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UNIVERSITY OF CALIFORNIA, SAN DIEGO

Cross-Avenue Politics: The Case of Colombia and Brazil

A Dissertation submitted in partial satisfaction of the
Requirements for the degree Doctor of Philosophy

in

Political Science and International Affairs

by

Mónica Pachón-Buitrago

Committee in charge:

Professor Gary W. Cox, Co- Chair
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Professor Mathew McCubbins

2008

The Dissertation of Mónica Pachón-Buitrago is approved, and it is acceptable in quality and form for publication on microfilm:

Co-Chair

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University of California, San Diego

2008

DEDICATION

To my family, for their love and encouragement.

To Orlando, for his love, patience, and marvelous sense of humor.

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"Las comisiones de conciliación en los procesos legislativos de Chile y Colombia", with Eduardo Alemán. 2008. *Política y Gobierno*, Vol. 15, No. 1. Pp. 1- 25.

"Political Institutions and Policy Outcomes in Colombia: The Effects of the 1991 Constitution," with Mauricio Cárdenas and Roberto Junguito. In *Political Institutions, Policymaking Processes, and Economic Policy in Latin America*, Tommasi, Mariano and Ernesto Stein (eds)**.** Cambridge: Harvard University Press.

ABSTRACT OF THE DISSERTATION

Cross-Avenue Politics: The Case of Colombia and Brazil

By

Mónica Pachón-Buitrago

Doctor of Philosophy in Political Science and International Affairs

University of California, San Diego, 2008

Professor Gary W. Cox, Co-Chair

Professor Matthew S. Shugart, Co-Chair

My objective with this dissertation was to show that the concept of cross-avenue politics is useful to understand the real balance of power between branches in presidential systems. While most studies look at the statutory avenue in isolation, the three papers in this dissertation are an attempt to show the significant effect of the interrelation of the different avenues available over the policy-making process. I have focused in particular on how weakening executive decree power affects statutory politics; and on how entrenching more policy in the constitution affects statutory (and decree) politics in Brazil and Colombia.

My results suggest that these reactive assemblies are more powerful when looking at cross avenue politics, even in presidential systems which have usually been considered to have the most dominant presidents of the region. Further research is required to analyze how these interrelation plays with other mechanisms such as referendums, and how does this influence translate into policy outcomes.

1. Cross Avenue Politics: The Cases of Brazil and Colombia

1.1 Introduction

A generation ago, legislative assemblies were on a far back burner in Latin American studies. Prior to the third wave of democratization, few scholars viewed the region's assemblies as playing important roles. In the past two decades, in contrast, a growing contingent of scholars has argued that assemblies play a vital role in the region's tumultuous politics, despite their primarily reactive character (Ames 1987, Ames 2001; Shugart and Carey 1992; Mainwaring & Shugart 1997; Cox & Morgenstern 2001; Negretto 2004; Alemán and Tsebelis 2005). Since presidents dominate staff resources and wield strong agenda-setting powers, they initiate most important pieces of legislation. Even while recognizing the preeminence of the president, however, new wave scholars argue that the assembly has a substantial impact: amending bills (Morgenstern 2004), forcing pro-active concessions, extracting pork (Ames 1987).

In this dissertation, I wish to add to new wave studies by expanding the conception of the policy-making power over which presidents and assemblies contest. Most (though certainly not all) new wave studies have focused on statutory politics. However, there are other ways to enact new policies, including the promulgation of decrees, the passage of national referenda and the passage of amendments to the Constitution.

I argue that all these different “avenues” of policy-making are interrelated. The basic logic of using one or the other can be stated as follows: if one avenue is blocked for any reason, go to another! Thus, I expect to show that blockages of one avenue divert traffic to another.

Another part of the argument is that the existence and use of other procedures—such as direct democracy or the possibility of introducing a legislative constitutional amendment without executive veto—changes the negotiations when using statutes or decrees. Thus, the avenues are inter-related and complementary. Let me illustrate this point with some examples.

Governor Arnold Schwarzenegger, who was elected in 2002 after the first statewide recall election in California’s history, is well known for his actual and attempted use of the initiative process, as a way to enact complicated pieces of legislation. His early successes strongly positioned him to use the threat of referendum to get more favored policies from the legislature. When the legislature balked at the prospect of reform, the Governor threatened to seek another referendum. Mindful of the Governor's success in promoting the March 2004 initiatives, the lawmakers caved, and passed worker's compensation reforms. Although initiative and referendum processes implied additional costs for Schwarzenegger, these were definitely lower than the costs of not passing his legislative agenda (Kousser, 2006).

In Colombia, President Alvaro Uribe proposed a referendum in 2002 to pass several of his election proposals. Given his high level of popularity, he thought his strategy would allow him to circumvent the heterogeneity of his coalition in Congress (he needed over 50% of all members to get the constitutional amendment passed).

Legislators from different political factions, who recognized the president's intention (and preferences over issues such as the electoral reform) as a real threat, decided to move first. Legislators had no choice but to pass the bill authorizing a referendum. However, by introducing and enacting a constitutional amendment, legislators established a new status quo before the referendum was voted on. Among the most disputed issues included in the referendum proposal was the reduction of the number of senators and deputies per district, as well as the establishment of a closed-list electoral system (Shugart et.al.2006). The constitutional amendment enacted by Congress proposed instead an open-list system and did not address the issue of the size of Congress. The referendum failed to fulfill the requisites for approval by just 1% of the vote, but the threat of the referendum made congressmen move closer towards the president's preferences than they likely would have without its existence. At the same time, due to the president's lack of veto power over constitutional amendments, legislators were able to change the electoral system so it aligned more closely with their preferred policy.

Generalizing these first two examples, how does having direct democracy affect the policy positions of the legislature? According to Lascher et al (1996), one of the most common arguments for the adoption of the initiative process is that "the availability of the initiative mechanism serves as a "gun behind the door", compelling recalcitrant legislators to respect the will of the people when making policy" (Gerber 1996, Lascher et al 1996).[1]

[1] Testing this hypothesis in the case of abortion for the US states, Gerber found that states which had initiative processes had passed parental consent laws closer to the preference of the median voter.

Another type of cross-avenue politics that has been studied in the literature concerns the inter-relation between statutes and executive decrees. As mentioned earlier, it has been hypothesized that decrees are one of the "safety valves" of the presidential system (Magar 2001)—a tactic in which the president can resort to circumventing legislative gridlock. A case in point is the use of decrees (*medidas provisórias)* in Brazil from 1988 till 2001. The Brazilian constitution allowed presidents, in cases of urgency and relevance, to decree "provisional measures with force of law". Although these measures were to expire after 30 days if not approved by Congress, the strategy pursued by the president was to re-issue these measures over and over again, gaining tremendous agenda-setting power over the legislature. Both the parties in the government's coalition and in the opposition agreed to initiate a constitutional amendment, finally approved in 2001, which sought to limit the president to re-issuing *medidas provisórias* only once after a 120 day period, and also to explicitly list the issue-areas in which they could be used. As will be shown in one paper of the dissertation, this meant that the president could no longer issue decrees for medium- or long-term policies.

In each of these examples the legislature and the executive employed a wide range of policy instruments to contest policy. Although formally he did not hold legislative power vis-à-vis the legislature, the availability of procedures such as direct democracy allowed California's Governor Schwarzenegger to circumvent the Assembly to pass his agenda. Colombia's president, Alvaro Uribe, resorted to the use of referendum when he observed that there was a gridlock in the constitutional amendment avenue. Legislators responded to the referendum threat and offered a

constitutional amendment. Thus, although Congress was able to pass the constitutional reform, and the president did not win via referendum, the use of this procedure was fundamental in moving Congress closer towards the President's preferred policy. In Brazil, the struggle for jurisdiction and the enactment of the constitutional amendment restraining the use of *medidas provisórias* is also a representative example of how Congress changed the rules of the game, making the use of the decree avenue more costly.[2]

Thus, actors interested in pushing a given policy must evaluate which "avenue" is best to attain their goal. I view each avenue—direct democracy, decree, statutory, and constitutional amendment—as having a series of veto gates, through which a given proposal must pass. These veto gates can be constitutionally mandated (e.g. lower chamber, upper chamber, executive, court review) or stipulated by standing orders (e.g. committees, directing boards). The more veto gates there are, and the more diverse the preferences are of the veto players, the harder it will be to traverse a given avenue (e.g. Madison 1787, Cox and McCubbins 2001, Tsebelis 2002). It is part of this project to look for the conditions under which the decision to choose another arena is profitable and credible.

My work differs from and complements existing theories of law production. Some models focus on the politics inside a single chamber (Cox and McCubbins

[2]During the negotiations of the constitutional amendment on the restriction of the use of decree, Fernando Henrique Cardosso diminished the number of decrees issued and instead starting introducing bills to Congress, and declaring them "urgent". João Domingo reports, " Desde que os discursos contrários á edição de medidas provisórias começaram a ser radicalizados, tanto por congressistas quanto por parte de ministros do Superior Tribunal de Justiça (STG) e do Supremo Tribunal Federal (STF), além de inúmeros juristas, o presidente decidiu reduzir o número de MPs. Orientou seus ministros a nunca mandarem á Casa Civil textos de medidas provisórias, mas anteprojetos de lei."

1993). Some focus on inter-cameral relations (e.g. Tsebelis & Money 1997) or veto bargaining between the executive and the legislature (e.g. Cameron 2000). Some focus on the cross-avenue effects of specific institutional contexts such as Gerber (1996), who studied how referenda in California affect statutory politics. My work is among the first to study cross-avenue effects in Latin America; and within that category I am the first to focus on constitutional amendments and changes in decree power of the president.

To further develop the concept of cross-avenue politics, the remainder of the introduction is organized as follows. The following section explains and provides a general description of the diverse avenues to enact policies: statutory, decree, constitutional amendment and direct democracy. This is followed by a section describing the decision-theoretical framework shared in the three papers that comprise the dissertation, discussing the concept of reactive assemblies and its relevance when analyzing cross-avenue politics in Latin America. Finally, I provide a roadmap of my dissertation, which is divided into three "stand alone" articles, each devoted to a case-study and tied together with the common thread of cross-avenue politics.

1.2 Avenues to Implement Policy

In this section, I will explain further the veto gates within each avenue. To describe the process I will refer to both Mainwaring and Shugart's distinction between the proactive and reactive powers of the president, as well as Cox and McCubbins's distinction between positive and negative agenda setting power.

Mainwaring and Shugart (1997) classified presidential and legislative powers into two categories: reactive and proactive powers. The executive's proactive powers enable the president to unilaterally change the status quo without congressional approval. These include both constitutionally delegated powers, and those delegated to him by the legislature in exceptional circumstances(Carey and Shugart 1998). Some presidents also have rights of exclusive introduction over certain policy areas. The budget or international treaties are the most common to be introduced exclusively by the executive. The reactive powers of the president refer to the executive's capacity to protect the existing status quo by vetoing a new proposal.[3]

Cox and McCubbins (2005) define positive agenda power as the ability of either the president or legislators to ensure that bills reach a final passage vote on the floor. Thus, for example, the ability to call for an urgency petition or call for a joint committee are institutions that facilitate positive agenda power. Conversely, negative agenda power is defined as the ability to prevent bills from reaching the floor.

1.2.1 Statutory Avenue

The first option to enact policy is the statutory avenue. Statutes are laws that have been formally approved by a majority of the legislature and have not been vetoed by the chief executive. Statutes regulate the most diverse issues such as the civil code, civil procedure, and corporate regulation, among many others. While in some countries, such as Costa Rica or Uruguay, most policy areas are dealt with via statutes,

[3] A very detailed account of types of veto power can be found at Alemán and Swchartz (2005).

other countries employ other legislative avenues more intensely, as is the case with Brazil and Colombia prior to the 1991 reform.

Consider first a stylized constitutional view of the statutory process. Before getting enacted, a bill has to be approved by the lower chamber, the upper chamber, the chief executive and sometimes by a constitutional court. Disaggregating the law-making process further requires us to look at the "intra-chamber" dynamic. This view allows us to identify the veto gates within each chamber, the veto players in each stage, and also the effect that positive and negative agenda setting powers have over the process. As seen in Figure 1.1, the directing boards of both chambers and the committees have control over the fate of a bill. They also set the floor agenda, and the only potential chance to overrule this authority is by the emergency powers exerted by the executive in certain presidential systems.

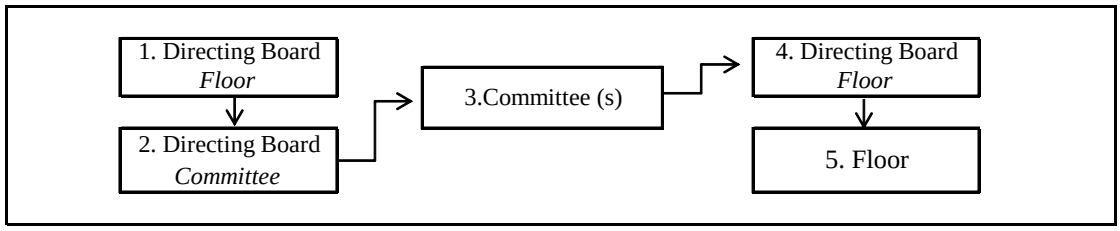

Figure 1.1: Intra-chamber view

Important details are of course omitted in these figures. In Brazil for example, the president can interrupt the process by issuing an "emergency petition", sending the bill straight to the floor. Other emergency powers can force the bill to be on the top of the agenda, imposing a 30-day limit for it to be discussed, as it is in the case of

Colombia.[4] One could also disaggregate the committee stage, adding more complexity to the process. For now, however, I will refer to each of the avenues in the most general way, acknowledging that the description is a simplification.

There is a high degree of variation across countries regarding the legislature's jurisdiction over statutory policy. At one extreme, the legislature has no competitors in the legislative arena. In the United States, for example, Congress has complete jurisdiction over all policy issues, and the executive introduces bills "indirectly" via his own legislative coalition. At the other extreme, the legislature has very restricted jurisdiction over the universe of policy areas due to the proactive powers of the executive branch. In Chile, Colombia and Brazil, for example, presidents have exclusive introductory powers over budget and administrative structures (Mainwaring & Shugart 1997). Thus, legislators can only influence these policy areas through reactive means. In these cases, legislators can amend bills introduced by the executive in an attempt to create logrolls, or delay the bill's enactment to increase their bargaining power (Ames 1987).

Regarding the reactive powers of Congress along the statutory avenue, legislators can exercise their veto in different stages of the process, depending on the legislative structure. I assume that all the legislatures I refer to are "busy legislatures"(Cox 2004), with complex organizations which distribute agenda-setting

[4] In this case however, there are no ways to circumvent the committee stage. The closest thing to overcoming the committee stage is the right of the Colombian president to call "joint committees". When this procedure is used, the committee of the House and the one from the Senate are required to session together, and instead of making two votes, decisions are made by the majority of both committees. By calling joint committees the president is able to avoid debates in both committees, thereby diminishing the time it takes the bill to pass, and possibly coordinate a majority with a different balance of forces.

powers unevenly across legislators. When agenda-setting powers are centralized, legislators on the "directing boards" can exercise the legislature's veto. For example, they can decide not to discuss one bill, or they can organize the agenda strategically so that the bill is given the least amount of discussion time possible for it to complete the regular procedure in its required allotment.

As with legislators, the president's jurisdiction over statutory policy varies across cases. At one extreme, we find the Mexican president with no statutory powers (same with Costa Rica, Honduras, Nicaragua and Paraguay), and therefore is classified as mainly reactive. At the other, presidents such as those in Chile and Argentina have ample jurisdiction with exclusive rights on introduction on various areas of policy. Presidents exercise their proactive powers by introducing bills to the legislature, using their positive agenda setting powers to push it through the process, in an effort to ensure a greater probability of success for each piece of legislation. In the same way, presidents can use urgency petitions to exercise their negative agenda power by clogging the agenda as a means to prevent bills from making it to the floor agenda.

Regarding the executive's reactive powers, presidents hold the power to veto legislation. As Cameron (2000) and others have shown, presidents have the capacity to protect the existing status quo from changing when the "override" majority is larger than the one required for passing the bill in the first place. There are different types of vetoes. Some presidents can exercise what is called a pocket veto, which occurs when the president purposefully does not sign the bill before the legislative session expires.[5]

[5] The pocket veto is an inaction that became a regular practice in the US. Guatemala and Honduras explicitly prohibit it (Shugart and Carey 1992).

Other types of veto which are explicitly stated include the partial veto and package veto. Amendatory constructive vetoes are also common in Latin America (Alemán & Schwartz 2005).[6] Veto overrides generally go from half plus one to two-thirds of the members of both Chambers.[7] Although overrides exist in most cases, there are cases where the presidential veto cannot be overridden, such as in Ecuador. When using total veto over any piece of legislation (except for the budget), the executive decision cannot be overridden by Congress. The only way out for Congress is to ask the President to submit the vetoed bill to voters by referendum, or wait a year to re-introduce the amendment (Mainwaring & Shugart 1997).

Depending on the institutional design, both the executive and the legislature may face additional constraints when trying to enact statutes. The existence of Constitutional Courts is one example of these. Constitutional Courts are quite common in new democracies, and are in charge of the abstract (and sometimes concrete) review of bills. Their objective is to ensure that bills fulfill the procedural requirements established by the rules of procedure, and also to ensure that the bill is consistent with the constitutional text. Once the Court has decided, the decision cannot be appealed.

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[6] Alemán and Schwartz (2005) propose an alternative definition to Shugart and Carey (1992) in which vetoes can be divided into two categories. The first is an absolute veto –package veto- which is an "unqualified rejection" and constructive vetoes which are "qualified rejections: a vote for a different law". In the category of constructive vetoes –partial vetoes-, two subcategories are identified: deletional and amendatory vetoes. Deletional vetoes are the most well-known in the literature as partial vetoes or line-item vetoes. Amendatory vetoes are fairly common in Latin America although less studied - , and allow the president to re-draft the bill and re-send it to Congress. Ten out of 18 countries in Latin America have this type of veto, including Brazil and Colombia.

[7] Some examples: Colombia's override rule is ½ members+1 from concurrent houses, Brazil's override is ½+1 of members from joint session, and Mexico is 2/3+1 of votes from concurrent houses.

1.2.2 Decree Avenue

The second avenue is the use of executive decrees (e.g. Carey & Shugart 1998, Magar 2001, Pereira et al 2004). Decrees allow presidents to recast the organization and activities of the central government, establish the status quo in some issues in the agenda, or change it. The capacity to issue decrees varies a great deal across countries with diverse institutional designs and political regimes.

According to Carey and Shugart (1998), there are two basic types of decrees: constitutionally-delegated decree power and congressionally-delegated power. Additionally, decree power varies depending on whether executive proposals are (or are not) immediately effective as policy, and on whether the proposals become (or not) permanent law even without legislative action. The first component evinces whether the assembly must take explicit action to rescind the decree or not; while the second tells whether or not there is any opportunity for debate of the measure before it becomes law.

In Chile, for example, the president can request the power to issue decrees to the legislature, and obtain legislative authority for up to a one-year period. In Brazil, as mentioned previously, the executive has the right to issue *medidas provisórias*, which have immediate force of law. In Argentina, the president can only issue decrees during “exceptional circumstances”, although its de-facto use is rather frequent (Jones 1997). In this case, most policy areas can be addressed except for penal law, taxes, the electoral system and legislation that might affect the party system. The only requirement for the president is to get the decree countersigned by the cabinet member

in charge of the relevant policy area and the chief of the cabinet both of he can dismiss.

When faced with a crisis situation, the Colombian executive can invoke a state of “internal commotion”, “war” or “economic emergency”. If approved by the Constitutional Court, the government has a 90-day period—which can be extended under certain circumstances—to deal with the crisis. The decrees issued can temporarily suspend the enforcement or application of laws incompatible with the measures taken to solve the initial crisis. However, to extend the period, the approval of the Senate is required.

Theoretically, there are two ways in which we can interpret the president’s decision to resort to the use of extraordinary powers. The first one refers to the issue of decrees (executive orders in the US case) as one of the ways the president exercises unilateral power to circumvent Congress (Moe & Howell 1999). The second one refers to the issue of decrees as a result of explicit delegation from the legislative branch. The underlying logic is that Congress might want to avoid making conflictual decisions, or may desire promptness in dealing with an issue in which it agrees with the executive and thus does not explicitly regulate itself, thereby allowing the executive to fill the gap. Additionally, legislators may delegate to the executive more generally, giving them the possibility to focus on the work that benefits their local constituencies (Carey & Shugart 1998).

1.2.3 Constitutional Amendment Avenue

The third avenue is the use of constitutional amendments. Constitutional amendments are the most difficult pieces of legislation to be enacted. To describe the various possible paths, I adapted Lutz's classification of the various procedures of formal constitutional amendment to the Latin American cases (Lutz 1994). The constitutional amendment procedures are organized from the easiest to the most difficult and a brief example is given for each.

Legislative supremacy. One legislative vote is sufficient to amend the constitution. This process only differs in the required majority for approval from the regular procedure of enacting statutory policy. This type of amendment procedure is not used in Latin America, but is common in parliamentary systems such as India, New Zealand and Austria, or other cases were "parliamentary sovereignty" is the principle.[8]

Intervening Election or Double Vote. This formal amendment procedure requires, in its most basic form, that the national legislature approves an amendment by votes in two sessions (Figure 1.2). For some countries, two sessions means that the amendment needs to be approved in different legislative years. For others, it means different Congresses. This is the model of formal amendment in countries such as Colombia, Dominican Republic, Ecuador, Bolivia and El Salvador. Each of these cases varies in the type of majority necessary for approval as well as in the threshold for amendment introduction.

[8] In the case of New Zealand and in other Westminster systems, Constitutional Acts can arguably be considered statutes because they can be altered by ½+1 of the vote in the legislature. I thank Professor Matthew Shugart for pointing this out.

In Colombia, for example, constitutional amendments require a simple majority in the first round, while in the second round it requires an absolute majority.[9] Among the Latin American cases, Colombia requires the smallest majority, but it has to be voted on in two different legislative years. In Brazil a 3/5 majority is required, in El Salvador and Bolivia a 2/3 majority of all members of Congress is necessary, while in Dominican Republic it is a 2/3 majority of the voting members (having at least a quorum of 50% of the members).

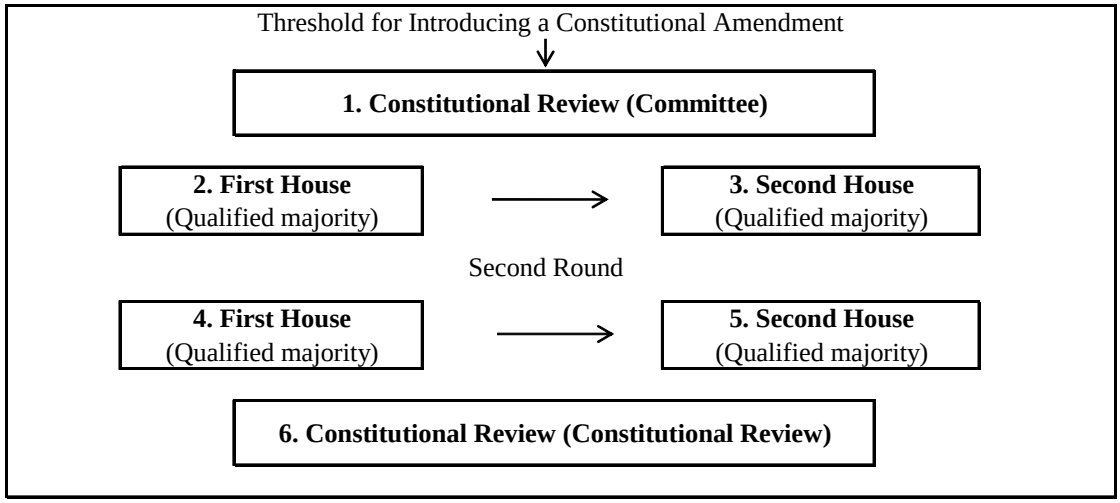

Figure 1.2: Reforming the Constitution: Double Vote Procedure
*Not all countries have a Constitutional Court. Review conducted by the Supreme Court, or by a specialized committee within Congress. Majorities within the committee might vary. Some only require absolute majority at the committee stage and then a larger supermajority will only be required at the floor.

Thresholds for introducing constitutional amendments are also very different. While in some countries such as Colombia or El Salvador constitutional amendments can be introduced after ten legislators endorse the bill (which in Colombia is

[9] Simple majority refers to a majority of the quorum established to deliberate and decide, which is 50+1 of the members of the House. In the Colombian Senate for example, of 102 members, at least 52 members have to be present in order to have a quorum to vote on a bill. The simple majority would be 27 members. An absolute majority requires that at least 52 members vote in favor of the bill.

equivalent to 3.7% of the whole Congress), amendments in the Dominican Republic amendments can only be introduced if at least 33% of the legislators endorse it.

Double vote with Executive veto. Although similar to the double vote/intervening election procedure, both legislators and the executive can introduce a constitutional amendment. This process, however, includes the executive branch as the last player in the constitutional amendment process, as it is in statutory politics. Chile and Ecuador are both examples of this type. In Chile, the first vote requires the approval of 3/5 of the legislature (amendments that deal with constitutional rights, armed forces, the constitutional court, the National Security Council and amendment procedures require 2/3). The second vote, which needs to occur 60 days after the first, needs an absolute majority. Subsequently, the president has the right to veto the proposal, in which case the override is of 3/5, with a 2/3 quorum requirement. It is not surprising that in 17 years, only 38 constitutional amendments have been proposed, of which 33% have been filed, 63% are still pending and only one constitutional amendment has been approved.

Figure 1.3 shows the double vote procedure for Ecuador. However, since it is a unicameral legislature, the number of debates is reduced to four (two in the committees, two in the floor). Unlike the Chilean case, there is no veto override. Hence, if the president rejects the constitutional amendment, Congress can solicit the president to hold a referendum for the people to decide on the particular issue, which the president cannot refuse. If the constitutional amendment is introduced by the executive and Congress has not made it part of its agenda after 120 days, the president can call for a referendum.

Although some presidents in Ecuador have enjoyed moderate popularity and successfully introduced reforms via referendum, congressional majorities were recalcitrant in accepting the executive's proposal to hold a referendum because it circumvented their authority in constitutional matters. Nonetheless, in 2007, President Rafael Correa succeeded as Congress supported his call for a referendum to ask voters whether they wanted to have a new constituent assembly.[10]

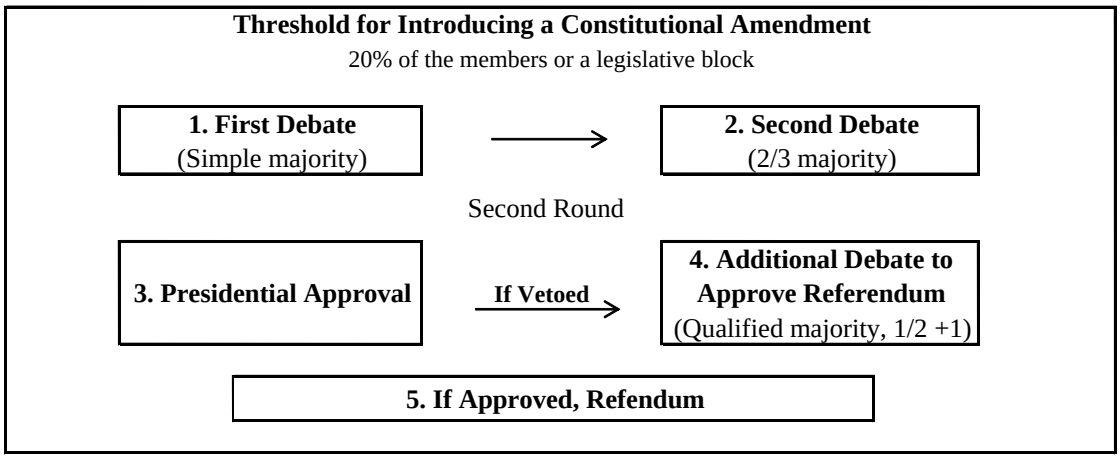

Figure 1.3: Constitutional Amendments Procedure: the case of Ecuador

Constitutional Assembly or equivalent. This procedure is characterized by the creation of a constitutional convention or the amendment approval of other levels of government. There is great variation within this category. In Argentina for example, the only way to reform the Constitution is by a constitutional convention which needs

[10] In December 2005, Ecuadorian President Alfredo Palacio attempted to call a referendum without first introducing the constitutional amendments in Congress. The result was an institutional crisis in which Congress threatened the president with starting a political trial against him as well as the Electoral Tribunal director's resignation. The president had no choice but to give up the idea. It has been reported that Congress has rejected over a 100 constitutional amendment bills in the last seven years. "Crece puja política en Ecuador", December 4, 2005. http://news.bbc.co.uk/hi/spanish/latin_america/newsid_4497000/4497136.stm

to be elected by the people, with previous congressional approval. In Guatemala, the unicameral Congress is required to approve the amendment by a 3/5 majority, and its ratification is done via referendum.

