

BICAMERAL POLITICS: THE DYNAMICS OF LAWMAKING IN BRAZIL

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# BICAMERAL POLITICS: THE DYNAMICS OF LAWMAKING IN BRAZIL

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University of Pittsburgh, 2005

What accounts for legislative capacity? Legislative capacity is the efficiency and effectiveness of the executive and legislative branches in lawmaking. Much literature in political science has addressed this important question. I join the discussion by examining the impact of bicameralism on legislative capacity and outcomes. I argue that bicameralism affects legislative capacity but its effects are conditioned by the location of preferences, inter-chamber bargaining, and legislative rules. Using Brazil as a case, I uncover the ways in which the inter-chamber interplays and their interaction with the executive influence legislative processes and their outcomes. First, an event history analysis of Brazilian legislative data (1988-2004) examines legislative approval and rejection as well as their timing. Next, I conduct case studies of key legislative issues in post-authoritarian Brazil (pension reform, presidential decree authority, gun control, and political reform). Evidence provides support for the arguments of this dissertation.

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# 1. CHAPTER 1: INTRODUCTION

## 1.1. INTRODUCTION

On September 13, 2004, the government of Brazilian President Luiz Inácio “Lula” da Silva made a risky move. Lula invited various senators of opposition parties for a dinner at the house of his Chief of Staff, José Dirceu. The event had intense media coverage and was severely criticized by opposition parties as an attempt by the Lula government to co-opt dissident senators of opposition parties. The purpose of this meeting was to amplify the government’s base of support in the Senate. Thus far, the Lula government had enjoyed a comfortable majority in the Chamber of Deputies, but its support base in the Senate had been precarious. In 2004, certain government initiatives that the Lula administration considered crucial were defeated in the Senate, and some others stalled.<sup>1</sup> Hence, Lula and his aides sought closer relationships with the senators of opposition parties who had been sympathetic to the government. The media reported that the government intended to weaken the opposition by helping dissident senators to create an independent party or to gain membership in one or more of the governing parties. This encounter was considered a high-risk action because it could damage the image of the president and infuriate opposition senators without necessarily broadening the government’s support base in the Senate, thus aggravating executive-senate relationships. Despite those risks, the government chose to pursue a dinner hosted by President Lula with sympathetic opposition

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<sup>1</sup> For example, the presidential decree that outlawed gambling was defeated in the Senate. President Lula issued this decree in response to the scandal that involved a high-ranking government aide illegally soliciting campaign contributions from an individual known to be involved illegal gambling. The Senate also increased the value of the minimum wage to R\$270 from the R\$260 determined by the government despite its concerted efforts to maintain the original value. The government was only able to restore the original R\$260 in the Chamber.

senators in the hope that this initiative would help avoid future government defeats in the Senate.

Politicians working with a bicameral legislature know that having two independent houses of Congress has implications for the legislative process and its outcomes. In the episode above, the Brazilian government recognized that the legislative success of government initiatives depended not only on the majority it entertained in the lower house but also on increasing its solid base of support in the upper house. However, there is virtually no research to date on the effects of bicameralism in recently democratized countries. The existing work on bicameralism focuses on the U.S. presidential system and European parliamentary systems.<sup>2</sup> Prior studies of legislative politics in new democracies have instead concentrated on presidential-lower chamber relations or modeled bicameral legislatures as if there were only one chamber (e.g., Shugart and Carey 1992; Linz 1994; Ames 2001; Cox and Morgenstern 2002). This neglect of bicameral relations in legislative research is problematic, because if rules that govern bicameral relations differ from country to country and/or from one type of bill to another, then their consequences are likely to differ as well. Moreover, modeling a bicameral legislature as a single chamber would lead to misleading conclusions and introduce a bias in the results of research (Tsebelis and Money 1997, 3).<sup>3</sup>

The central argument of this dissertation is this: Bicameralism affects legislative capacity but its effects are conditioned by the location of preferences, inter-chamber bargaining, and legislative rules. By legislative capacity, I mean the efficiency and effectiveness of the executive and legislative branches in lawmaking. Using Brazil as a case, I will uncover the ways in which the inter-chamber interplays and their interaction with the executive influence legislative

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<sup>2</sup> For example, Tsebelis and Money 1997, Heller 1997, 2001, Binder 1999, Patterson and Mughan 1999, König 2001, and Druckman and Thies 2002 deal with US presidential or European parliamentary bicameral systems.

<sup>3</sup> Such modeling strategy will not lead to a biased estimate only when the effect of the omitted chamber or bicameral interaction is zero, which itself must be demonstrated empirically.

capacity and its outcomes. Although this dissertation is about bicameralism in Brazil, its findings should also be of interest to scholars of comparative legislative politics, because the analyses in subsequent chapters will show how various legislative rules, preferences of the two chambers, and environments that shifted over time have affected legislative output in Brazil. Three main questions guide this dissertation: (1) How does bicameralism function and what are its consequences? (2) How are the effects of bicameralism mediated by legislative rules, partisan forces, and elections? (3) What, if any, is the impact of crises on the working of a bicameral regime?

This dissertation also has implications for the design of political institutions. For centuries, political pundits and scholars have sought to lay out the conditions that promote policy stability—when stability is regarded as a virtue—or conversely, the conditions that break gridlock—when a change of the status quo is desired. Many political scientists have argued that bicameralism is a key institution that makes a policy change difficult (e.g., Hammond and Miller 1987; Riker 1992; Tsebelis and Money 1997; Binder 1999). Whether policy stability is desirable or undesirable depends upon the context in which it is discussed. However, legislative delay and gridlock can be detrimental to political systems faced with significant challenges and thus may need to undertake important reforms.<sup>4</sup> Such is the case with many nascent democracies like Brazil. Linz (1994) argued that presidential systems have an inherent tendency to generate executive-legislative conflict that may result in policy stalemate and may ultimately lead to democratic breakdown. Shugart and Carey (1992) differentiated among presidential systems and showed the dangerous correlation between presidents with substantial legislative powers and the propensity for the collapse of democracy. In fact, so much of the literature dealing with democratizing countries is focused on regime survival and breakdown (e.g., Przeworski *et al.*

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<sup>4</sup> Policy stalemate is especially harmful when delays do not accompany an improvement in the quality of legislation.

2000), but there is little work on the systems that survive, that ‘muddle through,’ but do so ineffectually and slowly, satisfying nobody.

Moreover, virtually no study has systematically examined the impact of bicameralism on legislative stalemate and, by implication, on the stability of democracy in presidential bicameral systems. If bicameralism indeed has the propensity for increasing policy deadlock, if excessive policy stability arising from institutional conflict may threaten the survival of democracy as is often argued, *and* if a certain degree of policy predictability is nonetheless desired, it is then crucial to understand under what rules and conditions bicameralism is likely to generate policy immobility. This dissertation provides this crucial information, which is not only of analytical interest for political scientists, but is of practical interest to those designing new political systems, an increasingly frequent occurrence in the democratizing world.

