EMPOWERING THE PRESIDENCY:
INTERESTS AND PERCEPTIONS
IN INDONESIA’S CONSTITUTIONAL REFORMS, 1999-2002

DISSERTATION

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By

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ABSTRACT

The choice of political institutions is a critical aspect of a democratic transition. Significant amendments to the 1945 Constitution have transformed it into a more democratic framework with extensive separation of powers and checks and balances. Despite the introduction of the “difficult combination” of pure presidentialism and multipartism to Indonesia, consensual patterns of elite behavior should contribute to the further consolidation of democracy.

This study examines the impact of the first four amendments on executive-legislative relations and presidential power. The use of the 1945 Constitution by two authoritarian regimes for four decades gave rise to the perception that it inevitably created a dominant presidency. Thus Indonesian political elites set out in 1999 to curtail presidential power. Paradoxically, by the end of the process three years later they created a comparatively very powerful president, primarily due to the introduction of direct election and the narrowing of the grounds for impeachment. In addition, although the president’s residual powers have been restricted, only slight reductions were made in her specific powers.

This study utilizes concepts from political economy and political psychology to analyze the struggle between two broad camps in the constituent assembly (MPR): conservatives, led by Megawati Soekarnoputri and her Indonesian Democracy
Party-Struggle (PDI-P) and progressives from most of the other major political parties. The progressives consistently supported direct election, even though this did not fit with their self-interest. Their position is explained by their perceptions of Indonesia’s history: in their view, the parliamentary system was the primary cause of political instability in the 1950s, and thus they concluded that pure presidentialism was more appropriate for Indonesia. Following the presidential crisis of 2001, Megawati and PDI-P reversed their initial position in opposition to direct election, as a means to strengthen the presidency and abolish the constitutional supremacy of the MPR. This reversal is explained by the “electoral bargaining approach,” a theory of institutional choice developed based on cases in Eastern Europe, the former Soviet Union and Latin America. This approach examines the interests of competing political forces rooted in their bargaining power and varying degrees of uncertainty over political outcomes.

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Dedicated to my family

and to all those working for democracy in Indonesia
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* * * * *

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INTRODUCTION

CONSTITUTIONAL REFORM AND THE DEMOCRATIC TRANSITION IN INDONESIA

The choice of political institutions is a critical aspect of a democratic transition. This study examines one such set of institutions: the method of election and formal powers of the president, particularly in terms of executive-legislative relations. It analyzes the choices made by Indonesian political elites regarding these institutions as part of the constitutional reform process from October 1999 to August 2002. The context for these choices was the retention in 1998 of the vague, incomplete and illiberal 1945 Constitution as the institutional framework for the democratic transition. Rejecting four decades of authoritarianism based on that Constitution, these elites committed themselves in 1999 to curtailing presidential authority as part of the broader constitutional reform process.\(^1\) Three years later, they had succeeded in creating a much more liberal Constitution, but one which also establishes one of the most powerful democratically-elected presidencies in the world.

This study explains how this outcome was achieved, given the original aim to curb presidential power. To do so, I turn to both political economy and political psychology for theoretical insight. The “electoral bargaining approach,” a type of rational

\(^1\) Throughout this study, to avoid unnecessary repetition I use the terms “1945 Constitution” and “Constitution” interchangeably. I use the small “c” in references to constitutions in general.

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choice theory rooted in the pursuit of self-interest, is a useful framework to explain the changing positions on various constitutional amendments (especially direct election of the president and vice president) of the largest party that held the key swing votes in this process. However, this approach cannot explain the position on direct election taken by the other major party blocs. Their position was rooted instead in a perception of the history of Indonesia’s prior experiment with democracy in the 1950s. Perceptions of history are a political psychological factor more commonly utilized in analyses of international relations.

This introductory chapter first discusses the main puzzle addressed by this study and its principal findings. It then briefly summarizes the theoretical framework utilized in the study and examines the comparative context for democratic transition and constitutional reform in Indonesia. The chapter goes on to describe the process of constitutional reform in Indonesia from 1999 to 2002, as context for the analysis in subsequent chapters, and then concludes by outlining the structure of that analysis.

**One Puzzle, A Two-Part Answer**

As part of a broader process of democratization begun in 1998, Indonesians committed themselves early in the transition process to reforming the institutional foundation of the political system: the 1945 Constitution (*Undang-Undang Dasar 1945* or UUD 1945). This Constitution – a vaguely-worded and incomplete document drafted and approved hurriedly under the supervision of the Japanese fascists in the waning months of World War II – had provided an important measure of normative legitimacy to four decades of authoritarianism under President Soekarno’s “Guided Democracy” and
President Soeharto’s “New Order” regimes. After Soeharto was forced to resign in May 1998 and the transition began under President B.J. Habibie, Indonesian democratizers were determined to amend the 1945 Constitution in order to avoid the recurrence of authoritarianism.

Following democratic elections in June 1999, the constitutional reform process began in earnest in October with the passage of the First Amendment. The Second, Third and Fourth amendments were approved in August 2000, November 2001 and August 2002, respectively.\(^2\) Taken as a package, these four amendments have made substantial improvements to the basic structure of the Indonesian political system; the 1945 Constitution is now a much more specific, complete and democratic foundation for that system. One of the most important changes is the adoption of direct, popular election of the president and vice president as part of the establishment of a more purely presidential system akin to those in the United States, the Philippines, Nigeria and much of Latin America. Other important changes include the establishment of elections as the sole source of formal political power (i.e., the removal of appointed military and police officers – as well as other unelected representatives – from legislative bodies), the insertion of a detailed chapter on human rights based on the Universal Declaration of Human Rights, the specification of the principle of decentralization of political power to subnational authorities, and the establishment of a bicameral national legislature and a Constitutional Court. The amendments were also noteworthy for what they did not

\(^2\) The complete text of the original 1945 Constitution, including the official Annotations, can be found in Appendix A. The complete, integrated text of the original 1945 Constitution plus the first four amendments can be found in Appendix B.
include; the most important proposed change that failed to garner significant support was an attempt to assert the primacy of Islamic law for Indonesian Muslims.

Clearly these reforms, and others not mentioned above, covered a broad range of aspects of the Indonesian political system. This study focuses on one particular but very crucial aspect: presidential power. This power is most often expressed in the lawmaking and budgetary arenas – and thus this is primarily a study of changes in executive-legislative relations – but also includes presidential authority over the judiciary, military, police, and central bank, among other state institutions. In recent decades in political science, neo-institutionalists have spent significant time studying presidential power. In Chapters One and Two, I draw on this body of research to demonstrate that Indonesian constitutional reformers, after three years of debate and four amendments, on a comparative basis have created one of the most powerful democratically-elected presidencies in the world. The puzzle at the heart of this study is how this result was achieved, given that at the outset of the process in 1998-1999, Indonesians from across the political spectrum were united in their belief that an overly-strong executive was one of the main causes of a wide range of the country’s ills – including the curtailment of civil liberties, human rights abuses and corruption that accompanied four decades of authoritarianism – and were determined to rein in presidential power. For instance, at the ceremony announcing the founding of the National Mandate Party (Partai Amanat Nasional or PAN) on August 23, 1998, Amien Rais declared that as part of its platform, “PAN questioned executive dominance, which was inconsistent with democracy. The executive branch could no longer turn the legislature into a rubber stamp that legitimized its wishes.” (Mastoem 1998, 70)
How, then, did these same reformers create such a strong presidency four years later? There are two parts to the answer to this question, one rooted in a political economic approach and one in a political psychological explanation. Both parts of the answer involve understanding the dependent variable in this study, which is the positions taken on particular amendments by the five major party blocs in the constituent assembly. Following the principle of Occam’s Razor, my analysis begins in Chapter Three with a very parsimonious explanation: a combination of power, uncertainty and interests. Using the “electoral bargaining approach” developed by neo-institutionalists, I tackle the first part of the answer: why did the current president, Megawati Soekarnoputri, and her Indonesian Democracy Party-Struggle (Partai Demokrasi Indonesia-Perjuangan or PDI-P) end up supporting direct election of the president and vice president, when they began the constitutional reform process steadfastly opposed to all amendments and particularly direct election? The answer is that, following the presidential crisis in 2001, newly inaugurated President Megawati’s \(^3\) and her party’s conceptions of their interests regarding direct election changed dramatically, and they set about to reverse the trend from 1999 to 2001 of diminishing presidential power.

One drawback of this rational choice analysis is that it does not explain the second of the two parts to the answer: why did all the other major parties – which had much less chance than Megawati and PDI-P of occupying the presidential office in the near future – consistently support direct election of the president and vice president throughout the

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\(^3\) Throughout this study, I adopt the convention of shortening Indonesian personal names according to standard Indonesian practice rather than using “surnames,” as in Western practice. Thus Megawati Soekarnoputri is shortened to Megawati rather than Soekarnoputri and B.J. Habibie is shortened to Habibie. To avoid further confusion, however, I avoid using other contractions that are common in Indonesia, such as “Gus Dur” for Abdurrahman Wahid, whose name I shorten to Abdurrahman.
three-year constitutional reform process? In other words, why did parties that were much more likely to occupy seats in the legislature than in the presidential palace support the establishment of a strong presidency? To answer this question, we must abandon the parsimony of the neo-institutionalist approach and add a political psychological variable to the explanatory stew: the perceived lessons of history. Indonesia had experienced democracy once before: a parliamentary system in place from 1950 to 1959. This was a period of great tumult, including economic stagnation, a restive military and regional rebellions. This instability was reflected in the low survival rate of cabinets, which averaged barely over one year, on a par with postwar Italy through the early 1990s. The overwhelming consensus in contemporary Indonesia, across the political spectrum, is that this instability was primarily caused by the parliamentary system. Thus, despite the recent debate in political science regarding the strengths and weaknesses of parliamentary, presidential and mixed systems, parliamentarism was not a politically viable option in Indonesia’s constitutional reform process. All the major parties thus were committed to “retain” (as I will demonstrate, actually “establish,” given that the original 1945 Constitution did not in fact establish) a pure presidential system for Indonesia. With the important exception of PDI-P, they also understood, correctly, that such a system included the direct election of the president and vice president. Thus this commitment trumped their narrow self-interest as parties less likely to win the presidency in the near future.

In this analysis, particular attention is paid to the existence of a strongly conservative element in the prodemocratic opposition, a phenomenon not anticipated by the literature on democratic transition. This literature contains several typologies of actors
within the nondemocratic regime and the opposition. The basic thrust of all of these typologies is that both regime and opposition are divided into various groups of soft-liners and hard-liners. The interests and relative strengths of these groups are important determinants of the outcome of the transition. The Indonesian case does not conform to these typologies in one important way: none of them anticipate the existence of conservative elements in the prodemocratic opposition. All divide the opposition into at most two groups: radical antidemocratic extremists and prodemocratic moderates.

Megawati Soekarnoputri and her wing of the Indonesian Democracy Party (PDI), later renamed PDI-P, were neither antidemocratic extremists nor prodemocratic moderates; they were instead prodemocratic conservatives. In other words, they were an important part of the opposition to the authoritarian regime, but were deeply conservative regarding the institutional design of the new democracy. This conservatism was of the most literal type: a strong preference for the institutional status quo and an equally strong abhorrence for change. This attitude was illustrated by the party in its opening speech at the 2002 Annual Session of the People’s Consultative Assembly, when it quoted the following “wise saying”: “Be careful with your thoughts, because they can become words. Be careful with your words, because they can become actions. Be careful with your actions, because they can become your fortune.”

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4 The most comprehensive of these, with six categories, is provided by Colomer 2000. Other typologies can be found in O’Donnell, Schmitter and Whitehead 1986; Huntington 1991; and Przeworski 1991.

5 In his earlier work, Colomer (1991, 1285) raises this possibility in his discussion of the reformists’ preferences, but does not incorporate its ramifications into his formal models. There is no mention of this possibility in his more recent work (Colomer 2000).

6 “Pemandangan Umum PDI-P” [PDI-P General Views], read by Agustin Teras Narang (People’s Consultative Assembly 2002, 21).
P, their conservatism focused on the 1945 Constitution, which they held to be an inviolate legacy of the nation’s founding fathers and the struggle for independence.

The existence of this type of oppositional force, coupled with the absence of significant antidemocratic extremists in either the regime or the opposition, created dynamics at the outset of the transition that are not foreseen in the literature on democratic transition. These dynamics resulted in a clear break with the authoritarian past in some important ways – particularly, the release of political prisoners, the liberalization of the press and the party system, the relatively free and fair elections of 1999 and the emergence of new political leaders – but continuity in other significant ways, especially the retention of the illiberal 1945 Constitution as the institutional framework for the transition.\(^7\) During the subsequent process of constitutional amendment, these dynamics continued to influence the development of Indonesia’s fledgling democratic institutions.

Specifically, Megawati and PDI-P were a key part of the compromise in 1998 to retain the 1945 Constitution as the institutional basis for the transition. In October 1999 and August 2000, they acquiesced to some reductions in presidential power. However, they did force postponement of decisions on key amendments. By failing to clarify the basic nature of the Indonesian political system as presidential or parliamentary, this gradual and piecemeal amendment process contributed to the presidential crisis of 2001. One of the primary causes of this crisis was conflict between the president and legislators over the weak status of the presidency. This weak status was a result of the rules of the game contained not only in the original 1945 Constitution but also the First and Second

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\(^7\) See Chapter Two for a brief discussion of the illiberal political philosophy of organic statism and its relevance for the original 1945 Constitution.
Amendments. The subsequent strengthening of the presidency by means of the Third and Fourth Amendments can only be understood as a direct consequence of the resolution of this crisis. In particular, Megawati became president and she and PDI-P realized that in order to further their self-interest in a powerful presidency, they had to support—not oppose as in 1999 and 2000—direct election of the president and vice president.

**Summary of Theoretical Framework**

This study argues that an explicitly political approach focused on power, uncertainty and interests—as well as perceptions of Indonesia’s history—provides a better explanation of Indonesian constitutional reform than alternative approaches rooted in other political, cultural, economic or social theories. The electoral bargaining approach makes the assumption that the front-running presidential candidate (and his or her party) favors greater powers for the presidency in constitutional negotiations. Conversely, those politicians and their parties that don’t expect soon to occupy executive office prefer to restrict presidential power. The approach further assumes that the formal powers granted to the president by the constitution as well as the method of election of the president are key elements of presidential strength. Thus negotiations over these issues are an important object of research.

Under the electoral bargaining approach, a candidate’s or party’s interests are determined by two variables. The first is the bargaining power of the favored presidential candidate in the body charged with drafting or amending the constitution. There are two categories: high and low bargaining power. Some candidates have sufficient support (normally a substantial plurality) in the constituent assembly to veto any proposed
amendments, while others do not. Electoral bargaining theory posits that the greater the bargaining power of the presidential favorite, the stronger the powers granted to the presidency in the constitution. The second variable is the level of uncertainty – also high or low – regarding the outcome of the presidential election. Under conditions of low uncertainty, the front-running candidate and his or her party are emboldened during constitutional drafting to press for greater presidential powers because they expect to have access to those powers following the elections. When the election outcome is more uncertain, however, even the electoral favorite is more likely to hedge his or her bets and agree to some restrictions on presidential power, lest another candidate win the election and gain access to that power.

In the Indonesian case, the bargaining power of the electoral favorite, Megawati Soekarnoputri, remained constant at a high level throughout the period of constitutional reform. Her party led a conservative wing in the constituent assembly that commanded the necessary votes to veto amendments. This high level of bargaining power enabled her to slow down the amendment process in 1999 and 2000 and thereby protect many presidential prerogatives. Nonetheless, uncertainty over presidential election outcomes remained high in this first phase of reforms and so she was willing to accept some restrictions on presidential power. The decisive reversal came following her elevation to the presidency in July 2001. Uncertainty regarding her political future became much lower and she switched to supporting direct election of the president and vice president beginning in 2004 in order to shore up the power of the office she now occupied.

This parsimonious framework derived from rational choice theory provides the most plausible explanation of Megawati’s and PDI-P’s positions on direct election, both
before and after she became president in July 2001. However, it does not explain the consistent support for direct election demonstrated by Golkar, PPP (Partai Persatuan Pembangunan or Development Unity Party), PKB (Partai Kebangkitan Bangsa or National Awakening Party) and Reform, party blocs that had much lower chances than PDI-P of occupying the presidency in the near future. Rather than self-interest, this position is rooted in a shared construction of collective political history. The consensus view among Indonesian political elites is that the political instability of the 1950s was caused primarily by the parliamentary system then in place. Thus they believed that a parliamentary system was not appropriate for Indonesia and made a commitment to establishing a pure presidential system, including direct election of the president and vice president. This commitment prevailed over their self-interest in a weaker presidency.

**Comparative Context**

There are several reasons why studying constitutional reform is a valuable exercise, both generally and regarding Indonesia specifically. This is a particularly important topic in the context of a democratic transition. A constitution incorporates fundamental choices about political institutional structures. Political institutions do not tend to change very rapidly or very often, but a democratic transition often creates a window of opportunity for institutional reform. The design of these institutional structures can have a great impact on political stability and the survival of the democratic experiment itself, on the political party system, and on the coherence of policy-making. Studying the institutional choices made as part of a process of constitutional reform is thus a worthwhile endeavor.
More specifically, since 1998 Indonesia has been undergoing one of the most important regime transitions of the “third wave” of democratization that began in southern Europe in the mid-1970s (Huntington 1991). Indonesia’s transition has been important on a global and regional scale for several reasons. First, the country’s immense size: by population it is the fourth largest country in the world, and the largest thus far to undergo a transition in the third wave. Of the remaining nondemocratic countries, only China has a larger population. Second, it has the largest Muslim population in the world (although with significant religious pluralism), and the Muslim religio-cultural zone has been the least affected by the third wave thus far (Huntington 1991, 73, 295, 307-309).

Third, Indonesia joins a growing list of East and Southeast Asian countries, including South Korea, Taiwan, the Philippines and Thailand, to undergo a democratic transition following extended periods of authoritarian rule. Indonesia is the strategic anchor of the Association of Southeast Asian Nations (ASEAN), founded during the Cold War to combat communism and for decades a club of dictatorial regimes. Indonesia’s transition has caused ruling elites in nondemocratic Malaysia, Singapore and Burma to feel less comfortable in their positions. For Indonesians, the transition has been a sometimes inspiring, sometimes painful period of relishing newfound freedoms and restoring democracy after four decades of authoritarianism.

Furthermore, the institutionalized role of the military in the authoritarian regime was comparatively unique in Indonesia. While military involvement in politics has been commonplace around the world, the extent to which the Indonesian military was intertwined in all aspects of political, economic and social life places this case near the
extreme end of the spectrum. It is particularly noteworthy that the Indonesian military achieved this status with a comparatively small size per capita.\footnote{The three branches of the military total roughly 300,000 personnel in a country with a population that now exceeds 220 million.}

This high level of influence was a result of three factors. First, President Soeharto, a major general when he rose to power, used his personal knowledge of and influence in the military to make it the backbone of the New Order. Second, two-thirds of the Army’s personnel comprise the “territorial system,” units stationed at all levels of the state administrative system, from the capital down to the village level. This system was used to monitor and coerce the civilian bureaucracy. It remains largely intact to this day, although its more intrusive functions have been abandoned since 1998. Third, the “dual function” (\textit{dwifungsi}) ideology justified not only a traditional defense role but also a political and social role for the Indonesian military.

The hangover from the authoritarian regime of the military’s political influence had a significant impact on the constitutional reform process, as civilian politicians had to make numerous compromises with the military while simultaneously looking to its continuing influence to support their particular positions. This boosted the bargaining power of conservative political leaders and parties, particularly Megawati and PDI-P. Although the 1999 elections made PDI-P the leading conservative party, the military’s and police’s representatives were an important supporting player in the conservative wing of the constituent assembly charged with amending the Constitution.
The Process of Constitutional Reform in Indonesia, 1999-2002

When the transition to democracy began in Indonesia in May 1998, one of the most important compromises was the retention, unamended, of the 1945 Constitution as the institutional framework for political change (Liddle 2002). This Constitution was problematic from a philosophical, institutional, legal and historical standpoint. Philosophically, it was inspired by organic statism, one of the foundations of European fascism (see Chapter Two for more details). Institutionally, it has been claimed to emulate the organs of the colonial Netherlands East Indies, the wartime Japanese fascist system, and the Chinese Nationalist government – none of which are an auspicious pedigree for democracy. As a legal document, the Constitution was vague and incomplete. It was underspecified regarding many important political structures and the rules that govern them. Too many of its key clauses ended with an injunction for further specification in laws, opening the door to subsequent manipulation, and it lacked guarantees of basic civil and political rights. Finally, it also has a checkered history. Since its reinstatement by President Soekarno on July 5, 1959, the 1945 Constitution had facilitated the establishment of two authoritarian regimes, Guided Democracy (1959-1965) under Soekarno and the New Order (1966-1998) under President Soeharto, that together lasted for almost four decades.

In October 1999, August 2000, November 2001, and August 2002, the People’s Consultative Assembly passed the First, Second, Third and Fourth Amendments, respectively. The People’s Consultative Assembly (Majelis Permusyawaratan Rakyat or MPR) is the sole body empowered by the 1945 Constitution to amend it. During this period, the MPR consisted of 695 members, 500 of whom were national legislators (DPR
members), including the 38 appointed military and police representatives. The remainder of the MPR consisted of 130 regional delegates elected by provincial councils and 65 representatives of social organizations chosen by the Election Commission. The process of constitutional reform undertaken by this body provides political observers with a valuable window on the views of these elites regarding the unfolding democratic transition. Elite views regarding democratic values, institutions and processes are an important variable in the literature on democratic transition and consolidation (Higley and Gunther 1992).

President Soeharto wrapped himself in the mantle of the 1945 Constitution and was very careful to be seen as abiding by its tenets, as one element of his strategy to win popular legitimacy for his authoritarian New Order regime. After replacing Soekarno loyalists with his own people, in 1968 Soeharto reconvened the Provisional People’s Consultative Assembly (MPRS) and had this body formally remove President Soekarno from power and install himself as president, as stipulated in the 1945 Constitution.9 Soeharto then orchestrated elections every five years10 and reconvened the permanent MPR following each of these elections to formally end his term and be reelected to a new term.11 To have been seen as circumventing or even subverting the 1945 Constitution would have weakened Soeharto’s political position, especially in the late 1960s as he was consolidating his power. Soeharto and the Indonesian military (ABRI, now TNI), which formed the backbone of the New Order regime, then made upholding the 1945

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9 For a more detailed discussion of this process, see Crouch 1988, Chapter 8.


Constitution and the state ideology Pancasila\textsuperscript{12} contained in its Preamble the watchwords of their rule.

President Soeharto and the military held the 1945 Constitution essentially sacred, not least because it granted broad powers and tremendous flexibility to the president and created a weak legislature and judiciary, facilitating their authoritarian project. Proposals to amend the Constitution were considered tantamount to treason and all political and social organizations were required to include loyalty to the Constitution in their charters. This sacralization of the 1945 Constitution was especially ironic given that originally it was meant to be a provisional, emergency document whose main function was to help generate some modicum of legitimacy and structure for the Indonesian state in the aftermath of the hasty declaration of independence. President Soekarno himself, in a speech on August 18, 1945 urging the promulgation of the Constitution, promised that as soon as some level of stability and normalcy could be achieved, elections would be held for a constituent assembly that would draw up a definitive constitution (Yusuf and Basalim 2000, 58-59). In no way did Indonesia's founding fathers imagine that this vague, incomplete Constitution that they had hurriedly prepared in a matter of just weeks would become regarded as a sacred inheritance of the independence struggle and would be implemented without amendment.

Despite the weaknesses in the 1945 Constitution as the basis for democracy, it was explicitly or implicitly accepted by most major political forces as the framework for the transition in Indonesia that began in 1998. Subsequently, however, many of the most

\textsuperscript{12} Literally, “Five Principles”: (1) Monotheism, (2) Humanism, (3) National Unity, (4) Consultative/Representative Democracy, and (5) Social Justice. These principles were first expressed – in a different
important political parties came to believe that the Constitution must be amended to address flaws in the country’s political structure. The primary exception was what became the largest party after the 1999 elections, Megawati Soekarnoputri’s PDI-P. Given the way in which the Constitution was sacralized during the New Order, the simple fact that amending it was put on the political reform agenda was already an important step in the democratic transition.

The first set of changes was passed during the October 1999 General Session of the MPR, so that the new democratically elected president would be bound by them. These changes affected nine of the Constitution’s 37 articles. The MPR decided to follow a variant of the American practice of constitutional amendment, in which the full original text is accompanied by the changes to these nine articles, which as a whole are referred to as the First Amendment. The First Amendment focused on strengthening the position of the legislative and judicial branches vis-à-vis the executive branch. It also reaffirmed the decree passed at the MPR Special Session in November 1998 that limited the president and vice president to two five-year terms. Nonetheless, the First Amendment only scratched the surface of the serious problems with the 1945 Constitution.

The MPR, however, authorized a subcommittee of its members, known as the Working Body (Badan Pekerja), to draft and debate further constitutional reforms and report to its next plenary session, which took place in August 2000. This 86-member body in turn established a 44-member subcommittee, Ad Hoc Committee I (Panitia Ad

order – by Soekarno in a speech on June 1, 1945. Later that year they were rearranged and included in the Preamble to the 1945 Constitution.

Hoc I or PAH I), to be the primary forum for this work. All political forces in the MPR were represented proportionally on these bodies. Building on work done at the October General Session, these forces came to an early consensus in November 1999 on five major points: (1) to leave the Constitution’s Preamble untouched, thereby retaining Pancasila as the state ideology and supposedly avoiding a debate over an Islamic state; (2) to maintain the basic structure of the state as unitary, thereby thwarting an emerging debate on federalism; (3) to “retain” (more accurately, “establish”) the basic structure of the government as purely presidential, thereby preventing a debate on the re-establishment of parliamentarism; (4) to eliminate the official Annotations (Penjelasan) to the Constitution and insert any relevant substantive elements into the main body; and (5) to maintain the original Constitution and attach any amendments as appendices, rather than producing an entirely new text. Apart from these macro-level issues, all other parts of the Constitution were up for debate.

Between November 1999 and May 2000, PAH I conducted witness hearings, provincial consultation meetings, and international study missions. After the legislature reconvened in May 2000, PAH I conducted a detailed chapter-by-chapter review of the 1945 Constitution, which it completed at the end of June. The PAH I proposals included revisions of all 16 chapters of the existing 1945 Constitution and draft text for five new chapters. At the MPR Annual Session in August 2000, amended text was approved for only five chapters of the Constitution: regional authorities, the national legislature, citizens and residents, defense and security, and national symbols. In addition, two new

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chapters, on human rights and on national territory, were approved. These changes, collectively called the Second Amendment, and the contents of several of the MPR decrees passed at the 2000 Annual Session, addressed four important issues in Indonesian politics: (1) civil-military relations, (2) the separation of powers and checks and balances, (3) the decentralization of power to the regions, and (4) a bill of rights. Each of these issues contained significant changes to the Indonesian political system.

Although the Second Amendment began to address some of the fundamental weaknesses of the 1945 Constitution, many issues remained on the table. The MPR decided in August 2000 to give itself an additional two-year timetable, until the Annual Session in August 2002, to make further decisions on constitutional amendments. Some of the primary issues that remained on the table included: the method of election of the president and vice president; the structure and powers of the national legislature (unicameral or bicameral); the relationship of religion and politics, for as it turns out the decision to retain the original Preamble did not succeed in averting a debate on the establishment of an Islamic state; and the establishment of an independent judiciary with powers of judicial review and constitutional interpretation. The delays in addressing these issues contributed to the presidential crisis in 2001.

Soon after the August 2000 Annual Session, PAH I formed a 30-member "Team of Experts" (Tim Ahli) to assist it in its work. During the first half of 2001, much of PAH I's time and energy was spent studying and debating various proposed amendments with members of this team. In mid-2001, PAH I became preoccupied with helping to prepare

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15 This was the latest Annual Session at which it was possible to pass major changes to the structure of state institutions with enough lead time to make the legal and technical preparations to conduct regularly scheduled elections under the new system in 2004.
for the Special Session in July that removed President Abdurrahman and installed President Megawati.

The MPR’s attention then turned to preparing for its next Annual Session in November 2001, postponed from August due to the Special Session. This session achieved agreement on many of the remaining issues, but continued to postpone decisions on several crucial items until 2002. Most importantly, the Third Amendment passed at this session clarified the presidential nature of the system and continued the process of establishing greater separation of powers and checks and balances among the three branches of government. Specifically, it: (1) stripped the MPR of its status as having formally unlimited powers; (2) inserted a chapter on elections as the basis for legitimate political power; (3) established the principle of direct, popular election of the president and vice president; (4) clarified the grounds and procedures for presidential impeachment; (5) underscored that the president cannot dissolve the legislature; (6) established a second chamber of the national legislature to represent regional interests; (7) strengthened fiscal oversight institutions; and (8) created a Constitutional Court and a Judicial Commission.

Agreement could not be reached, however, on several important issues. One of these was the makeup of the MPR. Under one proposal, the MPR would consist strictly of the two chambers of the national legislature. Under the other proposal, in addition to these two chambers, the MPR would also continue to include unelected members, such as representatives of the military, police and social organizations. The second unresolved issue was the procedures for the second round of the presidential election. The Third Amendment states that a ticket that wins a simple majority of the national popular vote,
as well as at least 20 percent of the vote in at least half the provinces, is considered the victor. If no ticket crosses these thresholds, however, then there must be a second round. Under one proposal, the second round also would be a popular vote between the top two tickets from the first round. Under the other proposal, in the second round the winning ticket would be chosen by the MPR from the top two vote-getters in the first round. Other important unresolved issues included the independence of the central bank and the relationship between religion and the state.

In August 2002, the MPR convened for another Annual Session and succeeded, after extended debate, in meeting its self-imposed deadline for completing this round of amendments. Beginning in October 2004 the MPR will be a fully elected body consisting strictly of the two houses of the national legislature. The second round of the presidential election, if necessary, will also be by popular vote. In addition, the MPR approved retaining the original language of Article 29 on religion, thereby rejecting efforts to establish a constitutional basis for an Islamic state. The outcome of the debate on the central bank was less propitious: its independence (or lack thereof) will be regulated by law rather than the Constitution.

Structure of the Analysis

This study analyzes a set of institutional choices made by Indonesian political elites in the course of the transition regarding the sources of presidential power. Chapter One outlines theories of institutional choice and constitution making. It reviews several ways of measuring presidential power and discusses the dependent variable: the positions taken by MPR blocs on various amendments. It also defines and describes the
measurement of the key independent variables in the electoral bargaining approach: power, uncertainty and interests. Finally, it examines alternative explanations for the outcomes found in Indonesia.

Chapter Two discusses the overall historical, philosophical and institutional context for the constitutional reforms of 1999-2002. It begins with a brief synopsis of the history of Indonesia’s three constitutions. It continues with a discussion of the political philosophy of organic statism (or integralism, as it is known in Indonesia) and how that nondemocratic philosophy permeates the 1945 Constitution. Finally, this chapter uses the scales of presidential power discussed in Chapter One to take measurements at three relevant points in the process: the original 1945 Constitution prior to amendment in October 1999; when Megawati took office in July 2001 following both the First and Second Amendments as well as President Abdurrahman’s removal; and the present version of the Constitution following the first four amendments.

The next two chapters explain the positions taken by the most important MPR blocs on various constitutional amendments related to executive power, particularly direct election of the president and vice president. Chapter Three utilizes the electoral bargaining approach to analyze Megawati’s and PDI-P’s about-face in the latter half of 2001 from opposing to supporting direct election. Chapter Four begins by stating that the electoral bargaining approach fails to predict the strong and consistent support for direct election demonstrated by the other four major party blocs. It then describes Indonesian political elites’ common perception of their political history in the 1950s to explain their rejection of parliamentarism and support for direct election.
The concluding chapter summarizes the theoretical and empirical arguments made in previous chapters and re-examines the theory of institutional choice presented in Chapter One in light of those arguments. This chapter also places the foregoing analysis of changing presidential power in the larger context of the democratic transition and looks ahead at the prospects for democratic consolidation in Indonesia, based on comparative experiences with the combination of pure presidentialism and multipartism.

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CHAPTER 1

THEORIES OF PRESIDENTIAL POWER AND INSTITUTIONAL CHOICE

At the heart of this research is an assumption that institutions matter. This is by no means a new assumption in political science, which has been “bringing the state” – and other institutions – “back in” for over two decades (Evans, Rueschemeyer and Skocpol 1985). However, this is not a common assumption among those who study Indonesia, who tend to focus more on the roles of individual leaders (Liddle 1991) or a small group of elites, such as technocrats (Mallarangeng 2000); political culture, religion or ideology (Geertz 1960; Anderson 1990; Moertono 1981); and/or class structures and international influences (Winters 1996) as the primary forces in explaining developments in Indonesian politics. MacIntyre (2003) is a notable and welcome exception to this rule. The institutions that matter in this case are constitutional arrangements, and they matter for the democratic transition and democratic consolidation.

It is thus important to explain how and why institutions are chosen. This is especially important given that significant institutional change occurs only infrequently (Elster, Ofle and Preuss 1998). Interests vested in certain institutional arrangements arise with astonishing rapidity, making those institutions “sticky” and hard to change significantly. Consequently, most institutional changes occur gradually, on the margins. It
is only when existing institutional arrangements no longer serve the interests of political actors – or when new actors emerge whose interests are not accommodated by these arrangements – that significant institutional change can occur.

Indonesia’s democratic transition that began in 1998 has been a time of enormous institutional change. Shackles were removed on the freedom of the press and on the party system; in response, a vigorous press and many new parties emerged. The 1999 elections took place under an electoral system that was an experiment – which largely failed, although fortunately that failure did not impact the overall success of the elections – in combining the advantages of proportional representation with the advantages of single-member districts. Significant decentralization of political and administrative power has been undertaken. A second chamber of the national legislature and a Constitutional Court have been established.

This study focuses on one aspect of constitutional reform: the changing power of the presidency. This chapter outlines the theoretical framework for that analysis. It begins with an examination of several methods for measuring presidential power as well as a discussion of the dependent variable: party bloc positions on various amendments. I then turn to a discussion of the independent variables and various hypotheses generated by them. I also examine the weaknesses of various competing explanations and describe the methodology used in this research.

**Summary of Findings**

The original 1945 Constitution established a hybrid political system perhaps unlike any other in the world. The president enjoyed many specific powers and a broad
array of vaguely-defined residual powers. Nonetheless, the president remained indirectly elected by and thus constitutionally subordinate to the MPR. In an authoritarian context, the president was able to make use of his powers to manipulate the membership of the MPR and render it toothless. By contrast, in the more competitive political environment since 1999, the MPR reasserted its constitutional supremacy over the president, as exemplified by the rejection of President B.J. Habibie’s accountability speech in 1999 (effectively ending his chances for reelection) and the removal\textsuperscript{16} of President Abdurrahman Wahid in 2001. In Indonesia’s fledgling democratic system, therefore, the presidency was in fact a much weaker office than many people believed: the president could not make full use of her broad powers, fearing the MPR’s wrath.

From 1999 to 2002, as part of a more comprehensive process of constitutional reform, the MPR set out to redefine the power of the presidency and particularly legislative-executive relations. The First and Second Amendments to the 1945 Constitution – approved in October 1999 and August 2000, respectively – further weakened presidential power, especially by placing greater restrictions on the use of residual powers. The Third and Fourth Amendments – approved in November 2001 and August 2002, respectively – significantly strengthened the presidency by abolishing the constitutional supremacy of the MPR and establishing direct election of the president and vice president beginning in 2004 (although these amendments did place further restrictions on residual powers as well). The president’s specific powers have been only slightly reduced as part of this amendment process.

\textsuperscript{16} In discussing the presidential crisis of 2001, I prefer the term “removal” to “impeachment,” because the latter implies a more purely presidential system, which did not exist at the time in Indonesia.
In response to experiencing four decades of dominant, authoritarian presidents under the original 1945 Constitution, beginning in 1999 many Indonesian elites set out to reduce presidential power by reasserting the constitutional supremacy of the MPR, strengthening the legislature, and trimming the president’s specific and residual powers. Despite the significant restrictions on residual powers and minor reductions in specific powers contained in all four amendments, the Indonesian presidency remained comparatively very powerful at the end of the reform process. This will especially be true beginning in 2004, when direct election will provide the president a “popular mandate” to make full use of her formal powers.

How did Indonesian elites end up with an even more powerful presidency than they started with, despite their goal to weaken the office? The answer to this question lies in the key role played by Megawati Soekarnoputri, daughter of the first president, Soekarno, and her party, PDI-P. PDI-P won a 34 percent plurality of the popular vote in the June 1999 legislative elections and thus Megawati became the clear favorite for the presidential elections in October 1999. As vice president from 1999 to 2001, she automatically replaced President Abdurrahman when he was removed in 2001. From 2001 to 2003 she remained the favorite for the 2004 elections. Equally importantly, PDI-P won enough seats in the MPR – as the lead party in a conservative wing that also included the military and police delegates – to control the one-third necessary to defeat any constitutional amendments that might be put to a vote. Megawati and PDI-P were torn among three competing goals: an ideological commitment never to amend the original 1945 Constitution, a desire to burnish their reformist credentials for the 2004 elections, and a political interest in maintaining or expanding presidential power based on
the expectation that Megawati would soon occupy (and later, would continue to occupy) that office. The first goal entailed consistent opposition to amendments whereas the second goal required acceptance of at least some amendments, given that constitutional reform was seen as one fundamental element of the political reform agenda. The third goal did not generate a consistent position on amendments; rather, PDI-P’s and Megawati’s position fluctuated depending on the implications of the particular amendment for presidential power and the level of uncertainty regarding presidential election outcomes.

In 1999 and 2000, uncertainty remained high regarding when Megawati might win the presidency. According to the electoral bargaining approach, under conditions of high uncertainty even the presidential favorite hedges his or her bets and accepts some restrictions on presidential power. Thus PDI-P and Megawati joined the consensus on the First and Second Amendments, although they succeeded in forcing postponement of decisions on many of the most important issues. In 2001, however, Megawati had become president. Not only that, but the manner in which she had achieved the office – which vividly demonstrated the weakness of the presidency under existing arrangements – caused her to reconsider her ideological commitment to the original Constitution. This was particularly true regarding the most important outstanding issue of the method of presidential election. Thus as part of the Third and Fourth Amendments, Megawati and PDI-P reversed their position and supported direct election in order to strengthen the presidency.

The other four major party blocs in the MPR – Golkar, PPP, PKB and Reform – had always consistently supported direct election of the president and vice president. This
was due to their perception of the parliamentary system as the primary cause of political instability in the 1950s. They were committed to establishing a pure presidential system for Indonesia, including direct election. Although these blocs controlled a simple majority in the MPR, they did not have the two-thirds necessary to pass amendments by vote, and in any case the MPR was committed to approving as many amendments as possible by consensus. Thus PDI-P was able to block approval of direct election, as well as other amendments, in 1999 and 2000. However, in 2001 and 2002, once PDI-P had reversed its position, direct election was approved as part of the Third and Fourth Amendments.

**Measuring Presidential Power**

Contemporary theories suggest that the strength of the presidency is measured based on two factors: the method of election of the president and the constitutional powers granted to the president (Elster 1993, 196). A popularly elected president enjoys democratic legitimacy that is separate from and roughly equal to the legislature. Such a president is also normally harder to remove from office, usually by some complex set of impeachment procedures. Conversely, an indirectly elected president lacks such legitimacy and is often also easier to remove from office. Ceteris paribus, a popularly elected president is thus stronger than one that is indirectly elected, although by what margin can be difficult to quantify.

Determining the strength of executive power is an important aspect of understanding the rules of the political game. Despite this importance, McGregor (1994, 28) commented a decade ago that “No generally accepted method of assessing the powers
of presidents is offered in the literature of political science.” This statement is still largely true ten years later. Although the Shugart-Carey scale described below was an important contribution that has been widely used, it has certain drawbacks, such as that it was designed to be applied only to directly elected presidents.

Executive power can be measured by examining either the formal arrangements regarding presidential power, especially as contained in the constitution, or the actual exercise of that power in the trenches of political conflict. For the most part, the two scales discussed below measure formal arrangements. These scales thus assume either that formal arrangements are more important than actual practice or that practice more or less follows these arrangements.

Shugart and Carey (1992, Ch. 8) have developed the most widely used scale of presidential powers. This interval scale is based on the assumption that measuring the relationships among the president, the cabinet and the legislature are the most critical to an understanding of presidential power. It highlights the important distinction between the president’s legislative and nonlegislative powers. Each of six legislative and four nonlegislative powers can carry a value of zero to four; the two halves of the scale thus range from zero to 24 and zero to 16, respectively. Higher values indicate greater presidential powers.

