Democratic Governance in the Central and Eastern European Countries:

Challenges and Responses for the XXI Century

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Cabinet Decision-Making in Ukraine: The Dual Executive and The Diffusion of Policy-Making Authority

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The primary focus of the initial stage of the post-communist transition in Ukraine was on the content of the policies needed to transform the polity and the economy (competitive elections, political pluralism, privatization, macroeconomic stabilization, liberalization). "Getting policies right" was assumed to be the key to a successful transition. However, for policies to be successful, the proper institutional framework for initiating, implementing, and sustaining policies should be in place.

Three institutional players dominate the existing framework for policy making in Ukraine: the president, cabinet, and parliament. The relationship among these players can be analyzed along several dimensions. One critical dimension, which has already been discussed in the literature, is the extent of their independent ability to participate in the legislative process. Sundakov (1997), shows how the presidential and individual ministries' ability to issue legislative and quasi-legislative acts impedes the development of a stable legislative environment, imposes high burdens of coordination on the bureaucracy and blurs the distinction between the political and civil service aspects of public administration. Sundakov's policy recommendations focus on self-restraint in legislative and quasi-legislative activity on the part of president and individual cabinet ministries.

In the first part of this article, another aspect of authority diffusion – the institutional conflict over the distribution of executive powers – is analyzed and some mechanisms for mitigating such conflict are offered. Addressing this conflict is essential for eliminating the justification for competing policy agendas and parallel chains of command in the cabinet.

The second part of the article discusses the principles of cabinet organization and functioning. The arguments in favor of having technocratically-based cabinets are reviewed. Despite the intellectual appeal of such arguments, in fact, how cabinet

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formation along political lines could facilitate the cohesion and collegiality of cabinet decision making. The institutional and procedural changes that could facilitate greater involvement on the part of political parties, in the process of cabinet formation and cabinet decision-making.

The third part of this article offers the discussion of some changes in the procedures and rules governing the relationship between the cabinet and parliament in the legislative process. The effects of introducing changes in these procedures with the effects of preserving status quo are compared. It is argued that the proposed changes can both underpin a greater political consistency of cabinet decision making and encourage more disciplined and cohesive legislative process.

Multiple centers of executive decision-making

One of the major requirements for effective executive management is the concentration of executive decision-making power in the hands of cabinet (Manning 1999). The cohesiveness of the executive policy making process suffers when competing decision-making arenas exist. In Ukraine, the executive authority of the cabinet is effectively diffused by the decision-making activity of president and individual ministries. Thus, competing claims come from 'above' and 'below' the cabinet. From 'above' the cabinet, the president exercises his right to issue specific executive orders, as well as legislation-like decrees. From 'below', individual ministries and other central bodies of executive power, which have wide-ranging powers within their specific areas of responsibility, issue rules and instructions which often have properties of cabinet resolutions and orders.

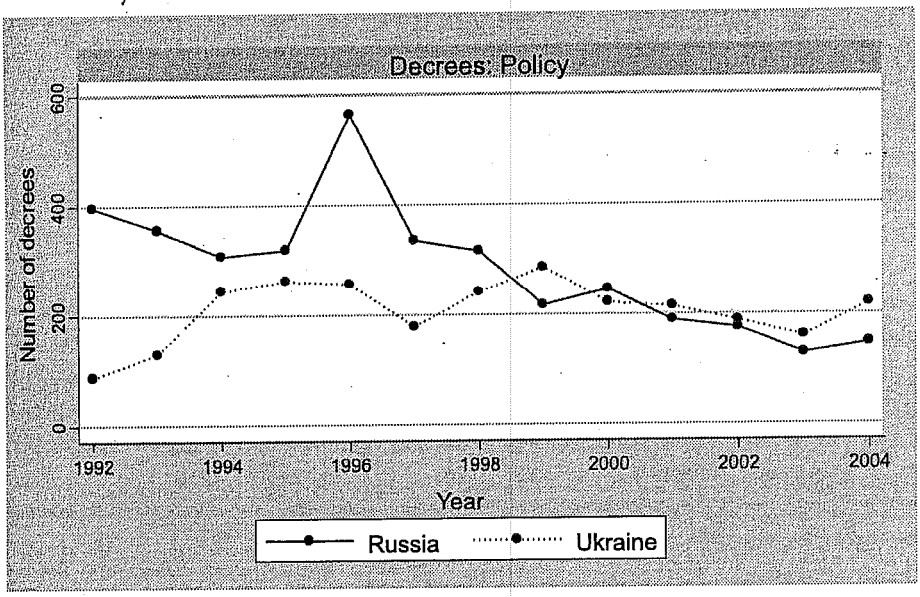
Presidential involvement in executive decision-making process: Presidential participation in the executive is based on constitutional provisions that grant presidents the power to issue decrees on a wide range of policy matters and to veto executive and legislative decisions. The president in Ukraine issues legislation-like declarations, executive decrees, orders, and specific instructions/task assignments that require government officials to take specific actions. The president also has also the power to initiate new pieces of legislation and to demand priority consideration for them in parliament. Presidential control of these powers indicates clearly that the president has the proactive means to change both the executive and legislative status-quo. The presidential ability to use veto powers also reflects the president's control of reactive powers. The legislative veto allows the president to defend the status-quo in the legislative process. The executive veto empowers the president to annul cabinet resolutions, revoke ministerial instructions and cancel the orders of other executive bodies.