## **1.2. BICAMERALISM AND LEGISLATIVE CAPACITY**

Political pundits and practitioners alike have long debated the merits of bicameralism.<sup>5</sup> Proponents of bicameralism have argued that it strengthens a representative function of government by allowing one additional arena for interest representation, improves the quality of legislation, furnishes an institutionalized check on the abuse of legislative power, increases policy stability, and reduces uncertainty in government action (Madison, *Federalist 62 and 63*; Montesquieu 1977; Riker 1992; Levmore 1992; Hammond and Miller 1987, Rogers 2001). The major critique of bicameralism was raised by Sieyès two centuries ago, which still is a good

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<sup>5</sup> A good summary of the historical justifications of bicameralism is found in Tsebelis and Money (1997).

representative of the current debate: “Of what use will a Second Chamber be? If it agrees with the Representative House, it will be superfluous; if it disagrees, mischievous” (Sieyès, quoted in Bryce 1921, 438).<sup>6</sup> Despite these potentially important influences of bicameralism, however, many influential works on legislatures and political capacity of government remain silent on the distinction between bicameral and unicameral legislatures (e.g., Jacobson 1990; Baron and Ferejohn 1989; Mayhew 1991; Shugart and Carey 1992; Weaver and Rockman 1993; Krehbiel 1996, 1998; McCarty 2000; Cox and Morgenstern 2001; Ames 2001; Epstein and O’Halloran 2001).

However, bicameral research is vital in institutional and legislative studies. Approximately one-third of the world’s legislatures are bicameral (Tsebelis and Money 1997), and empirical studies of bicameralism that do exist have shown that bicameralism is consequential. Bicameral incongruence, or divided policy majorities between the two chambers, increases legislative delays and gridlock (Tsebelis and Money 1997; Binder 1999; Bottom *et al.* 2000; König 2001). Bicameral incongruence also worsens government deficits where political party discipline is weak but improves budget balances where there is a tight party discipline (Heller 1997, 2001). The lack of a government majority in the upper house in bicameral parliamentary systems threatens cabinet stability (Druckman and Thies 2002). And bicameral rules and informational (a)symmetries affect the sequence of the legislative move, bargaining between the two chambers, the strategies that actors use to pursue their goals, and the likelihood that the bills are adopted (Money and Tsebelis 1992; Tsebelis and Money 1997; Rogers 1998).

Much of the contemporary debate on legislative politics focuses on the conditions that constrain a political system’s ability to act promptly and decisively (e.g., Weaver and Rockman 1993). Research based on the theories of veto players and divided government has shown that a

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<sup>6</sup>Bentham, Samuel Adams, Paine, Turgot, and Condorcet were also critical of bicameralism (Rockow 1928).



concurrence of the preferences of key legislative actors (both collectives and individuals) is crucial to a change of a prevailing policy.<sup>7</sup> Where this condition is absent, legislative delays and gridlock are expected to ensue. Prior research has also revealed that even when all parties agree that some agreement is better than no agreement, conflict can still arise over the specifics of new legislation. In the bargaining over the content of legislation, no one wants to back down first, and thus delays are a prominent property of legislative bargaining (Cox and Kernell 1991, 243).

In a similar fashion, bicameralism imposes a more stringent condition for a change of the status quo policy than unicameralism by requiring a concurrence of preferred policy positions by two distinct chambers (Hammond and Miller 1987; Riker 1992; Tsebelis and Money 1997).<sup>8</sup> In more technical terms, as the preferences of the two chambers diverge, the “winset” of the status quo—the set of all points that can defeat the status quo—becomes smaller, and hence the change of the status quo less likely. The convergence of preferences, in turn, is less likely if the two chambers have different partisan compositions and member characteristics. The sources of inter-chamber differences include, but not limited to, different methods and timing of membership selection and different career trajectories.

Besides the distribution of preferences, decision rules affect a political system’s propensity for policy change. The difficulty of implementing a policy change under the requirement of supermajority voting rules has been well documented (Krehbiel 1996, 1998; Brady and Volden 1997). In a bicameral setting, in addition to voting quotas, rules that govern inter-chamber conflict resolution influence the speed of legislation and legislative outcomes.

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<sup>7</sup> See Tsebelis (1995, 1999, 2002) for the analysis of veto players. For research on divided government, see a collection of essays in Cox and Kernell (1991). The most influential work against the alleged effect of divided government remains Mayhew (1991).

<sup>8</sup> This statement assumes that both chambers are endowed with veto power. However, even if one of the chambers has only the power to delay, modeling legislative politics in a bicameral legislature as if it were unicameral would be fallacious (Tsebelis and Money 1997).

Two exemplary bicameral conflict resolution mechanisms are the *navette* system, in which bills shuttle between the two chambers until an agreement is reached or some stopping rule is applied, and a conference committee, in which representatives from both chambers draft a compromise bill that is subsequently voted in the floor under a closed rule (that is, without amendment) (Money and Tsebelis 1992; Tsebelis and Money 1997). In a *navette* system, bicameral bargaining is central to determining the outcome, and holding all else equal, the chamber that can better withstand the delays of new legislation has a bargaining advantage.

Conferring on one chamber the power to be decisive is yet another conflict resolution mechanism. An example is to grant the chamber that initiates a bill the ‘last word’ after it is reviewed by the other chamber. Lijphart (1999) calls two chambers with equal constitutional prerogatives and democratic legitimacy (i.e., whether members are appointed or selected through popular elections) *symmetric* and ones that lack these qualifications as *asymmetric*. If, in symmetric bicameralism, the composition of the two chambers differs with respect to the membership characteristics and members’ preferences (that is, if the two chambers are *incongruent*), policy immobility likely results. If incongruence occurs in an asymmetric bicameral system, then the more powerful chamber is likely to overshadow the less powerful one, albeit to varying degrees. If there is bicameral congruence in either symmetric or asymmetric bicameralism, policy change should not be difficult, if so desired by all actors.

Bicameralism thus affects legislative capacity. However, how it influences legislative capacity depends upon various factors. I will analyze those points in the theory and empirical chapters.

### 1.3. RESEARCH DESIGN

Although the theories I develop in this dissertation are general and thus can be applied to various bicameral systems, this particular work focuses on one country—Brazil—for empirical analyses. There are various reasons why Brazil is a fascinating and important case to study bicameralism.

#### 1.3.1. Why study Brazil?

Brazil is an ideal case to examine the effects of bicameralism and various decision rules on the dynamics of lawmaking for at least four reasons: (1) because the question of legislative capacity is of substantive importance in Brazilian politics; (2) because the Brazilian political system accords its president strong legislative power; (3) because the country has unique legislative rules that in effect make it possible to study different “types” of bicameralism; and (4) because accessibility to legislative information and peaceful and uninterrupted alternations in government since democratization make this type of research viable.

