional models used here. Approval ratings may be shaped by some of the same institutional factors that affect gubernatorial bargaining success. For this reason we also conduct detailed cases studies about the effects of public opinion in Chapter 6 which allow us to further explore the potential causal relationship between popularity and gubernatorial success.

The regression models include two dichotomous variables that capture the amount of time a governor has to repay legislators who cast tough votes for her agenda. The first identifies chief executives who are serving in their first term, and should be positively correlated with gubernatorial success in the policy game. The second identifies chief executives who are in their legacy year. These governors should perform poorly in the policy game because they have very little time left in office to keep their promises.<sup>21</sup>

Overall, the regression results are consistent with our expectation that governors who can make larger side payments will do better in the policy game. The share of legislative seats controlled by the governor's party, gubernatorial popularity, and whether the governor is in her first term are all positively and significantly related to bargaining success. These effects are substantively meaningful. Holding all else constant and moving from the lowest approval ratings in our data set (18 percent for Gov. Taft of Ohio) to the highest (75 percent for Gov. Leavitt of Utah) nearly quadruples the chance that the governor will be able to secure a full pass for a policy proposal. Similarly, the chance of a first-term governor securing a pass is 19 points higher than a governor in her second or third term (as long as that governor is not in her legacy year).

Importantly, our results show that the ability to make large side payments does not enhance governors' bargaining power in the budget game. Large increases in either popularity or the share of legislative seats occupied by the governor's co-partisans result in only marginal and statistically meaningless changes in success. The same is true for first term governors. According to our

<sup>&</sup>lt;sup>21</sup>Since some of our sampled states place no limitations on the number of terms a governor may serve, it is impossible for us to create a single variable measuring the number of potential years that a governor could remain in office.

regression results, when the governor can offer large side payments, she is likely to perform as well (or better) in the policy game as she does in the budget game (assuming she is negotiating with an average as opposed to a citizen legisalture).

Our results for chief executives in their legacy year are puzzling. Surprisingly we find that governors in their final year of service do better when negotiating over policy proposals and this effect is statistically significant and fairly large. Why are final-year governors so successful in the policy game? We do not have a clear answer. One possibility is that these governors work particularly hard at securing the passage of their agenda in order to enhance their gubernatorial legacy. Despite this one puzzling finding, the empirical analysis generally demonstrates that the ability of governors to make large side payments is a key determinant of success when bargaining over policy proposals.

#### 4.3.5 Position Taking Bonus

We also anticipate that governors will be less successful in the policy game if the position-taking bonus is particularly large—that is, if the chief executive has a lot to gain by signaling her sincere policy positions. When this bonus is large our model indicates that the governor will make more "dead-on-arrival" proposals. Lawmakers will not take these proposals seriously and cannot be induced to the bargaining table even with the promise of large side payments.

To test this expectation, we consider a set of governors for whom the position-taking bonus is likely to be large—those who are flirting with a presidential bid. Anecdotal evidence seems to confirm that these governors often populate their agendas with proposals aimed at a national audience, particularly those individuals and interest groups whose support is important for a presidential campaign. In 2006, for instance, Gov. Pataki of New York surprised many observers by laying out a fairly conservative agenda, centered around deep cuts in income, property, and estate taxes as well as a series of tough-on-crime proposals. In the coverage of his State of the State address, the New York Times noted that Pataki's speech "courts a much different audience these days: the bedrock Republicans to whom he must appeal should he pursue a presidential run in 2008."<sup>22</sup> The governor's address even proposed funding refineries in New York to make ethanol, an

<sup>&</sup>lt;sup>22</sup>Danny Hakim, "Pataki Stresses Tax Cuts in Address Reprising Early Themes," New York Times, January 5. 2006, p. B1.

alternative fuel made from corn that is beloved in Iowa, the home of the first presidential caucus. As noted in Chapter 2, Gov. Romney also made a number of proposals in his 2006 State of the State address that were clearly targeted toward Republican voters outside of the liberal electorate in his home state. These included abstinence only sex education and ending welfare work exemptions for pregnant women, mothers of young children, and the disabled—none of which had a chance of passing in the very liberal Massachusetts legislature.