The US and Mexico do not hold referendums, but require the approval of the majority of the legislative assemblies from the federal units.[11] In the US, the requirement is that at least three fourths of the states approve the amendment. In the US, more than 130 constitutional amendments and joint resolutions from the Senate were proposed to reform the Constitution in the 105th Congress. However, just one was discussed and rejected on the floor. In cases where the hurdle of approval is so high, constitutional amendments serve more as position-taking devices than as a means to implement policy. In non-democratic regimes such as Mexico during the PRI era, the use of constitutional amendments was rather frequent, averaging 65 reforms per presidential term (counted as the number of changes to an article in the Constitution).[12]

1.2.4 Referendums or initiatives

The fourth avenue is referendums or initiatives. Referendums and initiatives are instruments of direct democracy whose main objective is to "go back to the people" for the approval or rejection of a particular policy. Referendums are proposed by the legislature or the executive, and can be used to approve a new constitution, a constitutional amendment or a regular statute. The requirements for proposals of

[11] In the US, the majority required is ¾ of the states.
[12] The reforms here are counted as a change to an article in the Constitution, and not to the number of reforms introduced changing various articles. See: http://www.diputados.gob.mx/leyinfo/refcns/reformaseppp.htm

initiatives and referendums vary greatly across cases. In some states in the US for example, such as California, Colorado and North Dakota, there are minimum requirements to present initiatives. In California, signatures from only 5% of all registered voters who voted in the last gubernatorial election are required to introduce an initiative. In others states like Mississippi, Wyoming or Massachusetts the requirement is more than 10% of the voters that voted in the last election, the length of the qualifying period is limited, or there are restrictions on the matters that can be addressed via initiatives (Bowler & Donovan 2004). Both legislators and the executive branch can sponsor initiatives directly or indirectly. In certain cases, the use of initiatives may increase the chance of getting a policy approved proposers can get at a different constituency for the assembly, allowing the executive to avoid gridlock or situations such as divided government (Kousser and McCubbins 2005) .

In Latin America, direct democracy instruments exist in most countries as an option to introduce and enact policy. Nevertheless, although their use and inclusion in the constitution has increased over the past three decades, the actual number of referendums is low. In fact, Uruguay is the only case where initiatives have been introduced and effectively passed more than eight times in the nineties. Also, from a total of 39 occasions where direct democracy was used in the region since the return to democracy through 2005, only 21% have been the result of popular initiative. In 41% of the cases, plebiscites were held to legitimize the presidential mandate, as with the case of Venezuela in 2007 or in Ecuador, which used this procedure six times since its return to democracy. In this particular case, various presidents have used the referendum as a means to overcome his lack of legislative power in passing very

important judicial system reforms, the creation of a constitutional assembly, changes in the electoral system and the dismissal of elected representatives. Congress, on the other hand, has used the referendum as a way to dismiss the executive as was the case with Abdalá Bucaram in May, 1997.

1.3 Cross-Avenue Politics and Presidentialism in Latin America

As noted by previous literature, looking at only one avenue of policy can only take us so far. A central theme of my study is that the use or changes in the procedure of one avenue will have an effect on the others—as well as create a noticeable effect on the balance of power between the executive and the legislature. Both the legislature and the executive not only have preferences over a "policy space", but also consider which procedure will maximize their impact on a preferred policy (e.g. Binder 1997, Binder 2003, Jupille 2004). Thus, a decision to take one over the others depends on the *interest* and *capacity* of each actor to influence the policy and significantly affect the policy outcome. The capacity to influence policy depends on the institutional design and the legislative powers given to both the executive and the legislature, while the interest is closely related to the electoral rules, career path and possibility of reelection.

It has been established that in presidential regimes, incentives to implement policy differ for presidents and legislators. In theory, the president, elected by a national constituency, has the greatest incentive to enact national policy for the provision of public goods. Legislators' incentives to work on national policy,

however, depend on the benefits national policy confers on their districts, since their reelection depends on representing the constituency that got them elected (Mayhew 1974; Shugart and Carey 1992). If presidents do not have proactive powers and are bound to introduce statutes through their party, like in the US case, legislators hold the first mover advantage. Thus, instead of creating a situation where legislators and the president compete for agenda time, the competition is among parties/legislators in the legislature. Consequently, since the president has no mechanism to circumvent Congress or appeal to a different constituency, the use of statutes is the dominant strategy for both legislators and the president.

If presidents have wide proactive powers (which enables them to have the de-facto/de jure agenda setting-power), they have the first-mover advantage. Presidents can introduce bills, constitutional amendments, enact decrees or call for referendums, and position their proposals at the top of the agenda. Presidents decide which avenue to employ depending on the advantages each of those represents versus the baseline of statutory politics. Thus, although nothing stops legislators from introducing counter-proposals to the executive proposal, their strategy leans towards being more reactive. As a consequence, we could interpret the introduction of legislation as an attempt to delay, amend or stop presidential proposals—and exceptionally in the attempt of enacting their own proposals.

If all avenues could be used interchangeably, the president would choose the avenue which best minimizes his costs, while ensuring the level of stability desired for the policy implemented. He could choose to introduce a regular bill, or pursue unilateral action by issuing a decree or using direct democracy, or he could entrench

the policy in the constitution. Thus, the more proactive powers the president has, the bigger the chances are of observing cross-avenue politics. If presidents can issue decrees, or statutes, or can propose referendums, all of these alternatives are to be considered whenever he wants to introduce and enact policy. Conversely, if legislators are restricted in the use of certain avenues due to the exclusive introductory rights of the president, legislators might resort to using other avenues. For example, they might engage in constitutional politics to negotiate over the rules to restrict presidential power in the long-term. Or, they might introduce legislation through another avenue anticipating the president's move, to try and force concessions or policy trade-offs. This is expected to help deputies to either "piggyback" on an executive proposal, or claim credit for a counterproposal.

Avenues can also be "activated" by variables such as the size of the constitution. Usually, when constitutions are long and detailed, the constituent assembly made an explicit attempt to protect certain constituencies by isolating them from statutory politics (Carey 2007). This detailed protection results in the constant need for presidents to amend the constitution as means to implement policy. The need for using constitutional amendments by the president represents an opportunity for legislators to influence the executive's proposal, since presidents have no veto power (except for the Chilean case) and legislators have all jurisdiction over this avenue.

Thus, when attempting to evaluate legislative power in reactive assemblies, the analysis of statutory politics is necessary, but can be limited. This is especially true for cases where dominant presidents exist, since looking only at statutes does not convey

the complexity of having shared legislative responsibilities between the president and the legislature.

The papers in this dissertation are an attempt to be a “window” to that complexity, by offering three different situations in which cross-avenue politics are at work. Each case attempts to measure the reactive power of legislators possess in both procedural and substantive terms. Additionally, the papers show the relatively high frequency of “negotiations over the rules”(constitutional politics) in presidential systems were policy is entrenched in the constitution and are characterized by presidents having many proactive powers such as Brazil and Colombia.

1.4 Roadmap

This dissertation is composed of three papers written in a stand-alone format. The first paper analyzes constitutional amendments in Brazil, the second considers the effects of a major constitutional limitation of decree power in Brazil in 2001, and the third paper analyzes a major limitation of decree power in Colombia in1991. Each paper has a historical contextualization, a section on the theoretical framework, some empirical expectations and results.

Two cases of cross-avenue politics are explored: the interrelation between decrees and statutes in Brazil and Colombia, and the interrelation between constitutional amendments and statutes in Brazil. Brazil and Colombia were chosen because they are good examples of the “dominant president and reactive assembly” combination, common to many Latin American countries, in which cross-avenue

politics often occur (Cox and Morgenstern 2001). Additionally, both Brazil and Colombia are examples of regimes where presidents are endowed with high constitutional powers and low partisan powers (Mainwaring and Shugart 1997), generating continued interest and debate when evaluating the capacity of presidents to control the agenda and successfully enact policies (e.g. Figuereido and Limongi 2000; Ames 1995, 2001; Amorim Neto, Cox and McCubbins 2003). This is partially explained by their candidate-based electoral systems which provide remarkably low incentives to pursue national policy (e.g. Mainwaring 1999, Ames 2001).

The first paper addresses the consequences of a long constitution on the balance of power between the executive and the legislature. One might expect that presidents would wish to avoid the constitutional avenue, since constitutional amendments must be approved by supermajorities in the assembly and presidents have no veto over amendments. In contrast, the passage requirement for statutes is lower and presidents' legislative powers over statutes (both proactive and reactive) are better.

Nonetheless, in Brazil, about three constitutional amendments are approved every year—and, of these, about half are introduced by the president. If we compare to the rates of constitutional amendment available (Lutz 1995, Melo 2000) we can safely conclude that the Brazilian president one of the most active constitutional engineers among all presidents. What accounts for this relatively frequent executive use of constitutional amendments in Brazil?

My argument is that the executive introduces constitutional amendments because the size of the constitution obliges him to do so. In order to affect policy in

many important areas, a constitutional amendment is the only viable vehicle. However, the story does not end there. To overcome his procedural weakness and assemble a super-majority to support his proposals, the president typically adds entirely new material to the constitution—increasing the policy scope of the constitution. The new material is offered to attract the support of legislators who want to see policies they favor entrenched in the constitution, yet recognize that this would not be possible without the president's help. The chapter provides a detailed account of legislative and executive activity on constitutional amendments, in the period 1991 – 2004, and also classifies all constitutional clauses (amending old text, introducing new text) proposed by the executive and enacted during the period.

The second paper studies the consequences of a major constitutional reform (32/2001) in Brazil, which required explicit legislative approval of executive decrees. Recent work has suggested that legislative assertion vis-à-vis the executive depends on whether decrees require explicit legislative approval (Negretto 2004) and on whether the rule used to consider decree-conversion bills is open or closed (Reich 2002, Negretto 2004). These authors showed how legislators have less possibilities of influencing any policy issued by decree when those can only be voted by closed rule.

My objective was to test the effect of Brazil's reform, keeping constant the existence of open rule and controlling for other variables that may influence executive decree power. Using a new dataset constructed for this paper, coding floor agendas from 1999 – 2005, the first part of the paper shows that the reform had an immediate effect, changing the use of floor agenda time. While in the pre-reform period the floor

agenda was mainly composed of constitutional amendments, complementary bills and regular bills, after the reform, decrees issued became 66% of all floor agenda items.

The second part of the paper analyzes the substantial effects of the reform by looking at the negotiations over the minimum wage in the pre- and post-reform periods. The main conclusion is that having a compulsory vote on every decree increased the legislature's influence over policy outcomes.

Finally, the third paper analyzes a more radical case of decree power limitation, the Colombian 1991 reform, and its consequences for legislative behavior. Prior to the reform, Colombia possessed a dominant presidency and a reactive, parochial assembly, which in Cox and Morgenstern's terms, is an assembly which has explicitly delegated the design of national policy to the executive (Cox and Morgenstern 2002). Due to the incentives generated by the "quasi-SNTV" electoral system, it was argued that the assembly was rarely involved in national policy (e.g. Pizarro 1995, Archer and Shugart, 1997). This state of affairs was consistent with Shugart's theory(1998) that executive legislative power is a function of how fragmented the party system is and the level of intraparty competition (with more fragmented assemblies delegating more power). Analyzing the effect of the 1991 Colombian reform—which heavily decreased presidential powers but did not change the lower chamber's personalistic electoral system—the paper tests the opposite causal relationship to see whether the reduction in the president's ability to use decree power transformed the parochial Colombian legislature into a more proactive and workable one, despite the lack of changes in the electoral system.

Analyzing the composition of the agenda from 1979 to 1998, the results show that the limitation of decree power had an initial effect on legislators' incentives, increasing the proportion of agenda items dedicated to national policy in the post-reform period. Nonetheless, from the analysis of the two presidential periods after the reform, it would seem that the initial push for a more national agenda decreased over time making the parochial negotiations more obvious, due to the fragmentation and lack of incentives for parties to work programmatically in the electoral arena.

2. Presidential Dominance sans Formal Power? Amending the Constitution in Brazil

Abstract:

Most presidents in Latin America are recognized for having great constitutional powers which allow them to control the legislative agenda. In contrast, whenever they use constitutional amendments, presidents no longer have veto power, and also need to have the support of a supermajority of the assembly to get proposals enacted. Despite having weak powers, presidents make frequent use of constitutional amendments and succeed. Furthermore, they not only modify but systematically add clauses to the constitution. Why would presidents use constitutional amendments if using them puts them at a procedural disadvantage relative to using statutes or decrees? Using data from Brazil (1991 – 2004), I show that presidents use constitutional amendments because they *must* to enact some of their key policy proposals, and add clauses to the Constitution as a means to strike deals with legislators to overcome their procedural disadvantages. Analyzing the legislative output in constitutional amendments, I show how by introducing legislation, as well as amending and delaying executive proposals, legislators take full advantage of their institutional powers. Thus, the frequent use of constitutional amendments to enact policy in the case of Brazil provides legislators with important powers vis-à-vis the executive, not usually considered when looking only at the policy-making process on ordinary legislation.

2.1 Introduction

> "It is not the first time that there is an attempt to amend the Constitution to cater to temporary interests. Speaking of which, this was a critique which was made in the past, when the military governments amended the Constitution under any pretext. If the law contradicted the administration, it was the law that needed to be changed. That was the dictum that ruled in the past. That is the reason why, during the democratization of the country, a long, detailed Constitution was drafted; to impede the abuse of citizens' rights, the rights of whom are less protected, in permanent disadvantage in the presence of an omnipotent State, willing to do whatever is it necessary to do as he wishes as if it was the absolute truth…"[1] Deputy Luis Antonio Fleury

It is well-documented that constitutions under dictatorial regimes have often neither bound nor constrained rulers: they are either frequently reformed to suit the regime's needs, or mostly ignored. The writing of new constitutions was one of the most important events signaling a new compromise between the political elites and the people during the most recent rounds of democratic transitions in Latin America. Although the processes through which constitutions were revised varied to a great extent (Carey, 2007), some of the constitutions became detailed "repositories of interest-group protection". That is, issues that were dealt with via statute in other countries were entrenched in constitutions throughout Latin America.

As such, some of the constitutions are lengthy, detailed, and in constant need of revision. The relatively high rates of constitutional amendments that are enacted per year throughout Latin America serve as evidence of this fact: Brazil has an average of

[1] "Não é a primeira vez que se procura alterar a Constituição para atender interesses passageiros. Aliás, essa era a crítica que se fazia no passado, quando os governos militares mudavam a Lei Magna a qualquer pretexto. Se a lei contraria o governo, muda-se a lei, eis o ditado simples que vigorou no passado. Foi em razão dele que, na redemocratização do País, fez-se uma Constituição detalhista, longa, exatamente para evitar abusos que ferissem direitos, principalmente os direitos dos mais fracos, em permanente desigualdade diante da força do Estado todo poderoso, disposto a fazer valer sua vontade como verdade absoluta." Translated by the author. *Diario da Câmara dos Deputados, Suplemento*. Dezembro 1999. Pp. 2096.

four, Colombia has an average of 2.5 (Melo, 2002). The prominent role of Constitutional Courts/ Constitutional review and the judicialization of politics also serve as evidence for the renewed importance of constitutions and their significance in these polities (Arantes, mimeo). Thus, constitutional amendment politics have become part of the ordinary legislative process in some countries in the region, and are a compulsory route for presidents in these cases interested in enacting national policy: for example, tax reform, privatizations and pension reform all entail amending the constitution.

The objective of this paper is to show how the existence of ongoing reform to the constitution changes the apparent balance of power between the president and the legislature, a factor overlooked by most indexes and analyses of executive-legislative powers in presidential systems (e.g. Shugart and Carey 1992; Metcalf 2002; Alemán and Schwartz 2006). Usually, when referring to the capacity of presidents to enact policy, scholars focus on the ability of presidents to enact ordinary legislation, which requires a simple majority of the legislature. However, if a constitutional amendment is required to enact any desired policy, the procedure changes and so does presidential power. Although there are important variations across countries, the requirement for a supermajority and the absence of an executive veto is common to all Latin American cases, except for Chile.

It has been shown that in democratic systems, the creation of supermajorities comes at a cost in terms of available and acceptable policy proposals, as well as distribution of power within the government's coalition. In their classical work,

Buchanan and Tullock (1962) showed how as the required majority increases, the *winset* of possible policy outcomes decreases in size, promoting more policy stability. Additionally, while with ordinary legislation presidents have the possibility to veto all or part of a bill, deals struck in committees and the floor for constitutional amendments cannot be vetoed, and are only subject to constitutional review (depending on the case).[2] Consequently, the president cannot use veto threats and needs to rely heavily on his coalition and the use of other resources such as nominations and budgetary disbursements, among others, to enact a policy close to his preferences.

If passing constitutional amendments is harder than passing bills, why would the executive use constitutional amendments instead of bills? Based on a comparison of both procedures, it is expected that presidents would avoid using constitutional amendments whenever possible, even if they have a supermajority in the legislature. This should be especially true in cases where there is widespread party indiscipline and strong candidate-based politics, where presidents would have a more difficult time forming stable and programmatic coalitions.

Nevertheless, in countries such as Brazil, we see a high rate of constitutional amendment, which can be partly explained by the size of the constitution (Lutz 1995; Mello 2000). As the size of the constitution increases, so do the policy areas that are entrenched in it (Lutz 1995). At first, the expectation is that most amendments would, in their majority, be modifying clauses. However, several authors have shown that a

[2] For a discussion on the effect of presidential veto see Aleman and Schwartz (2006).

high percentage of constitutional amendments introduced by the executive and subsequently approved by the legislature add text to the constitution (Melo 2002; Couto & Arantes 2003). To explain this puzzle, I use the Brazilian case. First, I show that presidents introduce amendments because *they must* in order to achieve their major policy goals. Second, I show how clauses that add text to the constitution are evidence that legislators take advantage of the limited procedural powers of presidents, with their lack of veto power in constitutional amendments, to "hitch a ride" on the constitutional amendments proposed by the executive.[3] Consequently, most additions to the constitutional text serve as evidence for legislative logrolling. Assuming that the president wants to minimize changes to the initial policy proposal, and only wanted to legislate on matters that are not constitutional text, he would just use statutes, where he has stronger powers. So, although presidents can still exercise their agenda power when using this constitutional avenue despite having weak formal powers, legislators react by taking full advantage of their institutional powers. Constitutional amendments that add text to the constitution allow presidents to enact and isolate their own policy proposals, as well as to credibly commit policy concessions to legislators. Also, the president can threaten legislators to use bills for added clauses if legislators attempt to radically change or reject his main policy proposal.

To evaluate the interaction between the executive and the legislature in constitutional politics, I analyze the patterns of interaction and approval of all

[3] The concept of hitching a ride in legislative politics was used by Glenn Krutz to explain the logic of omnibus bills in the US Congress (2001).

constitutional amendments introduced during the period 1991 – 2004. First, I show that there is a high correlation between the introduction of constitutional amendments (henceforth CAs) from the executive and the legislature, suggesting that legislators introduce CAs in anticipation of the introduction of executive CAs. Furthermore, I show that legislators outside the government's coalition synchronize their introduction of CAs more than members of the governing coalition. I argue that this is partially a consequence of the fact that governing coalition members have greater access to the drafts of policies as well as to other concessions given by the government, which diminish their incentives to introduce alternative proposals. Finally, I discuss the determinants of successful executive CAs. First, I show that the size of the coalition—measured by the percentage of congressional seats held by parties represented in the cabinet—has a significant positive impact and increases the probability that a CA will be enacted. I also demonstrate how constitutional amendments with a higher percentage of text added are the most successful when compared to CAs with a greater proportion of deletion or modification clauses.

The case of Brazil offers an ideal setting for this study. The Brazilian Constitution, as well as several others in the region, was the result of a Constituent Assembly which was not controlled by any majority. Consequently, the writing of the Constitution was highly contentious and resulted in an extremely decentralized process which led to a very detailed constitution. Between 1988 and 2008, more than 50 constitutional reforms have been enacted. Amendments deal with diverse problems that range from reorganizing the judicial branch (CA 45, 2004) to creating a health

troupe to facilitate the distribution of vaccines for endemic diseases (CA 51, 2006), dealing with permanent and transitory clauses in the constitution.[4] There is an average of 2.9 reforms approved per year. Also, Brazil has a multiparty system where building governing coalitions is a common strategy employed by the executive. Thus, there is some important variation that allows us to test some of the expectations.

This paper is divided as follows. In the first section, I describe in some detail the procedure to enact statutes and constitutional amendments in Brazil. The next section discusses the decision of the president and the legislature to choose either procedure. The following section explains the basic expectations on the patterns of introduction for legislators and the executive. The fourth part presents the main evidence to confirm the expectations and finally, the paper concludes.

2.2 Procedures to Enact Constitutional Amendments and Statutes in Brazil

In this section, I compare the procedures to enact bills and CAs in Brazil in order to highlight the differences that allow for more or less legislative assertiveness.

[4]A good analysis of the "permanent character" of transitory clauses in the constitution can be found at, De Almeida Melo, Carlos. *Ato das Disposições Constitucionais Transitórias: proposta de um critério objetivo para o estabelecimento do referencial temporal implícito,* where he describes all amendments that have been enacted for the transitory clauses (ADCT):"O ADCT foi objeto de diversas alterações: Emenda Constitucional de Revisão nº 1, de 1º de março de 1994, acrescentou os artigos 71, 72 e 73, Emenda Constitucional nº 12, de 15 de outubro de 1996, acrescentou o art. 74, Emenda Constitucional nº 14, de 12 de setembro de 1996, alterou a redação do art. 60, Emenda Constitucional nº 17, de 22 de novembro de 1997, alterou a redação dos artigos 71 e 72, Emenda Constitucional nº 21, de 18 de março de 1999, acrescentou o art. 75, Emenda Constitucional nº 30, de 13 de setembro de 2000, acrescentou o art. 78." Available at: http://www.senado.gov.br/web/cegraf/ril/Pdf/pdf_152/r152-03.pdf.

Then I proceed with an analysis of the factors that influence the executive's decision to choose between introducing bills or constitutional amendments.[5]

Introducing bills. Figure 2.1 illustrates the different routes that can be taken to enact a bill, depending on whether an urgency petition is issued or not. In Brazil, bills can be introduced by a wide variety of actors: individual legislators, the executive, other institutions at the federal level such as the STF (Supremo Tribunal Federal) and the Ombudsman Office, or even a group of citizens (Article 61, Federal Constitution). Once a bill is introduced, it is the Board of Directors responsibility to assign the bill to one or more permanent committees that match the bill's jurisdiction.[6] If considered necessary, the Board can create an ad-hoc committee for bills that cross over the jurisdictions of four or more permanent committees. Regular bills do not have time limits and are discussed as the Board sees fit. Thus, to give a bill priority the use of the urgency provision is necessary.

An urgency provision can be invoked either by party leaders or the president. There are two types of urgency: one is the "regular" urgency provision, which establishes a 45-day limit in which the bill must be discussed and the other is the extraordinary urgency provision (*urgencia urgentíssima*). When invoked and approved

[5] With the exception of some specific features of the Brazilian presidential system (such as the formation of ad-hoc committees for debate instead of permanent committees or the ex-ante constitutional review instead of the review by the Constitutional or Supreme Court), the procedures described are representative of other Latin American presidential regimes and could potentially be applied in other settings.

[6] The Board of Directors or *Mesa Diretora* includes the Chamber's president, two vice-presidents, four secretaries, and the secretary's substitutes. The main function of the board's president is to preside over the Chamber of Deputies, a role analogous to the Speaker of the House in the U.S. House of Representatives. The Board of Directors is also in charge of the administrative services of the Chamber (see http://www2.camara.gov.br/conheca/estruturaadm for more on the administrative structure of Brazil's Chamber of Deputies).

(it requires an absolute majority of the floor), the bill moves to the top of the floor agenda and the requirement that it must be approved by a committee is no longer necessary. In addition to urgency provisions, another way in which the legislative process can be expedited by the Board is by giving the committee in charge of the first debate conclusive power (*apreciação conclusiva*). When this occurs, the committee's vote is the only requirement for approval of the bill in that House before the bill can move on to the second House for approval. If at least one tenth of the members of the House request that this decision be overturned, the bill must adhere to ordinary discussion procedures.

Introduction of a Bill			
No Urgency		**Regular Urgency (45 day limit)**	**Extraordinary Urgency (Urgencia Urgentíssima)**
Regular Procedure	Poder Conclusivo		
1.Board of Directors	1.Board of Directors	1.Board of Directors	1.Board of Directors
2.Permanent Committee	2.Permanent Committee	2.Permanent Committee	2.Floor Vote
3.Floor Vote	3.To the Senate	3.Floor Vote	3.To the Senate
4. To the Senate		4.To the Senate	

Figure 2.1: Different Procedures to Enact a Bill in Chamber

Ordinary procedure. Once a bill gets to a committee, the president of the committee(s) chooses a rapporteur for the bill. She/he is responsible for presenting a statement to the committee recommending the bill's approval or rejection. This period of time is used by all other members from the House to present amendments to the bill, which are debated and approved when the committee holds its first debate.

If the bill is approved by the committee, the rapporteur is required to present the approved final version to the floor. If approved in the plenum, the bill goes to the Senate where a similar procedure will follow. If no amendments are included, the bill gets enacted. Otherwise, the bill must return to the House for another vote and to decide between the "House" and "Senate" versions. Unlike the US, Chile or Colombia, Brazil does not use conference committees to solve disputes between chambers. Finally, the president decides whether to approve the bill or use his line item or absolute veto power. The override is ½ + 1 of the members in Joint Session (House and Senate).

Constitutional Amendments. Compared to bills, it is more difficult to get CAs introduced in the legislature. While bills can be introduced by individual legislators, CAs require the endorsement (signatures) of at least one third of the members of either the House or Senate. They can also be introduced by the president.

The first step in the enactment of a CA is the approval of the Constitutional Committee (CCJC), which evaluates its constitutionality. The CCJC is composed of 61 legislators (the largest permanent committee in the House). Comparable to other permanent committees, its partisan composition follows the rule of proportionality,

representing all the legislative blocs in accordance to their seat percentages in the House. The content of CAs is not restricted, except that they must adhere to the basic structure of government established in the constitution: proposals that intend to abolish the universal vote, abolish the federation or change the separation of powers are considered inadmissible. If declared constitutional, the CA is returned to the Board of Directors. If the decision made by the CCJC is contested by the author of the CA, she/he can request a second opinion from the plenary by making a formal request that includes the endorsement of at least one third of the House's members, or the equivalent endorsement by the leaders who represent the same proportion of legislators. The final decision is then made by a plenary vote.

Whereas regular bills go directly to the permanent committee(s) coinciding with the bill's jurisdiction, all CAs require the formation of *ad hoc committees*. The president of the board is free to name any legislator to the committee as long as the final membership is proportional to the forces of the legislative blocs in the House. The tailoring of the committee gives the Board an important advantage in advancing or stopping the constitutional amendment, as the majority of the process to make changes to the proposal occurs at the committee level. Individual legislators are prohibited from introducing amendments at the floor stage. Thus, the committee establishes a limited number of sessions in which these can be considered. Once the CA is approved in committee, it goes to the floor.

While bills are approved with a simple majority of the quorum, CAs require votes from at least 3/5 of House members (a minimum of 308 out of 512 legislators).

If the CA enacted differs from the one approved by the special committee, the committee can request that the final draft be revised again, in which case another floor vote is required. Following approval in the House, the CA is sent to the Senate where an analogous procedure must be followed. After the CA has gone through the two rounds of votes in both the House and Senate, it is sent to the president to be enacted, without the possibility of veto.

After analyzing both intra-chamber procedures to enact CAs and bills, we can see how the procedure for enacting CAs is more demanding than the one enacting a statute. It is also worth highlighting, when comparing the two possible avenues, that presidents have procedural advantages when enacting a bill which they do not have when introducing a CA. First, by using the urgency petition (regular or extreme), the president can push a bill to the top of the agenda. Second, by requesting a "maximum urgency petition", they are able to avoid the committee stage altogether and deal exclusively with the floor vote. If the president's coalition controls the Board of Directors, the president could potentially avoid the floor as well if the Board declares the committee to have "poder conclusivo."[7] This is not possible in the case of CAs, where the president only has the capability to use a regular urgency petition, making it impossible to circumvent the committee stage. Finally, while presidents hold the power to either partially or completely veto bills, he has no veto power over CAs. Thus, CAs offer the only procedure by which the legislature could potentially

[7]Poder conclusivo literally translates as "power to conclude". Consequently, the committee decides for the House whether to pass or to reject the bill. However, since the threshold to solicit the floor vote is very low, this is a most unlikely scenario.

circumvent the president, since he formally cannot counterbalance or check the CA once approved.

Thus, when comparing these two procedures—holding the size of the coalition constant—it is harder to pass a CA than a bill. However, the decision of the president to build a minimum winning or supermajority coalition is endogenous to his agenda proposals. If he believes CAs are necessary to carry out his policy proposals, he will most likely choose a supermajority coalition which enables him to do that in the legislature.

The next section develops a decision theoretical model applied to the Brazilian case and develops more expectations on the introduction of executive and legislative constitutional amendments.

2.3 The President: Choosing between Bills and Constitutional Amendments

Following Amorim-Neto (2006), assume that the president's utility for pushing policy along a given avenue is a function of the probability of enacting the desired policy along the chosen avenue, times the utility obtained from the policy itself, minus the costs incurred for enacting the policy via the chosen avenue. Thus, we can differentiate between the utility of enacting policy via statutes, decrees or constitutional amendments. First, consider a president who wishes to enact policy b. He has three different avenues to enact this policy, each with its own expected utility:

$$(1)\ \mathcal{U}(\mathcal{b},\mathcal{D}) = \mathrm{P}(\mathcal{b},\mathcal{D}) * \mathrm{policy}(\mathcal{b},\mathcal{D}) - \mathrm{cost}(\mathcal{b},\mathcal{D})$$

$$(2)\ \mathcal{U}(\mathscr{b}, \mathcal{S}) = \mathrm{P}(\mathscr{b}, \mathcal{S}) * \mathrm{policy}(\mathscr{b}, \mathcal{S}) - \mathrm{cost}(\mathscr{b}, \mathcal{S})$$

$$(3)\ \mathcal{U}(\mathscr{b}, \mathcal{CA}) = \mathrm{P}(\mathscr{b}, CA) * \mathrm{policy}(\mathscr{b}, CA) - \mathrm{cost}(\mathscr{b}, CA)$$

In words, the utility of pushing b along the decree avenue, denoted $\mathcal{U}(\mathscr{b}, \mathcal{D})$, is the probability that $\mathscr{b}$ will succeed along this avenue (i.e. not be blocked by the assembly), denoted $\mathrm{P}(\mathscr{b}, \mathcal{D})$, times the value of the policy if it is implemented via that avenue, denoted $\mathrm{policy}(\mathscr{b}, \mathcal{D})$, minus the costs of using that avenue, denoted $\mathrm{cost}(\mathscr{b}, \mathcal{D})$. We expect presidents to choose the strategy with the highest expected utility. The decree avenue often offers a higher chance of success due to low costs and high probability of enactment. However, decrees are temporary and can be overturned, giving them a lower utility than statutes and amendments. Statutes are harder to get passed but more valuable once attained. Amendments are even harder to secure but are the most durable. In addition, certain policy areas are restricted in terms of which of the three avenues can be employed: some policies cannot be enacted by decree, and some cannot be addressed in bills as they are entrenched in the Constitution. Thus, when a restriction in the policy area is present, we assume that costs in that avenue go to infinity.