*The “Governability” Puzzle* To many observers of Brazilian politics, Brazil suffers governability problems. Governability refers to “the efficiency of a nation’s executive and legislative branches in the making of programs and policies” (Ames 2001, 1). Scholars such as Mainwaring (1999), Ames (2001), and Stepan (2000) argue that, despite substantial and immediate needs for economic, political and social reforms, the Brazilian political system has been unable to carry out these reforms. Where changes were made, moreover, they often came too late (usually punctuated by some sort of crises) and/or too little. These scholars contend that Brazil’s governability crisis results from the country’s electoral system to the lower chamber that

hinders efficient interest aggregation and strong regional powers vis-à-vis central authority due to its federal system.

These claims are far from obvious, however. Figueiredo and Limongi (2001) argue that the Brazilian political system does not have the governability crisis as often alleged because the executive dominates the legislative process. Brazilian presidents use their constitutionally endowed substantial legislative prerogatives—the exclusive right to initiate certain legislation, executive decree authority, and the ability to request “urgency” in the examination of their proposals in Congress—to promote their projects.

However, none of the major studies on Brazilian legislative politics has examined bicameralism as a potential cause of legislative gridlock. Both Ames and Figueiredo and Limongi focus on executive-lower chamber relations in their research. This scarcity of scholarly attention to bicameralism in Brazil may stem from the widespread perception that the Senate is simply the house of review and tends to be pro-executive (“*governista*”), making the upper house appear a non-significant actor in the legislative process (see, for example, Figueiredo and Limongi 1996, 8). While it is true that many bills originate from the lower house (due to the constitutional requirement that the executive proposals must be presented in the Chamber of Deputies) and the initiating house has the last word on the bills, still the Senate holds vetoes on such proposals. Moreover, the Senate has the same ‘last word’ prerogative as the Chamber in relation to the bills originating from that house. With respect to constitutional amendments, furthermore, there is no advantage for being the initiating house. Any disagreements on the text of constitutional amendment must be resolved by both chambers, or else the amendment will be aborted. Hence, any analysis of legislative politics in Brazil should explicitly treat the powers and preferences of the Senate as variables to be studied, rather than assume its non-impact.

Understanding the relationships between and among the two chambers and the executive will shed new light into the study of legislative politics in Brazil and contribute to solving the governability puzzle.

***Presidential Legislative Power*** Democratization of authoritarian regimes in the last few decades has brought about the rapid expansion of presidential bicameral systems. With the numerical expansion, different forms of presidential bicameralism emerged.<sup>9</sup> Whereas in the U.S. separation of powers system the executive has little proactive legislative prerogative (at least formally) and the powers of the two chambers are roughly equal, many of those new presidential democracies vary in their bicameral power divisions and presidential legislative authority. This growth of presidential bicameral systems has created an unprecedented opportunity to inquire into the workings and consequences of such political systems. The findings of Shugart and Carey (1992)—the propensity of presidential systems with strong executive legislative prerogatives to experience democratic failures—strengthen the motivation to study the effects of bicameralism in new presidential democracies. Nevertheless, almost all empirical research on bicameralism to date examines established democracies such as the United States and West European countries.

Unlike the United States, Brazil is a nascent democracy governed by a president with considerable legislative power. Brazilian presidents not only have the power to veto legislation (both line-item and package veto power) but also the power to initiate bills. Historically Brazilian presidents have amply used these prerogatives. This presidential power, in addition to the internal organization of Congress that gives party leadership considerable decision-making authority, is what Figueiredo and Limongi (2001) and other Brazilian scholars have argued to

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<sup>9</sup> Presidential bicameralism is a system in which the legislature is divided into two independent chambers and the executive is presidential rather than parliamentary.

make the otherwise inefficient Brazilian legislative process surprisingly efficient. It is worth probing to what extent legislative gridlock occurs due to bicameral differences even in the system with a president with strong legislative prerogatives.

*Unique Institutional Setting* One of the greatest challenges to an empirical assessment of theoretical predictions is case selection. There are simply not enough legislative data of the quality we would like to have to perform a large-N cross-national quantitative study, especially when one deals with newly democratized developing countries. However, with a small-N cross-national study that examines nations as cases, it is difficult to determine whether a phenomenon we want to explain (e.g., legislative gridlock) is caused by bicameral divergences, various decision rules, or some other factors such as their cultures and historical peculiarities. A study of Brazil offers great advantages in this regard.

Constitutionally, the Brazilian Chamber of Deputies (the lower house) and the Senate (upper house) are co-equal. Unlike many countries in which the lower chamber dominates the upper chamber, there is no area of legislation that is granted to the Chamber of Deputies but denied to the Senate.<sup>10</sup> However, in the making and remaking of statutory regimes in Brazil, the house where a bill is first introduced is decisive in the final decision (Article 65 of the Constitution). That is, although the reviewing house has the right to amend, so long as it approves the bill, there is no formal mechanism for the reviewing house to enforce such amendments. In this case, the Brazilian bicameral system can be considered, in Lijphart's terminology, asymmetric. What makes Brazilian bicameralism particularly unique is the fact that, by initiating bills first, both the Chamber and Senate can be the house with the power to make the final decision. This contrast with other countries with asymmetric bicameralism in

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<sup>10</sup> In contrast, there are twelve areas of legislation that are constitutionally exclusive to the Senate's competency. These include the authority to appoint two-thirds of the judges that review federal expenditures and the right to authorize international loans by the states.

which one chamber (usually the lower house) always dominates the other (usually the upper house).

By contrast, constitutional amendments represent legislative activities in the context of symmetric bicameralism. The Brazilian Constitution requires that each chamber of the Congress approve an identical text of an amendment by a three-fifths majority, voted in two separate rounds (Article 60). Neither house dominates the other in cases of bicameral disputes; they must be resolved by a navette rule.

In short, due to variation in decision-making rules, Brazil provides a natural experimental setting to test, while holding country-specific factors constant, whether and how different types of bicameralism and decision rules affect legislative outcomes. Table 1.1 summarizes decision rules and procedures of the Brazilian Congress.

**Table 1.1: Rules and Procedures in the Brazilian Congress**

	<b>Mode of Deliberation</b>	<b>Type of Vote</b>	<b>No of Votes Required</b>	<b>Type of Bicameralism</b>
<b>Constitutional Amendment</b>	<i>Navette</i> until agreement is reached	Roll call	3/5 of each chamber on 2 rounds	Symmetric
<b>Complementary Law</b>	<i>Navette</i> (initiating house is decisive)	Roll call	Absolute majority in each chamber	Asymmetric
<b>Ordinary Law</b>	<i>Navette</i> (initiating house is decisive)	Symbolic	Simple majority in each chamber	Asymmetric

*Source:* Brazilian Constitution.

*Notes:* This table excludes budgetary procedures and deliberation of presidential decrees and vetoes. A simple majority refers to votes by a majority of members present in the session, and an absolute majority refers to votes by a majority of each chamber's membership. Symbolic votes are equivalent to voice votes in the United States. In symbolic voting, those who are in favor remain seated whereas those who are opposed stand up.

