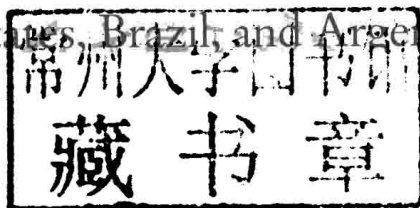

Presidents & Terminal Logic Behavior

Term Limits and Executive Action
in the United States, Brazil,
and Argentina

GENEVIEVE M. KEHOE

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in the
United States, Brazil, and Argentina



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In honor of my father, Alfred W. Gross Jr.

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&
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CHAPTER 1

Presidents and Executive Term Structure

1.1 INTRODUCTION

Final-term presidents should be more properly termed “soaring eagles” rather than “lame ducks.”¹ Significant things are pushed and accomplished, precisely because these presidents are free from reelection constraint and enthused by legacy to pursue bold projects—and they have the power to make it happen. This book addresses what Pallitto and Weaver (2007, 12) call “an enormous scholarly blind spot” in the study of the presidency—institutional analysis. Presidential studies have long favored work focused on the active and self-reflecting agents, the individuals that occupy the executive office at the expense of structural elements that persist over time.² These studies, however, ignore that the executive office may have systematic similarities (Edwards, Kessel, and Rockman 1993; Ragsdale and Theis 1997). The study of executive term structure is an institutional one. Term structure imposes an external constraint on the behavior of individuals residing in the executive office. Although some institutional studies of the presidency have tackled the effects of the electoral cycle on presidential behavior, surprisingly, I have found no cross-country, systematic study of executive term limits that is focused exclusively on presidential behavior as affected by the dichotomy between reelection and termination. Mario Serrafiero’s 1997 book, *Reelección y sucesión presidencial* (Presidential Reelection and Succession), is the only work that comes close.

Certainly there is reason to be concerned about executive power and the degree to which term structure affects the executive branch's ability to command political direction and control the state. Evidence of the growth in executive power abounds.³ Most telling is O'Connell's (2008) estimates that more lawmaking in the United States is done by the federal administrative state (which includes cabinet departments, the executive office of the president, and independent agencies) than by Congress.⁴ This evidence in combination with Grier and Grier's (2000, 243) conclusion that "the combination of concentrated power and a fixed term means that executive decisions have enormous economic importance" should cause serious pause.

Modern US presidents like other presidents around the world are a constant presence in the minds of the public they serve. Even more alarming is the way in which twenty-first-century technology has fundamentally transformed how the public evaluates politicians. We are instantaneously privy to information of both major and minor detail—forever uninterrupted. Fame can be sparked overnight. Long careers of action and achievement are no longer needed to garner the widespread popularity that makes politicians and their campaigns successful. Richard Cohen of the *Washington Post* writes: "We have substituted the camera—fame, celebrity—for both achievement and the studied judgment of colleagues." This, he argues, has propelled "the out-of-nowhere rise" and success of politicians who have no history of legislative achievement and yet have won public support for office at the highest levels. Cohen calls attention to the less-than-a-decade rise of Sarah Palin, John Edwards, and current president Barack Obama.⁵

This book is less about detailing the specific strategies, tactics, and powers of presidents. Certainly these are all important. Classics by Arthur Schlesinger, Richard Neustadt, Stephen Skowronek, and Theodore Lowi are must-reads for students of the US presidency.⁶ But here in the pages that follow I ask broader questions about presidents and the term limits within which they operate. Do term limits pressure presidents in a systematic way, making their behavior more predictable? If so, what sort of behavior do they engender? How may this pressure and its consequences contribute to the distribution of power in a presidential democracy?

Term limits can be thought of as a type of institution. They exhibit properties of organization and actuate change in elements such as functions, authority, control, hierarchy, and incentives. Although not necessarily the sole cause of out-

comes, term limits constrain and refract politics.⁷ Much variability in the political, economic, and social dynamics surrounds the office of the presidency over time. Yet presidents know they are limited to a fixed period of time within which they must act to achieve their goals. Thus, despite the variability, I hypothesize that similar behaviors emerge from this fact.