Why do presidents choose one avenue over the others?[8] Let's imagine that a president has a certain policy that he wants to implement and that he can do it either via decree, statute or constitutional amendment. Presidents will choose a bill (S) if,

[8] For simplicity, I limit the analysis to the choice between two avenues—CAs and statutes (or whatever the avenues are). However, it is possible to choose between "sequences" of avenues or parallel introductions. I thank Professor Vincent Crawford for his observation on this specific issue.

(4) $\mathcal{U}(\mathscr{b}, \mathcal{S}) = \mathrm{P}(\mathscr{b}, \mathcal{S}) * \mathrm{policy}(\mathscr{b}, \mathcal{S}) - \ \mathrm{cost}(\mathscr{b}, \mathcal{S}) > \mathrm{P}(\mathscr{b}, \mathcal{D}) * \mathrm{policy}(\mathscr{b}, \mathcal{D}) - \mathrm{cost}(\mathscr{b}, \mathcal{D})$

and,

(5) $\mathcal{U}(\mathscr{b}, \mathcal{S}) = \mathrm{P}(\mathscr{b}, \mathcal{S}) * \mathrm{policy}(\mathscr{b}, \mathcal{S}) - \ \mathrm{cost}(\mathscr{b}, CA) > \mathrm{P}(\mathscr{b}, CA) * \mathrm{policy}(\mathscr{b}, CA) - \mathrm{cost}(\mathscr{b}, CA)$

Note that the probability of enacting the policy unilaterally is 1, while the probability of enacting bills or CAs is lower and depends on the size of their coalition among other factors. Since presidents seek to minimize costs and maintain a working relationship with Congress during any given term, the summation of all costs and benefits should enable them to decide on a winning strategy.

Analyzing the presidential decision of whether to build a coalition cabinet or not, Amorim Neto (2006) suggests that a president's first decision is to choose a "prevalent policy-making strategy", which could mean implementing policy unilaterally or pursuing "stickier" policies that require congressional approval. If his policy proposals can be enacted unilaterally and his cost-benefit analysis favorably leans toward the frequent use of decree, the president will not spend resources to build a majority coalition.[9] On the other hand, if his cost-benefit analysis shows that the utility from using bills more regularly is higher, even after considering the costs of

[9] In September 2001, a CA introduced by legislators on the limitation of decree power was finally approved after more than four years of debate. The reform established two main changes: first, it limited the capacity of the executive to re-issue decrees to just one time, and also established the requirement of explicit approval for all decrees. This change has an important effect on the costs and benefits of introducing bills. In another chapter of my dissertation, I show how this reform increased the presidents' incentives to introduce decrees as opposed to bills but decreases his ability to act unilaterally (with the consent of leaders of Congress) to keep decrees off the agenda. Instead, I show how he uses more decrees as it allows him to change the status quo immediately but only requires a simple majority coalition to convert these temporary decrees to law.

distributing power among possible coalition members, he might decide to form a coalition to increase the probability of getting his policies enacted. Here it is assumed that the costs for taking one procedure over the other can be measured in terms of "power-sharing". The larger the coalition and number of parties represented, the more power is distributed among coalition partners and more policy concessions are made. In Amorim-Neto's work, this translates into the president's decision to build a more or less partisan cabinet, which can be proportionally or less than proportionally distributed among parties within the governing coalition.[10]

In our case, the relevant comparison is between bills and CAs, both of which require congressional approval. After comparing the procedures to enact statutes and CAs, it is apparent that enacting CAs is more costly than enacting bills because there are more veto gates and a supermajority is required for its approval. Consequently, it is expected that if the president decides to pursue a strategy requiring congressional approval, he would build a coalition—which can differ in size depending on the prevalence of statutes versus constitutional amendments and his campaign promises. If the prevalent strategy is "CA dominant", then we would expect the president to build a supermajority coalition to make his agenda viable. If his prevalent strategy is "bill dominant" then we would expect him to form a majority coalition – and negotiate with an ad-hoc coalition to pass CAs.

[10] By more proportional or less proportional I mean that the president could decide to include a party in his coalition with a smaller number of cabinet seats that it deserves according to the overall distribution of the party seats in the House or Senate.

2.4. Legislators: Choosing between Statutes and Constitutional Amendments

Following the same logic proposed earlier to determine the executive's preference for either route, the legislators' choice between statutes and CAs is dependent on their ability to maximize their bargaining capacity and their policy position. However, there is an important difference between the cost-benefit analysis of legislators and the president. Since the president holds the de-facto agenda setting-power, which gives him the first-mover advantage in determining the "dominant strategy", the strategy for opposition legislators is to react and attempt to delay, amend or stop presidential proposals. On the other hand, members of the governing coalition should protect the draft from opposition influence.

If the agenda-setting process is in the hands of legislators (i.e. the president has no right to introduce legislation), one could safely assume that legislators would care, at least partially, about introducing and enacting policy. However, when the de facto agenda-setting power is in the hands of the executive, as is the case in Brazil, legislators are aware that the probability of enacting their own policy is very low (Figuereido and Limongi 1999, Amorim-Neto, Cox and McCubbins 2003).

Figure 2.2 shows the percentage of CAs that passed each step of the legislative procedure differentiated by author (branch of government). The first thing to note is that CAs introduced by the executive have a higher rate of passage (35%) when compared to those introduced by the legislature (1%). Moreover, the executive outperforms legislators throughout the process: 70% of executive CAs went through the CJCC and were declared admissible or inadmissible in comparison to 22% of the

legislative proposals. In addition, ad-hoc committees are formed for 56% of the executive's proposals compared to only 6% for legislators.

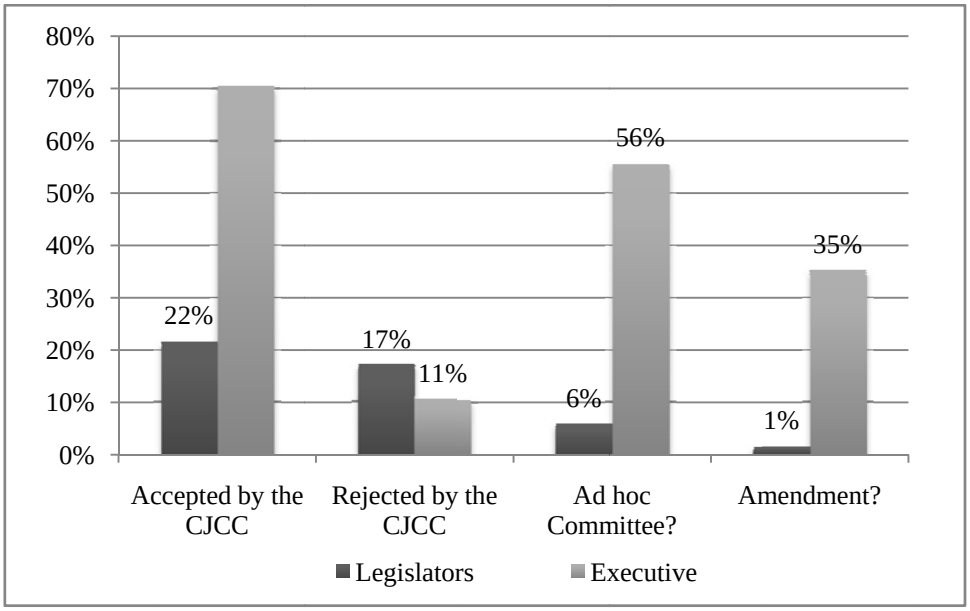

Figure 2.2: Percentage of Total CAs introduced, Differentiated by Branch of Origin and last procedure completed in the House1991- 2004

Thus, while one could assume that the executive introduces legislation with the expectation that it will be enacted; the same cannot be assumed for legislators.[11] And yet, legislators continue to introduce bills and CAs every year despite the low probability of enactment. I suggest here that legislative introduction can be a way to "hitch a ride" on the executive CAs, thereby applying the same logic used to govern

[11] While it is common to talk about *legislative success* referring to the capacity of legislators to introduce and enact policy, I would argue that this measure is applicable to the president but is not as useful for legislators. Legislators need to overcome important collective action problems before even putting a bill onto the agenda. Here I suggest that *legislative success* in reactive assemblies is more accurately described as the capacity of legislative groups to influence, amend or delay executive proposals.

the introduction and enactment of omnibus bills in the US case (Krutz, 2001).[12] Due to the prohibitive costs of vetoing omnibus bills due to the difficulty of building consensus for their main policy area, omnibus bills allow for policy trade which benefits both the president and members of Congress: the president is able to enact his principal reform, while conceding to members of Congress policies or amendments that would probably not pass if considered sequentially. I suggest that whenever presidents need to enact controversial policies, choosing a CA allows them to introduce their most ambitious draft of reform and it permits legislators to play a greater and more enduring role than a bill or decree was chosen.

To date, Ames's work (2001) has shown that legislators in Brazil amend bills heavily to obtain pork and other goods for their constituents in budgetary policy. Previous work on CA case-studies such as the Pension Reform approved in 2002 suggests that legislators engage in this strategy in other policy areas as well (Alston and Mueller 2005). Here, I show that the legislative introduction of bills and CAs also allow legislators to exercise their influence over the policy outcome. Introducing a bill or CA related to the executive's proposal gives legislators some procedural advantages. Once introduced, the legislators proposed policy gains leverage because it can either be: 1. Merged (*apensadas*) with the executive bill or CA; 2. Serve as a competing bill or CA; or 3. Included as amendments to the executive's bill or CA. To

[12] Omnibus legislation refers to the practice in the US Congress to package or bundle bills that would normally be debated separately, and that cover a wide range of policy areas. Usually, omnibus bills are defined by their most important policy to reform: for example, "Tax Reform". However, the bill also has other policies that might or might not be strictly or remotely related to tax reform. As Krutz and others have argued (Sinclair 1997, etc), omnibus bills are "must pass bills".

do this, legislators must have submitted the piece of legislation and solicit the committee to consider the proposal. Legislators can also introduce pieces of legislation that compete for the public's attention and are not necessarily related to the executive's bill or CA. By doing so, they might be able to negotiate for some support from the president in exchange for their support for the executive proposal.

Although legislators can certainly "hitch a ride" on bills, they are constrained by the existence of a partial executive veto. As Cameron (2000) has shown, the anticipated reaction of legislators acknowledging the executive's veto power limits the bargaining policy space. However, if the president chooses to introduce CAs, negotiations on the floor are final and not subject to presidential veto. Therefore, CAs present a good deal to both legislators and the president. The president can secure his preferred policy, while members of the governing coalition and opposition have the opportunity to maximize their influence due to the absence of executive ex-post veto.

The next section develops the empirical expectations derived from the analysis of the presidential and legislative behavior in the introduction and passage of CAs.

2.5 Main Expectations

Introduction of CAs by legislators: Individual legislators will choose their strategy after the executive has decided on his dominant procedural strategy and the size of his coalition. If the president decides to introduce CAs and legislators intend to influence the executive's proposal, it should be expected that the timing of the introduction of executive CAs and legislative CAs to be highly correlated, controlling

for other factors that also ignite this legislative activity such as floor votes. Since a strong correlation still does not give conclusive evidence for "causality", we will further explore the behavior for both the opposition and the government coalition.

Opposition versus government's coalition introduction of CAs: One of the ways in which presidents minimize their costs of bargaining during the floor stages is by actively pre-negotiating the draft with members of the governing coalition. The opposition, on the other hand, remains at the margins of the pre-negotiation and attempts to influence the draft of the proposal at the committee stage or on the floor. Thus, in order to make their position heard, an increase in the CAs proposed by members of the opposition should be expected, especially whenever the executive's policy is introduced. Since most of the amendment process occurs during the committee stage (individual floor amendments are very restricted), we would expect opposition legislators to introduce CAs close to dates when the executive's CAs are introduced. Conversely, it is expected that CA activity from members of the governing coalition is not necessarily synchronized with executive proposals.[13]

Determinants of success for presidential CAs. So far, I have argued that when presidents decide to use CAs to enact their policies as the dominant procedure, they attempt to build a supermajority coalition to ensure a higher probability of getting them enacted. Another possibility is that the executive does not anticipate introducing many CAs and therefore decides to work with a smaller coalition and negotiate on a case-by-case basis to form coalitions on the floor when trying to pass CAs. By

[13] Same caveats apply: it could be a spurious correlation because we are not sure if they are reacting to something "outside" the executive-legislative relations – or we are not classifying by policy area.

observing all executive CAs introduced in the legislature, the main expectation is simple. Presidents who hold a supermajority coalition should use CAs more often and be more successful as the size of his coalition passes the 3/5 threshold.

A final expectation relates to the content of the CAs. One of the apparent paradoxes debated regarding Brazil's use of CAs is the fact that executive CAs entrench policy in the constitution—instead of deleting or modifying its text (e.g. Melo 2000). It would seem that by adding text to the Constitution, the executive would make it harder for him to make future changes adding rigidity to the policy-making process, and also to future executives. Here I suggest an alternative explanation: additions should be interpreted as evidence of the reactive role that legislators play in the drafting of these proposals in the pre-negotiation and committee stages. By classifying all articles of CAs enacted, Couto and Arantes (2003) concluded that 61.2% of the articles included in the enacted CAs were additions to the constitution, 32% articles modified the ones from the original text, and only 1.6% deleted some text. Following Couto and Arantes (2003) and using their classification strategy for all CAs introduced by the executive branch from 1992 – 2004, the expectation is that CAs with more added text should have a higher probability of getting enacted than those articles that have a greater percentage modified or deleted text from the Constitution.

2.6 Empirical Results

2.6.1 Legislative Introduction of Constitutional Amendments: Timing of Introduction

To test whether legislators' CA introduction activity within and outside the coalition is "synchronized" with the executive's introduction of CAs, I constructed a daily dataset, which counts the number of CAs introduced, divided by opposition and governing coalition. To measure the covariation, I created "presidential windows", which equal one on the date the president introduced a CA, 20 calendar days before and 20 calendar days after.[14] Due to potential autocorrelation between government periods, I grouped the analysis into administrations and included a dummy for all of them except for Fernando Henrique Cardoso's first term which goes from 1995 – 1998.

The model is specified as follows,

$$(5)\ \gamma_{it} = \beta_0 + \beta_1 bef\_win_{it} + \beta_2 aft\_win_{it} + \beta_3 subst_{vote} + ad_{dum} + u_{it}$$

Two models were run: one for the government coalition and another for the opposition. $Y_{it,,}$ took a value of one when CAs where introduced by the opposition or the government coalition, at time T. The main independent variables are included: dummies for before and after windows, the number of substantive votes occurred per day, the dummies for each presidential period and the error term.

[14] The 20-day window was chosen arbitrarily. The idea behind it was to give a reasonable amount of time for legislators to react to the specific action by the president. The model performs similarly with 15-day windows as well.

Thus, the variation reported is the "within presidential term variation", with a check on the differences between presidential periods. Besides the time of introduction, I control for the occurrence of substantive floor votes in bills, decrees and CAs (for which I mean non-procedural votes). One would expect floor activity to ignite legislator's interest in introducing CAs as a position-taking device to present an alternative status quo, or just use them as position-taking devices.

Table 2.1: Results for Legislative Introduction of Constitutional Amendments as the Dependent Variable

	CA Opposition	**CA Government Coalition**
Substantive Floor Vote	0.104***	0.193***
	[11.65]	[19.91]
Before Presidential Window	0.088***	0.084***
	[3.62]	[3.17]
After Presidential Window	0.037	0.041
	[1.55]	[1.58]
Collor	-0.057**	-0.177***
	[2.28]	[6.56]
Franco	-0.091***	-0.184***
	[3.94]	[7.33]
FHC2	0.036*	-0.033
	[1.91]	[1.61]
Lula	0.025	-0.025
	[1.06]	[0.96]
Constant (FHC1)	0.110***	0.190***
	[7.32]	[11.63]
Observations	5114	5114
Number of admin	5	5

Absolute value of z statistics in brackets

* significant at 10%; ** significant at 5%; *** significant at 1%

The first thing to note is that both legislators of the government coalition and the opposition seem to introduce their CAs during the 20 day period before the president introduces his own CAs. This is consistent with the idea that legislators act

upon the expectation that a CA will be introduced. Although the "after" window has the expected positive sign, it is not significant. Thus, one can conclude that executive and legislative introduction activity in CAs covaries. Having substantive votes on decrees, bills or CAs is also positively correlated and significant at the 1% level, suggesting that the occurrence of floor votes might ignite legislators from both the opposition and the governing coalition to introduce CAs.

To see whether there were significant differences across administrations, presidential term dummies were included, excluding FHC1 (Fernando Henrique Cardoso, first term), which covers the period from 1995 – 1998, one of the most intense periods of constitutional amendment activity (Mello 2000). As it can be observed, Collor and Franco's administrations significantly differ from FHC1, having less CA activity than other periods from both the opposition and government coalition.

Thus, the pattern of covariation of introduction of presidential and legislative CAs seems to hold for most presidential periods, showing almost significant differences between the government coalition and opposition introduction. The opposition seems more likely to introduce CAs whenever the president introduces his.

2.6.2 Determinants of Executive Constitutional Amendment Approval: Size of the Government's Coalition and Timing of Introduction

Are constitutional powers enough for Brazil's presidents to get their CAs enacted or is it necessary to form more permanent supermajority coalitions? It has been suggested for the Brazilian case that presidents have various options to get

congressional approval. Some argue that coalition politics is the norm and that by "sharing power" the executive has a greater chance of enacting its agenda (Cheibub 2002, Amorim-Neto 2006). Others suggest that while coalition formation is important, the president has other means of achieving congressional approval. The formation of ad-hoc coalitions is a good strategy because the executive can distribute other types of resources such as pork or individual transfers (of cash!) rather than share power (Mueller and Pereira 2004; Raile, Pereira and Power 2006).

Building on Amorim-Neto (2006), I have suggested here that presidents can choose one of two dominant strategies: go via decree (unilateral changes to the status quo) or choose the use of procedures which require congressional approval.[15] If he chooses the latter, he can decide whether to use CAs or go via statutes. If his agenda is teeming with CAs, he can choose to form a supermajority coalition or negotiate with ad-hoc coalitions for those particular policies without making a permanent "power-sharing" commitment. To evaluate whether choosing between these two strategies matter, I built a dataset with all executive CAs introduced from 1992 – 2004. The dependent variable of the model in Equation 6 is whether the amendment passed or failed. The independent variables include the percentage of house seats from the governing coalition with representation in the cabinet and the number of months to the next election to control for the timing of introduction (see Appendix 1 for the size of the coalitions). Thus, we expect that just as in parliamentary systems (Martin and Vanberg 2005), pieces of legislation which are introduced earlier in the term tend to be

[15] After the reform to the decree power of the president in 2001, congressional approval is also required for decrees 45 days after its enactment.

the most agreeable. Subsequently, we would expect there to be a higher probability of ratification, even in the absence of a supermajority coalition.[16]

$$(6)\ \text{Logit (CA enacted)} = \log\left(\frac{p_i}{1-p_i}\right) = \beta_0 + \beta_1 coal(cabinet) + \beta_2 months + \mu_i$$

To avoid double counting, I excluded initial amendments which were divided and debated in separate pieces of legislation. For example, PEC 51 of 1991, better known as the Collor Plan II, reached the House in October 1991. Immediately after, the CCJC Committee decided to subdivide it into five separate amendments. In the dataset, I exclude PEC 51/1991 and instead count the five sub-divisions as separate CAs. This is also the case for Cardoso's Social Security Reform, among other cases. Results are shown in Figure 2.3.[17]

The size of the coalition represented in the cabinet is positive and statistically significant. From all sample, having a supermajority (2/3) increases the probability of getting a CA enacted from 27% to 44%. If we substract from the sample the "position taking CAs", the probability goes to 52%, without considering time. As Figure 2.3 illustrates, the probability of passing CAs increases as the size of the coalition represented in the cabinet increases to confirm the hypothesis that power-sharing increases the probability of the president's agenda being enacted. The timing of introduction is positive and consistent with the hypothesis that more agreeable pieces

[16] I used the robust specification to avoid any heteroskedasticity.
[17] Appendix 2 contains the regression table.

of legislation tend to be introduced earlier, or that earlier legislation has a greater possibility of finding support. However, it is not statistically significant at conventional levels.

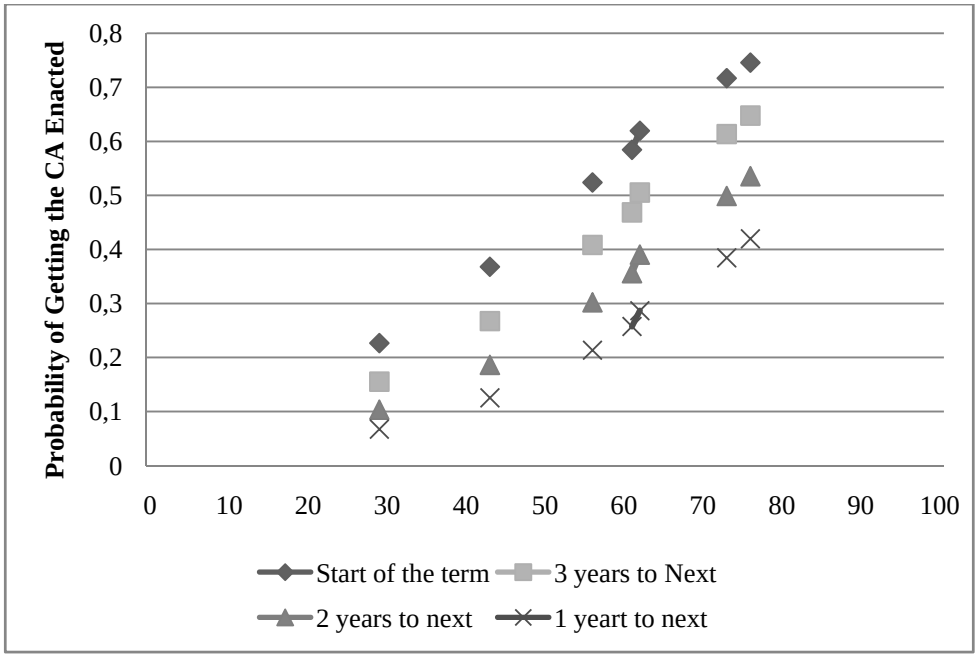

Figure 2.3: Effect of government's coalition size and timing on the probability of getting an executive CA enacted.

Holding both independent variables at their means, a coalition representing 60% of the party forces gives the president a 0.38 probability of getting a CA enacted that was introduced in the second year of the term. A five percent increase in the seats represented in the cabinet increases the likelihood of enacting the CA by 7%, holding other variables at their mean. Thus, we should expect presidents in Brazil to build supermajority coalitions in both houses to increase their chances of enacting policy via constitutional amendments. Equally, the earlier the CA is introduced, the more likely it will get enacted.

2.6.3 Content of Legislation: The More, the Better

Finally, the content of each CA that was introduced by the executive was classified to observe whether there was a significant difference between the content of CAs that were approved and those that were not approved. Each clause of the reform was classified as additive, modifying, or deletion.[18] As others have suggested, it is not in the interest of the executive to add more constitutional text, but rather use CAs whenever modifications to the constitutional text are necessary, even when they hold the agenda-setting power. However, somehow contrary to my expectation, and consistent with findings from Couto and Arantes (2003), executive CAs add more clauses than they modify (See Table 2). Here I suggest that most addition clauses serve as evidence of legislative influence. By entrenching policy and bargaining over the text of the reform, legislators hitch a ride on the executive CA and entrench policy which could be dealt with through ordinary legislation.

Table 2.2 shows some descriptive statistics regarding and include description of subject of table. On average, 40% of the clauses are modifications of existing constitutional text, 54% are additions to the constitutional text and only 6% of the clauses are meant to delete text.

[18] Since articles in the constitution vary in size to great extent, I chose the clause as the unit of count.

Table 2.2: Descriptive Statistics for the Content of Executive CAs

Variable	Obs	Mean	Std. Dev.	Min	Max
Total number of subsections modified, added or deleted	49	10.1	16.7	1	96
Percentage added	49	54%	37%	0	1
Percentage deleted	49	6%	12%	0	0.5
Percentage Modified	49	40%	36%	0	1

Source: Author

The size of CAs introduced by the executive has a mean of 10.1 clauses modified, with a high standard deviation of 16. The largest of the reforms was the Judicial Reform (CA 45/2004) introduced by Lula with 96 clauses, 9 deleting text, 34 modifying text and 53 adding text. Examples of smaller CAs are clause deletions to end monopolies and reforms to the temporary section of the Constitution that involved changing a date.

Table 2.3 shows the t-tests group (approved and not approved) to analyze whether there is a difference between the content of CAs approved and those not approved.

Table 2.3: Comparing Content type of Enacted and Not Enacted Executive CAs, 1992 - 2005

		Total	Mean	St. Error	St. Deviation	95% Confidence Interval	
Total Content of the CAs	Not Enacted	29	6.31	1.30	6.99	3.65	8.97
	Enacted	20	15.65	5.36	23.97	4.43	26.87
	Total	49	10.12	2.38	16.66	5.34	14.91
	T-test and Significance					-1.99	0.0527
Total Content Added	Not Enacted	29	3.41	0.77	4.14	1.84	4.99
	Enacted	20	7.90	2.89	12.90	1.86	13.94
	Total	49	5.24	1.28	8.99	2.66	7.83
	T-test and Significance					-1.75	0.09
Total Content Deleted	Not Enacted	29	0.45	0.21	1.15	0.01	0.89
	Enacted	20	1.40	0.50	2.26	0.34	2.46
	Total	49	0.84	0.25	1.74	0.34	1.34
	T-test and Significance					-1.94	0.06
Total Content Modified	Not Enacted	29	2.45	0.62	3.33	1.18	3.72
	Enacted	20	6.35	2.19	9.81	1.76	10.94
	Total	49	4.04	0.99	6.95	2.04	6.04
	T-test and Significance					-1.9895	0.0525

Source: Author

Although these t-tests only provide a rough comparison, it appears that enacted CAs are bigger, add more content on average, and also modify more clauses to amendments than CAs that are not enacted.

Here I have suggested that a higher rate of additions is the result of amendments introduced by legislators during the legislative process. Although this evidence is far from conclusive, some additional hints given by the fate of failed amendments point in that direction. First, an obvious but important fact is that 65% of executive CAs are rejected at the committee stage, from which only a very small percentage are in the interest neither of the executive nor Congress. There are very few position-taking amendments introduced by the executive, such as Cardoso's CA

prohibiting Child Labor and others that were truncated by early termination of the presidential term (e.g. Collor Plan). This means that Congress and especially the CJCC is actively serving as a veto gate for CAs that the president wants to enact: 62% (18) did not go further than the permanent committee stage. From those, four proposals attempting to increase the president's legislative powers were explicitly rejected and the others were left in stand-by or archived.

Table 2.4: Some statistics from Legislative and Executive CAs that had at Least One Nominal Vote in the Floor, 1988 – 2005

	Executive CAs	Legislator's CAs
Average Nominal Votes	16	5
Maximum Nominal Votes	105	19
Years for Approval	2 years	6 years
Average Quorum	87%	74%
Average Number of Amendments	71	6.57

Source: Author

From the CAs that passed the formation of the ad-hoc committee, there is some information about the number of amendments introduced by legislators and the time elapsed between introduction and approval, both of which illustrate the difficulties in acquiring approval. Table 2.4 shows some broad comparisons regarding the floor votes for enacted CAs introduced by legislators and the executive, years for approval and average number of amendments. First, while executive CAs had 19 nominal votes, legislative CAs had an average of five, only slightly more the minimum number of votes required to get approved. Nonetheless, there is wide variation. Lula's tax reform, for example, introduced in April 2003 and enacted in December of the same year had 466 amendments from legislators (CA 43/2003). The tax reform was approved quickly

as legislators agreed on its urgency, but added a lot of amendments. Cardoso's Civil Service Reform, on the other hand, was introduced in 1995 and approved in 1998. Compared to his other reforms that were approved, this one took a very long time (approximately three years) and was very difficult to get approved because a substantial number of legislators opposed it, even though it only proposed 60 amendments (Alston and Mueller 2005). Thus, it is reasonable to suggest that the larger the CA, the greater the influence of legislators is in the negotiation and policy outcome.

2.7 A word on Legislative Success Enacting Bills and Amendments

In order to compare the relative success of legislation introduced by the president or legislature, I borrowed from the distinction made between the legislative success and legislative productivity rates proposed by Aleman and Calvo (forthcoming). Success refers to the ratio of bills/CAs introduced to those enacted, and the productivity rate refers to the ratio of bills/CAs enacted by the executive or the legislature to all CAs enacted. By using these two measures, we can observe each branch of government's effect by taking into account introduction, but also its overall effect on the content of an enacted law.

