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Decree in Argentina

# GOVERNMENT CAPACITIES AND POLICY MAKING BY DECREE IN LATIN AMERICA The Cases of Brazil and Argentina

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What is the effect of constitutional decree authority (CDA) on the policy-making process of a presidential regime? Despite recent efforts to answer this question, there is still much uncertainty in the literature about the extent to which decree powers may allow presidents to control the legislative process. This article argues that in a separation-of-powers system, the existence of CDA effectively enhances executives' ability to act as agenda setters. This capacity, however, is not uniform across all cases. Developing a simple spatial model of decree games, the author argues that the bargaining power of an executive to promote legal changes through decrees varies according to three interrelated factors: decree approval rules, the extent of the executive's partisan support in the legislature, and the strength of the presidential veto. These propositions are supported by a comparative analysis of the process of constitutional design and the implementation of decrees in Brazil and Argentina, two cases presenting significant variation in each of the independent variables.

**Keywords:** *presidentialism; decree powers; policymaking; Latin America; Brazil; Argentina*

**R**ecent institutional studies show that presidential regimes present significant differences in terms of the distribution of powers between presidents and assemblies. These variations are particularly evident in the area of legislative powers. Although some presidential regimes invest execu-

**AUTHOR'S NOTE:** *I would like to thank Charles Cameron, Kent Eaton, Mark Jones, Fabrice Lehoucq, Eric Magar, Ana María Mustapic, Jorge Vianna Monteiro, Benito Nacif, Jorge Schiavon, Matthew Shugart, Juan Carlos Torre, and two anonymous reviewers of Comparative Political Studies for their comments on a previous version of this article. I am also grateful to the Flora Hewlett Foundation for its financial support during this research.*

COMPARATIVE POLITICAL STUDIES, Vol. 37 No. 5, June 2004 531-562

DOI: 10.1177/0010414004263663

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authority to the president in areas in which legislators were indifferent or had no particular interest in the outcome. A third reason, perhaps the most important, was to avoid an open conflict with the president on policy issues on which legislators did not fully agree with his position. This has been the particularly the case since the first presidency of Menem.

Menem's radical market reforms never quite had the active support of a majority within the PJ. The party was traditionally associated with a statist model of economic management, and many of its constituencies were located among groups (such as workers and public employees) who would be hurt by the new policies. In fact, several indicators confirm that in spite of strong discipline, the PJ was relatively uncohesive on the issue of economic reform. As Mustapic (2002) points out, almost 30% of the vetoes used by Menem during his first presidency were partial vetoes to laws initiated by the executive but amended in Congress with the participation of legislators of the PJ. Many of these vetoes involved laws implementing important economic reforms in the area of privatization.

In this context of intraparty conflict, it is clear why legislators regularly chose inaction in the case of NUDs: Although explicit support could affect the interests of their followers, explicit rejection could jeopardize their own political positions within a disciplined party. This may also explain the paradox of why Menem issued so many NUDs in spite of the seemingly high level of partisan support during his first presidency and in the first half of his second presidency. In the absence of a unified position within the party, Menem decided to avoid ordinary legislative procedures and rely on a "negative" form of party discipline to sustain policy making by decree. To maintain a decree, the president needed only to ask his partisans in Congress to abstain from repealing it.

Menem did not always resort to NUDs to neutralize opposition from his own party. In sensitive areas, such as privatization, the president regularly relied either on delegation or on normal legislation (Llanos, 1998, pp. 764-765). Something similar occurred in the area of labor reform, where the president faced strong opposition from labor unions and their representatives in Congress, all of them members of the PJ (Etchemendy & Palermo, 1998).<sup>39</sup> If one contrasts this strategy with other areas of reform, such as taxes and fiscal matters, for which NUDs were regularly used, one can conclude that the president made selective use of these instruments, avoiding them when active opposition from his party or organized interests was likely to arise.<sup>40</sup>

39. The only decree in the area of labor was one regulating strikes. See Etchemendy and Palermo (1998).

40. On the different factors explaining the option between introducing regular bills and changing the status quo by means of decrees, see Magar (2001).

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