They use this scale to develop a graph of presidential power, based on the two dimensions of legislative and nonlegislative power.¹⁷ Empirically, Shugart and Carey find cases across the entire spectrum of nonlegislative power, from zero to 16 points. In terms of legislative power, however, the empirical range is only half of the theoretical range:

¹⁷ Shugart and Carey 1992, 155 (Table 8.2) and 156 (Figure 8.1).
from zero to 12, out of a possible 24 points. For analytical purposes, they divide this graph into six sectors, roughly corresponding to various regime types.

An alternative to the Shugart-Carey scale is that developed by Frye (1997) in concert with Hellman (1997), drawing on work by McGregor (1994). This scale captures a broader range of a president’s substantial powers\(^\text{18}\) because it includes the president’s formal powers vis-à-vis not only the cabinet and the legislature but also the judiciary, the military and the central bank. Each of 27 powers carries a value of zero (doesn’t exist), 0.5 (shared with the assembly) or one (held solely by the president). For indirectly elected presidents, these values are multiplied by 0.5. The scale thus ranges from zero to 27 for directly elected presidents and zero to 13.5 for indirectly elected presidents. Higher values indicate greater presidential powers.

These scales differ in terms of the range of systems they are designed to measure, the range of powers they measure and the way in which they measure those powers.\(^\text{19}\) An advantage of the Frye-Hellman scale is that it was designed to measure both directly and indirectly elected presidents. However, it is important to remember that the technique of halving the strength of powers for indirectly elected presidents is an arbitrary convention rather than a weighting developed on the basis of empirical findings.\(^\text{20}\) The Shugart-Carey scale was developed for popularly elected presidencies and so technically is

\(^{18}\) As opposed to ceremonial powers, which McGregor includes but Frye (1997, 548 [Appendix B, Note]) deliberately excludes.

\(^{19}\) Despite these differences, Frye (1997, 547 [Appendix A, Note]) claims a high correlation of 0.814 with the Shugart-Carey scale.

\(^{20}\) Hellman (1997, 78, note 25) uses slightly different weightings, which are however no less arbitrary: in parliamentary systems with direct elections for the presidency, scores are multiplied by 0.75 and in parliamentary systems with indirect elections for the presidency, scores are multiplied by 0.5.
inapplicable to the Indonesian case before 2004. However, there is nothing in the content of the measures that necessarily makes the scale inapplicable to indirectly elected presidents. As Shugart and Carey do not examine indirectly elected presidents in their book, they do not address scoring conventions to adapt the scale to these presidents. Given the dangers of “cardinalizing” an ordinal scale, I hesitate to adopt weighting conventions such as those used by Frye and Hellman.\textsuperscript{21} Lacking a better solution, I propose to use the Shugart-Carey scale as an indicator of the powers the Indonesian president would have if she was directly elected, always keeping in mind that until the Third and Fourth Amendments are fully implemented in 2004 she is not (i.e. always imagining an asterisk accompanying the scores to indicate indirect election).

Another difference is that the Frye-Hellman scale is much more inclusive. The Shugart-Carey scale encompasses only legislative powers and those nonlegislative powers that are relevant to executive-legislative relations. Although these restrictions are a logical derivative of their theoretical and empirical focus on this aspect of constitutional design, they do prevent the scale from providing a measure of a greater range of presidential powers. Furthermore, even within the limited purview of executive-legislative relations, the Shugart-Carey scale omits a critical aspect of nonlegislative powers: the relative ease or difficulty of impeachment procedures.

The Frye-Hellman scale’s inclusiveness, however, can also be a drawback. Since it encompasses a broader range of powers, some of these powers will not be relevant for particular systems due to a lack of certain institutions. For instance, Indonesia does not have a dual executive, i.e. there is no prime minister. Before the Third Amendment,  

\textsuperscript{21} Personal communication from Matthew Shugart and John Carey.
Indonesia lacked a Constitutional Court. It also lacks a constitutionally-mandated National Security Council, although both President Abdurrahman and President Megawati have followed President Soeharto’s practice of naming a coordinating minister for politics and security, whose function – together with the relevant ministers – is much like that of a security council. The prime minister, Constitutional Court and National Security Council are mentioned in five of the 27 powers in the Frye-Hellman index. For a country like Indonesia that lacks such institutions, ignoring these parts of the index artificially depresses its comparative ranking.

Finally, some items on the Frye-Hellman scale’s list of presidential powers are of dubious significance, such as “proposes amendments to constitution” and “may address or send messages to Parliament.” Clearly the ability to address the legislature is an important power. However, since any citizen in a democracy – with basic civil and political rights – may propose constitutional amendments and send messages to his parliamentary representatives, what exactly do these powers mean? Obviously, proposals and messages from the president carry vastly greater political weight than those from an ordinary citizen, but if they are not binding, then these powers should not be weighted equally to – for instance – control over senior military appointments.

In Table 2.2 in Chapter Two, I have organized the elements of the Frye-Hellman scale according to the categories of the Shugart-Carey scale, as a means of highlighting the similarities and differences between them.

Frye’s approach – rooted in incomplete contracting theory (Grossman and Hart 1986) – also points up the important distinction between specific and residual powers. Specific powers are those whose purposes and limitations are clearly defined. Because
constitutional drafters cannot anticipate all possible scenarios, however, they must grant the president certain residual powers whose uses are less clearly defined. Both quantitative scales are restricted to specific powers, but Frye adds an additional, qualitative evaluation of residual powers. Making this distinction allows Frye (1997, 534 [Table 1]) to develop more nuanced hypotheses, which are discussed in further detail below.

In this study, I do not devise a new scale of presidential powers. Instead, using multiple measures based on these different scales, I draw a composite picture of the changing power of the Indonesian presidency.

**Dependent Variable: Party Bloc Positions**

The dependent variable in this study is the various MPR bloc positions on key amendments related to presidential power. The MPR from 1999 to 2004 was made up of 11 official blocs with certain powers granted to them by the rules of procedure, such as the right to nominate candidates for president and vice president, hold leadership positions in the entire body and its committees, propose constitutional amendments and make speeches. Nine of these blocs were based in political parties, with members elected in one of two ways. The majority of these blocs’ members held their seats in the MPR by dint of their election to the national legislature (People’s Representative Council, *Dewan Perwakilan Rakyat* or DPR) on closed party lists in a proportional representation system. The minority were party members elected as regional representatives (*Utusan Daerah* or
UD) by provincial councils. The other two blocs consisted of appointed seats, one bloc for the military (Tentara Nasional Indonesia or TNI) and police (Kepolisian Negara Republik Indonesia or POLRI), and one for representatives of various religious, social and professional organizations (functional delegates, Utusan Golongan or UG). For the purposes of this study, I am primarily interested in the positions of the five largest party blocs, which represent 543 (78 percent) of the MPR’s 695 seats: PDI-P, Golkar, PPP, PKB and Reform (consisting of two parties: PAN and PK [Partai Keadilan or Justice Party]). Other blocs, particularly TNI/POLRI that controlled an additional 38 seats, are mentioned when they are relevant to the analysis.

For the most part, these five blocs can be divided into two groups based on their positions on key amendments: conservatives (PDI-P) and progressives (the other four). I use the terms conservative and progressive according to their most literal meanings: conservatives prefer the status quo and progressives prefer change. As I use them in this study, these labels thus have little to do with a conventional left-right political spectrum. PDI-P began the constitutional reform process dogmatically opposed to all attempts to amend the 1945 Constitution, but in 1999 and 2000 acquiesced to some amendments while remaining steadfastly opposed to direct election of the president and vice president. Following President Abdurrahman’s removal in July 2001, newly elevated President Megawati and PDI-P reversed their initial position and threw their support to direct election, prompting passage in November 2001 of the key Third Amendment containing the principle of direct election. The Fourth Amendment passed in August 2002 cemented

Most regional representatives had clear party affiliations and thus joined the party blocs. A few, however, had no clear party affiliation and they generally chose to join the functional delegate bloc.
the position of this principle in the Constitution. In contrast, the other four major party blocs began the constitutional process strongly in favor of many amendments, both direct election and those designed to reduce presidential power. They remained consistent in these positions throughout the three-year amendment process, and their positions are basically those eventually adopted.

It is not difficult to determine a bloc’s position on a particular amendment. Fortunately for researchers, MPR proceedings are highly formalistic, with many official bloc speeches read out in plenary and committee sessions. These speeches are all in the public record. The main part of MPR sessions that are not in the public record are the closed negotiation sessions among bloc leaders to hammer out deals on various amendments. To understand why blocs held certain positions and what took place during these negotiations, I conducted open-ended interviews with many of these bloc leaders.

**Independent Variables: Bargaining Power, Uncertainty and Interests**

This search for explanatory factors begins with the assumption that constitution-making is an inherently political process, i.e. one that is explicitly rooted in the give-and-take of mundane conflicts over the distribution of power. As a consequence, we should not expect high moral principles or conceptions of some overarching “national interest” to be the most salient motivations or explanations for institutional choice, although they may in fact play some role (and did, in the Indonesian case). As Holmes and Sunstein (1995, 281) remark regarding Eastern Europe, “the subordination of constitutional revision to everyday political antics and aims is a trend observable everywhere in the region.”
I do not make this assumption lightly. I began this study perhaps too naively believing that constitution-making everywhere occurred in a manner akin to Ackerman’s (1992, 15) second track of a “higher lawmaking system.” Under this “‘dualistic’ form of liberal constitutionalism,…the lower lawmaking track is intended to register the successful conclusions of pluralist democratic politics [while the] higher lawmaking system is intended to determine whether a revolutionary initiative has gained the considered support of a self-conscious and deliberate majority.” (Ackerman 1992, 14-15)

Studying the Indonesian experience over the last several years has certainly dashed my naïvete, although it is perhaps unfair consequently to generalize to the opposite extreme that constitution-making is thus everywhere and at all times a process of mere horse-trading. After all, the Indonesian case may lie closer to the political pole of the range of experiences, given that the constituent assembly is in fact little more than an expanded legislature subject to the same political incentives salient for the legislature itself. According to Holmes and Sunstein (1995, 296), “Some commentators have deplored the fact that the new constitutions and constitutional drafts embody bargains among parliamentary forces rather than high-minded legal principles. But this squeamishness about public bargaining is precisely one of the forces that must be overcome in order to consolidate the transition to constitutional democracy.”

Normative concerns aside, I also believe that beginning with a theoretical focus on power, uncertainty and interests is the most parsimonious approach. It is only when this approach falls short of providing convincing explanations that we should begin to dull Occam’s Razor by adding other variables to the mix. As Herbert Kitschelt (1999, 11, fn. 7) has written, “Following Weber, …it may be heuristically useful in the construction
of theories to begin with a narrow conception of deliberate, calculating human action in pursuit of fungible objectives (money, power) and only expand it by additional assumptions about preferences and cognitions when it proves inadequate.”

The theoretical framework employed here thus begins by identifying the relevant political actors, measuring their power and placing them in a context of varying levels of uncertainty over future political outcomes, and thereby defining their interests. This framework “emphasizes a microanalytic approach to political behavior, centering on real people, not grand abstractions, on the individuals’ surrounding social, political, and economic constraints, and on the sometimes creative activity of individuals to avoid, avert, outdistance, or overthrow their institutions” (Lane 1997, 3).

For the purposes of this study, actors are defined as the 11 political blocs in the constituent assembly, the MPR. Nine of these blocs are based in political parties, one consists of the appointees from the ranks of the military and police, and one consists of delegates from social organizations that were chosen by the Election Commission. The analysis focuses on the interests and power of the five largest party-based blocs, although occasionally I mention the positions taken by some of the other six blocs (particularly the military and police bloc) as warranted. These groups are thus well-defined in terms of membership size and makeup and – despite internal factionalization within all of them – have demonstrated a high level of bloc discipline in decisions taken within both the DPR and the MPR over the past five years.
Bargaining Power

Bargaining power is defined by Frye (1997, 533) as the strength of each presidential candidate’s support in the founding body charged with writing the constitution. For the purposes of this study, the bargaining power of each of the blocs (and their respective candidates) is defined as the number of seats it holds in the MPR. For the time period under consideration (October 1999 to August 2002), this is constant, aside from minor variations due to casual vacancies. There are two categories of bargaining power: low and high. Frye defines high bargaining power as having veto power in the constituent assembly; low bargaining power is the lack of veto capability.

Uncertainty Regarding Election Outcomes

Uncertainty, in the sense that actors “know what is possible and likely but not what will happen,” is an inherent ingredient of democracy (Przeworski 1991, 12). According to Frye (1997, 533), “measuring the degree of uncertainty is a challenge, but to neglect uncertainty would be to dismiss a central component of institutional choice.” Uncertainty is defined here as regarding the outcome of the next presidential election. Frye (1997, 533-534) proposes several elements of a rough qualitative measure of such uncertainty for direct presidential elections. These elements are the time from the last election, the distance between candidates in opinion polls, and the number of candidates from the favored faction. Uncertainty is high if the last election was held some time ago, if the distance between candidates in polls is low, and/or if the favored faction nominates several candidates. As a precaution, these rough measures are compared to the reporting in the local press about probable electoral outcomes.
Some of these elements can also be applied to indirect presidential elections, although some do not travel well. Certainly the length of time since the last election and the number of nominees, especially from the dominant faction, are valid measures of uncertainty in indirect presidential elections as well. The most problematic of these measures for indirect elections is thus opinion polls. Since citizens are not casting their votes for president, their opinions influence the level of uncertainty only indirectly, by influencing the opinions of the presidential electors. Furthermore, in Indonesia and perhaps in other developing countries, public opinion research regarding political issues has not yet become a well-developed industry with regular, scientifically valid polls.\footnote{This was especially true for the 1999 elections. Leading up to the 2004 elections, a number of organizations conducted reliable national surveys on a much more frequent basis than in non-election years. Among international organizations, these included The Asia Foundation (TAF), the International Republican Institute (IRI) and the International Foundation for Election Systems (IFES). Among Indonesian organizations, these included the Indonesian Survey Institute (Lembaga Survei Indonesia or LSI) and the Institute for Social and Economic Research, Education and Information (Lembaga Penelitian, Pendidikan dan Penerangan Ekonomi dan Sosial or LP3ES). In previous years, those scientifically-conducted polls that did appear infrequently in the media were usually of telephone owners in the largest cities, rendering the results largely useless for extrapolating to the population as a whole. Even worse, of course, were the unscientific Internet or phone-in polls that relied on whoever responded.}

For indirect elections, I propose to substitute two other rough measures of elite and public opinion. For elite opinion, the measure is the tone of statements by MPR leaders and members regarding the viability of various candidates, particularly the incumbent president. Since they have the power to elect and remove the president, their opinions matter more than anything else. Strong and frequent negative statements, especially from leaders and members of the larger blocs, indicate high uncertainty. For mass opinion, the measure is the level of mass mobilization of both supporters and opponents of various candidates. High mobilization of both supporters and opponents of various leading candidates, as well as of only opponents of the current president, is an
indicator of high uncertainty. The other two combinations indicate low uncertainty. If only supporters of the current president are mobilized, or if neither is highly mobilized, then that is an indicator that the incumbent president likely will be retained or reelected, lending a perception of certainty to the outcome.

An additional challenge presented by the Indonesian case during the period under study was that the president’s five-year term was not truly fixed, as in most other presidential systems. Rules adopted during the prior authoritarian regime that allowed for the president to be removed in the middle of her term on political, not just legal, grounds remained in force. These rules were in fact used to remove President Abdurrahman Wahid in 2001 (see Chapter Three). Furthermore, the MPR – the constituent assembly that elects and removes the president as well as drafts and approves constitutional amendments – decided in 1999 that it would begin meeting every year rather than every five years, as under the authoritarian New Order. Although these annual MPR sessions were not empowered to remove the president, which can only happen at a general or special session, this decision increased the frequency with which the MPR could challenge the president’s authority.

Thus I propose to use three separate indices of uncertainty: one for systems of direct election of the president, one for scheduled indirect election years based on the nominally fixed presidential term and one for the intervening period between these scheduled indirect elections. Although I designed the latter two indices based on the Indonesian case, their elements are general enough to allow for potential application to similar cases. The direct election index is the same as that used by Frye (1997). In scheduled indirect election years, the index consists of: (a) the length of time since the
last election; (b) the number of nominees, especially from the dominant faction; (c) the proposed measures of elite and mass opinion; and (d) whether the incumbent is eligible for reelection. The index for the intervening period between scheduled indirect presidential elections consists of: (a), (b), and (c) above, substituting (d) whether formal removal procedures leading to a special session have been initiated. I use the first indirect election index for the 1999 General Session (First Amendment) and the second indirect election index for the 2000, 2001 and 2002 Annual Sessions (Second, Third and Fourth Amendments). The direct election index was not appropriate for Indonesia during the period under study, although it would have been appropriate had constitutional amendments been on the agenda in 2003 and 2004, and it will be the only appropriate index to use in Indonesia after 2004.

**Interests**

Elster (1993, 181-183; see also Elster, Offe and Preuss 1998, Ch. 3) outlines four perspectives on the role of interests in constituent assemblies, but only one of these is relevant to the Indonesian case. The first perspective is the personal (often economic) interests of the constitution’s framers. These interests do not appear to have been a primary factor in the constitutional debates in Indonesia, despite their importance for other issues on the political agenda, such as banking reform, corporate restructuring and privatization of public enterprises. The second perspective is that constitution-makers are influenced by the interests of their respective constituencies. These interests also do not appear to have been especially relevant in Indonesia, particularly because the proportional representation electoral system used to elect the majority of MPR members
makes it harder to define each member’s constituency. In addition, the amendments
drafted and approved by the MPR were not subject to ratification by popular referendum.
In fact, the MPR was often accused by non-governmental organizations of being elitist
and unwilling to consider public input to the amendment process. Moreover, the only
constitutional issue with any degree of salience for the public was the method of election
of the president and vice president (direct or indirect). Most other items on the
constitutional reform agenda were either too distant from daily experience, too complex
or too technical to generate pressure groups strong enough to sustain lobbying efforts.

The third perspective is that of the interests of institutions, especially those
legislative or executive institutions that are involved in the process of constitution-
writing. Elster (1993, 213) concludes that “the main force behind the Polish process of
constitution-making has been institutional self-interest” (emphasis in original). At first
glance, this conception of interest would appear to be relevant to Indonesia since two-
thirds of the membership of the constituent assembly (MPR) is the national legislature
(DPR).24 Sitting legislators who are also constitution-makers tend to create strong
legislatures. In addition, “bicameral constituent assemblies tend to create bicameral
constitutions” (Elster 1993, 192). The MPR has been de facto a bicameral constituent
assembly, since its largest and most politically salient component parts are the
proportionally-elected national legislature and the regional delegates, five from each
province. This latter factor would certainly explain the establishment of the new second
chamber to represent regional interests, although this chamber has only a limited impact
on presidential power. Unlike in the Polish case, however, this conception of institutional

24 The other one-third consists of the regional delegates and the functional group delegates.
self-interest certainly cannot explain why the MPR stripped itself of its constitutional supremacy and failed to fully assert the DPR’s powers vis-à-vis the president.

Thus only the fourth perspective on interests is relevant to the Indonesian constitutional reform process: political party interests. For example, small parties tend to prefer proportional and large parties tend to prefer majoritarian electoral systems, although party leaders (across the spectrum) tend to prefer closed-list proportional representation due to their greater power in such systems. Geddes (1995) emphasizes individual politicians’ career interests as the primary motivating force for institutional stability and change. In this study, I equate a particular party’s interest in maximizing its power with the individual career interests of its leader. The plausibility of this assumption is especially robust in a political system like Indonesia’s, in which the closed-list proportional representation electoral system grants extensive power to the national party leadership, which in turn fosters strong party discipline in legislative decision-making.

The “electoral bargaining approach” developed by Frye (1997, 532) “assumes that political actors seek to maximize their individual political power by securing office and by designing institutions that will allow them to exercise their power to the greatest extent possible.” In other words, those presidential candidates and their parties that have high expectations of achieving executive office tend to support a strong presidency: direct election, many specific powers and vague residual powers. Conversely, those candidates and parties that have low expectations of achieving executive office tend to support a weak presidency: indirect election, few specific powers and very constrained residual powers.
This argument is consistent with Geddes’s (1996, 28; 1995, 267) findings regarding Eastern Europe: “the party or alliance that controls the presidency or expects to control it in the near future supports broad powers for the president, whereas parties opposed to the president seek to limit presidential powers.” It is also consistent with Myerson’s (2000, 926) summary of Mueller’s (1996) global survey of constitutional conventions and commissions: “we typically find strong presidential systems in countries where the constitutional commission was controlled by supporters of the strongest candidate for the first presidential election.” Elster (1993, 182) observes that “A party that has a strong presidential candidate will push for a strong presidency in the constitution, whereas others will want to limit his powers.”

**Hypotheses**

Presidential strength is determined by the method of election (direct or indirect) and the formal powers – both specific and residual – granted to the office by the constitution. A directly elected president is more powerful due to the democratic legitimacy thereby conferred on the office and to the fact that directly elected presidents are often protected by more stringent impeachment procedures. A president with more specific powers – and more of those that are not shared with other institutions or actors – is stronger. A president with broad, vaguely defined residual powers is stronger than one whose residual powers are narrower in scope and with more specified limits on their use.

Frye (1997, 532-534) combines the two variables of the bargaining power of the electoral favorite and the uncertainty over the outcome of the presidential election to create an “electoral bargaining approach” to explain variations in presidential power over
time and across country cases. This approach generates a two-by-two table with four possible outcomes, reproduced here as Table 1.1.

<table>
<thead>
<tr>
<th>Uncertainty</th>
<th>Low</th>
<th>High</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Bargaining Power of the Electoral Favorite</strong></td>
<td>Few specific powers</td>
<td>Few specific powers</td>
</tr>
<tr>
<td>Low</td>
<td>Constrained residual powers</td>
<td>Very constrained residual powers</td>
</tr>
<tr>
<td></td>
<td></td>
<td><em>(Weakest president)</em></td>
</tr>
<tr>
<td>High</td>
<td>Many specific powers</td>
<td>Many specific powers</td>
</tr>
<tr>
<td></td>
<td>Vague residual powers</td>
<td>Very constrained residual powers</td>
</tr>
<tr>
<td></td>
<td><em>(Strongest president)</em></td>
<td></td>
</tr>
</tbody>
</table>

Table 1.1: Summary of hypotheses, electoral bargaining approach (reproduced from Frye 1997, 534 [Table 1]).

One extreme is when the electoral favorite’s bargaining power is low and uncertainty is high – the top righthand box of Table 1.1. Under these conditions, the president will tend to have few specific powers and very constrained residual powers. With low bargaining power, the electoral favorite cannot veto the establishment of a weak presidency. Furthermore, due to the high level of uncertainty, even the electoral favorite will tend to hedge his bets, thus resulting in the greatest level of restrictions on presidential power. The other extreme is when the electoral favorite’s bargaining power is high and uncertainty is low – the bottom lefthand box of Table 1.1. Under these conditions, the president will tend to have many specific powers and vague residual powers. Under low uncertainty, it is fairly clear who the next president will be. Furthermore, that candidate has high bargaining power, enabling her to have greater
influence on constitutional drafting. Thus this outcome produces the greatest level of power for the president.

Hypotheses regarding the two intermediate outcomes are generated as follows. Frye’s analysis implies that – holding bargaining power constant – reduced uncertainty is associated with lowered constraints on residual powers (i.e. a more powerful presidency) and also that – now holding uncertainty constant – increased bargaining power is associated with a greater number of specific powers. With lower uncertainty and/or greater bargaining power, the electoral favorite will be emboldened to push for fewer restrictions on presidential power. In sum, presidential power increases as one moves from right to left and from top to bottom in Table 1.1.

Alternative Explanations

This study makes use of theories based on a combination of interests rooted in bargaining power and uncertainty as well as of perceptions of Indonesia’s history to construct a coherent and efficient explanation of the Indonesian case. Alternative explanations based on other theories of institutional choice provide less convincing and/or less complete explanations of empirical outcomes in Indonesia.

The explanations presented here are political in nature. An alternative political explanation is that legislatures characterized by high fragmentation and/or weak parties may create strong presidencies to help avoid cabinet instability (Shugart 1993). Indonesia in this period was certainly characterized by high party fragmentation and somewhat weak parties, and has certainly created a strong presidency. Nonetheless, at the end of Chapter Four I will revisit this alternative explanation and discuss why it only illuminates
this correlation and not the reasons behind it. Thus this is ultimately an unsatisfactory explanation.

Another alternative explanation is grounded in political culture. Anderson (1990, chs. 1, 4) and Moertono (1981) make much of the impact of hegemonic notions of power and sultanistic conceptions of the state purportedly shared by many Javanese, as the single largest ethnic group in Indonesia with approximately 42 percent of the population. On the basis of this work, one could conclude that Indonesian elites – or at least that portion influenced by Javanese court culture – would prefer a strong presidency. At the end of Chapter Three, I will return to this explanation and discuss why it fails to capture the nuances of the constitutional reform process in Indonesia.

A third possible explanation is based on economic considerations. Przeworski (1991) posits that economic crises and/or economic restructuring create “losers” – groups that are worse off – who clamor for government attention. Government responses to these demands often have populist tendencies that can produce a more dominant executive. This explanation appears plausible on the surface: in Indonesia, severe and prolonged economic crisis since late 1997 was accompanied by a strengthening of the executive. However, there are two flaws in this explanation for the Indonesian case. First, although many Indonesian politicians’ – including President Megawati Soekarnoputri’s – rhetoric is populist, the reality of the impact of the 1997-1998 economic crisis is that the state has very few resources to dole out to loser groups. Instead, the government has more or less closely followed the International Monetary Fund conditions for aid that have included: fiscal and monetary austerity; reducing or abolishing state subsidies for rice, gasoline, kerosene, electricity and telephone prices; privatization of state-owned enterprises; and
banking sector restructuring. Meeting these conditions has often involved implementing unpopular policies in the face of a storm of protest, and has often meant a reduction in presidential prerogative (particularly from the point of view of patronage resources). Second, although constitutional reform was a general demand of the 1997-1998 popular protest movement that forced President Soeharto to resign, the particular reforms that have been approved can hardly be viewed as responses to mass-based public pressure. Indeed, the MPR did its best to restrict the debate to the political elite.

Finally, societal variables may also be theorized to explain institutional choices. Horowitz (1985) hypothesized that ethnic cleavages are paramount for political decision-making in “severely divided societies,” which may include Indonesia. There are two hypotheses generated by this theory. First, these societies may establish a dual executive in order to expand the targets of political competition for rival ethnic groups. Indonesia has not done so. Second, a dominant ethnic group may favor a strong presidency to unify it in the face of challenges from rival groups. Unlike in other ethnically heterogeneous countries, Indonesian elections have never been an “ethnic census” due to the existence of other cleavages that generally cross-cut ethnicity. While it is true that some parties fare better among Javanese voters and others among non-Javanese, all of the major parties draw support from many different ethnic groups. In fact, elements of the laws on political parties and elections essentially rule out the possibility of the formation of regionally- or ethnically-based parties. All of the parties in Indonesia are national. Thus the Javanese lack a ready political vehicle even if they did favor a strong presidency. Furthermore, it is likely they do not feel particularly threatened by other ethnic groups, the second largest of which (the Sundanese) is only one-third their size.
In sum, competing political, cultural, economic and societal approaches construct less satisfactory explanations of the institutional choices made by Indonesian elites during the constitutional reform process. An analysis focused on a combination of competing groups’ interests, rooted in their relative power in a context of varying uncertainty regarding outcomes, as well as elites’ perceptions of their country’s history, provides a more convincing explanation.

**Research Methodology**

The principal sources for this research were primary documents (such as proceedings of MPR sessions) and open-ended elite interviews. I completed some of the field research for this study through a kind of participant-observation of the transition process. From January 1999 through February 2001, I worked as a senior program officer in the Indonesia field office of the National Democratic Institute for International Affairs (NDI). An important aspect of my duties for NDI was to monitor the unfolding political transition, including the constitutional reform process. As part of this monitoring effort, I observed first-hand the 1999 MPR General Session and the 2000 Annual Session, and I met frequently with MPR and DPR members and other sectors of the national and subnational Indonesian political elite. At many of these meetings, I was accompanied by other NDI staff, particularly Andrew Ellis, NDI/Indonesia’s expert on electoral systems and other constitutional arrangements, for whom I often served as an interpreter. In this informal fashion, I gathered a substantial portion of the initial data. I returned to Jakarta for two months in July and August 2001 to observe the MPR Special Session and to conduct more formal, one-on-one interviews. I conducted further formal interviews in
Washington, DC in 2002 and 2003, as well as in Jakarta in July 2004. Through my extensive network of connections within the DPR and MPR, built both before and during my employment with NDI, I was able to obtain all the necessary primary written materials for my research as well as access to the key members involved in the constitutional reform process. The secondary sources for this research include newspaper and magazine articles and the academic literature on Indonesian politics.

25 A list of the formal, one-on-one interviews I conducted between 2001 and 2004 can be found in Appendix F.
Prior to explaining the institutional choices made by Indonesian politicians as part of the constitutional reform process from 1999-2002 – explanations found in Chapters Three and Four – it is useful first to describe the historical and institutional context for those choices. This chapter begins with a brief discussion of constitutional history in Indonesia, examining the three constitutions introduced between 1945 and 1950. The discussion then focuses on the 1945 Constitution, first describing its intellectual roots in the illiberal political philosophy of organic statism and thus its unsuitability for a democratic order. The remainder of the chapter measures presidential power in three versions of the 1945 Constitution: (1) the original Constitution, (2) following the First and Second Amendments that somewhat weakened the presidency, and (3) following the Third and Fourth Amendments that significantly increased the power of the presidency. This discussion establishes the context for the analyses found in Chapters Three and Four.

The use of the 1945 Constitution as the institutional foundation for two authoritarian regimes created the common perception in Indonesia that it inevitably fostered a dominant executive, and thus one of the primary goals of the reform process
was to restrict presidential power. This perception was not entirely inaccurate; the Indonesian presidency was in fact endowed with a wide array of specific and residual powers. However, what was not widely understood until 2001 was that in a more pluralistic and democratic context, the president could not make full use of those powers due to the constitutional supremacy of the People’s Consultative Assembly (MPR). Presidents Soekarno and Soeharto had been able to neutralize this supremacy by taking advantage of some of the Constitution’s vague clauses to pack the MPR with supporters, rendering it a rubber-stamp assembly. In October 1999, with the incumbent President Habibie’s Golkar Party now controlling only 26.2% of MPR seats and the ten other blocs free to exercise their political rights, the MPR could finally flex its muscles – and did so in dramatic fashion, rejecting Habibie’s accountability speech and thereby scuttling his chances at reelection. The First and Second Amendments further weakened the presidency by strengthening legislative oversight capabilities vis-à-vis the executive branch and restricting some of the president’s residual powers. In particular, the insertion of the national legislature’s right of “interpellation,” or the ability to call the president for questioning, abrogated the principle of executive privilege commonly asserted in pure presidential systems. The vulnerability of the president in the face of an aggressive DPR and MPR was even more graphically demonstrated by the constitutional removal of President Abdurrahman Wahid in July 2001 and his replacement by Vice President Megawati Soekarnoputri.

Paradoxically, this vivid demonstration of the weak position of the presidency vis-à-vis the MPR contributed directly to a re-balancing of this relationship. Megawati and PDI-P abandoned their opposition to and thus joined the consensus on approving the
establishment of direct election of the president and vice president and stripping the MPR of its constitutional supremacy. The Third and Fourth Amendments thus reversed the trend of eroding presidential power. Accompanying direct election, other changes made it much harder to impeach the president, both because the grounds for impeachment narrowed considerably and the procedures became much more complicated. In addition, the president still retained many of the specific powers granted by the original Constitution, particularly the authority to veto legislation with no mechanisms in place for an override by the legislature. Finally, although all four amendments had significantly curtailed the president’s residual powers, she still retained substantial leeway in her use of decree, emergency and martial law powers. In sum, following the full implementation of all four amendments in October 2004, Indonesia will have one of the most powerful democratically-elected presidencies in the world. Later in this chapter, I make use of the Shugart-Carey and Frye-Hellman scales to illustrate this point. First, however, it would be useful to provide a few more details regarding the position of the 1945 Constitution vis-à-vis two other constitutions that have been in force at various times in Indonesia’s modern history, as well as its illiberal philosophical underpinnings.

Three Regimes, Three Constitutions, One Drafter: 1945-1950

Indonesia as a nation-state has no independent history prior to 1945. Its contemporary borders are those of the Netherlands East Indies, a Dutch colony whose roots stretch back to the early seventeenth century. Prior to that time, what is now Indonesia was ruled by a collection of sultanates and empires, none of which ever
achieved control over the entirety of Indonesia’s contemporary territory. Thus as World War II drew to a close, Indonesia needed its first constitution.

At the time, the Japanese controlled the Netherlands East Indies, having invaded in early 1942 and relatively quickly driven out the Allied forces. As Japanese forces continued to suffer a string of defeats across the Pacific at the hands of the Allies in the first half of 1945, by mid-year the Japanese military governor in Batavia (now Jakarta) began to make preparations for Indonesian independence to prevent the restoration of Dutch colonial control (Ricklefs 2001, 259). These preparations included establishing the Investigating Committee for Preparatory Work for Indonesian Independence (Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia or BPUPKI) charged with, among other tasks, drawing up a constitution for the new state. The key drafter for this committee was Dr. Soepomo, a career bureaucrat who had studied in both Europe and Japan.

Under the watchful gaze of his colonial masters, in a matter of weeks Soepomo drafted a constitution said by various observers to resemble the institutions of Japanese wartime fascism, Dutch colonialism and Chinese nationalism. In any case, this draft constitution was clearly infused with the organic-statist political philosophies Soepomo had studied in Europe, as described in the next section in more detail. This draft then began to be discussed in BPUPKI sessions, but this debate was cut short by events elsewhere in the Pacific war theater. Following the Japanese surrender, Indonesian youth leaders kidnapped nationalist heroes Soekarno and Hatta and forced them to declare Indonesia’s independence on August 17, 1945. The following day, the Preparatory Committee for Indonesian Independence (Panitia Persiapan Kemerdekaan Indonesia or
PPKI), successor to the BPUPKI, adopted Soepomo’s draft as the 1945 Constitution for the new unitary republic.

This constitution was never fully implemented in the immediate postwar period, as the Dutch returned to try to retake control of their colony and Indonesian nationalists took up arms to defend independence. Although formally a republican government was established with Soekarno as president and a cabinet was named, this government was forced by the war for independence to flee Jakarta and its members scattered to various locations around the country. At various times between 1945 and 1949, some members of the government, including Soekarno and Hatta, were captured and imprisoned by the Dutch. As a further complication, in October 1945 Vice President Hatta issued Edict (Maklumat) X that in essence established a provisional parliamentary-style government, and Sutan Sjahrir was named prime minister. According to Ricklefs (2001, 268), “after less than three months, the 1945 constitution was suspended in practice, although in theory it remained in force.”

Throughout the first three years of the war for independence, the Dutch set up puppet administrations in the territories their forces controlled. In early 1949, American and United Nations pressure forced the Netherlands to begin preparing to recognize Indonesian sovereignty over its former colony. Over the course of several negotiation sessions, the Dutch forced the republican leaders to accept their puppet administrations as part of the newly independent, federal state. Thus when Indonesian sovereignty was officially recognized by the Dutch on December 27, 1949, the 1945 Constitution was replaced by the Constitution of the Republic of the United States of Indonesia (RUSI Constitution, Undang-Undang Dasar Republik Indonesia Serikat or UUD RIS). The
liberal RUSI Constitution – also drafted by Soepomo – established an indirectly-elected presidential system and incorporated a chapter on human rights based on the new Universal Declaration of Human Rights, perhaps the first constitution anywhere in the world to do so.

Many Indonesian political elites, including President Soekarno, interpreted the Dutch imposition of federalism as an attempt to maintain indirect control over their former colony. In August 1950, on the fifth anniversary of the declaration of independence, Soekarno announced the end of the brief federal experiment and the absorption of the former Dutch puppet administrations into the unitary Republic of Indonesia. In addition to ending federalism, however, this announcement also marked the beginning of nine years of parliamentary democracy under the 1950 Provisional Constitution (Undang-Undang Dasar Sementara 1950, or UUDS 1950). This liberal constitution, the third drafted by Soepomo, retained the chapter on human rights from the RUSI Constitution.26

Following the first national elections ever in Indonesia in 1955, the Constituent Assembly (Konstituante) set about drafting a permanent constitution. Meanwhile, President Soekarno chafed at the minimal powers he was granted as head of state by the 1950 Provisional Constitution. After more than three years of sometimes rancorous debate, the Constituent Assembly by 1959 was nearly finished with its work and

26 When asked how it was that the same man, Dr. Soepomo, could draft both the illiberal 1945 Constitution as well as the liberal RUSI Constitution and the liberal 1950 Provisional Constitution, Adnan Buyung Nasution and Marsillam Simandjuntak – two leading Indonesian constitutional scholars – both described him as a “good bureaucrat-scholar, not a pure academic with strong convictions, whose opinions could change on request.” The “requests” for these three constitutions came from the Japanese, the Dutch, and other Indonesians, respectively. See Interview, Adnan Buyung Nasution, Jakarta, August 16, 2001 and Interview, Marsillam Simandjuntak, Jakarta, August 18, 2001.
appeared headed toward permanently adopting a parliamentary system. Using the excuse that the Assembly had deadlocked over the contentious issue of the relationship of Islam and the state, on July 5, 1959 President Soekarno – with the backing of the military – dissolved the Assembly and declared the 1945 Constitution back in force, ushering in four decades of authoritarian rule (Nasution 1992).

**Organic Statism and the 1945 Constitution**

The original 1945 Constitution was based on the principles of organic statism, or “integralism” as it is known in Indonesia (Bourchier 1997; Simanjuntak 1994). Stepan (1978) contrasts organic statism with classical liberalism and command socialism as models of state-society relations. He argues that organic statism has deep roots in Western legal and political philosophy, stretching back to Aristotle and including Roman law, natural law, Aquinas, Hegel and many Papal encyclicals. His particular interest is in applying this model to the study of Ibero-American Catholic polities, especially Peru in the period 1968-1975.

According to Stepan (1978, 37), the main concepts of organic-statist normative theory are “the political nature of man, the goal of the organically related community in which the subsidiary parts play a legitimate and vital role, the state’s proper role in interpreting and promoting the common good, and the radical changes the state may legitimately impose to create an organic society.” He further argues,

It should be noted that this “common good,” while by no means intrinsically anti-democratic, lends itself to nonliberal legitimacy formulas in organic statism for two basic reasons. First, it opens the possibility that, since the common good can be known by “right reason,” there is no need for a process whereby interest groups express their opinions and preferences in order for the leaders of the state to “know” what the
common good is. Second, ...the pursuit of the common good (rather than elections or representation by group interests) is the measure by which the legitimacy of the state is evaluated. (Stepan 1978, 31)

He also states that,

Organic statism..., as a model of governance, does not maximize any of the polar principles of coordination of the two other modes of articulation between state and society. Such crucial features of organic-statism as the “concession theory” of private associations involve a far more interventionist role for the state in politics than posited in classical liberalism. However the “principle of subsidiarity” posits less penetration of society by the state in organic statism than that posited by command socialism. Organic statism, in theory, accords an important role for the decentralized political participation of semi-autonomous functional groups. (Stepan 1978, 41)

The clearest manifestation of the philosophical heritage of organic statism in the 1945 Constitution was the status, composition and purpose of the People’s Consultative Assembly (MPR). This representative body was the “highest” institution of the state, superior to the president, People’s Representative Council (DPR), Supreme Court and other organs of the state.\(^{27}\) Popular sovereignty (kedaulatan rakyat) was to be implemented “exclusively” by the MPR,\(^ {28}\) whose “power is unlimited.”\(^ {29}\) The MPR was thus the “embodiment” (penjelmaan) of the entire Indonesian nation.\(^ {30}\) In order to ensure the fully representative composition that this implied, the DPR’s membership was supplemented by representatives of the regions and “functional groups” (golongan-golongan) to form the membership of the MPR.\(^ {31}\) This was consistent with the organic-

\(^{27}\) 1945 Constitution, Annotation to Article 1.

\(^{28}\) 1945 Constitution, Article 1(2).

\(^{29}\) 1945 Constitution, Annotation to Article 3.