First, let's look at legislative success and productivity by looking at regular bills. Figure 2.4 shows the percentage of bills enacted per year, by author from 199 –

2003.[19] With the exception of the years 1989 and 1994, more than 60% of the bills enacted annually were introduced by the executive. However, if one looks at the total bills enacted since 1989, the total number of bills enacted that were introduced by the president equals 78%. Legislators, on the other hand, average 17% of the bills enacted per year, as well as 17% of the total amount of enacted bills since 1989.

Thus, it seems that overall the executive is the main legislator: he passed most of the bills introduced and over 60% of the bills enacted every year. When observing all legislation enacted, the executive is responsible for almost 80% of all pieces of legislation, while legislators account for only 17%.

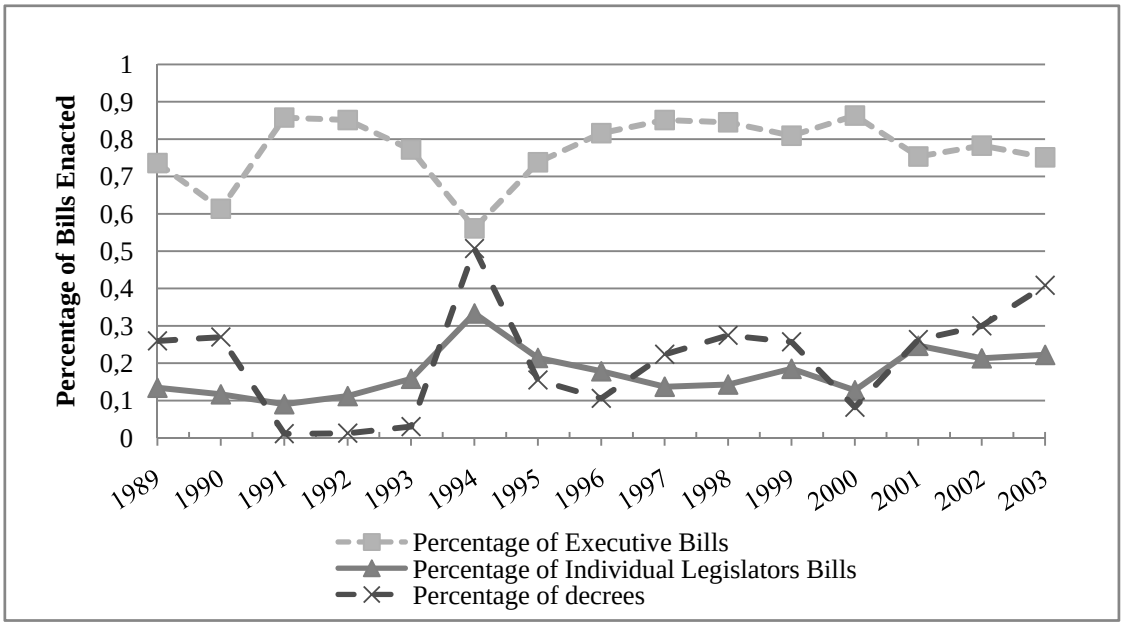

Figure 2.4: Percentage of bills enacted per year, by author (1991 – 2003)
Source: Amorim Neto, Octavio. 2007. "Algumas Conseqüências Políticas de Lula: Novos Padrões de Formação e Recrutamento Ministerial, Controle de Agenda e Produção Legislativa." In: Jairo Nicolau and Timothy J. Power (eds), **Instituições Representativas no Brasil: Balanço e Reformas.** Belo Horizonte: Editora UFMG, p. 55-73.

[19] The bills introduced by Permanent Committees are not included in the legislative initiative. The committee bills are on average 1% of bills enacted per year – with the exception of 1989, 1990 and 1991 with 13%, 27% and 11% respectively.

It could be expected that legislators performed in a similar way when evaluating their contribution to CAs. However, when looking at the total amount of CAs approved, legislators fare better. Even though legislative success remains low at close to 2% (there were 1,600 amendments introduced from 1991 – 2004), the actual number of CAs introduced and enacted by the legislature is greater than the number of executive CAs, comprising 55% of all CAs enacted. Thus, while the president's success is higher (in terms of the ratio of CAs introduced to enacted), his contribution to all CAs enacted is equal to 45%. [20] Figure 2.5 shows the productivity of both the executive and legislature for the period 1995-2004. As can be seen, legislative CA activity is constant and in some years such as 1996, 2000 and 2001 is quite intense.[21]

[20] Here I do not include the amendments completed during the time of constitutional revision, which had a different procedure of approval. (CAs 1 – 6).

[21] Some amendments such as the CA 30/2000 that established the "Fund for Poverty Eradication" show collaboration between the executive and members of the government's coalition. The author of the amendment at the time, Antônio Carlos Magalhães (PFL – BA) was president of the Senate and one of Cardoso's closest allies. This amendment helped him with resources for his constituency and to campaign on social issues, despite the fact he was from a right-wing party. Another example of a similar type of amendment was CA 43/2003. In the temporary clauses of the Constitution, one established that the federal government was responsible for the cost of irrigation projects in the center-west and northeast regions of the country for the next 15 years. The CA extended the period for ten more years, arguing that this was necessary as a result of the crisis in the agricultural sector.

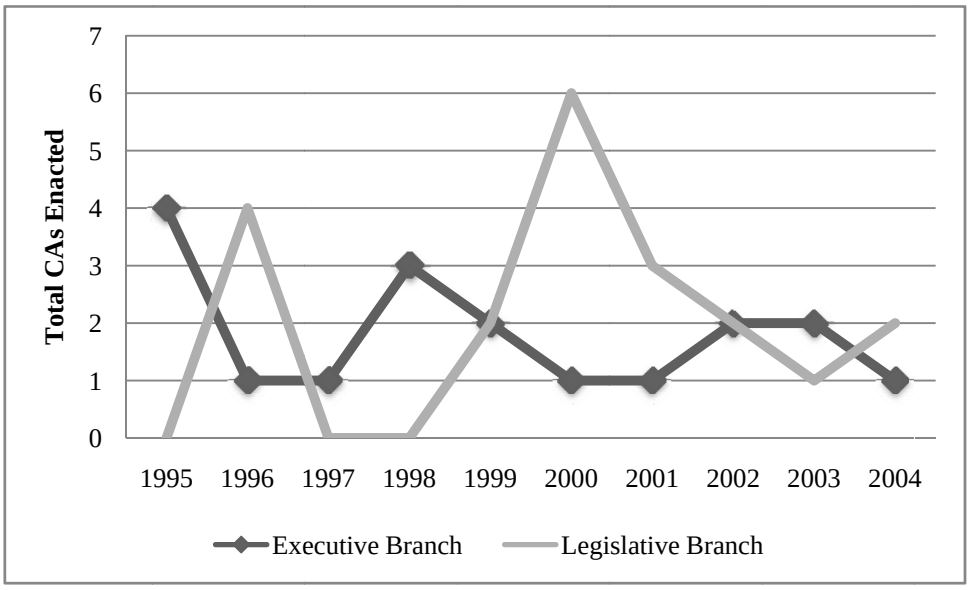

Figure 2.5: Total CAs differentiated by Author, 1995 - 2004
Source: Author calculations, data available at: www.camara.gov.br

Thus, we can conclude that legislators have had an important impact on the constant revision of the constitution. Legislative CAs minimize great divides in the legislature and are generally supported by the governing coalition in Congress. As a result, they are approved with very wide margins of support with an average of 80% of the decisive quorum compared to 70% support for executive CAs. Some of them represent important victories in the occasional turf battles between the executive and the legislature.

Among those, one interesting example of this is CA 32/2001 which limited executive decree power. To deal with this crisis that required immediate action, the Brazilian Constitution of 1987 gave the president constitutionally delegated decree power, which allowed the president to issue decrees for up to 30 days. In practice, however, since there was "constitutional silence" on whether decrees required explicit

approval of Congress after the 30 days had lapsed, presidents made it a norm to re-issue decrees, sometimes indefinitely. Furthermore, decrees became another way to implement policy, even when an extraordinary situation did not exist (Power 1998). Decrees were even used to regulate constitutional text, which would normally be done by complementary bills, requiring an absolute majority approval. Legislators did not like this state of affairs. By issuing decrees permanently, the president was circumventing the floor and preventing legislators from influencing policy. To solve this problem, the first attempt towards limiting the president's abuse of his right to issue decrees was enacted in 1995 in an executive CA (CA 7/95). This amendment represented a deal struck by members of Congress and President Fernando Henrique Cardoso to accomplish two objectives: eliminate the national monopoly of transportation (which the president wanted), and prohibit the use of decrees to regulate any article of the Constitution amended from 1995 onwards (which was Congress' demand). The purpose of introducing that article into the Constitution was to induce the executive to introduce *complementary bills.* Unfortunately, the strength of the amendment was not enough to curtail the constant use of decrees and a more radical reform was needed. Therefore, legislators decided to introduce a CA that explicitly limited the practice of re-issues by introducing the requirement of explicit approval after 60 days and it also limited the use of decrees to a limited number of policy areas. The CA was finally approved in 2001, after four years of executive opposition to the CA, and constant negotiations within the government's coalition.

Another example where legislators and the executive had a confrontation occurred over the passage of CA 25/2000, better known as Emenda Amin. In 1991, after a generalized condition of fiscal chaos at the state and municipal level and to prevent another massive debt bailout by the federal government, the executive introduced the "Fiscal Responsibility" complementary bill (Kohlscheen 2003). Among other objectives, the president wanted to earmark the percentage of the budget to be allocated to local council and state assembly expenditures. Although his legislative coalition thought the proposed change was a move in the right direction, they disagreed with President Cardoso's inclusion of a fixed percentage for all municipalities, and proposed an alternative CA that differentiated percentages based on the size of the municipality. The legislative CA was approved before the executive bill, adding the new text to the Constitution (Consultoria Legislativa 2002).[22] Although in this case there were similar preferences among legislators and the president, by establishing the new status quo in the constitution instead of approving or amending the executive bill, legislators ensured that any future change to this policy would require the use of this same procedure.

2.7 Discussion and Conclusions

[22] Consultoría legislativa. "Avaliação do impacto da Emenda Constitucional nº 25 sobre as despesas de câmaras de vereadores," available at: http://www.senado.gov.br/conleg/artigos/direito/ImpactodaEmendaConstitucional.pdf.

While CAs are rare events in many countries, they are used frequently in Brazil as an avenue for the most important executive policy proposals. Presidents use CAs because they *must*. When constitutions are long and detailed, even strong presidents need to resort to them as means to do policy. Although the president still holds the de facto agenda power, legislators have a number of opportunities to influence the policy outcome: legislators introduce parallel CAs, amend the ones introduced by the executive, and strike deals which mostly result in additions to the constitutional text. Although legislators could potentially circumvent the president due to the lack of veto power, this is rarely the case. Thus, even though legislators introduce a great number of CAs that do not get approved, I suggest that the introduction of CAs enables legislators to modify and delay executive proposals more effectively than they could through other type of legislative introduction. Both members of the governing coalition and from the opposition synchronize their introduction of CAs with the executive's. This temporal proximity is potential evidence for strategic behavior on behalf of legislators to maximize their leverage in the negotiations by appending executive bills, or just going public with alternative proposals.

To maximize their utility, presidents need to secure the passage of a policy proposal. In the literature it has been suggested that there are various routes to achieve this. Following Amorim Neto (2006) and extending his executive decision model, I found evidence that the size of the president's governing coalition affects his ability to gain approval for his proposals, as well as the timing in which they are introduced.

Additionally, larger CAs with more addition clauses are more successful than those that just attempt to modify the constitution. CAs offer a good compromise for legislators and the president: while the president is able to pass his policy, legislators from both within his coalition and out can get policy concessions that become entrenched in the Constitution and are protected at least until the next government is sworn into office. The data and analysis conducted here supports the idea that both the high rejection rates for executive CAs and the heavy amendment rate are further proof of influence from legislators in executive proposals.

In conclusion, while presidents overcome their procedural disadvantages by adding text to the constitution, legislators take full advantage of their institutional powers in this avenue. Thus, whenever constitutions are long and detailed, presidents *must* engage in constitutional politics frequently, which changes the balance of power between the executive and the legislature and adds additional legislative checks that do not exist when passing ordinary legislation.

Appendix 2.1: Size and Composition of Governing Coalition, 1992 – 2004

Table 2.5: Size and Composition of Governing Coalition, 1992 – 2004

	Itamar Franco			Cardoso, I Term		Cardoso, II Term		Lula, First Term	
Begginning date	Oct-92	Aug-93	Jan-94	Feb-95	Apr-96	Dec-99	Mar-02	Feb-03	Jan-04
Finishing date	Aug-93	Jan-94	Dec-94	Apr-96	Dec-98	Mar-02	Dec-02	Jan-04	Dec-04
	0	0	0	0	0	0	0	0	0
PFL (Partido da Frente Liberal)	86	86	89	89	99	105	0	0	0
PMDB (Partido do Movimento Democrático Brasileiro)	101	101	94	107	97	84	89	0	78
PR (Partido da República)	16	0	0	0	0	0	0	0	0
PSB (Partido Socialista Brasileiro)		0	0	0	0	0	0	22	20
PSC (Partido Social Cristão)	4	3	3	0	0	0	0	0	0
PSDB (Partido da Social Democracia Brasileira)	45	47	48	61	85	99	94	0	0
PTB (Partido Trabalhista Brasileiro)	27	29	0	31	28	31	0	28	52
PPB (Partido Progressista)	0	45	46	0	87	60	49	0	0
PT (Partido dos Trabalhadores)	0	0	0	0	0	0	0	91	90
PCdoB (Partido Comunista do Brasil)	0	0	0	0	0	0	0	12	10
PDT (Partido Democrático Trabalhista)	0	0	0	0	0	0	0	21	0
PL (Partido Liberal)	0	0	0	0	0	0	0	0	43
PPS (Partido Popular Socialista)	0	0	0	0	0	0	0	15	20
PV (Partido Verde)	0	0	0	0	0	0	0	5	6
Percentage of Seats	57%	62%	56%	56%	77%	74%	45%	43%	62%

Source: Fernando Limongi, Data from CEBRAP. The number of seats is counted at the beginning of the coalition. Some parties might differ in numbers due to the occurrence of party switching within a presidential term.

Appendix 2.2: Size of Executive Coalition and Effect on Constitutional Amendment Approval, 1992 – 2004.

Table 2.6: Size of the executive coalition and its effect on constitutional amendment approval, 1992 – 2004.

	Logit, robust
months_nextterm	0.039
	[0.026]
cabinet	0.049**
	[0.022]
Constant	-4.514**
	[1.803]
Observations	48

Robust standard errors in brackets

* significant at 10%; ** significant at 5%; *** significant at 1%

3. Limiting Presidential Decree Power: The Effect of the Constitutional Reform 32/2001 in Brazil

Abstract:

Most presidents in Latin America are recognized for being proactive legislators and their ability to employ a variety of avenues to implement their policies. In the literature, decree power is considered one of the most effective instruments to act unilaterally in order to establish a new status quo. However, recent literature has suggested that changes in procedures to issue decrees make a significant difference for the executive's capacity to avoid legislative assertion. Taking advantage of the constitutional reform No. 32 enacted in Brazil in 2001, this paper contributes to this debate by showing how the change to explicit approval of decrees made a significant difference by impeding the president from avoiding negotiations on the floor. By analyzing the House legislative agenda from 1999 – 2005, I show how the reform made a substantial increase in the percentage of executive agenda items, and a dramatic shift in the type of legislation being discussed in Congress. While decrees were rarely considered on the floor previous to the reform, in the post-reform period they accounted for about 65% of agenda items. Consequently, circumventing the floor is no longer a possibility. An example provided by negotiations over minimum wage from 1995 – 2004 is used to exhibit how policy outcomes became closer to the preferences of the majority of legislators in the absence of implicit approval of decrees and the requirement to have legislative approval on executive decrees.3.1 Introduction

3.1 Introduction

Depending on the institutional design of their polity, presidents have different avenues—such as decrees, bills, or even constitutional amendments—to enact policy. Most studies of bargaining between the executive and the legislature have looked at just one of these instruments, with a few notable exceptions (Amorim Neto 1998, 2006; Melo 2002; Pereira, Power, and Rennó 2004). In the pursuit of any policy goal, two decisions made by the policy-maker are of crucial importance: the content of the policy and the pathway to enact it. When is it better to introduce a bill or issue a decree?

Carey and Shugart (1998) were among the first to study presidential decree power comparatively and delineated the differences between congressionally delegated decree power and constitutionally delegated decree power for several case studies. Congressionally delegated decree power, they argued, could not be read as the usurpation of legislative power. Instead, they proposed a series of alternative hypotheses to evaluate the extent to which all decree power—congressionally delegated and constitutionally delegated—could be interpreted as the result of legislative delegation. Although this argument was widely accepted for congressionally delegated decree power, the debate over the role of legislators and their capacity to "influence" presidents endowed with constitutionally delegated decree authority (CDA) remains.

Recent work has suggested that legislative assertion in these cases depends on the required override majority, on whether decrees require explicit approval (Negretto

2004), and on the rule used to debate these bills (Reich 2002). However, to date, no empirical test has been proposed to measure if there is a visible effect. Taking advantage of the constitutional reform No. 32 enacted in Brazil in 2001, the objective of this paper is to test the effect of the change to explicit approval of decrees, keeping constant the existence of open rule and controlling for other variables that may influence executive decree power. I argue that constitutional amendment No. 32/2001—which changed the decrees approval procedure to one that required an explicit approval—altered the strategies used by the executive and the legislators to enact and influence policy. Initially, the 1988 constitution established that decrees could only be in effect for 30 days. In practice, however, reissuing decrees became a norm (Power 1998). Thus, the president could reissue a decree indefinitely, until Congress decided on whether or not to convert it into legislation. After 2001, the president could reissue a decree only once (for a subsequent period of 60 days). It would expire if Congress did not pass legislation enacting it into law following the reissue.

I will show how, before the reform, the president could choose to negotiate mainly with party leaders to secure just enough support to reissue his decrees indefinitely. Thus, the possibility of indefinite reissues allowed the president an intermediate route of approval which did not involve the floor. After the reform, this strategy was no longer viable. This study shows that the 2001 reform strengthened the floor's ability to negotiate and influence the policy outcome due to their required vote in every decree. Today, party leaders, who once played a definitive role in helping to

block a decree from reaching a floor vote, are in a weakened position because they no longer determine which decree is discussed, as all decrees automatically go to the top of the agenda. Since the president is accountable for the implementation of the policy, and has limited time to show results, his impatience benefits the legislature, as it can impose heavy costs on an executive previously reluctant to negotiate with rank-and-file legislators. Thus, although as a result of the reform, the congressional agenda is more dominated by presidential items, it is only to the benefit of legislators who can bargain a better deal. .

This paper begins with brief descriptions of the use of decree power in Brazil and the 2001 reform. The second part explains the executive's strategy in using decrees to implement policy before and after the reform. The third part of the paper describes my expectations for change as a consequence of the reform. The fourth part addresses what I call the "direct effects" of the reform, by observing aggregate data on procedural choices for the executive. The fifth part provides evidence for the "substantive effects" of the reform in the minimum wage policy and explains in more detail the negotiations that followed between the executive and the legislature. The case of Brazil's minimum wage is useful to illustrate the effects of constitutional amendment No. 32/2001 on policy outcomes both prior to and after the reform.[1] By looking at a case study, it is possible to control for policy area. Also, it facilitates the

[1] Totaling up bills and decrees can be problematic. Although all of them are worth one count in a dataset, in reality there are significant differences between them. Not all decrees and bills are of equal importance, size, or policy area; they are not perfect substitutes either. Even more importantly, counts or ratios cannot convey the pre- and post- negotiations between the executive with his coalition, or with members of other parties. Alston and Mueller (2006) use a similar argument to analyze the trades between policy and pork in the pension reform legislation during the Cardoso administration.

development of a more accurate description of the bargaining process between the president, his coalition, and the opposition.

3.2 The Use of Decree Power and the Constitutional Reform 32/ 2001

As Power (1998) has observed, the use of decrees or *medidas provisórias*, literally, provisional measures, is nothing new in Brazil. Historically, governing by decree has been a norm in times of crises, and was only explicitly restricted during the first period of democracy from 1945 – 1964. During the military dictatorship, the rules regarding the use of decrees were relaxed in the 1967 Constitution. Decrees had immediate force of law, and a 60-day period to get approved or rejected by Congress, with a closed rule (in other words, amendments were not allowed). Furthermore, if the decree was not considered by Congress within the 60-day period, it automatically became law.

With the transition to democracy, the debate over decree power was resumed in the Constituent Assembly. An agreement was struck to provide the president with some extraordinary powers in order to avoid the potential gridlock generated by a very fragmented party system. It was established that decrees could be used by the executive in times of "urgency and relevance", and that the legislature had 30 days to consider the decree, which it could amend. Although the automatic conversion of a decree to law if not considered during the 60-day period was eliminated, the Constitution did not explicitly state if the decree was considered rejected after the period expired. This convenient omission in the text was advantageous to presidents who had trouble getting working congressional majorities. Reissues became the norm,

and despite various efforts by the legislature to consider all decrees (see Power 1998, p. 204-207), it blatantly failed in doing so due to the volume of decrees being issued by presidents.

After various failed attempts to counteract the president's decree power, the legislature finally enacted constitutional amendment 32/2001[2], which contained three basic components that were intended to restrict the president's unilateral power: 1. It explicitly restricted policy areas that could be addressed by decree (see article 246, CN); 2. It allowed the Senate and House to discuss decrees separately rather than in joint session, as was previously required; and most importantly, 3. It only permitted a decree to be reissued once, which changed the system from implicit to explicit approval. By allowing the House and Senate to have separate deliberations over decrees, it facilitated debate on decrees by reducing coordination problems and allowing for divided government to become an additional check.

After a decree is enacted, and if it has not yet been considered by the plenary after a period of 45 calendar days, it automatically goes to the top of the congressional agenda. After 120 days have lapsed, the decree automatically becomes a bill (*projecto de conversão)*, which freezes the agenda. Consequently, Congress is forced to vote on it in order to resume any other legislative business. To analyze the effects of the reform, and in particular, the change to explicit approval, the next section analyzes the use of decrees with no explicit approval and the changes that occur when explicit approval is required.

[2] The constitutional amendment was approved almost unanimously by the House and Senate (427 yes votes, 1 no vote in the House, 65 yes votes and 1 no vote in the Senate).

3.3 Decrees: The Shift from a System of Implicit to Explicit Approval [3]

When seeking to impose a policy, Brazilian presidents first need to decide whether to enact a decree (*medida próvisoria*) or introduce a bill. Prior to the reform and from the executive's point of view, the most desirable avenue was to introduce a decree, since it had immediate force of law. The flowchart in Figure 3.1 clarifies the process by which decrees were considered previous to CA 32/2001. As mentioned earlier, the ideal scenario occurred whenever the legislature converted a decree into law with no amendments (Figure 3.1, outcome 6). An equally favorable scenario occurred when the legislature would *ignore* the decree (by either not putting it on the legislative agenda <R1>, or by putting it on the agenda but not voting on it <R2>), which enabled the president to reissue it repeatedly with only minor changes.

[3] Although the decree and the legislative bill avenues are not perfect substitutes because there are issues that decrees are prohibited from addressing, the minimum-wage negotiations are an instance in which these avenues are interchangeable.[3]

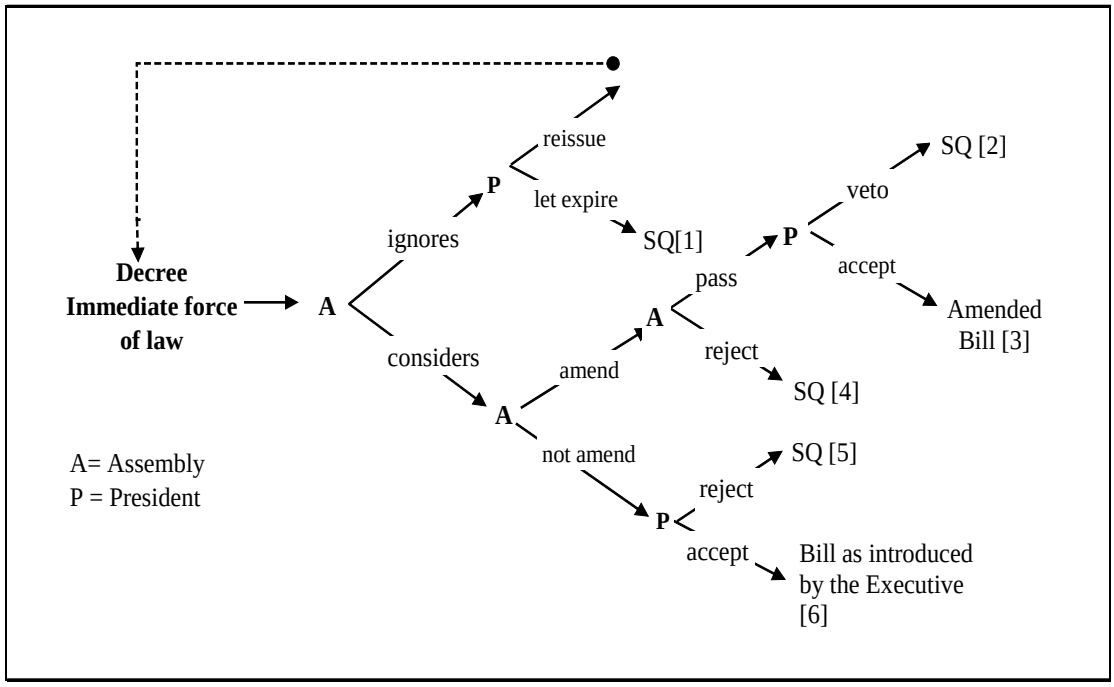

Figure 3.1: When Presidents Issue Decrees and There is no Explicit Approval Required

From 1995 through 2001, decrees were reissued an average of 15 times, which was equivalent to prolonging its life to two-and-one-half years. About 12% of all decrees were reissued more than 40 times or a length of seven years. The *Mesa Diretora*[4] would often ignore both non-controversial and controversial decrees. In the case of a controversial decree, if members of the *Mesa* were fearful that the decree could be voted down on the floor due to disagreements within the governing coalition, the Mesa used its veto power to keep it off the agenda. Thus, under the pre-2001 rules, the president could indefinitely reissue decrees when he could obtain the support of at

[4] The Mesa Diretora is in essence a Board of Directors. It includes the Chamber's president, two vice-presidents, four secretaries, and the secretary's substitutes. The main function of the board's president is to preside over the Chamber of Deputies, a role analogous to the Speaker of the House in the U.S. House of Representatives. The *Mesa Directora* is also in charge of the administrative services of the Chamber (see http://www2.camara.gov.br/conheca/estruturaadm for more on the administrative structure of Brazil's Chamber of Deputies).

least the majority of the Mesa (by agreeing not to put the decree on the agenda). Consequently, the president could effectively avoid having to deal with individual rank and file legislators in order to craft a plenary majority to support his policy.

A different scenario occurred when the Brazilian Congress considered and amended the issued decrees. It was required that decrees were voted on under open rule by a joint session of both the Chamber of Deputies and the Senate. Also, the president could make use of his partial or full veto. Thus, for example, in the case of the minimum wage legislation, if the president fully vetoed the amended decree, the minimum wage would revert to the previous year's level [SQ2]. The return to the status quo prior to the decree [SQ2] is also the outcome should the assembly decide to vote down the decree, amended or not.

So, why would the executive choose to introduce a bill? Amorim-Neto (1998; 2006) argues that there are two main reasons to introduce bills: durability and the negotiation of complex logrolls. We assume that presidents want their policies to last beyond their term to permanently change the status quo. Thus, when seeking to make a change to the status quo permanent, presidents would prefer to issue bills instead of decrees.[5] It is worth noting that in certain policy areas, decrees are not interchangeable with bills even before 2001, so depending on the policy area, the president could be without this alternative.[6]

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[5] A bill is also preferable when it can serve as an omnibus bargaining vehicle. Good examples of this trade-off are the negotiations in 1994, 1995, and 2001, in which the president conceded on the level of the minimum wage increase in exchange for changes to pension regulation, the Bank Secrecy Law, and tax-evasion laws.

[6] The Constitutional Amendment No. 7/1995 was the first attempt by legislators to restrict the indiscriminate use of decrees. In exchange for eliminating all monopolies in transportation, legislators

What changed after the 2001 reform? Following the enactment of the Constitutional Reform No. 32/2001, Congress is now required to vote on any decree after a maximum of one reissuance, which effectively ended the president's ability to use decrees to implement long-term policy. Also, a joint session is no longer required to consider decrees, which makes it easier for the Chamber to include them in the agenda. To solve conflicts between the two chambers, and if there are differences between the versions approved by the Chamber and the Senate, the Chamber is required to have an additional vote to either keep their version or adopt the one approved in the Senate.[7]

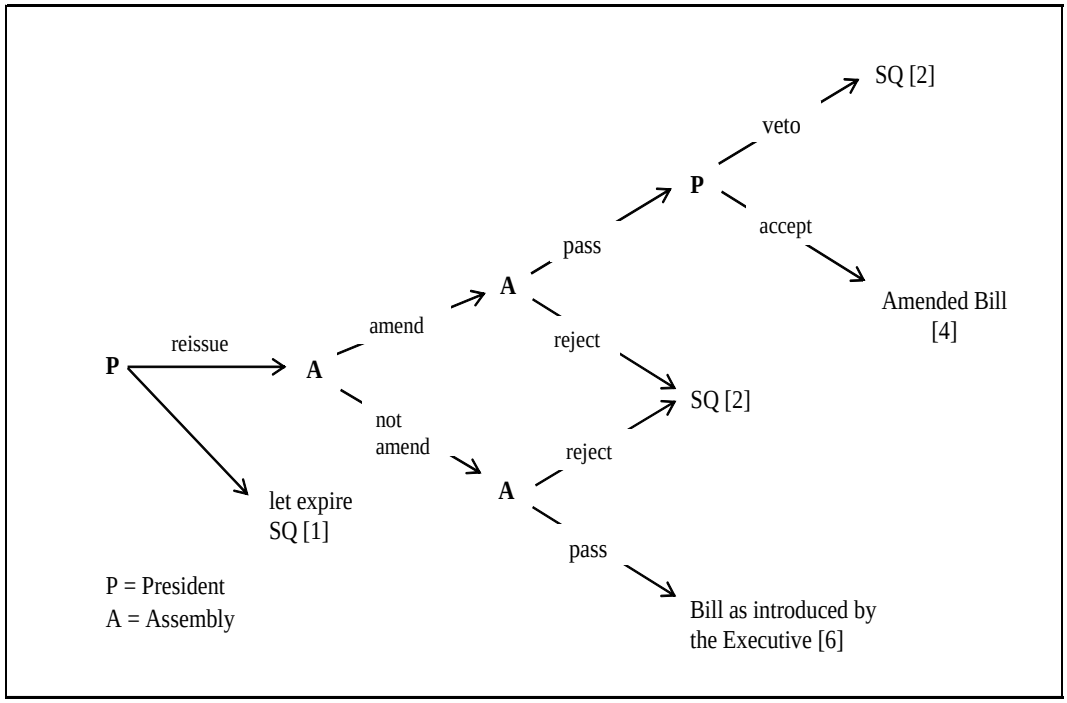

Figure 3.2: Reissuance Game after the Approval of Constitutional Reform No. 32/2001

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included a new article which established that decrees could no longer be used to regulate any amendments to the Constitution promulgated from 1995 onwards. Since then, 51 amendments have been promulgated.