**Feasibility** Brazil is a continuing democracy since 1985 with constitutional alternation in government. Between 1985 and 2005, there have been six different administrations (Sarney

1985-90, Collor 1990-92, Franco 1992-94, Cardoso 1995-98, Cardoso 1999-2002, Lula 2003-present) and six different congresses, allowing enough longitudinal variation in executive-legislative and bicameral relations. Moreover, the preferences of presidents, deputies and senators are expected to vary in Brazil due to their elections by different rules (a nation-wide majority rule for presidents; state-wide plurality rule for senators; and open-list proportional representation for deputies), staggering elections of the members of the Senate, different terms of office (8 years for senators and 4 years for deputies), and different career profiles (e.g., senators have particularly strong ties with state governors and deputies are especially close to mayors).

Furthermore, in the last several years, the Brazilian Congress has made significant improvement in making information on legislative activities available to the public. For example, Brazilian citizens and observers can accompany the progress of the bills that interest them via the sites of the Chamber and Senate on the Internet. The Chamber and Senate sites also began publishing results of roll call votes as well. Researchers can also obtain information that is not available online through their archives. In short, Brazil today provides wealth of information to researchers interested in testing with developing countries theories and techniques developed originally to study legislative politics of advanced industrial countries.

### **1.3.2. Methodology**

This dissertation analyzes the legislative dynamics of bicameralism through both quantitative and qualitative methods. A quantitative analysis shows general patterns of how bicameral divergences, decision rules, and other factors affect the legislative process and outcomes. In contrast, qualitative case studies of significant legislation enable us to pay closer



attention to whether theoretically predicted behavior in fact caused the patterns observed in the data. For the quantitative analysis, I use an event history analysis to examine legislative delays and outcomes. I analyze bills proposed in the Brazilian Congress since the promulgation of the 1988 Constitution.

Following the quantitative analysis, I closely examine several important legislative issues that have been debated in post-authoritarian Brazil. The case study method is the best approach to investigate how the *contents* of legislation changed as a result of strategic interactions between and within the executive and bicameral legislature, because such analysis requires a close examination of the legislative history of individual proposals. Moreover, there is no better way than the case study method to test whether the causal mechanisms posited by theory are actually the ones that produced the observed outcomes (Tsebelis and Money 1997, 126). The use of aggregate data may give insufficient attention to the actual processes that generate the observed outcomes. In this sense, case studies can complement the shortcomings in the quantitative study that may exist.

Specifically, this dissertation analyzes the following legislative agendas: pension reform, regulation of executive decree authority, political reform, and gun control law. The cases are chosen on the basis of variations in the key independent variables. Thus, the list includes statutory bills (political reform and gun control) examined by a simple majority rule under asymmetric bicameral powers and constitutional amendments (pension reform and reform of executive decree authority) considered by a supermajority rule under symmetric bicameral powers. In addition to variation in legislative rules, many of the cases in this list are also recurring reform issues across different administrations and congresses in Brazil. The long life cycles of certain important legislative issues in Brazil (unfortunately from the perspective of

legislative efficiency) allow us to investigate the impact of various bicameral partisan compositions on the processes and outcomes of bill deliberation. They also allow us to examine the changes in the economic and political contexts in which those issues were discussed.

#### **1.4. PLAN OF THE DISSERTATION**

This dissertation proceeds as follows. Chapter 2 reviews theoretical perspectives on bicameralism and legislative decision-making. Conventional approaches to studying Brazilian legislative politics focus on the executive or executive-lower chamber relations. I argue that it is necessary to analyze inter-chamber relations within the Congress in addition to executive-legislative relations. I then posit a set of hypotheses derived from a review of the theories. I argue that legislative gridlock is a function of intra-branch as well as inter-branch divergences, decision rules, the context in which bargaining occurs, and the temporal dimension of the bill in discussion.

Chapter 3 describes formal and informal legislative rules and practices under the 1988 Constitution in Brazil. It identifies actors and their roles as well as decision rules with respect to constitutional amendments, statutory bills, and presidential decrees. This chapter also compares deputies and senators in terms of their career trajectories and electoral mandates and draws their implications for legislative behavior.

In Chapter 4, I test the hypotheses developed in Chapter 2. I explain why the analysis of roll call votes is not sufficient in understanding legislative dynamics. I argue that greater attention should be given to analyzing timing of legislation as well as legislative outcomes. I

offer an event history technique as a way of analyzing the legislative dynamics of bill approval and gridlock.

The next three chapters investigate several important legislative issues that have been debated since Brazil's transition to democracy. Chapter 5 deals with pension reform under the Cardoso and Lula governments. Pension reform has been discussed in Brazil mainly as a constitutional reform. Although both presidents managed to approve constitutional amendment proposals, they were far short of what they originally intended and the issue requires more reforms in the future. This chapter also shows the strategic role that the Senate played and the effect of economic crises on the passage of the proposals.

Unlike the pension reforms, the topic of Chapter 6, the reform of presidential decree authority, was initiated by Congress. Although almost all members of Congress agreed that presidential decree power should be restricted and regulated, they disagreed on two points: to what extent should decree power be restricted and which of the legislative houses should review decrees first, thus retaining final words on their texts? The stalemate was resolved when the Senate gave in and accepted the Chamber's arguments. The president also did not lose completely; he successfully had Congress approve a provision that *expanded* his decree authority.

Chapter 7 discusses political reform and gun control. Both political reform and gun control bills are statutory bills, but their fates proved to be different. In 2003, the gun control bill was approved by Congress and sanctioned by the president. Political reform, which has been on legislative agenda for many years, seems to have suffered a legislative lapse in Congress once again. What accounts for the difference? This chapter discusses the role of a joint committee that enhances a chance for a bill's approval.

Chapter 8 concludes this dissertation. I summarize the findings of the research, draw implications for policymaking and institutional reforms, and set an agenda for future research. One of the important lessons that emerge from this dissertation is that the effects of bicameralism vary with chamber characteristics and preferences, legislative rules, and relative bicameral bargaining powers. Before reforming or adopting a bicameral legislature, institutional designers should examine many available options in order to find the alternatives that best fit their citizens' needs.

## 2. CHAPTER 2: THEORETICAL PERSPECTIVES ON BICAMERALISM AND DECISION-MAKING

*“It is easy and even, perhaps, historically correct to think of bicameralism as designed to stall or stop legislation. There will almost surely be less government intervention, less hasty legislation, and more preservation of the status quo if proposals must pass two hurdles rather than one.”* Saul Levmore (1992: 151)

Conventional approaches to studying Brazilian legislative politics focus on the executive or executive-lower chamber relations. However, the Brazilian legislature is bicameral. It consists of two independent legislative bodies, each of which with power to propose, amend, and veto legislation. Hence, legislative research that does not explicitly model bicameral politics may produce misleading conclusions. What are the consequences for policymaking of having two chambers rather than one? Under what conditions does bicameralism make a difference and what kind difference does it make under those conditions?

