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Understanding Presidential Power in Argentina: a Study of the Policy of Privatisation in the 1990s

MARIANA LLANOS

Abstract. This article focuses on the political and institutional process by which the privatisation policy was approved in Argentina during the 1990s. It concentrates mainly on the relationships that the President maintained with Congress and the political parties sitting in it. By looking through the lens of the privatisation case-study, the article aims to analyse the institutional capacity of Argentine democratic presidents to enact policy reforms. The article shows that the Presidency's constitutional resources in combination with the President's strong base of partisan support permitted the adoption of the innovative privatisation policy at an institutional level. However, the article also explains that the political and institutional resources of the Presidency were not invariable and permanent. Rather, the approval of the privatisation policy shows that policy-making processes involve a dialogue between President and Congress, an institutional interchange that can serve either to enhance or to constrain the powers of the President. By showing that congressional intervention should not be underestimated, this article claims that the Argentine presidential regime is better characterised as one of limited centralism than as an example of hyper-presidentialism. The first characterisation not only acknowledges the complexity of the institutional relations, but also the fact that, given a situation of presidential centralism, institutional relations are variable and, most importantly, contingent upon political conditions.

Introduction

The programme of privatisation implemented in the 1990s in Argentina has aroused interest all over the world. It has been referred to as 'one of the broadest and most rapid in the Western Hemisphere'¹ as well as 'one of the most ambitious and quickly undertaken by the economies that implemented structural reform programmes from the end of the sixties'.² This article focuses on the political and institutional process by which the privatisation policy was approved, and concentrates mainly on the relationships that the President maintained with Congress and the political

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¹ The World Bank, *Argentina's Privatisation Program: Experience, Issues, and Lessons*. (Washington DC, 1993), p. ix.

² P. Gerchunoff and G. Cánovas, *Las privatizaciones en la Argentina: Impactos micro y macroeconómicos*. (Chile, 1994), p. 11.

parties sitting in it. By looking through the lenses of the privatisation case-study, the article aims to analyse the institutional capacity of presidents in Argentina to enact policy reforms. The article shows that the Presidency's constitutional resources in combination with the President's strong base of partisan support permitted the adoption of the innovative privatisation policy at an institutional level. However, the article also explains that the political and institutional resources of the Presidency were not invariable and permanent. Rather, the approval of the privatisation policy shows that policy-making processes involve a dialogue between President and Congress, an institutional interchange that can serve either to enhance, or to constrain, the powers of the President. This pattern of institutional relations helps us to understand the use of presidential legislative resources such as vetoes and necessity and urgency decrees.

The article is organised as follows. First, it surveys the institutional powers of the Argentine Presidency to intervene in the legislative process, briefly discussing the current literature on the topic. Second, it shows how the privatisation policy became a legislative programme and why it is useful to understand many of the features of Argentine presidential power. Third, it explains how the combination of the formal powers of the Presidency and the President's standing vis-à-vis the parties represented in Congress shaped the process of policy adoption. Finally, the conclusion discusses current assumptions regarding the all-powerful character of the Argentine Presidency of the 1990s.

Presidential Constitutional and Political Powers

The Argentine political regime is characterised by the principles of the presidential system of government adopted by the Constitution of 1853. It is based on a separation of power between the three branches of government, the relationship being regulated by a system of mutual checks and balances.³ Within this framework, the constitutional design has simultaneously given the Presidency a central position in the political system. In effect, 1853 constitutionalists conceived the Presidency as the motor of the government. First, they gave it the power to present its own legislative initiatives for congressional consideration, which meant that the President was to be the head of the law-making process of government. Second, the constitutional provisions on the power of veto allowed the

³ For further information on the features of a presidential system, consult J. Linz, 'Presidential or Parliamentary Democracy: Does It Make a Difference?', in J. Linz and A. Valenzuela (eds.), *The Failure of Presidential Democracy. Comparative Perspectives*, vol. 1 (Baltimore and London, 1994).

President to participate in the legislative process after congressional approval. Furthermore, the President combined the positions of the head of state, the government, the public administration and the armed forces, and possessed the important prerogatives of declaring a state of siege and the power of federal intervention in the affairs of the provinces.

The Argentine political regime has been referred to as *hyperpresidentialist* by those scholars who emphasise the superiority of the Executive enshrined in the Constitution.⁴ Conversely, others have pointed out that, although undoubtedly powerful, the Argentine President still faces difficulties posed by the separation of powers. In the system of checks and balances, the role of Congress in the legislative process ought not to be underestimated. Because of the congressional prerogatives to approve, delay, amend, or reject the Executive's initiatives, the Argentine system would be better referred to as one of *limited centralism*.⁵

The fact is that the Constitution establishes wide margins for executive action, but only inasmuch as these are consistent with a balance of power within the institutional framework. However, historical developments during the twentieth century contributed to strengthening the primacy of the Presidency. In a context of political instability, a succession of democratic, semi-democratic and authoritarian regimes diminished the stature of institutions like Congress and the Judiciary, and enhanced that of the President. During *de facto* governments, the institutions that imposed control on the Executive were shut down or restricted. This resulted in the accumulation of prerogatives in the office of the Presidency. Congress, with its multiple functions of decision-making, controlling, and representing the will of the people, turned out to be the weakest institution. Presidential predominance also occurred during constitutional interregna. In effect, since constitutional rule often operated alongside hegemonic political projects, the settlement of most inter-institutional conflicts also tilted the balance of power towards the Executive.⁶

With the continuity of democratic rule since 1983, the strength and the policy-making capacities of the Argentine Presidency have begun to be tested empirically. In particular, the extensive implementation of structural

⁴ See C. Nino, 'Hyperpresidentialism and Constitutional Reform in Argentina', in A. Lijphart and C. Waisman (eds.), *Institutional Design in New Democracies. Eastern Europe and Latin America* (Boulder, 1996), p. 165, and M. Serafero, *Momentos institucionales y modelos constitucionales. Estudios sobre la Constitución Nacional* (Buenos Aires, 1993), pp. 27-44.

⁵ A. Mustapic, 'Oficialistas y diputados: las relaciones Ejecutivo-Legislativo en la Argentina', in *Desarrollo Económico*, vol. 39, no. 156 (Buenos Aires, 2000).

⁶ A. Mustapic, 'Conflictos institucionales durante el primer gobierno radical: 1916-1922', in *Desarrollo Económico*, vol. 24, no. 93 (Buenos Aires, 1984); L. De Riz and C. Smulovitz 'Instituciones y dinámica política. El presidencialismo argentino', in D. Nohlen and L. De Riz (eds.), *Reforma institucional y cambio político* (Buenos Aires, 1991).

reforms carried out by Menem's administration during the 1990s has been a subject of great interest for analysts of the political regime. In this area, most studies have emphasised the disposition of the Executive to act unilaterally. Some have done so by stressing the impact of the tremendous economic and social crisis that the country faced at the end of the 1980s.⁷ They point out that the emergency context of hyperinflation granted the government the necessary political strength to undertake a process of policy innovation. In other words, the crisis opened 'a maximum window for reform' and helped to empower the new government with an overwhelming mandate that, at the level of governmental institutions, was expressed in the Executive's capacity to move forward by using emergency powers that bypassed normal legislative procedures.⁸ A unilateral, centralised and personalised approach to decision-making was necessary to avert economic collapse and initiate structural adjustment.

Other studies went further. They pointed out that the economic crisis did not actually create an extraordinary context for the exercise of unilateral government, but rather facilitated the re-emergence of the country's long-term and heavy authoritarian legacies. In fact, these studies – of which O'Donnell's *delegative democracy* became the best-known –⁹ stressed that the heavy legacy of past majoritary tendencies together with the deep social and economic crisis, resulted in a policy style characterised by the exalted status of the Presidency and weak and heavily manipulated legislative and judicial branches. In this way, these works cast doubts on the republican features of the political regime because, although elections were held as in any democracy, the policy-making style based on concentration of authority and lack of horizontal accountability could only favour the degradation and emptying of the republic. Thus, the Argentine case (together with those of Brazil and Peru) served to support O'Donnell's delegative argument, according to which the absence of checks and balances (only present when the other institutions of government remain autonomous) gave way to a system of plebiscitary features in which policy changes were implemented swiftly and decisively, in contrast to the incremental and limited decision-making processes that characterise representative democracies. In delegative democracies –

⁷ J. Torre and V. Palermo, *A la sombra de la hiperinflación. La política de reformas estructurales en Argentina*, unpubl. paper (Buenos Aires, 1992); J. C. Torre, *América Latina: el gobierno de la democracia en tiempos difíciles*, Documento de Trabajo no. 122, Instituto y Universidad Torcuato Di Tella (Buenos Aires, 1994); J. C. Torre, *El proceso político de las reformas económicas en América Latina* (Buenos Aires, 1998); V. Palermo and M. Novaro, *Política y poder en el gobierno de Menem* (Buenos Aires, 1996).

⁸ J. Keeler, 'Opening the window for reform. Mandates, Crises and Extraordinary Policy-Making', in *Comparative Political Studies*, vol. 25, no. 4. (1993), p. 442.