Ukrainian presidents use all these powers liberally, which has enabled them to dominate, although to a different extent, the policy-making process in Ukraine. Throughout his ten year tenure in office president Leonid Kuchma was especially

active in relying on the combination of proactive and reactive powers that allowed him to intervene across many policy areas and, at various stages, of the decision-making process. As illustration of his policy activism, Figure 1 provides data on the policy-related decrees issued in Ukraine and Russia between 1992 and 2004:

Figure 1

Policy-Related Presidential Decrees in Ukraine and Russia, 1992-2004



Source: Author's calculaions; data from databases 'Zakonodavstvo' (Office of Computer Systems, Apparatus of Parliament of Ukraine) and 'Spravochnye pravovye sistemy' (Konsultant Plus, Russia)

Figure 1 provides data on the annual numbers of policy-related decrees issued by Ukrainian and Russian presidents to establish new policies, or change existing policies, in several broadly defined policy areas: polity, economy and society. These decrees were used, for example, to establish or re-organize central government agencies, improve pension provisions and introduce new social services. As Figure 1 indicates, president Kuchma, during the 1994 – 2004 period, issued on the average more than 200 policy decrees annually. The figure also indicates that during his last years in office Kuchma was issuing even a larger number of policy decrees than his powerful Russian counterpart.

Policy decrees are only one type of policy-related decision that are issued by presidents in Ukraine. They also issue so-called administrative orders used primarily to provide specific instructions to civil servants regarding the implementation of statutes and norms. Besides these two formalized types of presidential decisions, presidents give so-called 'doruchennia' or executive orders which instruct the cabi-

net, individual cabinet ministers or top civil servants to take specific actions. Although these orders are often not written, or formalized in any other way, they constitute a major tool of presidential involvement in executive matters. While the first months of Yushchnko's presidency saw some decline in the number of decrees issued by the president, there are numerous accounts of a large number of executive orders/instructions given to cabinet members by the new president.

Institutionalization of the Presidency: The Presidents' ability to intervene in executive matters is greatly enhanced by the strong policy-making capacities of the presidential office. Although there is no mentioning of the presidential office in the Ukrainian constitution, Ukrainian presidents have spent a very considerable amount of effort to strengthen the presidential office and to increase the scope of issues with which the office deals. At the height of Kuchma's presidency, his office, the so-called Presidential Administration, had more than 600 permanent staff members. Other reports indicate that the total number of administration employees during his presidency might have fluctuated between 1000 and 1500.

The administration included a number of departments that covered functional areas equivalent to those covered by cabinet ministries. For example, there is a consensus among analysts that Ukrainian foreign policy was more influenced by decisions made in the foreign relations department of the presidential administration than by the policy positions of the Ministry of Foreign Affairs. Even President Kuchma's former economic policy advisor acknowledges that too much power to make decisions in the economic sphere resided in the hands of president and his administration, and not in the cabinet.

While newly elected president Yushchenko promised a radical overhaul of the presidential office, many skeptics claim that not much has changed besides the title. Yushchenko's presidential office, the so-called Presidential Secretariat, boosts a very elaborate structure that includes many directorates and services. The first reports have already surfaced that criticize the Head of the Presidential Secretariat for meddling in executive matters that fall under the cabinet's jurisdiction.