In this chapter, I discuss theories of lawmaking in a bicameral legislature and posit a set of hypotheses. I argue that legislative gridlock and speed of legislation are a function of intra-branch divergences, decision rules, and the context in which bargaining takes place in a bicameral legislature.

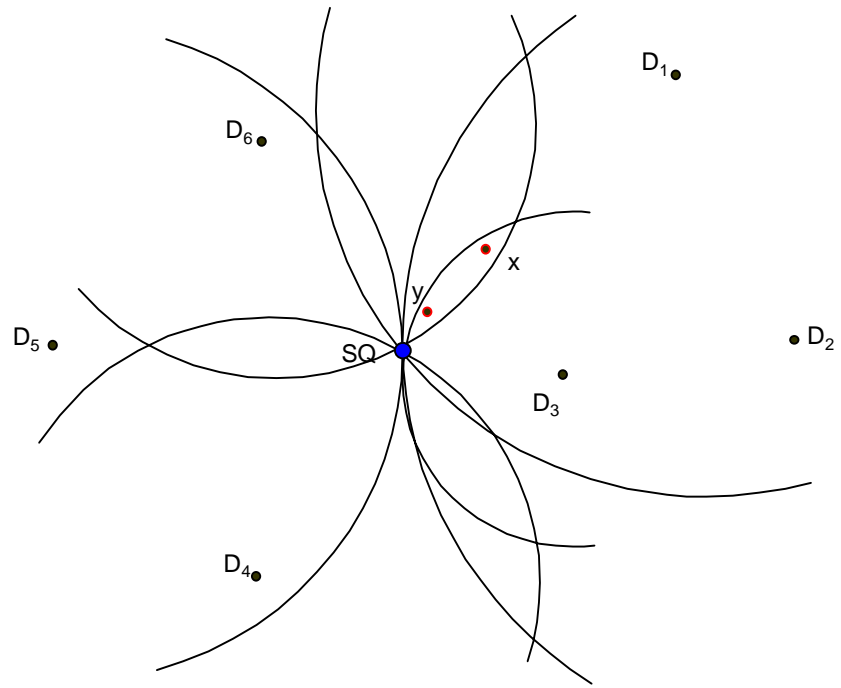
## 2.1. SPATIAL MODELS OF LAWMAKING IN A BICAMERAL LEGISLATURE

Voting cycles and instability in multidimensional policy spaces have been major concerns among social choice scholars (e.g., McKelvey 1976). Scholars such as Hammond and Miller (1987), Riker (1992), and Tsebelis and Money (1997) have argued that bicameralism is an institution that can promote policy stability. The stability-inducing property of bicameralism depends upon the two chambers having divergent preferences.

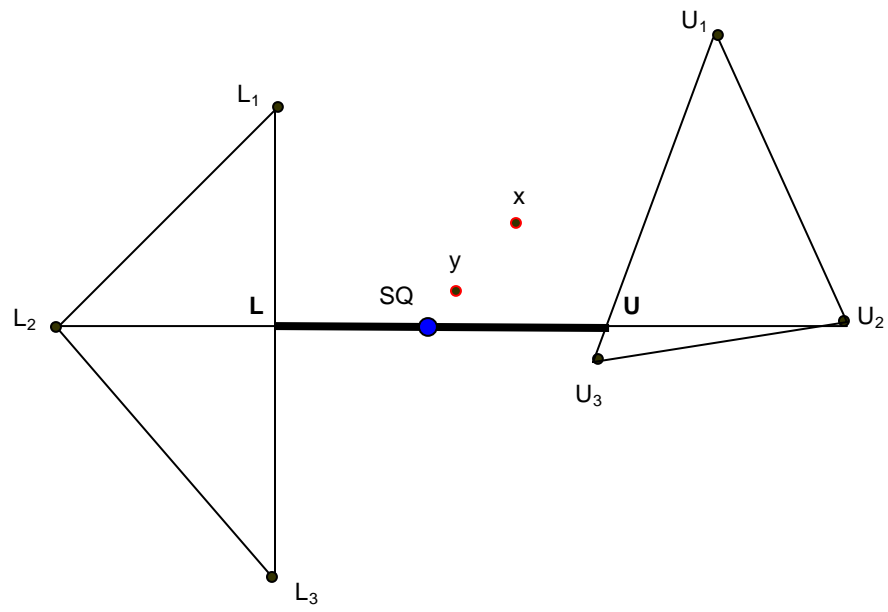
Let us consider Figure 2.1. There are six legislators,  $D_1, \dots, D_6$ , discussing a policy change in a two-dimensional space. We assume that the legislators have Euclidian preferences and they vote by simple majority rule. The figure shows the ideal point of each legislator and the location of the status quo policy, SQ. Suppose, for now, that this is a unicameral legislature. An alternative policy  $x$  can defeat SQ by a coalition of  $D_1, D_2, D_3$ , and  $D_6$  since they all prefer  $x$  to SQ. However, a different majority consisting of  $D_3, D_4, D_5$ , and  $D_6$  prefers alternative  $y$  to  $x$  (indifference curves are not drawn). Indeed, given the preferences of the six legislators, there is no point that can defeat any other alternative by simple majority rule, and as such, there is, at least theoretically, no policy stability.<sup>11</sup>

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<sup>11</sup> McKelvey's (1976) chaos theorem establishes that in multidimensional spaces, except under very strict and rare conditions, there will be no majority rule empty-winsset point. Instead there will be chaos; whoever controls the order of voting can determine the final outcome.



**Figure 2.1: Majority Cycles in a Two-Dimensional Policy Space in a Unicameral Legislature**



**Figure 2.2: Bicameral Core**



Now consider Figure 2.2. There are six legislators and their ideal points are identically positioned as in Figure 2.1, but they are assigned to one of the two chambers of a bicameral legislature. Legislators L1, L2, and L3 are the members of the lower house while legislators U1, U2, and U3 belong to the upper house. A passage of a bill now requires a joint majority of the two chambers. In this bicameral setting, a bicameral core—the set of all points that cannot be defeated with a given decision-making rule—exists that includes SQ. Therefore, neither the alternative  $x$  nor any other alternative policy can upset the status quo policy. In other words, the status quo policy cannot be changed.