[7] It is interesting to note that the first proposal to limit the use of decrees was introduced by Fernando Henrique Cardoso, himself, yet he fought against the reform for most of his two terms in office.

As shown in Figure 3.2, the reform created a new and different sub-game of decree reissuance. If a vote does not occur within 60 days, the president must decide whether to reissue the decree or allow it to expire. Thus, although the president can still change the status quo immediately, he cannot do so for more than 120 days unless he is able to gather enough support in both houses to pass it into law permanently. Since a floor vote cannot be avoided in the long run, an important change following the reform is the need for the president to engage in ongoing negotiations with a floor majority rather than with the party leaders who control the agenda.

3.3 Main Expectations

To describe the effects of the reform, I will first refer to what I call *direct effects* of the reform, and then the *substantive effects* of the reform. The direct effects of the reform are the changes in either the procedure or the strategy of the president, independent of the policy outcome. In particular, I refer to changes in the issuance and reissuance of decrees, changes in the number of approval votes for decrees, and changes in the agenda which result from the required approval of both houses. By substantive effects, I refer to changes in policy outcomes due to the reform. I take minimum wage policy as a running example.

3.3.1 Direct Effects of the Reform

Since the enactment of the reform, a floor vote of legislators is required for the final approval of a decree. Therefore, it can be expected that legislators will be roughly indifferent between the use of decrees and bills. The president, in turn,

anticipating the necessity of a vote, might work towards building a majority which would allow him to pass legislation. Thus, we could expect presidents who have the necessary support to use decrees as a default strategy (whenever there is no restriction on its use). Similar to the scenario prior to the reform, decrees offer the advantage to presidents of changing the status quo immediately and adds clean up costs if the legislature decides to return to the previous status quo. In other words, decrees still make it difficult for legislators to go back to the previous status quo. *As a consequence, decrees should not necessarily diminish in number or frequency.*

Since reissues are no longer permissible, we should expect changes in the agenda for both the House and Senate. Due to the required vote and the priority of decree conversion bills 45 days after the decree's issuance, we should expect to have a higher number of decrees waiting for a vote and debate, compared to the previous period. Adding this to the first expectation discussed on the number of decrees, I conclude that *it is expected that the House and Senate spends a greater percentage of their time discussing decrees.*

Finally, we should expect the success rate of the president to be affected by the reform. Since all decrees, both controversial and non-controversial require a vote, *we should see the legislature defeat the executive more often on the floor.*

3.3.2 Substantive Effects of the Reform

The purpose of the constitutional reform was to give Congress greater legislative power. As deputy and former President of the Chamber of Deputies Aécio Neves stated in his opening speech, legislators considered decree power to be a "blank

check" to the president from the legislature.[8] The three components of the reform – the limitations on policy areas, the change in legislative procedure and the change to explicit approval of decrees—were meant to give Congress the necessary instruments to exercise closer control over executive legislative activity. Thus, it was expected that tightening the procedures of oversight would result in ***greater*** *legislative influence in the drafting of policy*. Since a vote is required, the policy should better reflect the preferences of legislators. To test this expectation, I have chosen look at the negotiations over the minimum wage.

Currently, there are at least 64 million private, public, and retired employees in Brazil whose salaries and pensions are determined by the minimum wage.[9] With the return to democracy, the minimum wage policy became highly politicized, especially after the 1994 Plano Real, which implemented harsh measures to control inflation and a currency devaluation that reduced the real wage by 50%. Negotiations to adjust the wage level are a yearly ritual and give politicians a chance to "go public" on this issue.

The wage issue also has great salience because of its fundamental connections with policy areas entrenched in the Brazilian Constitution. The Constitution

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[8] "My principal campaign promise when accepting the candidacy for the Presidency of the Chamber of Deputies was to restrict and discipline the executive in its use of decrees, to help us recover the congressional legislative initiative. To achieve this ultimate goal, I have summoned today's session to begin the discussion of the project (Constitutional amendment) that limits the use of decrees. Decrees cannot become a "blank check" given to the executive power. (…) The respect I have for the President of the Republic and loyalty to my party should not – and effectively do not interfere – with my duties as President of the Chamber of Deputies. These duties are to defend, with all constitutional instruments available, the independence and dignity of the legislative branch…"*Aécio Neves (PSDB), President of the Chamber, 2000 – 2002*.

[9] The minimum wage in Brazil, as is true in other Latin American countries, has a very direct effect on the lives of Brazilians because salaries at all levels and pensions, are set in multiples of "one minimum wage."

establishes the minimum wage as the currency for most labor negotiations.[10] In an interview, President Fernando Henrique Cardoso explained:

> In Brazil this is a complicated matter. The minimum wage is used as a price index for all wages and social security benefits. You earn X number of minimum wages. Thus, the consequence of a pay raise for the poorest not only means closing the gap between high and low wages: The increment implies an increase in all wage structures including the skilled labor force, as well as more social security expenditures.[11]

Article 202 of the Brazilian Constitution establishes that no pension can be less than one minimum wage. The Constitution also mandates that the minimum wage be readjusted periodically to ensure people's ability to pay for a "shopping basket" (food and basic needs) that meets the standards for minimum consumption.[12] As a result, any increase in the minimum wage has strong implications for the annual federal budget, development planning, and most importantly, forecasting federal debt.

Negotiations over the minimum wage open a window of opportunity for the opposition to influence economic performance and redistribution. Over time, the president—independent from her/his party—has always preferred a modest raise (Zucco 2008). Legislators, on the other hand, are proponents of a higher minimum wage than the president wants, on average. Thus, the expectation is that after the

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[10] For a detailed analysis on the minimum wage effects in Brazil, see Neri and Leandro (2005).

[11] Translation by the author. "Salário minimo" (1995). "No Brasil a questão é ainda mais complicada. O salário mínimo é utilizado como indexador dos demais salártios e dos benefícios da Previdência. Ganhan-se tantos mínimos. Ao aumentar o mínimo não se eleva, portanto, apenas o piso e se reduz o diferencial entre os salários altos e baixos. Aumentam-se toda uma estructura de salários de mão-de-obra qualificada e os gastos de Previdencia.".

[12] Article 7, art IV of the Constitution establishes that the minimum wage, established by law, should be sufficient to cover the basic needs of the household including housing, food, education, health, free time, clothing, transportation and social security. "Salário mínimo, fixado em lei, nacionalmente unificado, capaz de atender às suas necessidades vitais básicas e às de sua família com moradia, alimentação, educação, saúde, lazer, vestuário, higiene, transporte e previdência social, com reajustes periódicos que lhe preservem o poder aquisitivo, sendo vedada sua vinculação para qualquer fim."

reform, *increases in the minimum wage are substantially higher compared to increases before the reform, holding other variables constant.*

In the next sections I present evidence that 32/2001 had important effects such as those described above. First, I provide evidence to demonstrate the direct effects of the reform and then I use data to illustrate the substantive effects of the reform. The evidence is consistent with the idea that the floor plays a bigger role in the second period where explicit approval is required. Finally, some negotiations that occurred both before and after the reform are compared.

3.4 Evidence for Direct Effects of 32/2001

3.4.1 Changes in Patterns of Introduction

Here I have suggested that the main advantage of using decrees prior to the reform when compared to regular bills was the possibility *of not having a floor vote.* Since the reform made a floor vote a requirement for decrees, the differences between issuing a decree and introducing a bill were greatly reduced. Although decrees have the advantage of changing the status quo immediately, they can no longer be sustained for an indefinite period without congressional consent. So, it would be expected that the executive would continue issuing as many decrees taking advantage of the immediate change of the status quo, while building a stronger floor coalition to convert decrees into law. In consequence, we would expect that the executive's patterns of introducing decrees would not change significantly after the reform.

To illustrate the differences and continuities in patterns of executive introduction, Figure 3.3 shows the counts per month of issued decrees, introduced bills

and complementary bills from January 1999 to December 2004.[13] The re-issue rate per year is also included, except for 2001, in which the regime changed. Comparing both periods, there is a noticeable difference in the patterns of introduction when considering the average yearly reissue. As has been argued here, reissues were an active avenue for implementing policy prior to the reform, and this is where the most significant difference is observed both before and after the reform. [14]

[13] The data used here follows the same format employed by from Pereira, Power and Rennó (2004). The database was built with the information available from the website www.camara.gov.br

[14] The period just after the reform was enacted requires some further explanation, as it is different from the trend we observe from 2003 onwards. If we observe the months after the enactment of the reform, Cardoso does not use decrees. As part of the deal struck when the reform came into effect, Cardoso and members of Congress agreed that the measures issued before the enactment of the reform could be re-edited indefinitely until Congress decided otherwise on a case by case basis. With the start of Lula's first term, the use of decrees is recommenced. As deputy Arnaldo Madeira (PSDB-SP) correctly argued in an interview in June 2001: "There is only 1 year and ½ left for the Cardoso government, and thus, few decrees to issue. The problem with the limitation of presidential power would be for future governments and not for the current".

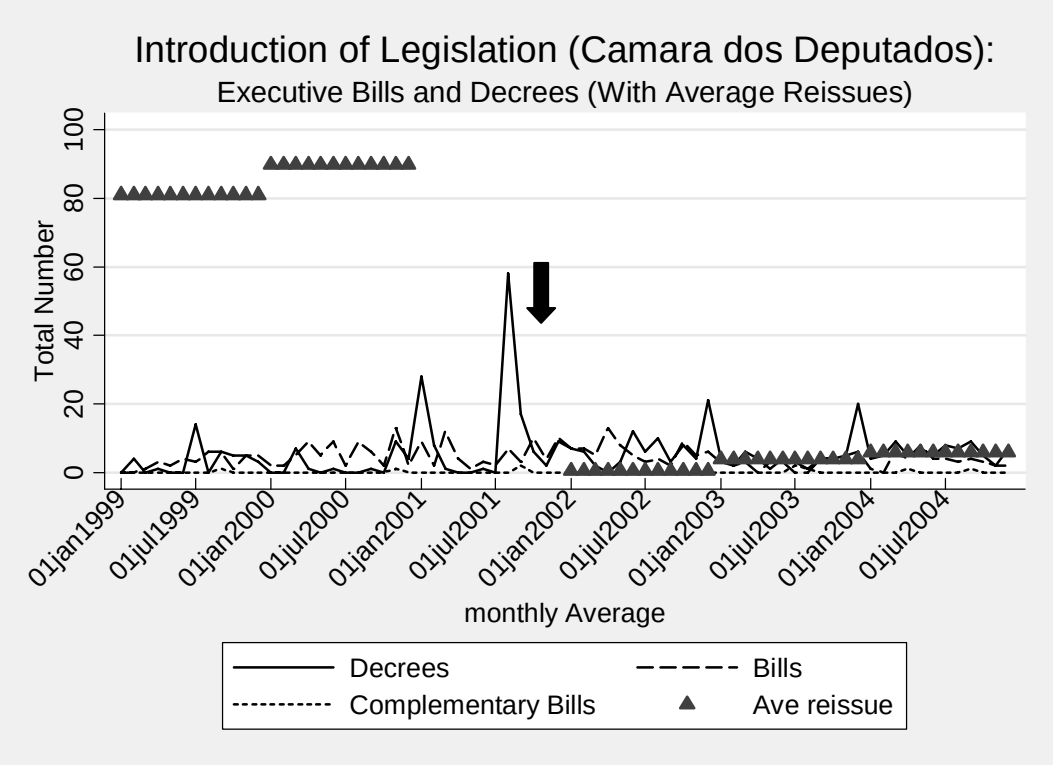

Figure 3.3: Introduction of Legislation (Câmara dos Deputados), with Average Reissues
Note: The information on the average reissue in 2001 is not available. Prior to the enactment of the reform, all decrees could be reissued indefinitely.

To extend the results from this four year monthly sample, the next table shows the frequency of decree reissuance during the two Fernando Henrique Cardoso administrations (1995-2002) and the first three years of Luiz Inácio da Silva (2003-2005) confirming the observed patterns (Table 3.1).

Table 3.1: Frequency of decrees (*medidas provisorias*) pre- and post-reform, 1995 - 2005

	Decrees Issued	Reissues without alterations	Reissues, with alterations	Percentage with a vote?	Transformed into law	Rejected/Archived
1995	30	408	86	150%*	45*	0
1996	39	609	69	38%	15	0
1997	33	683	71	94%	31	0
1998	55	752	228	29%	15	1
1999	45	973	108	73%	33	0
2000	25	1078	114	72%	18	0
2001****	130	831	na	14%	18	2
Total	357	762 (average)	676	31.37%	112	1
After the Reform		**1 additional Re-issue for 60**				
2002	82	6	0	100%	66	16**
2003	58	46	0	100%	57	1
2004	73	70	0	100%	66	7
2005	42	32	0	100%	35	7
Total	255	39 (average)	0	100%	354	33

*Includes decrees introduced from previous years, that is why the percentage of the vote is larger than 100%.

**Includes a veto from the president

*** Total number of decrees transformed into law over decrees issued for the first time.

**** The Reform is effective in September 2001.

Source: Amorim Neto and Tafner (2002) for years 1995 - 2001 and Camara dos Deputados website for years 2002-2005.

First, although there is not a substantial difference from year to year, more decrees were issued on average after 2002. The exceptionality of 2001 is also revealed. As it became clear that the reform was going to be approved, and to facilitate the transition from one regime to the other, the legislative majority conceded to the transformation into law of all decrees enacted prior to the ratification of the reform. Taking advantage of this in the months leading up to the approval, Cardoso enacted 72 new decrees, which clearly surpassed all decree activity in previous years.

Second, the number of reissued decrees clearly declined following the reform's passage. The average number of reissues fell from 750.5 before 2001 to 31.2

afterwards.[15] Also, it is worth highlighting that the percentage of decrees that were voted on, regardless of outcome, increased in the post-reform period. Prior to 2001, only 31.37% of all original decrees reached a vote; after the reform, 100% of the decrees had at least one floor vote. Similarly, the number of decrees converted into law almost doubles in the post-reform period, with a higher percentage voted down. This is not to say that Congress did not have opportunities to disagree with the president previous to the reform. The existence of open rule still allowed the consideration of the decree and its amendment (Reich 2002). Thus, the expectation that the reform did not change the patterns of introduction is confirmed. The president uses decrees as often as he did before, however the big difference is that he lost his ability to reissue a large number of decrees that would never receive a final vote. In the periods following September 2001 we see more of them being defeated in Congress since reissues are limited to one per decree.

Pereira, Power, and Rennó (2008) argued that the continuous use of decrees despite the enactment of the reform (and its increase as a percentage of all pieces of legislation introduced) is evidence of a more powerful president: "We stress that decree authority is only one form of presidential agenda-setting power, but since 2001 presidents have been able to use it more efficiently than before. The main reason is Amendment 32. Congress's attempts to create disincentives to decree authority was fruitless, because by forcing itself to take a rapid position—and allowing the

[15]Before 2001, decrees dealing with administrative issues (such as the reorganization of a ministry or financial regulation) were most frequently reissued, but some exceptions include cases of controversial policy (Amorim Neto and Tafner 2002; Negretto 2004).

trancamento da pauta [agenda cluttering] to become a routine part of legislative life—Congress reduced its own bargaining power and ceded further agenda control to the executive." Part of the argument made by the Pereira et.al relies on the assumption that the time restrictions imposed by the reform necessarily affect legislative bargaining capacity. Here I suggest that time constraints can favor the "terms of trade" for legislators. If the agenda is cluttered with executive decrees about to expire, legislators might benefit from the impatience of the president to keep his policy alive. Thus, the fact that the agenda is cluttered is further evidence that *the president can no longer arrange for an alternative avenue of no consideration and is in permanent need of congressional approval.*

When disentangling the effects of the reform, merely looking at the introduction of decrees and comparing them with the introduction of other pieces of legislation has a number of shortcomings (Pereira et.al. 2008). First, there is the implicit assumption that the president would choose only "one way" to enact policy, although there are no restrictions on using all possible avenues at the same time: he could issue a decree, or introduce a bill, or a constitutional amendment, or introduce various pieces of legislation, with different versions of the same policy. Also, for the purposes of the analysis, adding and subtracting different pieces of legislation is far from ideal. There is wide variation in length and relevance among bills, and needless to say, among decrees and constitutional amendments. Second, it is assumed that when a bill is introduced, the executive wants to get it passed. The cost of introducing a bill, complementary bill or constitutional amendment is not clear since it does not change

the status quo immediately, making it more difficult to believe the assumption that all items introduced are equally costly to introduce. Presidents might use pieces of legislation that do not immediately change the status quo for other strategic purposes such as to divert attention or play blame games.

To make all procedures comparable, and to complement the results obtained by looking at introduction patterns, the next section considers whether the composition of the House agenda changed following the reform. Analyzing the contents of the agenda allows us to quantify the priorities of legislators and the executive, without making the two assumptions above.

3.4.2 Changes in the House Agenda

Analyzing the agenda allows us to observe which items introduced are given priority in the policy-making process by the legislature and the executive. Floor time is a scarce resource and there are a limited number of sessions to debate and enact policy. Thus, if the goal is to implement policy, it is necessary to use this time efficiently. This is especially true for the executive branch which dominates the legislative process and historically has higher success rates compared to legislators (Cheibub, Przeworski and Saiegh 2004).

To determine if there was an observed change in the House agenda, I constructed a database by coding 100 random agendas from the period 1999 – 2004, from an approximate total sample of 500 sessions. For each session, all items debated during the session were coded by procedure and author. These variables were

aggregated to the month level by taking the average of all sessions in each month (some months have more sessions than others and certain months do not have sessions which caused some data points to be missing). For each session, the total number of items was calculated and used as the denominator to calculate the mean percentage of use of a certain procedure and the authorship per month (see Appendix 3.3).

To analyze whether there were significant changes in the agenda for the House, Table 3.2 shows the differences of means of items pre- and post-reform, differentiated by author.

Table 3.2: Change in the Agenda (Câmara dos Deputados), Percentage of Executive and Legislative Legislation

Mean Comparisons Across Periods (1999 - 2004)			
	Jan 1999-Sep 2001 (mean/ St. Error)	**Oct 2001 - Dec 2004 (mean/ St. Error)**	**T value/ P Value**
Mean of Executive legislation being discussed as a % of all items in the agenda	57% 0,06	74% 0,05	-2,24 0,02
Mean of legislative initiated legislation being discussed as a % of all items in the agenda	36% 0,06	25% 0,05	1,50 0,06

As can be observed, the results suggest that the reform reinforced the executive dominance of the legislative agenda. On average, executive-authored legislation went from being 63% to 77% of the items on the agenda. This is a rather important change in such a small period of time. More than three fourths of the agenda are executive agenda items, leaving little room for legislative initiatives.

Legislation initiated by the legislature became an even smaller portion of the post-reform legislative agenda, accounting for only 22% of agenda items in the post-reform period. This can be seen as a potential problem because legislators will progressively have less and less time for their own proposals if the executive's trend of issuing and reissuing decrees continues to increase as was seen in Figure 3.3.

Table 3.3: Change in the Agenda by Procedure (Câmara dos Deputados)

Mean Comparisons Across Periods (1999 - 2004)			
	Jan 1999- Sep 2001 (mean/ St. Error)	**Oct 2001 - Dec 2004 (mean/ St. Error)**	**T value/ P Value**
Mean of decrees being discussed as a % of all items in the agenda	0% 0.06	62% 0.05	9.3 0.00
Mean of bills being discussed as a % of all items in the agenda	39% 0.06	22% 0.04	2.22 0.03
Mean of complementary bills being discussed as a % of all items in the agenda	29% 0.06	1% 0.01	4.91 0.00
Mean of constitutional amendments being discussed as a % of all items in the agenda	17% 0.05	3% 0.01	4.17 0.00

Table 3.3 shows the difference in the agendas of the Chamber of Deputies during the periods before and after the reform by looking at the percentages of items differentiated by procedure (decrees, bills, complementary bills and constitutional amendments). As expected, there is a dramatic difference between the two periods. From not having the option to debate decrees in ordinary sessions, decrees became the

main items on the agenda in the post-reform period, averaging 65% of all items debated in each agenda. Prior to the reform, the Chamber's agenda mostly dealt with the deliberation and approval of regular and complementary bills, and constitutional amendments. From representing an average of 38% of the items in the agenda, bills went to an average of 18%. Equally, complementary bills which averaged 30% of the items in the agenda diminished significantly to an average of 1%.

Thus, the effect of the change to explicit approval further proves that due to the reform, the legislature has more options available to "keep tabs" on the president by making the president's day-to-day legislative introduction more dependent on congressional approval. It seems too, that in the long-term, due to the "cluttering" of the agenda by decrees, the president will be required to "find time" either by changing his patterns of introduction or by calling for more extraordinary sessions if he is interested in enacting other pieces of legislation such as complementary bills or constitutional amendments, which are so commonly needed to do policy in Brazil.

3.5 Aggregate Substantive Effects of the Reform

One could argue that even with the change of procedures, the end result in terms of policy outcomes could be potentially the same. In other words, it could be the case that the policy outcome before and after the reform would not necessarily be affected, due to the dominance of the office of the president and the powerful instruments that he holds (i.e. urgency, budgetary power) to control legislators. The reform in this case, would offer opportunities for legislators to further exploit those

resources that are made available through their relationship with the president. This study asserts, however, that a reasonable expectation is that the reform also had a substantive effect on policy outcomes. Since legislators have more opportunities to stop, delay or amend executive proposals, they take advantage of them.

To test this effect, minimum wage was chosen. Unlike most pieces of legislation, minimum wage is negotiated on an annual basis which provides an opportunity to control for "strategic entry". In other words, the president can choose the instrument with which to negotiate, but he does not have the option "to not introduce" any legislation on it. Thus, it offers a unique opportunity to see the president's strategic behavior and the policy outcome can be measured. First, I present evidence from empirical tests on the eleven years of negotiation analyzed. Next, I describe in more detail each negotiation, to illustrate the quantitative aggregate findings.

To test whether the minimum wage negotiations between 1995 - 2004 reveal any substantive effects of the reform, I collected all executive and legislative bills introduced that dealt with the setting of the minimum wage from 1994 - 2004. With the exception of bills that proposed the indexation of the minimum wage to inflation or productivity indicators, most of these bills introduce a specific minimum wage proposal, and calculate the difference between the proposed minimum wage by the executive and the one enacted covering the period from 1994 - 2004. It is assumed here that legislators (especially those in the opposition, but not exclusively) are in favor of a higher minimum wage and that presidents prefer no or more modest

increases (See appendix 3.2 and 3.4 for initial and final values). Do the changes brought about by the reform mean that legislators will achieve a policy closer to their preferences (a higher minimum wage)?

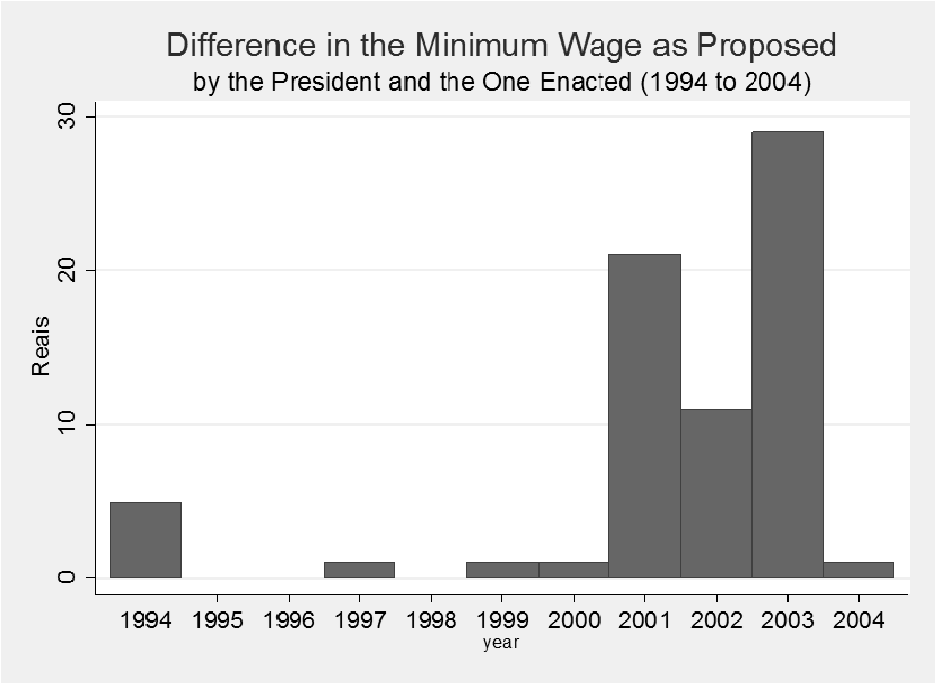

Figure 3.4: Difference in the Minimum Wage as Proposed by the President and the One Enacted, 1994 – 2004 (In *Reais*).
Source: Author, elaborated with data from bills introduced in the legislature, available at www.camara.gov.br, and newspaper archives from *Folha Online.*

A comparison of pre- and post-reform years in Figure 3.4 shows that the gap between the proposed and enacted minimum wage was smaller before 2001, with the exception of 2004, confirming that there is a substantial increase in the period after the reform at least in this policy area.[16] A difference of means test supports the significance of the pre- and post-reform differences (Appendix 3.1).

[16] Since the Chamber and Senate debated and approved decrees in separate sessions after 2001, and the Senate was controlled by the opposition, the proposed minimum wage increase from the Senate became

To analyze the differences in legislative introduction in this policy area, the first column of Table 3.4 shows the number of executive bills concerning the minimum wage and the second column shows the frequency by which the minimum wage was established through decree. In terms of minimum wage legislation, there is not a striking difference between the pre- and post-reform periods, consistent with the aggregate results previously discussed. There is a near significant difference, however, in the frequency with which the bill got to the floor. Prior to the reform, the president and the congressional leadership were able to negotiate the minimum wage decree without going to the floor. After the reform, the decree always reached a floor vote. A difference of means test shows a significant change in the number of decrees and bills introduced to regulate or set the minimum wage compared to the pre-reform period, signifying the existence of more credit-claiming on behalf of legislators.

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a take it or leave it offer. Since the Senate amended the decree to a non-credible level, the Chamber had to revert to the initial proposed price.

Table 3.4: Legislative Output on the Minimum Wage, 1994 –2004

	Executive bills	Decree	Legislative Bills	Got to the floor?
1994	1	0	3	1
1995	1	0	4	2
1996	0	1	1	0
1997	0	1	1	0
1998	0	1	1	0
1999	0	1	8	0
2000	0	1	6	1
2001	1	0	8	1
2002	1	0	2	1
2003	0	1	6	1
2004	0	1	17	1

Source: Author's calculations, from data collected at www.camara.gov.br for bill initiatives and www.presidencia.gov.br for decrees.

Thus, although issuing a decree is still a dominant strategy (all else being equal, there are additional costs if the enacted decree reverts to the previous status quo), anticipating that Congress will have a greater probability of amending the decree generates incentives to introduce bills or decrees that might offer potentially valuable bargains to both sides. In the post-reform period, the decree strategy became more complex as the floor, including opposition parties, now had a role that previously the president could avoid altogether by using the reissuance strategy. As a result, although the president is still the primary agenda setter and has an important advantage in terms of the ability to unilaterally change the status quo, the probability is increased that the policy outcome will be closer to the preference of the median legislator. This confirms the initial expectation that a change in procedure can also affect the policy outcome.

3.5.1 Negotiations over the Minimum Wage

To illustrate the effects of the reform, I describe the negotiations before and after the reform. This section provides more detail about the motivations for the president's choice to introduce a bill or a decree and how the strategy changed during the administrations of both Cardoso and Luiz Inácio Lula da Silva (henceforth Lula) after the legislature's approval of the reform. The different negotiations show that the cohesiveness of the president's coalition (understood as the amount of parties in the coalition and their diversity) is crucial for the president to enact his preferred policy.[17] In both the pre-reform and post-reform period, the president requires at least the consent of the members of the Board of Directors. While in the pre-reform period, this consent is sufficient to keep the policy off the agenda. In the post-reform period, the president is required to consider negotiations that involve the floor. Consequently, concessions from the executive to the legislature are both in the form of side-payments and in terms of the policy outcome.