What are the problems with the presidential involvement in executive matters? To understand how the presidency affects cabinet functioning, the organizational properties of effective cabinet decision making should be mentioned first. Effective governance requires a streamlined structure of executive government which generally implies that leadership of the cabinet is exercised from the office of the prime-minister; all major policy initiatives come from the cabinet; all major policy decisions are the result of collegial deliberation and ratification; and all major outcomes of decision-making are presented in the form of cabinet resolutions and laws passed by the parliament.

As the previous section indicates, in Ukraine the president has powerful means to affect the work of cabinet. Although formally not a part of the executive, the president actively participates in the executive decision-making process. Ac-

tive presidential involvement in the matters of executive government creates several major problems for the functioning of the cabinet.

The presidential use of powers to issue decrees and executive orders result in the diffusion of decision-making responsibilities: a cabinet is no longer the only executive institution in the center of government. Competing policy initiatives, parallel decision routes, excessive burden of bureaucratic coordination are all negative effects of the diffusion of executive powers.

Policy priorities of the president and the cabinet often clash due to the different type of electoral concerns that each office faces. Since a significant number of executive governance issues can be regulated either by presidential or cabinet acts, alternative routes for decision making are easily available for the various policy process participants. Depending on the easiness and extent of their access to either the president's office or the cabinet, individuals or groups will advocate that the issue be resolved either by the presidential decree/executive order or cabinet resolution/instruction. The existence of competing centers of executive decision making and the proliferation of executive documents, which often establish contradictory and conflicting rules, imposes a very high burden of coordination on the civil service and undermines the bureaucratic capacity of government.

Prospects for strengthening cabinet decision-making authority: Concentration of executive authority in the hands of cabinet as is envisioned by the December 2004 constitutional reform could alleviate some of the problems associated with diffused decision making and dual executive design. The reform might come into force soon if the validity of the procedures that led to the legislative passage of the 2004 – 2005 constitutional provisions, and the constitutionality of these provisions, are not challenged for too long a period in Ukraine's Constitutional Court. The reform will increase the cabinet's authority in policy initiation and implementation, limit the executive and legislative functions of the president, and change the principles of cabinet formation.

If the reform is stalled, it will be difficult for the cabinet to claim the highest authority in executive matters. Preserving the constitutional status quo will mean that the same set of policy instruments will continue to be available for the president to intervene routinely in cabinet decision-making. There are, however, several procedural and institutional mechanisms which can encourage the president's self-restraint with regard to his involvement in executive matters and help to minimize the effects of political competition between the president and legislature over the control of cabinet.

While constitutions define the general principles of cabinet accountability, they usually do not specify how the cabinet and individual ministries should function. Laws on the cabinet and cabinet ministries, cabinet rules of procedure, ministerial statutes and other legal documents of lower order regulate cabinet decision-making. The law on cabinet and some related types of laws have never came into

force in Ukraine[2]. These laws need to be passed in order to articulate principles of primacy of collegial cabinet decision-making in executive matters; to emphasize the priority of cabinet resolutions and instructions/task assignments in the workload of government officials; and to specify the norms of ministerial subordination to the cabinet.

Such a strategy on the consolidation of executive functions in the hands of cabinet, for example, produced some positive results in Poland. Despite the fact that the Polish constitution empowers the president with substantial legislative powers and with the right to nominate the cabinet, the subsequent legal acts defined more precisely cabinet responsibilities vis-à-vis the president and parliament, strengthening the supremacy of the latter (Law on the Matters of Government Administration, 4.09.97).

Cabinet's Dual Subordination: Partisan and Technocratic Considerations in Cabinet Formation Process

Both parliament and president participate in cabinet formation in Ukraine. The constitutional provisions that are currently in place, however, privilege the president over the parliament. The former has an exclusive right to nominate a prime minister who must be approved by the parliament. Upon the prime minister's nomination the president appoints individual ministers. The president also controls the powers of cabinet dismissal. Cabinet dismissal powers, however, are symmetrical: both the president and the legislature can unilaterally dismiss the cabinet. However, recently President Yushenko has sought to challenge parliamentary authority in this regard by refusing to accept the resignation of a cabinet dismissed by the Parliament.

The constitutional requirement of joint participation of the president and parliament in the selection of premier does not allow the president to secure the selection of his ideal candidates. To compensate for that lack of full discretion, the president in Ukraine frequently uses his dismissal powers: the majority of cabinet dismissals during 1991 – 2004 period were initiated by the president (Protsyk 2003).