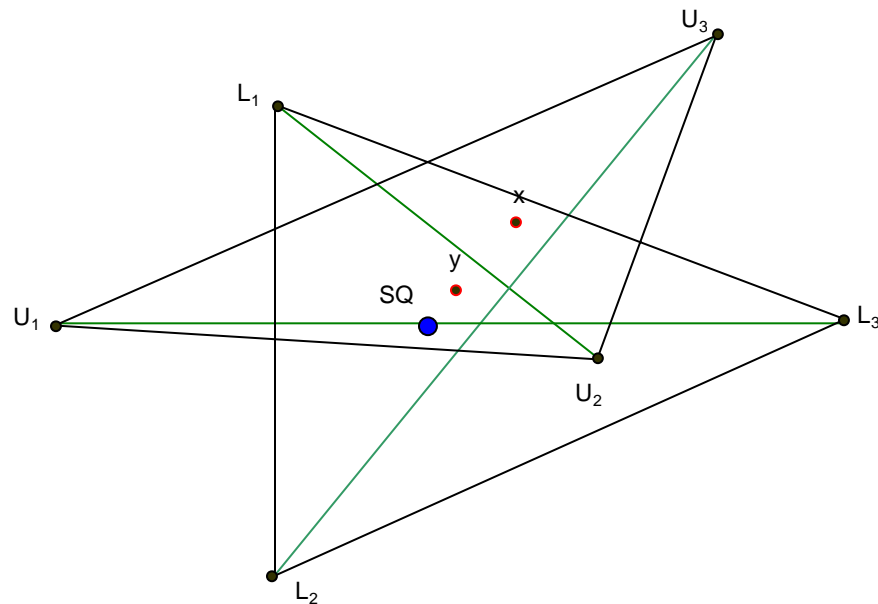
To understand why a bicameral core exists given the locations of the six legislators' most preferred policy positions, consider the following. A chamber bisector is the median hyperplane that goes through at least two chamber actors as shown in Figure 2.2. A change of the status quo is possible if and only if there is a (simple) majority in both houses. A bicameral bisector is a cross-chamber bisector each side of which constitutes a joint majority (Hammond and Miller 1987). The line passing through L2 and U2 is the bicameral bisector. Hammond and Miller (1987) proved that the bicameral core is a subset of a bicameral bisector. In their words:

Theorem 1. A point  $x$  is in the core if and only if no straight line through  $x$  leaves a majority of both chambers to one and the same side of that line (Hammond and Miller 1987: 1159).

Theorem 2. If (1) a bicameral legislature has only one bicameral bisector and (2) there is a point  $x$  on the bicameral bisector such that the chamber bisectors from one and only one chamber intersect at the bicameral bisector in each direction from  $x$ , then  $x$  is a core point (Hammond and Miller 1987: 1160).

In Figure 2.2, line segment LU lying on the  $L_2U_2$  bicameral bisector is the core because a majority of both chambers exists on the line segment and its either side.

It is straightforward to illustrate why any policy in the core is invulnerable to alternative policies. First, notice that SQ that would be defeated by point  $x$  in a unicameral legislature prevails over  $x$  by a joint majority of  $L_2$  and  $L_3$  in the lower house and  $U_2$  and  $U_3$  of the upper house. More generally, any point above LU is defeated by a concurrent majority of the two chambers. Also, any point below LU is defeated by another joint majority consisting of  $L_1$  and  $L_2$  and  $U_1$  and  $U_2$ . Likewise, any point to the left and the right of LU cannot gain a concurrent majority supporting it. Moreover, the upper house will reject any movement to the left of SQ on LU while the lower house will veto any movement to the right of it. Consequently, LU is the bicameral core, and SQ has an empty winset.



**Figure 2.3: The Absence of a Bicameral Core**

This argument does not hold for cases in which the ideal points of the two houses overlap. Let us examine Figure 2.3. I reshuffled the chamber assignments of the six legislators but kept their respective ideal points unaltered. In this example, there is no bicameral core. There are three bicameral bisectors in this configuration ( $L_1U_2$ ,  $L_2U_3$ , and  $L_3U_1$ ) and the points on each of the line segments can defeat points not on the line segments. Accordingly, there is no point with an empty winset. An exception occurs only when all three bicameral bisectors intersect at the same point, in which case that point is the bicameral core (Tsebelis and Money 1997: 83). In general, for one and two dimensional policy spaces, the larger the distance of the ideal points between the members of the two chambers, the greater is the size of the bicameral core, and consequently the greater is the likelihood of legislative gridlock. Also, the more overlapped the ideal points between the members of the two chambers, the less likely it is that a bicameral legislature will have a core.

**Hypothesis 1:** The greater the distance of policy preferences between the two chambers, the greater is the likelihood of gridlock.

Bicameral policy differences may arise from dissimilar partisan compositions of the two chambers, asymmetrically sized government's bases of support, divergent constituencies and electoral mandates, and so forth.

Generally, a bicameral core rarely exists in more than two-dimensional policy spaces, except for under very restrictive conditions. However, Tsebelis and Money (1997) have shown formally that even in the case in which there is no core, the uncovered set—the set of points that cannot be defeated directly and indirectly by any other points—always exists in a bicameral legislature. Furthermore, “as the number of legislators increases and as the distance between the centers of the yolks of the two chambers grows, [the area that contains the uncovered set of a

bicameral legislature]...becomes more like a straight line” (Tsebelis and Money 1997: 87).<sup>12</sup> In their elegant expression, “...the line connecting the centers of the yolks of the two chambers is the privileged dimension of conflict and compromise in bicameral legislatures” (Tsebelis and Money 1997: 90).

## **2.2. DYNAMIC MODELS OF LAWMAKING IN A BICAMERAL LEGISLATURE: BICAMERAL POLITICS AS A TIMING GAME**

Bicameral games can be reduced to one “privileged dimension of conflict and compromise.” Although the spatial illustration of decisionmaking in a bicameral legislature in the previous section helps us to predict the likelihood of the rejection of an alternative policy, it tells us little about how and when conflicts will be resolved or compromises will be made in cases where both chambers agree that a new policy is desirable but disagree on its details. In other words, if the bicameral core (or uncovered set) attracts point  $x$ , then the two houses must decide exactly where the new policy should be placed on that line segment. The location of  $x$  depends on the relative bargaining power of each house.

This section introduces bargaining models in analyzing bicameral politics. As in Tsebelis and Money (1997), I approach bicameral bargaining as a timing game where two actors—the lower and upper houses—must decide the timing of concessions given its and the other actor’s degrees of impatience to reach an agreement. First, I will describe a finite game (i.e., game with a stopping rule) with complete information in which each player’s payoffs are common knowledge, followed by an infinite game (game with no stopping rule) with complete

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<sup>12</sup> *Yolk* is “the smallest circle intersecting with all median lines” (Tsebelis and Money 1997, 86).

information. I then move to bargaining under incomplete information in which the two players do not know each other's payoffs.

### **2.2.1. Bargaining with Complete Information**

Bicameral bargaining may be modeled as a simple noncooperative model of bargaining developed by Rubinstein (1982). In this game, the two players have to reach an agreement on how to split a pie and they alternate offers sequentially. Both players are assumed to want to reach an agreement. Moreover, both players value an immediate agreement more than an agreement in a later period. That is, the players are impatient. In the application to legislative bargaining, Rubinstein's alternating offers game inspired Baron and Ferejon's (1989) bargaining model in a (unicameral) legislature and Tsebelis and Money's (1997) model of intercameral bargaining in a bicameral legislature.

