

Rethinking “compound elections” from an interest-based negotiation approach

David Mauricio Guinard Hernández*

Fecha de recepción: 20 de enero 2019

Fecha de aceptación: 25 de mayo de 2019

ABSTRACT

We define compound elections as complex indirect elections that have a two-stage process (nomination and election), are determined by the influence and power of the incumbent parties, and are characterized by the use of difficult negotiation tactics by parties to endorse their interests. An interest-based negotiation approach can help to have more efficient, transparent and objective compound elections. Compound elections usually do not have a determined process to conduct negotiations between all the incumbent parties. A process that allows all parties to contribute to the design of a framework of criteria applicable to the nomination and election stages may help to get a better outcome of the compound election in terms of time, expenditure and quality of the decision. Having a strong communication between parties may encourage the formation of value-creative options that can help to improve compound elections.

Keywords: Compound Elections; Negotiation Skills; Interest-based negotiation; Value creation; Nomination and election criteria

RESUMEN

Se Define a las elecciones compuestas como elecciones indirectas complejas que tienen un proceso de dos etapas (nominación y elección), están determinadas por la influencia y el poder de las partes involucradas, y se caracterizan por el uso de tácticas de negociación difíciles de las partes para respaldar sus intereses. Un enfoque de negociación basado en intereses puede ayudar a tener elecciones compuestas más eficientes, transparentes y objetivas. Las elecciones compuestas generalmente no tienen un proceso predeterminado para llevar a cabo negociaciones entre todas las partes interesadas. Un proceso que permita a todas las partes contribuir al diseño de un marco de criterios aplicables a las etapas de nominación y elección puede ayudar a obtener un mejor resultado de la elección compuesta en términos de tiempo, gasto y calidad de la decisión. Tener una fuerte comunicación entre los partidos puede alentar la formación de opciones creativas de valor que pueden ayudar a mejorar las elecciones compuestas.

Palabras clave: Elecciones compuestas; Habilidades de negociación; Negociación basada en intereses; Creación de valor; Nominación y criterios de elección

* Candidato a Máster en Derecho –LLM– por la *Universidad de Melbourne* (Australia), Máster en Economía, Regulación y Competencia en los Servicios Públicos por la *Universidad de Barcelona* (España), Abogado de la *Universidad Externado de Colombia*. Consultor en temas de derecho público, administrativo, económico, infraestructura, comercial, minero y energético. Email: guinarddavid@gmail.com

1. INTRODUCTION

Election¹ processes involve negotiations. Following the definition of negotiation as “any interaction or communication –spoken, written, electronic or nonverbal– between two or more parties, with an intention to persuade or influence” (Darwin, 2016), we observe that most election processes (from presidential and congressional elections to local councils or board of directors) entail an interface between several parties (e.g., candidates, electors, and interests groups) with the purpose to influence a decision in a certain way.

Parties involved in election processes may have various interests and will interrelate with each other trying to find the best way to satisfy them. Negotiations inherent to election processes usually represent the trading between votes and future decisions: one candidate negotiates the favourable vote of a community by offering the development of future projects, investments, and the creation of jobs.

The density of the negotiations embedded in election processes may be defined by the amount of power, the range and scope of the position or office subject to election, the number of parties involved, time, interests at stake, public attention and media coverage.

Alongside well-known presidential and congress election processes, some other kinds of indirect elections do not depend directly on people’s vote and are instead determined by the influence and power of the incumbent parties. For this paper, we will call those kinds of elections “compound elections”, characterised by having a two-stage process (nomination and election).

The involvement of various parties in the composition of the outcome (e.g., one party defines a short-list of candidates and another party elects from that short-list) is a characteristic of *compound elections*. The contribution of each party is necessary for reaching an outcome, so they are mutually dependent and responsible for the success of the election.

The purpose of this short paper is to discuss the interests embedded in *compound elections*, the negotiation issues that arise along with this kind of elections, difficult negotiation techniques used by parties to uphold their positions, and how an interest-based analysis may help to deal with those issues.