\(^{30}\) 1945 Constitution, Annotations to Articles 1 and 2.

\(^{31}\) 1945 Constitution, Article 2(1).
statist “model’s assumption of functional parts that are perfectly integrated into a solidaristic whole.” (Stepan 1978, 43) The MPR was also charged with establishing and modifying the conceptualization of the common good on a regular basis: “every five years the Assembly takes into account all developments and trends of the time and determines which orientations (haluan-haluan)\textsuperscript{32} shall be pursued in the future.”\textsuperscript{33}

The tenets of organic statism were further exemplified by what was lacking in the Constitution, such as the specification of elections as the primary basis for political power (including DPR and MPR membership). The implication was that the function of the MPR as the embodiment of popular sovereignty was more important than the exact means by which the members of that body were chosen. Furthermore, the emphasis on social over individual needs was illustrated by the lack of explicit guarantees of fundamental civil and political rights. Those that were mentioned in the Constitution, such as the freedoms of speech, assembly and association, were to be “established by law,” a sufficiently vague phrasing that allowed for their restriction by law as well.\textsuperscript{34}

Although not directly relevant to this study, the articles on the economy also reflected organic-statist principles. For instance, the economic system was to be constructed as a “cooperative enterprise based on the family principle (asas

\textsuperscript{32} In the constitutional usage, “haluan” is a particularly difficult word to translate into English. Its other meanings are nautical: a boat’s prow or the direction a boat is heading. The analogy is thus that if the president has violated “haluan negara,” then he or she is steering the state in the wrong direction. Thus I have translated “haluan” as “orientation.” This is consistent with another political usage of the word to describe someone’s (or a party’s) political orientation, such as “berhaluan kiri” (“have a leftist orientation”).

\textsuperscript{33} 1945 Constitution, Annotation to Article 3.

\textsuperscript{34} 1945 Constitution, Article 28.
Furthermore, natural resources and economic sectors that affected many people were to be controlled by the state “and used to achieve the maximum benefit for the people,” i.e., the common good.36

Organic statism not only provides a useful framework for understanding the philosophical roots of the 1945 Constitution but also helps explain the emergence and nature of the two authoritarian regimes (Guided Democracy and the New Order) that based themselves on that Constitution. For instance, Stepan (1978, 44) states that

Political elites who attempt to create systems that approximate the organic-statist model commonly come to power...in the context of elite perceptions of crisis in pluralist systems and the failure of self-regulating mechanisms. In response to this perceived crisis, the role of the state is broadened and the perceived “responsibility” for the direction of the national economy is shifted from pluralist mechanisms of self-regulation to statist mechanisms.

This is reflected in Indonesia’s history, in which in the late 1950s President Soekarno and the military conspired both to end parliamentary democracy and to nationalize foreign (mainly Dutch) assets.

Outcomes often diverge from intentions, however, as Stepan (1978, 45) also observes:

Partly because of...inherent tensions in the abstract model of organic statism, in most concrete cases of regimes that initially announce organic-statist principles, there is a political tendency to move toward greater control over groups via manipulative corporatist politics (especially with regard to working class groups) than is theoretically posited in the model, and there is a tendency in economic policy to allow greater entrepreneurial freedom for capitalism than is posited in the model. Such regimes thus become authoritarian-corporatist capitalist regimes.

35 1945 Constitution, Article 33(1).

36 1945 Constitution, Articles 33(2) and 33(3).
This is an appropriate depiction of President Soeharto’s New Order regime that followed Soekarno’s Guided Democracy.

In sum, the original 1945 Constitution was an inappropriate foundation on which to erect the superstructure of democracy. Its philosophical underpinnings in organic statism – whether transferred to Indonesia through emulation of Japanese fascism, Dutch colonialism, or Chinese nationalism – rendered the Constitution unsuitable for democratic institutions and practices. The constitutional supremacy of the MPR did not allow for the separation of powers and checks and balances that typify healthy presidential systems. This was reinforced by the lack of explicit protections for basic human rights in the Constitution. In addition to these philosophical considerations, four decades of authoritarianism anchored by the 1945 Constitution served as sufficient evidence for many Indonesians. I now turn from this discussion of the philosophical underpinnings of the 1945 Constitution to a more detailed examination of presidential powers in its original version, using the measures described in Chapter One, as a benchmark for comparison of the impact of the first four amendments.

The Presidency in the Original 1945 Constitution

A widely accepted half-truth in Indonesia was that the original 1945 Constitution created a dominant presidency. This was a truth, but only a half-truth. It was true that within the constellation of the standard three branches of government (executive, legislature and judiciary), the executive was dominant. Besides many of the usual powers granted to the executive branch, primacy in law-making was also given to the president, relegating the legislature to second-class status. There were no formal guarantees of the
independence of the judicial branch from the executive branch and there were no specifications for checks on the president by the Supreme Court.

Nonetheless, it is critical to understand that in Indonesian constitutional terminology, the president, legislature (DPR) and Supreme Court were only classified as “high state institutions” (lembaga tinggi negara). There was another body that was the “highest state institution” (lembaga tertinggi negara) superordinate to them all: the MPR. Given the lack of legislative and judicial checks on the executive, the only potential check on the president was that he was elected by and therefore accountable to the MPR. This remained only a potential check, however, because the Constitution contained loopholes that allowed the president to manipulate the composition of the DPR and MPR. The primary weakness of the 1945 Constitution from the standpoint of checks and balances, therefore, was not that the executive was stronger than the legislature or the judiciary, but rather that neither the eligibility rules for membership in the DPR and the MPR nor the mechanisms to become a member (in a democracy, elections) were specified in the Constitution. These lacunae allowed Presidents Soekarno and Soeharto to manipulate the membership of the DPR and MPR, ensuring their docility and thereby eviscerating the only significant potential check on presidential power contained in the original 1945 Constitution.

The proposition that the (potential) weakness of the Indonesian presidency was primarily due to indirect election by the (potentially) superior MPR – rather than to a lack of specific powers – is supported by the scores on the Shugart-Carey and Frye-Hellman scales of presidential power (see Tables 2.1 and 2.2). The Indonesian presidency under the original 1945 Constitution – along with relevant MPR decrees and legislation – on the
Shugart-Carey scale scored eight (out of 24) on legislative powers and 12 (out of 16) on nonlegislative powers. It had a raw score of 17 (out of 27) and an adjusted score of 8.5 (out of 13.5) on the Frye-Hellman scale.\(^{37}\)

<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Legislative Powers</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Package Veto</td>
<td>4</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Partial Veto</td>
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<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Decree</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Exclusive Introduction</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Budgetary Powers</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Referenda</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total Legislative</strong></td>
<td><strong>8</strong></td>
<td><strong>7</strong></td>
<td><strong>8</strong></td>
</tr>
<tr>
<td><strong>Nonlegislative Powers</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cabinet Formation</td>
<td>4</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Cabinet Dismissal</td>
<td>4</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Censure</td>
<td>4</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Dissolution</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total Nonlegislative</strong></td>
<td><strong>12</strong></td>
<td><strong>12</strong></td>
<td><strong>11</strong></td>
</tr>
<tr>
<td></td>
<td>(Indirect)</td>
<td>(Indirect)</td>
<td>(Direct)</td>
</tr>
</tbody>
</table>

Table 2.1: Specific powers, Indonesian presidency, 1999-2002, Shugart-Carey scale.

As can be seen in Table 2.3, in comparison to the systems measured by Shugart and Carey (1992, 155 [Table 8.2]) the scores reported above fell toward the more powerful end of the spectrum, although by no means were outliers. The Indonesian presidency shared the most common level of nonlegislative power, a score of 12 on the

---

\(^{37}\) Appendix C contains an explanation of my scoring decisions on both scales for all three measurement points (original 1945 Constitution, First and Second, and Third and Fourth Amendments).
### Legislative Powers

**Package Veto**

16. Remands law to Parliament  
   | Original 1945 Constitution | First and Second Amendments (October 1999/August 2000) | Third and Fourth Amendments (November 2001/August 2002) |
   | 1 | 1 | 1 |

17. Sends laws to Const. Court  
   | NA | NA | 1 |

**Partial Veto**

**Decree**

19. Nonemergency decrees  
   | 0 | 0 | 0 |

22. Special powers if Parl. can't meet  
   | 1 | 1 | 1 |

23. Emergency powers at other times  
   | 1 | 1 | 1 |

**Exclusive Introduction**

18. Proposes legislation  
   | 0.5 | 0.5 | 0.5 |

20. Proposes const. amendments  
   | 0.5 | 0.5 | 0 |

**Budgetary Powers**

**Referenda**

2. Calls referendums  
   | 0 | 0 | 0 |

**Legislative Procedure**

21. Calls special sessions of Parl.  
   | 0 | 0 | 0 |

24. Participates in parl. sessions  
   | 0 | 0 | 0 |

25. Address/send messages to Parl.  
   | 1 | 1 | 1 |

**Subtotal Legislative**  
   | 5 | 5 | 5.5 |

### Nonlegislative Powers

**Cabinet Formation**

4. Appoints prime minister  
   | NA | NA | NA |

5. Appoints ministers  
   | 1 | 1 | 0.5 |

**Cabinet Dismissal**

**Censure**

**Dissolution**

1. Dissolves Parliament  
   | 0 | 0 | 0 |

3. Calls elections  
   | 0 | 0 | 0 |

**Cabinet Procedure**

26. Convenes cabinet sessions  
   | 1 | 1 | 1 |

27. Participates in cabinet sessions  
   | 1 | 1 | 1 |

Continued

Table 2.2: Specific powers, Indonesian presidency, 1999-2002, Frye-Hellman scale.
Shugart-Carey scale, but had a fairly high level of legislative power. The score of eight was only equalled or surpassed by four of the 44 constitutions examined by Shugart and Carey. Thus the Indonesian presidency looked strong. Looks were deceiving, however, because all of the presidents studied by Shugart and Carey were directly elected. The indirect method of election used for the Indonesian presidency weakened the president’s power by a significant, although quantitatively indeterminate, factor.

As can be seen in Table 2.4, a similar picture emerged from a comparison of the Indonesian case with the data presented in Frye (1997, 547 [Appendix A]), but with an important difference: using this scale, the appearance of a strong presidency was not entirely deceiving. The Indonesian raw score of 17 on specific powers was at the very high end of the spectrum of cases analyzed by Frye. That score was equalled or surpassed by only three cases: Turkmenistan, Russia’s 1993 “Yeltsin Constitution” and Uzbekistan.
<table>
<thead>
<tr>
<th>Country</th>
<th>Legislative Powers</th>
<th>Nonlegislative Powers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chile 1969</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>Brazil 1988</td>
<td>9</td>
<td>12</td>
</tr>
<tr>
<td>Chile 1925</td>
<td>8</td>
<td>12</td>
</tr>
<tr>
<td>Columbia pre-1991</td>
<td>8</td>
<td>12</td>
</tr>
<tr>
<td><strong>Indonesia 1945 (Original)</strong></td>
<td>8</td>
<td>12</td>
</tr>
<tr>
<td><strong>Indonesia 1945 (4 Amendments)</strong></td>
<td>8</td>
<td>11</td>
</tr>
<tr>
<td>Chile 1891</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>Brazil 1946</td>
<td>7</td>
<td>12</td>
</tr>
<tr>
<td><strong>Indonesia 1945 (2 Amendments)</strong></td>
<td>7</td>
<td>12</td>
</tr>
<tr>
<td>Paraguay</td>
<td>6</td>
<td>16</td>
</tr>
<tr>
<td>Korea 1962</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>Uruguay</td>
<td>6</td>
<td>11</td>
</tr>
<tr>
<td>Korea 1987</td>
<td>6</td>
<td>9</td>
</tr>
<tr>
<td>Ecuador</td>
<td>6</td>
<td>8</td>
</tr>
<tr>
<td>Chile 1989</td>
<td>5</td>
<td>15</td>
</tr>
<tr>
<td>Mexico</td>
<td>5</td>
<td>12</td>
</tr>
<tr>
<td>Panama</td>
<td>5</td>
<td>12</td>
</tr>
<tr>
<td>Philippines</td>
<td>5</td>
<td>11</td>
</tr>
<tr>
<td>Colombia 1991</td>
<td>5</td>
<td>8</td>
</tr>
<tr>
<td>Germany (Weimar)</td>
<td>4</td>
<td>12</td>
</tr>
<tr>
<td>Guatemala</td>
<td>4</td>
<td>12</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>4</td>
<td>12</td>
</tr>
<tr>
<td>Portugal 1976</td>
<td>4</td>
<td>9</td>
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<tr>
<td>El Salvador</td>
<td>3</td>
<td>12</td>
</tr>
<tr>
<td>Nicaragua</td>
<td>3</td>
<td>12</td>
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<tr>
<td>Iceland</td>
<td>3</td>
<td>8</td>
</tr>
<tr>
<td>Argentina (current 1992)</td>
<td>2</td>
<td>12</td>
</tr>
<tr>
<td>Bolivia</td>
<td>2</td>
<td>12</td>
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<td>Dominican Republic</td>
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<td>Honduras</td>
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<td>Cuba 1940</td>
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<td>Nigeria</td>
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<tr>
<td>Korea 1948</td>
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<td>Argentina (proposal 1992)</td>
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<td>7</td>
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<tr>
<td>Romania</td>
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<td>2</td>
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</table>

Table 2.3: Presidential power in Indonesia, compared to cases in Shugart and Carey 1992, 155 (Table 8.2), arranged from most to least powerful.
Table 2.3 continued

<table>
<thead>
<tr>
<th>Country</th>
<th>1982</th>
<th>1983</th>
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<tbody>
<tr>
<td>Portugal</td>
<td>1.5</td>
<td>6</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>1</td>
<td>12</td>
</tr>
<tr>
<td>France</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Venezuela</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>Peru</td>
<td>0</td>
<td>9</td>
</tr>
<tr>
<td>Finland</td>
<td>0</td>
<td>8</td>
</tr>
<tr>
<td>Austria</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Haiti</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Ireland</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

This was hardly good company to keep if one wanted to construct a democratic presidency. Since 1993-94, Turkmenistan and Uzbekistan have ranked at or near the bottom of the Freedom House country ratings.38 In 2004 Human Rights Watch wrote about Turkmenistan that it “has one of the most repressive governments in the world. Its president, Saparmurat Niazov, …has absolute power over virtually all aspects of political and civic life and has crafted a cult of personality compared by many to that of Stalin.”39 At the same time, Human Rights Watch described Uzbekistan as “one of the most repressive countries in the Central Asia region…, with systematic torture of detainees, persecution of Muslims who practice Islam outside of state controlled structures, and harassment of human rights defenders and opposition members.”40

38 Since 1993-94, Turkmenistan has been consistently rated “Not Free” with a 7 (the lowest) on both political rights and civil liberties. From 1993-94 to 1995-96, Uzbekistan shared this dubious distinction, only rising slightly to a 6 on civil liberties since 1996-97. See www.freedomhouse.org/ratings/index.htm.


<table>
<thead>
<tr>
<th>Country</th>
<th>Presidential Powers</th>
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</thead>
<tbody>
<tr>
<td>Directly Elected Presidents</td>
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<tr>
<td>Turkmenistan</td>
<td>18.5</td>
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<tr>
<td>Russia 1993</td>
<td>18.0</td>
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<tr>
<td>Uzbekistan</td>
<td>17.0</td>
</tr>
<tr>
<td>Indonesia 1945 (Original), Raw</td>
<td><strong>17.0</strong></td>
</tr>
<tr>
<td>Indonesia 1945 (2 Amend), Raw</td>
<td><strong>16.5</strong></td>
</tr>
<tr>
<td>Georgia</td>
<td>16.0</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>15.5</td>
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<tr>
<td>Kyrgyzstan</td>
<td>15.5</td>
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<tr>
<td>Belarus</td>
<td>15.0</td>
</tr>
<tr>
<td>Ukraine</td>
<td>15.0</td>
</tr>
<tr>
<td>Croatia</td>
<td>14.5</td>
</tr>
<tr>
<td>Indonesia 1945 (4 Amend)</td>
<td><strong>14.5</strong></td>
</tr>
<tr>
<td>Romania</td>
<td>14.0</td>
</tr>
<tr>
<td>Armenia</td>
<td>13.5</td>
</tr>
<tr>
<td>Moldova 1991</td>
<td>13.0</td>
</tr>
<tr>
<td>Poland</td>
<td>13.0</td>
</tr>
<tr>
<td>Tajikistan</td>
<td>13.0</td>
</tr>
<tr>
<td>Lithuania</td>
<td>12.0</td>
</tr>
<tr>
<td>Russia 1991</td>
<td>12.0</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>10.0</td>
</tr>
<tr>
<td>Moldova 1990</td>
<td>10.0</td>
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<td>Macedonia</td>
<td>6.5</td>
</tr>
<tr>
<td>Slovenia</td>
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<tr>
<td>Indirectly Elected Presidents</td>
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<td>Indonesia 1945 (Original), Adjusted</td>
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<td>Indonesia 1945 (2 Amend), Adjusted</td>
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<td>Hungary</td>
<td>7.25</td>
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<tr>
<td>Albania</td>
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<tr>
<td>Slovakia</td>
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</tr>
<tr>
<td>Czech Republic</td>
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<tr>
<td>Latvia</td>
<td>4.75</td>
</tr>
<tr>
<td>Estonia</td>
<td>4.50</td>
</tr>
</tbody>
</table>

Table 2.4: Presidential power in Indonesia, compared to cases in Frye 1997, 547 (Appendix A), arranged from most to least powerful.

House rating – within the freedom status of “Partly Free” – slowly deteriorated since 1991-92 from a three on both political rights and civil liberties to a five in both categories.
by 2003-04.\textsuperscript{41} In addition to these three countries, the six cases just below the original 1945 Constitution in Table 2.4 (and just above the amended Constitution) have also suffered from extended periods of authoritarian rule under dominant presidents: Georgia, Kazakhstan, Kyrgyzstan, Belarus, Ukraine and Croatia. Indonesia, by comparison, has been moving in the other direction. From 1998-99 to 2003-04, its rating on political rights rose from six to three, although its rating on civil liberties held constant at four.\textsuperscript{42} The point is not that Indonesia’s strong presidency puts it at serious risk of reversion to authoritarianism (I think this is a possible, but relatively unlikely, outcome in the near future), but rather that when one removes the nondemocratic cases from Frye’s data, it becomes even clearer that Indonesia has one of the strongest democratically-elected presidencies in the world.

This picture of an unusually strong presidency was reinforced by a comparison of Indonesia’s adjusted score of 8.5 with the indirectly elected presidents examined by Frye. This group of cases ranged from an adjusted score of 4.5 (Estonia) to 7.25 (Hungary). Even considered as an indirectly elected president, then, Indonesia’s presidency was comparatively powerful.

This conclusion was also bolstered by an examination of the president’s residual powers, following the categories found in Frye (1997, 549 [Appendix C]). In Indonesia under the original 1945 Constitution, these powers were extensive, encompassing sweeping clauses, decree powers, emergency powers, martial law powers and veto powers (see Appendix D). They were counterbalanced only by rules regarding dissolution

\textsuperscript{41} See www.freedomhouse.org/ratings/index.htm.

\textsuperscript{42} Ibid.
of the legislature, interim powers, impeachment and referenda powers. I now provide
details on each of these categories of residual powers.

One of the greatest weaknesses of the original 1945 Constitution was that it
contained significant sweeping clauses. As I have already pointed out, the greatest single
loophole was that the eligibility and mechanisms for membership in the MPR were
vague, especially regarding the nature of the functional group representation (utusan
golongan), and the eligibility and mechanisms for membership in the DPR were
completely unspecified. In addition, the Constitution contained few guarantees of basic
civil and political rights. Article 28 said only that the “freedoms to associate and to
assemble, to express written and oral opinions, etc., shall be established by law.” The
chapter on the judiciary was one of the least specified, only declaring the existence of a
Supreme Court and other judicial bodies without granting them any specific powers or
establishing how their personnel were to be chosen. Article 14 of the Constitution also
bestowed the president with unlimited authority to grant clemency (grasi), amnesty, a
pardon (abolisi) or the restoration of rights (rehabilitasi) to an individual. Finally, the
clauses regarding the economy also provided the president with the potential for
accumulating significant political patronage resources. Article 33(2) stated that “sectors
of production that are important to the state and affect the welfare of many people shall
be controlled by the state.” Article 33(3) stated that the “earth and water and the natural
wealth within them shall be controlled by the state and used to achieve the maximum
benefit for the people.”

Indonesian presidents also enjoyed substantial decree powers, primarily in two
forms: the “government regulation in lieu of a law” (peraturan pemerintah pengganti
undang-undang or “perpu”) and the “presidential decision” (keputusan presiden or “keppres”). The latter were completely unregulated by the Constitution and President Soeharto used them frequently to distribute favors to his family members and cronies. According to Article 22(1) of the 1945 Constitution, the president could issue a perpu under “circumstances of compelling crisis” (hal ihwal kegentingan yang memaksa). However, the Constitution left entirely unclear the critical questions of the criteria for such circumstances and who had the authority to determine when they existed. A moderate check on this power was established by Articles 22(2) and 22(3), which required that a perpu must be approved by the legislature (DPR) during the next session. If the regulation was rejected by the DPR, then it must be revoked.43

The president’s emergency and martial law powers were also construed broadly. Article 12 stated that the president had the authority to declare a state of emergency. The stipulation in the official Annotations (Penjelasan) to the Constitution that this authority was granted to the president as head of state – implying that it was not to be used as head of government for political purposes – was a very weak restriction. It would not take a very creative president to construe challenges to his own political future as threats to the very existence of the state. The laws and regulations that built upon this article dated to 1959 and 1960, the period of establishment of President Soekarno’s authoritarian Guided Democracy regime. They stated that the president had sole authority – with no oversight from the legislature – to declare a state of emergency and to decide when to rescind such

43 Note, however, that the particular phrasing of this clause implied that a perpu’s revocation was not automatic with its rejection by the DPR. Instead, the government was required to take positive action to revoke it. No deadline was specified for this action and no punishment designated if the government delayed or refused to act.
a declaration. Under a state of emergency, the president was granted broad powers of
decree and the authority to severely restrict civil and political liberties.

A great controversy erupted in September 1999 near the end of the transitional
administration of President Habibie when the holdover New Order-era DPR passed a bill
replacing these outdated laws and regulations. The bill on Handling States of Danger
(Penanggulangan Keadaan Bahaya or PKB) was perceived to grant the president and
the military too much discretion. Students took to the streets to protest the passage of the
bill. Security forces opened fire, killing several demonstrators, in an incident that became
known as “Semanggi II.” Since the MPR was scheduled to convene for its Annual
Session the following week to elect a president and vice president, President Habibie
responded swiftly by announcing that he would not sign the bill into law until after an
extended period of “socialization” of its contents to the public. Within weeks, President
Abdurrahman came to power and he too left the bill to gather dust on his desk. President
Megawati has also never signed the bill.

The result of this turn of events was that the laws and regulations from 1959 and
1960 remained in force. Ironically, although the 1999 bill did not satisfy reformists, its
contents were somewhat more restrictive of presidential discretion than the outdated
legislation. For instance, in declaring or ending a state of emergency, the president had

44 Government Regulation in Lieu of a Law (Perpu) No. 23/1959, Articles 1(1) and 1(2).
45 When it was submitted to the legislature by the government in July 1999, the bill’s name was The
Security and Safety of the State (Keamanan dan Keselamatan Negara or KKN).
46 Named for the massive highway cloverleaf (Semanggi) located in the middle of Jakarta; “Semanggi I”
referred to the shooting of demonstrators during the MPR Special Session in November 1998.
“to consult with or gain the approval of” the DPR.\textsuperscript{47} Restrictions of three to six months were placed on the initial allowable length of various states of emergency.\textsuperscript{48} The bill also explicitly stated that efforts to deal with a state of emergency were to remain within the bounds of international law and the protection of human rights.\textsuperscript{49}

The debates over this legislation have not just been academic. Using the more draconian 1959 and 1960 laws and regulations, in June 2000 President Abdurrahman declared a state of “civil emergency” (\textit{darurat sipil}) in Maluku Province in response to escalation of the communal violence that began there in January 1999.\textsuperscript{50} North Maluku Province was later split off from Maluku Province, and the state of emergency remained in force for both provinces. Although beginning in early 2002 President Megawati considered ending the state of emergency in North Maluku, in April 2002 she also mulled the possibility of raising the emergency status of the rump Maluku Province to “military emergency” (\textit{darurat militer}) due to ongoing violence there.\textsuperscript{51} In May 2003 she did in fact declare a military emergency in Aceh, which in May 2004 was downgraded to a state of civil emergency.

\textsuperscript{47} Draft Law on Handling States of Danger, Article 7(1).

\textsuperscript{48} Ibid., Articles 10(1) and 18(1).

\textsuperscript{49} Ibid., Article 4.


The president’s veto powers were also extensive and were not restricted by any checks. Article 21(2) stated that bills not ratified by the president could not be reintroduced during the same legislative session. There were no override provisions and no restrictions on the presidential veto. Thus President Habibie, President Abdurrahman and President Megawati could ignore the bill on states of emergency with impunity. The Constitution made no mention, however, of partial (line item) veto powers.

Not all of the categories of residual presidential powers were biased toward a strong presidency. For example, there were no provisions in the main body of the Constitution for the president to dissolve the legislature, a point underscored in the Annotations. There were also no provisions for interim powers. Finally, the president had no authority to call referenda.

Given the constitutional superiority of the MPR, the procedures for removing the president were the clearest example of (potential) presidential weakness. The main body of the Constitution said only that the MPR had the authority to choose the president and vice president; it said nothing about removing them. However, the official Annotations – which at least since 1959 have been considered to be an indivisible part of the original Constitution – stated that the president was responsible to the MPR, whose “power is unlimited” (kekuasaannya tidak terbatas). The Annotations further stated that the DPR had oversight authority over the executive branch and if the DPR concluded that the president had “truly violated the state orientation (haluan negara) as determined by the

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32 Article 8 of the 1945 Constitution stated that the vice president was to serve out the remainder of the president’s term if the latter was to “die, resign or be unable to perform his/her duties.” Article 5(2) of MPR Decree VII/1973 stated that if both the president and vice president were unable to fulfill their duties, then a triumvirate of the foreign minister, defense minister and home affairs minister would govern until the MPR convened in special session within one month to elect a new president and vice president (who would serve out the remainder of the original term).
Constitution or the MPR,” then the MPR could be called to convene in special session to hold the president accountable. Specific procedures based on these clauses from the Annotations, including a three-step memorandum process, were included in MPR Decree III/1978 (People’s Consultative Assembly 2001). Since “state orientation” was defined as including MPR decrees, which often included policy guidelines, then charges brought against the president could be either legal or political (unlike most pure presidential systems, in which impeachment charges normally must be based on violations of the constitution and/or laws). Political charges, such as policy disagreements or allegations of (noncriminal) mismanagement, usually have a lower evidentiary threshold for “conviction” than legal charges.

In summary, a widespread perception among Indonesian politicians and the public alike was that the 1945 Constitution established a strong presidency. This perception was largely based on the dominant role played by Presidents Soekarno (during Guided Democracy) and Soeharto for almost four decades. For instance, in 1998 Amien Rais – a political scientist with a Ph.D. from the University of Chicago who founded and led the National Mandate Party and later became MPR speaker – stated that “with the 1945 Constitution, the power of the chief executive is too great. In time Bung Karno and Pak Harto seemed more like monarchs than presidents of a republic.” (Mastoem 1998: 101)

The constitutional loopholes regarding the composition and formation of the MPR allowed President Soeharto to manipulate its membership such that it was unthinkable that the complex impeachment procedures summarized above would ever be used against him. In short, although on paper he was responsible to the MPR, in fact he was accountable to no one. Because he wrapped himself in the mantle of the 1945
Constitution, it was therefore assumed that under any circumstances it would produce a dominant executive.

This has turned out not to be the case, however, in the context of the greater political pluralism and competition that has existed since 1999. The experiences of Presidents B.J. Habibie and Abdurrahman Wahid give weight to this caveat. As had his predecessor a half-dozen times, Habibie was required to present an accountability speech to the MPR at the end of his term in October 1999. Unlike his predecessor, however, Habibie’s speech was rejected by the Assembly, effectively ending his reelection bid. Based on the accountability and removal procedures associated with indirect election, President Abdurrahman was removed by the MPR in July 2001 when he lost the political support of the vast majority of MPR members. This very real threat of removal – now vividly demonstrated for the current and future presidents – meant that the Indonesian president was not as free to make use of his or her extensive powers as a directly elected president with those same powers would have been.

Following the June 1999 legislative elections, Indonesian politicians began preparing for the MPR Annual Session in October that would elect the president and vice president. This was also the first opportunity for these democratically elected legislators to address fundamental constitutional reforms that had been postponed at the outset of the transition with the agreement to retain the 1945 Constitution. Given limited time, a full agenda, and resistance to amendments by PDI-P and TNI/POLRI, MPR members approved a limited package of reforms bundled as the First Amendment and agreed to empower a subcommittee to continue to meet throughout the ensuing ten months to consider further reforms at the August 2000 Annual Session. The expectation at the time
was that the amendment process would be completed at this session. Instead, solely due to clever delaying tactics by the conservative wing led by PDI-P and including TNI/POLRI, this session resulted in the approval of more important but still limited reforms as the Second Amendment and a new timetable of two more years for further discussion. The partial nature of these reforms contributed to the subsequent presidential crisis, as President Abdurrahman Wahid and DPR members battled over the basic nature of the system: presidential or parliamentary? Following Abdurrahman’s removal and replacement by Vice President Megawati Soekarnoputri at the MPR Special Session in July 2001, the postponed Annual Session in November passed another significant package of reforms as the Third Amendment. This multiphase process of constitutional reform was completed with the passage of the Fourth Amendment at the August 2002 Annual Session in preparation for the next scheduled elections in 2004. Taken together these four amendments represent in essence a wholly new constitution: a pure presidential system with a bicameral national legislature, judicial checks on the president and the legislature, a bill of rights and significant devolution of power to subnational authorities.

The weakness of the Indonesian presidency in the original 1945 Constitution due to indirect election was subsequently exacerbated by the First and Second Amendments, which introduced minor reductions in specific powers and significant reductions in residual powers. Although this study is primarily focused on the final outcome of the process as reflected in all four amendments taken together as a package, a snapshot of the amendment process as it stood in July 2001 – following the Second Amendment – is critical to understanding Megawati’s and PDI-P’s switch to supporting direct election in
November 2001. Using the scales described in Chapter One, the following sections thus measure presidential authority in the amended 1945 Constitution at two points in time: in the middle of the process (following the Second Amendment) and at the end of the process (following the Fourth Amendment).

The First and Second Amendments: Redefining Executive-Legislative Relations, Weakening the Presidency

Based on their perception of an inevitably dominant executive branch under the 1945 Constitution, politicians in the MPR set out in October 1999 to redefine executive-legislative relations on a more equal footing. They focused on the relationship between the president and the DPR, which was in fact characterized by severe presidential dominance, while ignoring the larger context of the relationship between the president and the MPR. In this latter relationship, although the president had the upper hand in terms of the day-to-day operation of the government, in the end she was accountable to what has become since 1999 a lively and aggressive MPR.

The scope of the First Amendment was limited to nine articles out of the 20 originally proposed for amendment. This was due both to the strong resistance to any amendments at all by the PDI-P and TNI/POLRI blocs and to the limited time between the inauguration of the new MPR on October 1 and the completion of the General Session on October 21. Taken as a whole, the changes to these nine articles focused mainly on shifting primary control of the legislative process from the president to the DPR. This shift is captured most clearly by a comparison of Articles 5(1) and 20(1) from the original Constitution and the First Amendment. In the original Constitution, these articles stated, “The President shall hold the power to make laws with the approval of the
DPR” and “Every law shall require the approval of the DPR,” respectively. In the First Amendment, these articles were changed to read, “The President has the right to submit bills to the DPR” and “The DPR shall hold the power to make laws,” respectively. Overall, however, the First Amendment only began to scratch the surface.

The Second Amendment (and its accompanying MPR decrees) was much more comprehensive than the first, although it also did not contain all of the proposed amendments, again due to opposition from the conservative wing led by PDI-P and TNI/POLRI. The reductions in the president’s powers contained in this amendment were largely within the categories of residual powers.

The minor reductions in specific powers are captured by the Shugart-Carey and Frye-Hellman scales (see Tables 2.1 and 2.2). The score on the Shugart-Carey scale dropped slightly on the dimension of legislative powers from eight to seven, a reflection of the fact that primary responsibility for the legislative process was shifted from the president to the DPR. The president’s nonlegislative powers on this scale remained unchanged at 12. The raw and adjusted scores on the Frye-Hellman scale weakened slightly, from 17 to 16.5 and from 8.5 to 8.25, respectively, due to the stipulation in MPR Decree VII/2000 that the president’s choice for supreme commander of the armed forces would now have to be approved by the DPR. The Frye-Hellman scores regarding legislative powers remained unchanged, a reflection of the more general wording of the relevant item on the Frye-Hellman scale (“proposes legislation”) compared to the Shugart-Carey scale (“exclusive introduction of legislation”). MPR Decree VII/2000 did not impact the Shugart-Carey scores because that scale does not measure powers associated with the president’s role as commander in chief.
More significant changes occurred to the president’s residual powers (see Appendix D). The most important changes occurred within the category of sweeping powers. The revised Article 19(1) stipulated that DPR members were to be chosen by election, ensuring that the appointed seats for the military and police would be abolished in 2004. This significantly curtailed the president’s ability to render the MPR toothless by manipulating the membership of the DPR. The Second Amendment also included a comprehensive chapter on human rights, Articles 28A to 28J. Many of the clauses in this chapter were drawn directly from the Universal Declaration of Human Rights, as had been the case for the RUSI Constitution and the 1950 Provisional Constitution. The guarantees of the rights of assembly and association contained in this chapter, if enforced, would end the president’s ability to disband political parties. Both Presidents Soekarno and Soeharto had banned certain parties and forced others to merge, as effective weapons against their political opponents. Under the new Articles 14(1) and 14(2), the president could only grant clemency and restoration of rights “with consideration to the views of the Supreme Court” and could only grant amnesty and pardon “with consideration to the views of the DPR.” This was a much lighter restriction, however, than requiring the outright approval of the Supreme Court and the DPR.

Regarding the president’s decree powers, MPR Decree III/2000, Article 3(6) restricted the scope of presidential decisions (keputusan presiden or keppres) to administrative matters. This was in response to President Soeharto’s abuse of this type of executive regulatory capability to distribute favors to his family members and cronies. MPR Decree III/2000, Article 3(4) simply reiterated the stipulations in Articles 22(2) and
22(3) of the Constitution that every government regulation in lieu of a law (perpu) must either be approved during the next legislative session or, if rejected, must be revoked.

In terms of impeachment procedures, Article 20A(2) stipulated that the DPR as a body had the rights of “interpellation” (hak interpelasi) – i.e. the right to call the president before the legislature for questioning – and of inquiry (hak angket). The former right is a common feature in parliamentary systems vis-à-vis the prime minister – as in “question time” in the British system – whereas the latter right is a common aspect of legislative oversight of the executive branch in any type of system. The DPR exercised both of these rights in its clashes with President Abdurrahman leading up to his removal. For instance, in January 2001 the DPR special committee investigating the Buloggate and Bruneigate scandals attempted to call the president for questioning. He refused, then acquiesced to a “dialogue” (rather than questioning) to take place at a neutral location other than the palace and the legislature. The president opened this dialogue at the Jakarta Convention Center on January 22 with a brief statement, refused to be sworn in, and then walked out when the committee could not clarify if the dialogue was a legal or a political forum (the president refused to attend a legal forum, arguing that legal matters should be settled by the judicial branch).

Under the heading of veto powers, only the wording rather than the essence of the power relationship changed – i.e. the president clearly still has the upper hand. The president’s veto powers were now expressed in a rather unusual way. According to the revised Article 20(2), a bill now required the “joint approval” (persetujuan bersama) of the DPR and the president. The new Article 20(3) contained the essence of the original
Article 20(2): “If a bill fails to achieve joint approval, that bill shall not be reintroduced within the same session of the DPR.” There were still no override provisions.

The DPR subsequently amended its rules of procedure to take into account these changes, establishing a four-step legislative process. The four steps differ slightly depending on whether a bill originates in the legislative or executive branch. The first step is the introduction of the bill in plenary by the sponsoring branch and the second step is a response in plenary by the other branch. The third step is committee deliberations and the fourth step is a vote in plenary session. The second and third steps in this process are the key arenas for achieving joint approval. For a bill that originates in the legislature, during the second step the president can effectively veto the bill (even though the term “veto” itself is never used in the Constitution or the DPR rules of procedure) by refusing to provide a cabinet member with a “presidential mandate” (amanat presiden or “ampres”) to respond in plenary. Lacking this response, the legislative process on that bill cannot move forward to committee deliberations. During the third step, the president’s veto can be exercised by withholding his or her approval at the end of the committee deliberations, blocking the bill from being sent to plenary for a final vote.

The joint approval clause was tested in 2002 in the case of a bill dividing Riau Province into two new provinces, one on the mainland of Sumatra and one for the archipelago surrounding Singapore and the Malaysian Peninsula. The DPR agreed with the establishment of the new provinces but President Megawati was hesitant given that the Riau provincial council and Riau Governor Saleh Djasit had both opposed the division of their province. Several DPR members threatened publicly to pass the bill
without the president’s approval but within days their threat evaporated due to the wording of Article 20(2) requiring joint approval.53

The Second Amendment added Article 20(5) that stated, “In the event that the President fails to sign a jointly approved bill within 30 days following such approval, that bill shall legally become a law and must be promulgated.” This would appear to abolish the president’s pocket veto of a bill he opposed, except that under the joint approval clause the bill would never have made it to the president’s desk without his approval. Thus the only scenario prohibited by this new clause was if the president allowed a bill to achieve joint approval but then before signing it had a change of heart. (In essence this is what happened with the emergency powers bill in October 1999.) In other words, this was not a significant check on the president’s veto powers.

The First and Second Amendments and related MPR decrees made no changes to the residual powers regarding dissolution of the legislature, emergency and martial law powers, interim powers and referendum powers.

In summary, the First and Second Amendments redefined the balance of power between the executive and the legislature, slightly reduced the president’s specific powers and significantly reduced the president’s residual powers. Of the broad range of sweeping clauses found in the original 1945 Constitution, only those regarding the judiciary and the economy remained untouched. In addition, the president’s decree powers were restricted and the legislature was granted rights that facilitated the president’s removal. The DPR and MPR also vividly underscored the newfound weakness of the Indonesian presidency.

(and conversely, the strength of these representative bodies) when— for the first time ever— they exercised the removal procedures in MPR Decree III/1978 against President Abdurrahman.

**The Third and Fourth Amendments: Direct Election of a Strong President**

The Third and Fourth Amendments emphatically reversed the trend of a weakening executive evident from the First and Second Amendments. The single most significant change was the initiation of direct, popular election of the president and vice president beginning with the next elections in 2004. For the first round of the presidential election, if no ticket achieves a simple majority of the national vote, as well as at least 20 percent in at least half the provinces, then a second round runoff between the top two vote-getting tickets is necessary. Given the convention used in the Frye-Hellman scale of halving the powers of indirectly elected presidents, this change resulted in an automatic upward spike on that scale (see Table 2.2). The qualitative caveat attached to the scores on the Shugart-Carey scale is also removed by this change (see Table 2.1).

This dramatic increase was accompanied by other changes that are more mixed, some increasing and some decreasing the president’s powers. The MPR continued to chip away at the president’s specific powers, reflected in another decrease in the raw score on the Frye-Hellman scale. In addition, significant changes were made regarding the president’s residual powers, some favorable to the president and some not.

On the Shugart-Carey scale, the score on legislative powers rose from seven to eight and the score on nonlegislative powers dropped from 12 to 11 (see Table 2.1). The gain on legislative powers was due to the revised Article 23(2) that reintroduced an
element of the presidential power of exclusive introduction of legislation, in this case the national budget. The loss on nonlegislative powers was due to the addition of the new Article 17(4), which stated that the “formation, alteration and dissolution of ministries of state shall be regulated by law.” This clause was a response to various presidents’ predilection, in forming cabinets, to shuffle parts of ministries and sometimes even whole ministries as if rearranging patio furniture. For example, President Abdurrahman’s first cabinet abolished the ministries of information and social affairs and created new state ministries for regional autonomy and human rights. In his second cabinet less than a year later, these two new ministries were absorbed by the Ministry of Home Affairs and the Ministry of Justice, respectively. In the terms of the Shugart-Carey scale, this new clause somewhat restricted the president’s power in cabinet formation. The president now could name ministers only to those posts that had already been established by law. Although this restriction was not explicitly addressed by Shugart and Carey (1992, 150 [Table 8.1]), it should nonetheless be measured as a reduction in presidential discretion. Thus the score in the category of cabinet formation drops from four to three.