⁹ G. O'Donnell, 'Delegative Democracy', in *Journal of Democracy*, vol. 5, no. 1 (1994).

which could also be referred to as *low-intensity democracies*, *democracies by default*, and *empty democracies* –¹⁰ the President was transformed into the embodiment of the nation.

Empirical works have also been produced in support of the thesis of the concentration of power in Argentina. They have shown how, during the 1990s, the Executive used unilateral policy-making resources to consolidate its power vis-à-vis Congress. Delegation of power and necessity and urgency decrees were the main instruments selected by the President.¹¹ Delegation of power was represented by two laws – the Economic Emergency Act and the State Reform Act – the approval of which was required by the Executive in July 1989 in order to deal with the hyperinflationary situation that the country was going through. By approving these bills, Congress delegated to the Executive an important number of economic powers that would otherwise have required the passage of a bulk of individual legislation. Thus, they constituted a major framework for policy actions from which the Executive drew the political power that was necessary to implement its economic programme. Delegated decrees replaced laws, and so the President could govern without institutional interference. On the other hand, ‘necessity and urgency decrees’ were also used by President Menem to assume the prerogatives of legislation belonging to Congress. However, when issuing this kind of decree, the President was not acting on the basis of authority delegated by Congress, but rather creating a new law without prior consent or authorisation. Because of this, President Menem’s use of necessity and urgency decrees generated constitutional controversy. He was not the first Argentine president to venture into the ambit of legislative decisions by using these resources, but the extreme number of them issued during his term in office was in many cases interpreted as abuse of authority.¹² The fact is that these decrees were an important pillar for the economic reform plan since they were mainly used to approve

¹⁰ See L. Diamond, ‘Democracy in Latin America. Degrees, Illusions, and Directions for Consolidation’, in T. Farer (ed.), *Beyond Sovereignty. Collectively Defending Democracy in the Americas* (Baltimore, 1996), p. 60.

¹¹ D. Ferreira Rubio and M. Goretti, ‘When the President Governs Alone: The *Decretazo* in Argentina, 1989–1993’, in J. Carey and M. Shugart, *Executive Decree Authority* (Cambridge, 1998).

¹² As Ferreira Rubio and Goretti have demonstrated, between July 1989 and August 1994, President Menem signed 336 necessity and urgency decrees, while there had been only 35 issued between 1853 and July 1989. See D. Ferreira Rubio and M. Goretti, ‘When the President Governs Alone: The *Decretazo* in Argentina, 1989–1993’; also D. Ferreira Rubio and M. Goretti, ‘Cuando el presidente gobierna solo. Menem y los decretos de necesidad y urgencia hasta la reforma constitucional (julio 1989–agosto 1994)’, in *Desarrollo Económico*, vol. 36, no. 141 (Buenos Aires, 1996); D. Ferreira Rubio and M. Goretti, ‘Gobernar la emergencia. Uso y abuso de los decretos de necesidad y urgencia (1989–1993)’, in *Agora*, no. 3 (Buenos Aires, 1995).

policies relating to taxation, salaries, public debt and the restructuring of public agencies.¹³

Besides governing by using delegated decrees and necessity and urgency decrees, other studies have shown that in the case of regular legislation, the President could also maintain control over policy outcomes by resorting to his power of veto. Vetoes were another strong legislative resource for the Executive during the 1990s, especially those of partial nature. They allowed the Executive to move forward by obtaining a necessary piece of legislation which, after congressional amendments, could still be corrected in order to adjust it to the presidential view and, then, promulgated.¹⁴ Furthermore, vetoes could be used to protect the Executive's right to issue necessity and urgency decrees, since any congressional attempt to override them could be vetoed. Again, when using the veto before the constitutional reform of 1994, Menem stirred up constitutional controversy, especially by asserting his right of partial promulgation. According to the Argentine constitution of 1853, vetoes could be used to make objections to a bill 'in whole or in part' (Article 72), and should then be communicated to Congress for reconsideration. But only after the constitutional reform of 1994 were Argentine presidents explicitly granted the power to veto parts of a bill and back others.¹⁵

In sum, while underscoring Menem's expansive interpretation of his presidential role, current analyses have concurrently revealed the prevalence of a centralised pattern of policy-making in democratic Argentina. According to this, Presidents count on a 'constellation' of constitutional powers to legislate that includes vetoes and decrees. This constellation has led to the Presidency's characterisation as 'potentially dominant' which has been explained as the President's ability 'to issue a decree and then veto any legislative attempt to amend it.'¹⁶ In other words, studies on the institutional features of the current democratic regime have provided evidence to sustain the thesis of hyperpresidentialism by distinguishing the many resources available to Argentine presidents that enable them to act unilaterally and then to get their agendas enacted.

¹³ D. Ferreira Rubio and M. Goretti, 'When the President Governs Alone: The *Decreto* in Argentina, 1989–1993', p. 46.

¹⁴ On Menem's use of the partial veto power, consult G. Molinelli, 'Las relaciones presidente-Congreso en Argentina '83–'95', in *POSTData*, no. 2 (Buenos Aires, 1996), and A. Mustapic, 'Tribulaciones del Congreso en la nueva democracia argentina. El veto presidencial bajo Alfonsín y Menem', in *Agora*, no. 3 (Buenos Aires, 1995).

¹⁵ *Constitución de la Nación Argentina. Texto oficial de 1853 con las reformas de 1860, 1866, 1898, 1957 y 1994 ordenado por ley 24430* (Buenos Aires, 1996).

¹⁶ M. Shugart and S. Mainwaring, 'Presidentialism and Democracy in Latin America: Rethinking the Terms of the Debate', in S. Mainwaring and M. Shugart (eds.), *Presidentialism and Democracy in Latin America* (Cambridge, 1997), pp. 48–52.

However, this article contends that the nature of presidential powers cannot be fully understood without simultaneously studying the role played by Congress. In this sense, the cited works do not help to sustain the argument that the centrality of the presidential institution means the parallel weakness of the legislative branch. There is even less evidence to argue that the weakness of Congress is a permanent feature of the political regime, as the delegative argument has suggested. In effect, it is certain that the use of necessity and urgency decrees has empowered presidents with the possibility of adopting legislative decisions unilaterally. As a consequence, it can be maintained that their use has entailed usurpation of Congress's legislative functions. Similarly, delegation of power could well be interpreted as congressional acquiescence to the Executive. However, the use of the partial veto seems to suggest, on the contrary, that the Executive is responding to an active legislature, one which uses its right to revise, delay and amend executive bills. Furthermore, necessity and urgency decrees could also be seen as responses to situations of gridlock in which Congress would be using its right to reject the Executive's proposals.

This article proposes to evaluate the capacities of both Presidency and Congress to intervene in the rule-making process by observing their interaction during the formulation of the privatisation policy, a case in which the Executive could see its policy goals mostly achieved in practice. As will be shown, understanding the power of the President to implement his policy involves studying related not only to the availability of constitutional resources, but also his relationship with the congressional majorities and, more importantly, his position in the leadership of his own party. This is demonstrated by exploring the attitude of Congress and the political parties towards the institutional resources – presidential bills, vetoes, necessity and urgency decrees – selected by the Executive to adopt the decisions necessary for the privatisation reform.

Privatisation: a legislative programme

Despite some timid attempts at reform during the 1980s, the launching of structural reforms in Argentina came after the hyperinflationary upsurge of 1989. The economic crisis coincided with the historical democratic transfer of mandate from President Raúl Alfonsín to the winning opposition candidate, Carlos Menem. In fact, July 1989, was the first time since 1916 that Argentina celebrated a transfer of power to the opposition party without the mediation of the armed forces. However, during Alfonsín's period in office it had already become apparent that democracy was destined to coexist with the heavy burden of the state's financial crisis. In response to the context of hyperinflation, the newly-inaugurated

government of President Menem began to implement a programme of economic reforms that would eventually take Argentina away from its state-led, inward-oriented model of growth. As is well known, privatisation and extensive deregulation became the main corrective measures. A massive privatisation programme virtually reversed the tide of state ownership that had overrun the country throughout the twentieth century. This programme progressed through Menem's first six years in office and extended even further during his second presidential term. It became unique both in its scope (since it included all the important enterprises) and in its pace (because it was essentially carried out in the first four years of his administration).¹⁷

This programme of policy innovation demanded the approval of new legislation. In effect, the privatisation programme contradicted the existing legal norms created to protect the previous statist development model. Most state entities, regardless of their institutional status, had been created by law and therefore required the passage of special legislation in order to be sold.¹⁸ Thus, privatisation became a governmental

¹⁷ Privatisation has received various academic definitions and interpretations. They vary between the two extremes of privatisation as a single policy, concerning the sale of a state-owned asset to a private sector enterprise, and privatisation as a wide range of policies, designed to limit the state's scope and functions as well as to reduce the weight of the public sector in the economy. A wide definition of privatisation would include operations that do not necessarily imply the whole or partial change of ownership. For instance, a privatisation movement would include the introduction of private sector personnel and notions of efficiency and of management techniques into the public sector; private sector competition with the public sector by a policy of liberalisation and deregulation; contracting out public services to private agents; selling land and publicly-owned housing stock; and, finally, a number of political and social reforms associated with decentralisation, in other words, with the devolution of political and administrative authority to elected local officials. (See J. Vickers and V. Wright, 'The Politics of Industrial Privatisation in Western Europe: An overview', in *West European Politics*, vol. 11, no. 4 (1988).) This study acknowledges that some aspects embraced in a wide definition of privatisation have been carried out in Argentina as much as privatisation in its limited definition has been taking place at provincial and local levels of government. Nevertheless, it only focuses on the policy of selling and conceding public assets in which the institutions of the central government engaged during the 1990s.