1 “More and more occasions require negotiation; conflict is a growth industry. Everyone wants to participate in decisions that affect them; fewer and fewer people will accept decisions dictated by somebody else. People differ, and they use negotiation to handle their differences. Whether in business, government or the family, people reach most decisions through negotiation.” (Fisher & Ury, 2012, p. 60).

To support the discussion, we will use as reference point some examples of *compound elections* in the United States and Colombia, explaining how they work, what interests are at stake, and identifying related negotiation issues and complicated tactics used in past and ongoing *compound election* processes.

We will also conduct an interest-based analysis of *compound elections*, identifying the seven elements of negotiation and assessing how are they represented in this kind of elections. Finally, we will conclude the paper by discussing how negotiation skills can help to have more efficient, transparent and objective *compound elections*.

2. IDENTIFYING COMPOUND ELECTIONS

2.1. The United States “Appointment clause.”

The “appointment clause”² of the Constitution of the United States of America provides a system of “advise and consent” (White, 2005) from the federal Senate for the confirmation in office of several public servants appointed by the President, including all cabinet secretaries, ambassadors, judges of the Supreme Court and federal judges (Weaver, 2015).

In this example, the candidate appointed by the President must undertake a process of scrutiny through the relevant Senate committee to get confirmation from the full federal Senate (Weaver, 2015). The President’s candidate cannot take the oath without such confirmation. In this system, the President role is to nominate an appointee, while the Senate role is to confirm or reject the President’s appointee. The Senate does not elect between various candidates; the election power is to either confirm or reject the appointee (Weaver, 2015, p. 1729).

This check and balances system (Weaver, 2015, p. 1727) seeks to control the access to the highest public offices with the participation of both the executive branch and the legislative branch: the President is free to appoint the candidate of his/her preference, but that candidate must pass Senate confirmation. On the other hand, the Senate has no direct influence on the definition of the

2 “He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.” *United States Constitution* art II § 2.

appointee but has the power to reject the confirmation of the President's proposal (Weaver, 2015).

2.2. Colombian systems of compound elections

Like the US Constitution, the Colombian Constitution (1991) also created several systems of *compound elections* to provide the head officer of the most important institutions in the Country and the judges of the most important court.

These systems aim to preserve the independent nature of the relevant institutions (since they are not part of the executive branch, and they do not depend on the President's authority), following a *check and balance* inspired model that comprises the contribution of various branches of power. We make a concise review of some Colombian compound election systems below:

- **Prosecutor General**

The Office of the Prosecutor General ('OPG') investigate the facts that may constitute crime or offences and is entitled to press charges before courts. The OPG is one of the most important public offices in the country, as it is entitled to establish the criminal prosecution policy, conduct the investigation of major crimes and criminal organisations, and also decide the policy of plea bargains (Colombian Constitution, 1991, art. 250).

Article 249 of the Colombian Constitution provides that the Supreme Court of Justice elects the Prosecutor General from a three-candidate short-list prepared by the President. It is also provided that candidates must have the same qualifications required by the Constitution to be a judge of the Supreme Court of Justice.

The OPG is particularly important in the current Colombian political scene because the criminal prosecution policy will be crucial for the development of the peace agreements recently reached by the government with FARC guerrilla.

- **Inspector General**

The Office of the Inspector General ('OIG') is entitled to conduct investigations and impose disciplinary sanctions over those who hold public office. It also has the power to intervene in processes before judicial or administrative authorities when it becomes necessary to defend the legal order, the public domain, or fundamental rights and guarantees (Colombian Constitution, 1991, art. 277).

The OIG is particularly important in the Colombian political scene because it has the power to remove almost any executive or legislative officer –including publicly elected ones such as city mayors and local legislators–(Colombian Constitution, 1991, art. 278). It also has the power to ban a public servant from politics and public duties, so it turns to be very important for the future configuration of local and national politic forces.

Article 276 of the Colombian Constitution provides that the Senate elects the Inspector General from a three-candidate shortlist arranged with nominees proposed by the President, the Supreme Court of Justice and the Council of State, one each.