The dominant principle of cabinet formation in Ukraine has so far been technocratic. None of the Ukrainian cabinets since 1990, with the possible exception of the most recent Tymoshenko cabinet, was formed on the basis of the formal party affiliation of candidates for ministerial portfolios. The primary criteria for ministerial selection were some sort of "technical" expertise in a specific area of government functioning. Party affiliation was always a secondary consideration and having strong party ties was often perceived as a liability, especially for candidates for key economic and "power" portfolios. The 2005 Tymoshenko cabinet, formed after the events of the Orange revolution, marked a radical departure from this principle:

2 The draft law on Cabinet of Ministers was initially introduced in 1997. Since then the various versions of the law were passed by a parliamentary majority eight times. The president vetoed the law each time it was passed in the parliament. As a result, the law was never enacted.

politicians with strong party identifications, and lack of specific technical expertise, were appointed to many key ministerial positions. Yet this cabinet was a partisan one only in a very loose sense of the term, cabinet composition was more a reflection of the specific preferences of the newly elected president than a result of party coalition bargaining in the parliament.

Both technocratic and political cabinets in Ukraine face the dilemmas of dual subordination or accountability. Cabinet is subordinate or accountable to both the president and the legislature because each of these institutions has the unilateral control of cabinet dismissal powers. In terms of a principal-agent framework, the cabinet has two principals which assign tasks to it and may sanction the cabinet's non-compliance using the ultimate sanction of dismissal. Symmetrical powers of cabinet dismissal 'confuse' the cabinet members. Especially when the president and parliament are at odds, the cabinet is confronted with the necessity to pursue contradictory or competing courses of actions advocated by its principals.

Using his power of cabinet and ministerial dismissal, the president may affect the individual positions of cabinet ministers selectively providing them with the incentives to advocate or defend policy proposals preferred by the president. As a result, the policy making process in cabinet becomes fragmented. Cabinet decision-making is also likely to be less cohesive and decisive if cabinet members face the necessity to maneuver between the conflicting preferences of the president and the legislature. The adoption of contradictory cabinet policies and high policy volatility become, in fact, an optimal response strategy for cabinet ministers who are interested to remain in office but face the competing claims on the part of the president and the legislature.

Forming a cabinet along technocratic, rather than party, lines is sometimes perceived as advantageous for the quality of decision-making in the cabinet. Technocratic cabinet members usually have a deeper knowledge of the sector of the government that they manage. They are expected to make their judgments on the basis of sectoral needs and expediency and not electoral concerns. They are believed to be more capable of withstanding the pressure of special interests and thus more willing to initiate unpopular economic and social reforms. The empirical research on the subject, however, finds mixed support for such expectations. The consistent evidences of better performance of technocratic cabinets as compared with party-based cabinets are only found with regard to the initiation of reforms and not with regard to reform implementation and consolidation (Haggard and Kaufman 1995).

What are the problems with technocratic cabinets as regards the quality of cabinet decision-making?

While the idea of technocratic cabinets may initially sound appealing, substituting the politicians' cabinet with the team of independent experts creates numerous obstacles for cabinet decision making.

Fragmentation of decision making: Although cabinet decision making is often presented as collegial and team-spirited, it is, in fact, fragmented and personality-centered. This is due to the individual nature of ministerial selection. Ministers get their portfolios not because they are part of a political team, but on the basis of their individual merits. It is then rational for ministers, who are not party agents, to adopt strategies that promote their personal political popularity and foster clientalistic sector-specific ties rather than benefit the collective image of the cabinet team

Parochialism of ministerial interests: The technocratic nature of ministerial selection leads to parochialism in policy making on the level of individual ministries. Ministers, whose professional roots are in the industries they are currently in charge of, have a tendency to associate themselves with the interests of that particular sector and not the cabinet as a whole. They view themselves as representatives of their specific industries in the cabinet. They are oriented to satisfy the demands of their sectoral constituencies rather than the needs of citizens that consume their goods or services. For example, the minister of transportation is more preoccupied with the well-being of transport-related bureaucratic structures and enterprises than with the quality of transportation services that consumers receive. The technocrats in sectorally-based ministries are also more likely to favor the incumbent large state enterprises than private start-up companies, thus providing additional disincentives for private sector development.