¹⁸ Roberto Dromi, Menem's first Minister of Public Works and Services, and a specialist in administrative law, wrote:

From 1930's onwards, genuine public enterprises are created to develop commercial and productive activities under different juridical formulae and models: for instance, autonomous and autarchic entities, state enterprises (Act 20705), mixed enterprises (Act 19550 and Decree-law 23549/46), private enterprises controlled and/or administered by the State (Acts 17507, 18832, 22229, 22334, etc.), own enterprises and public corporations. (...) Our constitutional order, our own republican system of government and control executive and legislative inter-relation, the necessary participation of the Legislature as an expression of the popular will, and the circumstance that decentralised entities, whatever their juridical type, were created by law, determined the need to enact a specific state reform law.'

legislative programme. The policy initiative was in the hands of the Executive, but congressional ratification turned out to be an unavoidable step in the process of property change. As a consequence, the whole set of governmental institutions – executive offices, Congress, the courts – needed to be mobilised in order to put the programme into practice. In other words, the policy process would put the institutions to work and in so doing, activate the many veto points that this process involved.¹⁹

From the very beginning the Executive understood that the process of legislative innovation was going to open several possibilities for the action of veto players. To expose the economic programme to the risk of dilution and derailment was a high cost for a government facing a tremendous economic crisis and problems of political credibility.²⁰ Thus, the delegation of power was thought to be a useful strategy for avoiding these risks. By means of this, the government could concentrate the political power that was necessary to make the policy viable at an institutional level.²¹

See R. Dromi, *Reforma del estado y privatizaciones* (Buenos Aires, 1991), pp. 34, 75–6; also R. Dromi, *Empresas Públicas. De estatales a privadas* (Buenos Aires, 1997).

¹⁹ G. Tsebelis, 'Decision Making in Political Systems: Veto Players in Presidentialism, Parliamentarism, Multicameralism and Multipartyism', in *British Journal of Political Science*, no. 25 (1995).

²⁰ Why did Menem make such an effort to strengthen the chosen policy direction? Certainly, the objective economic situation did not provide many possibilities for public policy, other than those showing sympathy to market reform. Nevertheless, it has been explained (Torre and Palermo, 'A la sombra de la hiperinflación') that an economic emergency is not enough in itself to account for the precise policies sometimes selected by politicians. A crisis certainly limits the margins of options, but it is also true that it necessarily is affected by the perception that politicians have of it. Torre and Palermo have written about 'Menem's credibility problem', concluding that Menem's turnaround once elected 'was the result of a strategic calculation; more precisely, the choice of market policies was a means to neutralise his political weakness, forge a hitherto unknown social coalition and maintain this in power'. In order to make himself credible and trustworthy, Menem became far removed from his political past, one in which the party he was leading had previously moved in the opposite direction towards nationalisation and state-regulation.

²¹ It should also be noted that the government realised that justice was another sphere in which opposition to the economic reforms could be expressed. A legal argument asserting delegative laws and necessity and urgency decrees to be unconstitutional was interpreted as disastrous for the future of the economic plan. Thus, the government devised a bill that was meant to create a favourable majority in the Supreme Court by means of increasing the number of members from five to nine. The bill was submitted in September 1989 and passed in April 1990, after a fairly easy passage in the Senate, and a more complicated one in the lower house where it was heavily criticised for its irregularities. The result of this was the enlargement of the Supreme Court's membership, and the appointment of pro-government candidates. In May 1990, Menem had already, with the Senate's agreement, appointed six Supreme Court judges: four in the created posts, and the remaining two replacing those who had resigned.

The Economic Emergency Law and the State Reform Law reflected these concerns. They provided a major framework for policy actions as well as the means to construct the political power that was necessary to implement this economic programme. The Economic Emergency Law was aimed at the financial cleansing of the public sector. It involved an immediate and temporary reduction in public expenditure, mainly concerning subsidy regimes. The State Reform Law particularly concerned privatisation. It declared a state of emergency affecting all state entities, enterprises and societies, and initiated the reform of the state by incorporating an appendix with an extensive number of enterprises, which were declared 'subject to privatisation' under Article 9. The list included public companies engaged in a wide range of activities, encompassing public services (such as airlines, telephones, the underground, media, cultural activities, ecological maintenance), basic production (such as the coal and petrochemical industries) and the exploitation, administration, repair, extension or maintenance of existing public works. The two laws also included a series of dispositions aimed at guaranteeing the Executive the means to implement their measures without major institutional interference. The State Reform Law provided that the privatisation policy would mainly be implemented by means of decrees rather than laws.²² Similarly, the Economic Emergency Law also delegated legislative powers to the Executive.²³ To Congress was only reserved the function of controlling the process that was to take place in the executive branch.

The State Reform Law initiated the first wave of privatisation in Argentina. Very important state-owned enterprises, such as the national airlines and the telephone company, passed into private hands after its

²² Ekmedjian states that Articles 2 and 3 of the state reform law (Act 23696) delegated to the Executive the ability to intervene in state companies. Articles 3 and 4 granted the *interventores* and respective ministers and secretaries the power to disregard a wide range of legal dispositions concerning the internal organisation of those entities. Article 6 allowed the Executive to modify the legal framework of the existing entities. Similarly, Articles 15, 18, 61 and 65 contained a delegation of legislative functions to the executive power. Moreover, Article 67 empowered the Executive to sub-delegate to ministers powers that had been given to it by this law. Ministers could also delegate their own powers to the secretariats of their ministries. See M. Ekmedjian, 'El instituto de la emergencia y la delegación de poderes en las leyes de la reforma del estado y de emergencia económica', in *La Ley* (Buenos Aires, 1990).

²³ Ekmedjian establishes that the economic emergency law (Act 23697) delegated to the Executive the following functions: Articles 24 and 25 delegated certain powers relating to changes in the national budget; Article 28 authorised the executive to alter the destination of funds; Articles 30 and 31 delegated to the executive power the setting of official fuel prices; Article 41 delegated the legislative power to regulate the functioning of the capital market; Article 63 delegated to the Superintendencia de Seguros de la Nación not only legislative powers, but also the possibility of modifying insurance contracts already in force. These retroactive effects are not allowed by law. See *ibid.*

approval. During the one and a half years that this wave lasted, the government propounded the policy of privatisation when it was dealing simultaneously with high levels of inflation. Thus, privatisation was at that time aimed directly at macro-economic stabilisation. The sale of public assets implied that the government could either obtain fresh cash or foreign debt papers, the two contributing to the cleansing of state finances and to improving Argentina's negotiating position with creditors. The intention was to find a temporary way of financing the fiscal gap – aggravated by the hyperinflation episodes – until the adjustment policies produced their full effects. Therefore, this privatisation was marked by a sense of both political and economic urgency. Since attention was paid to stabilisation goals and the construction of a credible image for the government, the priority was to respect tight deadlines, instead of safeguarding important economic issues, such as the pricing policy of the privatised firms or the establishment of regulatory frameworks. Allegations of corruption also cast a shadow on the privatisation processes carried out during this phase.

When macroeconomic stability was achieved after the implementation of Minister Cavallo's Convertibility Plan (April 1991), a quite different stage began in the implementation of the privatisation policy.²⁴ The Ministry of Economy made explicit its intention to depart from the previous phase by carefully planning the policy and by making improvements in privatisation procedures. Concerns for economic productivity and efficiency that had been set aside during the first wave began to be raised in the second.²⁵ Similarly, in response to accusations of irregularities, the Ministry made explicit its worries about guarantees of legal security for investors, and expressed its wish for congressional involvement in privatisation decisions. The new phase suggests a learning process by the policy implementation agencies, but also indicates that the persistence of criticisms of the outcome of the previous phase obliged the

²⁴ The 'convertibility plan' launched in March 1991 provided the way out of instability. It involved a radical change from earlier plans both in its objectives and instruments. On the one hand, it created a convertible currency on a one-peso-to-one-dollar basis, and required that the Central Bank had gold, foreign exchange, or other external assets (generally foreign government securities) in reserve to completely back the monetary base. On the other hand, the plan was introduced by means of a law. The government attempted to demonstrate, through its own self-discipline, that its commitment to monetary and fiscal discipline was so strong that it sought permanent, legislated control, as opposed to the type of commitment that could be expected from decrees.

²⁵ Gerchunoff and Cánovas differentiate two periods within this second phase. The first one is at the beginning of the convertibility plan, when privatisations were used to balance the fiscal accounts. The second period started when fiscal accounts were in a better state, and other non-macro-economic goals, such as those of efficiency, could be pursued. P. Gerchunoff and G. Cánovas 'Privatizaciones en un contexto de emergencia económica', in *Desarrollo Económico*, vol. 34, no. 136 (Buenos Aires, 1995).

government to draw a dividing line in order to gain credibility. In brief, during this phase privatisation continued to be a priority, but under conditions which forced the government to be more careful with the design of the policy.