3.5.1.1 Bargaining Within His Own Coalition: Cardoso and the 1995 Negotiations

The president and Congress got off to a rough start in negotiating the minimum wage. During the first week of January, just after Cardoso's inauguration, opposition PT (Partido dos Trabalhadores) Deputy Paulo Paim introduced a bill raising the minimum wage from $79 *reais* to $100 *reais*. On January 24, after the bill had been passed by the Chamber and the Senate, Cardoso threatened to veto it. Cardoso had

[17]See Appendix 3.5 for the Size and Partisan Composition of the Coalitions of the whole period.

been the Finance Minister in the previous government, and had successfully implemented the Plano Real, a policy package to stabilize the macroeconomic indicators. The proposed raise was a threat to the recently achieved stability. Nonetheless, Paim's minimum wage bill passed, and the executive veto was issued on February 8. Although Cardoso had won the presidency with a well-sized coalition, his own leaders in Congress would give up the opportunity to get a better bargain in this negotiation. [18] On February 10, Antonio Carlos Magalhães, deputy and speaker of the House, announced that his party, Partido da Frente Liberal (PFL), a member of the governing coalition, would vote against the presidential veto on the grounds that it was unconstitutional to lower anyone's wages. On February 16, the Partido Progressista (PP) announced that it would do the same.[19] Discussions to rally enough support to override the veto continued, while Cardoso made multiple appearances to explain why he had vetoed the bill and to promote five constitutional amendments that he recently proposed. Primarily, he argued that any change in the minimum wage had to be preceded by a profound social security reform to ensure the continuance of economic stability. Although the veto override was unlikely to pass, Cardoso was quick to offer Congress an alternative proposal to avoid delays in his other proposals. Given that even leaders in his coalition wanted an increase, the route *of no consideration* was not viable.

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[18] The parties forming the coalition were the PMDB (107 seats), the PSDB (61 seats), the PFL (89 seats), and the PTB (31 seats). He also had a comfortable majority in the Senate. At the end of September 2002, parties in the presidential coalition had gained 21 adherents, representing 61% of the Chamber.

[19] "Congresso herda "entulho" Legislativo," in *Folha*, February 20, 1995.

On February 23, Cardoso proposed an adjustment to minimum wage in May, which he anticipated to be close to a 30% increase, from $79 *reais* to $ 91 *reais*. As a trade-off for this capitulation and to reduce the strain on the national budget, he also introduced a bill to end minimum wage indexation for social security payments. Legislators immediately protested leading to the offer of a new deal.[20] On March 6, Social Security Minister Reinhold Stephanes publicly announced another bargaining attempt by proposing an increase to $100 *reais* (effective in May) that would apply only to those employees and retirees who earned one minimum wage. Unions protested again, but the agreement started gaining some momentum.[21]

Finally, on March 16, the executive introduced one bill that combined social security reform and the minimum wage increase. Congress immediately considered it and it went to the committees on Labor and on Social Security, which proposed 55 amendments. Deputy Paim was named the bill's special rapporteur and he proposed a larger increase to $105.70 *reais*, with an incremental increase to $180 *reais* by May 1996, and a raise of 42.5% in payments to pensioners from the *Instituto Nacional do Seguro Social* (National Social Security Institute, INSS), among other amendments. This meant an estimated additional cost of $125 million *reais*. Cardoso, aware of the position of the special rapporteur, opted to delay debate on social security and focus

[20] The end of the indexation would imply that only employees or retirees who earned just one minimum wage were eligible for the increase and not others who earn incremental "minimum wages".
[21] These protests were motivated by the fact that most wages and pensions are set in multiples of the minimum wage. Simultaneously, Cardoso issued a decree transferring $5 billion from the Social Security account to finance the public deficit. Since he had justified his minimum-wage bill veto with the argument that the Social Security Account did not have enough funds to finance the increase, the PMDB leadership rejected the government's strategy and publicly questioned it.

instead on the minimum wage.[22] In addition, to counteract Paim's report on the bill, Cardoso issued an urgency petition that enabled him to take the bill directly to the floor, where leaders of his coalition controlled the Board of Directors and would ensure the bill got through. The opposition parties scored some points during the plenary session, by winning procedural votes that allowed for deliberation and voting on the bill article by article.[23] Paim also announced he would give up the idea of having two bills if the executive agreed to remove the most controversial proposals calling for an increase in social security contributions.[24]

The government responded immediately. Social Security Minister Stephanes agreed to the 42.5% increase to pensioners, in exchange for an increase of 2% in social security contributions from those who earned more than five minimum wages. This offer was accepted by Paim, and deliberations on the floor resumed.[25] On April 19, the government introduced an "urgencia urgentíssima" (which translates as the most urgent of all urgent matters) to further expedite the floor vote. By approval of an absolute majority of the Chamber (or the support of its leaders, which amounts to the absolute majority), rules were suspended, except for those requiring a quorum, the

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[22] At that time, more than 17 alternative proposals had been introduced in the Chamber and Senate.

[23] During that same plenary session, the "ruralists" won support, even within the government's coalition, to override an executive veto on the elimination of the indexation of agricultural products. The next day, Cardoso retaliated by suspending all rural loans issued by the central bank, Banco do Brasil.

[24] At the time, each economic sector had its own social security deduction regime. The government's goal was to unify this multiple-regime system, replacing it with one in which most workers would have a fixed percent of their salary deducted as a social security contribution, with exceptions for progressive taxation.

[25] The PT attempted to further delay the negotiations by arguing that parts of the bill still needed to be discussed. On April 13, it was announced by the leaders of the governing coalition that there would be no more negotiations and any remaining disagreements would be decided during the floor vote. "Projeto do mínimo será decidido no vote. Líderes dos partidos que apóiam o governo rejeitam a reabertura de negociações defendida pelos petistas," in *Folha*, April 18, 1995.

presentation of reports, and publications. The bill went to the top of the agenda. Finally, after 33 final passage votes (they voted on a large number of articles separately from the original), the bill made its way to the Senate.[26]

The bill was approved on April 16 in the Senate by the leaders' symbolic vote.[27] On April 27, the president signed the minimum wage increase and a pension reform that was substantially diluted down from the original, with these changes becoming effective on May 1, which is Labor Day.

3.5.1.2 A Strong Coalition: Cardoso and Party Leaders from 1996 through 1999

After the struggle of getting the minimum wage approved in 1995, Cardoso had achieved a stable deal within the government's coalition, so the 1996 negotiations over the minimum wage represented a continuation and protection of the status quo established in 1995. In January, the government signaled its desire not to increase the minimum wage's real value.[28] The leader of the House, Luiz Carlos Santos (PMDB), supported the government's policy, arguing that any increase had to be preceded by the enactment of further social security reform.[29] However, the position of legislators within the coalition was not homogeneous.

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[26]During the floor session, and as a strategy to delay the vote, 15 new amendments were introduced (from the PTB, PDT, PL, and PT), of which only two would pass. The default floor vote procedure is to vote on the bill as a whole, but legislators can introduce motions to divide it. Deputy Jacques Wagner (PT) presented a general motion to divide the bill into two votes—separating minimum wage and social security—but it failed (139 in favor; 339 against), because only the opposition parties, the PT and the PDT, supported it.

[27] A symbolic vote occurs when leaders declare publicly the position of their bloc without the need for a nominal vote.

[28]"Mínimo pode ficar sem aumento real," January 11, 1996. (*Folha* archives).

[29] "Para líder, aumento do mínimo requer reforma," January 12, 1995 (*Folha* archives).

From January through March, the government actively negotiated jointly with legislators who opposed the reform and with the *Central Unica dos Trabalhadores* (CUT), an organization that represents Brazil's most important unions. In addition, and as part of the government's strategy, the finance minister, Pedro Malan, made the possibility of any raise conditional on an increase in worker's social security contributions. Earlier in the year, companies who were in arrears in paying the INSS for contributions had made arrangements to liquidate that debt. By conditioning the increase to the fulfillment of that commitment placed responsibility on those companies while diverting some of the pressure from the executive.

Nevertheless, several times, the opposition attempted to bring the minimum wage debate to the floor, mainly by introducing alternative bills. Both Cardoso and Santos tried to stop all debate. As a result, coalition members from committees discussing the opposition bills strategically abstained to withhold the committee quorum needed to debate the bill.[30] Consequently, the only avenue left for the opposition was judicial review, by asking the *Supremo Tribunal Federal* (STF) to decide on the constitutionality of raising the minimum wage to a level that would not even meet the rise in inflation. However, the Court did not hand down a decision.

On May 1, 1996, Finance Minister Malan announced the enactment of a decree increasing the minimum wage to $112 *reais*, which included a variation on the rules

[30] "Parlamentares governistas boicotam a instalação da Comissão Mista do Congresso que precisa ser criada para discutir a MP. Ontem, pelo segundo día consecutivo, a comissão deixou de ser instalada por falta de quórum. Nova tentativa de abertura foi marcada para a próxima terça feira. Essa data, noentanto, coincide com o prazo limite para funcionamiento dela. (...) O governo vai reeditar a MP como bem quiser e, com isso, también consegue seu objetivo: administrar e legislar ao mesmo tempo" (*Folha* Archives). See also, "Massacrados pela maioria governista no Congresso, os partidos da oposição estão recorrendo cada vez mas ao STF" (*Folha* Archives).

governing the setting of the minimum wage. By law, the minimum wage level had to be set and enacted by May 1 of each year. This decree overruled that, and not surprisingly, the CUT organized protests that very day, supported by the PT, PDT, the PC do B, and PSB opposition parties. Opposition leaders also met with the president of Congress, José Sarney (PMDB-AP), to request a vote on the decree. They introduced more than 66 amendments to a bill introduced by Deputy Paim (PT). However, in the end, the committee was never able to meet due to the lack of a quorum. The president's coalition was successful in blocking consideration of the minimum wage decree and continued its reissue every 30 days after that.[31]

During the next three years (1997, 1998, and 1999), minimum wage negotiations would follow a very similar pattern to the one established in 1996. The minimum wage was set by reissuing the same decree from 1996 after adjusting for inflation (7% in 1997, 0% in 1998, and 5% in 1999).

3.5.1.3 Credit Claiming and Elections: The 2000 Negotiations

Although the government's coalition remained essentially unchanged, 2000 was an election year (local elections), and parties, both within and outside the coalition, were interested in advertising their platforms. The negotiations over the minimum wage in 2000 demonstrate again how, even if the president decided to issue a decree, he required the support of coalition leaders to pursue his reissuing strategy.

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[31] Although President Cardoso was effective at preventing consideration of the minimum wage, he had a very difficult time when it came to getting essential votes on the constitutional amendment to reform social security, which was first rejected by the Chamber on March 6. Fearful of losing the floor vote, the president pressured members of his coalition to strategically abstain in order to buy time for further negotiations within his coalition. On April 29, he created a new ministry in charge of political coordination in the hopes of unifying the executive's strategy in its negotiations with Congress.

More importantly, the 2000 negotiations demonstrated the importance of floor votes to legislators interested in sending signals to their electorate.

Beginning in early February, the PSDB and the PFL, which were part of the governing coalition, started pushing the executive to take more aggressive action to increase the real value of the minimum wage. Adding to the pressure, the PFL, which had lost its majority in the Senate (but still had Antonio Carlos Magalhães as Senate president), publicly announced that it would start acting more independently from the government, and introduced a bill to make the minimum wage equivalent to $100 US dollars (which was at the time the equivalent of $177 *reais*). Cardoso threatened to veto. In the cabinet, Social Welfare Minister Waldeck Ornélas (PFL) tried to find some middle ground between his leader's position and the president's, and declared that a 10% increase in the minimum wage was possible if Brazil's anti-poverty fund could be used. The proposal was not well received by PFL leader Antonio Carlos Magalhães.

To isolate the rank and file and Congressional leaders of the PFL, the president negotiated with the PSDB and PMDB to gain their support on the 10% proposal (equivalent to $151 *reais*). He also delayed the vote on a bill regulating wages for public employees. Due to declarations made by Magalhães, Cardoso feared possible retaliation by the PFL in the Senate. Thus, to minimize the debate time on the decree, he publicly announced that the minimum wage increment would be effective in April, not May. Cardoso's strategy to isolate the PFL worked, and by the end of March, Magalhães and the PFL had no other option than to accept the $151 *reais* proposal.

Due to the pressure for a floor vote on the issue within his own coalition and outside, Cardoso promised to hold a vote on the decree on March 26. However, PFL leaders realized that Cardoso could reissue the decree again, thereby losing momentum for debate. As a solution, they conditioned their support for the minimum wage of $151 reais to the passage of a bill that would allow states to establish a higher minimum wage.

In response, Cardoso supported the bill on state-defined minimum wages, while threatening to kick defectors on the minimum wage vote out of his cabinet. He also agreed to immediately disburse money to make certain legislators' budgetary amendments effective.[32] The decree to set the minimum wage at $151 *reais* was finally approved in a floor vote with 98 defections from the governing coalition (306 in favor, 184 against in the Chamber of Deputies, and 48 in favor and 20 against in the Senate).

3.5.1.4 The 2002 Minimum Wage after the Reform: Policy and Pork Exchanges

The Annual Budget bill determines the estimates for total revenue and fixed expenditures for the following fiscal year (Pereira and Mueller 2004). It must be introduced no later than August 30 and must be approved by December 15. As any legislation, there is an open rule for its approval, although with certain restrictions:

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[32] See Pereira and Mueller (2004, p. 797): “Even after the budget including the amendments has been approved, the actual appropriation of the programs and projects in the budget is not guaranteed. It is the executive who is in charge of paying out the resources for the expenditures specified in the budget. It so happens that in deciding when and how much of the resources will be paid, the executive is allowed a very high degree of discretion. This allows him or her to strategically choose which congressperson's amendments will actually be appropriated and which will be shelved despite having been approved.” See also “Governo cedeu a pedidos de parlamentares que ameaçavam votar contra a medida provisória que estabelece novo valor. Congresso aprova salário mínimo de R$ 151," in *Folha* ONLINE, May 11, 2000.

legislators cannot introduce amendments exceeding the budgetary revenue and each legislator is limited to amendments that do not exceed $2 million *reais*.

Within the budget, there is always an initial estimate of the minimum wage for the following year. Since the limitation on reissuing decrees was already in place, Cardoso attempted to negotiate the minimum wage within the Annual Budget bill instead of making a tentative proposal subject to change, as had occurred before.

As it was customary, the opposition did not concur with the government's proposal and demanded a higher increase. In exchange for a higher minimum wage, opposition legislators from the PT and other left-leaning parties took advantage of their right to propose individual amendments to the budget and relinquished it in exchange for the allocation of those resources to fund a higher minimum wage. By making this trade-off, they would also be able to claim credit for the wage increase along with the government. Since it is up to the executive's discretion to disburse the funding mandated in amendments (as mentioned before, each legislator has a $2 million *reais* limit), the benefit for the PT as a whole was high and the individual price to rank and file legislators was less since they most likely would never see their amendments executed. Thus, the existence of the vote facilitated the existence of a bargain for the opposition, which would not have occurred in a scenario previous to the decree reform.

3.5.1.5 Lula's strategy: Amended Decrees with a Fragile Coalition

Since the PT had always supported a higher minimum wage, in his campaign, Lula had no choice but to continue supporting an increase in the real value of the

minimum wage, even if he knew the proposal was difficult to maintain. Although he did not go as far as the left-leaning PSB presidential candidate Antonio Garotinho, who had proposed doubling the minimum wage immediately, Lula campaigned for a 20% increase to $240 *reais*, which was openly supported by most of the parties in the Chamber in 2002. To make this increase feasible, Congress enacted a bill creating a Contingency Fund of $2 billion *reais*. Cardoso vetoed it.[33]

Immediately after the presidential election, on October 27, the PT announced that the 20% increase was not realistic. Instead, the newly elected president proposed a 10% increase. This generated a crisis within the "not even been sworn into office" coalition. It was to be expected that the opposition parties (incumbents in the presidency) would take advantage of this situation, which they did.

To expose the inherent contradictions within the government's coalition, the PFL placed on the agenda a bill introduced months earlier by Paulo Paim (PT), proposing a minimum wage of $250 *reais* to the Labor Committee. On November 7, 2002, two weeks after the election was held, the PT, PL, PDT, and the PCdoB (all members of Lula's coalition) had no choice but to vote against the proposal. President-elect Lula accused the opposition of playing dirty, and decided to postpone the minimum wage negotiations to May, instead of continuing Cardoso's strategy of using the budget bill to achieve a consensus. Lula and his economic team wanted to buy time and decided to wait until April to announce their proposal. In the meantime, Cardoso's government approved an increase of 5.5% in the budget, equivalent to $211

[33] "FHC corta verba que seria usada para reajustar o salário mínimo em 2003," in *Folha Online*, July 27, 2002.

reais. Over the months of January and February the government proposed a 17% ($234 *reais*) increase effective in May, and members of the governing coalition rejected the proposal as well as the opposition.[34]

After going back and forth within the governing coalition, Lula finally issued a decree on April 1, 2003, setting the minimum wage at $240 *reais*. The decree was immediately put at the top of the congressional agenda. Although the opposition (particularly the PFL and the PSDB) proposed $260 *reais,* and was able to delay the final vote in the Chamber and Senate for three weeks, the conversion bill was passed into law on June 25, 2003, with the minimum wage set at $240 *reais*.

The fact that he submitted a minimum wage proposal for $240 *reais* signified an important departure from the initially proposed 10% increase. A negotiation within the governing coalition was necessary for a floor vote to succeed, which meant that it was important to develop a proposal that satisfied other parties within the coalition.

Lula faced even tougher opposition in the 2004 negotiations. Lula's initial proposal was an increase to $260 *reais,* and yet again, members of his coalition introduced bills advertising alternative proposals of $280 *reais*. The Senate, controlled by the opposition—and with the help of some discontented members of the governing coalition— approved an amendment to the conversion decree that raised minimum wage to $275 *reais,* arguing that they were only helping Lula fulfill his campaign promises. The decree returned to the Chamber, and after a very intense use of

[34] "'O presidente disse que essa é uma decisão política e que só será tomada em abril. O mínimo só vigora a partir de 1º de maio, vocês [jornalistas] querem antecipar, vocês são muito pessimistas', afirmou o ministro-chefe da Casa Civil, José Dirceu" in "Valor de mínimo não está definido," *Folha Online*, February 12, 2003.

patronage, the Chamber approved the initial version of the decree of $260 *reais*.[35] It was argued in the news that Lula was paying the price for not supporting a constitutional amendment that would allow the presidents of both the Chamber and Senate to run for reelection.

3.6 Conclusions

One of the main objectives of Constitutional Amendment No. 32/2001 was to regulate the reissuance of decrees by forcing all of them to be considered by the legislature after only one reissuance. *The analysis here showed that the legislative support needed to sustain indefinite reissuance of decrees is less than the support needed to convert a decree into law*. As was demonstrated by the minimum wage negotiations, one of the consequences of the reform was the existence of more inter-branch bargaining due to the anticipation of a vote. This has empowered the floor majorities. Furthermore, this analysis suggests that the legislative success in this case had more to do with the legislator's capacity to negotiate within the legislation introduced by the executive, than with patterns of introduction.

The reform also created further incentives for the president to govern via decree whenever bills and decrees can be used interchangeably. Since legislators know that their vote is required for the final approval of a decree in the post-reform period, it can be expected that legislators will prefer the use of bills, but will be more indifferent between the use of decrees and bills compared to the previous period. The president,

[35] The leaders of the Chamber and Senate have a two-year term, with no possibility of reelection. See "Emenda, já rejeitada uma vez, não teve respaldo público do presidente. Lula paga preço de crise e deve apoiar reeleição no Congresso," June 20th, 2004, in *Folha* Online.

in turn, anticipating the occurrence of a vote, might work towards building a majority which would allow him to pass legislation. Thus, to approve a piece of legislation, presidents should use decrees as a default strategy. As I have shown here, presidents often used decrees both before and after the reform. Nonetheless, the enactment of decrees no longer means circumventing the legislative majority.

The reform had a significant impact on the legislative agenda. After the reform, decrees automatically enter the agenda of the Chamber and Senate in ordinary sessions. As a consequence, the agenda of the Chamber reflects the "day-to-day" politics due to the frequency of decrees. This fact, jointly with the frequency of decrees, might affect the president in the long-run—as he is clogging his own agenda—by not providing sufficient time for other legislative business. Further research is required to determine if there is an increase in the number of plenary sessions in order to adequately deal with the time constraint.

The analysis of the minimum wage suggests that the reform had substantive effects regarding the influence of legislators to affect the policy outcome. Once all decrees had to go to a floor vote to remain in effect, the president's strategy had to change, to include anticipation of the floor's reaction to any of his policy proposals. The trade-offs involved in deciding whether or not to use a bill versus a decree also changed. Since decrees are closer equivalents to bills issued by the executive with urgency petitions attached (although note that in some cases the fact that decrees immediately change the status quo is still an important legislative prerogative), to obtain results that

are closer to his preferences, the president might prefer to engage in multidimensional logrolls instead of dealing with separate pieces of legislation.

Appendix 3.1: Minimum wage, nominal and real (1995-2004)

Table 3.5: Minimum wage, nominal and real (1995-2004)

Month	Set Minimum Wage	Consumer Index Price	Real Minimum Wage (1994 base year)
1/1/1995	70	111	63
5/1/1995	100	122	82
5/1/1996	112	148	76
5/1/1997	120	160	75
4/1/1998	120	167	72
5/1/1999	136	173	79
4/1/2000	151	185	82
4/1/2001	180	197	92
5/1/2002	200	213	94
5/1/2003	240	248	97
4/1/2004	260	259	100

Appendix 3.2: Coding of the Legislative Agenda

The diverse procedures coded were: constitutional amendments, complementary bills, bills, decrees, congressional resolutions (reforming the Rules of Procedure), and congressional decrees, which are mainly treaties. For the purpose of this paper, only the first four categories are disaggregated. To code the author of each piece of legislation, three categories were used: executive, legislators, and others. The judicial branch or agencies in the bureaucracy, such as the Supremo Tribunal Federal or the Ombudsman Office, can introduce legislation too, but this scenario is rare. All of these belong to the "others" category.[36]

As an example to understand the coding process, observe session, id No. 49 in Table 3.7. There are three items that were discussed, from which 66% are bills, and 66% of them are authored by legislators.

Table 3.6: Example of the Agenda Dataset

id	Date	Order	Item Identifier	Item_Procedure	Executive	Legislator
1	1/19/1999	1	PL 3651/1997	Bill	1	0
1	1/19/1999	2	PL 2960/1997	Bill	1	0
2	2/24/1999	1	PLP-149/1997	Complementary Bill	0	1
2	2/24/1999	2	PL 4690/1998	Bill	1	0
3	3/16/1999	1	PRC 5/1999	Resolution	0	1
49	9/18/2001	1	PL 4941/2001	Bill	1	0
49	9/18/2001	2	PRC-106/1992	Resolution	0	1
49	9/18/2001	3	PL-2763/2000	Bill	0	1

[36] Also, since in Brazil institutions of Congress such as the Mesa Diretora, or any permanent committee can also introduce legislation, these were added together with the category of individual legislator.

Appendix 3.3: Summary of the Minimum Wage Negotiations

Table 3.7: Summary of the Minimum Wage Negotiations

Year	Immediate vehicle	Additional Dimension?	Election Year	Average Coalition Size	Initial Wage Level	Final Wage Level	Other Concessions	Diff President's Popularity
1994	decree (reissued once)	Social Emergency Fund	National	55%	65	70	One -time Bonus $15/ later 8% raise	NA
1995	Paim's bill vetoed			68%	100	100		1%
1995	Bill	Social Security Reform		68%	91	100		1%
1996	Decree		Local	77%	112	112		-11%
1997	Decree	Regionalization of Minimum Wage		77%	119	120		-6%
1998	Decree		National	77%	120	120		-7%
1999	Decree			72%	135	136		-5%
2000	decree (amended)		Local	72%	150	151	Promise to Increment	1%
2001	Budget	Bank Secrecy Bill, Tax Evasion Bill		72%	159	180		-7%
2002	Budget	Parliamentary Amendments	National	45%	189	200		-6%
2003	Decree	Parliamentary Amendments		47%	211	240		-1%
2004	decree (3 rounds)	Not Endorsing Reelection of Directing Boards	Local	62%	259	260		0%

Appendix 3.4: Size and Partisan Composition of Government Coalitions, 1992 - 2004

Table 3.8: Size and Partisan Composition of Government Coalitions, 1992 - 2004

	Itamar Franco			Cardoso, I Term		Cardoso, II Term		Lula, First Term	
Begginning date	Oct-92	Aug-93	Jan-94	Feb-95	Apr-96	Dec-99	Mar-02	Feb-03	Jan-04
Finishing date	Aug-93	Jan-94	Dec-94	Apr-96	Dec-98	Mar-02	Dec-02	Jan-04	Dec-04
	0	0	0	0	0	0	0	0	0
PFL (Partido da Frente Liberal)	86	86	89	89	99	105	0	0	0
PMDB (Partido do Movimento Democrático Brasileiro)	101	101	94	107	97	84	89	0	78
PR (Partido da República)	16	0	0	0	0	0	0	0	0
PSB (Partido Socialista Brasileiro)	9	0	0	0	0	0	0	22	20
PSC (Partido Social Cristão)	4	3	3	0	0	0	0	0	0
PSDB (Partido da Social Democracia Brasileira)	45	47	48	61	85	99	94	0	0
PTB (Partido Trabalhista Brasileiro)	27	29	0	31	28	31	0	28	52
PPB (Partido Progressista)	0	45	46	0	87	60	49	0	0
PT (Partido dos Trabalhadores)	0	0	0	0	0	0	0	91	90
PCdoB (Partido Comunista do Brasil)	0	0	0	0	0	0	0	12	10
PDT (Partido Democrático Trabalhista)	0	0	0	0	0	0	0	21	0
PL (Partido Liberal)	0	0	0	0	0	0	0	0	43
PPS (Partido Popular Socialista)	0	0	0	0	0	0	0	15	20
PV (Partido Verde)	0	0	0	0	0	0	0	5	6
Percentage of Seats	57%	62%	56%	56%	77%	74%	45%	43%	62%

Source: Fernando Limongi, Data from CEBRAP. The number of seats are counted at the beginning of the coalition. Some parties might differ in numbers due to the occurrence of party switching within a presidential term.

4. Electoral Incentives versus Presidential Powers: The Effect of the Constitutional Reform of 1991 on the Plenary Agenda in Colombia

Abstract:

Shugart (1998) illustrated the existence of a negative correlation between the constitutional and partisan powers of the president, and suggested that executive constitutional power was endogenous to the legislature's electoral incentives. But what happens when the constitutional powers of the president change while the electoral incentives remain the same? Analyzing the effect of the 1991 Colombian reform—which substantially decreased presidential powers but did not change its personalistic electoral system—the objective of this paper is to test the opposite causal relationship and see whether the reduction in the president's ability to use decree power transformed the parochial Colombian legislature into a more pro-active and workable one, despite the lack of changes in the electoral system. Analyzing the composition of the agenda from 1979 to 1998, the results show that the limitation of decree power had an initial effect on legislators' incentives, changing the proportion of agenda items dedicated to national policy from an average of 57% of nationally-oriented bills to 73% in the post-reform period. Nonetheless, from the analysis of the two presidential periods after the reform, it would seem that the initial push for a more national agenda decreased over time, due to increasing fragmentation and the lack of incentives to work programmatically in the electoral arena.

4.1 Introduction

In the study of presidential regimes, the question of who has responsibility for national policy has been of perennial interest. In theory, the president, elected by a national constituency, has the greatest incentive to enact national policy/public goods. Legislators' incentives to work on national policy depend on the benefits national policy confers on their districts, since their reelection depends on representing the constituency that got them elected (Mayhew 1974; Shugart and Carey 1992). Cross-national differences in public good provision have been explained by variables measuring electoral incentives, such as the type of electoral system, type of career path (Cox and Morgenstern 2001; Jones et.al 2002), and the possibility of reelection. It has been argued, for example, that countries with candidate-based electoral systems generally provide fewer public goods than those with party-based systems (Crisp et.al. 2006; Calvo and Murillo 2004; Figuereido and Limongi 1999; Haggard and McCubbins 2001).

Cross-national comparisons have also highlighted variations in the executive's capacity to introduce and enact national policy (Shugart and Carey 1992; Mainwaring and Shugart 1997; Haggard and McCubbins 2001; Negretto 2004). Different classifications illustrate how, while some presidents have mainly reactive powers in the policy-making process, other presidents are constitutionally endowed with pro-active powers. This gives them the authority to enact policy unilaterally, some even without legislative intervention (Shugart and Carey 1992; Shugart and Mainwaring 1997; Morgernstern and Nacif 2002).

Shugart (1998) highlighted a negative correlation between the constitutional and partisan powers of the president and suggested that executive constitutional power was endogenous to legislators' incentives. In polities with electoral rules that generate personal vote seeking incentives, legislators have constitutionally delegated the responsibility of national policy to the president by giving him the authority to unilaterally change the status quo. Conversely, in polities with electoral rules enhancing party vote seeking incentives, the preference is to delegate national policy to the ruling party, as the building of party reputation would benefit legislators in their quest for reelection. This inverse correlation suggests the existence of a *balance* between the constitutional and partisan powers of the president to ensure the adequate provision of public goods at both the local and national levels.