The Frye-Hellman scale shows similar changes (see Table 2.2). The score decreases from 16.5 to 14.5, but this consists of a 3.5-point loss partially offset by a 1.5-point gain. That gain is due to the establishment of the Constitutional Court, making it possible to calculate scores for two of the three elements that previously had been inapplicable to the Indonesian system. The president shares with the DPR and the Supreme Court the authority to appoint judges to the Constitutional Court and has the power to send laws to the Court for review. The 3.5-point loss is spread over five elements. The Fourth Amendment stripped the president of his or her ability to propose
constitutional amendments, reserving that power exclusively for the MPR and dropping this element from 0.5 to zero. As discussed above, the new rule for cabinet formation drops the score on this element from one to 0.5. In addition, under the new central bank law based on Article 23D (a part of the Fourth Amendment), the president no longer fully controls the process for selecting the bank’s board of governors. The president now must send nominees to the DPR for a “fit and proper test” and final selection, dropping the score on this element from one to 0.5. As a result of the Third Amendment, the president has also lost the power to select Supreme Court justices, who are now nominated by the new Judicial Commission for approval by the DPR. Although the president has the power to appoint and dismiss members of the Judicial Commission, this must also be done with the approval of the DPR. Thus the ability of the president to influence the composition of the Supreme Court is so attenuated as to drop this element from one to zero. The other one-point reduction reflects the fact that the authority to manage the judicial system – including by appointing judges – has now passed from the president (through the Ministry of Justice and Human Rights) to the Supreme Court. This is a result of progress made as part of a five-year transitional process begun by the Habibie administration to enhance the separation of powers between the executive and judicial branches.

The president’s residual powers also underwent significant changes, some increasing and some reducing those powers (see Appendix D). A major boost to the president’s position was the narrowing of the basis for impeachment. This change was a direct response to the presidential crisis of 2001 and was also consistent with direct election of the president. The MPR’s power was no longer formally unlimited. The new Article 3(3) also stated that the MPR could only remove the president or vice president
before the end of her term “in accordance with the Constitution.” Although this sounded innocuous and perhaps even self-evident, the consequence was that the Broad Outlines of State Orientation (GBHN) could no longer be used by the MPR to remove a president. In Article 7A, the justifications for impeachment were reduced to two: legal charges – specifically limited to treason, corruption, bribery, other high crimes, or immoral acts – and no longer fulfilling the criteria to be president or vice president. The latter would include, for example, being declared no longer medically fit for the position. No longer could the MPR remove the president based on MPR decrees and based on policy or other political differences.

The impeachment procedures were also more greatly specified and are comparatively difficult. According to Articles 7B(1), 7B(3) and 24C(2), if the DPR believes that the president should be removed, then a special majority of two-thirds present of a two-thirds quorum must request the Constitutional Court to weigh the evidence and reach a verdict. Under Articles 7B(4) and 24C(2), the Court is required to respond to this request and has only 90 days to reach a verdict. If the Court returns a guilty verdict, then the DPR can request that the MPR convene to remove the president (Articles 7A, 7B(1) and 7B(5)). According to Articles 7B(6) and 7B(7), the MPR must convene within 30 days, the president is allowed to defend herself, and a decision to remove requires a special majority of two-thirds present of a three-quarters quorum. The same procedures apply to the vice president.

The most significant reductions in the president’s residual powers occurred in regard to the sweeping clauses. An upper chamber of the national legislature, the Regional Representative Council (Dewan Perwakilan Daerah or DPD), was established
that provides a further check on the executive (Article 22C(1)). Its members are to be individual (non-party) nominees chosen by election (Article 22E(4)); DPR members may only be party nominees (Article 22E(3)). The new chapter on elections requires that they be free and fair and be conducted by an independent election commission (Articles 22E(1) and 22E(5)). Following the 2004 elections, the MPR will consist solely of a joint session of the People’s Representative Council (DPR) and the DPD. The proposal to maintain a third element in the MPR, the functional group representation, was defeated – closing the final loophole allowing for military and police delegates in the MPR. With all MPR members now to be subject to popular election, the president’s ability to manipulate its membership has been drastically reduced to whatever level of influence the president has over candidate selection for the DPR within his or her own party, and whatever ability the president has to convince non-party-based supporters to run for DPD seats.

The Third Amendment also strengthened and expanded the prohibition on dissolution of the legislature. The new Article 7C states that the president cannot dissolve or suspend the DPR. This was a direct response to President Abdurrahman’s attempt to suspend the MPR and DPR in July 2001.

The judicial branch’s checks on the executive and legislative branches were also specified in greater detail. Under the new Article 24A(1), the Supreme Court is the court of final appeal and can review legal products below laws in the hierarchy vis-à-vis laws. According to Article 24C(1), the Constitutional Court is the first and only court for reviewing laws vis-à-vis the Constitution, for resolving constitutional conflicts among other state institutions, for making decisions regarding the dissolution of political parties, and for resolving conflicts over election results.
The Third and Fourth Amendments made no changes to the president’s decree powers, emergency and martial law powers, veto powers, referendum powers or interim powers.\(^{54}\)

Taken as a package, the four amendments to the 1945 Constitution have almost completely undermined the organic-statist elements in the original document and replaced them with a much more liberal framework that may well prove to be a solid foundation for the consolidation of Indonesia’s second democratic experiment. Nonetheless, despite the slight reductions in specific powers and significant reductions in residual powers throughout the amendment process, the Indonesian president remains comparatively a very powerful chief executive. This will especially be true after direct election is implemented in 2004. The single greatest source of the weakness of the presidency – the constitutional superiority of the MPR – was completely abolished. The president will share with both chambers of the legislature the aura of democratic legitimacy that accompanies direct election. The narrowed basis for impeachment means that the president can no longer be removed on the grounds of policy differences or accusations of political mismanagement. The president’s de facto veto power – with no provisions for override by the legislature – consolidates his dominance in the legislative process and he retains significant decree, emergency and martial law powers.

Given that Indonesian politicians began the process of constitutional reform committed to curtailing presidential power, how did they complete this process three

\(^{54}\) Regarding the latter, the new Article 8(3) states that if simultaneous casual vacancies are to occur in the presidency and vice presidency, then presidential duties will be carried out in the interim by the triumvirate of foreign minister, home affairs minister and defense minister. The MPR is required to meet within 30 days to elect a new president and vice president to serve out the remainder of the term. These procedures, however, do not affect presidential power per se.
years later by creating one of the most powerful democratically-elected presidencies in the world? The next two chapters answer this puzzle, first by explaining the changing positions taken by Megawati and PDI-P and then by examining the position taken by the other four major party blocs in the MPR.

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CHAPTER 3

SELF-INTEREST AND INSTITUTIONAL CHOICE

In the MPR deliberations over constitutional amendments, the key swing role was played by Megawati Soekarnoputri and her Indonesian Democracy Party-Struggle, PDI-P. This party, the single largest bloc in the MPR, led a conservative wing that also included the military and police bloc (TNI/POLRI) and a small bloc (KKI) consisting of representatives of eight secular nationalist parties that always followed the lead of PDI-P and TNI/POLRI. If PDI-P joined the consensus position of the other major party blocs, then TNI/POLRI would follow its lead to avoid standing alone against all the parties. If PDI-P disagreed with the other major party blocs, then the conservative wing together controlled slightly more than the minimum one-third of seats needed to defeat a vote on amendments.

Megawati’s and PDI-P’s position on direct election of the president and vice president underwent a dramatic reversal between July and November 2001. During the deliberations over the First and Second Amendments in 1999 and 2000, PDI-P opposed direct election and other amendments, and was successful in postponing decisions on these items while acquiescing to more limited amendments. At the November 2001 MPR Annual Session, however, PDI-P leaders surprised their colleagues by announcing that
they now supported direct election, and the Third Amendment passed at that session included the principle of direct election in the first round of the presidential electoral system. PDI-P also supported the Fourth Amendment in August 2002 that cemented the position of this principle in the amended 1945 Constitution by establishing that the second round would also be by direct election. The establishment of direct election is the single most important reason that Indonesia after 2004 will have one of the strongest democratically-elected presidencies in the world.

This chapter examines the causes of this dramatic reversal in PDI-P’s position on direct election. The first section describes PDI-P’s unique position as a conservative element of the prodemocratic opposition to the authoritarian regime. The second section draws on the electoral bargaining approach to explain why PDI-P acquiesced to the First and Second Amendments that further weakened the Indonesian presidency. The third section describes the presidential crisis of 2001 and the impact it had on Megawati’s and PDI-P’s thinking regarding the original 1945 Constitution. The fourth section again draws on the electoral bargaining approach to explain the reversal of PDI-P’s position on direct election in 2001. The fifth section describes the concessions PDI-P was able to extract from the other parties in exchange for this support for direct election. The conclusion discusses the limitations of an alternative explanation for PDI-P’s behavior rooted in political culture.

A Conservative Element in the Prodemocratic Opposition

A distinctive element in Indonesia’s transition was the political position occupied by Megawati and PDI-P. On the one hand, they were clearly part of the opposition to the
authoritarian regime. After Soeharto and his operatives forcibly ousted her from the PDI leadership in July 1996, she became the most prominent symbol of victimization by and nonviolent resistance to the New Order. Nonetheless, her preferences regarding the institutions and policies of the new democracy were quite conservative, in the literal sense of preserving the status quo. She was opposed to devolving significant power to subnational authorities, out of fear that it would become the first step toward national disintegration. She favored a repressive, military response to separatist movements in various parts of the country rather than the political response of negotiation with disaffected groups. She was also close to the military in other ways and resisted pressures for military accountability for past human rights abuses. Once Megawati became president, progress on further reducing the military’s institutionalized role in political and economic affairs continued to slow down. In addition, she was soft on corruption.

Most relevant for this study, Megawati and PDI-P firmly resisted all attempts to amend or replace the 1945 Constitution. Until 2001 they were particularly opposed to direct election of the president and the establishment of an upper house of the national legislature to represent regional interests, linking the latter to federalism. Their conservatism regarding the Constitution was both politically and ideologically motivated. Politically, many in PDI-P thought it inevitable that Megawati would some day become president and most thought that day would be sooner rather than later. Given those expectations, they did not wish to circumscribe significantly the broad powers granted to the presidency by the 1945 Constitution. At this point, few PDI-P leaders were aware that in a democratic context, the presidency was a less powerful institution than it had been during the authoritarian period.
In addition, one of Megawati’s greatest fears was that reopening the debate from the 1950s on an Islamic state would repolarize Indonesian society and perhaps eventually lead to national disintegration. As the Preamble to the 1945 Constitution guarantees a multidenominational state based on Pancasila, she feared that amending any part of the Constitution would open the door to amending the Preamble as well. Ideologically, Megawati and PDI-P saw the Constitution as a venerated inheritance of the independence movement generally and President Soekarno (Megawati’s father) specifically. In constructing history in this way, they ignored the fact that Soekarno himself made it very clear at the time that he saw the 1945 Constitution as a provisional document that would be in force only until a constituent assembly could be elected and convened to draw up a permanent constitution (Yusuf and Basalim 2000, 58-59). They also argued that the authoritarian regimes of the previous four decades were not inevitable products of the 1945 Constitution but rather resulted from an imperfect or irresponsible implementation of it.

This conservatism regarding the 1945 Constitution impacted the overall transition and constitutional reform processes in several important ways. First, as the transition began in 1998, Megawati’s conservatism meant that the opposition forces could not agree on a strategy to press for a cleaner break with the authoritarian period. Amien Rais at first pressed for replacing the 1945 Constitution, or at least making significant amendments to it before new elections were held, but had to abandon this position in the face of Megawati’s opposition to it. This contributed significantly to the retention of the nondemocratic 1945 Constitution as the institutional framework for the democratic transition. Second, Megawati’s and PDI-P’s resistance to amendments was a significant
(although not the only) cause of the limited nature of the First Amendment and the sole reason that constitutional reforms were not completed in August 2000, lengthening the process for a full two more years. This extended, partial, multiphase process of constitutional amendment exacerbated the presidential crisis of 2001, a crisis which easily could have turned much more violent than it did, thereby threatening the success of the transition itself.

**Acquiescence to the First and Second Amendments**

Despite their firm opposition in principle to constitutional amendment, in 1999 and 2000 Megawati and PDI-P grudgingly acquiesced to the First and Second Amendments. As shown in Chapter Two, these amendments significantly reduced the president’s residual powers but made only minor changes in specific powers – and in any case, Megawati and PDI-P were highly successful at these MPR sessions in forcing postponement of decisions on many other issues. The electoral bargaining approach outlined in Chapter One can shed light on this seemingly contradictory behavior.

In this section, I provide evidence that the electoral favorite’s (Megawati’s) party, PDI-P, had high bargaining power in the MPR due to its ability to form a veto coalition that commanded more than one-third of the members. As the electoral favorite, Megawati and PDI-P opposed most amendments, for one of the important goals of many proposed amendments was to reduce executive power and strengthen the legislature. This opposition to amendment coincided with the ideological commitment to the original 1945

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Constitution of a significant faction within PDI-P. In a context of high uncertainty about the presidential election outcome in 1999 and 2000, however, even the electoral favorite wanted to hedge her bets and thus was willing to allow for some restrictions on presidential power. This position on amendments coincided with another interest pulling Megawati and PDI-P in the opposite direction from their ideological commitment to the original Constitution: jockeying for position within the “reformist” camp leading up to the 2004 elections. Thus some amendments were passed that began to restrict presidential power, but decisions on many of the most central issues were postponed until 2001 and 2002.

Bargaining Power of the Electoral Favorite

The primary actors in the constitutional reform process were the political blocs (fraksi) in the constituent assembly, the MPR. The analysis in this and the following chapter will focus on the positions taken by the five largest party-based blocs (PDI-P, Golkar, PPP, PKB and Reform) and the military/police (TNI/POLRI) bloc, out of a total of 11 blocs in the MPR at the time. Each of the party-based blocs had a clear leader (usually the national chairperson of the party) who was also the bloc’s candidate for one of the four plum political posts: president, vice president, MPR speaker and DPR speaker. The individual candidate’s bargaining power was thus equivalent to his bloc’s bargaining power: the number of seats it held in the MPR. For the period encompassing the First and

56 At its November 2001 Annual Session, the MPR approved the reestablishment of a twelfth bloc – the regional delegates (utusan daerah) – as an interim measure until the new upper house, the Regional Representative Council (Dewan Perwakilan Daerah or DPD), is formed in 2004. This bloc was formally reestablished in January 2002.
Second Amendments (October 1999 to August 2000), the makeup of the MPR was constant, aside from minor variations due to casual vacancies.

The military/police bloc played a safe, conservative strategy that both meshed with its institutional interests and avoided drawing attention to its essentially untenable constitutional position – from the standpoint of presidential democracy – as an element of the executive branch with voting rights in a legislative body. It did not publicly support or oppose any of the party-based candidates and also did not have a public position on the candidacy of Minister of Defense/Supreme Military Commander Gen. Wiranto for various political positions (including the presidency and vice presidency) in October 1999. In constitutional debates, although conservative at heart TNI/POLRI tended to follow PDI-P’s lead. If PDI-P agreed with the other major party blocs, TNI/POLRI was forced to go along so as not to stand out in opposition to all the major parties, even if its own position was different. However, if PDI-P as the most conservative party took a different position from the more progressive parties (as it did on many important issues, including direct election, in 1999 and 2000), then TNI/POLRI was a solid supporting player in the conservative wing of the MPR.

The general constituency/outlook, bargaining power and expected presidential candidate of all of the MPR blocs is found in Appendix E. No bloc held anywhere near a majority: PDI-P, the largest bloc, had only 27 percent of the seats. Furthermore, the power of the two largest blocs, PDI-P and Golkar, was roughly equal. This was a significant change from the balance of power in the DPR, in which PDI-P held 153 seats to Golkar’s 120, out of a total of 500. Golkar took advantage of its greater share of the vote in the Outer Islands (i.e. outside of the political and demographic center of Java),
combined with its greater political experience, to win the lion’s share of the regional delegates in the MPR, who were elected indirectly by the provincial councils.

Following these two blocs, which were both broad-based in electoral support and secular nationalist in outlook, there were three medium-sized party-based blocs that represented various Muslim constituencies: PPP, PKB and Reform (PAN and PK). PK represented conservative modernist Muslims, but had formed a legislative alliance with the more moderate modernist PAN, largely muting its voice. PKB was the main political vehicle for traditionalist Muslims and was a solidly moderate party. PPP was a conglomeration of modernist and traditionalist Muslim factions. Although PPP held mainstream progressive views on many other constitutional issues, regarding the relationship of Islam and the state it was forced to cover its right flank from more conservative Muslim parties, which had nothing to lose by advocating amendment of Article 29. The military and police bloc was significantly smaller than any other party-based bloc, but was a key element in the conservative wing of the MPR led by PDI-P.

Based on PDI-P’s clear plurality victory in the June 1999 general elections (34 percent to Golkar’s 22 percent), Megawati Soekarnoputri was the overwhelming favorite to win the presidency in the months between the elections and the MPR General Session in October 1999. “Having won about 35 percent of the vote in last week’s elections, Megawati knows she may soon be president of Indonesia. ‘With discipline and pride,’

57 Article 29(1) of the 1945 Constitution stated that “The state shall be based upon belief in the One and Only God,” using the phrase from the first principle of Pancasila. Beginning in early 2000, the small conservative Muslim party PBB proposed – and was then joined by PPP – to amend this article by adding the phrase from the Jakarta Charter “with a requirement to implement Islamic law for Muslims.” Every other bloc opposed this amendment, which was finally defeated at the 2002 Annual Session.

she told *Newsweek*, beaming with confidence, ‘we have become winners.’” (Moreau 1999, 12)

Her election certainly was not guaranteed because PDI-P failed to win a majority of either the popular vote or the seats in the DPR and MPR. However, the other parties and their leaders clearly were willing to give her the first opportunity to craft a coalition in the MPR that would seal her victory, much as the leader of the plurality-winning party in parliamentary elections would most often be given the first opportunity to form a government. Under these informal rules of the game, only if Megawati failed to build such a coalition – as would turn out to be the case – would other party leaders then be justified in initiating negotiations to support their own candidacies. Thus Megawati’s and PDI-P’s bargaining power in the MPR was high, according to the definitions developed in Chapter One. With the support of other conservative forces such as the TNI/POLRI bloc, she could muster the minimum one-third of MPR seats necessary to veto constitutional amendments if they came to a vote.

A brief survey of Megawati’s rivals supports the view that she was the favorite to win the presidency between June and October 1999. The incumbent, B.J. Habibie, suffered from a general handicap common to most anyone from Golkar: identification with the authoritarian New Order and former President Soeharto. In addition, the Bank Bali fundraising scandal and the pro-independence vote in East Timor (as well as the bloody aftermath of the referendum) combined to make his candidacy increasingly untenable. Other Golkar politicians, Akbar Tandjung foremost among them, were unwilling to be seen as publicly betraying Habibie as long as the latter was in power. In addition, they could look forward to a second career in the new democratic system and
calculated that the public would not have much tolerance for a president from Golkar in 1999 but might in future years (not unlike the fate of many former communist parties in Eastern Europe).

Hamzah Haz from PPP lacked charisma and was seen as a more likely candidate for one of the other three positions than for the presidency. Abdurrahman Wahid had waffled throughout 1999 on his intentions regarding the presidency. Most often he expressed his support for Megawati’s candidacy, although occasionally he also revealed his own desire for the office. This desire was not taken seriously, however, due to concerns about his health: two strokes at the beginning of 1998 had left him blind, physically frail and somewhat emotionally unstable. He was sometimes mentioned as a candidate for MPR speaker, but rarely for the other three positions. Prior to the elections, Amien Rais had had high hopes of becoming Megawati’s main rival for the presidency. However, PAN’s poor electoral showing (seven percent) dashed these hopes and he was satisfied to end up as MPR speaker. Yusril Ihza Mahendra’s ambitions for the presidency were also eliminated by PBB’s tiny one percent share of the vote.

In sum, despite the weaknesses mentioned above, B.J. Habibie was considered the main threat to Megawati’s ascendancy to the presidency, mainly due to fears that he and Golkar would use the significant financial resources at their disposal to buy enough votes in the MPR for his victory. Over the course of August and September 1999, Megawati repeatedly frustrated potential allies such as Abdurrahman Wahid and Amien Rais by her unwillingness to build a coalition of support for her candidacy. When the final nail in Habibie’s coffin was struck by the rejection of his accountability speech, Abdurrahman stepped forward as the candidate from the Muslim side of the spectrum and defeated
Megawati. Nonetheless, the fact that she eventually lost this vote in no way reduced her status as the clear favorite prior to the election, when constitutional amendments were being debated and approved.

Uncertainty Regarding Election Outcomes

Despite Megawati’s position as the clear presidential favorite between July and September 1999, uncertainty regarding her chances of winning was high and in fact increasing as the MPR General Session opened in early October. An examination of the various elements of the proposed index of uncertainty bears out this observation. First, although the previous presidential election had been quite recent (March 1998), this election was the last by the New Order-era rubber-stamp assemblies that unfailingly reelected President Soeharto by acclamation. Much had changed in Indonesian politics over the ensuing nineteen months.

Second, mass mobilization (in the form of demonstrations) of the supporters and opponents of various candidates was high and increased as the MPR session drew near. A variety of groups opposed incumbent President Habibie’s reelection bid. Some saw him as a symbol of the New Order, some focused on the specific issue of corruption (most notably the Bank Bali scandal) and some were angry over the vote for independence in East Timor. Smaller counter-demonstrations supported Habibie’s candidacy, either for partisan reasons (support for Golkar and its affiliated organizations) or on the basis of ethnic/regional sentiment (specifically Sulawesi and sometimes more broadly eastern Indonesia as a whole). Megawati’s supporters were also out in force in many parts of the
country. In addition to these two leading contenders, numerous smaller groups demonstrated in support of various other presidential candidates.

Third, the incumbent, President Habibie, was eligible for reelection. Despite significant opposition, especially from the student movement, he also represented the most serious challenge to Megawati. Habibie received especially strong support from conservative modernist Muslims and Muslims from eastern Indonesia, constituencies that would not be likely to defect to Megawati. Another factor increasing the level of uncertainty was that Megawati and Habibie were the only candidates with a realistic chance of winning. In other words, the opposition to Megawati’s candidacy within the MPR was not divided among several viable candidates. As described earlier, for various reasons Akbar Tandjung, Hamzah Haz, Abdurrahman Wahid, Amien Rais and Yusril Ihza Mahendra were not considered strong contenders for the position.

Finally, and perhaps most importantly, political elites were becoming increasingly frustrated by Megawati’s inability or unwillingness to build a coalition in support of her presidential candidacy. Given that PDI-P controlled only a plurality of MPR seats, it was critical for Megawati to reach out to other blocs for support. Nonetheless, throughout August and September she repeatedly missed opportunities to do so. As the MPR session drew near, expressions of this frustration grew increasingly public and vocal. As a result, other blocs began to explore alternatives to both Megawati and Habibie. Abdurrahman Wahid, one of Megawati’s closest allies but also one of those frustrated with her inaction, eventually broke with her and became a candidate in his own right. When Habibie’s candidacy was fatally wounded by the rejection of his accountability speech on the eve of the election, Abdurrahman took his place as the only viable alternative to Megawati.
The only element of the rough index of uncertainty that does not point toward high uncertainty is that Megawati was PDI-P’s only candidate, ensuring the party’s solid support for her.

Leading up to the 2000 Annual Session, uncertainty was also high, despite Abdurrahman Wahid’s election just ten months earlier. Abdurrahman cut his own honeymoon period short by dismissing two of his cabinet members on allegations of corruption just weeks after taking office. His erratic and often provocative behavior throughout the remaining months of 1999 and the early months of 2000 increased animosity toward him. This inchoate animosity was transformed into open opposition beginning in April 2000 when he dismissed two more cabinet ministers, one from PDI-P and one from Golkar, accusing them of corruption as well. In response, the DPR invoked its “right of interpellation” (hak interpelasi) to question the president directly regarding these dismissals. President Abdurrahman further angered lawmakers by stating in this meeting that the ministers were fired for incompetence, not corruption, but providing evidence of neither charge. DPR and MPR members now began searching for loopholes by which they could transform the upcoming Annual Session into a Special Session and remove the president. Although the existing rules appeared to invalidate this strategy, some MPR members and leaders continued to threaten to invoke it until the very end of the Annual Session. Given the widespread and increasing opposition to President Abdurrahman, this strategy was by no means guaranteed to fail, despite its apparent unconstitutionality.

This opposition was reflected in measures of elite and mass opinion as well. Only PKB – his own party – remained a steadfast supporter of the president throughout this
period. Every other party vocally criticized him for one transgression or another. Mass mobilization of both supporters and opponents of the president became increasingly frequent throughout the first half of 2000. Demonstrations against the president – both in Jakarta and many regional cities – increased in frequency, size and intensity. In response, President Abdurrahman’s supporters, especially in Jakarta, Central Java and East Java, held counter-demonstrations and occasionally also attacked the president’s opponents and their offices. Golkar offices and Muhammadiyah offices, schools and hospitals (associated with MPR speaker and former Muhammadiyah chairman Amien Rais and his party PAN) were the most common targets of these attacks.

Other elements of the rough index of uncertainty did not point in the direction of high uncertainty. In addition to the short time since the last election (ten months), it was also clear who would replace President Abdurrahman were he to be removed: Vice President Megawati. A few conservative Muslim politicians – who objected to the prospects of Megawati becoming president – argued that if Abdurrahman were to be removed then the MPR would have to hold an entirely new presidential election. These objections did not gain much currency, however, because they so blatantly contradicted the Constitution. Article 8 clearly stated that the vice president serves out the remainder of the president’s term should the latter resign, become incapacitated or otherwise become unable to carry out his duties. Furthermore, formal removal procedures were not

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in fact initiated prior to the Annual Session despite proposals to do so. Nonetheless, the increasing level of opposition to President Abdurrahman’s administration, as reflected in the indicators of elite and mass opinion – when combined with the existence and popularity of these proposals – meant that uncertainty was again high leading up to the 2000 Annual Session.

*Interests*

The most important bloc in terms of the outcome of the constitutional reform process was PDI-P, for two reasons. First, PDI-P was unlike any of the other major party-based blocs in taking a deeply conservative position on constitutional amendment. PDI-P’s default preference was to reject any and all amendments. Second, PDI-P was the leading bloc in a conservative wing – also consisting of the military and police bloc and the small KKI bloc – that could muster the one-third of the MPR seats necessary to block approval of any amendments that might come to a vote.

Throughout the process of constitutional reform, PDI-P and Megawati were torn among three, often competing, goals.\(^60\) Ideologically, they were quite conservative and often took a principled stand against any and all amendments. Their self-interest, however, was to preserve the power of the presidency based on their (ultimately correct) expectation that sooner or later Megawati herself would hold the office. Finally, looking ahead to the 2004 elections, they wanted to maintain the public’s perception of them as basically pro-reform (*reformasi*) – or at least avoid the perception that they were anti-

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reform. Given that the reformasi agenda included significant constitutional amendments, maintaining this perception meant at least acquiescing to – if not outright supporting – some amendments. The latter goal thus consistently clashed with PDI-P’s and Megawati’s ideological commitment to the original 1945 Constitution. Their self-interest in preserving the power of the presidency, however, produced different stands on particular amendments, depending on the context. They opposed most amendments that reduced presidential authority, but in 1999 and 2000 acquiesced to some due to high uncertainty over when Megawati might become president. In 2001 and 2002 they supported direct election because uncertainty was much lower and they needed to shore up the power of the presidency.

These competing goals were also reflected in intraparty factionalism. Veteran PDI-P leaders who could trace their party pedigree back to Soekarno’s Indonesian National Party (PNI), Parkindo and other pre-fusion parties – as well as the 1974 fusion of these nationalist and Christian parties into PDI, the predecessor to PDI-P – tended to emphasize ideological commitment to the original Constitution and paid little attention to the party’s reputation regarding the reform agenda and to Megawati’s self-interest in the powers of the presidency. The leaders of this faction included DPR Deputy Speaker Soetardjo Soerjogoeritno, DPR Commission II chairman Amin Aryoso, party elder statesman Abdul Madjid and DPR bloc chairman Roy B.B. Janis. The label “Soekarnoist” often applied to this faction was a badge of honor that reflected both its historical roots and its continuing ideological commitment to the symbols of that era, including the 1945 Constitution.
More recent recruits to the party, including younger activists such as MPR bloc deputy chairman Heri Akhmadi and ex-Golkar cadres such as MPR Working Body Ad Hoc Committee I chairman Jakob Tobing and MPR bloc chairman Arifin Panigoro, did not share this ideological commitment and instead tended to focus more on political positioning for the 2004 elections and preserving the powers of the presidency for Megawati. Although the Soekarnoist faction included senior party leaders, one of the reasons this faction failed to prevent passage of the Third and Fourth Amendments was that it held few leadership positions in the party’s MPR bloc, which was dominated by the newer recruits.

PDI-P and Megawati consistently took a principled stand against amending the 1945 Constitution at all. In public, they gave two main reasons for this position. One was that the Constitution was an inheritance (warisan) of the country’s founding fathers and of the struggle for national independence. In its opening speech to the 2002 Annual Session, PDI-P extolled “to what extent our founding fathers wisely and skillfully formulated the ideals of the Proclamation [of Independence] into the Preamble of the 1945 Constitution.”61 In this view, therefore, out of respect for this legacy the Constitution should not be amended.

A second reason was their analysis that the problems of the past were not due to flaws in the Constitution itself – as many proponents of amendment argued – but rather due to inappropriate implementation of its clauses. Megawati herself, in her first major speech after the 1999 elections, reminded her audience of, “the necessity to review every

61 “Pemandangan Umum PDI-P” [PDI-P General Views], read by Agustin Teras Narang (People’s Consultative Assembly 2002, 12).
law ever passed. Are these laws truly based on and in accord with the spirit and the mandate of our state’s Constitution?”62 PDI-P also stated at the opening of the 2002 Annual Session that, “constitutional practice in the past was marked by many distortions.”63 According to this line of reasoning, if only politicians were to commit to return to the original spirit and letter of the Constitution – and then follow up that commitment with actions consistent with it – many of Indonesia’s political problems could be solved.

Apart from these publicly-stated positions, however, to the extent that amendments reduced presidential authority, PDI-P’s principled stand against them was also consistent with the party’s self-interest: Megawati expected to become president and thus didn’t want to erode any of the powers of the presidency.

Two other blocs joined PDI-P in the coalition of forces that were conservative regarding constitutional reform. These were the military/police bloc and a small bloc (Kesatuan Kebangsaan Indonesia [KKI] or Indonesian National Unity) consisting of eight tiny secular nationalist parties that frequently supported the military’s and PDI-P’s positions on various issues. The military shared PDI-P’s consecratory view of the 1945 Constitution as a legacy of the struggle for independence. Furthermore, the military’s corporate interests were also served by the Constitution, due to both its vagueness and the weakness of the legislative and judicial branches. In fact, the proposal to revive the 1945 Constitution was first made in July 1958 by the head of the army at the time, Lt. Gen.

62 “PidatoPolitik Ketua Umum PDI Perjuangan Megawati” [PDI Perjuangan Chairwoman Megawati’s Political Speech], Kompas, 30 July 1999.

63 “Pemandangan Umum PDI-P” [PDI-P General Views], read by Agustin Teras Narang (People’s Consultative Assembly 2002, 12).
A.H. Nasution (Ricklefs 2001, 320-321). The lack of clarity regarding the makeup of the DPR and MPR allowed the military to gain direct representation in those bodies. Weak legislative and judicial oversight of the military enhanced its ability to avoid accountability to civilian institutions. Together these three conservative blocs controlled 237 seats, slightly more than the minimum of 232 (one-third of 695) needed to defeat amendments if they came to a vote. The conservatives could also count on some additional support from other blocs, especially some of the functional group delegates, further strengthening their ability to follow a rejectionist strategy if necessary.

PDI-P didn’t oppose all amendments, however. For example, in supporting the chapter on human rights PDI-P reminded its fellow MPR members that,

we must be able to learn from history. Past political practices were almost always colored by violations of human rights, especially civil and political rights. Thus, to ensure the future, it is imperative that we include stipulations about human rights in the 1945 Constitution. This is not just the logical consequence of underscoring the rule of law in Indonesia, but also if we wish a public life in which every person feels safe and secure.64

Furthermore, in evaluating the DPR speaker’s annual report in 2002, PDI-P praised the improvements in the legislature’s performance as “a logical result of the First Amendment to the 1945 Constitution, in which the law-making authority that had rested with the president was transferred to the DPR.”65

64 “Pemandangan Umum PDI-P” [PDI-P General Views], read by Agustin Teras Narang (People’s Consultative Assembly 2002, 18).

65 “Pemandangan Umum Partai Demokrasi Indonesia-Perjuangan” [PDI-P General Views], read by A. Teras Narang, MPR Annual Session, August 2, 2002. (This quote is found in a portion of the speech that was not read out in the plenary session due to time constraints, and thus is not in the official Proceedings, but was included in the written version submitted to the MPR and photocopied for members and observers. See People’s Consultative Assembly 2002, 21.)
Conclusion

The electoral bargaining approach is a useful framework for understanding the weakening of presidential power with the First and Second Amendments. Furthermore, the electoral bargaining approach provides a more convincing analysis than the rival explanations summarized in Chapter One, all of which would have predicted a stronger, not a weaker, presidency.

Megawati Soekarnoputri was the clear electoral favorite leading up to the October 1999 General Session and – as vice president – was in line to become president had President Abdurrahman Wahid been removed at the August 2000 Annual Session. Her party PDI-P’s bargaining power in 1999 and 2000 was high, i.e. it was the lead party in a conservative wing that controlled sufficient votes to veto any constitutional amendments should they come to a vote. Uncertainty was high leading up to both the 1999 and 2000 MPR sessions.

Under conditions of high bargaining power for the presidential favorite and high uncertainty, presidential power should remain high but be subject to some restrictions. Furthermore, the theory predicts that high uncertainty should produce greater reductions in residual powers than in specific powers. This is in fact what is observed for the First and Second Amendments. Although the Indonesian president’s specific powers were reduced only slightly, his residual powers were subject to more significant restrictions. As the electoral favorite, Megawati and PDI-P favored a strong presidency. Since most proposed amendments were designed to curtail presidential authority, they opposed them – a convenient convergence of their self-interest and ideological commitments. Nonetheless, given high uncertainty regarding when Megawati and PDI-P might occupy
the presidency – and a related desire to burnish their reformist credentials – they were willing to hedge their bets and accept certain restrictions on presidential power.

**The Presidential Crisis of 2001**

Between July and November 2001, this calculus changed dramatically for Megawati and PDI-P as a result of the removal of President Abdurrahman. Uncertainty was now much lower, as Megawati occupied the presidency and remained the favorite for 2004. Under conditions of high bargaining power and low uncertainty, the electoral bargaining approach suggests that the front-running candidate feels confident to create a powerful presidency – and no longer sees the need to hedge her bets. But before we turn to an examination of the changes in the values of these independent variables, let me first briefly describe the presidential crisis of 2001 and its impact on Megawati and PDI-P.

Although the original 1945 Constitution did establish procedures for the election of the president, it did not delineate mechanisms for her removal from office. Article 7 established a fixed five-year term of office for the president. Article 8 stated simply that, “Should the President die, resign or be unable to perform his/her duties during his/her term of office, he/she shall be succeeded by the Vice President until the expiry of his/her term of office.” The procedures for removing a president in mid-term were found elsewhere, in MPR Decree III/1978 (People’s Consultative Assembly 2001). MPR decrees were a legal product not mentioned in the Constitution. Political practice during the authoritarian New Order established their place in the legal hierarchy as second only to the Constitution, above laws passed by the DPR. In the democratic era, this practice was itself enshrined in MPR Decree III/2000 (People’s Consultative Assembly 2001).
short, these decrees, while not part of the formal Constitution, could regulate constitutional matters, including the removal of the president.

MPR Decree III/1978 established a complex process for removing the president that involved both the DPR and the MPR. The DPR first had to come to the conclusion that the president had violated the Constitution or failed to uphold the Broad Outlines of State Orientation.\(^{66}\) The charges thus could be either legal or political. Although removing the chief executive (prime minister) in mid-term on political grounds is standard practice in a parliamentary system, presidential impeachment is generally only allowed on fairly strict legal grounds. In 2000-2001, Indonesian legislators were ambivalent on this point. On the one hand, their objections to Abdurrahman’s presidency were clearly political: abandonment of the coalition that had elected him, erratic management style and inability to overcome the economic and social crisis. On the other hand, their commitment to a presidential system carried the risk of delegitimizing acting on these objections to remove him. Their solution was to rummage around for a legal basis for his removal. Two scandals provided sufficient grounds (in their view) to initiate the removal process, which then became a means to its own end. In the words of one Golkar leader, “Buloggate and Bruneigate were only a trigger whose culmination was a political decision.”\(^{67}\)

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\(^{66}\) MPR Decree III/1978, Article 4 (People’s Consultative Assembly 2001, 13). The Broad Outlines of State Orientation (\emph{Garis-Garis Besar Haluan Negara} or GBHN) were a set of policy guidelines drafted by the MPR, passed as a decree, and presented to the newly elected president as the policy agenda for his or her five years in office. Establishing the GBHN was one of the three functions of the MPR explicitly mentioned in the 1945 Constitution (besides establishing and amending the Constitution, and electing the president and vice president). The GBHN were one of the primary yardsticks by which the MPR evaluated the performance of the president at its Annual, General and Special Sessions. As an MPR decree, the GBHN were thus legally binding; as a set of policy guidelines, they were a political yardstick.

\(^{67}\) Interview, Slamet Effendy Yusuf, Golkar, Jakarta, August 19, 2001.
To aid its investigation, the DPR could exercise its “right of interpellation” (hak interpelasi) to summon the president to the DPR for questioning. This right, which the MPR inserted in the Constitution as part of the Second Amendment, abrogated executive privilege and was akin to “question time” in a Westminster parliamentary system. If the DPR’s investigation concluded that charges were warranted, then it would vote in plenary session to send its first memorandum of censure to the president. The president had three months to comply with this memorandum. If the DPR was dissatisfied with the president’s response (or lack thereof), then it could vote to send a second memorandum of censure. The president had an additional month to comply with the second memorandum. Finally, the DPR could then vote to request that the MPR convene in Special Session, which would take approximately two months to prepare.

If the MPR decided to convene, it would call the president to make an accountability speech defending the performance of his or her government and responding to the specific charges. If the MPR voted to reject this speech, then the president had the right of reply. A negative vote on the reply functioned as removal from office, and the MPR would then swear in the vice president to serve out the president’s term and elect a new vice president. Although significantly more complicated and time consuming – requiring at least six months to complete – than a parliamentary vote of no

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68 1945 Constitution, Article 20A(2).

69 The procedures described in this paragraph were outlined in MPR Decree III/1978, Article 7 (People’s Consultative Assembly 2001, 14).

70 The two-month preparation period was specified in the MPR Rules of Procedure. In practice, for the 2001 Special Session, this period was shortened by about ten days in response to President Abdurrahman’s emergency decree.

confidence in a prime minister, this process of presidential removal had the potential to function in essentially the same manner because it allowed for political disagreements (not just legal charges) to be the basis for midterm removal from office.

The removal of President Abdurrahman Wahid by the MPR at the July 2001 Special Session – less than two years into his five-year term – was a vivid illustration of the weakness of the Indonesian presidency and, conversely, the newfound strength of the MPR (and by extension one of its constituent parts, the DPR). This balance of power had always been theoretically possible under the 1945 Constitution and, ironically, had even (still theoretically) been tilted further in the MPR’s direction by several MPR decrees promulgated during the New Order, including MPR Decree III/1978. In reality, however, both Presidents Soekarno and Soeharto were able to establish their political preeminence by manipulating the composition of the MPR and DPR, which then became little more than rubber-stamp assemblies.

The DPR and MPR formed as a result of the 1999 elections – while still somewhat flawed from a democratic standpoint due to the unelected military, police and functional group delegates – transformed themselves into much livelier and more aggressive institutions. This was in part a natural result of the greater political pluralism resulting from those elections and the freedoms of speech, association and assembly that the members now enjoyed. The transformation was also, however, a product of the constitutional changes incorporated in the First and Second Amendments, which on the whole weakened the presidency and strengthened these two legislative bodies.