The second phase of privatisation required innovation in the legal basis for the policy. The commitment to non-devaluation and the refusal to print more money meant public sector finances were in a straitjacket. Only fiscal or commercial policies, or structural reforms, were available in order to strengthen the fiscal situation. Additionally, the sale of state assets played a key role in the evolution of external accounts. One of the problems of convertibility was the current account's growing imbalance, as a result of accelerated economic reactivation. A large capital inflow was required to cover this imbalance, and cash revenue from privatisation was an important source of this.²⁶ Therefore, either for reasons connected to macro-economic stabilisation or as a consequence of the features of the stabilisation plan adopted, privatisation always remained central to Menem's administration, and was located at the top of the government's public policy priorities. However, the State Reform Law which had authorised the first phase of privatisation was not sufficient for the needs of the new period, both because the government was concerned with improving the quality of the instruments used to privatise and because it wanted to extend the privatisation policy to other areas.²⁷ Because of this, the second privatisation phase gave new impulse to legislation and, in fact, inaugurated a wave of new bills.

During the six years of his first term as President, Carlos Menem added a total of ten other proposals to the State Reform Law, which were devoted to taking the reform further. As with the first bill, the others were intended to provide the legal basis for the government's policy of privatisation, since they affected companies the sale of which, because they belonged preponderantly to the state, required congressional approval.²⁸ Considered together, the ten bills provided for the sale or transfer of a large number of state companies to the private sector: the assets of the

²⁶ Frenkel and Rozenwurcel have pointed out that 'more than one-third of the private capital account surplus in the period 1991–1993 can be attributed directly or indirectly to privatisation'. R. Frenkel and G. Rozenwurcel, 'The Multiple Roles of Privatisation in Argentina', in A. Lijphart and C. Waisman (eds.), *Institutional Design in New Democracies*, p. 230.

²⁷ The State Reform Law had established that for all enterprises not included in the accompanying appendix, new laws had to be passed declaring them 'subject of privatisation' (Article 3).

²⁸ One of them also affected the pension system, not a company but a service that had traditionally been carried out by the state and, for that reason, needed a complete legislative reformulation.

Ministry of Defence; Altos Hornos Zapla (defence); the electricity industry; the gas industry; two bills for the privatisation of the national oil company, Yacimientos Petrolíferos Fiscales; Mercado de Hacienda (cattle market); ports; Caja de Ahorro and BANADE (banks); the pensions system.

During Menem's second presidential term this programme of legislative privatisation advanced even further. During the first two years of this period, Congress considered five further bills authorising the sale of the following companies: the hydroelectric dam, Yacyretá; nuclear plants; airports; the Post Office; the mortgage bank. Consequently, Congress dealt with a total of sixteen bills relating to privatisation during the two Menem administrations.

It should be noted that the two waves of privatisation distinguished above were defined at an institutional level, the first wave concerning the many enterprises included in the State Reform Law, and the second the specific companies included in the various bills that came afterwards. The number of privatisation bills submitted to Congress by Menem's government indicates that the policy was not just adopted all at once and in a single package, but rather that its adoption involved a cumulative process extending over a period of time. This characteristic of the policy-making process requires an analysis of the institutional dynamics by which the capacity of the President to get his policy enacted throughout the years of his administration can be studied. The next section focuses on the diachronic process of policy-making taking place within the parameters of governmental institutions, and shows the absence of an immutable balance of power there, which, in turn, reflects the changes in the attitude of the political parties sitting in Congress.

Congress, parties and the President's policy

This section identifies three stages in the President–Congress relationship during Menem's two presidential periods. These stages vary in accordance with the size of the presidential majority in Congress that, as is explained below, can be greater or less than the majority held by the President's own party. The variability of presidential support in Congress explains the President's capacity to get his privatisation laws approved, as well as many of the features of the policy that arose from the legislative process.

In order to understand the President's ability to govern, the political composition of the Chambers of Congress should be considered together with the levels of discipline displayed by the governmental party, and the propensity of the opposition parties to cooperate. These three factors constitute what we call the *size of the President's majority in Congress*, which can be defined as the amount of party support that the President's policy

can raise and can be greater or smaller than the ruling party's majority. If the size of the presidential majority is considered as a variable, the high and low levels in this variable are produced by different combinations of its three components. In effect, the higher position in this range is represented by a *large majority*, in other words, a majority that exceeds the quorum barrier comfortably. In this case, the President is practically independent of Congress, even if he wishes to propose an ambitious legislative agenda. However, this is normally the case for relatively brief periods of the presidential term. The middle-high position is represented by a *strict majority*. As such, this majority precisely reaches the quorum level, thus leaving no resource surplus. On the lowest position in the range is the *simple or no majority*, which implies that the majority supporting the President in Congress is not enough to obtain the passage of his bills. Indeed, since Congress is formed by two Chambers with equal prerogatives to pass legislation, these categories are defined after considering the presidential support in both of them. Thus, the absence of a majority in one of the Chambers places the case in the 'simple-no majority' category, because this fact will block a positive final approval.

The treatment of privatisation bills shows that Menem's political support in Congress varied through the levels described above. Since the number of seats held by the Peronist Party during these ten years was quite stable, and fairly favourable to the President, the importance of the other institutional factors, i.e. party discipline and opposition cooperation, needs to be highlighted. In fact, during his two presidential terms in office, electoral results granted Carlos Menem a favourable distribution of the institutional power.²⁹ This was especially so in the Senate where the Peronist Party always had an absolute majority. In the Chamber of Deputies, however, this party had only a simple majority during Menem's first six-year term. Menem's re-election in 1995 resulted in the Peronists having a greater number of seats in the lower house, so that the President was able to begin his second mandate with the support of absolute majorities in both Chambers. However, this situation only lasted for two years, because electoral results for the partial renewal of the Chamber of Deputies in 1997 gave victory to the opposition parties forming the Alliance.³⁰ In other words, during the last two years of Menem's second

²⁹ The Appendix provides further information on the composition of the congressional Chambers.

³⁰ The Alianza is an electoral agreement arranged in time for the 1997 congressional elections between old Radicalism and new Frepaso. From 1989 to 1995, Peronism and Radicalism were the only heavyweight parties at a national level. However, towards the second half of the decade, some changes began to occur in the national party system. The presidential elections of 1995 demonstrated that an alliance named

term, the Peronist Party lost the absolute majority that it had obtained two years before, and returned to the simple majority that it had enjoyed for so many consecutive years. The only occasion when the Peronist Party did not have any majority in the lower house took place at the very beginning of Menem's first administration and was, as is explained below, a direct consequence of the special conditions laid down for the transfer of power from Alfonsín to Menem. It only lasted from July to December 1989.

The support of a large majority

The interaction between President Menem and the Congress began in 1989 with the President having a large majority in Congress as revealed above. This fact marked the greatest imbalance of power during the presidential period in favour of the Executive office. It happened as a result of the difficult times of hyperinflation, when Congress agreed temporarily to delegate to the Executive the legislative powers necessary to implement the economic reforms. As we have explained above, the Executive asked for this delegation of powers when submitting both the state reform bill and the economic emergency bill.

Delegation took place when the ruling party did not have a majority in the lower house, but it was possible because of the political convergence created by the context of emergency: Peronists, Radicals and members of smaller parties facilitated the bill's approval in both Chambers. The first two parties did so in accordance with the arrangements for the transfer of the mandate from President Alfonsín to President Menem. In fact, a two-fold agreement was reached by the two major political parties when the Radical Party – then in power – found itself unable to govern. On the one hand, there was to be a change in the duration of the transitional period. The crisis had burst in the first semester of 1989 when Menem was already an elected President. However, he was not expected to assume power until the following December, as this was the time when Alfonsín's mandate expired. In view of this, both major political parties agreed to shorten the transition period from December to July. The ruling President's resignation was the most convenient institutional way out of the crisis that would still permit the continuation of a democratic regime.

On the other hand, party agreements took into account the unfavourable situation that the transfer of the Presidency in July would

Frepasso was capable of consolidating its national expansion when it came second with 28.5 percent of the vote, relegating the Radical Party to third place (the worst election result in the history of the party). When Frepasso (which gathered discontented Peronist elements and some parties on the left, such as the Intransigent Party and the Christian Democratic Party) converged with the UCR for the congressional elections of 1997, they were able to tilt the balance of power in the lower house towards the opposition.

mean in terms of congressional seats for the new administration. In effect, the shortening of Alfonsín's period in power did not include Congress, where December remained as the changeover date. Since the Radicals had a majority in the lower chamber, Menem would therefore start his period in office without congressional support. Hence, the Peronists agreed to assume the presidential office before the expected date, but in return obtained the Radicals' commitment to facilitate the approval of all economic laws that the Peronist President would send to Congress from July to December. The agreement especially affected the Chamber of Deputies, because in political terms it implied that the Radicals would provide the number of legislators necessary to open a discussion of the President's bills. Since they had 114 deputies and, consequently, a simple majority, the agreement consisted of guaranteeing enough of their presence for the quorum, but only up to the maximum of seventy-five people, so that the Peronist position predominated.³¹

Support obtained by these political agreements complemented that from the small parties whose economic policy preferences coincided with those of the government. So, the centre-right UCeDé members and provincial parties enlarged the arc of support given by the opposition political forces. To this should be added the fact that the President could also count on the support of his own political party. This was not so self-evident as it might seem, since the presidential turnaround in 1989 had left the Peronist Party in Congress in the complicated situation of having to support explicitly a policy that was against Peronist political values, and which it had fervently opposed just a few months previously, when Alfonsín's government had attempted the privatisation of the national airline and telephone companies.³² However, the critical context facilitated

³¹ The number seventy five was not arbitrary, as it was the total number of members that the Radical bloc would have in the Chamber after the congressional renewal (from December 1989 to December 1991). Therefore, if the transition had not shortened the congressional period as it had done with the presidential one, the inter-partisan agreements would provide the majority that the new president had obtained in votes, but could not yet see translated into congressional seats.