Lawmakers are adept at recognizing proposals aimed at bolstering a potential presidential bid and are often unwilling to play along.<sup>23</sup> While governors Pataki and Romney were positioning themselves for runs at the 2006 Republican nomination, Gov. Richardson of New Mexico was getting ready to jump into the Democratic contest. In his State of the State address, he proposed a sweeping and large agenda (44 items), seemingly aimed at traditional Democratic interests. His agenda included a large increase in the minimum wage, a proposal to insure that all children under the age of five have health insurance, and expanded investments in education. Despite Richardson's partisan advantages (his party controlled approximately 60 percent of the seats in both legislative chambers), most of his agenda items went down to defeat. Commenting on the governor's poor results, state Republican party Chairman Allen Weh said, "The governor's real priorities are himself...He's one of 10 to 12 guys running for President, and he wants things to add to his resume."<sup>24</sup>

All else equal, we expect governors with presidential ambitions to be less successful at winning the adoption of the policy items in their agendas. To test this hypothesis we have identified governors who are reported (in either state or national media) to be seriously considering a presidential campaign.<sup>25</sup> Even without controlling for other determinants of success, these data support our expectations. Governors with presidential ambitions were only able to secure full passes for 28 percent of their proposals. Governors who were not eying a national campaign, on the other hand, won full passes 42 percent of the time. Both sets of governors had very similar proportions of their

<sup>&</sup>lt;sup>23</sup>A notable exception to this pattern occurred in 2006. During this legislative session, Gov. Romney proposed a historically significant health insurance reform plan, aimed at providing insurance to all state residents. Though this plan was viewed by many as an attempt by the governor to raise his national profile, Democratic leaders in the legislature were more than willing to go along (though they pushed for an even broader reform). Romney's proposal was successful because it appealed to the long-held policy objectives of state Democrats.

<sup>&</sup>lt;sup>24</sup>Kate Nash, "Lawmakers temper year of zeal," Albuquerque Tribune, February 17, 2006, p. A1.

<sup>&</sup>lt;sup>25</sup>Our dataset includes five governors with presidential ambitions. In 2001 these are Howard Dean (Vermont) and Gray Davis (California); in 2006 they are George Pataki (New York), Bill Richardson (New Mexico), and Mitt Romney (Massachusetts).
agenda items end in compromises—21 and 18 percent respectively.

These results hold up in our regression analysis. When we include a measure of presidential ambition as an explanatory variable, it is indeed a significant predictor of gubernatorial success in the policy game. Our results show that, holding all else equal, governors who are reported to be considering a presidential campaign are over two and one half times less likely to win the passage of a policy proposal. The substantive importance of this relationship exists under a variety of strategic contexts. It does not, however, exist in the budget game. That is, we uncover no meaningfully difference in success between governors with and without national ambitions in when it comes to bargaining over budgetary items.<sup>26</sup> It is important to note that though we confirm the prediction that governors with presidential ambitions often lose on their overly ambitious proposals, we note that this does not imply that they lack power; instead, it simply suggests that they exercised their power to pass it.

## 4.3.6 Features of the Proposal & Agenda

Our regression models also include variables that capture the overall size of the governor's agenda and features of each proposal. We anticipate that as the size of the agenda grows, the probability that the governor will succeed on any individual item will decline. In the policy game, a governor's ability to make side payments should be depleted if she asks for numerous bills. In the dividethe-dollar logic of the budget game, there are only so many cents that can be allocated among the players, meaning that a governor winning a figurative amount of concessions must determine how to allocate these across her budgetary agenda items. To test for the effects of agenda size we include a count of the total number of proposals included in a governors agenda.<sup>27</sup>

We include also four variables that capture features of each proposal. The first identifies agenda items that represent a liberal change in status quo policy. These are proposals that move policy in a leftward direction (for example, environmental regulations, expansion of social services,

<sup>&</sup>lt;sup>26</sup>In regressions not reported here, we consider whether governors are less likely to be successful in election years. It is possible that governors will place a high value on signaling their true beliefs to voters when they are running in an election. We do not find any meaningful evidence supporting this hypothesis.