In the aftermath of the removal of President Abdurrahman and the elevation of Vice President Megawati to the presidency, the interests of key politicians and their
parties changed dramatically. The most significant of these changes was that experienced by President Megawati herself and her party, PDI-P. Prior to the presidential crisis Megawati and PDI-P had been captive to the common perception that the original 1945 Constitution established a dominant executive. Based on this perception, they had fought tooth and nail to derail, postpone or water down constitutional amendments that might weaken the executive, calculating that sooner or later (and more likely sooner than later) she would become president. This calculation was evident both at the 1999 General Session, when the First Amendment was debated just days before the presidential election that Megawati and most other PDI-P politicians believed she would win, and at the 2000 Annual Session, when the debate over the Second Amendment occurred in a context of increasing dissatisfaction with Abdurrahman’s administration.

Their predictions regarding her rapid rise to the presidency were in fact borne out in 2001, but the way in which she achieved that office also gave them pause. Megawati and PDI-P feared that in subsequent years the MPR would turn on her as it had done to Abdurrahman and prematurely end her presidency. In fact, in the days leading up to Abdurrahman’s removal, she sent PDI-P leaders to ask for guarantees from other party leaders that this would not also happen to her. As a result of this vivid demonstration of the MPR’s constitutional supremacy, both Megawati and other PDI-P leaders began to realize that their prior perception of the strength of the Indonesian presidency was incorrect. They also correctly concluded that the main source of weakness was the indirect method of election by the MPR and therefore began to see the advantages of direct election for Megawati as the incumbent and early favorite in the 2004 elections.

What had previously been taboo within PDI-P – direct election – now could be considered for possible adoption.

An initial indication of Megawati’s misgivings – albeit still tempered by her conservatism regarding the Constitution – can be detected in her Independence Day speech just weeks after becoming president. She said that,

With all the criticisms it has had, we have…witnessed, as it turns out, that the 1945 Constitution still can function well. …Recently, among our leaders and intellectuals has arisen the awareness that we need to make amendments that are more comprehensive and conceptual regarding state arrangements rooted in the 1945 Constitution. …Nonetheless, even if we agree to make these amendments, surely we should do so carefully… In establishing the foundations for these more comprehensive and conceptual amendments, it appears that several items require serious thinking… Among these is the institutional relationship between the legislature and the executive…73

**Support for Direct Election in 2001 and 2002**

*Bargaining Power of the Electoral Favorite*

The general constituency/outlook and bargaining power of each of the six most important MPR blocs remained constant from 1999 and 2000 to 2001 and 2002, ignoring minor fluctuations in bloc size due to casual vacancies. For many of these blocs, their expected presidential candidate for the 2004 elections was also exactly the same as in 1999. Only Golkar and PKB had experienced changes in this regard. Former President B.J. Habibie had retired from public life and Golkar’s expected candidate was the national party chairman, Akbar Tandjung. The future of his political career, however,

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73 Megawati Soekarnoputri, “Pidato Kenegaraan Presiden Republik Indonesia di depan Sidang Dewan Perwakilan Rakyat” [State Address of the President of the Republic of Indonesia to a Session of the People’s Representative Council], Jakarta, August 16, 2001.
depended on the successful appeal of his 2002 conviction for misusing state funds, which only came from the Supreme Court in February 2004. The popularity of another of Golkar’s possible candidates, Sultan Hamengkubuwono X of Yogyakarta, was limited mainly to certain parts of Java.

PKB remained mired in an internal struggle between pro- and anti-Abdurrahman Wahid factions that began with then-national party chairman Matori Abdul Djalil’s decision to attend the Special Session that removed Abdurrahman from power (the rest of the party’s MPR bloc refused to attend the session). As was later borne out by events, at the time it appeared that Matori’s faction was vastly smaller than Abdurrahman’s and thus it was widely expected that the latter would eventually win the battle for the right to use the PKB name. Nonetheless, it was unclear in 2001 and 2002 whom that faction would nominate in 2004 as its presidential candidate, because Abdurrahman was not a particularly viable option, despite his repeated public statements that he considered himself a candidate. The most popular figure from outside the major parties was liberal Muslim intellectual Nurcholish Madjid, but he lacked a mass power base and regularly expressed in public his lack of interest in the presidency.

Leading up to the November 2001 and August 2002 Annual Sessions, President Megawati Soekarnoputri remained the clear favorite for the 2004 presidential elections. She had taken over the presidency four months prior to the November session, had mollified conservative Muslim politicians by supporting the election of a former rival – PPP national chairman Hamzah Haz – to be her vice president, and had built a solid base of support in the DPR and MPR. Despite some grumblings in 2002 about her government’s performance in office, there were no significant challenges to her
presidency in the run-up to the August session either. The focus instead was on completing the process of constitutional amendment and preparing for the 2004 elections. In other words, it was widely expected that Megawati would serve out her term until October 2004.

It was also widely expected that Megawati would once again be PDI-P’s presidential candidate in 2004. Although occasional rumors surfaced that she easily tired of the daily grind of being president and preferred to step down in 2004, her own past behavior would seem to contradict those rumors. On several occasions, she had spoken publicly both, on the one hand, of her initial reluctance to become PDI’s leader (in 1993) and then PDI-P’s presidential candidate (in 1998) and, on the other hand, of her subsequent realization that she could not refuse these nominations due to her “duty to serve her party and her country.”\footnote{“I’m Not Ambitious To Become President’: Megawati,” \textit{The Jakarta Post} Online Edition, May 20, 2001. See also Interview, Dwi Ria Latifa, PDI-P, Washington, DC, October 1, 2002.} Regardless of whether these statements were sincere or simply for public consumption, the conclusion one must have drawn is that in the end Megawati had consistently stepped forward as a candidate, reluctantly or not. Leading up to the 2001 and 2002 Annual Sessions, there was no reason for MPR members to believe otherwise for the 2004 presidential elections as well.

As the clear presidential favorite, Megawati’s bargaining power continued to be high at these two MPR sessions. PDI-P was the leading party in the conservative wing that controlled more than one-third of the MPR. Under Article 37 of the 1945 Constitution, this “blocking third” gave the coalition veto power over constitutional amendments, should votes be taken.
Uncertainty Regarding Election Outcomes

Leading up to the 2001 and 2002 Annual Sessions, short-term uncertainty was low, in the sense that there were no indications that President Megawati faced significant opposition. The 2001 session convened roughly at the end of her 100-day presidential honeymoon, a practice Indonesia appears to have adopted from the American tradition. MPR members were thus still inclined to give her the benefit of the doubt as a new occupant of the presidential palace. In addition, Megawati had made few controversial decisions in her first three months in office and so there was very little to galvanize any potential opposition. In 2002, although some criticized her administration for not achieving more regarding economic recovery, bureaucratic and judicial corruption, prosecution of human rights abuses, and resolution of communal and separatist conflicts, no one challenged her right to hold the office.

For both sessions, there were no indications that formal removal procedures were even being seriously considered, much less actually initiated, by any politician or bloc. Elite and mass opinion was also generally supportive. In sum, every component of the rough index of uncertainty for intervening years pointed in the direction of low uncertainty.

Furthermore, although somewhat higher than short-term uncertainty, in 2001 and 2002 medium-term uncertainty regarding the outcome of the 2004 presidential elections remained relatively low as well. Assuming at the time that Megawati was able to serve out Abdurrahman’s original term unchallenged (and in fact she has), in 2004 the last presidential election would have taken place only three years previously. If, as most
believed, Megawati was a candidate for reelection, without doubt she would be the sole candidate from PDI-P. Under the extant rules, she would be eligible for reelection. Elite and mass opinion, while not overwhelmingly behind her, were also not vigorously opposing her.

Low medium-term uncertainty was also as much a product of the relative lack of viable challengers as it was of characteristics of Megawati herself. Golkar’s most likely candidate, Akbar Tandjung, was convicted in 2002 of misusing state funds during the 1999 elections. Although in 2001 and 2002 he remained in his posts as DPR speaker and party chairman while on trial and then while appealing his conviction, he was not considered a popular candidate due to his public persona as the poster boy for New Order-era corruption. While Golkar had a strong stable of other equally experienced politicians, none was a particularly obvious or popular alternative to Akbar. Hamzah Haz’s election to the vice presidency had done little to increase his popular appeal, but PPP had few alternatives. Abdurrahman Wahid had not only his health problems but also his poor performance as president and ignominious removal from office to contend with. In addition, PKB also had no obvious alternatives. Finally, Amien Rais enjoyed the solid support of his party and an unsullied reputation for avoiding corruption, but remained a divisive figure who would have difficulty building a broad-based coalition of support. At the time of debate over the Third and Fourth Amendments, there were no strong candidates from outside the major parties.

From the standpoint of 2001 and 2002, Megawati’s reelection in 2004 was by no means guaranteed. Much depended on her performance in office in the intervening years, the exact presidential electoral system, and the nature of the party system and intra-party
factionalization in 2004. Nonetheless, she could expect to enjoy the benefits of incumbency for three years before the elections. Most of the indicators in the rough index of uncertainty for intervening years in an indirect election system thus pointed in the direction of low uncertainty, a dramatic change from 1999 and 2000.

**Interests**

Megawati’s and PDI-P’s position on constitutional amendment was substantially changed by the removal of President Abdurrahman Wahid. She and the party both suddenly realized that the Indonesian presidency as established by the 1945 Constitution and the first two amendments was not nearly as powerful as they had thought. President Abdurrahman’s removal was a vivid example of the de facto actualization of the MPR’s de jure constitutional supremacy over the president. Megawati desperately wished to avoid a similar fate.

In the period before the next elections in 2004, this meant establishing a firm base of support in the DPR and MPR. In 2001, by supporting erstwhile rival Hamzah Haz’s vice presidential candidacy, Megawati seemed to have learned a lesson from her bitter experience in 1999 about building coalitions and blunting potential opposition. Looking ahead to the next presidential term (2004-2009), securing her position meant undermining the constitutional supremacy of the MPR and strengthening the presidency.

This is the main reason PDI-P supported the Third and Fourth Amendments in November 2001 and August 2002, respectively. For instance, in its opening speech at the 2002 Annual Session, PDI-P explained its support in 2001 for the principle of direct presidential election, and its support in 2002 for direct election in the second round as
well, by reminding its fellow MPR members of their “agreement to maintain, by which we mean to perfect, the implementation of a presidential system of government. We know that one characteristic of a presidential system of government is fixed terms of executive office.” In 2001 and early 2002 PDI-P had continued to propose that the second round of elections, if necessary, should take place in the MPR. By the 2002 Annual Session, however, PDI-P had come around to accept the majority position of direct election in both rounds.

PDI-P also used the introduction of direct presidential election to argue that President Megawati no longer was obligated to present to the MPR a progress report in 2003 and an accountability speech in 2004 for her administration’s policies since 2001. In drafting the MPR decree on the 2003 Annual Session, all the other blocs had proposed that the MPR continue to “hear and discuss” the president’s progress report. PDI-P, however, managed to convince these blocs to accept its own proposed language, which was that the MPR would only “hear” (not discuss, and therefore not criticize) this progress report. The abolition of her accountability speech in 2004 is expected to be a

75 “Pemandangan Umum PDI-P” [PDI-P General Views], read by Agustin Teras Narang (People’s Consultative Assembly 2002, 15).


78 Draft MPR Decree on Conduct of the 2003 MPR Annual Session, Article 1, Alternative 1.

79 Draft MPR Decree on Conduct of the 2003 MPR Annual Session, Article 1, Alternative 2; MPR Decree No. III/2002, Article 1 (Amandemen... 2002, 32).
consequence of the MPR’s instruction to itself to revise its standing orders by 2003 in light of recent constitutional amendments.\footnote{MPR Decree No. III/2002, Article 3 (Amandemen... 2002, 33). Personal communication from Andrew Ellis.}

In 2003 rejection of her progress report could have been used as grounds for removal in a similar fashion to President Abdurrahman. In 2004, if the MPR session came before the second round of direct elections, rejection or approval of her accountability speech could have been used as a political football by other parties to extract concessions from Megawati or help discredit her administration and harm her reelection bid.

PDI-P also wished to burnish its reformist credentials prior to the 2004 elections. In its opening speech at the 2002 Annual Session, PDI-P explained its support in 2001 for the Constitutional Court as supporting the “rule of law,” to help resolve “violations of constitutional rights by law-making authorities.”\footnote{“Pemandangan Umum PDI-P” [PDI-P General Views], read by Agustin Teras Narang (People’s Consultative Assembly 2002, 14).} The party was by no means united around this newfound position in favor of amending the 1945 Constitution, however. President Megawati, herself torn between the competing goals described above, tried to satisfy the various factions in her party by expressing support for the specific amendments under discussion while maintaining that in general the Constitution should be amended as little as possible.\footnote{“Perubahan UUD 1945 Sebaiknya Sekarang” [1945 Constitution Should Be Amended Now], Kompas Online Edition, May 15, 2002.} Nonetheless, she provided vital support to the progressive elements of PDI-P in their battles with the conservatives. Jakob Tobing, the chairman of Ad Hoc Committee I and neither a progressive nor a conservative, explained,
I personally briefed her on [the] progress [of the amendment process]. If I discuss these matters with PDI-P executives, I rarely get a response since they really don’t understand what is going on. But Mbak Mega was different. She knew exactly what the entire process was. Without her support, it would have been impossible for me to face those people (who rejected the amendments).  

The Soekarnoist faction remained adamantine in its opposition to any amendments. However, this faction was asleep at the switch during the debates on the Third Amendment, because it was not until after the 2001 Annual Session was over that some members of this faction publicly expressed their displeasure with some of the key elements of this amendment. Jakob Tobing revealed that,  

[Most of the opposition toward constitutional amendments came] from PDI-P. To be honest, most MPR members did not understand (the amendments). That’s why many of them were startled when the changes were approved. Then they suddenly wanted the MPR to do this and that, which really shows that they didn’t understand what was going on. In many of the preliminary meetings, nobody raised any real objections. Again, this shows that they were not paying attention. This led to the acceptance of the articles concerning the dissolution of the MPR. Many of them did not even realize that.  

The primary targets of the conservatives’ criticism were the abolition of the constitutional supremacy of the MPR, the acceptance of the principle of direct election for the president and vice president, and the establishment of the DPD. As debate continued on the draft Fourth Amendment and the 2002 Annual Session drew near, this faction circulated a petition among PDI-P and other bloc members in the MPR calling for the Third Amendment to be rescinded and debate on the Fourth Amendment to be halted.

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83 "Most People Didn’t Realize What Was Happening Until It Was Too Late,’ Interview with Jakob Tobing, Chairman of MPR’s Ad Hoc Committee in Charge for Amending the 1945 Constitution,” Van Zorge Report, September 2, 2002, 15.

84 Ibid., 13.
Some petition leaders also called for an immediate return to the original 1945 Constitution, while others expressed support for (or at least acceptance of) the First and Second Amendments.\textsuperscript{85} By March 2002, the petition leaders claimed to have gathered around 200 signatures, a significant portion of the MPR but still short of the one-third necessary to block further amendments and well short of the two-thirds necessary to roll back previous amendments.\textsuperscript{86} Political rivals and independent observers feared that this petition, and the sentiment it reflected, was the first step toward history repeating itself: President Megawati – with the support of the military – issuing a decree declaring the constitutional reform process deadlocked and the original 1945 Constitution back in force, as her father had done in 1959.\textsuperscript{87}

Other PDI-P factions expressed their frustration with the Soekarnoist faction and made public guarantees that the Fourth Amendment would be approved. However, the conflict between these factions was reflected in the early days of the 2002 Annual Session. Following standard procedures in the MPR, after opening speeches by each bloc the Assembly subdivided itself into three commissions to discuss various items on the agenda. Commission A was to discuss the Fourth Amendment and was in essence an expanded version of the Working Body’s Ad Hoc Committee I that had been debating drafts of that amendment since the beginning of the year. To maintain this continuity,

\textsuperscript{85} “Rapat Perumusan Amandemen UUD Dipindah dari Bali ke Tangerang” [Drafting Meeting on Constitutional Amendment Moved from Bali to Tangerang], \textit{Kompas} Online Edition, April 4, 2002.


PDI-P’s Jakob Tobing, the chairman of Ad Hoc Committee I, would normally be elected without opposition to chair Commission A as well. The Soekarnoist faction of PDI-P, however, rejected his nomination to lead Commission A. This faction was unhappy with his role in shepherding the constitutional reform process as the chair of Ad Hoc Committee I since the end of 1999 and saw his part in the passage of the Third Amendment as particularly treacherous of party ideals. Tobing was vulnerable to this faction’s attacks in part because he was a more recent recruit from Golkar’s ranks. Nonetheless, one of Tobing’s allies in the party, MPR bloc chairman Arifin Panigoro, was able to overcome the mutiny and Tobing was finally elected chairman of Commission A.  

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**Conclusion**

According to the electoral bargaining approach, the re-strengthening of the Indonesian presidency in this second phase of amendments can be explained by Megawati’s new position as the presidential incumbent and a much lower level of uncertainty regarding the prospects for her to retain that position through 2004 and beyond. She supported direct election in order to strip the MPR of its constitutional supremacy and shore up presidential power. The bargaining power of the electoral favorite remained roughly the same as it had been in 1999 and 2000 – that is to say, high. As uncertainty dropped with Megawati Soekarnoputri’s elevation to the presidency, PDI-P’s and Megawati’s strategy changed. They no longer felt the need to hedge their bets
regarding presidential power because now they had captured it. The electoral bargaining approach would suggest that this should be accompanied by an increase in presidential power. As we have seen, this is in fact the case regarding these two amendments. Further reductions in specific and residual powers were overwhelmed by the significant increase in power associated with direct election, restricted grounds for impeachment, and the establishment of a rather tortuous impeachment process.

One of the techniques progressives used to force PDI-P’s hand and overcome the opposition of conservative nationalist ideologues within that party was to threaten calling for a vote on amendments if consensus could not be achieved.\(^8^9\) One hallmark of the Indonesian constitutional reform process since 1999 has been the strong preference for consensual approval of amendments over voting. This preference was designed not only to ensure broad support for the new rules of the game but also so that no blocs would be perceived as anti-political reform. At the 2001 Annual Session, PDI-P wanted to avoid an open vote in which at least some members of its bloc might take a public position in opposition to the Third Amendment.\(^9^0\) With the MPR decision to postpone until 2002 decisions on the articles that remained controversial, PDI-P was able to maintain internal bloc cohesion and join the consensus approving the Third Amendment.

Earlier in this chapter I outlined PDI-P’s three primary goals regarding constitutional reform: an ideological commitment to reject all amendments, a desire to be

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\(^9^0\) “Megawati Instruksikan Fraksi PDIP Upayakan Jangan Terjadi Deadlock” [Megawati Instructed the PDI-P Bloc to Avoid Deadlock], *Kompas* Online Edition, November 9, 2001.
seen as pro-reform by accepting at least some amendments, and a self-interest to preserve the powers of the presidency. A brief analysis of the interaction of these competing goals demonstrates that a change in PDI-P’s strategy on constitutional amendments based on its power interests was the crucial factor that led to PDI-P’s support for the Third and Fourth Amendments and therefore the strengthening of the presidency. PDI-P’s ideological commitment to the original 1945 Constitution and its desire to be perceived as pro-reform each produced consistent positions regarding constitutional amendment: the former against amendment and the latter for it. Thus these goals cannot account for the change in PDI-P’s overall position regarding direct election of the president and vice president. This about-face is instead accounted for by the change in PDI-P’s position on amendment rooted in the third goal: self-interest in preserving the powers of the presidency. Although PDI-P struggled to balance multiple, competing goals, the goal of maximizing its real and potential power was the driving force behind changes in its position on direct election.

**The Price of PDI-P Support for Direct Election**

Although in 2001 and 2002 it was now in Megawati’s and PDI-P’s self-interest to support direct election of the president and vice president, they could still use their support as a bargaining chip to extract concessions from the other blocs. The main quid pro quo they demanded in exchange for supporting direct election was a significant reduction in the powers of the new Regional Representative Council (DPD). Reducing the powers of the DPD was also consistent with Megawati’s and PDI-P’s interest in strengthening the presidency, as a strong DPD could have served as an additional legislative check on presidential power.
With its electoral strength concentrated in the Outer Islands, Golkar had proposed that the DPD have nearly the same powers as the DPR – i.e. somewhat limited legislative powers and full budgetary and oversight authority. Draft legislation in many policy sectors and all draft budgets would have required approval from both houses, and the DPD would have had the power to conduct independent inquiries regarding policy and budgetary implementation.

From the beginning of the constitutional reform process, just as they had done with direct election, Megawati and PDI-P had consistently opposed the very establishment of the DPD, believing that bicameralism was an inherent element of federalism and thus inappropriate for a unitary state. This belief was perhaps a result of the fact that Indonesia’s only prior experience with bicameralism was under the federal RUSI Constitution from December 1949 to August 1950. In the course of deliberations, however, the pressure put on the MPR by regional interests (particularly the 130 regional representatives within that body) to establish an upper house was too much even for PDI-P to bear, and as part of the Third Amendment they acquiesced to its establishment. Nonetheless, PDI-P correctly saw the proposed establishment of a strong bicameral legislature as an expansion of the new system of checks and balances designed to curtail executive branch dominance, and thus opposed it for that very reason.

As part of the price the other blocs had to pay in return for PDI-P’s support of direct election, they had to agree to strip the DPD of many of its proposed powers, particularly regarding legislation and budgets. According to the Third Amendment, the legislative and budgetary process will remain centered in the DPR, and the DPD will only

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be able to provide nonbinding input to the DPR on the budget and on pieces of legislation in clearly delineated areas that impinge on regional interests. The DPD has, however, retained its full powers of oversight and inquiry.

**Political Culture and PDI-P’s Conservatism**

Of the four alternative explanations outlined in Chapter One, the one most relevant to explaining Megawati’s and PDI-P’s conservatism on constitutional reforms is that grounded in political culture. Although PDI-P has supporters in every province of Indonesia, its electoral strength is concentrated in the most populous provinces of Central Java, Yogyakarta and East Java. These provinces are also the historical location of the capitals of the various Javanese empires and sultanates of the last two millenia, and thus the Javanese cultural heartland. In other words, PDI-P is one of the parties that would be posited by this approach to be most susceptible to the hegemonic notions of power and sultanistic conceptions of the state purportedly shared by many Javanese (Anderson 1990, chs. 1, 4; Moertono 1981). Furthermore, Megawati herself would have been greatly influenced by these cultural norms as taught to her by her father. Under this theory, it was these cultural norms – and not self-interest – that drove Megawati’s and PDI-P’s desire for a strong presidency and thus their conservatism regarding the 1945 Constitution.

On the surface, this argument appears plausible. Some significant portion of PDI-P’s voters and leaders – including perhaps Megawati herself – subscribes to these cultural norms, and a strong presidency has been created in Indonesia. However, there are several problems with this theory. The first drawback is that Megawati’s own cultural background is more complex: her mother was from Bengkulu in Sumatra and she was
raised in cosmopolitan Jakarta, not the Javanese heartland. Furthermore, PDI-P itself is internally heterogeneous. Although it does gain a significant share of its support from the Javanese heartland, it is also a truly national party, drawing support from every corner of Indonesia. The more egalitarian and dynamic cultures of urban entrepreneurs and coastal farmers and fishermen are found among many of these non-Javanese ethnic groups, such as the Sundanese, the Madurese, the Batak, the Minangkabau, the Dayak, the Buginese and the Acehnese. Furthermore, the Javanese court cultural tradition – while certainly influential – may not even be dominant among ethnic Javanese themselves. A significant portion of Javanese – particularly those in urban areas, along the north coast and in the eastern part of the island – were raised instead in similarly egalitarian and dynamic cultures to those of non-Javanese.

Furthermore, this static cultural explanation cannot account for Megawati’s and PDI-P’s changing position on key constitutional amendments throughout the process. For this theory to be plausible, Javanese court culture would have to be posited to be compatible both with a strong presidency and with retaining the organic-statist elements of the original 1945 Constitution. However, in 1999 and 2000 Megawati and PDI-P acquiesced both to certain reductions in presidential power and to a weakening of some of the organic-statist elements. In 2001 and 2002, they greatly strengthened the presidency while simultaneously abolishing most of the remaining organic-statist elements. A cultural theory of institutional choice cannot capture these nuances. Similarly, Geddes (1996, 29-30) found that “One could not argue, however, that the basic underlying logic of [East European politicians’] choices derived from norms or a
worldview distinctive to the Leninist experience. In this regard, the behavior of political elites shows no evidence of the persistence of a special Leninist legacy.”

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CHAPTER 4

PERCEIVED LESSONS OF HISTORY

While the electoral bargaining approach is an excellent prism through which to view the changing position of PDI-P on various amendments, it fails to explain the common position taken by the other four major party blocs – Golkar, PPP, PKB and Reform – in support of direct election of the president and vice president. Megawati was the frontrunner for the presidency throughout the three-year period (1999-2002) during which amendments were debated and approved. In other words, these four parties harbored no misconceptions about the fact that they had much less chance than PDI-P of occupying the presidential palace in the near future. Furthermore, these blocs had much less bargaining power than the conservative wing of the MPR led by PDI-P. As outlined in the previous chapter, uncertainty over presidential election outcomes in 1999 and 2000 was high. The electoral bargaining approach thus predicts that these blocs should have supported a much weaker presidency. In fact, however, all four blocs consistently supported direct election – which greatly strengthens the presidency – throughout the amendment process.

Explaining this seemingly contradictory behavior requires turning to an analytical framework based in political psychology that is more common in international relations.
than comparative politics. In international relations, perceptions of history are often theorized to influence contemporary behavior. A similar phenomenon was at work regarding these four blocs’ support of direct election of the president and vice president. Leaders of all four blocs, as indeed was true for nearly all of Indonesia’s political and academic elite, perceived the 1950s – Indonesia’s only prior experience with democracy, under a parliamentary system – as a period of great political instability. Furthermore, they blamed the parliamentary system itself as one of the primary causes of that instability, and downplayed the independent impact of other factors, such as economic crisis, regional rebellions and political polarization.

On the basis of this perception of their own history, these elites developed a strong commitment to presidentialism. In fact, one of the early points of consensus during deliberations on constitutional reforms was to establish a pure presidential system in Indonesia. Leaders of these four blocs further understood that a pure presidential system required direct election of the president and vice president. Thus this commitment to presidentialism prevailed over their self-interest as parties less likely to capture the presidency, and they consistently supported direct election throughout this three-year period, finally succeeding in 2001 and 2002.

This chapter examines how this process unfolded. The first section describes in more detail the inadequacy of the electoral bargaining approach to explain the common position taken by these four blocs. The second section examines the ways in which perceptions of history have been used in international relations and comparative politics, and the third section applies this approach to the period of parliamentary democracy in the 1950s in Indonesia. The fourth section makes the link from this perception of history
to the contemporary commitment to presidentialism and direct election, and the final section examines the superiority of this approach over one of the alternative explanations raised in Chapter One.

Inadequacy of the Electoral Bargaining Approach

Megawati had been the frontrunner for the presidency since the June 1999 legislative elections had made PDI-P the largest party by a wide margin. Even after she lost the presidential election in the MPR in October 1999 to Abdurrahman Wahid, as vice president Megawati was in line to replace him and was also still considered the strongest candidate for the 2004 elections. Her ascension to the presidency in July 2001 only strengthened her position as the frontrunner for reelection in 2004. The assumption that the 2004 election was Megawati’s to lose continued to be widely held – both by the political elite and the public at large – throughout the remainder of 2001, all of 2002 and much of 2003. As I described in the preceding chapter, this assumption was based in part on her continued popularity, in part on her new status as the incumbent, and in part on the lack of strong potential challengers.

It was not until late 2003 and early 2004 that Megawati’s popularity began to wane significantly, the perceived ineffectiveness of her administration made incumbency a liability rather than an asset, and two noteworthy challengers emerged: Gen. Wiranto and Gen. Susilo Bambang Yudhoyono. Thus throughout the period during which constitutional amendments were under consideration – October 1999 to August 2002 – Megawati was the clear frontrunner for the presidential race in 2004. Furthermore, 2004-2009 would be her first full term in office, making her eligible for reelection in 2009 for a
second five-year term. In other words, the other major parties had much less hope of occupying the presidential palace any time soon.

In addition, the bargaining power of these four blocs was much lower than that of PDI-P. Even though they themselves held a common position in support of direct election, they still did not command sufficient votes to overcome the veto power of the conservative wing led by PDI-P, even if they had been able to count on the votes of all of the other small party blocs and every member of the functional delegate bloc.

Under the electoral bargaining approach, with low bargaining power and high uncertainty, these four blocs should have supported a much weaker presidency than that envisioned by Megawati and PDI-P. Nonetheless, throughout the amendment process they consistently supported direct election – which serves to greatly strengthen the presidency – although they did support other amendments to reduce the president’s specific and residual powers.

Perceived Lessons of History

Explaining these blocs’ position on direct election thus requires the addition of a political psychological variable more often used in international relations than in comparative politics: the perceived lessons of history. Although Jervis (1976, Ch. 6) is the classic statement of the role of perceived lessons of history in international relations, with some minor modifications many of his concepts and observations can also be stretched to comparative politics. He states that, “Learning from history is revealed dramatically when decision-makers use a past event as an analogy for a contemporary one.” (Jervis 1976, 218) Ehrmann (1983, 4) agrees that, “The more vividly the conflicts
of the past are remembered, the more heavily they weigh on the behavior of political
actors and onlookers.” Nonetheless, it is important to demonstrate that a particular case is
not one in which “analogies are seized upon only to bolster pre-existing beliefs and
preferences.” (Jervis 1976, 217) According to Jervis (1976, 225), “causality must be
demonstrated to flow from the interpretations of the past to the perceptions of the present. We
must be able to rule out the alternative possibilities of spuriousness (i.e. that both the
interpretations of the past and the current perceptions are caused by a common third
factor) and of current preferences influencing memories.”

Jervis (1976, 239) posits that,

The four variables that influence the degree to which an event affects later perceptual predispositions are whether or not the person experienced the event firsthand, whether it occurred early in his adult life or career, whether it had important consequences for him or his nation, and whether he is familiar with a range of international events that facilitate alternative perceptions.

In addition, Jervis (1976, 239) goes on to make two observations regarding these variables. First, “when several of the variables are positive…the event will have especially great salience.” As I explain below, for Indonesian political elites in 1999-2002, the period of parliamentary democracy in the 1950s fulfills at least two and often three of these four conditions. Second, “events that are terribly important for the nation (e.g. wars) can have so great an impact that the perceptual predispositions of those who did not participate in the making of the policy will be affected almost as much as those who did.” This also applies to the lessons learned by contemporary decision-makers regarding the nine years of parliamentary democracy, which was a particularly important period in Indonesia’s modern history.
Jervis (1976, 271-279) also theorizes that there are four particular types of lessons that people tend to draw from history. First, people who are consistently faced with the same pattern of actors, problems and opportunities will tend to see subsequent situations as if they fit the earlier pattern, even if they don’t. Second, a decision-maker’s past experiences of interactions with a particular actor can create an image that influences how the decision-maker perceives the actor’s contemporary behavior. Third, people endeavor to avoid repeating recent failures, often without exploring whether alternative options would have worked better in the past or without examining the similarities and differences of the present situation to past ones. This is the type of lesson most relevant for this study, in which Indonesian political elites preferred presidentialism as a means to avoid repetition of the failures they associated with parliamentarism. Fourth, the reverse of the third lesson can also occur: people try to repeat recent successes, without sufficiently examining to what extent the current situation mirrors the past. In sum, Jervis (1976, 282) opines that,

the learning process is beset with three linked flaws that seriously affect the quality of decision-making. First, there is often very little reason why those events that provide analogies should in fact be the best guides to the future. …Second, because outcomes are learned without careful attention to details of causation, lessons are superficial and overgeneralized. …Third, decision-makers do not examine a variety of analogies before selecting the one that they believe sheds the most light on their situation.

Perceptions of the 1950s Parliamentary Democracy

Indonesia’s previous experiment with democracy lasted from August 1950, not long after de facto independence was achieved, to July 1959, with national elections
taking place in September and December 1955.\textsuperscript{92} This was a pure parliamentary democracy, as established by the 1950 Provisional Constitution in force at the time. The presidency, occupied by Soekarno, was a figurehead position; formal executive power rested with the prime minister and the cabinet. Nonetheless, President Soekarno’s popularity, charisma and penchant for involving himself in political battles meant that his informal power was much greater than his highly circumscribed formal power.

The 1950s were also a period of great upheaval in Indonesia. On the geostrategic plane, the country struggled to find its way as a newly independent former Dutch and Japanese colony in an increasingly bipolar Cold War context. One of President Soekarno’s solutions to this problem was to reach out to other developing country leaders – such as China’s Zhou Enlai, India’s Jawaharlal Nehru, Egypt’s Gamal Abdul Nasser and Yugoslavia’s Josip Broz Tito – to found the Non-Aligned Movement at the Afro-Asia Conference in Bandung in 1955. Economically, most Indonesians were mired in poverty, with many of the country’s most strategic assets remaining under the control of foreigners, especially the Dutch. Some of these assets were nationalized and placed under the control of the army in 1957 following the declaration of martial law. This period was also characterized by several regional rebellions, such as the Republic of the South Moluccas in 1950, Kahar Muzakkar in South Sulawesi from 1951 to 1961, DI/TII in West Java, Aceh and South Sulawesi from 1948 to 1962, and PRRI/Permesta in West Sumatra and North Sulawesi from 1957 to 1961.

\textsuperscript{92} The September 1955 elections were for the parliament and the December elections were for the constituent assembly (\textit{Konstituante}) charged with drawing up a permanent constitution. Local elections followed in 1957.
Nationally, domestic politics seemed no less chaotic. In the nine years of parliamentary democracy, seven cabinets rose and fell – a rate akin to that found in postwar Italy through the early 1990s. Also like postwar Italy, however, this superficial political instability masked underlying continuity. Just as a similar combination of parties anchored by the Christian Democrats were returned to power in nearly every one of those Italian cabinets, in Indonesia in the 1950s three of the four main parties (the Indonesian National Party, Masjumi and Nahdlatul Ulama) rotated in and out of power in every possible combination throughout all of these cabinets. Of the four largest parties, only the Indonesian Communist Party was permanently shut out of power during this period. On an individual level, the same ministers reappeared frequently, although sometimes with a different portfolio (Susunan... 1997). What is remembered by Indonesian political elites about this period, however, is not the underlying continuity but rather the superficial instability, and it is this perception that has driven the resistance to considering the reestablishment of parliamentarism as part of the recent constitutional reform process. As Jervis (1976, 217) says, “it is the surface lessons that are learned most easily, quickly, and thoroughly.”

Leaders of all the parties, including PDI-P, perceived the parliamentary system as a primary source of the political instability of the 1950s and thus were committed to a presidential system for Indonesia. This commitment, and the perception of history that underlay it, was so widely accepted by the Indonesian political elite that it hardly needed to be stated during the constitutional reform process. For example, every one of the eleven blocs, in their opening speeches to the MPR Working Body at the 1999 General Session, stated that one goal of the constitutional reform process was to restrict
presidential power, with no mention of parliamentarism or a prime minister, implying the retention of a presidential system (People’s Consultative Assembly 1999a). In their opening speeches the following day to the Working Body’s Ad Hoc Committee III charged with drafting constitutional amendments, every bloc made this implication more explicit by calling for the retention of the presidential system as part of the overall framework under which amendments would be discussed (People’s Consultative Assembly 1999b). Perhaps because the conventional wisdom regarding parliamentary democracy in the 1950s was so widely shared, none of these blocs gave any specific reasons for their preference for a presidential system; it was simply stated and then they moved on to other items. Since this was the consensus view, it was not challenged. Only once during the Ad Hoc Committee III debates, an unidentified member from PDI-P in passing mentioned learning from the history of the 1950s as the reason for the preference for presidentialism (People’s Consultative Assembly 1999b, 59). In addition, at various times during the PAH III debates, members reminded one another of their commitment to presidentialism, particularly when it was felt that proposals violated that commitment. This commitment was so broadly shared that even during sharp debates regarding the confusion and sometimes also conflicts of interest that could arise due to the fact that the president is both head of state and head of government, not a single member of PAH III raised a dual executive – either under a parliamentary or a mixed system – as a possible solution (People’s Consultative Assembly 1999c).

Nonetheless, this perception of the negative consequences of parliamentarism for Indonesia was the conventional wisdom. Given the infrequency with which this perception was explicitly stated during constitutional debates in the MPR, in-depth
interviews with participants in those debates are one way to explore the underlying perceptions. For instance, Golkar’s DPR bloc chairman who was also the party’s floor leader on PAH III in 1999 and subsequently PAH I stated, “Based on our experience from the 1950s, the parliamentary system was seen as a total failure. Many people concluded from this that a parliamentary system was not yet appropriate for Indonesia.”

His colleague from Golkar, the deputy chairman of PAH III and then PAH I, held a similar view. He said, “Golkar’s opposition to a parliamentary system is the result of reflection on our experience. We considered it at one point but it doesn’t guarantee political stability. Our experience from the 1950s is that cabinets only lasted a matter of months, on average. What can such short-lived cabinets accomplish? With direct election, the president is stronger.”

Another colleague from Golkar who served as a member of PAH I echoed this view. In his words, “We still believe in our experience from the past, that when a parliamentary system meets a multiparty system it brings about weak government, as we had in the 1950s. That’s why we believe in the presidential system, because the government can last longer, for the full five-year term. A parliamentary system is not as strong or stable.”

The third-largest bloc in the MPR, PPP, also shared this perception of Indonesia’s history from the first decade of independence. A member of PAH I from PPP stated, “Parliamentary systems have more negative than positive aspects. Our historical

experience from the 1950s is that governments fell every so many months.” 96 This view was also held by members of the next-largest bloc, PKB. For example, the secretary of PAH I, from PKB, explained, “PKB opposed the reestablishment of a parliamentary system due to our historical experience. Political instability from 1949 [sic] to 1959 demonstrated that a parliamentary system is inappropriate for the Indonesian condition of heterogeneity. The frequent change in cabinets showed that the government wasn’t effective. Economic development was hampered by this political instability.” 97

The leading party in the last of the five largest blocs, PAN, held the consensus view as well. One member of Commission A during the MPR Annual Sessions from PAN stated, “A portion of the political community is still traumatized by the experience of the 1950s, in which governments rose and fell. Indonesia did not succeed in establishing a strong parliamentary system. In a parliamentary system, small parties can hold large parties hostage – thus this type of system is not appropriate for Indonesia.” 98 Note that PAN was the smallest of the five largest parties from the 1999 elections, and thus would have the most to gain from holding PDI-P and Golkar “hostage.” This is a strong example of how a party’s self-interest in a different type of system is trumped by its commitment to a pure presidential system. A colleague who was PAN’s floor leader in PAH I agreed, “PAN opposed a parliamentary system because of our predecessors’ experience since 1946 [sic], in which cabinets were short-lived.” 99

It is relatively easy to demonstrate that the connection between these perceptions of the period of parliamentary democracy and contemporary preferences for presidentialism is not spurious. According to Jervis (1976, 226-227), “Third factors usually explain instances in which people with different policy preferences rooted in different basic values hold different interpretations of the past. ...Spuriousness is...unlikely when people with different personalities and beliefs learn the same lesson from an event.” The evidence provided above indicates that leaders of four parties that represent different socioreligious streams (aliran) in Indonesian politics and that hold different views on other issues all share the same perception of parliamentary democracy in the 1950s.

It is harder to show conclusively that this is not a case of current preferences influencing perceptions of history. As Jervis (1976, 224) states, “We cannot directly measure predispositions and so must rely for our evidence on how people perceive incoming information.” Nonetheless, there is some evidence that these elites’ perceptions of their country’s history predated their contemporary preference for a presidential system. Ricklefs (2001, 310) notes that when martial law was declared in 1957, which was the beginning of the end of parliamentary democracy, it was not “known what new form of government would follow, except that it would not be the kind of multiparty democracy that was perceived as having failed the nation.” In other words, the perception of the failure of parliamentarism is not a recent development in Indonesia.