What this study finds is astonishing. Presidents issue decrees at extraordinary rates at the end of their tenure despite their standing with the public, despite their standing with Congress, despite their country's economic condition, and despite the makeup of their character or their ideological leanings. If the uptick in presidential interaction with the public, where we have what Lowi (1985, 20) describes as "the excessive personification" of government in the presidency, has contributed to the growth in executive power, the two four-year-term structure within which presidents operate has done no less. When presidents are clearly aware of their exact end in tenure, they succumb to what I call in this research terminal logic behavior, or TLB. With rare exception, presidents in their final months are afire with ambition and purpose and act accordingly.

The lame duck hypothesis is a strange phenomenon in presidential studies. Although research has found that actors in the political process change their behavior in anticipation of an administration's end, as we will see in chapter 2, there is little evidence indicating that presidents' power is actually weakened as a result. This study indicates that term limits may indeed have the opposite effect. They act like a pressure cooker, causing presidents to act unilaterally and decisively on policy as their time in office nears its end. This is not necessarily a bad thing, for it can move presidents to produce what may be effective and good policy. Yet, like using a pressure cooker, the risk of harm is great. Indeed, without proper checks in place such term pressures heighten the risk of abuse. I link not only decrees of foreign affairs and the environment to the cyclical model of presidents' time in tenure but also decrees of emergency power. Above all else, finding a systematic pattern of use in emergency power undermines any assumption that the concept of emergency is what it once may have been—a concern for the security of the state. This gives us more reason to believe that the prince is far from "tamed," particularly at this current moment in history, when the line between foreign and domestic affairs has become blurred. In this book I carefully peel back the layers to reveal why, particularly in the last few decades, term limits have become an agent of force, compelling presidents across administrations and across nations to "uni-

lateral action, energy, commitment, decisiveness”—to what Lowi (1991, 238–39) describes as the “fast track” of presidential activity.⁸ I explore what this might mean for the future of presidential democracy if this pressure is left unacknowledged and underappreciated.

1.2 BECOMING TERMINAL: PRESIDENTS OPERATING IN DUAL FRAMES

One of the principal causes of democratic breakdown, according to authors like Diamond (2000), is the abuse of executive power. Although a number of substantive differences exist between the two basic democratic forms, parliamentary and presidential systems, one key difference stands out.⁹ Chief executives serve at the pleasure of parliament, whereas presidents serve out their predetermined term. In a parliamentary system the executive depends on the confidence of Congress in order to carry on its duties. The elected Congress has the power to choose and remove the executive. Similarly, the executive has the ability to dissolve Congress and call for elections. In presidential systems, members of the executive serve for a fixed term and are not subject to a confidence vote by Congress. Essentially, the presence of executive term cycles is what makes a democratic system presidential and not parliamentary.¹⁰

Linz (1990) finds that, since World War II, thirteen out of thirty-nine breakdowns have occurred in parliamentary democracies, while presidential democracies have experienced ten breakdowns out of thirteen.¹¹ Przeworski et al. (2000, 129) report that between 1950 and 1990 “the probability that a presidential democracy will die during any particular year is 0.0477, and the probability that a parliamentary democracy will die is 0.0138.” By Robert Dahl’s (2002) count, only twenty-two countries have been “steadily democratic” since 1950, and only two of those have been run by presidents.¹² Furthermore, Blondel (1987, 161) finds that executive heads in parliamentary systems endure longer than the world average, where for elected presidents the fixed term is “on average shorter and typically is shorter—sometimes much shorter—than the term allowed by the constitution.” In the United States, presidents, who could serve eight years, average only five. Latin American presidents, who are typically elected to terms of four to six years and in many cases cannot seek reelection, average only about three years in office due to coups and forced resignations.¹³ Such findings focus attention on executive term limits and their potentially problematic effects.¹⁴