• **Comptroller General**

The Office of the Comptroller General (‘OCG’) supervises the management of public funds. It is entitled to conduct investigations and impose monetary sanctions over those who manage public funds –mainly public officers–(Colombian Constitution, 1991, art. 268).

The importance of the OCG is similar to the OIG because it has the power to ban public officers from future exercise. The OCG is also very relevant because it can enforce preventive actions (such as freezing bank accounts or restraining deals over the property), and impose economic penalties.

Article 267 of the Colombian Constitution provides that the whole Congress elects the Comptroller General from a three-candidate shortlist arranged with nominees proposed by the Constitutional Court, the Supreme Court of Justice and the State Council, one each.

This election system was recently modified (Constitutional Amendment Nº 2 / 2015). The new provision states that the whole Congress elects the Comptroller General by the absolute majority from a shortlist arranged through a public call.

• **Judges of the Constitutional Court**

The Constitutional Court (‘CC’) is entitled to safeguarding the integrity and supremacy of the Colombian Constitution. It has the power to void statutes for unconstitutionality charges and to provide the correct interpretation of statutory provisions under the Constitution. It is also the closing court in judicial procedures related to the protection of constitutional rights (Colombian Constitution, 1991, art. 241).

The CC has significant importance within the Colombian political environment due to its power to interpret and void statutes. It also has a tradition of judicial activism when facing major social and political issues, mainly when there is significant inaction of the executive and the legislative branches (Constitutional Court of Colombia, 2011).

The CC is currently under the spotlight because of their role in the validation of the statutes and rules needed to implement the peace agreements recently reached by the government with FARC guerrilla. The success of the peace agreements relies on the validation and the interpretation by the CC of the entire set of provisions that will develop those agreements (“Así fue el arranque del plebiscito”, 2016).

Article 239 of the Colombian Constitution provides that the Senate elects the judges of the CC from three-candidate shortlists presented by the President, the Supreme Court of Justice and the Council of State. Each nominator provides shortlists for three benches (for a total of nine).

2.3. Examples of issues in compound elections

From a negotiation perspective, the significance of these elections can be identified in the following examples, where several difficult negotiation techniques were used to influence the result of a relevant compound election:

- **2016 US Supreme Court election.**

We identify an issue in the succession process of the US Supreme Court vacating bench left after the death of Justice Antonin Scalia in February 2016. On March 2016 former President Barack Obama nominated Merrick Garland (Chief Judge of the United States Court of Appeals for the District of Columbia Circuit) to fill Justice Scalia seat (Meko, Keating, Uhrmacher & Stamm, 2016).

Being nominated by a Democrat President, the peculiarity of the situation is that Chief Justice Garland had to go through a Republican-controlled Senate to secure confirmation (Weaver, 2015, p. 1729). Taking into account that 2016 was an election year, it was reported that Republican Senate leaders held the confirmation of Chief Justice Garland until a new President was elected (Kessler, 2016).

The nomination of Chief Justice Garland remained before the US Senate without a decision –months after being presented by former President Obama–. It was one of the most prolonged periods taken by the US Senate to confirm a Supreme

Court nomination (The White House, n. d.). Short after getting to the Oval Office, President Donald Trump nominated Justice Neil Gorsuch in replacement of Merrick Garland for the vacant seat in the US Supreme Court (de Vogue, 2016).

From a negotiation skills perspective, it is perceived that the US Senate held the confirmation of Chief Justice Garland because of his liberal ideological background, which differs from the conservative approach that characterised deceased Justice Scalia (Bonica, Chilton, Goldin, Rozema & Sen, 2016). We perceive this situation as a difficult negotiation tactic from the Republican Party to force a change of nominee trying to keep a conservative ideological composition of the Supreme Court, holding the election until a new President got in office (Milbank, 2016).

Justice Gorsuch –Trump’s new nominee– has a conservative background much more appealing to the Republican Party and closer to the tradition set by the late justice Scalia. The Republican-controlled Senate confirmed him on April 2017 only two months after his nomination (Liptak & Flegenheimer, 2017).