<sup>&</sup>lt;sup>27</sup>Our results remain unchanged if we replace this with a measure of agenda scale—the product of the number of agenda items in the governor's State of the State address and their average magnitude (using the 5 point scale discussed in Chapter 3).

strengthening of abortion rights, etc). Proposals that move policy rightward or that have no clear ideological orientation are coded as zero. The second variable identifies proposals that would move status quo policy in the same direction as preferred by the legislature. So, a conservative (liberal) proposal would be assigned a value of 1 if the legislature is controlled by Republicans (Democrats). We always code ideologically neutral proposals as a 1, regardless of the partisanship of the legislative majority (though this assumption does not effect our results).<sup>28</sup> While our models make no prediction about whether liberal proposals should pass more frequently than conservative or ideologically neutral proposals, we would expect those that move policy in a direction preferred by lawmakers to enjoy great success.

We also include a variable identifying agenda items that constitute a significant departure from status quo policy—that is those proposals that are coded as either a 4 or 5 on our measure of policy impact. We anticipate that governors will be less likely to secure passage for these agenda items. Finally, we utilize a variable indicating proposals that are political reforms. Political reforms should be difficult to pass since they often require a constitutional amendment (necessitating a super majority vote in both legislative chambers) or ask lawmakers to agree to new restrictions on their own behavior (such as campaign finance laws or tax and expenditure limitations). Even within our sample, we observe governors who were very successful at moving most of their legislative agenda, but utterly failed when it came to their ideas for political reform. Gov. Riley of Alabama, for instance, proposed a set of popular reforms that included legislative term limits, new disclosure requirements for lobbyists, and an amendment to the state constitution prohibiting local governments from using eminent domain to seize private property and then turn it over to private individuals or corporations.<sup>29</sup> By the end of the legislative session Gov. Riley did not secure the passage of any of his proposals for political reform, but his batting average for all other agenda items was over 70 percent.

As we expected, our regression results show that governors who propose larger agendas are less likely to win the adoption of any given proposal. This relationship is statistically significant and substantively important. For the typical governor, switching from an agenda size one standard

<sup>&</sup>lt;sup>28</sup>In regression results not reported here we consider several alternative operationalizations of ideological agreement, including one which makes ideological agreement into a series of steps (party control of one house, party control of both houses, and party control of both houses with a veto-proof override). None of these alternatives change our finding of a null effect.

<sup>&</sup>lt;sup>29</sup>This proposal was in response to the U.S. Supreme Court's decision in Kelo vs. City of New London.

deviation below the mean (15 total proposals) to an agenda size one standard deviation above the mean (35 total proposals) decreases the probability that a policy proposal will be adopted by about 10 points. While we do not report an interaction between agenda size and whether a proposal is budgetary, when we include this term in our regression models, it has no meaningful relationship to gubernatorial success, meaning the affect of agenda size is similar in the budget and policy games. Of the proposal-specific variables, only the indicators for liberal policy change and for political reform are statistically significant. Liberal agenda items are significantly more likely to pass; apparently, governors have an easier time selling legislators on new programs and regulations than on proposals such as the rollback of regulations or teacher merit pay. Perhaps interests groups play a role in creating this asymmetry in the direction of policy. Governors are also less successful when proposing political reforms, which, because many of these reforms seek to impose strict ethics rules on lawmakers and increase the power of the governor, should not be surprising.

#### 4.3.7 State Fiscal Health

In our regressions we consider one final determinant of success—the fiscal health of the state. When asked about the advantages governors may enjoy during periods of fiscal prosperity, Bill Hauck, who served as Gov. Pete Wilson's deputy chief of staff, responded (perhaps a bit facetiously) that, "When times are good, and when the state has money, it's a piece of cake. Almost anyone can do the job."<sup>30</sup> While this response may understate the challenges of governing in times are good, the consensus among our interviewees is that state chief executives have a much easier job winning support for their proposals when the state is not confronting a budget deficit. Qualitative accounts of gubernatorial administrations are littered with stories of governors forced to scale back their legislative agendas to accommodate worsening fiscal circumstances (cf., Beyle 1992). Dan Schnur, who also served in Pete Wilson's administration, recounted for us the effects that the troubled California economy of the early 1990s had on Governor's Wilson's agenda. "If you look at the inaugural address and the first State of the State address, you'll see a very ambitions agenda...He'd been getting budget warnings, but the bottom fell out in the spring of 1991. Everything that he proposed had to fall by the wayside."<sup>31</sup>

<sup>&</sup>lt;sup>30</sup>Interview with Bill Hauck, former chief of staff to Assembly Speakers Willie Brown and Bob Moretti and deputy chief of staff to Gov. Pete Wilson, conducted by telephone by Thad Kousser and Justin Phillips, June 25, 2009.