Jervis (1976, 262) also notes that, “Major events not only affect the perceptual predispositions of large numbers of people, they influence people deeply. ...Indeed the resulting lessons are apt to be so salient that they will be passed down to those who did
not experience the events.” In the case of Indonesia, especially for subsequent
generations, the perception of the failure of parliamentarism was strengthened and
propagated not only informally but also formally via the self-serving historiography of
the authoritarian New Order found in history textbooks and official indoctrination
courses. According to McVey (1994, 3, 5),

New Order spokesmen have been…emphatically negative: for them, the
parliamentary period was a time of political chaos when, with particularist
interests and alien ideas given free play, the hard-won unity of the
independence struggle threatened to dissipate entirely. The irrationalities
of Guided Democracy and the violence of its ending were, in this vision,
not a negation of the experiment with constitutional democracy but a
consequence of it. That the [New Order] should portray constitutional
democracy in this way is understandable; after all, it is an authoritarian
regime anxious to portray its discipline as essential to the nation’s
salvation. But…this concept of the parliamentary period as an
international merit test that was failed has been very influential, both
among Indonesians and those who study them.

Even when this official historiography began to be challenged by dissidents in the
1980s and 1990s, the alternative discourse they developed did not automatically imply a
preference for parliamentarism. Feith (1994, 17) states,

That “liberal period” is depicted [by the New Order] as one of pointless
imitation of Western political forms, of persistently petty party bickering,
of frustratingly deadlocked government, of primordial antagonism and
religious-ideological polarisation that benefited nobody but the
communists, and of rebellions that almost destroyed the country’s
territorial integrity. But that conventional depiction has not gone
unchallenged. In the last ten years or so people associated with opposition
groups like the Petition of 50 have been telling another story about the
1950s: that ministers and senior civil servants lived simply and accessibly,
that big-time corruption was rare, that the courts were independent of even
cabinet ministers and top military officials, that the Afro-Asian
Conference held in Bandung in 1955 was a triumph for Indonesia’s good
name in the world, that the elections of that year were honest and peaceful.

Uncorr uptible government officials, an independent judiciary, foreign policy successes
and democratic elections are not the exclusive province of parliamentary systems; these
dissidents could easily reconcile nostalgia for such things with a preference for presidentialism.

Furthermore, another factor strengthening the case that Indonesian elites’ perceptions of history influenced their contemporary preferences and not vice versa is that these perceptions were not entirely incorrect. According to Jervis (1976, 226), “When the interpretation of the past is strikingly incorrect, it is likely that it was influenced by current preferences rather than the other way around.” While it may be unfair to lay the entire blame for political instability in the 1950s at the feet of the parliamentary system, it is hardly “strikingly incorrect” to do so. The classic study of this period is by Feith (1962, 597), who concluded, “The 1949-1957 period was one of high and rising political unrest. This unrest could be blamed on the existing party and parliamentary system.” Would a different political system have been better equipped to deal with the multiple challenges faced by Indonesia at the time? One piece of evidence that it would have is that the last cabinet under the 1950 Provisional Constitution, the so-called “Business Cabinet” (Kabinet Karya) that served from April 1957 to July 1959, was the longest-lasting cabinet of the entire parliamentary period. This cabinet was also the only one of the seven not explicitly formed on a party basis and the only one led by a non-party politician, Djuanda Kartawidjaja (Feith 1962, 579; Ricklefs 2001, 313-314).

Let us now return to the four variables posited by Jervis (1976, 239) to “influence the degree to which an event affects later perceptual predispositions.” The first of these variables was whether a person experienced the event firsthand. In 1999 anyone older than 50 would have been at least ten years old in 1959, the end of the period of parliamentary democracy. This would have been old enough, if not to understand the
intricacies of parliamentarism, at least to have experienced directly some of the chaos of that period, such as economic stagnation and regional rebellions. With very few exceptions, however, none of the MPR members in 1999-2002 was old enough to have experienced the 1950s as an adult, which was Jervis’ second variable.

The third variable was whether the event was important to a person’s state or organization. Clearly this was a very important period in Indonesia’s modern history: the first decade of self-rule after centuries of colonial subjugation. The failure of the parliamentary system to maintain political stability and foster economic growth was a searing blow to Indonesians’ nationalist consciousness. The fourth variable was the range of available alternative analogies. Since in 1999 Indonesia had only one prior period of democracy in its history, there was only one analogy available to these elites. According to Jervis (1976, 270), “A decision-maker whose conceptual framework is dominated by a few categories will fit events into them quickly and on the basis of little information. On the other hand, those who are familiar with multiple possibilities will be less influenced by any single historical case.” In short, the period of parliamentary democracy in the 1950s is positive for three of these four variables for anyone older than 50 in 1999, and two of the four for anyone younger than 50 (and even these younger generations were heavily socialized against parliamentarism, as described above). This explains why this period has such great salience for contemporary institutional choices in Indonesia.

For Indonesian party leaders, the relevance of their perceptions of the parliamentary period for contemporary institutional choices was reinforced by the fact that many of the other sources of political instability in the 1950s – such as regional rebellions, economic crisis, a restive military, a weak and ineffective bureaucracy, and
significant foreign influence over the economy – also had echoes in the context surrounding the constitutional reform debates of 1999-2002. In the words of one member of PAH I from Golkar, “we are still in the midst of a multidimensional crisis.” In addition, the 1999 election results seemed to indicate that the same socioeconomic and religious cleavages (aliran) that had been the primary sources of both party identities and voting patterns in the 1950s were still salient four decades later. In other words, given strong similarities in the political environment between the 1950s and 1999-2002, Indonesian political elites concluded that the reestablishment of a parliamentary system carried a very high risk of the return of the political instability that had characterized that earlier decade.

PDI-P shared this view of the 1950s and also preferred a presidential system but justified its initial opposition to direct election on various grounds, as discussed previously in Chapter Three. According to Jervis (1976, 224), however, this initial mismatch between PDI-P’s perception of history and its institutional preferences is not unusual “because so many other variables influence later perceptions, we must talk in terms of perceptual predispositions. …The impact of learning from history can be outweighed by other influences.” In the case of PDI-P, these other influences included its ideological commitments and its self-interest.

The other four major party blocs correctly understood that a pure presidential system requires the direct, popular election of the president. The goal of establishing a pure presidential system thus trumped their political self-interest in a weaker presidency. In their view the demographic realities of Indonesian sociocultural heterogeneity would

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100 Interview, Theo Sambuaga, Golkar, Jakarta, July 12, 2004.
always produce a multiparty system that – in any type of parliamentary system – would inevitably lead to cabinet instability. The corollary of this argument was that a presidential system provided a measure of executive stability as a welcome counterbalance to the instability of multipartism rooted in social heterogeneity.

Why didn’t these party leaders alter the proportional representation electoral system to reduce the level of party fragmentation, rather than adopt presidentialism, if the overall goal was political stability? There are several answers to this question. First, any reforms explicitly designed to reduce political pluralism just as it was finally being reestablished would have raised the specter of Presidents Soekarno’s and Soeharto’s efforts to manipulate and control the party system by banning some parties and forcing others to merge. Second, there were in fact elements of the electoral system designed to reduce party fragmentation but portrayed as achieving different, more palatable goals. For instance, in the electoral laws for both 1999 and 2004, in the name of preserving national unity regional parties were effectively banned by the party registration requirements stipulating the establishment of branches in a minimum number of provinces and districts. In addition, for the 2004 elections, electoral district magnitudes were reduced substantially, ostensibly to increase the accountability of elected representatives to their constituencies. Third, with the exception of Golkar, all of these parties were smaller and thus benefited from proportional representation. Any electoral system designed to reduce party fragmentation could have spelled the death knell for any one or more of these parties.

101 In the event, even if this reform was also intended to reduce party fragmentation, it did not succeed in doing so. In fact, the opposite occurred as voters shifted their support from the five larger parties to two smaller parties.
Finally, these elites often perceived a presidential system as better able to preserve national unity. For instance, the chairman of Golkar’s DPR bloc and a member of PAH I argued, “In a parliamentary system, all political decisions are made in parliament. Separatist movements such as those in Aceh or Papua could influence such decisions via parliamentary parties.”\textsuperscript{102} His colleague in Golkar, another member of PAH I, agreed, “For the people in the regions striving for justice, the level of trust in the central government is very low. Thus the idea of separatism has flourished in places such as Aceh, Papua, Maluku and Riau. We need a stable, united government that is democratic but strong enough to concentrate on delivering justice to the regions. Otherwise this nation will become more fragmented and tend to disintegrate.”\textsuperscript{103} The secretary of PAH I from PKB stated, “The presidential system is closely tied to maintaining national unity, which is one of PKB’s basic principles. Since the president is both the head of state and head of government, he or she can be stronger and more effective, without being dependent on another political leader such as a prime minister.”\textsuperscript{104}

A presidential system is also seen to be better able to withstand the consequences of the high level of “political immaturity” perceived to be widespread among the political party elite. The chairman of Golkar’s DPR bloc and a member of PAH I said, “Even though we have been independent for 50 years, we are not mature in our politics. For example, look at the hundreds of political parties that have been established.”\textsuperscript{105}

\textsuperscript{102} Interview, Andi Mattalata, Golkar, Jakarta, July 4, 2004.

\textsuperscript{103} Interview, Theo Sambuaga, Golkar, Jakarta, July 12, 2004.

\textsuperscript{104} Interview, Ali Masykur Musa, PKB, Jakarta, July 7, 2004.

\textsuperscript{105} Interview, Andi Mattalata, Golkar, Jakarta, July 4, 2004.
colleague from Golkar, a deputy chairman of PAH I, agreed, “A parliamentary system cannot guarantee political stability. Our people are not yet mature; just a little bit of dissatisfaction and the prime minister could be brought down.”

In a related fashion, the secretary of PAH I from PKB stated, “We are not mature yet in addressing the heterogeneity of Indonesian society. Thus we need a strong figure.”

A member of PAH I from PPP said, “Indonesian political culture remains primordial and paternalistic. Emotions still win out over logic, such as when factions within parties have differences of opinion. Factions that lose internal battles try to undermine the winning factions, and the latter try to finish off the former.”

The operative concern in this analysis is not whether Indonesian elites correctly applied their perceptual predispositions regarding parliamentarism to their contemporary situation. For instance, their institutional preference for presidentialism ignored the possibility of designing a parliamentary system to minimize the likelihood of cabinet instability, for instance by adopting the constructive vote of no confidence. They also brushed aside the lesson that a strong, effective and professional state bureaucracy could mitigate the policy impact of instability in the political executive. Finally, they didn’t take into account the recent academic debate regarding the various strengths and weaknesses of parliamentary, presidential and mixed systems.

Instead, the main point of this analysis is that these perceptions were widely held among the Indonesian political

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109 A good summary of some of the conclusions of this debate can be found in Gunther 2001. See also the concluding chapter for further discussion.
elite during the 1999-2002 period of constitutional amendment. Equally importantly, these perceptions influenced their views on certain amendments, including particularly direct election of the president and vice president.

**Commitment to Presidentialism and Direct Election**

The commitment to presidentialism was made explicit early in the constitutional reform process. At the October 1999 MPR General Session, two things soon became apparent to all the members. First, constitutional reform was a complex and serious process that could not be resolved adequately within the few days allocated for deliberations at the session. Second, there was a lack of consensus on specific amendments. In particular, PDI-P and TNI/POLRI were the leading blocs resisting amendments, and they (in conjunction with KKI, a small bloc) controlled the more than the one-third of seats necessary to block approval of any amendments. Nonetheless, uncertainty over the presidential election was high and public opinion was strongly in favor of amending the Constitution, and thus these blocs acquiesced begrudgingly to join the consensus approving the First Amendment at this session. They were, however, successful in restricting the scope of this amendment to focus almost solely on the principle that the legislative process should be centered in the legislature rather than the executive branch.

Proponents of more wide-ranging constitutional reforms, although frustrated at their failure at this session, took heart in the passage of the First Amendment as setting an important precedent for further amendments, given the New Order’s “sacralization” of the original 1945 Constitution. In the final months of 1999, as Ad Hoc Committee I of the
MPR Working Body set about its work preparing draft amendments for the 2000 Annual Session, all the blocs first agreed by consensus upon a set of five principles that would form the basis for all their future work. One of these principles was concerning the political philosophical basis for amendments, i.e., that the Preamble to the 1945 Constitution would not be revised. In particular, this meant that the five-point state ideology of Pancasila would remain in force and that there would be no consideration of establishing an Islamic state in Indonesia. Two more of these principles were regarding procedural issues. First, amendments would be tacked on as appendices to the original Constitution (this was often described as the “American model” of amendment, as opposed to the “French model” of wholesale replacement). Second, the official Annotations to the Constitution would be eliminated and any substantive elements marked for retention would be included directly in the amended body of the Constitution. Henceforth the amended 1945 Constitution would consist only of the Preamble and the main body, the latter consisting of the original text plus any amendments. Finally, the other two principles concerned the political institutional basis for amendments. First, the unitary state would be retained, avoiding any discussion of federalism. Second, and most relevant for this analysis, a presidential system would be established. These basic principles thus served as a macro-level framework guiding the discussion of specific changes over the following three years.

In addition to this general commitment to presidentialism, the other four major party blocs also correctly understood that a pure presidential system requires the direct, popular election of the president. Fuad Bawazier, former minister of finance in President
Soeharto’s last cabinet and a member of Ad Hoc Committee I from the National Mandate Party, stated in 2000,

if one wishes to maintain a presidential system, then a balanced pattern of relations must be established between the president and legislative institutions. And this means that the appointment of the president by the MPR must be changed to direct, popular election so that the legitimacy of presidential power no longer stems from the Assembly with all its consequences.\(^\text{110}\)

Party founder and chairman Amien Rais stated his support for direct election of the president as early as April 1999, in the run-up to the June 1999 elections.\(^\text{111}\)

Golkar leaders, including President Habibie beginning soon after President Soeharto stepped down, were consistent in their support for direct presidential election.\(^\text{112}\) This support was formalized in a Golkar position paper on constitutional amendments presented during the MPR General Session in October 1999.\(^\text{113}\) As Ad Hoc Committee I resumed its work in early 2000, Golkar chairman and DPR speaker Akbar Tandjung reiterated, “the focus of PAH I BP MPR to amend the 1945 Constitution should be aiming toward a direct presidential election system.”\(^\text{114}\) A member of PAH I from Golkar stated, “Direct election provides the president with strong legitimacy. In a parliamentary

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\(^{110}\) “Pemilihan Presiden Secara Langsung” [Direct Presidential Election], *Republika*, June 12, 2000, p. 6.


\(^{113}\) “Amandemen UUD 1945: Golkar Usulkan Presiden dan DPR Sepenuhnya Dipilih Rakyat” [Amendment of the 1945 Constitution: Golkar Proposes that the President and the DPR be Fully Elected by the People], *Kompas*, October 8, 1999, p. 1.

system, the president has no real governing power. The prime minister is not directly elected by the people, but rather by the parliament.”

Despite being elected indirectly by the MPR, President Abdurrahman Wahid expressed his support for direct election when he was still in office. In May 2000, he stated, “the president and the vice president should be directly elected in order to get rid of the Indonesian people’s hypocritical posture toward the system of checks and balances as well as anomalies in the main body of the 1945 Constitution.”

This understanding of the need for direct election of the president in a pure presidential system was reinforced in the first half of 2001 as the process for removal of President Abdurrahman Wahid unfolded. According to a member of the DPR and PAH I from the National Mandate Party, “One of the reasons for the creation of a strong presidency is the commitment that Indonesia’s political system should be presidential. The experience with [Abdurrahman] very much colored thinking in this regard, i.e. the concern that a system like that could change from presidential to parliamentary.” His colleague from Golkar, a deputy chairman of PAH I, agreed, “Our experience with [Abdurrahman] also caused our opposition to a parliamentary system. It was too easy for the DPR to call the MPR into session.”

It is not immediately apparent that this would be the lesson learned by these politicians from the 2001 presidential crisis. It is equally plausible that they could have concluded that if President Abdurrahman had been directly

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116 “Pemilihan Presiden Langsung Untuk Hapuskan Kemunafikan” [Direct Presidential Election in order to Eliminate Hypocrisy], Kompas, May 26, 2000, p. 6.
elected in 1999 and subject to the much more difficult impeachment provisions common in pure presidential systems, it would have been nearly impossible to remove him in the middle of his term and Indonesia would have had to suffer through three more years of his erratic administration. In other words, they could have concluded that perhaps it was time to take a second look at parliamentarism, as a way for the legislature to replace more easily an ineffective chief executive. The fact that they did not come to these conclusions speaks volumes about the powerful impact of their perceptions of Indonesia’s history on their contemporary preference for presidentialism.

Thus as the November 2001 MPR Annual Session opened, the positions of all major blocs in the MPR converged to support the principle of direct election of the president and vice president, albeit for different reasons. President Megawati and PDI-P did so out of self-interest, to increase the power of the presidency they expected she would retain until and after 2004. The other major party blocs had always supported direct election, but this position was bolstered by their recent experience of the midterm removal of a president on political rather than judicial grounds.

For Golkar, PPP, PKB and Reform, the goal of establishing a pure presidential system thus trumped their political self-interest in a weaker presidency. A leader of PAH I from PKB said, “From a political angle, PKB should not have agreed with direct election of the president and vice president. With our political base too narrowly concentrated on Java, a PKB candidate would find it difficult to gain 50 percent plus one of votes nationally as well as at least 20 percent in at least half the provinces.”

If the preferences revealed by a political party are not rooted in that party’s self-interest, then it is important to examine the sources of those preferences. Under what conditions is self-interest no longer the most important factor in determining political positions? One factor at work is that amendment of the constitution, unlike passing legislation, is often seen as above partisan politics. The PKB leader of PAH I quoted above went on to say, “When direct election of the president and vice president was debated, PKB no longer thought of its own interests, but rather the public interest.” One PPP leader who played an important role on PAH I held a similar view, stating, “Practical political interests can’t always be used as the reference point for amending the Constitution. Instead we have to take into account the long-term future of the nation.” This attitude is consistent with Ackerman’s (1992, 15) second track of a “higher lawmaking system.”

In reforming their political system, Indonesia’s elites thus rejected both previous eras in their modern history. They strove to avoid the overcentralization of power and executive dominance of the authoritarian period as well as the fragmentation and instability of the parliamentary democracy that preceded it. This pattern of political development has certain similarities to the German case, in which postwar constitutional drafters created a system designed to avoid the pathologies of both the Weimar and Nazi regimes (Loewenberg 1971). The caveats in this comparison of Indonesian and Germany are that the extremes of the preceding regimes in Germany were somewhat greater than those in Indonesia and the contemporary German system is parliamentary instead of

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120 Ibid.
121 Interview with Lukman Hakim Saifuddin, PPP, Washington, DC, October 2, 2002.
presidential. It is not obvious that Indonesian elites would make these particular choices. The rejection solely of the excesses of the immediately preceding period is another common pattern. The sixteen French constitutions promulgated over the 215 years since the Revolution have often lurched between “the oligarchic deformations of the representative traditions and the caesaristic temptations of plebiscitarian regimes” (Ehrmann 1983, 11). Another common pattern is the restoration of a previous democratic constitution, as in Uruguay and Argentina (Linz and Stepan 1996). This outcome has the advantage that it is formally democratic, rapid, tends to avoid conflict and draws on legacies of historical legitimacy. However, it can also be the case that this resurrected constitution is no longer appropriate in the contemporary context, given intervening social and political change, and could even be destabilizing, for it may have played a role in the previous democratic breakdown. Indonesian constitutional reformers, by contrast, have tried to achieve an equilibrium point between establishing the separation of powers and checks and balances – thereby avoiding the authoritarian excesses – and maintaining an effective central government – in contrast to the 1950s. This struggle for equilibrium is illustrated by the one explicit reference in the 1999 PAH III debates to the negative experience of the 1950s, by an unidentified PDI-P member: “we can learn from history that under parliamentary democracy cabinets rise and fall and the state is never stable, thus we have agreed that the system must be presidential – only it was too powerful, perhaps because [the original 1945 Constitution] was made in a hurry as a provisional measure – so let’s fix it even if it remains presidential.” (People’s Consultative Assembly 1999b, 59)
An Institutional Explanation: Correlation But Not Causation

The results examined here are also largely congruent with an institutional explanation outlined in Chapter One. According to Shugart (1993), legislatures characterized by high fragmentation and/or weak parties may create strong presidencies to help avoid cabinet instability. Based on research in Latin America, Eastern Europe and the former Soviet Union, Shugart (1993, 32) has found that the strength of presidencies varies inversely with the strength of parties. The less well-formed are the identities of parties as vehicles for programmatic policy choices at the time of constitution-making, the more likely are the founders to create a powerful presidency. Granting strong presidential powers is a way to minimize the risk of unstable cabinets, to let somebody else (the president) take direct responsibility for policy choices, and to leave elected representatives relatively free to provide “services” to their constituents.

The DPR (and thus the MPR) from 1999 to 2004 was certainly characterized by high party fragmentation. The 1999 elections produced a comparatively very high level of party fragmentation for a presidential system (and moderately high even for parliamentary systems): the Laakso-Taagepera index of “effective” political parties was 4.7.122 In other words, there were approximately five major parties in these legislative bodies.

Where the empirical reality in Indonesia does not entirely match Shugart’s theory is that Indonesian parties, while certainly not very strong organizations, are also not completely weak either. The parties have clear identities, although these tend to be based on sociocultural markers (aliran) rather than coherent, detailed policy platforms. Thus in

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122 This does not count the 38 unelected seats (7.6 percent of the total) set aside for the military and the police. The formula can be found in Laakso and Taagepera 1979, 4. Comparative data is in Linz and Stepan 1996, 277. By way of comparison for Indonesia, the number of effective political parties as a result of the 1955 parliamentary elections was 6.4.
campaigning, parties all tend to offer very similar and very broad motherhood-and-apple-pie statements that make it difficult to distinguish among them on the basis of policy prescriptions. Party bloc voting discipline has been relatively high in the national legislature over the past five years, although at the subnational level party discipline has been much weaker and allegations of vote-buying have been widespread, particularly in the election of regional executives. The parties tend to be highly centralized organizations dependent on the mobilizational capacity of the elites who sit on their national leadership boards, and some are also dependent on the charisma of a particular leader. The patron-client nature of this mobilizational capacity means that these parties tend to suffer from significant internal factionalization on the basis of personal rivalries, a situation exacerbated by the lack of policy platforms that could help establish common goals.

Nonetheless, this explanation can only establish the correlation of high party fragmentation and somewhat weak parties with the establishment of a strong presidency in Indonesia. It cannot explain how this strong presidency was created – in two ways. First, it cannot account for the weakening of the presidency in the First and Second Amendments that contributed to the presidential crisis of 2001 and thus caused Megawati and PDI-P to reverse their position on direct election. Party fragmentation was certainly no lower and party strength no higher in 1999 and 2000 than it was in 2001 and 2002. Second, although all the parties rejected parliamentarism on the grounds that they believed presidentialism promised greater cabinet stability, they did so not based on some abstract notion but rather in reference to their very specific perceptions of Indonesia’s own political history, as detailed above.
Furthermore, Shugart’s theory is not about the macro-systemic choice between parliamentarism and presidentialism, but rather about micro-institutional choices regarding the strength of the presidency. Finally, the DPR and MPR from 1999 to 2004 can hardly be accused of shying away from policy choices and concentrating on serving their constituents. In fact, these bodies are more often accused of ignoring their constituents, and they have passed numerous laws and decrees over the last five years that have contributed to building the institutional basis for consolidating democracy, fighting corruption and developing the economy. In short, the combination of political economic and political psychological factors presented in this study provide a more nuanced and complete explanation of the empirical outcomes in Indonesia.

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CONCLUSION

CONSTITUTIONAL REFORM AND THE PROSPECTS FOR DEMOCRATIC CONSOLIDATION IN INDONESIA

The power of the presidency and executive-legislative relations in Indonesia have changed significantly since 1999. Under the original 1945 Constitution, the presidency was endowed on paper with a broad array of specific and residual powers – and authoritarian presidents were able to take full advantage. In a more democratic context, however, the president was unable to use those powers fully due to the indirect nature of the presidential election process and the constitutional supremacy of the MPR. As a result of the first four amendments and accompanying MPR decrees, the president’s formal powers have in fact been curtailed somewhat. This is especially true of the president’s residual powers; specific powers have been reduced only slightly. Nonetheless, the Indonesian president has still become a very powerful chief executive when compared to other presidents around the world, now that the president and vice president will be directly elected and the constitutional supremacy of the MPR has been abolished.

This study incorporates an element heretofore unanticipated in theories of democratic transition: a conservative prodemocratic opposition. The existence of a significant element of the opposition to the authoritarian regime that shared institutional
preferences with regime actors resulted at first in limited, uncoordinated constitutional reforms that created further confusion regarding the rules of the political game, leading to a constitutional crisis. Paradoxically, the particular resolution of that crisis subsequently helped break the impasse on fundamental constitutional issues such as the method of election of the president and vice president. The end result of this process is a constitutional framework that is much more democratic, coherent and complete than in the original document – and which may over time prove to serve as the foundation for a viable presidential democracy in Indonesia.

In conclusion, I return to the research puzzle addressed by this study: how did Indonesian politicians charged with amending the 1945 Constitution begin in 1999 with the principle of curtailing presidential power and yet end up by 2002 creating one of the strongest democratically-elected presidencies in the world? In answering this question, I have argued that a combination of self-interest and construction of collective historical memory offer an explanation that best balances the goals of parsimony, richness and accuracy.

For the largest party, PDI-P, and its leader, President Megawati Soekarnoputri, the challenge is to explain why in 2001 and 2002 they switched from opposing to supporting direct election of the president and vice president. This study finds that this reversal was rooted in their self-interest, both short-term in ensuring her ability to serve out the remainder of Abdurrahman Wahid’s term through 2004 and longer-term in maintaining and even enhancing the power of a presidency they expected her to continue to occupy for some time beyond 2004.
For the other four major party-based blocs in the MPR (Golkar, PPP, PKB and Reform), self-interest does not explain their consistent support for direct election, and thus the challenge for these parties is to determine what does explain their position. As parties with much lower hopes than PDI-P of occupying the presidential palace in the near future, their self-interest was in a weaker presidency and thus they should have opposed direct election, which serves to greatly strengthen the presidency. Instead, this study finds that their consistent support for direct election was rooted in a shared construction of collective historical memory. The 1950s were remembered by these parties’ leaders as a time of great political instability in Indonesia, and they ascribed much of the blame for this instability to the parliamentary system in place at the time. When deliberations over constitutional amendments began in 1999, consideration of a parliamentary system or even a mixed system was taken off the agenda and a commitment was made to establishing a pure presidential system, including direct election of the president and vice president. For these four party blocs, this commitment to pure presidentialism trumped their self-interest in a weaker presidency.

Thus beginning in November 2001 the positions of PDI-P and the other four blocs converged in support of direct election, which was one of the key reforms in the Third and Fourth Amendments. PDI-P’s about-face was critical to ensuring that other members of the conservative wing in the MPR, such as the military and police bloc, overcame their own hesitations and joined the consensus in support of direct election.

The failure of the electoral bargaining approach to explain every major bloc’s position on constitutional amendments related to presidential power certainly demonstrates the limitations of the applicability of this theory of institutional choice.
However, it is not necessarily a fatal blow, for this approach focuses on power, uncertainty and interests from the standpoint of the favored presidential candidate. One test of its applicability, therefore, is not whether it travels well to the rest of the political spectrum in a particular country but rather whether it explains the behavior of front-running candidates in additional cases. This study demonstrates that the electoral bargaining approach does in fact travel rather well to an examination of Indonesia’s constitutional reform process from the standpoint of the favorite Megawati Soekarnoputri and her party, PDI-P.

One of the reasons it is possible to combine these explanatory factors in a single analysis is that both emphasize the role that individual political actors – and their objective interests as well as subjective perceptions of reality – play in determining political outcomes. This is a very different approach from political cultural or historical sociological approaches that see grand forces, such as culture or socioeconomic classes, at work. This is not to say that such grand forces were not relevant to the constitutional reform process in Indonesia from 1999-2002. Perhaps in the future, after the new political arrangements have had some time to operate, it will be easier to discern the macrostructural forces at work. In the meantime, however, perhaps in part because the reform process is so recently completed and the new arrangements have not yet been fully implemented (as of this writing in September 2004), it is easier to see the influence of individual political actors and their interests and perceptions.

This concluding chapter has two tasks. First, I reexamine the electoral bargaining theory outlined in Chapter One in light of the treatment of the Indonesian case in Chapters Two, Three and Four. Second, I look ahead at the prospects for democratic
consolidation in Indonesia, based on how the changes in presidential power examined in this study fit into the literature on the relative merits of presidentialism and parliamentarism.

The Electoral Bargaining Approach: A Reexamination

This study contributes both methodologically and substantively to the political science literature on institutional choice, particularly regarding presidential power. Methodologically, it explicitly compares several scales of presidential power in a way that has rarely been done before. This comparison both highlights that these scales measure many of the same features of presidential power – and therefore the results run in parallel – and implicitly suggests ways to improve these measures.

Let me now make these suggestions more explicit. First, it is critical to measure both the specific and the residual powers that a president can employ. A scale such as that developed by Shugart and Carey (1992) that only measures specific powers would have revealed little about the constitutional reform process in Indonesia, in which the more significant changes took place in the realm of residual powers. Second, scales that can be applied to both directly and indirectly elected presidents are inherently more useful than those that are limited to one type or the other. Incorporating both types into a single comparative framework is not only useful for expanding the number of country cases that can be studied, but also for comparing developments in a particular country over time. This is especially true if that country switched at some point from one type to another, as Indonesia has in 2004. Third, the Indonesian case underscores the importance of focusing not only on the formal constitution, but also on decrees, laws and other second-level
statutes that may regulate what are normally considered “constitutional” issues. A small but significant portion of the formal changes in presidential power in Indonesia since 1999 took place not as constitutional amendments per se but rather as MPR decrees or new laws.

This study also suggests some areas for further research. Extant measures of presidential power remain inadequate to the task. Presidential strength is not just dependent on the method of election and the formal specific and residual powers granted to the office. McGregor (1994, 23-24) has suggested that presidential strength can also be dependent on the extent of party support in the legislature. In addition, I would add that the extent of party fragmentation in the legislature also effects presidential strength. As a general rule, greater party fragmentation weakens legislatures and specifically makes it harder for an opposition coalition to coalesce – and thus easier for the president to cobble together shifting legislative majorities on an issue-by-issue basis. Other factors contributing to presidential power are “accumulated traditions” and “the personality of the office holder” (Elster, Offe and Preuss 1998, 76; McGregor 1994, 23-25). To this list we could also add the moral authority of the office and judicial interpretations of executive prerogative (McGregor 1994, 23-25). Some of these factors are admittedly harder to measure than others, but none is currently factored into any existing scale of presidential power.

Furthermore, these scales are limited to measuring presidential power. It would be useful to have broader measures of executive power that can be applied to presidential, parliamentary and mixed systems. This is especially critical if executive power in turn
becomes an independent variable used to explain such phenomena as democratic stability or economic development (Gunther 2001).

Substantively, I use a theoretical framework – the “electoral bargaining approach” – that was developed primarily based on cases in Eastern Europe and the former Soviet Union (and secondarily Latin America) to inform my treatment of a case in Southeast Asia. This is an exercise both in conceptual traveling and in exploring – once concepts have been stretched – to what extent those concepts are useful on a broader geographic plane. The conclusion I draw from this exercise is that many of the concepts do in fact travel fairly well.

This conclusion should not be entirely surprising given that the concepts I utilize – such as bargaining power, uncertainty over election outcomes, interests, and perceptions of history – are not unduly fraught with particular cultural constructs. This makes it easier to apply those concepts in different parts of the world. The main modification I introduce – somewhat different measures of uncertainty for an indirectly elected president – is also not necessarily specific to Indonesia or Southeast Asia, and thus should be able to travel elsewhere as well.

This study also contributes to the literature on Indonesian political development, both by explaining some of the most important constitutional reforms of the past five years and by demonstrating that an institutional choice framework can be fruitfully applied to Indonesia. In my examination of recent constitutional reforms in Indonesia, I have focused on the struggle between two broad camps of politicians in the MPR: progressives and conservatives. For the purposes of this study, the main criterion
distinguishing these groups was their position on amending the 1945 Constitution: progressives in favor and conservatives opposed.

The progressives were scattered among many different blocs: most (although not all) of Golkar as well as nearly all of PPP, PKB and Reform. The conservatives were led by PDI-P; the other significant element of this camp was the military and police bloc. Furthermore, I have tried to demonstrate that PDI-P cannot be seen as monolithic regarding constitutional reforms but rather was internally factionalized between more conservative and more progressive elements. In the end, the more progressive faction of PDI-P was able to outmaneuver the more conservative faction and make common cause with the progressives in other parties to complete in 2002 the process of constitutional amendment begun in 1999. The main achievement of the conservative camp, therefore, was to delay the completion of the amendment process until 2002; on most of its substantive issues, it lost battle after battle.

This contemporary struggle can serve as a window on one aspect of modern Indonesian history stretching back to the early years of independence. The conservative camp on amending the 1945 Constitution is the contemporary equivalent and the political heirs of the “solidarity makers” of the 1950s and the progressive camp is the equivalent of the “administrators.” Feith (1962, 24-25) defined administrators as elites “with administrative, legal, technical, and foreign language skills, such as are required for the running of a modern state,” whereas solidarity makers are “leaders with what may be called integrative skills, skills in cultural mediation, symbol manipulation, and mass organization.” Feith (1962, 604-608) concluded that the decline (and eventual overthrow) of constitutional democracy at the end of the 1950s could be traced to the “political
failure” of the administrators, led by Vice President Hatta, and the victory of the solidarity makers, led by President Soekarno. In that first decade of independence, administrators remained a minority. In a review of Feith’s book, however, Benda (1982 [1964], 19) argued that,

it is nonetheless highly probable that Indonesia will modernize and that therefore change will come to loom larger than continuity. ‘Solidarity-making’ will very likely be forced to yield, or at least to make progressively more room for, ‘problem-solving.’ for economic modernization, in particular, is bound to follow its peculiar, rational, and indeed iron logic.

Benda was prescient. Following the end of parliamentary democracy and the rise of Guided Democracy, the administrators did not fade away but rather slowly grew in numbers and strength, especially in the nurturing environment of the economic growth fostered by the New Order beginning in the late 1960s. President Soeharto was a solidarity maker as well, but unlike Soekarno he recognized the value of administrators for creating economic resources that could be used to support his regime (Liddle 1991). Bresnan (1993) has analogized the history of policy-making in the New Order to a pendulum swinging back and forth between greater influence for economic nationalists (solidarity makers) in times of growth and for liberal economists (administrators) in times of crisis. Mallarangeng (2000) has examined the role of the community of liberal economists in overcoming the oil price crash and reorienting development toward non-petroleum-based export-led growth in the late 1980s and early 1990s. In other words, the balance of power between these two groups was more even during the New Order than it had been in the 1950s.

This study suggests a further update of this history: by the dawn of the new century, the tables had turned from the 1950s. It is now the solidarity makers (the
conservatives on constitutional amendment) who are in the minority in Indonesia and the administrators (the progressives on constitutional amendment) who are in the majority.\footnote{The other difference, of course, is that in the context of the 1950s the administrators were the conservatives and the solidarity makers were the radicals (Benda 1982 [1964], 17).} This is reflected in the success of the progressive camp in achieving all of its major substantive goals regarding constitutional amendment. Even more noteworthy is that these goals were achieved via a constitutional reform process that has not turned the conservative camp into a semiloyal or antisystem force vis-à-vis the new democratic regime. Instead, through various compromises, none of which undermined the democratic nature of the new system, the conservatives were able to join the consensus approving all four amendments. Linz and Stepan (1996) posit that consensual decision-making is the most nurturing type of constitution-making environment for democratic consolidation.

This certainly does not mean that the solidarity makers will inevitably disappear. In fact, it is much more likely that this segment of the Indonesian elite – and the mass constituency it represents – will remain an important factor in Indonesian politics for some time to come. It does mean, however, that we have one reason to adopt a cautiously optimistic stance regarding the likelihood that Indonesia’s second experiment with democracy will not go the way of the first: the constitutional reform process of 1999-2002 has resulted in an “elite settlement” in which all civilian political party elites have committed themselves to the new democratic institutions (Burton, Gunther and Higley 1992). At the elite level, the main challenges Indonesia faces in the coming years are to ensure that civilian behavior remains consistent with this commitment and to bring
around that portion of the military officer corps that still holds a semiloyal stance toward democracy so that full civilian control can be established.

The country’s progress over the second half of the twentieth century toward a “consensually unified elite” is an important step in securing the consolidation of democracy in Indonesia. As I discuss next in the final section of this chapter, the particular combination of institutions and norms chosen by this elite may be a second reason for cautious optimism in this regard.

**A Strong Presidency, Multipartism and Prospects for Democratic Consolidation: Not as Difficult a Combination in Indonesia?**

The end result of the recent constitutional reform process in Indonesia is the establishment of a more purely presidential system, in the context of a multiparty system. This “difficult combination,” as identified by Mainwaring (1993), has led to political instability – and sometimes even the breakdown of democracy – in the Philippines and Latin America. What are the prospects that this combination will make the consolidation of Indonesian democracy more difficult? I will argue here for guarded optimism. A number of other features of Indonesian politics – both institutional and cultural – have created a pattern of consensual politics that may serve to ameliorate the difficulties inherent in this combination of presidentialism and multipartism.

Sparked by Linz’s (1990a, 1990b, 1994) polemic essay, over the last fifteen years in comparative politics a lively debate has taken place on the relative merits of presidentialism, parliamentarism and mixed systems for political stability. An important conclusion of this debate was that the rather blunt distinctions among those systems do not easily lend themselves to firm conclusions regarding political stability, in part
because each of those categories is itself so internally heterogeneous. Instead, two categories of subtypes are more useful for drawing conclusions regarding political stability, policy performance and economic outcomes: majoritarian and consensual patterns of institutions and elite behavior (Gunther 2001). A majoritarian pattern – also referred to as a “concentrated-power” system – occurs when the same party controls the executive and legislative branches and elites demonstrate “winner-take-all” behavior. This can happen with a unified presidential, unified premier-presidential, single party majority parliamentary, or single party dominant parliamentary government. A consensual pattern – also known as a “diffuse-power” system – occurs when different parties control the executive and legislative branches, or there is a coalition or minority government, and elites exhibit coalition-building, compromise behavior. This can occur under a divided presidential, divided premier-presidential, multiparty coalition parliamentary, or minority parliamentary government.

These patterns have important consequences for democratic consolidation and for policy-making. The consensual pattern is more conducive to democratic consolidation because its inclusiveness can help build broad support for the new democracy and thereby avoid the creation of permanent losers who might otherwise turn against the system. The caveat to this conclusion is that once democracy is consolidated, majoritarian patterns may no longer threaten democratic stability and may in fact be better suited to effective policy-making. In fact, majoritarian patterns – because they have fewer “veto players” – are considered to be better at creating innovative and coherent policies, are more decisive, and are better at imposing losses on affected interests (Tsebelis 1995). Conversely, consensual patterns – with more veto players – are more conducive to policy
stability (defined as a lack of abrupt changes of policy direction), more open to citizen demand articulation, and better at protecting political minorities.

A single country can exhibit both patterns at different times in its political development. Furthermore, one pattern may be more appropriate than the other for facing a certain type of challenge. For instance, in facing an internal crisis such as a democratic opening, a consensual pattern may be more conducive to a successful transition and consolidation of democracy. On the other hand, a majoritarian pattern may be more effective at overcoming an external crisis such as an international economic shock or an attack by another state.

The consensual pattern – especially in the cases of divided presidential and premier-presidential systems – also contains the lurking dangers of executive/legislative deadlock and ideological polarization that can threaten regime stability. Mainwaring (1993) has argued that multipartism tends to soften political support for the president and is almost certain to generate divided government. A strong president’s response can be to bypass the legislature and rule by decree or even to overthrow democracy altogether. Przeworski et. al. (2000) found strong empirical evidence for these hypotheses; in their study, legislative-executive deadlock was most likely when the largest legislative party controlled more than one-third but less than one-half of the seats.

The key factors distinguishing whether the consensual pattern of institutional arrangements leads to the benign effects on policy-making and democratic consolidation outlined above or to the malignancies of deadlock and polarization are elite and mass behavior. According to Mainwaring (1993, 223), stable multiparty presidential regimes, when they do occur, depend “largely on the desire of elites and citizens to compromise
and create enduring democratic institutions. Optimally, political systems should have institutional mechanisms that reinforce such dispositions.” In the remainder of this concluding section, I discuss the prospects for democratic consolidation in Indonesia given the constitutional changes approved since 1999. I argue that the combination of a strong presidency and multipartism may prove to be less difficult in Indonesia than in Latin America due to the strongly consensual behavior of Indonesian elites and the institutional structures that support that behavior.