• 2012 election for Inspector General of Colombia

On September 2012, three months before the end of his period, the Inspector General in Office (Alejandro Ordoñez Maldonado) started a silent campaign to be shortlisted for re-election as Inspector General for a second period. In a move without precedents, he managed to be appointed as the Supreme Court candidate way before the other nominators –the President and the State Council– appointed their candidates (“Corte Suprema terna”, 2012).

The early appointment as a candidate of the Inspector General in office was significantly criticised. The Inspector General in office managed to get great support in Congress for the upcoming election (“En Senado crece apoyo”, 2012). There was an investigation to establish whether the Inspector General in office unduly used his powers to secure votes for his appointment by the Supreme Court and for the election in Congress (“¿Está viciada la reelección”, 2014).

The President and the State Council where presumably deterred from appointing a strong candidate for the shortlist, given that the Inspector General in office secured enough support way before they started their internal processes to appoint a candidate (“Carrera para Procurador”, 2012). Finally, in November 2012 the Inspector General in office was re-elected by Congress for a second term until January 2017. During the election in Congress, the candidate appointed by the President resigned to be a part of the shortlist, so the election was made from a two-person shortlist (“Senado reelige a Alejandro Ordóñez”, 2012).

The election was judicially challenged before the State Council. In September 2016, the Court decided to annul the re-election of the Inspector General after finding that Mr. Ordoñez used his power while being in office to secure the vote of some Justices of the Supreme Court that participated in his nomination by giving jobs to their family members (Colombian State Council, n. d.).³

• 2009 election for Prosecutor General of Colombia

On 2009, President in office Alvaro Uribe Velez –second term– had a history of bad relationships with the Supreme Court, mainly as a consequence of severe accusations of espionage over some judge’s allegedly ordered by the President’s office (“La mala ‘racha’”, 2015). The relationship was also deteriorated due to the strong approach of the Supreme Court against politicians related to armed guerrillas (a famous scandal known as ‘parapolítica’) (“La mala ‘racha’”, 2015).

By August 2009, President Uribe presented to the Supreme Court a three-candidate shortlist for the election of the next Prosecutor General. The first shortlist was heavily criticised by the Supreme Court arguing that the candidates did not have proper academic and professional criminal law background for the OPG (“Nueva terna para fiscal”, 2009). This gesture was publicly seen as an action to block the election in retaliation from the Supreme Court against the President for the espionage accusations (“Corte Suprema devuelve”, 2009).

Consequently, and for the first time in history, the Supreme Court declared the shortlist nonviable and returned it to the President (“Corte Suprema devuelve”, 2009). The President recomposed the shortlist and sent it to the Supreme Court. During the issues related to the President’s shortlist, many of the appointed candidates resigned to be part of it (“Renuncia de Juan Ángel”, 2009).

After further criticisms related to the criteria to nominate the candidates, the Supreme Court finally accepted to vote. However, the necessary number of votes was never accomplished (“Corte seguirá votando”, 2010). The public opinion assumed these actions as a stringent strategy from the Supreme Court to reject the election of any appointee from President Uribe, taking into account that his term in office was about to end (“Corte seguirá votando”, 2010).

By rejecting all the shortlists presented by President Uribe, the Supreme Court held the election until the new President got in office. And so did happen, once President Juan Manuel Santos got in office, he changed the shortlist appointing three new candidates according to the criteria determined by the Supreme Court

3 Colombian State Council, Press release < <http://www.consejodeestado.gov.co/prensacde.php#>>.

in the past rejections (“Gobierno presenta nueva terna”, 2010). The Supreme Court finally elected a new Prosecutor General in December 2010, almost one year and a half after the former Prosecutor General left office.

The incident proved the power of the Supreme Court in the negotiation for electing a new Prosecutor General, forcing their point of view regarding the skills and background of the candidates, and standing against the presidential capability to appoint candidates into the shortlist.