Potential for policy volatility: Technocratic cabinets have more difficulties in mobilizing political support to enact policies. Parliament, which approves the prime-minister's and the cabinet's program, does not take political responsibility for the actions of the cabinet. Cabinet approval and ministerial stay in office depends on the support of a situational and not a party-based majority. Given the unstable nature of their political support, technocratic cabinets face greater uncertainty regarding their term in office. Threatened by the prospects of support withdrawal, they opt for policy reversals to ensure cabinet survival. Still, technocratic cabinets do not rate high in terms of cabinet duration: earlier research found that the average cabinet term in Ukraine during the 1991 – 2002 period was 15.3 months as compared with the average of 21.8 months for the East European parliamentary regimes (Protsyk 2003).

Other things being equal, cabinet instability complicates decision making processes by making policy objectives more volatile and policy outcomes less predictable. The high cabinet turnover undermines efforts for the creation of a stable legislative environment and encourages the development of such alternative arenas for decision making as various presidential councils and corporatist bodies. By dismissing or accepting the resignation of some cabinet members, and not all cabinet members, the president further undermines the idea of collegiality in cabinet decision making.

Cabinet's Legislative Powers and Legislative Strength

The right of legislative initiative is one of the key policy instruments available to cabinets across political systems. There is a growing tendency in advanced democracies to strengthen cabinet power in forming the legislative agenda. Cabinet ability to secure the successful passing of cabinet-sponsored bills is enhanced through the introduction of procedural norms that allow cabinets to submit their draft laws in a package, to declare a draft law as a matter of confidence vote and to designate certain draft laws as issues that require priority in legislative consideration.

It is argued here that the cabinet's ability to successfully pass its legislative agenda through the Ukrainian parliament is undermined by the specific design of procedural norms and by the persistent political fragmentation in the legislature.

Cabinet legislative initiatives: Table 1 below captures the variation in the legislative activity of Ukrainian cabinets. It lists the number of draft laws introduced by each cabinet since 1994. It provides information on how many draft bills became laws, and measures the success rate that individual cabinets achieved in securing parliamentary support for their legislative agenda. As the numbers indicate, with the exception of the Yuschenko cabinet, there was a steady downward trend in the percentage of draft bills that cabinets were able to turn into laws. In other words, the cabinets' ability to fulfill their legislative agendas was declining during 1994 – 2002.

Table 1

The Legislative Activity of Cabinets in Ukraine, 1994 – 2002

Prime Minister	Office term	Law Drafts Introduced	Law Drafts Enacted	Law Drafts Failed	Success Rate (%)
Masol, Vitali	6/94 – 4/95	133	77	56	58%
Marchuk, Yevhen	6/95 – 5/96	206	88	118	43%
Lazarenko, Pavlo	5/96 – 6/96	33	14	19	42%
Lazarenko, Pavlo	6/96 – 6/97	326	135	191	41%
Pustovoitenko, Valeri	7/97 – 12/99	743	289	459	39%
Yushchenko, Viktor	12/99 – 4/01	316	145	171	46%
Kinakh, Anatoly	4/01 – 11/02	244	89	155	36%

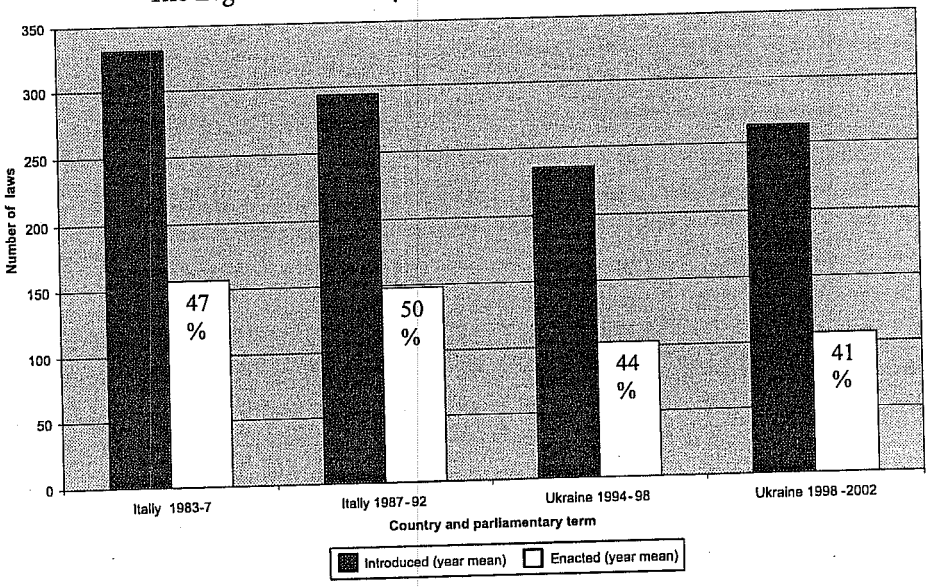
Sources: *Author's calculation; data from Upravlinia komp'iuternykh system Apparatu Verkhovnoi Rady Ukrainy (Office of Computer Systems, Apparatus of Parliament of Ukraine).*