During the transitional period from 1999 to 2004, both institutional and elite behavioral patterns in Indonesia have been overwhelmingly consensual. The most important institutional aspects of this consensual pattern were indirect presidential election, multipartism in the legislative bodies (DPR and MPR) and moderate polarization of the party system. Indirect election of the president by a legislative body (the MPR) that exhibited a moderately high degree of party fragmentation provided incentives for coalition-building, however temporary those coalitions might have been. Moderate polarization means that for all their differences none of the most important Indonesian parties occupy the extremes of the political spectrum, rendering the necessary compromises attainable as well. The requirement in the First Amendment for “joint approval” of laws by the DPR and the president has largely promoted cooperation between the legislative and executive branches.

Elite behavior also reinforced this consensual institutional pattern. A convention developed of dividing the four plum posts among the major parties: president, vice president, MPR speaker, and DPR speaker. Another convention was that of forming multiparty cabinets, in part to ensure broad legislative support for the president. In
addition, MPR and DPR leadership positions, from deputy speakerships to committee posts, were allocated proportionally by bloc size – and even the tiniest blocs received some positions. The consequence of these practices was that no formal legislative opposition emerged. Indonesian political elites also demonstrated their willingness to punish those among them who swam against the consensual current. The effort to remove President Abdurrahman Wahid gained momentum when he demonstrated majoritarian behavior, such as the abrupt dismissal of cabinet ministers – threatening the emerging convention of multiparty cabinets – and his attempt to replace the national police chief without prior consultation with the DPR.

Fortunately, this pattern has had the expected consequences for democratic consolidation. In part because of this consensual pattern, Indonesia’s fledgling democracy is well on the road toward consolidation. At the time of this writing (September 2004) only six years since the transition began, Indonesia has enjoyed an enviable string of remarkable political achievements: successfully completing groundbreaking constitutional reforms, conducting two sets of national elections under different electoral systems, implementing significant decentralization of power to subnational authorities, greatly reducing the level of communal violence in many regions, and allowing East Timor to become independent without causing national disintegration.

This is not to say that the transition process has been perfect and that Indonesian democracy is already fully consolidated. The military remains very politically influential. Indonesia has yet to experience a fully peaceful transfer of executive power, although that is expected to happen in October 2004. Although violence has subsided, communal tensions remain high in some provinces, may be growing in others, and occasionally
break out into violence. The government has not yet devised a successful strategy for resolving separatist conflicts in Aceh and Papua. The government’s inability to tackle corruption and overcome economic problems may eventually erode public confidence in democracy. Nonetheless, given the comparative experience of other third wave transitions, it is not unusual for Indonesian democracy not to be fully consolidated only six years after the democratic opening. The coming five years of the next administration is a critical period in this process.

Unfortunately, the consensual pattern has also had the expected consequences for policy-making. The level of policy stability has bordered on stagnation. Well-financed and/or well-organized individuals and groups have been able to take advantage of the proliferation of institutional and partisan veto players to serve their interests. Policies have lacked innovation and coherence and the state has lacked decisiveness and the will to impose losses on affected interests. For instance, corporate debt restructuring and bank privatization and recapitalization have been hindered by the ability of former tycoons to manipulate state institutions. This is a hallmark of the consensual pattern of politics.

Most of the constitutional changes approved since 1999 have contributed to a greater proliferation of “institutional veto players” in the Indonesian political system and thereby reinforced the consensual pattern (Tsebelis 1995). The most important change is the establishment of a comparatively very powerful president who after 2004 will enjoy the legitimacy of direct election and will be harder to impeach. The national legislature (DPR) has now established a precedent for being much more active in legislative, budgetary and oversight processes, and so the “joint approval” clause may continue to create incentives for executive-legislative cooperation but it may also contribute to
deadlock, given that the legislature has no mechanism to override a presidential veto. Furthermore, after 2004 the president and the DPR will have to deal with a new institution, the Regional Representative Council (DPD). Although its powers are not as great as the DPR, nonetheless it represents a new node of systemic fragmentation of power. In addition, the rules for its composition – candidates must stand as individuals rather than party representatives – should make its internal political dynamics very different from those of the party-based executive and DPR. The decentralization of power to the regions and the strengthening of judicial checks on the executive and the legislature have also increased the number of institutional veto players.

Furthermore, party fragmentation has actually increased dramatically from the 1999 to the 2004 elections. Although the presidential electoral system for 2004 was significantly different, the legislative electoral system was similar to the fundamentally proportional representation system used in 1999. The main difference was the reduction in district magnitudes to a range of three to 12 seats per district (from a range of four to 82 seats in 1999), which should have served to reduce the level of party fragmentation. In fact, the reverse happened, as voters punished the five largest parties for poor performance and shifted their votes to two other parties, increasing the Laakso-Taagepera index of the number of “effective” political parties represented in the DPR from 4.7 (1999-2004) to 7.1 (2004-2009). This is a very high level of fragmentation for a parliamentary system, and is off the charts for a presidential system.

The danger identified by Mainwaring (1993) in the combination of presidentialism and multipartism is that a directly elected president enjoys roughly equal democratic legitimacy to that of the legislature. Many such presidents believe they have
received a popular mandate to rule on behalf of the entire country. In a faceoff between the president and a fragmented legislature unwilling to support fully his or her legislative agenda, “presidents and the opposition alike are often tempted to revert to extra-constitutional mechanisms to accomplish their ends.” (Mainwaring 1993, 217)

Although most of the institutional changes since 1999 make deadlock more likely in Indonesia after 2004, patterns of elite behavior remain largely consensual and are less likely to change rapidly than the institutional context. For example, each of the five presidential and vice presidential tickets in the 2004 election represented a combination of partisan and demographic backgrounds. This was done as a way of maximizing their chances of coming in first or second in the first round and thereby entering the second round, if not outright winning in the first round.

The tickets consisted of the following combinations: Golkar’s official candidate, a Javanese retired general who was also popular with modernist Muslims (Wiranto) and PKB’s official candidate, a Javanese intended to appeal to traditionalist Muslims (Salahuddin Wahid, Abdurrahman Wahid’s younger brother); PDI-P’s official candidate, the incumbent president, who is of mixed Javanese, Sumatran and Balinese ancestry and who enjoys a national following among secular nationalists (Megawati Soekarnoputri) and the national chairman of Nahdlatul Ulama (NU), a Javanese also intended to appeal to traditionalist Muslims (Hasyim Muzadi); PAN’s official candidate, a Javanese former national chairman of Muhammadiyah who appeals to modernist Muslims on and off Java (Amien Rais) and a businessman and former minister from Golkar who hails from Kalimantan, intended to appeal to eastern Indonesians (Siswono Yudo Husodo); the Democrat Party’s official candidate, a Javanese retired general with national appeal
(Susilo Bambang Yudhoyono) and a businessman and former presidential aspirant from Golkar who hails from Sulawesi and also has ties to NU, intended to appeal to eastern Indonesians and traditionalist Muslims alike (Jusuf Kalla); and PPP’s official candidate, the incumbent vice president who also hails from Kalimantan and has an NU background (Hamzah Haz) and a Sundanese retired general, intended to appeal to secular nationalists and modernist Muslims alike (Agum Gumelar). Given these combinations of the multiple, cross-cutting cleavages that characterize Indonesian society, direct presidential election has continued to provide incentives for inter-party compromise and coalition-building and has not threatened national unity and social peace.

Presidential cabinets after 2004 may also continue to be made up of representatives of several parties, although perhaps not as broad a spectrum as has been the case from 1999 to 2004. A more likely scenario is that presidents will begin to hew more closely to the (parliamentary) logic of minimum winning coalitions, to maximize the chances of securing strong, stable legislative support while minimizing the policy and patronage payoffs necessary to achieve that support. The likelihood of this scenario, of course, depends on the coalitions formed for the second round of the 2004 presidential election.

It is also likely that the DPR will continue to allocate leadership positions to all party blocs on a proportional basis. Although a few of the party leaders I have interviewed over the past several years have expressed some interest in amending the DPR rules of procedure in order to allocate leadership positions strictly to the minimum winning coalition necessary to achieve a majority, most have said that this is not likely for the time being. For example, a leader from Golkar, the largest party in the 1999-2004
DPR and thus the party with the least to gain from proportional allocation, recently stated, “It is not yet likely for the rules of procedure to be changed. It is an Indonesian cultural trait that we like to share, so that no one ends up with absolutely nothing.”

Consensual behavior is facilitated by the fact that although party fragmentation has increased with the 2004 elections, the party system continues to be characterized by only moderate polarization. Furthermore, the largest legislative party, Golkar, will control only 23 percent of DPR seats and is a highly pragmatic party. This will make it much easier for the president to form temporary, shifting coalitions around specific pieces of legislation.

These conclusions are bolstered by an updating of the veto player analysis of Indonesian political architecture found in MacIntyre (2003). As noted previously in Chapter Two, the first two amendments to the 1945 Constitution further weakened the presidency. Writing as of this point in the constitutional reform process, MacIntyre (2003, 153) found that the number of veto players in Indonesia had increased dramatically from one prior to 1998 (President Soeharto) to three or four as of 2001: the president and the two or three party blocs necessary to achieve a majority in the DPR. MacIntyre (2003, 148) opines that,

> in their determination to avoid the perils of a political framework that radically concentrates decision-making power, Indonesia’s reformers may in fact have ‘overshot’ and produced a system that harks back to the highly fragmented multiparty parliamentary framework of the 1950s... In short, the key question for Indonesia is whether it is in fact lurching from an extremely centralized institutional configuration all the way over to a heavily fragmented configuration. With the president dependent on continuous support from a substantially fragmented party system for not only legislative cooperation, but for his or her very survival in office, this is emerging as a serious problem.

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Fortunately, with the Third and Fourth Amendments, and particularly the establishment of direct election of the president and vice president and the tightening of impeachment grounds and procedures, the national political architecture in Indonesia is no longer nearly as problematic as it was in 2001.

In fact, using MacIntyre’s (2003, 37) definition of a veto player as “an individual or collective actor that has the institutionalized power to defeat a proposed law by withholding formal approval,” Indonesia after October 2004 will have only two veto players: the president and the DPR. Depending on the president’s ability to maintain good relations with DPR blocs and form shifting coalitions, these blocs no longer need to be counted separately as veto players. The weaker DPD does not have the veto power over legislation that the DPR enjoys as part of the “joint approval” clause. In MacIntyre’s analysis, two veto players is a moderate level of institutional fragmentation, which he posits can solve the “power concentration paradox” and produce a more efficient and effective pattern of governance – i.e. neither overly rigid nor overly capricious.

The continuation of a fundamentally consensual pattern of politics in Indonesia should contribute to greater progress toward democratic consolidation after 2004, although this outcome is of course by no means predetermined. If, however, this consensual pattern fosters political gridlock, then policy-making will continue to suffer from a lack of innovation, coherence and decisiveness. Unfortunately, these are the very qualities necessary to build (or rebuild, as the case may be) state capacity, which is as important as democratic accountability to the future health of democracy in Indonesia. Comparative experience, however, suggests that it is possible (although certainly not guaranteed) for a country to muddle through the first ten years or so after a democratic
opening by focusing on completion of the transition and deepening of consolidation, after which government performance becomes more critical to the health of democracy. In this view, a majoritarian pattern of politics may not be necessary in Indonesia as early as 2004 (and may in fact be detrimental to the consolidation of democracy), but would have greater utility after the 2009 elections.

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APPENDIX A

THE ORIGINAL 1945 CONSTITUTION,
INCLUDING OFFICIAL ANNOTATIONS
PREAMBLE

Whereas independence is the right of all nations, therefore colonialism must be abolished in this world, as it is not in conformity with humanity and justice.

And the struggle of the Indonesian independence movement has arrived at the moment of rejoicing to guide the Indonesian people safely and peacefully to the threshold of the independence of the state of Indonesia which shall be independent, united, sovereign, just and prosperous.

By the grace of God Almighty and motivated by the noble desire to live as a free nation, the people of Indonesia hereby declare their independence.

Subsequent thereto, to form a government of the state of Indonesia which shall protect all the people of Indonesia and the whole Indonesian motherland, and to improve public welfare, to educate the people and to contribute to the establishment of a world order based on freedom, everlasting peace and social justice, therefore the independence of Indonesia shall be formulated into a Constitution of the State of Indonesia which shall be established as a Republic based on popular sovereignty and based on: a belief in the One and Only God, a just and civilized humanity, the unity of Indonesia, democracy led by the wisdom of policies developed in deliberation among representatives, and the achievement of social justice for all the people of Indonesia.

THE CONSTITUTION

CHAPTER I
Form and Sovereignty

Article 1

(1) The State of Indonesia shall be a unitary State in the form of a Republic.

(2) Sovereignty shall be vested in the people and shall be exercised exclusively by the People’s Consultative Assembly (Majelis Permusyawaratan Rakyat).

CHAPTER II
People’s Consultative Assembly
(Majelis Permusyawaratan Rakyat)

Article 2

(1) The People’s Consultative Assembly shall consist of the members of the People’s Representative Council (Dewan Perwakilan Rakyat) augmented by the delegates from the regional territories and functional groups as determined by law.
(2) The People’s Consultative Assembly shall convene in a session at least once in every five years in the national capital.

(3) All decisions of the People’s Consultative Assembly shall be taken by a majority vote.

**Article 3**

The People’s Consultative Assembly shall determine the Constitution and the broad outlines of state orientation.

**CHAPTER III**

**Executive Power**

**Article 4**

(1) The President of the Republic of Indonesia shall hold the power of government in accordance with the Constitution.

(2) In exercising his/her duties, the President shall be assisted by a Vice President.

**Article 5**

(1) The President shall hold the power to make laws with the approval of the People’s Representative Council.

(2) The President may issue Government Regulations as required to implement laws.

**Article 6**

(1) The President shall be an indigenous Indonesian.

(2) The President and the Vice President shall be elected by the People’s Consultative Assembly by a majority vote. [Translator’s Note: The phrase “suara yang terbanyak” can be translated as either “plurality vote” or “majority vote,” but is generally understood to mean the latter.]

**Article 7**

The President and the Vice President shall hold office for a term of five years and shall be eligible for reelection.
Article 8

Should the President die, resign or be unable to perform his/her duties during his/her term of office, he/she shall be succeeded by the Vice President until the expiry of his/her term of office.

Article 9

Prior to taking office, the President and Vice President shall swear an oath in accordance with their respective religions or shall make a solemn promise before the People’s Consultative Assembly or People’s Representative Council. The oath or promise shall be as follows:

Presidential (Vice Presidential) Oath:
“I swear before God that I shall, to the best of my ability, fulfill as justly as possible my duties as President (Vice President) of the Republic of Indonesia, uphold faithfully the Constitution, conscientiously implement all laws and regulations, and devote myself to the service of Country and Nation.”

Presidential (Vice Presidential) Promise:
“I solemnly promise that I shall, to the best of my ability, fulfill as justly as possible my duties as President (Vice President) of the Republic of Indonesia, uphold faithfully the Constitution, conscientiously implement all statutes and regulations, and devote myself to the service of Country and Nation.”

Article 10

The President is the Commander-in-Chief of the Army, Navy and Air Force.

Article 11

With the approval of the People’s Representative Council, the President declares war, makes peace and concludes treaties with other states.

Article 12

The President may declare a state of emergency. The conditions for such a declaration and the subsequent measures regarding a state of emergency shall be regulated by law.

Article 13

(1) The President shall appoint ambassadors and consuls.

(2) The President receives foreign ambassadors.
Article 14

The President grants clemency, amnesty, pardon and restoration of rights.

Article 15

The President grants titles, decorations and other distinctions of honor.

CHAPTER IV
Supreme Advisory Council
(Dewan Pertimbangan Agung)

Article 16

(1) The composition of the Supreme Advisory Council shall be determined by law.

(2) The Council has the duty to reply to questions raised by the President and has the right to submit recommendations to the Government.

CHAPTER V
Ministers of State

Article 17

(1) The President shall be assisted by the ministers of state.

(2) These ministers shall be appointed and dismissed by the President.

(3) These ministers shall head Government Departments.

CHAPTER VI
Regional Authorities

Article 18

The division of the territory of Indonesia into large and small regions, and the form and composition of their authorities, shall be prescribed by law in consideration of and with due regard to the principles of deliberation in the government system and the hereditary rights of special territories.
CHAPTER VII
People’s Representative Council
(Dewan Perwakilan Rakyat)

Article 19

(1) The composition of the People’s Representative Council shall be prescribed by law.

(2) The People’s Representative Council shall meet at least once a year.

Article 20

(1) Every law shall require the approval of the People’s Representative Council.

(2) Should a bill not obtain the approval of the People’s Representative Council, the bill shall not be resubmitted during the same session of the People’s Representative Council.

Article 21

(1) Members of the People’s Representative Council have the right to submit bills.

(2) Should such a bill, despite the approval of the People’s Representative Council, not obtain the sanction of the President, the bill shall not be resubmitted during the same session of the People’s Representative Council.

Article 22

(1) In circumstances of compelling crisis, the President shall have the right to establish government regulations in lieu of laws.

(2) Such government regulations must obtain the approval of the People’s Representative Council during its next session.

(3) Should there be no such approval, these government regulations shall be revoked.

CHAPTER VIII
Finances

Article 23

(1) The State Budget shall be determined by law. In the event that the People’s Representative Council does not approve the budget proposed by the Government, then the Government shall operate under the budget of the preceding year.
(2) All government taxes shall be determined by law.

(3) The forms and denominations of currency shall be determined by law.

(4) Other state financial matters shall be regulated by law.

(5) In order to audit the accountability of state finances, a Finance Audit Board (Badan Pemeriksa Keuangan) shall be established by law. Its findings shall be reported to the People’s Representative Council.

CHAPTER IX
Judicial Power

Article 24

(1) Judicial power shall be exercised by a Supreme Court and other judicial bodies, as provided for by law.

(2) The composition and powers of these judicial bodies shall be regulated by law.

Article 25

Requirements regarding the appointment and dismissal of judges shall be determined by law.

CHAPTER X
Citizens

Article 26

(1) Citizens shall consist of indigenous Indonesian peoples and persons of foreign origin who have been legalized as citizens in accordance with law.

(2) Conditions regarding citizenship shall be determined by law.

Article 27

(1) All citizens shall be equal before the law and the government and shall be required to respect the law and the government, with no exceptions.

(2) Every citizen shall have the right to work and to earn a humane livelihood.
Article 28

The freedoms to associate and to assemble, to express written and oral opinions, etc., shall be established by law.

CHAPTER XI
Religion

Article 29

(1) The state shall be based upon belief in the One and Only God.

(2) The state guarantees all persons the freedom of worship, each according to his/her own religion or belief.

CHAPTER XII
National Defense

Article 30

(1) Every citizen has the right and duty to participate in the defense of the state.

(2) The rules governing defense shall be regulated by law.

CHAPTER XIII
Education

Article 31

(1) Every citizen has the right to education.

(2) The government shall establish and conduct a national educational system that shall be regulated by law.

Article 32

The government shall advance Indonesian national culture.

CHAPTER XIV
Social Welfare

Article 33

(1) The economy shall be organized as a cooperative enterprise based on the family principle.
(2) Sectors of production that are important to the state and affect the welfare of many people shall be controlled by the state.

(3) The earth and waters and the natural wealth within them shall be controlled by the state and used to achieve the maximum benefit for the people.

**Article 34**

Impoverished persons and abandoned children shall be taken care of by the state.

**CHAPTER XV**

The Flag and the Language

**Article 35**

The national flag of Indonesia shall be the Red and White (Sang Merah Putih).

**Article 36**

The national language shall be Indonesian (Bahasa Indonesia).

**CHAPTER XVI**

Constitutional Amendments

**Article 37**

(1) In order to amend the Constitution, at least 2/3 of the number of members of the People’s Consultative Assembly shall be in attendance.

(2) Decisions shall be taken with the approval of at least 2/3 of the number of members in attendance.

**TRANSITIONAL PROVISIONS**

**Article I**

The Preparatory Committee for Indonesian Independence shall arrange and conduct the transfer of administration to the Government of Indonesia.

**Article II**

All existing state institutions continue to function and regulations remain valid as long as new ones have not yet been established in conformity with this Constitution.
Article III

For the first time, the President and the Vice President shall be elected by the Preparatory Committee for Indonesian Independence.

Article IV

Prior to the formation of the People’s Consultative Assembly, the People’s Representative Council and the Supreme Advisory Council in accordance with this Constitution, all their powers shall be exercised by the President assisted by the National Committee.

ADDITIONAL PROVISIONS

(1) Within six months after the end of the Great East Asia War, the President of Indonesia shall arrange and execute all the provisions of this Constitution.

(2) Within six months after the formation of the People’s Consultative Assembly, that Assembly shall convene a session to determine the Constitution.

ANNOTATIONS TO THE CONSTITUTION OF THE INDONESIAN STATE

GENERAL

I. The Constitution, A Part of the Basic Law

The Constitution of a state is only a part of its basic law. The Constitution is the written part of the basic law, whereas besides the Constitution there is also an unwritten part of the basic law that comprises basic rules that emerge and are preserved in the conduct of State affairs, even though they are unwritten.

Indeed, to study the basic law (droit constitutionnel) of a State it is not enough just to analyze the articles of the Constitution (loi constitutionnelle), but rather one must also analyze practices and the original intent (geistlichen Hintergrund) behind the Constitution.

The Constitution of no State can be understood simply by reading the text. To gain a thorough understanding of the Constitution of a State we have to study how the text came into existence, to know the explanations and also to know the atmosphere in which the text was made.

In this way we can grasp the fundamental ideas and the basic reasoning underlying the constitution that we are studying.
II. The Basic Ideas in the “Preamble”

What are the basic ideas that are embodied in the “Preamble” to the Constitution?

1. "The State" – so it reads – protects all the Indonesian people and the entire territory of Indonesia on the basis of unity by realizing social justice for all the people of Indonesia.

The “preamble” thus incorporates the idea of a unitary State that protects and accommodates all the people with no exceptions. Thus, the State stands above all groups of the population and above all individual convictions. The State, according to the “preamble,” calls for the unity of all the Indonesian people with no exceptions. This is one of the principles of the State that must never be forgotten.

2. The state shall strive for social justice for all the people.

3. The third basic idea in the “preamble” is that the State shall be based on the sovereignty of the people rooted in democracy and the deliberations of representatives. Hence, the State system formed by the Constitution shall be based on the sovereignty of the people and the deliberations of representatives. This line of thought conforms to the characteristics of Indonesian society.

4. The fourth basic idea in the “preamble” is that the State shall be based on the belief in the One and Only God according to a just and civilized humanity. Hence, the Constitution must make it the duty of the Government and all other institutions of the State to foster high human ethical norms and to live up to the noble moral aspirations of the people.

III. The Basic Ideas in the “Preamble” are Embodied in the Articles of the Constitution.

The basic ideas include the original intent and the Constitution of the State of Indonesia. These ideas gave rise to legal aspirations (Rechtsidee) that encompassed the basic law of the State, both the written (the constitution) and the unwritten.

The articles of the Constitution incorporate these basic ideas.

IV. The Constitution is Concise and Flexible

The Constitution is made up of only 37 articles. Other articles merely contain transitional and additional aspects. Thus this draft constitution is very brief if compared, for example, with the Constitution of the Philippines.

It is adequate if the Constitution only contains the fundamental provisions and guidelines as directives for the central government and other State institutions to conduct State affairs and social welfare. In particular for a new State and a young State, such a
written basic law is best to contain the basic provisions only while the operational procedures can be accommodated in laws which are easier to make, amend and repeal.

This is the system of the Constitution.

We always have to remember the dynamics of the life of the community and the State in Indonesia. Indonesian society and State grow, times change, especially during the current period of physical and spiritual revolution.

Therefore, we have to live a dynamic life; we have to watch all developments in the life of the community and the Indonesian State. Consequently, don’t rush into hasty crystallization and molding (Gestaltung) of ideas that can easily change.

Of course written provisions are binding. Hence the more flexible a written provision, the better. We have to ensure that the system of the Constitution does not lag behind changing times. We must not make laws that quickly become obsolete (verouderd). A very important thing in the life of the government and the state is the spirit of the State authorities, of the government leaders. Even though a Constitution is based on the family system, if the spirit of the authorities and the leaders of government is individualistic, then the Constitution is in reality meaningless. On the other hand, even if a Constitution is imperfect, but the spirit of the government leaders is right, such a Constitution will in no way hinder the operations of the State. Thus, what is most important is the spirit. It must be a living and dynamic spirit. On the basis of these considerations, only the basic principles should be embodied in the Constitution while the instruments of execution should be left to the law.

The Government System

The government system asserted in the Constitution is as follows:

I. Indonesia shall be a State based on law (Rechtsstaat).

1. As the Indonesian State is based on law (Rechtsstaat), it is not founded on power alone (Machtsstaat).

II. The constitutional system.

2. The government is based on the constitution (basic law), not on absolutism (unlimited power).

III. The highest power of the State is vested in the People’s Consultative Assembly (Die gezamte staatgewalt liegi allein bei der Majelis).

3. The sovereignty of the people is held by a body named the People’s Consultative Assembly that is the embodiment of all the people of Indonesia (Vertretungsorgan des Willens des Staatsvolkes). This Assembly determines the Constitution and the Broad
Outlines of State Orientation. This Assembly appoints the Head of State (President) and the Deputy Head of State (Vice President). It is this Assembly that holds the highest power of the state, whereas the President shall follow the state orientation whose broad outlines have been determined by the Assembly. The President, who is appointed by the Assembly, shall be subordinate and accountable to the Assembly. He/she has the “mandate” of the Assembly; he/she is obliged to carry out its decisions. The President is not in an equal position as (“neben”), but is subordinate to (“untergeordnet”), the Assembly.

IV. The President is the highest government executive under the Assembly.

Under the People’s Consultative Assembly, the President is the highest government executive.

In the conduct of government, the power and responsibility rest with the President (concentration of power and responsibility upon the President). [Translator’s Note: This is how the original annotation reads, with a slightly different emphasis in the Indonesian phrase that precedes the English phrase.]

V. The President is not responsible to the People’s Representative Council.

Besides the President there is a People’s Representative Council.

The President must obtain the approval of the Council to make laws (Gesetzgebung) and to determine the state budget (Staatsbegrooting).

Hence, the President must work together with the Council, but the President is not responsible to the Council, in the sense that the President’s position does not depend upon the Council.

VI. The Ministers of State are aides to the President; Ministers of State are not responsible to the People's Representative Council.

The President appoints and dismisses the ministers of state. These ministers are not responsible to the People’s Representative Council. Their positions do not depend upon the Council but upon the President. They are aides to the President.

VII. The power of the Head of State is not unlimited.

Although the Head of State is not responsible to the People’s Representative Council, he/she is not a “dictator” in the sense that his/her power is not unlimited.

As underscored above, he/she is responsible to the People’s Consultative Assembly. Nonetheless, he/she has to pay full attention to the voice of the People’s Representative Council.
The Position of the People’s Representative Council

The People’s Representative Council is in a strong position. The Council cannot be dissolved by the President (unlike in a parliamentary system). Moreover, members of the People’s Representative Council are concurrently members of the People’s Consultative Assembly. Hence the People’s Representative Council can always monitor the actions of the President and if the Council is of the opinion that the President has truly violated the state orientation as determined by the Constitution or the People’s Consultative Assembly, then the Assembly may be requested to convene a special session to hold the President accountable.

The Ministers of State are no Ordinary Senior Officials

Although the positions of the Ministers of State depend upon the President, they are no ordinary senior officials since in practice it is primarily these ministers who exercise executive power (*pouvoir executief*).

As Head of a Ministry, a minister knows all the matters related to his/her work domain. Hence a minister has great influence upon the President in deciding policy regarding his/her ministry. In fact this means that these ministers are leaders of the state.

To determine the government's policies and for the purpose of coordination in the administration of the state, ministers work in close cooperation with one another under the leadership of the President.

REGARDING THE ARTICLES

CHAPTER I

*Form and Sovereignty of the State*

Article 1

The decision to form a unitary state and a republic is a manifestation of the basic idea of the sovereignty of the people.

The People’s Consultative Assembly is the highest authority in the conduct of state affairs. This Assembly is the embodiment of the people, who hold state sovereignty.

CHAPTER II

*People’s Consultative Assembly*

Article 2

This article means that all the people, all groups and all regions shall have representatives in the Assembly, such that this Assembly can truly be considered as the embodiment of the people.
The term "groups" refers to such bodies as cooperatives, labor unions and other collective organizations.

This provision fits with the conditions of the time. In conjunction with the idea of creating a system of cooperatives in the economy, this clause is a reminder of the existence of such groups in economic organizations.

**Clause 2**

A body with such a large membership should meet at least once in five years. The term "at least" implies that should it be necessary it may meet more than once in five years, by holding a special session.

**Article 3**

Since the People’s Consultative Assembly is vested with the sovereignty of the state, its power is unlimited. Keeping in mind community dynamics, once in every five years the Assembly takes into account all developments and trends of the time and determines which orientations shall be pursued in the future.

**CHAPTER III**

**Executive Power**

**Article 4 and Article 5, Clause 2**

The President is the chief executive of the state. To enforce laws he/she has the power to issue government regulations (*pouvoir reglementair*).

**Article 5, Clause 1**

Besides executive power, the President together with the People’s Representative Council exercises the legislative power of the State.

**Articles 6, 7, 8 and 9**

Self-explanatory.

**Articles 10, 11, 12, 13, 14 and 15**

The powers of the President referred to in these articles are consequences of the position of the President as the Head of State.
CHAPTER IV
Supreme Advisory Council

Article 16

This Council is a Council of State that is obligated to give recommendations to the Government. It is only an Advisory body.

CHAPTER V
Ministers of State

Article 17

See above.

CHAPTER VI
Regional Authorities

Article 18

I. Since the State of Indonesia is a unitary state (*eenheidsstaat*), Indonesia will have no region under its jurisdiction that also constitutes a state (*staat*).

Indonesian territory will be divided into provinces that in turn will be divided into smaller regions.

Regions with autonomous status (*streek* and *locale rechtsgemeenschappen*) or with merely the status of an administrative region, all according to regulations that will be determined by law.

In regions with autonomous status, a regional representative body will be established since even in the regions authorities must be based on the principle of deliberations.

II. In the territory of the State of Indonesia there are approximately 250 self-governing regions (*zelfbesturende landschappen*) and village communities (*volksgemeenschappen*), such as the village (*desa*) in Java and Bali, the village (*nagari*) in Minangkabau, the hamlet (*dusun*) and clan (*marga*) in Palembang and others.

These regions have their own indigenous social systems and thus may be considered as special regions.

The State of the Republic of Indonesia respects the status of these special regions and any government regulation on these regions shall have due regard to the hereditary rights of these regions.
CHAPTER VII
People’s Representative Council

Articles 19, 20, 21 and 23

See above.

This Council must approve all bills submitted by the Government. The Council also has the right to initiate bills.

III. This Council also has the right of budgeting (begrooting) (Article 23).

In this way the People’s Representative Council controls the Government.

It has to be borne in mind that all the members of this Council are also members of the People’s Consultative Assembly.

Article 22

This article concerns the emergency rights (noodverordeningsrecht) of the President. It is necessary to include this provision in order that in times of emergency the government can guarantee the safety of the state by taking prompt and appropriate actions.

Nevertheless, the government cannot escape the control of the People’s Representative Council. Therefore, the government regulations referred to in this article must be approved by the People’s Representative Council, as they have the same validity as laws.

CHAPTER VIII
Finance

Article 23

Clauses 1, 2, 3 and 4

Clause 1 contains the right of budgeting (begrooting) of the People’s Representative Council.

The method used to decide the budget is one yardstick to assess the characteristics of a government. In a fascist state, the budget is exclusively determined by the government. In a democracy or a state based on the people's sovereignty, like the Republic of Indonesia, the budget is determined by law, meaning with the approval of the People’s Representative Council.

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How the people will survive as a nation and from where to obtain the funds to survive, must be decided by the people themselves through their representatives on the Representative Council. The people decide their own destiny and hence also their way of life.

Article 23 states that, in the matter of determining the budget, the People’s Representative Council is in a stronger position than the Government. This reflects the sovereignty of the People.

Since the determination of expenditures involves the right of the people to decide their own destiny, any measures which impose a burden on the people, such as taxes and the like, must be determined by law – that is, with the approval of the Council.

The types and exchange rates of currency shall also be determined by law. This is important because currency has a great influence in society. Most importantly, currency is a means of exchange and a measure of prices. As a means of exchange, it facilitates purchases and sales in society.

Thus it is necessary to have types and forms of currency that are needed by the people as measures of prices for the basis to determine the price of each good that is exchanged.

The thing that is the measure of prices should itself have a fixed price; it should not fluctuate because of uncertain currency supply. Thus currency supply should be established by law.

In this connection, the position of the Bank of Indonesia, which will issue and regulate the circulation of paper currency, shall be determined by law.

Clause 5

Government expenditure of the funds that have been approved by the People’s Representative Council must conform to that decision. To audit the accountability of the government there must a body that is free from Government influence and authority. A body that is subordinate to the government will not be able to discharge such a difficult task. Conversely, such a body is not a body that stands above the government.

Hence, the authority and duties of that Body shall be determined by law.

CHAPTER IX
Judicial Power

Articles 24 and 25

Judicial power is independent power in the sense that it is free from government influence. Thus, the status of judges must be guaranteed by law.
CHAPTER X
Citizens

Article 26
Clause 1

People of other nations, such as those of Dutch, Chinese and Arabic descent, whose domicile is Indonesia, recognize Indonesia as their home country and are loyal to the State of the Republic of Indonesia, may become citizens.

Clause 2

Self-explanatory.

Articles 27; 30; and 31, Clause 1

These articles concern the rights of citizens.

Articles 28; 29, Clause 1; and 34

These articles concern the status of residents.

Articles that only concern citizens as well as those regarding the entire population, accommodate the aspirations of the Indonesian people to build a democratic state which will implement social justice and humanitarianism.

CHAPTER XI
Religion

Article 29, Clause 1

This clause emphasizes the belief of the Indonesian people in the One and Only God.

CHAPTER XII
National Defense

Article 30

Self-explanatory.
CHAPTER XIII
Education

Article 31, Clause 2

Self-explanatory.

Article 32

The national culture is the product of the mental and spiritual activities of the entire Indonesian people.

The old and indigenous cultures that are the zenith of cultural life in all the regions of Indonesia, are included as part of the national culture. Cultural activities should lead to the advancement of civilization, culture and unity, without rejecting new elements from foreign cultures that can develop or enrich the national culture and raise the human dignity of the Indonesian people.

CHAPTER XIV
Social Welfare

Article 33

Article 33 embodies the principle of economic democracy that production is done by all for all, under the leadership or ownership of members of the community. Community prosperity is to be emphasized, not individual prosperity. Hence, the economy is organized as a cooperative enterprise based on the family principle. The form of enterprise that is appropriate for that is the cooperative.

The economy is based on economic democracy, prosperity for everybody. Therefore, economic sectors that are essential for the state and that affect the livelihoods of many people must be controlled by the state. Otherwise the control of production might fall into the hands of powerful individuals who would exploit the people.

Hence, only enterprises that do not affect the livelihoods of the general population may be left to private individuals.

The earth, the waters and the natural resources therein are basic assets for the people's prosperity. They should, therefore, be controlled by the state and exploited to the maximum benefit of the people.

Article 34

Self-explanatory, see above.
CHAPTER XV
The Flag and the Language

Article 35

Self-explanatory.

Article 36

Self-explanatory.

In regions that have their own languages that are well preserved by the people (such as Javanese, Sundanese, Madurese and others), those languages shall be respected and protected by the state.

Those languages are also part of the living Indonesian culture.

CHAPTER XVI
Amendments to the Constitution

Article 37

Self-explanatory.

* * * * *
APPENDIX B

THE AMENDED 1945 CONSTITUTION
(INTEGRATED TEXT, THROUGH THE FOURTH AMENDMENT)
PREAMBLE

Whereas independence is the right of all nations, therefore colonialism must be abolished in this world, as it is not in conformity with humanity and justice.

And the struggle of the Indonesian independence movement has arrived at the moment of rejoicing to guide the Indonesian people safely and peacefully to the threshold of the independence of the state of Indonesia which shall be independent, united, sovereign, just and prosperous.

By the grace of God Almighty and motivated by the noble desire to live as a free nation, the people of Indonesia hereby declare their independence.

Subsequent thereto, to form a government of the state of Indonesia which shall protect all the people of Indonesia and the whole Indonesian motherland, and to improve public welfare, to educate the people and to contribute to the establishment of a world order based on freedom, everlasting peace and social justice, therefore the independence of Indonesia shall be formulated into a Constitution of the State of Indonesia which shall be established as a Republic based on popular sovereignty and based on: a belief in the One and Only God, a just and civilized humanity, the unity of Indonesia, democracy led by the wisdom of policies developed in deliberation among representatives, and the achievement of social justice for all the people of Indonesia.

CONSTITUTION

CHAPTER I
Form and Sovereignty

Article 1

(1) The State of Indonesia shall be a unitary State in the form of a Republic.

(2) Sovereignty is in the hands of the people and is implemented according to this Constitution.

(3) The State of Indonesia shall be a State based on the rule of law.
CHAPTER II
People’s Consultative Assembly
(Majelis Permusyawaratan Rakyat)

Article 2

(1) The People’s Consultative Assembly shall consist of the members of the People’s Representative Council (Dewan Perwakilan Rakyat) and the members of the Regional Representative Council (Dewan Perwakilan Daerah) who have been elected through general elections, and shall be regulated further by law.

(2) The People’s Consultative Assembly shall convene in a session at least once in every five years in the national capital.

(3) All decisions of the People’s Consultative Assembly shall be taken by a majority vote.

Article 3

(1) The People’s Consultative Assembly has the authority to amend and enact the Constitution.

(2) The People’s Consultative Assembly shall swear in the President and/or Vice President.

(3) The People’s Consultative Assembly may only dismiss the President and/or Vice President during his/her term of office in accordance with the Constitution.

CHAPTER III
Executive Power

Article 4

(1) The President of the Republic of Indonesia shall hold the power of government in accordance with the Constitution.

(2) In exercising his/her duties, the President shall be assisted by a Vice President.

Article 5

(1) The President has the right to submit bills to the People’s Representative Council.

(2) The President may issue Government Regulations as required to implement laws.
Article 6

(1) A candidate for President and Vice President shall be a citizen of Indonesia since birth, shall never have acquired another citizenship by his/her own will, shall never have committed an act of treason against the state, and shall be spiritually and physically capable of implementing the duties and obligations of the President and Vice President.

(2) The requirements to become President and Vice President shall be further regulated by law.

Article 6A

(1) The President and Vice President shall be elected as a single ticket directly by the people.

(2) Each ticket of candidates for President and Vice President shall be nominated prior to the holding of general elections by political parties or coalitions of political parties that are participants in the general elections.

(3) Any ticket of candidates for President and Vice President which obtains more than fifty percent of the number of votes during the general election and in addition obtains at least twenty percent of the votes in more than half of the total number of provinces in Indonesia shall be sworn in as the President and Vice President.

(4) In the event that no ticket of candidates for President and Vice President is elected, the two tickets which have received the first and second highest total of votes in the general election shall be submitted directly to election by the people, and the ticket which receives the highest total of votes shall be sworn in as the President and Vice President.

(5) The procedures for the election of the President and Vice President shall be further regulated by law.

Article 7

The President and Vice President shall hold office for a term of five years and may subsequently be re-elected to the same office for one further term only.
**Article 7A**

The President and/or the Vice President may be dismissed from his/her position during his/her term of office by the People’s Consultative Assembly on the proposal of the People’s Representative Council, if it is proven that he/she has violated the law through an act of treason, corruption, bribery, or other act of a grave criminal nature, or through moral turpitude, or that he/she no longer meets the qualifications to serve as President and/or Vice President.

**Article 7B**

(1) A proposal for the dismissal of the President and/or the Vice President may be submitted by the People’s Representative Council to the People’s Consultative Assembly only by first submitting a request to the Constitutional Court to investigate, bring to trial, and issue a decision on the opinion of the People’s Representative Council either that the President and/or Vice President has violated the law through an act of treason, corruption, bribery, or other act of a grave criminal nature, or through moral turpitude, and/or the opinion that the President and/or Vice President no longer meets the qualifications to serve as President and/or Vice President.

(2) The opinion of the People’s Representative Council that the President and/or Vice President has violated the law or no longer meets the qualifications to serve as President and/or Vice President is undertaken in the course of implementation of the oversight function of the People’s Representative Council.