In summary, the examples reviewed above allow us to identify that difficult negotiation techniques are frequently used in compound elections as an instrument to destabilise the balance of power between the nominator and the elector. Since neither of them has the final say in the election outcome, they have an incentive to use difficult tactics to interfere in the decision of the other party, trying to allocate their interests better following a positional bargaining approach.

We can also identify that the use of difficult tactics is encouraged by the lack of clear and objective criteria applicable to the nomination and the election processes. We will address these issues in the interest-based negotiation analysis below.

3. INTERESTS-BASED NEGOTIATION ANALYSIS

Following the seven elements framework explained in *The Handbook of Dispute Resolution* (Moffitt & Bordone, 2005), we will undertake an interest-based negotiation analysis of compound elections, discussing how this approach may help to get better outcomes in this kind of elections.

3.1. Parties

We can identify multiple parties in compound elections:

- The decision makers: the nominator and the elector that integrate each part of the compound election.
- The candidate (s), nominee (s) or appointee (s).
- The receptor (e.g., the people or a specific group of people).
- The person currently/formerly in office.
- Third parties (such as interest groups, media, unions, NGO’s, etc.)

3.2. Interests

The variety of parties creates different sets of interests⁴ at stake. The nominator's interests are to provide a good candidate (regarding academic background, experience, abilities, etc.) and to secure the position with someone of his/her confidence and probably someone from the same political or ideological scope. The nominator may also be interested in securing influence over the appropriate office through the candidate.

The elector is interested in fulfilling his/her duty (provide an outcome of the assigned task), delivering a transparent election process and choosing the best available option (in terms of academic background, experience, abilities, etc.). The elector may also be interested in influencing over the relevant office through the chosen candidate.

A candidate's main interest is to be elected. Another interest may also be to reach a unanimous election to have a stronger position once in office and to secure future supports to their decisions.

The receptor interests are getting a fast election, getting the best available candidate, having a transparent and objective election process, and securing accountability from the nominator, the elector and the elected candidate. Third parties may share these interests.

The person in office may be interested in securing a steady transition, as well as the continuance of his/her policies and the completion of projects. He/she may also be interested in not having criticisms, inquiries or investigations over past actions and decisions. In some cases where re-election is allowed, the person in office may be interested in being nominated for a new term.

Finally, it is important to point out that all parties have a shared interest: to get an effective outcome of the compound election (this includes a fast, transparent and objective election). This shared interest is the main incentive to pursue a cooperative interest-based approach, encouraging communication to develop value-creating options that help to get to the shared goal faster and more efficiently.

4 "A party's basic needs, wants, and motivations are commonly referred to as its *interests*." (Moffitt & Bordone, 2005, p. 280)

3.3. Alternatives

There is not much room for alternatives⁵ for the parties involved in compound elections. As seen in the examples from the United States and Colombia, both the nominator and the elector usually must fulfil their duty by constitutional or legal mandate, so they cannot just walk away from it without being in breach of their responsibilities. This fact creates a significant incentive to cooperate through negotiation because a non-cooperative position will probably lead to a stall situation where the election gets blocked against the responsibilities of both the nominator and the elector.

Alternative pathways for both the nominator and the elector are usually difficult negotiation techniques. From the nominator's perspective, public criticism and media attacks are frequently used as a difficult tactic to press the elector to speed up the election process or to restrain the elector in the assessment process of candidates.

From the elector's perspective, holding or distracting the election, taking a long time in the assessment process, and deeply criticising a candidate's skills and background may be used as a hard negotiation technique to push the nominator to withdraw a candidate.

Opposing to this limited alternative panorama of the nominator and the elector, a candidate always has the alternative to withdraw himself/herself from the election process by resigning to the nomination (or shortlist). This approach is not entirely easy though because resigning may be considered has a disloyal action against the nominator (who trusted the candidate in the first place by proposing his/her name).

From the receptors and third parties' perspective, usually it is not mandatory for them to have a say in a compound election –neither in the nomination nor in the election processes–, so there is not much room for alternatives. Receptors and third parties may try to participate in the compound election encouraging media coverage over the actions of both the nominator and the elector and setting the spotlight over the skills and background of the candidates. This may be used as a difficult technique to put pressure on the relevant parties and to give more transparency to the process overall.