While most presidential cases fall somewhere along this continuum, a few challenge the existence of such balance. Colombia, after the approval of the 1991 reform, is one of them. Prior to 1991, the Colombian president was consistently ranked among the most powerful in the region. This was especially true after the 1968 constitutional reform, when legislators agreed to give the president decree power over economic issues and all budgetary initiatives (Shugart and Carey 1992; Archer and Shugart 1997). With only the requirement of signatures from his cabinet, the president could declare a state of siege, or the state of economic emergency. The emergency powers entitled him to legislate via decree as well as to suspend existing laws for as long as the state of siege was in force. Legislators had no incentives to complain. As part of the deal to pass the 1968 reform, legislators had secured individual budgetary

allocations to be used in their constituencies, not dependent on presidential approval. Since the electoral system in Colombia promoted a high degree of intraparty competition (Cox and Shugart 1995; Shugart and Nielson 1999), legislators' top priority was providing for their local and regional constituencies to improve their odds of getting reelected. The responsibility of national policy was left to the executive office. Thus, Colombia had a dominant president—with high pro-active powers—and a Congress mainly focused on the provision of local public goods.[1]

The political instability of the 1980s, however, challenged the permanence of this equilibrium.[2] The Constitutional Reform of 1991 was enacted to correct what were believed to be the institutional causes of the political crisis. Among other changes, the 1991 reform reduced the president's constitutionally delegated decree power in time and scope. However, whereas presidential powers greatly diminished, electoral incentives for legislators to engage in national policy did not significantly change (Botero 1998; Crisp and Ingall 2001; Crisp and Desposato 2004). So, what should we expect would happen in this case with the provision of national policy, where legislative electoral incentives and are executive powers are clearly not aligned in the way that Shugart's theory would predict?

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[1] This combination is referred to in the literature as the "inefficient secret" (Carey and Shugart 1992; Amorim-Neto and Santos 2003). While the president delivered national policy, legislators could focus in what ensured their reelection, free-riding off the success of the president for the creation of a national reputation for his/her party.

[2] Increasing violence and terrorism put Colombia in one of its most difficult crises. Three presidential candidates were killed between 1989 and 1990. Congress was considered corrupt and clientelistic. The judiciary had been directly threatened by drug-trafficking organizations. While the use of emergency powers of the president had delivered some short-term solutions, violence indicators just got worse. Some advocates for institutional reform even argued that those short term solutions—highly flagged due to their questionable respect for human rights—had made the situation worse in the long run (Gallón 1979, Vásquez Carrizosa 1986).

Shugart's theory would suggest that the 1991 reform was untenable in the long-term, contrary to what Nielson and Shugart (1999) expected. Either the electoral incentives had to be re-engineered too or the presidential power needed to be built back up. In the short-term, some new means of addressing national policy would be invented. Either the president would lead policy coalitions or the need for legislative entrepreneurs would arise. The objective of this paper is to test whether the reduction in the president's ability to use decree power transformed the assembly from a parochial one into a more pro-active and workable one, despite the lack of changes to the assembly's personal vote seeking incentives from 1991 to 1998. This conceptualization (parochial, pro-active and workable) is taken from the typology introduced by Cox and Morgenstern (2001). Parochial and workable legislatures are defined by the existence of a workable majority, which allows the president to enact policy. The main difference between a parochial legislature and a workable legislature is the type of "currency" that is being exchanged. While a parochial legislature exchanges a greater percentage of private goods or local public goods, the workable legislature's focus is on negotiating over policy concessions. To see the effect of the reform, this paper looks at the composition of floor agendas from 1979 to 1998, comparing the House and Senate.[3]

[3] The reason to choose the coding of the floor agenda is well argued by Cox and McCubbins (2005): "Although the details of legislative procedure differ widely across the democratic legislatures, one generalization holds universally: Important bills can only pass pursuant to motions formally stated and voted upon in the plenary session. The necessity of acting pursuant to formally stated motions means that every bill must consume at least some plenary time, if it is to have a chance at enactment. Simply put, plenary time is the sine qua non of legislation."(p.10)

Three main dependent variables are examined: the percentage of items in the agenda dealing with national policy as opposed to items targeting local or regional constituencies, the percentage of items authored by the president as opposed to legislators, and finally, the allocation of agenda time to members of the governing coalition as opposed to those in outsider of it.

I argue that the reform had a decreasing "nationalizing" effect. Although the reform to the Senate attempted to correct for the narrow interests of Congress, the results do not support that the change to a national district in the Senate had a significant impact on transforming its priorities compared to the House's agenda. Confirming what Archer and Shugart (1997) suggested, although the 1991 reform was meant to be a radical departure, in reality it was only a moderate departure from the previous status quo, due to the combination of high presidential powers with the existence of high levels of patronage.

The results show that the limitation of decree power had an effect on legislators' incentives, changing the proportion of agenda items dedicated to national policy, from an average of 57% of nationally-oriented bills to 73% in the post-reform period. The results also show that the modest "nationalizing" effect is due to a shift in the type of legislative bills brought to the floor, as well as a result of the executive controlling a greater proportion of agenda items in the case of the Senate. While previous to the reform, nationally-oriented bills authored by legislators added up to 48%, the number of nationally-oriented bills increased to an average of 64% of all legislative proposals debated on the floor in the period following the reform.

Furthermore I argue that the events following 1998 and the numerous failed attempts at reform hinted to the fact that the change in presidential powers without a change in the electoral incentives for legislators was not a viable equilibrium in the long run. Thus, the approval of the 2003 electoral reform can be seen as a complement to the inconclusive renovation of the political institutions that began in 1991 (Shugart, Moreno and Fajardo 2006; Pachón and Shugart, mimeo).

The paper is divided as follows. The first part offers a more detailed description of presidential powers prior to and after the 1991 reform. The second part includes an explanation of the methodology adopted and data. The third part describes my predictions on how the reform affected the three main dependent variables. The fourth part presents the empirical results. Finally, the paper concludes by discussing the problematic viability of the 1991 arrangement and the complementary reforms enacted.

4.2 Colombian Presidentialism Before and After the Reform

In the late 1970s, and especially after President Turbay's confrontational strategy to deal with urban guerrillas by the use of legislative decrees and the permanent use of a state of siege, the belief that the president was a "semi-god" or a "constitutional dictator" gained a large number of supporters (Hartlyn1988). The majority of scholars agreed that Colombia had become a *delegative democracy*, especially after the constitutional reform of 1968, which had created a presidency that

was difficult to hold accountable in regular legislation (Gallón 1979; Cepeda 1985; Vásquez Carrizosa 1986).[4]

Various institutional features seemed to be consistent with this description. During any state of siege, the president could issue decrees that would last for as long as the state of siege was in force, and he could also suspend existing laws which went against the new legislative decrees. The president could declare two types of states of siege: external war and domestic disturbance. After the 1968 constitutional reform, the president could also declare a state of economic emergency, which was the only one with a 90-day limit for the calendar year.[5]

Due to the lack of restrictions in time and scope, presidents used their right to declare emergencies quite often. Since the return to democracy in 1958, Colombia was in a "state of emergency" 75% of the time (Archer and Shugart 1997). Analyzing all decrees between 1958 and 1978, Gallón (1979) confirmed that large numbers of the decrees enacted during the states of siege were unrelated to the state of emergency.[6]

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[4] In O´Donnell's own words a delegative democracy is "Typically, and consistently, winning presidential candidates in DDs present themselves as above all parties, i.e. both political parties and organized interests. How could it be otherwise for somebody who claims to embody the whole nation? In this view, other institutions – such as Congress and the Judiciary – are nuisances that come attached to the domestic and international advantages of being a democratically elected president. Accountability to those institutions, or to other private or semi-private organizations, appears as an unnecessary impediment to the full authority that the President has been delegated to exercise." Pp. 60 -61.

[5] All legislative decrees issued during any state of siege were required to go through the Supreme Court to have an ex-post review of constitutionality. Also, Congress could only revise decrees issued under the state of economic emergency. However, the Court justices had few incentives to go against the president, especially during the National Front, due to his powerful nomination powers across all branches of government.

[6] If anything, it was only after the end of the National Front in 1974 that the Supreme Court became an effective institutional check assuming a more active role in checking presidential attempts to abuse their legislative powers by revising the decrees enacted, or overriding the use of emergency powers when the causes for the emergency were not considered valid (Pécaut 1989; Cepeda 1985).

While agreeing that decree power made for extremely powerful presidents, Archer and Chernick (1992) argued that due to the existence of highly factionalized parties, presidents were incapable of enacting policies that departed from the status quo. The existence of factions within parties impeded the formation of stable majorities in Congress. Furthermore, the permanence of National Front arrangements commanding the president to keep a power-sharing scheme, gave the president little room to maneuver.[7]

Similar to Geddes (1994) explaining the absence of incentives for reform in the Brazilian case, Archer and Chernick (1992) and Nielson and Shugart (1999) suggested that the overrepresentation of rural constituencies in Colombia's Congress and in the administration impeded the implementation of innovative policies. Similarly, Archer and Shugart (1997) referred to the Colombian president prior to 1991 as "potentially dominant" because although Colombian presidents had extensive constitutional powers compared to other presidents in the region, they were unable to push the constitutional reforms needed to significantly change the status quo. Presidents had to deal with a parochial legislature and an extremely decentralized

[7] The National Front was a bipartisan consociational agreement between the Liberal and Conservative Party that ended a short period of dictatorship (1953-1957) and established the bipartisan alternation in the presidency for 16 years and the parity in every office for political appointees. During the National Front, the president was constitutionally bound to build a bipartisan government, which included all political appointees in the government from ministers to mayors. After the National Front was officially over, one of the most important constitutional legacies was a clause in Article 120, which established after 1974, to permanently "preserve the national spirit in the Executive branch and the public administration", the nomination and appointment of ministers, governors and ambassadors had to be of adequate and equitable participation for the major party in opposition to the President." In practice, this meant that the president had an obligation to concede part of the administration to the losing party (the Conservative Party) – proportional to their vote share, which limited power over those posts and perks (Carroll and Pachón 2006).

party structure in which legislators had no incentives to be programmatic or follow the party line if that would hurt their constituency in any way.[8]

Nonetheless, the consensus at the end of the 1980s was that the excessive power of the president needed to be restricted, as it had failed to solve the problems faced by the country. The idea that society was "blocked" from participating in the democratic process due to the bipartisan control of all branches of government became widely accepted and facilitated the occurrence of peace processes in 1989 with forces such as the M-19, one of the most important guerilla groups, which later became a political party.[9] On October 9, 1990 Colombia's Supreme Court ruled in favor of legislative decree No. 1926 issued by President César Gaviria, calling for the election of a Constituent Assembly.[10] At its inaugural session, President Gaviria argued:

> "We have the worst of two worlds. A state of siege that discredits our democracy due to its permanent character and its affinity to martial regimes, and at the same time, a

[8] "Just as Congress helped previous presidents create new state institutions that were quickly and relatively easily converted into sources of patronage, so too did Congress operate positively in the passing of major legislation that opened a new revenue source and a major municipal institution to the direct control of congressional party machines. However, and this crucial caveat - when presidential policy initiatives attempt to reduce or curtail the use of national resources for patronage purposes, the negative power of Congress can be insurmountable…" (p. 145)

[9] The M-19 later received unprecedented support gaining 19 of the 70 seats in the Constituent Assembly election. The participation and election of different movements and parties gave the institutions more "legitimacy", after a long period of bipartisan control. This was one of the purposes of the Constitution of 1991which even included indigenous and afro-Colombian minority special constituencies. However, this conscious effort to foster minorities at the same time favored indiscipline in the parties and fragmentation. Before 1991, the cost to exit a party was greater, as participation was mainly through the two traditional parties, though \some third forces existed that had already entered the political spectrum. After 1991, the cost to exit a party was very low, especially since voters more easily support independent candidates, a consequence of candidate-based campaigns.

[10] By declaring the use of a legislative decree admissible, the Court ended long-term stalemates between Congress and the president and the Court and the president. Previously, the Court had overruled two proposals that called for the formation of constituent assemblies due to flaws in their legislative procedure (Cepeda 1985). For some analysts, the catalyst for October's decision was a citizen's initiative called the "seventh ballot", a student movement which started promoting the call for the constituent assembly after the last failed attempt for constitutional reform in Congress in 1988. The growing support for the initiative resulted in more than 85% of voters casting a yes vote to call a constituent assembly on May 27, 1990 (Shugart 1992; Dugas 1993, 1994).

> state of siege that has lost its coercive power, its capacity to intimidate and effectiveness to restore public order. Permanent violence and permanent state of siege… (…)That is why the government's proposal is to end with the institution as is, and take advantage of experience to create three different levels of public perturbation, each with different degrees of exceptional power…"[11]

The 1991 reform made important changes to the executive's power. First, it typified three states of emergency, by making the *external war* distinctive from the *state of domestic disturbance*. The president could no longer decide to unilaterally go to war because the Senate's approval was now required. Also, a 90-day limit (renewable for further periods of 90 days with the approval of the Senate) was given to the *state of domestic disturbance*, subject to the Constitutional Court's approval. The state of economic emergency was given a 30-day limit, renewable for up to a maximum of 90 days during the calendar year and was transformed into three distinct emergencies: economic, social and environmental. Finally, the policy areas addressed by decrees were constrained to matters dealing with the stipulated crisis and only explicit congressional approval and constitutional review was required for all exceptional legislation.

Legislators' incentive to intervene in national policy also changed due to the change in the nomination powers of the president. Prior to 1991, the president had

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[11] "Tenemos el peor de los mundos: un Estado de Sitio que desprestigia nuestra democracia por su carácter permanente y por su afinidad nominal con los regímenes de ley marcial, pero, al mismo tiempo, un Estado de Sitio que ha perdido fuerza coercitiva, su capacidad de intimidación, su efectividad para restablecer el orden público. Violencia permanente y Estado de Sitio permanente. (…) Por eso el Gobierno propone acabar con la figura de Estado de Sitio y aprovechar la experiencia colombiana para crear tres grados diferentes de perturbación del orden, a los cuales le correspondan tres grados diferentes de poderes excepcionales…"César Gaviria, Presidente de Colombia, Palabras en la Inauguración de la Asamblea Nacional Constituyente, in http://www.elabedul.net/Documentos/Temas/Asamblea_Constituyente/Gaceta_001.pdf

ample "integrative powers".[12] It was a common practice that elected party leaders in the legislature leave their *suplente* (alternate) in the assembly and become cabinet members, mayors or governors, to use that opportunity as a springboard to appeal to a greater electorate. After 1991, legislators were banned from becoming ministers and ambassadors. Also, since 1986, they could no longer be appointed mayors or governors after 1991. Thus, their chance of success at the national level was dependent on their legislative activity.

The end of the constitutionally mandated participation of the two biggest parties in the administration introduced uncertainty over the distribution of perks and benefits associated with the executive office and it also changed the incentives to engage in national policy. Without the obligation to nominate members of the opposition to the administration, there was a bigger bonus for winners. The trade-off, however, was that accountability would also be higher. Consequently, members of the governing coalition were required to make an additional effort to protect the presidential policy agenda. On the other hand, the opposing parties would have an incentive to offer counterproposals to the president's agenda. As opposition, they would need not only to keep their constituency happy, but also to appeal to the national electorate to improve their chances of winning the executive office in the next election.[13] Therefore, it could be expected that the competition for agenda time would be tighter when compared to the previous period in which, independently from the

[12] The integrative powers of the president are understood as the power of nomination that allows presidents to build a stronger coalition by making political appointments (Cox and Morgenstern 2001).
[13] Similar to what Amorim Neto and Santos (2003) find for Brazil.

election results, both the Conservative and Liberal Parties would have had an "adequate share" of all government posts.

Nonetheless, soon after the Constitution was enacted in 1991, a long debate started regarding the need for change to the electoral system in order to solve the governability crisis (e.g. Shugart, Moreno and Fajardo 2006; Pizarro 1996; Rodriguez-Raga 2001).[14] For most analysts, the combination of the incremental fragmentation of the political parties with a weak president, was seriously threatening the capacity of presidents to enact national policy without erupting into corrupt and clientelistic practices. Medellín (2006) went as far as to argue that Colombia went from a permanent state of siege, to a regime in which the president was under siege by Congress. Evaluating the powers of the president, Kugler and Rosenthal (2004) argued that the change in decree power made it nearly impossible for the president to legislate. In their policy recommendations, the authors proposed a constitutional change that gave the president fast track authority to submit non-amendable propositions regarding urgent matters of economic policy, and to facilitate holding referendums to go directly to the voters and to reduce the number of Congressmen.[15]

Undoubtedly, the existing electoral system (simple quota and largest remainders with no vote pooling across candidates of the same party, and no limits on the number of lists) had resulted in a fragmented political elite, where more than 90%

[14] Although it is not a subject for this paper, there was a successful electoral reform in 2003, in which there was a change from the SQLR with no limit on the number of lists per party, to d'Hondt formula, with an optional open/closed list system.

[15] These recommendations became part of the reform proposal developed by Pastrana's government (1998- 2001), and were also later added to Uribe's referendum proposal, which failed to pass the threshold of approval in the first year of his first term.

of the lists were only winning one seat per list (Pizarro 1996; Archer and Shugart 1997; Botero 1998; Shugart, Moreno and Fajardo 2006; Crisp and Desposato 2004). Analyzing legislative introduction, Crisp and Ingall (2001) found systematic patterns of nationally-oriented bills introduced by senators with more dispersed electoral strategies, and pork barrel policy being introduced by senators elected by a narrow constituency. They also showed that after the atypical 1991 election, which was characterized by a more nationally-oriented campaign, the elections of 1994 and 1998 followed previous patterns of more concentrated support and locally-targeted bills. Not surprisingly, since the electoral system in place would still generate incentives for legislators to do work for their constituencies, patterns of introduction did not change much.

However, analyzing bill introduction is different from studying the composition of the agenda. While there is no limit in the number of bills that can be introduced, there is limited floor time for both legislators and the president.[16] Thus, there are more "filters" which might introduce biases, based on criteria such as party or even substantial interest in the policy. Before getting to the floor, the legislative procedure in Colombia establishes that a bill must go through the Board of Directors to be assigned to a committee. After arriving at the committee, the committee board is required to choose a *rapporteur* for the bill. The bill will only get to the floor after the committee has voted on it. Since there is limited time, a great number of bills will not

[16] The allocation of time for the president may not be necessarily as restricted as the one for legislators. Presidents can call for extraordinary sessions to debate particular bills which he is interested in getting approved. However, legislators do not have this power.

get past this committee filter. Furthermore, no regulation makes it compulsory for the Committee Board to debate all bills. Their selection process is thus an important procedural power. Table 4.1 shows summary statistics for all bills introduced from the periods 1982- 1986 and 1992 – 2003 which finalized their legislative procedure.

Table 4.1: Legislative Output in Colombia by Number of Debates, 1982 -1986, 1992 – 2003

Bills introduced by ----->	**Legislators**		**Executive**	
Stage of the Legislative Procedure	**Frequency**	**Percent**	**Frequency**	**Percent**
1. In Committee, House of Origin	1.307	67,13	98	21,44
2. Debate in the Plenary of House of Origin	193	9,91	63	13,79
3. In the committee, other House	132	6,78	66	14,44
4. Had a final debate	315	16,18	230	50,33
Total	1.947	100	457	100

Note: Bills are counted only if they have already been archived or enacted. Bills which are an ongoing legislative procedure have been omitted.
Source: Author's calculations. Data used in Cardenas, Junguito and Pachón (2008).

As can be seen in Table 4.1, for the periods analyzed (1982–1986, 1992–2003), 67.3% of legislative bills did not get past the committee stage. In contrast, only 21.44% of the executive legislation died at the committee stage. Thus, by analyzing the composition of the agenda (equivalent to 33% of the total legislative bills introduced and 79% of all executive bills introduced) we can better analyze whether there was a significant shift in priorities and the interaction between the executive and the legislature.

4.3 Data and Research Design

A considerable amount of recent literature on democracy in Latin America is concerned with the balance of power in executive-legislative relations. Many efforts to assess the government's degree of accommodation with the legislature have been anecdotal, while systematic accounts have focused on measurements such as legislative introduction and the success rates they generate (e.g. Taylor Robinson and Diaz 1999; Amorim-Neto and Santos 2003; Crisp et al 2004; Aleman and Navia 2006).

The substantive interpretation of these measurements, however, highly depends on the costs of introducing legislation.[17] Furthermore, comparing legislative bills and executive bills when there are 265 legislators and only one president is problematic. Thus, although we could aggregate legislators as a unit, this is a questionable assumption, especially in the Colombian case where parties have less incentive to work collectively.

Consequently, to measure the effect of the reform on the executive-legislative balance, I pursue an alternative route focusing on analyses of the floor agendas. Using this indicator, we can distinguish introduction strategies based on the costs that are incurred, and precisely measure the means and rate by which initiatives are given

[17] An illustration of this point is provided by Cárdenas, Junguito and Pachón (2008), who calculated that legislative success ratios in the pre- and post-reform periods were 15% on average, while presidential success was 74%. If we knew, for example, that legislative bills constituted only 15% of the congressional agenda on average that same number sounds better than a situation in which we knew 50% of the items in the agenda were authored by legislators. In the first case, we could infer that bills introduced by legislators do not usually get to the floor stage—while in the second case, we could argue that rank-and-file legislators have a good chance of getting their bill to the floor—and fail to pass the bill.

priority time. While introducing a piece of legislation may imply some costs for the individual legislator (i.e. time to write the bill), it is assumed here that the shared costs in terms of "agenda time" are higher, and thus more significant.

While the determinants on agenda control have been studied in parliamentary systems and in the US presidential system (i.e. Cox 1987; Martin and Vanberg 2005), less research has been done on presidential systems where presidents and legislatures compete for floor agenda time.[18] For this analysis, each item in the agenda was classified by author, procedure and target, following the methodology laid out by Taylor Robinson and Diaz (1999). The data was collapsed by agenda to get the percentages of nationally-oriented bills, the percentage of executive bills, and lastly, the percentage of bills from members of the governing coalition. Table 4.2 summarizes the research design. The dataset covers the period from pre- to post-reform and has two groups: the House and Senate. While both the Senate's and House's agendas are equally affected by the decree reform, this research design allows testing for the separate effects of decree and electoral reform.

Table 4.2: Research Design

	Electoral Reform	Decree Reform
Senate	☑	☑
House		☑

[18] To my knowledge, no research like this has been done for Latin American cases. In the literature on the U.S. Congress there are some examples of using the composition of the agenda as a dependent variable. See for example Taylor (1998).

I collected and coded all floor agendas from 1979 to 1998 in the House and Senate, which are published in the *Gaceta del Congreso*.[19] A total of 1,310 floor agendas were coded. Table 4.3 shows the main descriptive statistics on the average number of items in the agenda for both Houses, as well as the raw count of agendas. As can be seen, the average agenda has five items for the House and approximately eight items for the Senate. Although the size of the Senate's agenda increases after the reform, the difference is not significant. Moreover, the number of observations previous to the reform is greater as it covered 11 years compared to only six after the reform.

Table 4.3: Descriptive Statistics of the Database (1979 – 1998)

	Average Number of Items	**Mean Number of Bills in the Agenda**		**Total Number of Sessions**		**Total Number**
House	5.26	4.56	4.38	382	216	598
Senate	7.94	6.25	8.58	442	270	712

To perform an analysis of the impact of the constitutional reform, I ran an OLS model. First, I ran the model without any post-reform observations, then I ran the model with all the pre-reform and first congress data, and finally, I ran the model with the entire sample including the second congressional session after the reform. Table 4.4 presents the results of all of them. The regression equation is specified as follows.

[19] Ideally, the coding would have been done in the actual order of the day, as it happened on the floor. Unfortunately, this information is not available for the period under study. Thus, the agenda is coded as published by the Board of Directors in the *Gaceta*.

$$\frac{Nat\ Items}{Total\ items} = \beta_1 reform + \beta_2 Senate + \beta_3(Senate * Reform) + \beta_5 pre\_election + \beta_6 months + \beta_7 dec + \beta_8 time^2 + \beta_9 Betancur + \mu$$

In this specification the dependent variable is the percentage of national agenda items. The independent variables are: a dummy for reform, which takes a value of 1 after 1991; a dummy for the Senate and an interaction effect between reform and Senate, to observe the differences between the two houses. The control variables are a dummy for "pre-election" that takes a value of 1 three months before a national election; a dummy for the number of months till the start of the next presidential term; and a dummy for "December", to control for legislative activity that responds to the regular yearly cycle. Also, a squared time trend (time^2) was added, to control for time[20]; and a dummy for (only) minority government (Betancur). [21]

4.4 Expectations of the Effect of the Reform on the Floor Agenda

Role of the President in the Composition of the Agenda

Since the use of decree power is highly limited after the reform, we should expect the agenda to have a larger percentage of agenda items from the executive

[20] The time trend is squared and not linear because of an empirical observation. Although the number of issues increases over time—their increment is tenuous and remains relatively stable.

[21] To perform the analysis I used OLS estimations. However, this method does not properly handle cross-equation error correlation. In the appendix a different methodological strategy was used, using a multinomial logit model in which the unit of analysis is not the agenda, but the agenda item. Four categories were created: executive-national, legislative-national, executive-local, and legislative-local as the baseline. The results for this alternative estimation are in the appendix 4.1. The results obtained are consistent to the ones obtained with OLS estimation.

compared to the previous period, as the president needs statutes to enact any policy change.

Role of Legislators in the Composition of the Agenda

Legislators would have more incentives to participate in national policy—thus we should expect more nationally-oriented bills in the floor agenda from legislators, since their legislative work is the only way legislators can become national entrepreneurs.

Conversely, legislation targeting local constituencies should diminish as a percentage of items in the agenda.

Effect of the Reform in the Percentage of National Agenda Items

Due to increasing presidential activity in the agenda, the end of the bipartisan sharing of the cabinet and all offices of the executive branch and the limitation on decree power, we should see a greater percentage of national agenda items after the reform. The effect should be more significant in the Senate due to its national constituency. Conversely, locally-oriented policy should constitute a smaller percentage of the agenda after the 1991 reform as legislators have a bigger incentive to engage in national policy.

Control of Agenda by the Government Coalition and the Opposition

Legislators in the same party as the president should control a larger portion of the agenda compared to the previous period. The logic behind this expectation of course is the need for the president and the governing coalition to control the agenda as an necessary requirement to enact statutes.

Differences in the House and Senate

Since the Senate and president's constituencies are most similar, party leaders in the Senate should give higher priority to executive bills compared to House members.

4.5 Results

Did the reform have an effect on making national-oriented policy more prominent in the House and Senate agendas? Table 4.4 presents the results for nationally-oriented policy in policy areas where the executive and the legislature have competing jurisdictions, excluding budgetary bills and treaties, which can only be introduced by the president. The first regression is the model with all the data from the pre-reform period with controls for each presidency, followed by the same model but including a dummy for reform and increasing the sample size to include the first government post-reform, and then the second government post-reform. Thus, the last column has the complete sample. In this way, it is possible to observe whether the reform's effect is permanent or not. Since there is no control group for which to measure the scenario of "no reform" (both the House and Senate were affected by the decree reform), I use the constant to represent the *gross* value of the dependent variable for each Chamber, and the summation of the constant and β of the reform to be the *net effect* of the reform to illustrate the results. Both data from the House and Senate are used together to perform the analysis.[22]

[22] The sum is only done if the value of the variable is significant.

As can be observed in the last column of Table 4.4, before the reform, national bills comprised 57% of the agenda, as opposed to bills targeting more specific regions/sectors, which averaged 54% (when all other variables are equal to 0). The coefficient for reform is positive and statistically significant suggesting that after 1991, the agendas from both the House and Senate increased their "national character" by 16%, compared to the previous period. Also, some of the control variables show some statistical significance and have a semi-substantial impact on the debate of national bills in the floor. The variable pre-election shows a negative effect on the debate of national bills, which is consistent with the logic that more local agenda items are introduced during election times. December shows a positive effect on the percentage of national agenda items, consistent with the fact that December could represent more legislative activity from the executive. The variable months (months to the next election) is negative and statistically significant. This result is unexpected although with a minimal substantial effect.

Table 4.4: Changes in the Percentage of National Bills in the House and Senate Agenda

DV: Percentage of National -oriented Bills	1979 - 1990	1979 – 1994	1979 - 1998
pre_election	-0.043	-0.086**	-0.038
	[1.14]	[2.45]	[1.17]
December	0.014	0.022	0.060***
	[0.47]	[0.80]	[2.66]
Months	-0.002	-0.004***	-0.002**
	[1.16]	[3.16]	[2.20]
Senate	-0.043	-0.041	-0.057**
	[1.56]	[1.43]	[2.07]
Betancur	-0.132***	-0.111***	-0.075***
	[4.24]	[3.58]	[2.70]
time2	-0.002***	-0.001***	-0.001**
	[4.89]	[3.02]	[2.52]
Reform		0.206**	0.161***
		[2.56]	[2.68]
senate*reform		0.068	0.056
		[1.16]	[1.33]
Constant	0.660***	0.682***	0.572***
	[12.94]	[12.78]	[13.89]
Observations	660	800	1107
R-squared	0.06	0.06	0.05

Effect of the Reform on the Percentage of National-Oriented Bills

	Prior to 1991**	After 1991**
House of Representatives	46% (0.03)	61% (0.04)
Senate	40% (0.02)	60% (0.03)

Robust t statistics in brackets

* significant at 10%; ** significant at 5%; *** significant at 1%

**Results presented with all sample, 1979 - 1998. The value in parenthesis is the standard error. Variables time2 and months were set to their mean. Variables December and pre-election were set to 0. All other variables are set to 1 or 0 depending on the cell.

Thus, the reform had a clear effect, shifting the agenda items devoted to national bills from 46% to 61% in the House, and with a slightly higher effect on the

Senate. It is worth noting that the effect of the minority conservative government is also significant—making the overall agenda less nationally-oriented. As the lower part of Table 4.4 shows, the differences between the two House agendas are not significant. While it was expected that the reform would make the Senate agenda more nationally-oriented and the coefficient for the interaction term is the direction expected, it is not significant. Thus, the existence of the "national district" did not make the Senate more "nationally oriented" compared to the House in absolute terms, except for the two years following the reform. Nonetheless, there is more nationally-oriented policy being debated, overall.[23]

From the results it can be argued that there was a change in the priorities of the Board of Directors in both houses. Whether the increase in the percentage of nationally-oriented bills is a result of more executive items on the agenda, or is due to a shift in the type of legislative bills considered on the floor, is partially answered by the results in Table 4.5. Due to the limitation in decree power, part of the expectation after the reform was that the president would have more incentives to use bills and also use his emergency powers to maximize his agenda time. This would be reflected by an increase in the percentage of executive agenda items.