***Bargaining over Finite Rounds*** There are two players: the Chamber of Deputies (C) and the Senate (S). I assume that both the Chamber and the Senate are unified players in order to simplify the game. The Chamber and the Senate alternate offers and counteroffers sequentially; once an offer is made, the other side must decide whether to accept or reject the offer. If a house rejects the offer, that house must make a counteroffer. The game continues until an offer is accepted or it reaches round  $T$ , the final round of bargaining. If there is no discounting, that is, if both players consider the future is as worthy as the present, the player who gets to make an offer in the last round gets the whole pie. However, the assumption of no discounting may not be realistic in many legislative settings.

For one reason or another, legislative actors may desire to approve legislation that they deem desirable sooner than later. Impatience for a speedy legislative approval may arise due to constituency pressures, upcoming elections, or economic crises. A swift approval of a new law allows society to enjoy its benefits longer. Legislative actors also wish to portray themselves as efficient lawmakers. Impatience may also stem from a risk that a bill may be aborted between the present and next round of negotiations. The level of impatience can be captured by a discount factor,  $\delta$ . If  $\delta > 1$ , the future is worth more than the present. If  $\delta = 1$ , the future is as good as the present. Finally, if  $\delta < 1$ , the future is worth less than the present. The relationship between the discount factor and the discount rate,  $r$ , is  $\delta = 1/(1 + r)$ . I assume  $0 < \delta_i < 1$  where  $i$  is either the Chamber of Deputies (C) or Senate (S).<sup>13</sup>

The Chamber and the Senate must bargain on the content of legislation. Both players desire to pass a law closer to their ideal points. If the Chamber wins  $\alpha$ , then the Senate gets  $1-\alpha$ . If all the Chamber's demands are accepted by the Senate, the former gets 1 and the latter 0, and vice versa. Since both houses attach greater importance to the passage of legislation today than its passage tomorrow, a failure to reach a bicameral agreement in each round of bargaining results in a discounting of its passage by  $r_C$  and  $r_S$ , respectively. Thus, if the total value of legislation is 1 in the first round, it will be  $\delta_C$  and  $\delta_S$  in the second round, respectively.

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<sup>13</sup> This assumption is necessary if the players are impatient.

**Table 2.1: Bicameral Bargaining over Three Rounds**

Round	Proposer	Chamber's share	Senate's share
T	C	1	0
T-1	S	$\delta_C$	$1-\delta_C$
T-2	C	$1-\delta_S(1-\delta_C)$	$\delta_S(1-\delta_C)$

Suppose that the Chamber makes an initial proposal. Suppose also that there are three rounds of bargaining. This situation is analogous to one in which the house that initiates a bill has the final word. We employ a backwards induction to solve this game, as illustrated in Table 2.1. In the final round,  $T$ , if it is ever reached, the Chamber keeps all its demands and offers no compromise to the Senate. The Senate accepts the Chamber's proposal because it is indifferent between the Chamber's proposal and rejecting the proposal, in which case the Senate gets nothing. At  $T-1$ , the Senate offers the Chamber  $\delta_C$ , which, for the Chamber, is equivalent to having an entire pie at  $T$  and thus will be accepted, keeping  $1-\delta_C$  for itself. By the same logic, in the initial round,  $T-2$ , the Chamber offers the Senate  $\delta_S(1-\delta_C)$  and retains  $1-\delta_S(1-\delta_C)$ . In equilibrium, an agreement is concluded in the very first round, with the Chamber keeping  $1-\delta_S(1-\delta_C)$  for itself and offering the Senate  $\delta_S(1-\delta_C)$ , which it accepts.

There are a few remarks. First, the first offer is always accepted. Second,  $\delta_S$  and  $\delta_C$  capture the bargaining strength of each player. The share of a pie for player  $i$  increases with the value of  $\delta_C$ . Third, the house that initiates a bill has an advantage over the reviewing house in games with odd numbers of rounds. If  $\delta_C = \delta_S$ , the house that gets to propose first always wins more than the reviewing house. The magnitude of the first mover advantage diminishes with the number of rounds, however.

Bargaining over finite rounds can be applied to the analysis of statutory lawmaking in Brazil where the house in which bills are first introduced retains the final word as long as the reviewing house approves them. What will happen if there is no formal restriction on how many rounds the two houses can bargain?

***Bargaining over Infinite Rounds*** Bargaining over infinite rounds represents bicameral bargaining where there is no formal stopping rule. Bargaining over infinite time is appropriate to study bicameral bargaining with respect to constitutional amendments in Brazil.

There is a unique subgame perfect equilibrium outcome for the discounted infinite-time bargaining game. For two players with fixed discount factors,  $\delta_S$  and  $\delta_C$ , the only subgame perfect equilibrium outcome is  $M_C = \frac{1 - \delta_S}{1 - \delta_C \delta_S}$ , where the Chamber of Deputies is the first mover and  $M_C$  is the Chamber's non-discounted maximum share (Rubinstein 1982). Why is this the case? It uses the same logic as in the case of finite games but with an introduction of  $M_i$ , the non-discounted maximum share that  $i$  can receive. At some point in the course of bargaining, denote it as time  $t$ , the Chamber and the Senate know that the Chamber's largest possible share is  $M_C$  and the Senate's  $1 - M_C$ . Thus at  $t-1$ , the Senate offers the Chamber  $\delta_C M_C$  and keeps  $1 - \delta_C M_C$  for itself. At  $t-2$ , the Chamber proposes a share of  $\delta_S(1 - \delta_C M_C)$  to the Senate, saving  $1 - \delta_S(1 - \delta_C M_C)$  for itself. We then solve for  $M$  by setting the two expressions for the Chamber's maximum share,  $M = 1 - \delta_S(1 - \delta_C M_C)$ , which becomes  $M_C = \frac{1 - \delta_S}{1 - \delta_C \delta_S}$ .

One of the striking features of this game is that, as with finite-time games with complete information, the first offer is always accepted. That is, there is no real bargaining in the equilibrium even in the case where negotiations can theoretically continue infinitely. However, in real politics bargaining failures and delays in reaching agreements are commonplace. The



inadequacy of those models in explaining delays stems from the assumption of complete information. Once this assumption is relaxed, delays in bargaining are possible.

### **2.2.2. Bargaining with Incomplete Information**

Under bargaining with incomplete information, negotiations can last more than one round. Delays in reaching an agreement may be inefficient—especially if all parties in negotiation concur on the desirability of a policy change in the same direction—but certainly realistic. In the literature on bargaining with incomplete information, there are typically two players (customarily a seller and a buyer), and one player is uninformed about the other player's discount factor or reservation level (e.g., Rubinstein 1985; Fudenberg and Tirole 1983). Therefore, finding the correct “type” of the player is essential for an agreement to be concluded. The first player updates his beliefs about the possible type of the second player using Bayes' rule. Models where both sides are uninformed and/or can make offers are much more complicated and support multiple equilibria.