5 “By definition, an alternative to agreement must be a course of action that the negotiator can implement without the consent of the other negotiator (s).” (Moffitt & Bordone, 2005, p. 283).

3.4 Options

“*Options* are possible agreements or pieces of a potential agreement upon which negotiators might possibly agree” (Moffitt & Bordone, 2005, p. 283). Compound elections are fertile ground for value-creating options that better satisfy all parties’ interests.

If interest-based negotiation is the path taken, it should be introduced a negotiation process (Bordone & Todd, 2005) from the beginning of the compound election, where the nominator may hear receptors, third parties, potential candidates, representatives of the elector and even the person in office, to elaborate a common framework of nomination criteria. Cooperation between all parties will be the key in this option, having in mind that enhanced criteria will provide a better and faster outcome (which is a shared interest among all parties).

By participating in the creation of such a framework, all parties will feel involved in the process and bounded by the selected criteria. This strategy will generate a legitimization effect over the entire process because all the relevant parties will have an incentive to relocate their efforts to secure the success of the process instead of trying to obstruct it.

This cooperative approach may also work during the election part of the process. The elector should be open to hearing the opinion of all the parties as well as an overview of all the candidates in a public and transparent way. The elector should also discuss jointly defined criteria for the election.

All these options may help increase accountability from the decision makers, transparency of the process, and a faster and better outcome based on reliable objective criteria.

3.5. Legitimacy

As discussed above, criteria are the keystone for improving the outcome of compound elections. Most of the criticisms that surround this kind of elections are that they tend to be subjective and very politicised. Most of the public offices filled through compound elections are highly technical and endure high levels of responsibility. Therefore, the allocation process of the head officers should guarantee that the most prepared and capable are selected.

The legitimacy of compound elections may increase by establishing objective selection criteria for both the nomination and the election processes. These criteria should include specific skills and academic background (according

to the profile of the public office), records of good behaviour, lack of criminal records, the argumentative level of previous decisions, etc.

Moreover, getting all parties to participate in the definition of the applicable criteria will increase the legitimacy of the compound election overall, because it will bound all parties' interests towards the success of the election, and will also allow value-creation through the contribution of all relevant parties.

Subjective or non-relevant criteria should be excluded when defining the framework of criteria. Race, sexual preferences, religion, political liaison, ideology, etc., should be strictly rejected from nomination and election criteria.

3.6. Communication

Communication⁶ also plays a key role in compound elections. Both nominators and electors –as main roles of the process– should guarantee that the procedures they undertake to reach a decision are as public, clear and transparent as possible.

However, communication in compound elections should not be restricted to the transparency of the process. Nominators and electors should engage an effective communication with the rest of the relevant parties, allowing adequate meetings and hearings where they can appropriately explain their interests. This approach will also create a proper environment for value-creating options.

3.7. Relationship

Most of the complexities of compound elections originate in relationship issues between all the parties involved. There is usually a lot of political tension between the nominator and the elector, as they usually represent different branches of power that are expected to counterbalance each other.

Both the nominator and the elector usually owe accountability to receptors and third parties –public accountability–, even more if they are publicly elected. This characteristic encourages nominators/electors to keep a good relationship with the public. It also encourages them to seek for efficient strategies to fulfil their duties and their political obligations without harming their relationship with public electors.

6 'the *communication* process by which parties discuss and deal with the preceding six elements of negotiation.' (Moffitt & Bordone, 2005, p. 284).

This set of entangled relationships supports interest-based negotiations as an effective strategy to satisfy in the best possible way the interests of all the parties involved without harming the complicated relations between them. A cooperative approach reduces the risk of fractures on the relationships between parties because it merges all the available efforts towards the common interests among all parties: getting an efficient outcome of the compound election.

3.8. Commitments

From the commitment perspective, the ball is in the field of the decision makers. If a framework of criteria applicable to the nomination and the election process is discussed with all the relevant parties, decision makers should firmly commit to those criteria when undertaking their duties.