(3) The submission of the request of the People’s Representative Council to the Constitutional Court shall only be made with the support of at least 2/3 of the number of members of the People’s Representative Council who are present in a plenary session that is attended by at least 2/3 of the total membership of the People’s Representative Council.

(4) The Constitutional Court has the obligation to investigate, bring to trial, and issue the most just decision on the opinion of the People’s Representative Council at the latest ninety days after the request of the People’s Representative Council was received by the Constitutional Court.

(5) If the Constitutional Court decides that the President and/or Vice President is proved to have violated the law through an act of treason, corruption, bribery, or other act of a grave criminal nature, or through moral turpitude; and/or the President and/or Vice President is proved no longer to meet the qualifications to serve as President and/or Vice President, the People’s Representative Council shall hold a plenary session to submit the proposal to impeach the President and/or Vice President to the People’s Consultative Assembly.
(6) The People’s Consultative Assembly shall hold a session to decide on the proposal of the People’s Representative Council at the latest thirty days after the People’s Consultative Assembly receives the proposal.

(7) The decision of the People’s Consultative Assembly on the proposal to impeach the President and/or Vice President shall be taken during a plenary session of the People’s Consultative Assembly which is attended by at least 3/4 of the total membership and shall require the approval of at least 2/3 of the number of members who are present, after the President and/or Vice President have been given the opportunity to present his/her explanation to the plenary session of the People’s Consultative Assembly.

**Article 7C**

The President may not suspend and/or dissolve the People’s Representative Council.

**Article 8**

(1) In the event that the President dies, resigns, is impeached, or is incapable of performing his/her obligations during his/her term of office, he/she shall be replaced by the Vice President until the end of his/her term of office.

(2) In the event that the position of Vice President becomes vacant, the People’s Consultative Assembly shall hold a session within sixty days at the latest to elect a Vice President from two candidates nominated by the President.

(3) In the event that the President and Vice President simultaneously die, resign, are impeached, or are incapable of performing their obligations during their term of office simultaneously, the duties of the presidency shall be undertaken by a joint administration of the Minister of Foreign Affairs, the Minister of Home Affairs, and the Minister of Defense. At the latest thirty days after that, the People’s Consultative Assembly shall hold a session to elect a President and Vice President from two tickets nominated by the political parties or coalitions of political parties whose tickets won first and second place in the previous general election, who will serve for the remainder of the term of office.

**Article 9**

(1) Prior to taking office, the President and Vice President shall swear an oath in accordance with their respective religions or shall make a solemn promise before the People’s Consultative Assembly or People’s Representative Council. The oath or promise shall be as follows:
Presidential (Vice Presidential) Oath:
“...swear before God that I shall, to the best of my ability, fulfill as justly as possible my duties as President (Vice President) of the Republic of Indonesia, uphold faithfully the Constitution, conscientiously implement all laws and regulations, and devote myself to the service of Country and Nation.”

Presidential (Vice Presidential) Promise:
“I solemnly promise that I shall, to the best of my ability, fulfill as justly as possible my duties as President (Vice President) of the Republic of Indonesia, uphold faithfully the Constitution, conscientiously implement all statutes and regulations, and devote myself to the service of Country and Nation.”

(2) In the event that the People’s Consultative Assembly or People’s Representative Council is unable to convene a session, the President and Vice President shall swear an oath in accordance with their respective religions or shall make a solemn promise before the leadership of the People’s Consultative Assembly witnessed by the leadership of the Supreme Court.

Article 10
The President is the Commander-in-Chief of the Army, Navy and Air Force.

Article 11
(1) The President with the approval of the People’s Representative Council may declare war, make peace and conclude treaties with other countries.

(2) The President in making other international agreements that will produce an extensive and fundamental impact on the lives of the people which is linked to the state financial burden, and/or that will require an amendment to or the enactment of a law, shall obtain the approval of the People’s Representative Council.

(3) Further provisions regarding international agreements shall be regulated by law.

Article 12
The President may declare a state of emergency. The conditions for such a declaration and the subsequent measures regarding a state of emergency shall be regulated by law.

Article 13
(1) The President shall appoint ambassadors and consuls.

(2) In the appointment of ambassadors, the President shall have regard to the opinion of the People’s Representative Council.
(3) The President shall receive the accreditation of ambassadors of foreign states and shall in so doing have regard to the opinion of the People’s Representative Council.

Article 14

(1) The President may grant clemency and restoration of rights with consideration to the views of the Supreme Court.

(2) The President may grant amnesty and pardon with consideration to the views of the People’s Representative Council.

Article 15

The President may grant titles, decorations and other honors as provided by law.

Article 16

The President shall establish an advisory council with the duty of giving advice and considered opinion to the President, which shall be further regulated by law.

CHAPTER IV
Supreme Advisory Council
(Dewan Pertimbangan Agung)

Deleted.

CHAPTER V
Ministers of State

Article 17

(1) The President shall be assisted by ministers of state.

(2) Ministers shall be appointed and dismissed by the President.

(3) Each minister shall be responsible for a particular area of government activity.

(4) The formation, alteration and dissolution of ministries of state shall be regulated by law.
CHAPTER VI
Regional Authorities

Article 18

(1) The Unitary State of the Republic of Indonesia shall be divided into provinces and those provinces shall be divided into regencies (kabupaten) and municipalities (kota), and each province, regency and municipality shall have a regional authority that shall be regulated by law.

(2) The authorities of the provinces, regencies and municipalities shall administer and manage their own affairs according to the principles of autonomy and the duty of assistance (tugas pembantuan).

(3) The authorities of the provinces, regencies and municipalities shall include for each a Regional People’s Representative Council (Dewan Perwakilan Rakyat Daerah) whose members shall be elected through general elections.

(4) Governors, Regents (bupati) and Mayors (walikota), respectively as heads of government of the provinces, regencies and municipalities, shall be elected democratically.

(5) Regional authorities shall exercise wide-ranging autonomy, except in matters specified by law to be the affairs of the central government.

(6) Regional authorities shall have the right to adopt regional regulations and other regulations in order to implement autonomy and the duty of assistance.

(7) The structure and administrative mechanisms of regional authorities shall be regulated by law.

Article 18A

(1) Authority relations between the central government and the authorities of the provinces, regencies and municipalities, or between a province and its regencies and municipalities, shall be regulated by law having regard to the particularities and diversity of the regions.

(2) Relations between the central government and regional authorities in finances, public services, and the use of natural and other resources shall be regulated and administered with justice and equity according to law.

Article 18B

(1) The state recognizes and respects units of regional authorities that are special and distinct, which shall be regulated by law.
(2) The state recognizes and respects traditional communities as well as their traditional rights as long as these remain in existence and are in accordance with societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law.

CHAPTER VII
People’s Representative Council
(Dewan Perwakilan Rakyat)

Article 19

(1) Members of the People’s Representative Council shall be elected through a general election.

(2) The composition of the People’s Representative Council shall be regulated by law.

(3) The People’s Representative Council shall convene in a session at least once a year.

Article 20

(1) The People’s Representative Council shall hold the power to make laws.

(2) Each bill shall be discussed by the People’s Representative Council and the President to achieve joint approval.

(3) If a bill fails to achieve joint approval, that bill shall not be reintroduced within the same session of the People’s Representative Council.

(4) The President signs a jointly approved bill to become a law.

(5) In the event that the President fails to sign a jointly approved bill within thirty days following such approval, that bill shall legally become a law and must be promulgated.

Article 20A

(1) The People’s Representative Council shall have legislative, budgeting and oversight functions.

(2) In carrying out its functions, in addition to the rights regulated in other articles of this Constitution, the People’s Representative Council shall have the right of interpellation (interpelasi), the right of investigation (angket), and the right to declare an opinion.
(3) In addition to the rights regulated in other articles of this Constitution, every member of the People’s Representative Council shall have the right to submit questions, the right to propose suggestions and opinions, and the right of immunity.

(4) Further provisions on the rights of the People’s Representative Council and the rights of members of the People’s Representative Council shall be regulated by law.

**Article 21**

Members of the People’s Representative Council shall have the right to propose bills.

**Article 22**

(1) In circumstances of compelling crisis, the President shall have the right to establish government regulations in lieu of laws.

(2) Such government regulations must obtain the approval of the People’s Representative Council during its next session.

(3) Should there be no such approval, these government regulations shall be revoked.

**Article 22A**

Further provisions regarding the procedures to establish laws shall be regulated by law.

**Article 22B**

Members of the People’s Representative Council may be removed from office, according to conditions and procedures that shall be regulated by law.

**CHAPTER VIIA**

**Regional Representative Council**

*(Dewan Perwakilan Daerah)*

**Article 22C**

(1) Members of the Regional Representative Council shall be elected from every province through a general election.
(2) The number of members of the Regional Representative Council from every province shall be the same, and the total membership of the Regional Representative Council shall not exceed one-third of the total membership of the People’s Representative Council.

(3) The Regional Representative Council shall convene in session at least once a year.

(4) The composition and status of the Regional Representative Council shall be regulated by law.

**Article 22D**

(1) The Regional Representative Council may propose to the People’s Representative Council bills related to regional autonomy, center-region relations, the formation, division and merger of regions, the management of natural resources and other economic resources, and the financial balance between the center and the regions.

(2) The Regional Representative Council shall participate in the discussion of bills related to regional autonomy; center-region relations; the formation, division, and merger of regions; the management of natural resources and other economic resources, and the financial balance between the center and the regions; and shall provide consideration to the People’s Representative Council on bills on the state budget and on bills related to taxation, education and religion.

(3) The Regional Representative Council may oversee the implementation of laws concerning regional autonomy, the formation, division and merger of regions, center-region relations, the management of natural resources and other economic resources, the implementation of the state budget, taxation, education and religion, and shall submit the results of such oversight to the People’s Representative Council as material for further action.

(4) Members of the Regional Representative Council may be removed from office, according to conditions and procedures that shall be regulated by law.

**CHAPTER VIIB**

**General Elections**

**Article 22E**

(1) General elections shall be conducted in a direct, general, free, secret, honest and fair manner once every five years.

(2) General elections shall be conducted to elect the members of the People’s Representative Council, the Regional Representative Council, the President and Vice President, and the Regional People’s Representative Councils.
(3) Participants in the general election for the election of the members of the People’s Representative Council and the members of the Regional People’s Representative Councils are political parties.

(4) Participants in the general election for the election of the members of the Regional Representative Council are individuals.

(5) General elections shall be organized by a general election commission that is national, permanent, and independent.

(6) Further provisions regarding general elections shall be regulated by law.

CHAPTER VIII
Finances

Article 23

(1) The state budget as the basis of the management of state funds shall be determined annually by law and shall be implemented in an open and accountable manner for the maximum prosperity of the people.

(2) The bill on the state budget shall be submitted by the President for joint discussion with the People’s Representative Council, which discussion shall take into account the opinions of the Regional Representative Council.

(3) In the event that the People’s Representative Council fails to approve the proposed state budget submitted by the President, the government shall operate under the state budget of the preceding year.

Article 23A

Taxes and other levies of a compulsory nature for the needs of the state shall be regulated by law.

Article 23B

The forms and denominations of currency shall be determined by law.

Article 23C

Other matters concerning state finances shall be regulated by law.
Article 23D

The state shall have a central bank, the composition, status, authority, accountability and independence of which shall be regulated by law.

CHAPTER VIIIA
Finance Audit Board
(Badan Pemeriksa Keuangan)

Article 23E

(1) To audit the management and accountability of state finances, there shall be a single Finance Audit Board that shall be free and independent.

(2) The results of any audit of state finances shall be submitted to the People’s Representative Council, the Regional Representative Council and the Regional People’s Representative Councils in accordance with their respective authority.

(3) Action following the result of any such audits shall be taken by representative institutions and/or bodies according to law.

Article 23F

(1) Members of the Finance Audit Board shall be chosen by the People’s Representative Council, with regard to the considerations of the Regional Representative Council, and shall be formally appointed by the President.

(2) The leadership of the Finance Audit Board shall be chosen by and from the members.

Article 23G

(1) The Finance Audit Board shall be based in the national capital, and shall have representation in every province.

(2) Further provisions regarding the Finance Audit Board shall be regulated by law.

CHAPTER IX
Judicial Power

Article 24

(1) Judicial power is a power that is independent in order to organize the judiciary to enforce the law and justice.
(2) Judicial power shall be implemented by a Supreme Court and subsidiary judicial bodies in the form of public courts, religious affairs courts, military tribunals, and state administrative courts, and by a Constitutional Court.

(3) Other institutions whose functions are related to judicial power shall be regulated by law.

**Article 24A**

(1) The Supreme Court shall have the authority to hear a trial at the highest (cassation) level, to review ordinances and regulations below laws against laws, and shall possess other authorities as provided by law.

(2) A Supreme Court justice must possess integrity and a character that is not dishonorable, and shall be fair, professional, and possess legal experience.

(3) Candidates for Supreme Court justice shall be proposed by the Judicial Commission to the People’s Representative Council for approval and shall subsequently be formally appointed as Supreme Court justices by the President.

(4) The Chief Justice and Deputy Chief Justice of the Supreme Court shall be elected by and from the justices of the Supreme Court.

(5) The composition, status, membership, and judicial procedures of the Supreme Court and its subsidiary judicial bodies shall be regulated by law.

**Article 24B**

(1) There shall be an independent Judicial Commission that shall possess the authority to propose candidates for appointment as justices of the Supreme Court and shall possess further authority to maintain and ensure the honor, dignity and behavior of judges.

(2) A member of the Judicial Commission must possess legal knowledge and experience and must be a person of integrity with a character that is not dishonorable.

(3) Members of the Judicial Commission shall be appointed and dismissed by the President with the approval of the People’s Representative Council.

(4) The composition, status and membership of the Judicial Commission shall be regulated by law.
Article 24C

(1) The Constitutional Court shall possess the authority to try a case at the first and final level and shall have the final power of decision in reviewing laws against the Constitution, determining disputes over the authorities of state institutions whose powers are given by this Constitution, deciding over the dissolution of political parties, and deciding disputes over the results of general elections.

(2) The Constitutional Court is obligated to issue a decision over an opinion of the People’s Representative Council concerning alleged violations by the President and/or Vice President, according to this Constitution.

(3) The Constitutional Court shall be composed of nine Constitutional Justices who shall be formally appointed by the President, of whom three shall be nominated by the Supreme Court, three nominated by the People’s Representative Council, and three nominated by the President.

(4) The Chief Justice and Deputy Chief Justice of the Constitutional Court shall be chosen by and from the Constitutional Justices.

(5) A Constitutional Justice must possess integrity and a character that is not dishonorable, and shall be fair, shall be a statesperson who understands matters pertaining to the form of government and the Constitution, and shall not hold any position as a state official.

(6) The appointment and dismissal of Constitutional Justices, judicial procedures, and other provisions concerning the Constitutional Court shall be regulated by law.

Article 25

Requirements regarding the appointment and dismissal of judges shall be determined by law.

CHAPTER IXA
State Territory

Article 25A

The Unitary State of the Republic of Indonesia is an archipelagic state, the boundaries and rights of whose territory shall be established by law.
CHAPTER X
Citizens and Residents

Article 26

(1) Citizens shall consist of indigenous Indonesian peoples and persons of foreign origin who have been legalized as citizens in accordance with law.

(2) Residents shall consist of Indonesian citizens and foreign nationals living in Indonesia.

(3) Matters concerning citizens and residents shall be regulated by law.

Article 27

(1) All citizens shall be equal before the law and the government and shall be required to respect the law and the government, with no exceptions.

(2) Every citizen shall have the right to work and to earn a humane livelihood.

(3) Each citizen shall have the right and duty to participate in defending the state.

Article 28

The freedoms to associate and to assemble, to express written and oral opinions, etc., shall be established by law.

CHAPTER XA
Human Rights

Article 28A

Every person shall have the right to live and to defend his/her life and existence.

Article 28B

(1) Every person shall have the right to establish a family and to procreate based upon lawful marriage.

(2) Every child shall have the right to live, to grow and to develop, and shall have the right to protection from violence and discrimination.
**Article 28C**

(1) Every person shall have the right to develop him/herself through the fulfillment of his/her basic needs, the right to obtain education and to benefit from science and technology, arts and culture, for the purpose of improving the quality of his/her life and for the welfare of the human race.

(2) Every person shall have the right to improve him/herself through collective struggle for his/her rights to develop his/her society, nation and state.

**Article 28D**

(1) Every person shall have the right of recognition, guarantees, protection and certainty before a just law, and of equal treatment before the law.

(2) Every person shall have the right to work and to receive fair and proper remuneration and treatment in employment.

(3) Every citizen shall have the right to obtain equal opportunities in government.

(4) Every person shall have the right to citizenship status.

**Article 28E**

(1) Every person shall be free to choose and to practice the religion of his/her choice, to choose one’s education, to choose one’s employment, to choose one’s citizenship, and to choose one’s place of residence within the state territory, to leave it and to subsequently return to it.

(2) Every person shall have the right to the freedom to believe his/her faith (kepercayaan), and to express his/her views and thoughts, in accordance with his/her conscience.

(3) Every person shall have the right to the freedom to associate, to assemble and to express opinions.

**Article 28F**

Every person shall have the right to communicate and to obtain information for the purpose of the development of his/her self and social environment, and shall have the right to seek, obtain, possess, prepare, process and convey information by employing all available types of channels.
Article 28G

(1) Every person shall have the right to protection of his/herself, family, honor, dignity, and property, and shall have the right to feel secure against and receive protection from the threat of fear to do or not do something that is a human right.

(2) Every person shall have the right to be free from torture or inhumane and degrading treatment, and shall have the right to obtain political asylum from another country.

Article 28H

(1) Every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and shall have the right to obtain medical care.

(2) Every person shall have the right to receive facilitation and special treatment to have the same opportunity and benefit in order to achieve equality and justice.

(3) Every person shall have the right to social security in order to develop oneself fully as a dignified human being.

(4) Every person shall have the right to own personal property, and such property may not be arbitrarily taken over by any party.

Article 28I

(1) The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances.

(2) Every person shall have the right to be free from discriminative treatment based upon any grounds whatsoever and shall have the right to protection from such discriminative treatment.

(3) The cultural identities and rights of traditional communities shall be respected in accordance with the development of times and civilizations.

(4) The protection, advancement, upholding and fulfillment of human rights are the responsibility of the state, particularly the government.

(5) For the purpose of upholding and protecting human rights in accordance with the principle of a democratic and law-based state, the implementation of human rights shall be guaranteed, regulated and set forth in laws and regulations.
Article 28J

(1) Every person shall have the obligation to respect the human rights of others in the orderly life of the community, nation and state.

(2) In exercising his/her rights and freedoms, every person shall have the obligation to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society.

CHAPTER XI
Religion

Article 29

(1) The state shall be based upon belief in the One and Only God.

(2) The state guarantees all residents the freedom of worship, each according to his/her own religion or beliefs.

CHAPTER XII
State Defense and Security

Article 30

(1) Every citizen shall have the right and obligation to participate in the defense and security of the state.

(2) The defense and security of the state shall be conducted through the total people’s defense and security system, with the Indonesian National Military and the Indonesian National Police as the main forces, and the people as the supporting force.

(3) The Indonesian National Military, consisting of the Army, Navy and Air Force, as an instrument of the state has the duty to defend, protect, and maintain the integrity and sovereignty of the state.

(4) The Indonesian National Police, as an instrument of the state that maintains public order and security, has the duty to protect, guard, and serve the people, and to uphold the law.
(5) The composition and status of the Indonesian National Military and the Indonesian National Police, the authority relationships between the Indonesian National Military and the Indonesian National Police in performing their respective duties, the conditions concerning the participation of citizens in the defense and security of the state, and other matters related to defense and security, shall be regulated by law.

CHAPTER XIII
Education and Culture

Article 31

(1) Every citizen has the right to obtain education.

(2) Every citizen has the obligation to attend elementary education, and the government has the obligation to fund it.

(3) The government shall manage and organize one system of national education, which shall increase the level of spiritual belief, devoutness and moral character in the context of developing the life of the nation, and shall be regulated by law.

(4) The state shall prioritize the budget for education at a minimum of twenty percent of the state and regional budgets to fulfill the needs of implementation of national education.

(5) The government shall advance science and technology with the highest respect for religious values and national unity to achieve the advancement of civilization and the prosperity of the human race.

Article 32

(1) The state shall advance the national culture of Indonesia among the civilizations of the world by assuring the freedom of society to preserve and develop cultural values.

(2) The state shall respect and preserve local languages as national cultural treasures.

CHAPTER XIV
The National Economy and Social Welfare

Article 33

(1) The economy shall be organized as a cooperative enterprise based on the family principle.
(2) Sectors of production that are important to the state and affect the welfare of many people shall be controlled by the state.

(3) The earth and waters and the natural wealth within them shall be controlled by the state and used to achieve the maximum benefit for the people.

(4) The national economy shall be organized on the basis of economic democracy upholding the principles of togetherness, efficiency, justice, sustainability, environmental perspectives, self-sufficiency, and maintaining a balance in the progress and unity of the national economy.

(5) Further provisions relating to the implementation of this article shall be regulated by law.

**Article 34**

(1) Impoverished persons and abandoned children shall be taken care of by the state.

(2) The state shall develop a system of social security for all of the people and shall empower the weak and underprivileged in society in accordance with human dignity.

(3) The state shall have the obligation to provide sufficient medical and public service facilities.

(4) Further provisions in relation to the implementation of this article shall be regulated by law.

**CHAPTER XV**

*The National Flag, Language, Coat of Arms and Anthem*

**Article 35**

The national flag of Indonesia shall be the Red and White (*Sang Merah Putih*).

**Article 36**

The national language shall be Indonesian (*Bahasa Indonesia*).

**Article 36A**

The national coat of arms shall be the Pancasila eagle (*Garuda Pancasila*) with the motto Unity in Diversity (*Bhinneka Tunggal Ika*).
Article 36B

The national anthem shall be Great Indonesia (Indonesia Raya).

Article 36C

Further provisions regarding the national flag, language, coat of arms and anthem shall be regulated by law.

CHAPTER XVI
Constitutional Amendments

Article 37

(1) A proposal to amend this Constitution may be included on the agenda of a session of the People’s Consultative Assembly if it is submitted by at least 1/3 of the number of members of the People’s Consultative Assembly.

(2) A proposal to amend the articles of this Constitution shall be submitted in writing and must clearly state the part that is proposed to be amended and the reasons for the proposed amendment.

(3) To amend the articles of this Constitution, the session of the People’s Consultative Assembly must be attended by at least 2/3 of the number of members of the People’s Consultative Assembly.

(4) A decision to amend the articles of this Constitution shall be made with the agreement of at least fifty percent plus one member of the total number of members of the People’s Consultative Assembly.

(5) Provisions relating to the form of the Unitary State of the Republic of Indonesia may not be amended.

TRANSITIONAL PROVISIONS

Article I

All existing laws and regulations shall remain in effect as long as new laws and regulations have not yet taken effect under this Constitution.

Article II

All existing state institutions shall remain in place in order to implement the provisions of this Constitution as long as new state institutions are not yet established in conformity with this Constitution.
Article III

The Constitutional Court shall be established at the latest by August 17, 2003, and until it is established the Supreme Court shall undertake its functions.

ADDITIONAL PROVISIONS

Article I

The People’s Consultative Assembly is tasked to undertake a review of the content and the legal status of the Decrees (Ketetapan) of the Provisional People’s Consultative Assembly and the People’s Consultative Assembly for decision by the People’s Consultative Assembly at its session in 2003.

Article II

With the enactment of these amendments to this Constitution, this 1945 Constitution of the State of the Republic of Indonesia shall consist of the Preamble and the Articles.

* * * * *
APPENDIX C

SCORING THE INDONESIAN PRESIDENCY
ON THE SHUGART-CAREY AND FRYE-HELLMAN SCALES
The following is an explanation of my scoring decisions regarding the specific powers of the Indonesian presidency, using both the Shugart-Carey and Frye-Hellman scales, for the original 1945 Constitution, following the First and Second Amendments, and following the Third and Fourth Amendments. This explanation is included here so that other researchers may recheck my scoring decisions.

**Shugart-Carey Scale**

**Legislative Powers**

**Package Veto** (4, 4, 4): According to Article 21(2) of the original Constitution, bills not signed by the president could not be reintroduced during the same DPR session; there were no override provisions to this full veto power. The First Amendment changed Article 20(2) to include the requirement for all bills to have the “joint approval” of the DPR and the president, rephrasing the president’s full veto power. The revised Article 20(3) included the same language as the original Article 21(2). There were still no override provisions. The Second Amendment added Article 20(5) eliminating the president’s pocket veto. However, for a law to have reached the president’s desk for signature, it would have already achieved joint approval, thus this is not a significant check on presidential power.

**Partial Veto** (0, 0, 0): There are no provisions in the 1945 Constitution for a partial veto by the president.

**Decree** (2, 2, 2): Article 22(1) of the Constitution grants the president the power to issue “government regulations in lieu of laws” under “circumstances of compelling crisis.” There are no specifications regarding the definition of such circumstances, and it is implied that the president has the power to determine when they exist. However, Article 22(2) requires that such regulations must be submitted to the DPR during its next session for approval, and Article 22(3) states that if these regulations are rejected then they must be revoked by the president.

**Exclusive Introduction** (1, 0, 1): Under Article 5(1) of the original Constitution, legislative power was concentrated in the hands of the president, with a secondary role for the DPR. The First Amendment reversed this relationship, so that under the revised Article 20(1) legislative power was concentrated in the DPR and the revised Article 5(1) simply granted the president the power to submit bills to the DPR. However, the Third Amendment revised Article 23(2), granting the president the exclusive right to submit the state budget to the DPR for deliberation.

**Budgetary Powers** (1, 1, 1): Besides the exclusive right of introduction of the budget noted above, there are no budgetary powers specified in the Constitution for the president. However, it is a tradition since at least the New Order that the state budget must be balanced, although in practice this has been achieved by including foreign grants and loans on the revenue side of the budget.

**Referenda** (0, 0, 0): There are no referenda powers specified in the Constitution for the president.
Nonlegislative Powers

Cabinet Formation (4, 4, 3): According to Article 17(2) of the original Constitution, the president has sole power to appoint ministers. However, the Third Amendment added Article 17(4) that specifies that the formation, change and dissolution of ministries must be regulated by law, i.e. it is subject to the joint approval of the president and the DPR. This serves to restrict somewhat the president’s discretion in forming cabinets, even though it is not the same as requiring confirmation or investiture by the DPR.

Cabinet Dismissal (4, 4, 4): Under Article 17(2) cited above, the president also has the sole power to dismiss ministers.

Censure (4, 4, 4): The Constitution makes no mention of powers for the DPR to censure and remove ministers.

Dissolution (0, 0, 0): The official Annotations to the original Constitution expressly forbid the president to dissolve the DPR. Although the Annotations have been eliminated, the Third Amendment added Article 7C that also explicitly forbids the president from either dissolving or suspending the DPR. It appears to be simply an oversight that the DPD, also established by the Third Amendment, is not mentioned in this article. It is certainly the intention of the MPR that the president will also not be able to dissolve or suspend the DPD, and this oversight may be corrected soon.

Frye-Hellman Scale

1. Dissolves Parliament (0, 0, 0): See explanation under “Dissolution” above.

2. Calls referendums (0, 0, 0): See explanation under “Referenda” above.

3. Calls elections (0, 0, 0): Elections were not mentioned at all in the original Constitution. The Third Amendment added Chapter VIIIB on elections, and according to Article 22E(1), elections are to be held once every five years.

4. Appoints prime minister (NA, NA, NA): There is no prime minister in the Indonesian system.

5. Appoints ministers (1, 1, 0.5): See explanation under “Cabinet Formation” above.

6. Appoints Constitutional Court (NA, NA, 0.5): The Constitutional Court did not exist until the Third Amendment, which also specified in Article 24C(3) that three each of its nine members will be nominated by the president, the DPR and the Supreme Court.

7. Appoints Supreme Courts (1, 1, 0): The original Constitution did not specify the mechanisms for selecting Supreme Court justices, but in practice this was always the prerogative of the president. The Third Amendment included the new Articles 24A(3), which specifies that Supreme Court justices will be proposed by the new Judicial
Commission for approval by the DPR, and 24B(3), which specifies that members of the Judicial Commission will be appointed and dismissed by the president with the approval of the DPR. Thus the ability of the president to influence the composition of the Court has become so attenuated as to be nearly non-existent.

8. **Appoints judges** (1, 1, 0): As with Supreme Court justices, the original Constitution did not specify the mechanisms for selecting judges at lower levels in the judiciary. However, until 2001 the judicial system was under the administrative control of the Ministry of Justice and Human Rights, and thus the appointment of judges could be directly influenced by the president. In 2001 administrative control of the judicial system was transferred to the Supreme Court as part of a five-year transition begun by President Habibie in 1999 to increase the separation of powers between the executive and judicial branches.

9. **Appoints prosecutor general** (1, 1, 1): The Constitution does not specify a mechanism for filling this particular position, although in practice the prosecutor general (Attorney General) has always been a member of the cabinet, and thus the same rules for appointing ministers apply to this position.

10. **Appoints Central Bank chief** (1, 1, 0.5): The original Constitution did not specify the existence of a central bank, much less mechanisms for the appointment of its chief. The Fourth Amendment included the new Article 23D, which establishes the existence of a central bank but states that its composition, status, authority, accountability and existence shall be regulated by law. The new law on the central bank based on this article specifies that the president may nominate candidates for members of the bank’s board of governors, but that those nominees are subject to a fit and proper test and final selection by the DPR.

11. **Appoints Security Council** (1, 1, 1): The Constitution does not specify the existence of a security council, but Indonesian practice in recent decades has been to have a coordinating minister for politics and security who oversees the work of the ministers of foreign affairs, defense, home affairs, and justice and human rights. The function of this coordinating minister along with these ministers is much like a security council, thus I have decided to score this element. The score reflects the rules on appointing ministers described above.

12. **Appoints senior officers** (1, 1, 1): The Constitution does not specify this particular power, but does state that the president is the commander in chief, as described below. In practice, military headquarters plays a greater day-to-day role in this process, but ultimate power rests with the president.

13. **Appoints senior commanders** (1, 0.5, 0.5): As above, the original Constitution did not specify this particular power, and in practice this had been the president’s prerogative. MPR Decree VII/2000 required the president to obtain the approval of the DPR before appointing or dismissing the supreme commander of the armed forces, in Article 3(3), and the national police chief, in Article 7(3).
14. Commander in chief of armed forces (1, 1, 1): According to Article 10 of the Constitution, the president is commander in chief of the army, navy and air force.

15. Chairs National Security Council (1, 1, 1): As above under element 11, to the extent that a security council can be considered to exist under Indonesia’s current system, the president certainly chairs it, given his or her complete control over the cabinet.

16. Remands law for reconsideration (1, 1, 1): See explanation under “Package Veto” above.

17. Sends laws to Constitutional Court (NA, NA, 1): The Court was not established until the Third Amendment, but the president can send it laws for review.

18. Proposes legislation (0.5, 0.5, 0.5): See explanation under “Exclusive Introduction” above. Even under the original Constitution, with legislative power concentrated in the hands of the president, Article 21(1) granted DPR members the right to propose legislation. When the roles were reversed under the First Amendment, Article 5(1) granted the president the right to propose legislation. Thus both the president and the DPR have always shared the right to propose legislation.

19. Issues decrees in nonemergencies (0, 0, 0): The Constitution makes no mention of the president’s power to issue decrees outside of emergency situations.

20. Proposes amendments to constitution (0.5, 0.5, 0): Under the original Article 37, the MPR had the sole power to amend the Constitution, but there were no restrictions on who could propose amendments. As part of the Fourth Amendment, the revised Article 37(1) specifies that proposed amendments must be submitted by at least one-third of the number of members of the MPR.

21. Calls special sessions of Parliament (0, 0, 0): The Constitution makes no mention of any power for the president to call the legislature into session.

22. Special powers if Parliament unable to meet (1, 1, 1): See explanation under “Decree” above.

23. Assumes emergency powers at other times (1, 1, 1): Article 12 of the Constitution grants the president the power to declare a state of emergency. The original Annotations, now eliminated, stated that this power was granted to the president as head of state – implying that it was not to be used as head of government for political purposes – but this was not a particularly strong restriction. The laws and regulations based on Article 12, which date to 1959 and 1960, do not allow for oversight of the president’s emergency powers by the DPR or any other body. Under a state of emergency, the president has extensive decree powers as well as the authority to severely restrict civil and political liberties. The bill passed by the DPR in 1999, which placed greater restrictions on the
president than the older statutes, was never signed by the president and thus never became law.

24. Participates in parliamentary sessions (0, 0, 0): The Constitution makes no mention of any power for the president to participate in legislative sessions.

25. May address or send messages to Parliament (1, 1, 1): The Constitution does not expressly allow the president to do this, but the tradition under the New Order was for the president to address the DPR twice each year: in January to present the draft state budget and in August to commemorate Independence Day. Since the fiscal year was changed in 2001 to coincide with the calendar year, this has been reduced to once per year, in August, both to commemorate Independence Day and present the draft state budget.

26. May convene cabinet sessions (1, 1, 1): Under Article 17 of the Constitution, the president has complete control of the cabinet.

27. Participates in cabinet sessions (1, 1, 1): As above, the president has complete control of the cabinet.

* * * * *
APPENDIX D

RESIDUAL POWERS OF THE INDONESIAN PRESIDENCY
The following table describes the changes in the residual powers of the Indonesian presidency from the original 1945 Constitution, following the First and Second Amendments, and following the Third and Fourth Amendments. The table is organized according to the categories found in Frye 1997, 549 (Appendix C). Under each category is a summary finding of the net status of that power category following the Fourth Amendment.

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td><strong>Decree powers</strong></td>
<td>*Presidential decisions completely unregulated</td>
<td>*Presidential decisions restricted to administrative matters</td>
<td>*No change</td>
</tr>
<tr>
<td><em>(Net result: moderate restrictions)</em></td>
<td><em>Government regulations in lieu of laws can be issued in circumstances of compelling crisis, must be approved by DPR during next session, if not approved then must be revoked</em></td>
<td><em>No change</em></td>
<td><em>No change</em></td>
</tr>
<tr>
<td><strong>Dissolve parliament</strong></td>
<td><em>President cannot dissolve the DPR</em></td>
<td><em>No change</em></td>
<td><em>President cannot suspend or dissolve the DPR</em></td>
</tr>
<tr>
<td><em>(Net result: high restrictions)</em></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Emergency powers</strong></td>
<td><em>President alone decides when to declare and to rescind a state of emergency</em></td>
<td><em>No change</em></td>
<td><em>No change</em></td>
</tr>
<tr>
<td><em>(Net result: no restrictions)</em></td>
<td><em>Broad decree powers and authority to severely restrict civil and political liberties</em></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Continued
| **Martial law powers**  
* (Net result: no restrictions) | *President alone decides when to declare and to rescind martial law  
* Broad decree powers and authority to severely restrict civil and political liberties | *No change | *No change |
|---|---|---|---|
| **Interim powers**  
* (Net result: no powers) | *None | *No change | *No change |
| **Impeachment**  
* (Net result: low restrictions) | *By MPR, following two motions of censure by DPR  
* Based on both judicial and political grounds | *No change | *By MPR, following finding by Constitutional Court regarding opinion of the DPR  
* Restricted solely to judicial grounds  
* DPR granted rights of “interpellation” and inquiry | *No change |
| **Veto powers**  
* (Net result: no restrictions) | *Full veto, no legislative override  
* Change only of wording (“joint approval”), not essence of full veto power  
* Prohibition of pocket veto following joint approval | *No change | *No change |
| **Referenda powers**  
* (Net result: no powers) | *None | *No change | *No change |

Continued
| **Sweeping clauses**  
*Net result: high restrictions* | *Eligibility and mechanisms for MPR membership are vague* | *No change* | *MPR consists of DPR and DPD, both chosen by popular election* |
| | *Eligibility and mechanisms for DPR membership are unspecified* | *DPR members chosen by popular election* | *No change* |
| | *Few guarantees of basic civil and political rights* | *Comprehensive chapter on human rights* | *No change* |
| | *Vague chapter on the judiciary* | *No change* | *No change* |
| | *Unlimited authority to grant clemency, amnesty, pardon and restoration of rights* | *Clemency and restoration of rights with consideration of views of Supreme Court; amnesty and pardon with consideration of views of DPR* | *No change* |
| | *Economic clauses create potential for patronage resources* | *No change* | *No change* |

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APPENDIX E

MPR BLOCS
<table>
<thead>
<tr>
<th>MPR Bloc/Parties</th>
<th>Seats, 1999-2004</th>
<th>Constituency/Outlook</th>
<th>Actual/Expected Presidential Candidate(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PDI-P (Partai Demokrasi Indonesia-Perjuangan or Indonesian Democracy Party-Struggle)</strong></td>
<td>185 (26.6%)</td>
<td>Broad-based, secular nationalist</td>
<td>Megawati Soekarnoputri</td>
</tr>
<tr>
<td><strong>Partai Golkar (Partai Golongan Karya or Functional Groups Party)</strong></td>
<td>182 (26.2%)</td>
<td>Broad-based, secular nationalist</td>
<td>B.J. Habibie (1999, actual); Akbar Tandjung (2000-2004, expected)</td>
</tr>
<tr>
<td><strong>PPP (Partai Persatuan Pembangunan or Development Unity Party)</strong></td>
<td>70 (10.1%)</td>
<td>Muslim (modernist and traditionalist)</td>
<td>Hamzah Haz</td>
</tr>
<tr>
<td><strong>PKB (Partai Kebangkitan Bangsa or National Awakening Party)</strong></td>
<td>57 (8.2%)</td>
<td>Traditionalist Muslim</td>
<td>Abdurrahman Wahid (1999, actual; 2001-2004, expected)</td>
</tr>
<tr>
<td><strong>Reform (PAN, Partai Amanat Nasional or National Mandate Party; and PK, Partai Keadilan or Justice Party)</strong></td>
<td>49 (7.1%)</td>
<td>Modernist Muslim</td>
<td>Amien Rais</td>
</tr>
<tr>
<td><strong>KKI (Kesatuan Kebangsaan Indonesia or Indonesian National Unity; eight small parties)</strong></td>
<td>14 (2.0%)</td>
<td>Secular nationalist</td>
<td>None (supported Megawati)</td>
</tr>
<tr>
<td><strong>PBB (Partai Bulan Bintang or Crescent Moon and Star Party)</strong></td>
<td>13 (1.9%)</td>
<td>Modernist Muslim</td>
<td>Yusril Ihza Mahendra</td>
</tr>
<tr>
<td><strong>PDU (Persatuan Daulat Umat or Union of Muslim Sovereignty; five small parties)</strong></td>
<td>9 (1.3%)</td>
<td>Muslim (modernist and traditionalist)</td>
<td>None</td>
</tr>
</tbody>
</table>

Continued
<table>
<thead>
<tr>
<th>Party/Group</th>
<th>Seats</th>
<th>Ideology</th>
<th>Alliance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PDKB (Partai Demokrasi Kasih Bangsa or Nation Compassion Democracy Party)</strong></td>
<td>5</td>
<td>Catholic, secular nationalist</td>
<td>None (supports Megawati)</td>
</tr>
<tr>
<td><strong>TNI/POLRI (Tentara Nasional Indonesia/Kepolisian Negara Republik Indonesia or Indonesian National Military/Indonesian National Police)</strong></td>
<td>38</td>
<td>Secular nationalist</td>
<td>None</td>
</tr>
<tr>
<td><strong>UG (Utusan Golongan or Functional Group Delegates)</strong></td>
<td>73</td>
<td>Various</td>
<td>None</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>695</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
APPENDIX F

INTERVIEWS


Jimly Asshiddiqie, Habibie Center, constitutional scholar, advisor to President Habibie, and chief justice of the Constitutional Court (2003-), Jakarta, August 14, 2001.


Abdullah Syarwani, PPP, secretary of the party’s advisory council and MPR Working Body Ad Hoc Committee II member, Jakarta, August 15, 2001.


Akbar Tandjung, Golkar, party chairman and DPR speaker, Jakarta, August 16, 2001.


Rully Chairul Azwar, Golkar, MPR Working Body Ad Hoc Committee I member and bloc whip in DPR and MPR, Jakarta, August 21, 2001.


M.S. Ka’ban, PBB, party secretary general and MPR bloc chairman, Jakarta, August 22, 2001.


Dwi Ria Latifa, PDI-P, DPR bloc deputy secretary, Washington, DC, September 30, 2002; and Washington, DC, October 1, 2002.


Rojil Ghufron, PKB, DPR member, Washington, DC, October 1, 2003.


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