³² Alfonsín's timid attempts to implement a programme of privatisation incurred the fervent opposition of numerous sectors. Corrales has listed the members of the anti-privatisation coalition that the Radical government had to face: labour sectors, the private sector, the military, civilian managers of state-owned companies, some leaders from the ruling Radical Party, the Peronist Party, and Congress. See J. Corrales, 'Coalitions and Corporate Choices in Argentina, 1976–1994: The Recent Private Sector Support of Privatisation', in *Studies in Comparative International Development*, vol. 32, no. 4 (Pennsylvania, 1998). The Peronist Party in the Senate killed the legislative progress of the three privatisation bills submitted by the Executive in 1988. Consult M. Llanos, 'Privatisation and Democracy. A Study of the Legislative Process for State Reform in Argentina', unpubl. D.Phil. Thesis, University of Oxford, 1998, Chapter 3, for further details on the Peronist opposition to Alfonsín's bills.

the process considerably. The economic crisis was a powerful argument in support of those advocating the presidential programme in Congress. It underscored the fact that the economic plan was not the new administration's choice, but a policy imposed by circumstances which did not leave any room for alternative courses of action. Additionally, the popular support obtained by Menem after the announcement of his economic measures, contributed to dissipating the party's doubts about the government's economic direction.³³

The result of this large majority including ample opposition support and a high degree of internal discipline from the Peronists, was the unanimous vote for the delegative bills in the Senate and a comfortable majority for them in the lower house. Thus, the first stage of privatisation shows how the difficult period of hyperinflation promoted a cooperative attitude by the political parties in Congress. This, in turn, served to confirm the predominance of the Presidency in the policy-making process since the executive mostly accomplished its policy goals.

Buying the support of a strict majority

The second stage in the executive-legislative relationship began with the President's submission of other privatisation bills in Congress. This wave of privatisation bills shows that delegation of power was not a permanent feature of the relations between the President and Congress, but rather one of a particularly critical period. In the second phase, inter-institutional relations were characterised by the formation of a strict majority, in other words, by the support that the President obtained mainly from his own Peronist Party. This phase combined the existence of a congressional majority (absolute in the Senate, relative in the Chamber) with a high degree of discipline in the Peronist Party and the cooperation of minor parties. Although return of the Radicals to an opposition stance was notable, this phase turned out to be one in which Menem could obtain support for all his legislative proposals.

The following table indicates the voting pattern that allowed the privatisation bills to be passed in committee. As can be seen, the ruling party played an important role by participating in the passage of all the privatisation bills through committee. However, the majority rule was only used three times. Considering the nineteen votes in which the committees passed the privatisation bills, it emerges that they had the support of two or more political forces. Thus, inter-partisan cooperation turned out to be an important characteristic of the approval of the bills,

³³ Opinion polls indicated that, after publicly announcing the government's economic direction in July 1989, Menem managed to raise the 47.5 % of votes he had obtained in the elections to an 82 % approval rating.

Table 1*. *Voting Pattern in the Committees†*

Approval Formulae**	Senate	Deputies Chamber	Total
PJ-Others	5	9	14
PJ	2	1	3
PJ-UCR	1	—	1
PJ-UCR-Others	1	—	1
Total	9	9	19

* This and the other subsequent tables have been prepared with data from Congressional Reports and *Dictámenes de Comisión*.

** PJ: Peronist Party; UCR: Radical Party; Others: Smaller Parties.

† It must be remembered here that the composition of the committees is determined by the distribution of power resulting from the elections and is translated into congressional seats in the Chamber.

in the committees of both the upper and the lower houses. In the two Chambers, agreements were mainly made with minor parties ('others' in the table): only twice with the Radicals.³⁴

Data shows that the Peronist Party displayed marked pragmatism and flexibility, since it agreed to policy directives at both critical and normal times. In fact, critical moments of hyperinflation having been left behind, the Peronist Party continued supporting the President's policy in Congress. It is rather obvious, though, that the party's positive support was closely linked to the extraordinary success of the political decisions that began to be adopted in 1989. In other words, the sense of loyalty towards directives from the President should not be separated from the subsequent electoral victories and the repeated renewal of voter support for Menem and his economic programme and team. Therefore, it seems that the Peronist Party did not have much leeway to reject the economic programme. Conversely, it had an incentive to follow the course of action ratified by the ballot box.

Despite this, partisan discipline was not automatic. So, operating with a strict majority in Congress would change the terms of the President's relations with the other branch of government. No room was left for the subordination of Congress, given not only the President's permanent need to seduce small allied parties, but also his need to persuade his own rank

³⁴ Among the 'other' parties, the following can be considered the best allies of the government: Unión del Centro Democrático (UCeDé), Movimiento Popular Neuquino, Partido Renovador de Salta, Partido Blanco de los Jubilados, Partido Liberal de Corrientes, Alianza Acción Chaqueña, Partido Demócrata Cristiano Federal, and Partido Conservador Popular. All these parties can be considered the best allies of the government, because they never cast a negative vote against its privatisation bills (with the sole exception of the Partido Blanco de los Jubilados, who abstained during the vote on the privatisation of gas). These regionally-based parties, although numerically irrelevant as individual forces, played a crucial role in providing votes for the passage of the bills.

and file.³⁵ Two indicators serve to establish that Congress's cooperation during this phase implied no subordination to the Executive.

The first is the legislators' involvement in the writing of the bills. The overwhelming presidential success in obtaining the approval of his bills in Congress probably conceals the intense and not so obvious process of negotiation that led to their passage. It should be stressed that, although eventually approving all the Executive's proposals, the congressional majority took its time to make all kind of amendments. On two occasions (the oil company privatisation and the modification of the pensions system) it went as far as to force the Executive to withdraw the original drafts and their replacement with others that took into account many of the legislators' views.³⁶ Thus, although the Executive counted on a working majority in Congress, the legislative nonetheless maintained its powers to modify draft bills and to delay the legislative process.³⁷ The result of this was a version of the bills not always acceptable to the Executive. In fact, on several occasions the Executive had no resort but to use its veto power. Five bills were partially vetoed during this period, which shows the Executive's efforts to bring the bills closer to its own views. Vetoes were, then, a powerful corrective to unacceptable congressional amendments. Nevertheless, the vetoed bills were never returned to their original versions. In this way, congressional action was not totally erased and left its mark on the design of the policy. The following table summarises the main features of the inter-institutional relations during the second stage of the privatisation policy.³⁸

³⁵ It should also be taken into account that the major Argentine political parties are structured as decentralised organisations. As Mustapic, ('Oficialistas y diputados: las relaciones Ejecutivo-Legislativo en la Argentina'), has argued, the party leader is backed by a coalition of regional leaders, who then regulate the balance of power in the organisation. This decentralised party structure, together with the decentralised institutional features of the regime (separation of powers, federalism, organisation of the congressional work in committees) prevent the automatic acceptance of the party's leadership.

³⁶ For further details, consult M. Llanos, 'El Presidente, el Congreso y la política de privatizaciones en Argentina (1989-1997)', in *Desarrollo Económico*, vol. 38, no. 151 (Buenos Aires, 1998).

³⁷ It should be noted that the State Reform Law, although involving the delegation of legislative powers, was passed in one month, while the approval of the remaining bills took an average of ten months.

³⁸ Note that there is a case (the cattle market) in which the Executive resorted to a necessity and urgency decree although the legislative process had already been initiated. This case only marginally meets the definition of privatisation since the case could also be considered part of the policy of deregulation. The fact is that the Executive discouraged the approval of this bill in Congress, and included it in the necessity and urgency decree that established the rules for the policy of deregulation (Decree 2284/91, in *Boletín Oficial*, 1 Nov. 1991). The decree was not the result of an institutional conflict since the debate of the bill had been initiated and was progressing smoothly.