As discussed earlier, good communication, relationships, accountability and transparency may help assuring decision makers will follow the objective standards designed to improve the compound election process. In any case, decision makers have an incentive to honour their word and fulfil their commitments, because any lack of trust may be negatively reflected in future elections.

4. CONCLUSION

The interest-based analysis discussed above helped us to identify several interests surrounding compound elections. We observed that parties frequently use difficult negotiation tactics to endorse their interests. We also recognised that compound elections usually don't have a determined process to conduct negotiations between all the incumbent parties.

The discussed negotiation skills can help to have more efficient, transparent and objective compound elections. A process that allows all parties to contribute to the design of a framework of criteria applicable to the nomination and election stages may help to get a better outcome of the compound election in terms of time, expenditure and quality of the decision.

Having a strong communication between parties may encourage the formation of value-creative options that can help to improve compound elections. Those value-creative options may include disclosure and public coverage of the entire process –for transparency purposes–, time limits for the nomination and the election stages, a framework of objective selection criteria, etc.

This strategy will suppose more participation of multiple parties and a consequential restraint of the discretionary power of the decision makers. This restraint should be balanced with the increased approval of the outcome derived from the involvement of all the incumbent parties in the process.

Being aware that compound elections mainly depend on the decision makers' discretionary power, it is crucial to have a public, serious and enforceable commitment from them to the agreed value-creative options.

REFERENCES

- Fisher, R., William, U., Patton, B., & Boutsikaris, D. (2012). *Getting to yes: negotiating an agreement without giving in*. *Getting to yes: negotiating an agreement without giving in*. London: Random House Business
- Moffitt, M. L., & Bordone, R. C. (Eds.). (2005). *The Handbook of Dispute Resolution*. San Francisco: Jossey-Bass.
- Bordone, R. C., Todd, G. S. (2005). Have You Negotiated How You'll Negotiate? *Negotiation*, 8(9), 3.
- Weaver, R. L. (2015). "Advice and Consent" in Historical Perspective. *Duke Law Journal*, 64(8), 1717-1753. Retrieved from <https://scholarship.law.duke.edu/dlj/vol64/iss8/6>
- White, A. J. (2005). Toward the Framers' Understanding of "Advice and Consent": A Historical and Textual Inquiry. *Harvard Journal of Law & Public Policy*, 29(1), 103-148. Retrieved from <http://boydengrayassociates.com/wp-content/uploads/2005/01/White-Toward-the-Framers-Understanding-of-Advice-and-Consent.pdf>
- Colombian Constitution. (1991). Colombia.
- U.S. Constitution. (1787). United States of America.
- De Vogue, A. (2016). President Trumps nominates Neil Gorsuch for Supreme Court. *CNN* (online). Retrieved from <http://edition.cnn.com/2017/01/31/politics/donald-trump-supreme-court-nominee>
- Bonica, A., Chilton, A., Goldin, J., Rozema, K. & Sen, M. (2016). New data show how liberal Merrick Garland really is. *The Washington Post* (online).

Retrieved from <https://www.washingtonpost.com/news/monkey-cage/wp/2016/03/30/new-data-show-how-liberal-merrick-garland-really-is>

La mala 'racha' que rodea a los exfuncionarios de Uribe. (2015, February 2). *Vanguardia*. Retrieved from <http://www.vanguardia.com/colombia/297530-la-mala-racha-que-rodea-a-los-exfuncionarios-de-uribe>

Inició debate en el Consejo de Estado sobre la demanda contra el procurador. (2016, April 19). *W Radio* (online). Retrieved from <http://www.wradio.com.co/noticias/actualidad/inicio-debate-en-el-consejo-de-estado-sobre-la-demanda-contra-el-procurador/20160419/nota/3111772.aspx>

¿Está viciada la reelección del procurador Alejandro Ordóñez? (2014, July 2014). *Noticias RCN* (online). Retrieved from <http://www.noticiasrcn.com/nacional-pais/esta-viciada-reeleccion-del-procurador-alejandro-ordonez>