Table 4.5 shows the results of the regressions with percentage of executive agenda items as the dependent variable. As with the previous table, the first column represents the average behavior prior to the reform. Before 1991, executive bills

[23]This can be observed when one-year windows are used instead of presidential terms.

constituted 53% of the agenda items in the House, while the Senate's average was surprisingly low, close to 30%.

Table 4.5: Percentage of Executive Bills/CAs in the House and Senate Agenda

DV: Percentage of Executive Bills	**1979 - 1990**	**1979 – 1994**	**1979 - 1998**
pre_election	0.221***	0.153***	0.188***
	[6.13]	[4.37]	[5.75]
December	-0.019	-0.007	0.029
	[0.75]	[0.26]	[1.36]
months_nextpresidency	0.001	-0.002	0
	[0.59]	[1.47]	[0.41]
Senate	-0.203***	-0.212***	-0.235***
	[8.00]	[8.14]	[9.58]
Betancur	-0.085***	-0.073**	-0.058**
	[2.98]	[2.57]	[2.28]
time2	-0.001***	-0.001**	-0.000**
	[3.76]	[2.34]	[2.07]
Reform		0.037	0.019
		[0.49]	[0.32]
senate_reform		0.248***	0.236***
		[4.26]	[5.82]
Constant	0.536***	0.582***	0.517***
	[11.49]	[11.95]	[13.55]
Observations	682	828	1146
R-squared	0.14	0.12	0.12

Effect of the Reform on the Percentage of Executive Bills

	Prior to 1991**	After 1991**
House of Representatives	50% (0.03)	51% (0.04)
Senate	26% (0.02)	47% (0.03)

Robust t statistics in brackets

* significant at 10%; ** significant at 5%; *** significant at 1%

**Results presented with all sample, 1979 - 1998. The value in parenthesis is the standard error. Variables time2 and months were set to their mean (24 months into the presidential term). Variables December and pre-election were set to 0. All other variables are set to 1 or 0 depending on the cell.

The results show that the reform variable did not have a significant effect, except for in the interaction term. From having only 26% of executive agenda items in the Senate, the reform increased it to 47%. Although this change is important, the substantive effect is not impressive; because this is partially attributable to the fact that the House and Senate agendas became more interdependent. Why is the Senate so different from the House in the pre-reform period? While there is no systematic analysis comparing the House and the Senate, one can speculate, based on anecdotal evidence that this difference is the result of the Senate behaving as a stronger veto gate at the committee stage than the House. While the House is better known for its venal character, the Senate was considered a forum for party leaders and future presidential candidates. In previous research I have shown how the Constitutional Committee in the Senate, for example, is a significant predictor of presidential failure (Pachón 2002; Cárdenas, Junguito and Pachón 2008). Nonetheless, it would require additional research to confirm this expectation.

Thus, based on the information available, the hypothesis that a larger portion of agenda items would come from the executive is rejected for the House.[24] Finally, the variable pre-election is consistently significant through all the period analyzed, increasing the percentage of executive agenda items by 18%.

In order to confirm whether the "nationalizing effect" was explained by changes in legislative priorities, Table 4.6 shows the result when the dependent

[24] A potential problem faced with the measure being used to analyze the agenda is that it is a "simple sum" that does not take into account the position in the agenda. In appendix 4.3 there is additional analysis on how to measure "priority" of agenda items. The analysis shows our results are comparable since there are no big changes on the agenda items for the executive or the legislature.

variable is the percentage of national agenda items authored by legislators. Indeed, the results confirm a shift in the legislative-authored agenda items considered. Previous to the reform, nationally-oriented agenda items from legislators accounted for 34% in the House and Senate during liberal governments. After the reform, we observe an increase of 30% on nationally-oriented bills from legislators in the first legislative period after the reform, for a total of 88% (1992 -1994), and an average shift of 16% after considering the period under President Samper. To a certain extent, this confirms the more national character of the post-reform Congress but it also questions the permanence of the reform effect. When Samper's tenure is considered, legislative nationally-oriented bills in the agenda account for just 64%.

When looking at the analysis done in the simulation, the percentage of nationally-oriented bills increased in the House and Senate by 17% and 19% respectively, allowing us to conclude that the reform had an impact on legislative output and change in priorities, at least for the two post-reform periods.

Table 4.6: Percentage of Agenda Items from Legislators that are Nationally- Oriented.

DV: Percentage of National-Oriented items from Legislators	**1979 - 1990**	**1979 - 1994**	**1979 - 1998**
pre_election	-0.053	-0.052	-0.046
	[1.38]	[1.44]	[1.25]
December	0.015	0.015	0.011
	[0.56]	[0.53]	[0.47]
months_nextpresidency	-0.002	-0.003**	-0.002
	[1.14]	[2.06]	[1.30]
Senate	0.04	0.038	0.01
	[1.41]	[1.32]	[0.35]
Betancur	-0.229***	-0.216***	-0.170***
	[6.97]	[6.60]	[5.85]
time2	-0.002***	-0.002***	-0.001***
	[5.37]	[4.49]	[2.68]
Reform		0.309***	0.168**
		[3.62]	[2.11]
senate_reform		0.014	0.026
		[0.19]	[0.53]
Constant	0.577***	0.584***	0.483***
	[10.03]	[9.51]	[10.02]
Observations	582	707	977
R-squared	0.11	0.1	0.05

Effect of the Reform on the Percentage of Legislative National-Oriented Bills

	Prior to 1991**	After 1991**
House of Representatives	34% (0.04)	51% (0.05)
Senate	35% (0.03)	54% (0.04)

Robust t statistics in brackets

* significant at 10%; ** significant at 5%; *** significant at 1%

**Results presented with all sample, 1979 - 1998. The value in parenthesis is the standard error. Variables time2 and months were set to their mean (24 months into the presidential term). Variables December and pre-election were set to 0. All other variables are set to 1 or 0 depending on the cell.

Majority Party versus Opposition. One of the most important objectives of the reform was to end the distinctive bipartisan power-sharing in government. The consociational agreement had created a situation in which there were no losers, allowing the minority party (the Conservatives) to have a large minority bonus of representation in all branches of government. By adding uncertainty to the distribution of resources, it was expected that the majority party would take advantage to favor its own people in order to improve its odds in subsequent elections. A reasonable suspicion would be that their overrepresentation would also be reflected in the congressional agenda, as the incentives for interparty competition were so low. Table 4.7 shows the results for the percentage of agenda items from the Liberal Party, who was the party in the presidential office – except for the period of 1982 – 1986.[25]

[25] To compare the percentage of agenda items with Liberal Party seat shares, see appendix 4.2.

Table 4.7: Percentage of Agenda Items from Liberal Party Legislators

DV: Percentage of Agenda items from Liberal Party Legislators	**1979 - 1990**	**1979 - 1994**	**1979 - 1998**
Senate	0.059**	0.055*	0.073**
	[1.97]	[1.79]	[2.41]
Betancur	-0.039	-0.036	-0.022
	[1.35]	[1.21]	[0.75]
Reform		0.167***	0.175***
		[2.90]	[4.65]
senate_reform		-0.116*	-0.141***
		[1.76]	[3.15]
Constant	0.599***	0.599***	0.574***
	[21.93]	[21.49]	[21.03]
Observations	550	667	908
R-squared	0.01	0.03	0.03
Robust t statistics in brackets			
* significant at 10%; ** significant at 5%; *** significant at 1%			

First, it is important to highlight that prior to the reform, around 57% of agenda items were from Liberal party legislators, even when it was not in government (the dummy for Betancur (1982 – 1986) has the expected sign, but is insignificant). Indeed, the Liberal Party had a larger proportion of the legislative agenda items, which reflects a rather small majority bonus. The Conservative Party, even as a minority, had a good chance of getting their bills debated on the floor. Nonetheless, the results confirm that the effect of the reform is highly significant, increasing the proportion of agenda items of the majority party in the House to 75% of the agenda. This is important evidence showing that even if no changes occurred in the electoral arena, parties in Congress were behaving as stronger procedural coalitions.

The Senate however, had an effect in the opposite direction, which suggests that even if Liberals had a majority, they would have had trouble dominating the agenda compared to the House. However, this change in agenda control did not imply that more national agenda items from the majority party were being discussed (See Appendix).

4.6 Conclusion: Effects of an Inconclusive Reform

Former research has suggested the existence of a causal relationship between the type of electoral rules governing legislative elections and the constitutional powers of the president. It is argued that where electoral rules heighten the importance of candidates' personal reputations, legislators are more likely to delegate the provision of public goods to the president. The complementary argument is that electoral rules that provide incentives to build the party's reputation lead legislators to undertake the provision of public goods themselves. If this is a general rule, then post-reform (1991-2003) Colombia is an exception—the electoral rules enhanced intraparty competition, hence elevating the importance of personal reputations, but the president's power to make policy was highly restricted.

The 1991 constitutional reform in Colombia provided an excellent opportunity to test the inverse causal relationship: the effect of executive decree power limitation over legislative behavior. Did the reformers succeed in making Congress a forum to better achieve public good provision? Comparing the House and Senate agendas also provided additional variation with respect to electoral incentives, as the Senate in 1991 became a nationwide district.

The results show that the limitation of decree power had an effect on legislators' behavior, with their consideration of national policy rising from an average of 57% to 73% of the national agenda items in the post-reform period. The results also show that the modest "nationalizing" effect is due to a shift in the type of legislative bills being brought to the floor, as well as a result of the executive controlling a greater proportion of agenda items in the case of the Senate. While nationally-oriented bills authored by legislators comprised 48% of all agenda items before the reform, it increased to 64%, and was as high as 80% during Gaviria's administration. Although legislators would not necessarily introduce bills to get them passed, the more recurrent debate in national policy illustrated by the changes in time allocation in the floor stage would definitely give them an advantage in negotiations with the president both in terms of policy and in the provision of local public goods.

Finally, the reform had a visible impact on the proportion of agenda items authored by legislators of the Liberal party (the majority party) going from 57% to 75% of the agenda items in a given floor session. This change suggests the existence of a greater "majority bonus" for legislators associated with the party in government in the House compared the previous period. However, this change in agenda control did not imply that more national agenda items from the majority party were being discussed (See appendix 4.4).

Thus, overall, the reform limiting presidential powers had an effect on the legislative agenda, which resulted in more national policy being debated in Congress. Presidents had no choice but introduce bills, as it was the only way under regular

circumstances to get policy enacted. We know from previous research that the reform also changed the patterns of representation, as more parties could run and get their voices heard since they could debate and win in both local and national elections (Pizarro 1995; Garcia 2001). By 1998, 25% of the Senate was composed of new independent legislators, which translated into more labels, new names and new issues. Consequently, the reform meant an important departure in terms of representation.

Despite these changes in executive-legislative relations, the reform did little to alter the successful political strategy to get elected. Consequently, the initial nationalizing pattern immediately after the reform was difficult to maintain. Both big and small parties in both the House and Senate could follow the same electoral strategy they had used before the reform. The equilibrium generated by the 1991 reform then, became one difficult to maintain, especially since the presidents elected based their support on costly post-electoral negotiations. While legislators continued to be elected on the basis of their local constituency work, I suspect that presidents faced increasingly higher costs in getting certain reforms passed, as the incentives for legislators to vote for any reform were still low, despite their increasing role in national policy.

The decreasing effect of the reform is consistent with the events that occurred after the period studied in this paper. In 1998, a conservative/independent candidate, Andrés Pastrana, was elected president and his support came from a supra-party alliance made up of liberal dissidents and conservative party members called “Alianza por el Cambio.” Among his campaign promises, President Pastrana prioritized

changing the electoral system. However, since his coalition was very heterogeneous, he was not able to get the reform approved by Congress (Shugart, Moreno and Fajardo 2006). The scenario became more difficult with the rise in the share of independents and new political movements in 2002, who systematically refused to reform the rules that directly influenced their reelection prospects.

The situation worsened as newspapers filled with allegations and corruption scandals multiplied. They accused cabinet members of buying off legislative votes during Pastrana's government. These events, in conjunction with Alvaro Uribe's successful candidacy as a liberal dissident and the call for a referendum (an avenue which did not exist prior to the 1991 reform) gave the momentum for the 2003 reform which finally changed the electoral system. The threat of using a referendum to pass the reforms instead going through the regular procedure of constitutional amendments made legislators move faster to enact a reform that represented a middle-ground compromise. Using Shugart and Carey's terminology, the inefficiency in the policy-making process during the post-reform period was no longer a secret, and they knew that another reform was required. It was just a matter of time. The change from the quasi-SNTV system to an optional open/closed list system devolved nomination power to party organizations, as well as created incentives for collective action, aligning the "nationalizing effect" of the 1991 reform with stronger political parties. Further research will tell if the 2003 reform is the missing piece of the puzzle to improve the public good provision while ensuring the continuity of candidate-based politics in the electoral arena.

Appendix 4.1: Multinomial Logit Analysis

Table 4.8: Multinomial Logit Model, Excluded Category: Local – Legislative Agenda Items

	National-Executive	National-Legislative	Local-Executive
pre_election	0.938***	-0.07	1.830***
	[7.54]	[0.59]	[10.88]
december	0.278***	0.002	-0.112
	[3.04]	[0.03]	[0.61]
Reform	1.452***	1.567***	0.256
	[5.77]	[6.25]	[0.37]
Senate	-0.910***	0.169	0.570***
	[7.76]	[1.63]	[2.74]
betancur	-0.845***	-0.796***	-1.734***
	[6.85]	[7.87]	[7.92]
senate_reform	0.643***	-0.332**	0.472
	[3.69]	[2.08]	[0.90]
time2	-0.006***	-0.006***	-0.008***
	[6.93]	[7.11]	[4.39]
Constant	0.143	0.430***	-1.671***
Observations	4396	4396	4396

Omitted Value: Local Legislative
Robust z statistics in brackets
* significant at 10%; ** significant at 5%; *** significant at 1%

Table 4.9: Predicted Probabilities for the Four Categories Using Multinomial Logit Model for Reform

Predicted Probabilities from Multinomial Logit Model		
	Prior to Reform	After 1991 Reform
National-Executive	0.166	0.278
National-Legislative	0.261	0.491
Local-Executive	0.040	0.020
Local Legislative	0.532	0.209

Table 4.10: Predicted Probabilities for Interaction Term reform*senate Using Multinomial Logit

Predicted Probabilities from Multinomial Logit Model		
	Senate Prior to Reform	Senate After Reform
National-Executive	0.184	0.328
National-Legislative	0.414	0.279
Local-Executive	0.040	0.020
Local Legislative	0.374	0.351

Appendix 4.2: Liberal Party Seat Share and Percentage of Agenda Items Before and After the Reform

Table 4.11: Effect of the Reform on the Percentage of Agenda Items from Liberal Party Legislators and the Average Seat Share Compared

Effect of the Reform on the Percentage of Agenda Items from Liberal Party Legislators and Average Seat Share Compared				
	Average Seat Share Pre 1991	% of Liberal Agenda Items Prior to 1991*	Average Seat Share Post 1991	% of Liberal Agenda Items After to 1991*
House of Representatives	55%	57%	54%	75%
Senate	54%	64%	55%	61%

*Results presented with the total sample, 1979 – 1998

Appendix 4.3: A note on agenda items priority

A potential problem faced with the measure being used to analyze the agenda is that it is a "simple sum" that does not take into account the position in the agenda. One could imagine situations in which the order of the agenda mattered and others in which it did not. When introducing a controversial bill, for example, the use of emergency powers by the executive is possible evidence of his belief that the time to debate using the regular procedure is not enough. In this case, being on the top of the agenda clearly matters. On the other hand, when introducing a regional bill, the legislator should be indifferent about having it at the top of the agenda or included in a "tap-tap" session, as long the legislature votes on it. Tap-tap practices are best known in Colombia as the *pupitrazo*, commonly used to get bills with a due date through at the end of legislative session.[26] Since the executive is the one with the most pressure to show results executing policy, it is worth investigating whether the relative position of the president's items in the legislative agenda are constant across both periods, to confirm that the increase in the percentage of executive items is significant. To measure this, I created a variable which divided the number of executive items in the first three agenda items over the total number of executive items for the agendas in which the executive introduced legislation. For example, if the president introduced one bill and it was at the top of the agenda, the value of the variable would be 1. If

[26]To speed up the legislative procedure, legislators are asked to vote by hitting their desk. If the hit is loud enough, the bill gets approved. **"Tap-tap" Hearing:** On occasion, leadership in one or both houses will instruct committee chairs to discontinue hearings on new bills after a certain date. A "tap-tap hearing" refers to a hearing in which a committee chair schedules a large number of bills to be heard in one meeting prior to the cut-off date. In rapid succession, the chair opens (with a gavel drop) and closes (with a gavel drop) public hearings on the bills: hence the "tap tap" moniker. (From: http://www.leg.state.or.us/glossary.html.)

there were two items in the agenda, and only one in the top 3 items, the variable would have a value of .50. The results are presented in Table 4.12. The first thing to note is that the average for executive priority before the reform in the House is 68%, while it is smaller in the Senate, with 48%.The reform does not have an impact on whether bills from the executive are a priority or not. Thus, executive bills are a priority in the agenda when they are being considered both before and after the reform, confirming the validity of the results for both the pre- and post-reform periods.[27]

Table 4.12: T-test for the Variable Executive Priority

	Executive Priority
Senate*reform	-0.019
	[0.36]
Senate	-0.196***
	[5.81]
Reform	0
	[0.01]
Constant	0.689***
	[30.14]
Observations	851
R-squared	0.07
Absolute value of t statistics in brackets	
* significant at 10%; ** significant at 5%; *** significant at 1%	

[27] Another significant predictor of higher executive participation of the agenda is the variable pre-election, suggesting a retrieval of legislators for their constituencies. On average, during the months before national elections, executive bills account for 66% of the plenary agenda in both the House and Senate.

Appendix 4.4: Percentage of National Agenda Items from the Governing Coalition

Table 4.13: Percentage of National Agenda Items from the Governing Coalition

DV: Percentage of National -oriented Bills from the Governing Coalition	**1979 – 1990**	**1979 – 1994**	**1979 - 1998**
Senate	-0.107**	-0.113**	-0.075
	[2.19]	[2.25]	[1.52]
Betancur	-0.145***	-0.137***	-0.113**
	[3.03]	[2.80]	[2.31]
Reform		0.037	0.085
		[0.38]	[1.50]
senate_reform		-0.022	-0.089
		[0.20]	[1.30]
Constant	0.709***	0.705***	0.656***
	[16.30]	[15.85]	[15.25]
Observations	311	387	553
R-squared	0.05	0.04	0.04

Robust t statistics in brackets

* significant at 10%; ** significant at 5%; *** significant at 1%

5. Conclusions

A major objective of my dissertation is to expand the conception of the policy-making power over which presidents and assemblies contest. While most studies analyzing the balance of power in presidential systems have looked mainly at the statutory avenue, we know that other instruments for pushing policy are available to presidents and legislators (c.f. Gerber 1996; Amorim-Neto 1998; Pereira, Power and Rennó 2004). Thus, my dissertation focuses on what I label "cross-avenue politics." Specifically analyzing how the pursuit of policy through one policy-making avenue (e.g. decrees, statutes, constitutional amendments or referenda) affects politics in another avenue. I have focused in particular on how weakening executive decree power affects statutory politics; and on how entrenching more policy in the constitution affects statutory (and decree) politics.

5.1 Decrees and statutes

Regarding the relationship between decrees and statutes, the previous literature has proposed both a long-term and a short-term theory. The long-term theory is that stronger decree powers will be granted to the executive when legislators' electoral incentives are more parochial. The logic here is that parochial legislators will not provide national public policy because they recognize there is no incentive to do so, and hence they will agree to delegate greater power to the president (Shugart 1998). The short-term theory is that the executive will use decrees (rather than statutes) in order to circumvent legislative roadblocks, taking into account the lower durability of decrees and any constitutional constraints on their use by following a simple cost-

benefit logic (Amorim Neto 1998; 2006). In light of these two theories, I have examined the consequences of two major reforms that weakened executive decree power in Brazil (2001) and Colombia (1991).

Based on the short-term theory, in an environment of limited decree power, one would simply expect that presidents would be **forced to deal with the legislature** across a wider range of policy. This would occur either by seeking explicit approval for decrees, or by using statutes or constitutional amendments instead of decrees. The long-term theory suggests that weakening decree power (without changing electoral incentives) should **either create a demand to re-instate the executive's strong powers**; or a **demand for stronger legislative parties** capable of pushing through national policies; or a **demand to change electoral incentives**. We can see each of these occurring in the two cases of Brazil and Colombia.

In the case of Brazil, the 2001 decree reform basically changed the rule of "implicit approval" of decrees, to requiring explicit approval after a maximum of one reissue of the decree. Furthermore, the reform established that after 45 days of the decree's enactment, it would go at the top of the legislative agenda to get floor approval.

My work shows that the short-term effects of the 2001 constitutional reform were immediate. Prior to the 2001 reform, the possibility of reissuing decrees more than once offered the president a way to ensure that issued decrees would stay off the agenda. While in the long run, legislators interested mostly in catering to their constituencies would agree to delegate national policy to the president, in the short term, executive dominance over the agenda became an argument for reform. The use

of decrees in policy areas where decrees and statutes were used interchangeably became the president's dominant strategy to implement short-, medium- and long-term policy.

The change to explicit approval in the post-reform period had important procedural and substantive consequences, resulting in a better deal for the majority of legislators both in the long and short term. Since decrees automatically move to the top of the agenda, there is no possibility for the Directing Board to negotiate an avenue of "no consideration". The empirical tests performed confirm this fact. First, I showed how after the reform there is a substantial increase in the percentage of executive items in the floor agenda, from 63% prior to the reform to 77% after the reform. Second, I show a dramatic shift in the number of decrees being discussed in Congress. While decrees were rarely considered on the floor before the reform, decrees accounted for about 65% of floor agenda items in the post-reform period. Although issuing decrees after the reform continued to be the dominant strategy for the executive, circumventing the floor this is no longer a possibility. Thus, the change to explicit approval of decrees increased the reactive power of the Brazilian assembly.

I also argued that while the reform did not change the fact that national policy continues to primarily be the president's job, after the reform, legislators are able to keep closer tabs on the president. This new check on everyday presidential activity can increase the strength of political parties in the long run. Prior to the reform, leaders from the governing coalition played a more determinant role in the policy-making process, by negotiating alternative routes of no consideration. Since the reform, party leaders cannot control the agenda as it is jammed with executive items. While this fact

benefits individual legislators and their bargaining capacity, it does not necessarily increase the role of parties. As in the case of Colombia, Brazilian legislators still have an incentive to go local and provide more resources for their constituency, delegating the president most national policy. Hence, if rank-and-file congressmen can trade with their vote more frequently and party leaders do not control what gets in and out of the agenda, they will need less of their party leaders. Therefore, in the long term, we could expect an ongoing debate for electoral reform to address the "parochial character" of the legislature.

Nonetheless, I argue that it is possible that legislators (especially the ones in the opposition) will forego the opportunity to influence national policy, as they did with the minimum wage negotiations. While prior to the reform the president could enact his preferred policy most of the time, after the reform we observe systematic concessions to legislators on national policy.

In the case of Colombia, I argue that the limitation in time and scope of executive decree power effectively forced the president to deal with the legislature to implement policy by other means. Prior to 1991, the president could declare a state of siege if he had the consent of his cabinet. The emergency powers entitled him to legislate via decree as well as to suspend existing laws for as long as the state of siege was in force, which had no time limits. Since the return to democracy in 1958, Colombia was in a "state of emergency" 75% of the time (Archer and Shugart 1997). As in the Brazilian case, since the incentives for legislators were to enhance their personal vote as opposed to their partisan vote, this arrangement yielded positive results for them in the long run. In the short run, however, the constant use of decree

and emergency powers became an issue as it was felt that the use of extraordinary powers was not enough to address broader national concerns.

The 1991 reform made important changes to the executive's power in an attempt to re-balance the system. Among other changes, the 1991 reform reduced the president's constitutionally delegated decree power in time and scope, allowing the president to declare a state of siege only after gaining approval from the Constitutional Court. However, without a complimentary reform to electoral incentives, it was not clear how the reform would change legislators' incentives in a candidate-based party system. Did changing presidential decree power generate incentives for the emergence of stronger legislative parties, or did it just increase the price per legislator the president needs to pay to enact policy?

The results show how after the reform, legislators had a more active role in national policy, perhaps because they could no longer abdicate their power to the executive, and it was necessary to change legislative priorities. The proportion of agenda items dedicated to national policy went from an average of 57% of nationally-oriented bills to 73% in the post-reform period. The results also show that the modest "nationalizing" effect is due to a shift in the type of legislative bills being brought to the floor, as well as a result of the executive controlling a greater proportion of agenda items in the case of the Senate. While previous to the reform, nationally-oriented bills authored by legislators added up to 48%, the number of nationally-oriented bills increased to an average of 64% of all legislative proposals studied on the floor in the period following the reform.

The empirical results also show a significant change in the majority party's incentives to control the floor agenda. Agenda items authored by the majority increased from 57% of all items prior to the reform to 75%. This is important evidence that despite the lack of reform in the electoral arena, parties in Congress were behaving as stronger procedural coalitions in the post-reform period.

Thus, when compared to the Brazilian case, the 1991 constitutional reform meant a more radical departure. While the executives in both Brazil and Colombia could no longer circumvent the legislature in the medium and long term, the fact that presidents can use decrees as their default "avenue" in Brazil only increased the reactive character of the legislature, but left the proactive character of the assembly untouched. In Colombia, a more radical departure meant that the legislature is more proactive in the introduction of national legislation, and parties have more incentives to act collectively to take control of the agenda.

Nonetheless, as with Brazil, the effects of the reform in Colombia were questionable in the long run, as legislators continued revealing with parochial ways. After 1998, numerous attempts to reform the electoral system hinted at the fact that the change in presidential powers without a change in the electoral incentives for legislators was not a viable equilibrium in the long run. Additional reform was required to either the increase presidential power, or reorganize political parties. The approval of the 2003 electoral reform can be seen as a complement to the inconclusive renovation of the political institutions that began in 1991, and as a demonstration of cross-avenue politics at its best. Only when legislators were faced with the threat of a

referendum did they pass a reform which would involve more nationally-oriented policy in the electoral arena.

5.2 Constitutional amendments and statutes

I have also suggested both long-term and short-term theories regarding the relationship between constitutional amendments and statutes, similar in some ways to those governing the decree-statute relationship. The long-term theory is that longer (more detailed) constitutions will be imposed on the executive when legislators fear executive abuses—the logic being that presidents have weak powers to change the constitution and thus cannot ignore the assembly's wishes. The short-term theory is that the executive will use constitutional amendments when policy cannot be changed by statutes (or decrees), taking into account his weaker powers—again following a simple cost-benefit logic. In light of these two theories, I have examined the consequences of Brazil's long constitution.

While the president has comprehensive proactive and reactive formal powers in all other avenues pushing policy forward, when amending the constitution the president does not have reactive power. Under these circumstances, one would expect the president to avoid using this route, especially when other "cheaper" options are available. Yet, in Brazil, we see a large number of amendments sponsored by the president every year, making him one of the most active reformers of constitutional text in Latin America. Furthermore, I and others show how executive constitutional amendments add constitutional text in addition to modifying text. How can we explain

the president's success and use of the constitutional avenue, despite his lack of formal powers?

My findings show that presidents use the constitutional avenue because it is the only way to enact some of their key proposals. The Brazilian constitution is long and detailed, making the use of decrees or statutes limited to certain policy areas. Thus, I conclude that the size of the constitution serves as a constraint for dominant presidents and diminishes their opportunities to use unilateral powers to do policy.

To measure legislative reaction to executive constitutional amendments, I chose to analyze legislative introduction of constitutional amendments. Despite the fact that less than one percent of all legislative amendments introduced are enacted, legislators remain very active, introducing hundreds of constitutional amendments every year. I argue that by introducing parallel constitutional amendments, legislators attempt to increase their procedural advantages and increase their chances of "hitching a ride" on the constitutional amendments of the president. I show the existence of a strong correlation between the introduction of legislative constitutional amendments from both members of the governing coalition and the opposition with executive constitutional amendment introduction.

Finally, I argue that in order to overcome his procedural weakness and assemble a super-majority to support his proposals, the president typically adds entirely new material to the constitution—increasing its policy scope. The new material is offered to attract the support of legislators who want to see policies they favor entrenched in the constitution, yet recognize that this would not be possible without the president's help. Without veto power, the president is required to strike

deals that would not otherwise exist if the president could use alternative avenues such as decrees or statutes. Thus, the paper shows how the frequent occurrence of constitutional politics provides legislators with opportunities to enact policy through executive constitutional amendments, despite their marginal control over the agenda.

5.3 Concluding Remarks

My objective with this dissertation was to show that the concept of cross-avenue politics is useful to understand the real balance of power between branches in presidential systems. While most studies look at the statutory avenue in isolation, the three papers in this dissertation are an attempt to show the significant effect of the interrelation between the different avenues available over the policy-making process. I have focused in particular on how weakening executive decree power affects statutory politics; and on how entrenching more policy in the constitution affects statutory (and decree) politics.

My results suggest that reactive assemblies are more powerful when using the cross-avenue filter, even in presidential systems which have usually been considered to have the most dominant presidents in Latin America. Further research is required to analyze how these interrelations influence other mechanisms such as referendums, and how these interactions translate into policy outcomes.

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