Table 2. *Congressional Procedure of Privatisation Bills (1989–1995)*

Privatisation Bills	Approval	Congressional Procedure (month/day/year)	Duration	Congress's Amendment	Partial Veto
Ministry of Defence Assets	Yes	17 months	(7/23/90 to 12/4/91)	Yes	No
AHZ (defence)	Yes	1 month	(7/27/90 to 8/23/90)	Yes	No
Electricity Industry	Yes	6 months	(6/13/91 to 12/20/91)	Yes	Yes
Gas Industry	Yes	11 months	(6/13/91 to 5/20/92)	Yes	Yes
Oil Industry, YPF	Yes	17 months	(4/4/91 to 9/24/92)	Yes	Yes
Mercado de Hacienda (cattle market)	Decree		(9/18/91)	—	—
Ports	Yes	20 months	(9/27/90 to 6/3/92)	Yes	Yes
Caja de Ahorro and BANADE (banks)	Yes	10 months	(12/3/91 to 9/30/92)	Yes	No
Pensions	Yes	15 months	(6/5/92 to 9/23/93)	Yes	Yes
YPF (2nd round)	Yes	1 month	(3/1/95 to 3/22/95)	Yes	No

The use of the veto leads to the second indicator of intense legislative activity during this period. This concerns the Executive's constant display of leadership, which means that the Executive did not limit itself to submitting the bills, but carefully followed their path throughout the different congressional processes. Leadership skills were displayed on several fronts and in different ways either to pressurise or to persuade reluctant legislators.³⁹ The cultivation of ties with Congress involved the President himself, his closest collaborators, as well as parallel efforts from the Ministry of Economy. A frequent strategy was the President's public announcement of tight deadlines, which aimed at setting limits to congressional debates. Another consisted of public threats of vetoes or decrees in order to pressure Congress to respond accordingly. More subtle ways of influencing legislators were private meetings with congressional leaders (the chiefs of the Peronist blocs, the heads of the committees, leaders of potentially supportive opposition parties). Some of these bridge-building activities became more institutionalised with the creation of congressional liaison offices with permanent staff, especially those brought in from the Ministry of Economy. These strategies were directed at particular contents of the bills with which the Executive was most concerned. They prove that there was an intense process of negotiation by means of which the Executive could control policy contents, but which also marks the relevance of the Executive's interlocutors in the other branch of government.

The congressional discussion of the privatisation of gas and electricity industries serves to illustrate how the dialogue between the branches of government developed during this stage of state reform.

The cases of electricity and gas

The bills for the privatisation of electricity and gas were those most carefully designed by the executive power. The World Bank provided a close supervision and played an active part in defining these projects. With these bills, Minister Cavallo intended to draw a dividing line from previous privatisations. On the one hand, there was the need to obtain the financial support required by the convertibility plan. The government submitted these bills in the midst of intense negotiations with the IMF, which involved, among other measures, proposed levels of fiscal surplus to be achieved through privatisation.⁴⁰ On the other hand, there was also

³⁹ An extensive account of the presidential leadership's strategies and their impact on the contents of legislation can be found in M. Llanos and A. Margheritis, 'Liderazgo presidencial y dinámica institucional durante la primera Presidencia de Menem. El caso de las privatizaciones', in *Revista Política y Gobierno*, vol. VI, no. 2 (Mexico, 1999).

⁴⁰ *Ambito Financiero*, 27 June 1991.

the pressure from future consumers to consider their interests in the course of the sale. Powerful industrial users of gas and electricity were particularly anxious to avoid higher tariffs, which were crucial for industrial costs. So entrepreneurial organisations (such as the Argentine Industrial Union) monitored the policy-making process closely.⁴¹

From the very beginning it was clear that Congress would exert its right to delay and modify the proposed bills. In effect, although the bills were submitted in June, it was October before the Senate was prepared to begin to consider the electricity privatisation in a plenary session. Gas privatisation was even more delayed. So, the Executive would frequently accompany the law-making processes with the public use of its 'time pressure' tactics and threats of using decrees instead of laws. Furthermore, the congressional disposition to amend these bills obliged the Executive to maintain a close supervision of the legislative processes and, eventually, to make use of its power of veto. This will now be considered in more detail.

Due to congressional intervention, the state was granted a power of veto in the electricity bill. This bill created the office of Despacho Nacional de Cargas as a public company. The state would initially hold the majority of shares and would be entitled to reduce the holdings to ten percent. Congress did not alter this provision but the deputies added that, despite the reduction of shares held by the state, it would maintain its interest and power of veto over the directorate (Article 35). Imports and exports were also a matter for discussion when Congress considered electricity services, as well as the transport and distribution of gas. In both cases the Executive's proposal was that export and import activities would not need prior authorisation. Congress, however, stipulated that authorisation would be required for both imports and exports of electricity (Article 34) and also for the export of gas (Article 3). Following the proposal of the Partido Renovador de Salta, gas export authorisation would be granted provided that internal supply would not be affected. In the particular case of Gas del Estado, Congress added further reforms. There was a major debate about how long the period of concession should be (Articles 5, 6). The Senate proposed thirty-five years, with possible extensions. Committees in the lower house fixed the extension period at thirty-five years, and left open the possibility of further renewals. But a negative reaction in the Chamber as a whole finally reduced the extension period to ten years and eliminated the possibility of further renewals. Government subsidy provisions were also included. Article 48 challenged the strict subsidy policy favoured by the government. It provided for the Executive to grant subsidies after receiving congressional authorisation.

⁴¹ *Ambito Financiero*, 25 Oct. 1991; 18 March 1992.

Another article was added in the lower house (Article 92) which allowed for the creation of a subsidy in the event that it was required as compensation to the provinces. Finally, the situation of the workers was also considered. The Senate enacted a provision (Article 80) through which privatisation arrangements could include the issue of bonds to allow the workers a share of the company's profits. The lower house confirmed this clause, adding the obligation to issue ten per cent of the company's shares as part of the shared property scheme.

Besides claiming the right to correct the general design of the policy, Congress tried to extend its own influence during the implementation stage. These attempts were intended to enlarge its sphere of action, which the State Reform Law had restricted only to some elements of control and supervision. In general, most of the modifications involved improvements to the control functions of Congress. However, it was also the case that while seeking supervision Congress was actually trying to become involved in performing executive functions. The electricity bill (Article 93) enlarged the functions of the bicameral commission (a control commission created by the State Reform Law) to include reporting on three matters: tender basis, assessment of offers and final contracts. These reports were supposed to have a binding character and, therefore, they could either confirm or paralyse the privatisation process. Besides these provisions affecting the existing commission, Congress enlarged its control prerogatives by creating others. It tried to ensure supervision over appointments in the directorate of the regulatory body: before appointing or removing members the Executive would have to consult a congressional commission (Articles 55 and 59, respectively).

Finally, the gas bill provides many examples of modifications involving particular interests. Most of these modifications were aimed at favouring the provinces. Article 50 created the regulatory body. The Chamber of Deputies agreed to the decentralisation of the body, stipulating the creation of a minimal structure in each distribution area in order to maintain an easy relationship between users and companies. Article 52 specified a progressive delegation of functions corresponding to the competence of the provinces. Article 54 concerned the appointment of members to the regulatory directorate. Although appointments were the prerogative of the Executive, the deputies decided that two of the five members should be proposed by provincial governors. Article 82 (amended in the Senate) appropriated ten percent of the privatisation benefits and distributed them as follows: half according to the federal co-participation index, and the remaining half using an index that the Ministry of Economy would calculate to be inversely proportional to the average annual temperature in each province. The deputies then added

that the Municipality of Buenos Aires should also share in this ten per cent. Article 92 created the Natural Gas National Fund. It was to last for five years and the money would come partly from the resources obtained by increasing the tariffs paid by all consumers, and partly from the repayments obtained from loans made with the fund's resources. The destiny of the funds would be: eighty percent to compensate for the tariffs that users had to pay in the colder provinces and twenty percent for research programmes concerning natural gas. Through Article 95, the state agreed to give a special reimbursement to the provinces in order to compensate them for the projects that had already been undertaken for the distribution of gas to their inhabitants. They would consist of either state shares in privatised companies or some other similar payment.

In summary, this was how Congress helped with the bills governing privatisation of the gas and electricity industries. As can be seen, although some of these amendments might upset the Executive, the fact is that, in general, they were improvements that did not block the move to privatisation. However, it is true that the Executive could maximise its achievements in Congress because the legislative process was closely monitored by the government. As a result some other congressional clauses were not included in the final version of the bill. For example, in the case of gas, the Chamber of Deputies attempted to include a provision for the creation of a bicameral commission (Article 94) that was to assist the Executive in the whole privatisation process and to report regularly to Congress on progress made. The Executive was supposed to consult this commission every time important decisions had to be taken. Eventually, this proposal was withdrawn because the Executive stated that there was a bicameral commission already in operation. In the case of electricity, the Executive was surprised by the modifications worked out by the Energy Committee, where, in the bill's second reading, Peronist deputies excluded the possibility of privatising a number of hydroelectric dams. Instead, the provinces in which those dams were located were empowered to decide on their privatisation. This amendment provoked an immediate response from the Presidency. The General Secretary, Bauzá, organised an urgent meeting with the head of the committee, Deputy Antonio Cassia, the Secretary of Energy, Carlos Bastos representing the Ministry of Economy, and some senators.⁴² Afterwards, the Peronist deputies shifted their position on the hydroelectric dams.⁴³

Once the legislative process was completed and the bills had passed through the congressional Chambers, the Executive made use of its partial veto power. The Executive decided to veto Article 93 of the electricity bill which attempted to extend the powers of the bicameral commission that

⁴² *Clarín*, 14 Dec. 1991.