<sup>&</sup>lt;sup>31</sup>Telephone interview of Dan Schnur conducted by Thad Kousser, July 7, 2009.

To evaluate systematically the effects of state fiscal health we include a lagged measure of the state's budget surplus. These data were obtained from the Fiscal Survey of States which is published biannually by the National Association of State Budget Officers. The measure we use is the prior year's fiscal budget surplus as a share of total state expenditures. Positive values of this measure indicate a budget surplus while negative values indicate a deficit (in our sample, however, we have no states that ran deficits). In both of our regression models, we observe a positive and significant relationship between surplus and gubernatorial success. This effect is not all that large—moving from a perfectly balanced budget to one that has a 12 percent surplus (the mean in our sample) only increases the probability of bargaining success by a few points. The significance and size of this effect does not differ across the budget and policy games.<sup>32</sup>

### 4.3.8 The Empirical Importance of Two Bargaining Models

The results of the regression analyses consistently support our argument that there are two largely distinct models of inter-branch bargaining—one for budgeting and another for negotiations over policy bills. This is indicated by the statistically significant (and substantively meaningful) co-efficients on the interactions between budgetary proposals and our measures of political capital, the strength of the governor's party in the legislature, and legislative session length. This is also illustrated by Table 4.1 below which shows changes in the predicted probabilities of bargaining success, conditioned upon changes in the bargaining environment. It is clear from the Table that the variables which play a key role in shaping gubernatorial success in negotiations over policy items have almost no effect when it comes to budgeting and vice versa.

Readers may wonder, however, whether and how our results would differ if the interactions were excluded; that is, if we estimated regression models that looked more like those in the existing literature. Remember, most investigations into the determinants of gubernatorial success do not distinguish between bargaining over budgets and bargaining over policy bills. In regression models that exclude the interaction terms, many of our key variables no longer appear to be significant determinants of gubernatorial bargaining success, including the partisanship of the legislature, the amount of time a governor has remaining in office, and the patience of legislators. Public approval remains statistically significant, but the magnitude of its effect falls by nearly half. This dramatic

<sup>&</sup>lt;sup>32</sup>Alternative measures of state fiscal well being such as the unemployment rate do not have a statistically significant relationship to success even if we remove our lagged measure of budget surplus from the model.

change in our results suggests that ignoring the fundamental difference in bargaining over budgets and policy bills may lead researchers to falsely conclude that key determinants of gubernatorial success (such as the partisanship of the legislature) are not meaningful predictors of outcomes or that they only have substantively minor effects. That prior studies of governors do not make this distinction may help account for some of the puzzling and inconsistent findings in the literature. Ultimately, by including these theoretically driven interaction terms in our regression models, we uncover determinants of gubernatorial success that might otherwise be hidden.

	Policy Bills	Budgetary Proposals
Variable shifts from		
A <b>popular</b> governor (68% approval) to an unpopular one (44% approval)	-15%	-2%
A <b>first term</b> governor to a governor serving in a later term	-19%	+3%
A governor not in her <b>legacy year</b> to a governor serving in her legacy year	+16%	+17%
A governor whose party holds a large <b>legislative seat share</b> (34%) to a governor whose party has a small seat share (67%)	-11%	+2%
A governor who holds no <b>presidential ambitions</b> to a governor who does	-16%	-3%
Legislature shifts from short <b>legislative sessions</b> (20 days) to long sessions (270 days)	+6%	-21%

Table 4.1: *Predicted Probabilities of Gubernatorial Success.* The table reports the change in the predicted probability of a bargaining success, conditional upon a change in the explanatory variable of interest. All predicted probabilities use Model 1 from appendix Table 4.2, except predictions for the effect of popularity which are calculated using Model 2.

# 4.4 Summary

This chapter presents baseline data on gubernatorial success, telling us the share of agenda items that become law and the amount of variation in bargaining success across governors. These data indicate that state chief executives are powerful, if not omnipotent, actors in the lawmaking process. Of the agenda items we identified in State of the State addresses, 41 percent passed in a form that closely resembled the governor's original request and another 18 percent were adopted as half-a-loaf compromises. The data also show that legislative achievement varies widely across chief executives—some governors in our sample secured the adoption of nearly 90 percent of their agenda items, while others failed to shepherd even 25 percent of their proposals through the legislative process. Importantly, these data show that even the most strategically advantaged chief executives were defeated on some proposals while the weakest governors had enough power to secure the adoption of at least a small portion of their agenda.