To put the activity of Ukrainian cabinets into a comparative perspective, Chart 1 provides data on the activity of Ukrainian and Italian cabinets during two parliamentary terms. The availability of detailed quantitative data on the Italian cabinets,

as well as the fact that Italian cabinets are among the weakest in Europe in terms of their control over the legislature, makes this comparison interesting.

Chart 1

The Legislative Activity of Cabinets in Italy and Ukraine



Sources: Author's calculation for Ukraine; data on Italy – Gary W. Copeland and Samuel Charles Patterson, Parliaments in the Modern World: Changing Institutions (Ann Arbor: University of Michigan Press, 1994).

As Chart 1 indicates, Ukrainian cabinets during both parliamentary terms which are included in the graph, introduced a smaller number of law drafts and were much less successful than even the legislatively weak Italian cabinets. These findings underscore the general problems with the functioning of cabinets in Ukraine.

How does party fragmentation affect government decision-making?

One of the persistent myths in Ukrainian politics is that having many parties at the centre of government at the same time is conducive for democracy and good governance. The normative claim, which postulates that the more representative political system creates better democratic government, provides the primary justification for proliferation of political parties. In the same time, there is almost a consensus in the literature on political economy about trade-off relationship between government representativeness and effectiveness (Cox 1987, Shugart and Carey 1992).

More representative parliaments face greater collective action problems and more representative cabinets face greater obstacles in the process of developing collegial decisions than more consolidated executive and legislative bodies.

Party fragmentation, the number of parties in the legislative body, is a key characteristic of the party system that has an immediate effect and significant on the process of decision-making in cabinet.[3] A strong correlation between the degree of party fragmentation and the limited decisiveness of government policy making is found in a substantial amount of empirical literature on the subject. (Cowhey 1993, Haggard and Kaufman 1995).

Government indecisiveness and lack of cohesion: Because of the necessity to accommodate the interests of many collective members, the fragmented legislative majority face more difficulties in enacting the legislative change than one party or stable coalition majorities. Even in relatively stable coalitions, policy making process is less coherent than in one-party governments due to the necessity to negotiate policy decisions with coalition partners that are likely to be at odds with one another on at least one policy dimension.

Cabinets, which rely on the support of a fragmented and undisciplined legislative coalition lack stable legislative backing to introduce and implement bold policy initiatives. Such cabinets are much weaker politically than one-party cabinets which enjoy a stable majority support in parliament.

Government instability: Fragmented legislative majorities are prone to rapid disintegration. Political parties, whose stakes in sustaining a majority amount only to a couple of cabinet portfolios, easily flee the coalitions whenever there is a hint that their interests will be better served by joining the opposition. The prospects of imminent coalition break-down have profound effects on the motivation of party leaders and individual legislators. Parties do not commit themselves to the sustained cooperation thus reinforcing the vicious circle of government instability. Similar motivations affect the behavior of cabinet members who often try to cope with the uncertainty of their office term by maximizing their personal political or economic benefits of cabinet incumbency.

Blackmail potential of minor political parties: Party fragmentation may also increase the relative importance of small parties in decision-making process. When passing or rejecting a decision depends on a small number of votes controlled by a minor political party, the latter acquires a substantial leverage in coalition politics. Even when the party does not object to the proposed policy, it is likely to bargain using its leverage to get better deals in other policy areas. In this sense, the preferences of small parties can have a disproportional effect on government decision-making.

3 The literature on party fragmentation is quite sophisticated. A number of technical measures of party fragmentation is developed in the literature. See, for example, Octavio Amorim Neto and Gary Cox, "Electoral Institutions, Cleavage Structures, and the Number of Parties," *American Journal of Political Science* 41 (January 1997): 149 – 174.

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