⁴³ *Clarín*, 18 Dec. 1991.

was meant to control the implementation stage of the policy. In the gas bill, Article 54 was regarded by the Executive as a hindrance to the fulfilment of the privatisation timetable because it demanded that two of the five members of the regulatory body be appointed by provincial governors. In the Executive's view, this procedure 'would delay the terms of Gas del Estado's privatisation as well as the constitution of the National Regulatory Body because securing the coordination, organisation and agreement among provincial governors would not permit the fulfilment of the timetable that had been fixed by the executive power'.⁴⁴ Article 80 (ten per cent of the shares to be assigned to the participated property scheme), Article 92 (creation of a subsidy) and Article 95 (reimbursement of the provinces) concerned the policy itself and were seen as being opposed to the implementation of the programme. Thus, by partially vetoing the two bills the Executive tried to stop congressional moves to improve its position in the policy-making process and to redesign the policy. Executive success was only partial however, since many of the legal clauses that resulted from congressional negotiations remained in the final version of the bills.

In short, the approval of privatisation laws after the hyperinflation episode, shows that the President remained powerful enough to get his agenda enacted. The sources of this power were basically political since he could count on the support of a majority in both houses of congress. However, the fact that this majority was strict gave the President no surplus of power. Thus, he was forced into a dialogue with the members of the other branch of government, which characterised this phase as one of intense institutional activity. The terms of this activity have been distinguished by examining the presidential resources used during this phase. On the one hand, the fairly favourable policy outcome obtained by the Executive – demonstrated by the approval of all his bills – underscores its command over the Peronist Party and its ability to obtain circumstantial allies in the two Chambers. On the other, the absence of any delegation of power as well as the use of the partial veto confirmed that congressional members were determined to use their legislative powers to delay and modify the Executive's bills.

Facing presidential succession

After his re-election in 1995 President Menem faced an entirely different situation. In fact, this re-election inaugurated a second four-year administration where the institutional and political resources available to the President were changed. On the one hand, he enjoyed an absolute majority in the Chamber of Deputies for the first time since his arrival in

⁴⁴ Decree 885/92, in *Boletín Oficial*, 12 June 1992.

power in 1989. As a consequence, President Menem could begin his second mandate with a majority in the two Chambers of Congress. On the other, he began to face problems from within the Peronist Party itself. During his first mandate, President-party relationships had been characterised by a skilful leader and a fairly disciplined party with incentives to follow the leader's directions. After re-election, leadership efforts to control the party failed on many occasions. The party began to contemplate the presidential succession, and alternative leaders began to emerge, aiming at the next presidential prize in 1999. Thus, the President had to face incipient competition from some of his party factions, the consolidation of which eventually resulted in the decline of his political power.

Therefore, Menem began his second four-year term faced with the challenges involved in maintaining his authority over the rank and file of his party. These challenges affected the functioning of governmental institutions and, in turn, the policy-making process. Furthermore, the emergence of another leadership challenge occurred when, towards the end of the first two years of the administration, the recovery of the opposition parties added normal government-opposition rivalry to the existing problems within the Peronist rank and file. In fact, the partial renewal of the Chamber of Deputies in 1997 favoured the opposition Alliance. The President thereby ended his second presidential term having lost the absolute majority he had obtained only two years previously.

Thus, the inauguration of the second term failed to produce a honeymoon period for the President. On the contrary, the distinctive feature of this stage of the privatisation policy was the beginning of a conflict between the Executive and the lower house. Five privatisation bills were debated in Congress during the first two years of Menem's second administration. The legislative procedure for the Post Office privatisation bill had already been initiated during the previous period, and had even been approved by the Senate committees in October 1994. The privatisation of the 'Yacyretá' hydroelectric dam (which was still under construction) was introduced during the period of extraordinary sessions, at the beginning of 1995, after the signing of an international agreement with Paraguay, which shares ownership of the dam with Argentina. The remainder of the bills – the privatisation of nuclear plants, airports and the National Mortgage Bank – were all submitted and debated during Menem's second administration. Table 3 summarises the main features of the congressional procedure of these bills.

On the one hand, this table indicates that the legislative procedures of the bills privatising the nuclear plants and the Mortgage Bank replicated features of the law-making processes noted in the previous phase: first,

Table 3. *Congressional Procedure of Privatisation Bills (1991–1997)*

Privatisation Bills	Approval	Congressional Procedure	Duration	Modifications	Vetoes
Post-Office	No (decree)	Detained in the Lower Chamber	From 1/18/95 to 4/2/97	—	—
Nuclear Plants	Yes	Detained in the Lower Chamber	26 months	Yes	Yes
Airports	No (decree)	Detained in the Lower Chamber	—	—	—
Hydroelectric Dam	No	Detained in the Lower Chamber	—	—	—
Mortgage Bank	Yes	From 10/10/96 to 7/2/97	9 months	Yes	Yes

Table 4. *Privatisation Bills. Congressional Results (1989–1997)*

Privatisation Bills	First Menem Presidency	Second Presidency	Total of Bills
Approved Bills	10	2	12
Non-approved Bills	0	1	1
Non-approved/Decrees	1	2	3
Total of Bills	11	5	16

Congress passed them; second, during the passage amendments to the original version were introduced; third, the average duration of the procedures was much the same as that of the previous phase. In other words, these cases corresponded to the main features of the legislative process that led to the approval of earlier bills, such as the oil, electricity and gas privatisations. As in these earlier cases, the Executive responded to congressional intervention by resorting to the partial veto.

On the other hand, the Table shows that Congress not only maintained its powers of delay and modification, but also actually halted some bills. This conflict between the powers was precisely located in the Chamber of Deputies where the Post Office, airports, and Yacyretá privatisation bills were delayed after having received approval in the Senate. This is an entirely new feature in presidential-congressional relationship because approval of privatisation bills had never been denied by Congress during the first six years of Menem's administration. Table 4 documents the record.

This table compares the attitude of Congress towards the privatisation bills in Menem's first and second terms. As we have explained, privatisation bills had received overwhelming congressional approval during his first period in office. In contrast, the fact that the number of non-approvals surpassed the number of approved bills appears as a new feature of the period initiated by Menem's re-election. Likewise, the number of privatisation decrees is also significant in this period. A necessity and urgency decree was used to secure the privatisation of the airports. For the privatisation of the Post Office the government took the controversial decision of resorting to the State Reform Law, and to do so it used a delegated decree. Finally, seeing the failure of the private concession of the hydroelectric dam, Yacyretá, the government opted for private management as an alternative solution, a decision that could be taken using normal administrative decrees. While in previous years decrees had been avoided in decisions concerning privatisation, their use in the third phase confirms that they reflect the President's lack of political support in Congress.

In fact, a distinctive feature of the phase after re-election was the

Executive's proclivity to make privatisation decisions unilaterally. The use of decree powers to impose privatisation is far from being a symbol of a President with absolute powers. Rather it is the proof that the President's political resources had weakened. These decrees were the solution for a President facing a blocked legislative process, which prevented him from repeating previously successful strategies, such as negotiating some contents of the bills in exchange for their final approval.

The other aspect of these decrees is a Congress that had recovered its legislative powers in full, by adding to its existing powers to modify and delay legislative processes the ability to reject the Executive's initiatives. Decrees were the 'weapons of the weak' when the President could no longer control either the Peronist Party or the agreements with opposition parties.⁴⁵ Neither should the capacity of Congress to discourage the submission of bills be underestimated. This 'preventive' ability was demonstrated,⁴⁶ first, when the government began to announce its plans to privatise the National Bank (Banco Nación),⁴⁷ and later on, when it decided to modify the already privatised pension system.⁴⁸ Despite

⁴⁵ The expression 'weapons of the weak' was borrowed from Keeler who uses it to qualify the resources used by governments of the French Fifth Republic (package vote, the guillotine, circumvention of the Senate) when they face a weak majority in the National Assembly and/or have no majority in the Senate. See J. Keeler, 'Executive Power and Policy-Making Patterns in France: Gauging the Impact of Fifth Republic Institutions', in *West European Politics*, vol. 16, no. 4 (London, 1993).

⁴⁶ J. Blondel, *Comparative Legislatures* (London, 1973).

⁴⁷ Banco Nación is considered a giant in the local financial system, with a hundred year existence in profitable and non-profitable sites all over the country. It is the bank that assists rural producers in trouble, and grants credits to small and middle size enterprises both in rural and industrial areas. It has also been a state financial agent assisting the government and other banks. During the second half of 1996, the press echoed rumours about the forthcoming privatisation of the National Bank, which the government denied on several occasions. Nevertheless, opposition and Peronist legislators expressed their negative attitude by submitting declarations and resolutions of rejection. See *Clarín*, 5 Sep. 1996; *La Nación*, 8 Dec. 1996; *Página 12*, 25 April 1997. A year later, the government began to discuss the topic more openly, and even expressed its political commitment in a letter of intent signed with the IMF. See *Clarín*, 4 Dec. 1997. Then, it became obvious that this privatisation was very unpopular. It generated all kinds of negative reactions. Important entrepreneurial entities, such as the Argentine Rural Society and the Argentine Industrial Union expressed their opposition. *Clarín*, 9 and 21 Nov. 1997. Other organisations embracing small and middle size producers (Argentine Agrarian Federation, Argentine Rural Confederation) also expressed their total opposition. *Clarín*, 9 Feb. 1998. Ahead of this, legislators confirmed their decision to reject the idea of a total privatisation (see *Clarín*, 8 Nov. 1997). As a consequence, for two years, the government was not able to transform its initiative into a bill ready for submission to Congress.