Using regression analysis and our data on gubernatorial success, we systematically evaluate the bargaining models developed in Chapter 2. The main findings from these analyses are summarized in Table 4.2. The table reports the relationship between each of our substantive variables and gubernatorial success in both budget and policy negotiations. If the it is significant we report a positive or negative sign, indicating the direction of the relationship. If a variable had no meaningful correlation with success we report the effect as "null", and if the direction or statistical significance of the relationship differed across regression estimations we report the effect as "mixed."

	Policy Bills		Budget Pr	Budget Proposals	
	Expectation	Finding	Expectation	Finding	
Legislative Session Length	null	mixed	-	_	
Governor's Legacy Year	null	+	+	+	
Legislative Seat Share (Governor's Party)	+	+	null	null	
First Term Governor	+	+	null	null	
Public Approval	+	+	null	null	
Presidential Ambitions	-	—	null	null	
Total Number of Proposals	—	—	_	-	
Proposal is a Budget Item			+	+	

Table 4.2: Determinants of Gubernatorial Bargaining Success.

As anticipated, we find that what governors bargain over—policy or budgetary proposals largely determines what factors will and will not shape gubernatorial success. In the budget game, chief executives do better when they are negotiating with impatient legislatures, that is, legislatures which meet in relatively short sessions. In the policy game, governors do better when their party controls a larger share of seats in the legislature and when they have more political capital, that is, when they are in their first term or when they have higher levels of public approval. Our results also reveal that governors generally have a higher probability of success when negotiating over budgetary items and when they propose smaller agendas.

Just as important as identifying the factors that affect the probability of success, our results tell us which variables *do not* meaningfully shape bargaining outcomes. When negotiating over budget items, for instance, the partisanship of the legislature is not significantly correlated to success nor are measures of political capital. This means that governors do not need partisan allies in the legislature or popularity to do well in budget bargaining. These findings represent a noteworthy departure from the existing literature which typically argues for a strong positive relationship between these variables and success and does not distinguish, either theoretically or empirically, between sets of factors that should affect budget bargaining and those which should affect bargaining over policy proposals. Our results strongly support the notion of two distinct bargaining games.

# 4.5 Appendix

	(1)	(2)
Budgetary Proposal	1.45**	3.96**
	(.71)	(1.40)
Session Days	.001	$.004^{*}$
Session Days * Budgetary Proposal	006**	007**
Logiclative Seat Share (Covernor's Party)	(.002)	(.003)
legislative seat share (dovernor s r arty)	(.009)	(.013)
Legislative Seat Share (Governor's Party) * Budgetary Proposal	015	025**
First Term Covernor	(.010)	(.012) 76*
	(.32)	(.42)
First Term Governor * Budgetary Proposal	64*	99**
	(.36)	(.36)
Public Approval		.03**
Public Approval * Budgetary Proposal		03*
		(.02)
Presidential Ambitions	-1.13**	-1.48**
	(.50)	(.56)
Presidential Ambitions "Budgetary Proposal	.99***	1.54***
Legacy Year	.68*	.99**
	(.40)	(.53)
Legacy Year * Budgetary Proposal	.02	66
	(.35)	(.40)
Significant Policy Change	28	24
Liberal Policy Change	(.19) 54**	(.20) 67**
Liberar Foney Change	(.13)	(.14)
Ideological Unity	.11	.06
	(.13)	(.14)
Political Reform	82**	62*
Number of Proposals	(.30 <i>)</i> - 02**	(.37) - 03**
	(.01)	(.01)
Budget Surplus (Lagged)	.006**	.017*
	(.002)	(.011)
2001 Dummy Variable	21	55
	(.28)	(.34)
cut1	.72	2.43
	(.60)	(1.18)
cut2	1.52	3.24
	(.61)	(1.19)
N	1088	801
AIC	2209	1790

Table 4.3: Determinants of Gubernatorial Legislative Success. The units of analysis are individual gubernatorial legislative proposals. Both models are ordered logistical regressions, with standard errors clustered by state year. Two-tailed tests are used: \* < .10, \*\* < .05

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