Nueva terna para fiscal. (2009, July 5). *El Espectador* (online). Retrieved from <http://www.elespectador.com/opinion/editorial/nueva-terna-fiscal-articulo-149131>

Flegenheimer, M. & Adam, L. (2017, April 7). Neil Gorsuch Confirmed by Senate as Supreme Court Justice. *The New York Times* (online). Retrieved from <https://www.nytimes.com/2017/04/07/us/politics/neil-gorsuch-supreme-court.html>

Corte Suprema devuelve la terna para elegir Fiscal. (2009, September 17). *El Espectador* (online). Retrieved from <http://www.elespectador.com/noticias/judicial/articulo161954-corte-suprema-devuelve-terna-elegir-fiscal>

Así fue el arranque del plebiscito en la Corte Constitucional. (2016, May 29). *El Tiempo* (online). Retrieved from <http://www.eltiempo.com/politica/justicia/plebiscito-por-la-paz-en-la-corte-constitucional/16605954>

Kessler, G. (2016, March 16). Does the Senate have a constitutional responsibility to consider a Supreme Court nomination? *The Washington Post* (online). Retrieved from <https://www.washingtonpost.com/news/fact-checker/wp/2016/03/16/does-the-senate-have-a-constitutional-responsibility-to-consider-a-supreme-court-nomination>

Meko, T., Keating, D., Uhrmacher, K., & Stamm, S. (2016, March, 7). Everything you need to know about appointing a Supreme Court justice. *The Washington Post* (online). Retrieved from <https://www.washingtonpost.com/graphics/politics/scotus-nominees>

- Milbank, D. (2016, April 5). Republicans duck and run from Merrick Garland. *The Washington Post* (online). Retrieved from https://www.washingtonpost.com/opinions/republicans-duck-and-run-from-merrick-garland/2016/04/05/20e5c680-fb6b-11e5-80e4-c381214de1a3_story.html
- Corte Suprema terna a Alejandro Ordóñez para su reelección en la Procuraduría. (2012, August 30). *Caracol Radio* (online). Retrieved from http://caracol.com.co/radio/2012/08/30/nacional/1346326680_753028.html
- Renuncia de Juan Ángel Palacio y reunión Uribe-Corte, parecen destrabar elección de nuevo Fiscal. (2009, October 14). *El Tiempo* (online). Retrieved from <http://www.eltiempo.com/archivo/documento/CMS-6352827>
- Senado reelige a Alejandro Ordóñez como Procurador General. (2012, November 27). *El Tiempo* (online). Retrieved from <http://www.eltiempo.com/archivo/documento/CMS-12403313>
- Carrera para Procurador: ¿terna de uno? (2012, November 1). *Semana* (online). Retrieved from <http://www.semana.com/nacion/articulo/carrera-para-procurador-terna-uno/267250-3>
- Corte seguirá votando la terna para Fiscal, pese a denuncias. (2010, August 6). *Semana* (online). Retrieved from <http://www.semana.com/nacion/articulo/corte-seguira-votando-terna-para-fiscal-pese-denuncias/120179-3>
- Gobierno presenta nueva terna para la elección de Fiscal General. (2010, November 3). *Semana* (online). Retrieved from <http://www.semana.com/nacion/articulo/gobierno-presenta-nueva-terna-para-eleccion-fiscal-general/124058-3>
- En Senado crece apoyo a reelección del Procurador. (2012, February 7). *El Espectador* (online). Retrieved from <http://www.elespectador.com/noticias/politica/senado-crece-apoyo-reeleccion-del-procurador-articulo-325223>
- Darwin, F. (2016, May 9). Negotiation Skills Workshop Welcome! Lecture delivered at the Negotiation Skills MLM subject. University of Melbourne.
- Constitutional Court of Colombia. (2011). *Main Decisions*. Retrieved from <http://english.corteconstitucional.gov.co>
- The White House. (n. d.). *President Obama's Supreme Court Nomination* The White House. Retrieved from <https://www.whitehouse.gov/scotus>