⁴⁸ The most controversial point appeared when, at the beginning of 1999, the government began to consider the possibility of eliminating the state's basic contribution, which had been maintained (thanks to congressional intervention) after the introduction of a pension system based on personal savings. The Chief of the Peronist bloc in the lower

congressional reluctance to cooperate, the Executive did not respond by using decrees in these cases. It is likely that the negative social and political reaction to these proposals discouraged their use, but also that the Executive could not produce the institutional conditions for their enactment, i.e. the support of the Supreme Court⁴⁹ and the tolerance of the President's own party.

In brief, this phase of the privatisation policy shows how useful were unilateral resources of the presidency in substituting for a reliable political majority in Congress. In fact, either through the support of a congressional majority or thanks to the use of the presidential decree authority, four of the five proposed privatisations were approved and implemented. As in previous privatisation phases, results were very close to what the President was seeking. However, it is also true that decree powers were not used in every single case in that the President faced obstacles. There were cases when the Executive had to abandon its initiatives, rather than exercising its unilateral authority to push them forward. In other words, the Executive lacked the means to counterbalance opposition forces, and so, to put its policy into practice.

Conclusion

The formulation and approval of the privatisation policy in Argentina was a highly institutional process, led by the Executive, in which Congress participated actively. Faced with the President's initiatives, Congress made use of its powers of approving, delaying, amending, and preventing the submission of legislation, during different stages of the reform process. However, these lawful features of the policy of privatisation do not contradict the mounting evidence of a President who exercised legislative powers in an unilateral and discretionary way. Thus, this research supports the view that the adoption of structural reforms in

house explained that 'there was no favourable climate to treat this topic in the bloc.' *Clarín*, 24 June 1999.

⁴⁹ It should be stressed here that the Supreme Court as reformed by Menem at the beginning of his first administration was ready to support the Executive on almost every occasion he required it. Indeed, this contributed to the doubts cast on the functioning of the system of separation of powers. However, in the long run, the situation led to the discredit of the Supreme Court and its members, and gradually made it more difficult for them to maintain an unconditional attitude. When the Court supported the Executive on the privatisation of the airports by confirming the constitutionality of the decree with which the decision was adopted, its reputation reached its lowest level. From then on, however, the Court learnt that supporting the Executive on issues that raised constitutional controversy was highly costly for the political survival of both the institution and its members.

Argentina involved a complex process in which the modality of legislating by decree ran in parallel with other legislative processes found in the congressional arena.

Because congressional intervention cannot be underestimated, it can be claimed that the thesis of *limited centralism* is a better characterisation of the features of the presidential regime than that of *hyperpresidentialism*. The first term not only acknowledges the complexity of the institutional relations, but also the fact that, given a situation of presidential centralism, institutional relations are variable and, most importantly, contingent upon political conditions. From this point of view, it is easier to approach the primary question of the capacity of Argentine presidents to get their agendas enacted. To do this, it is necessary to point out the following:

It has been stated that the capacity of presidents to maximise the opportunities offered by the position they occupy depends on both their style of leadership and the situation in which they operate.⁵⁰ In this sense, Carlos Menem was favoured by the critical conditions under which he came to power. In effect, the economic situation of 1989 increased the president's capacity for political action and gave him the green light for a centralised pattern of decision-making, which turned out to be crucial for the launch of a far-reaching policy reform. At the same time, Menem demonstrated that he was a high risk politician, ready to act on the margins of the Constitution. As a leader who maximised opportunity, Menem maintained his propensity towards unilateral action throughout his years in power. However, the favourable conditions which accompanied his arrival in office in 1989 were not constant, and gradually began to diminish. 'The political context which allowed the concentration of authority changed when the economy was stabilised and the first structural reforms implemented.'⁵¹ Thereafter the Executive was forced on several occasions into a political dialogue which did not change the direction of the economic reforms, but which certainly increased the costs of the process of policy implementation, as the privatisation case-study described in these pages has shown.

Therefore, the empirical evidence of this case serves to confirm that a centralised pattern of decision-making is a necessary condition for a far-reaching policy reform. But a successful centralised style is far from being only unilateral action, *decretismo* and delegation of power. Although these conditions are sufficient for the initiation of structural reforms, the

⁵⁰ B. Rockman, 'The Performance of Presidents and Prime Ministers and of Presidential and Parliamentary Regimes', in K. von Mettenheim (ed.), *Presidential Institutions in Democratic Politics. Comparing Regional and National Contexts* (Baltimore and London, 1997).

⁵¹ J. C. Torre, *El proceso político de las reformas estructurales en América Latina* (Buenos Aires, 1998), p. 91.

implementation of a piecemeal long-term reform, such as privatisation, demands the construction of relatively stable coalitions of political support. In other words, it is certain that the broad constitutional powers of the Argentine Presidency allowed President Menem to proceed on issues which would otherwise have been indefinitely postponed. However, it is not correct to assume that these constitutional legislative resources replaced the need for a political support base. The strong support that Menem obtained from his party and his party's allies at an institutional level was the key to policy success during most of the first administration. This political and institutional leverage of the President permitted the achievement of his privatisation goals, inasmuch as negotiations on the contents of the bills satisfied the parties' demands for participation.⁵²

By following the implementation of the privatisation policy over time, it can be seen that Menem began to lose his capacity to govern after he was re-elected. Both public support and party support decreased. Public support eroded once people began to experience the negative consequences of fundamental reform and recession (the latter connected to the conditions created by the Tequila crisis). Party support declined once re-election ensured that the next presidential succession (of 1999) would pass back into the hands of the Peronist Party. In this article, Menem's difficulties in building political consensus after his re-election have been demonstrated by examining the treatment of the privatisation bills in Congress, where the Peronist majority blocked many of the legislative processes. This situation led the Executive to by-pass congress and to use unilateral resources in order to continue with the implementation of the policy. Although they were helpful, these resources did not compensate for the loss of political support, and certainly did not contribute to the maintenance of the image of presidential dominance. The Executive could reach some of its policy goals, but others had simply to be abandoned. Similarly, while enacting decrees (for example, the airports decree), the Executive and the Supreme Court only provoked harsh political criticisms and popular discredit.

As a corollary, the privatisation case-study demonstrates that there is a limited period in which presidential leadership can maintain such high levels of acceptance. If a President is re-elected, constraints will probably arise from the concern of his party for the succession. Moreover, if

⁵² One could also argue that the daily involvement of Menem's party in the writing of the bills also created a certain base of tolerance for the President's enactment of necessity and urgency decrees in other policy areas. This fact has been highlighted by Mustapic ('Oficialistas y diputados: las relaciones Ejecutivo-Legislativo en la Argentina'), who has stated that the enactment of necessity and urgency decrees also requires special political conditions, that is, it demands at least the implicit consent of the party of the President.

economic reforms have been radical, sooner or later the time will come when people seek to redefine their relationship with the leader. As has been stated, '...presidents who have maximally achieved early are likely to be on a downward spiral, especially through a second term when they must face up to the problems their achievements have caused'.⁵³

Appendix

Table 5*. *Composition of the Chamber of Deputies (1983-1995)*

Political Party	1987-89		1989-91		1991-93	
	Seats	%	Seats	%	Seats	%
PJ	96	37.8	120	47.2	117	45.5
UCR	114	44.9	90	35.4	84	32.7
Frepaso	—	—	—	—	—	—
UceDe	7	2.7	11	4.3	10	3.9
PI	5	2.0	2	0.9	2	0.8
Others	32	12.6	31	12.2	44	17.1
Total	254	100	254	100	257	100

Political Party	1993-95		1995-97		1997-99	
	Seats	%	Seats	%	Seats	%
PJ	128	49.8	131	51.0	119	46.3
UCR	83	32.3	68	26.4	66	25.7
Frepaso	—	—	22	8.6	38	14.8
UceDe	4	1.5	2	0.8	—	—
PI	1	0.4	1	0.4	—	—
Others	41	16.0	33	12.8	34	13.2
Total	257	100	257	100	257	100

* *Source*: The Table has been prepared on the basis of data from Cámara de Diputados. Su Composición y Comisiones. Note that the total number of deputies increases from 254 to 257 due to the establishment of Tierra del Fuego as a new province.

Table 6*. *Composition of the Senate (1983-1998)*

Political Party	1989-92		1992-95		1995-98	
	Seats	%	Seats	%	Seats	%
PJ	26	56.5	30	62.5	37	57.8
UCR	14	30.4	11	22.9	15	23.4
Provincial Parties	6	13.1	7	14.6	10	15.6
Frepaso	—	—	—	—	2	3.2
Total	46	100	48	100	64	100

* Note that the total of senators increases from 46 to 48 due to the establishment of Tierra del Fuego as a new province. The period 1995-98 includes new senators in accordance with the constitutional reform of 1994.

⁵³ Charles Jones cited in B. Rockman, 'The Leadership Question: Is there an Answer?', in C. Campbell and M. Wyszomirski (eds.), *Executive Leadership in Anglo-American Systems* (Pittsburgh, 1991).