In their analysis of bicameral bargaining with incomplete information, Tsebelis and Money (1997) adopt Grossman and Perry's (1986a, 1986b) model in which a seller bargains with a buyer over the price of an object. The buyer knows the seller's asking price, but the seller is uninformed of the buyer's valuation of the object. Grossman and Perry's model relies on computer simulations to discern equilibrium outcomes. Tsebelis and Money (1997: 104) highlight two of the findings by Grossman and Perry to formulate their “conjectures” about bicameral bargaining: the level of uncertainty and time discount factor have positive effects on the duration of bargaining.

Rather than using Grossman and Perry's model, I apply Alesina and Drazen's (1991) model of concession timing to bicameral bargaining because the latter does not rely on the assumption of asymmetric information as the former. Alesina and Drazen use a war of attrition model in which two (or more) societal groups must agree on the distribution of the burdens of economic stabilization—the levels of taxation. Both groups desire economic stabilization but each wants the other to assume a larger share of the burdens of stabilization. Stabilization will not occur until at least one of the groups concedes so that an agreement can be reached. What drives this game is the costs of waiting for another instant to concede in order to maximize expected present discounted utilities. In this model, each group's pre-stabilization utility loss (denoted  $\theta$ ) is only known to the group itself, and the other group knows only the distribution of its opponent's  $\theta$ . Thus, unlike Grossman and Perry's model where only one side is an uninformed player, in Alesina and Drazen's model both sides are uninformed of each other's level of impatience now represented by  $\theta$ . This representation of incomplete information is more suitable to an analysis of bicameral bargaining than the model with asymmetric information because there is no strong *a priori* reason to believe that one of the chambers knows the costs and payoffs of the other chamber.<sup>14</sup>

Alesina and Drazen's model helps to explain "rational" delay and predicts concession timing in bargaining. As applied to bicameral bargaining, each chamber's challenge is to choose whether it will concede at time  $t$  based on its costs and payoffs and the distribution of the other chamber's possible type with the knowledge that the other side also desires a policy change.

Pre-stabilization utility losses can be considered as opportunity costs for the current policy. In

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<sup>14</sup> Although Alesina and Drazen's model reaches conclusions similar to Grossman and Perry's findings adopted by Tsebelis and Money, I prefer to adopt their model because of their treatment of incomplete information for the two, not just one, players. In addition, Alesina and Drazen's model can be extended to account for different aspects of lawmaking as discussed subsequently.

equilibrium, the optimal time for concession is when the costs of waiting another period to concede just equals the expected gains from waiting another period.<sup>15</sup> A lower  $\theta$  makes a chamber a strong bargainer; a higher  $\theta$  makes it a weak bargainer. Thus, the higher the costs of legislative delay, the sooner will a concession be made, and the faster the speed of legislation. Delays in legislation also occurs as long as one or both of the chambers believe that the other side has a higher  $\theta$  and thus choose to wait for the other to concede.

Alesina and Drazen's war of attrition model can also be extended to account for why one might observe inefficient delays in bicameralism (as explained above) but not in unicameralism (under the assumption of a unified actor). Since there is only one legislative body that can pass a law, the single chamber legislature alone must bear any burdens incurred to itself that are associated with the passage of legislation. Since flow utility before the passage of new legislation is negative and lifetime utility after its passage is positive, the legislature's expected utility is maximized by passing it immediately.

The model also implies that an uneven allocation of post-legislation costs between the two chambers tends to lengthen the period of pre-legislation bargaining. The distribution of post-legislation burdens is an indicator of the degree of concession required in order to strike a deal, and the greater the distance of the two chambers' ideal points, the larger is the degree of concession required to pass legislation. Since both houses must live with the consequences of new legislation which affect the anticipated values of their future payoffs, *ceteris paribus*, an uneven distribution of compromises gives strong incentives to bargain harder, resulting in more time before an agreement is concluded.<sup>16</sup>

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<sup>15</sup> See Alesina and Drazen (1991) for the formal representation of the model.

<sup>16</sup> See Fearon (1998) for a similar argument in the context of inter-state bargaining in international relations.

In contrast, if a new policy's expected duration is short—for instance if it has a pre-set expiration date, then an expected post-legislation utility loss from compromise is smaller than in a case where new legislation is expected to last infinitely. Therefore, the duration of bargaining should be positively related to the duration of legislation proposed.

The discussions in this section have generated several hypotheses, three of which I will highlight.

**Hypothesis 2:** Impatience reduces the propensity for legislative delay.

**Hypothesis 3:** Legislative delay is positively related to the duration of legislation proposed.

**Hypothesis 4:** Holding the levels of impatience constant, the house that initiates a bill compromises less than the reviewing house in the content of legislation over which they are bargaining.

### **2.2.3. Informational Expertise and Sequential Moves in a Bicameral Legislature**

The models of bargaining under complete information reveal a first mover's advantage in legislation when there is an odd number of rounds. However, the order of play in these models is exogenously determined. Rogers (1998) argues that sequential moves themselves are strategic choices that bicameral legislatures face. Since information acquisition is costly, in an environment of high uncertainty, the chamber that has higher expected payoffs (gains from specialization minus costs of specialization) specializes, given that the net expected payoffs are positive.

Rogers maintains that the costs of information acquisition are inversely related to chambers' sizes such that the cost function is usually lower for the lower house than the upper house. Moreover, when the two chambers are controlled by the same party, the less specialized house *wants* the more specialized house to move first. Hence, the probability that the lower house introduces legislation that will be adopted is higher than the probability that the upper house introduces such legislation (assuming that the lower house has a greater number of members than the upper house). Furthermore, since the upper house desires to take advantage of the lower house's informational expertise, bills initiated by the lower house should enjoy relatively swifter approval and fewer modifications by the upper house than bills initiated by the upper house.

**Hypothesis 5:** Bills initiated by the lower house are more likely to have speedy approval than bills initiated by the upper house.

Note that this argument challenges a conventional wisdom of bicameralism that focuses on senatorial expertise. According to this view, a senate (or an upper house) promotes superior legislation relative to a lower chamber because of longer terms of office, higher minimum ages, and finer career trajectories that make senators professional legislators capable of studying legislation objectively (Tsebelis and Money 1997: 40).<sup>17</sup> Therefore, this perspective implies that senate-initiated bills should entertain higher approval rates than those proposed by the lower house. However, Rogers' informational model predicts the contrary. In addition, given the costs associated with specialization, the senate is likely to concentrate on developing expertise only in certain areas determined by its institutional and membership mandates and characteristics.

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<sup>17</sup> Brazilian senators' term of office is eight years and the minimum age to run for senatorial seats is 35. In contrast, federal deputies' term of office is four years and candidates for such offices may be as young as 21 years of age.

### 2.3. TYPES OF BICAMERALISM AND LEGISLATIVE RULES

It is generally agreed upon that institutional settings and legislative rules affect the likelihood of legislative success. Many scholars have argued that supermajority voting rules make legislative gridlock more likely (e.g., Krehbiel 1996, 1998; Brady and Volden 1997; Tsebelis 2002). The theoretical models of qualified majority rules tend to be simple and elegant, but they are usually built on an (implicit) assumption that there exists only a single chamber (and a president).

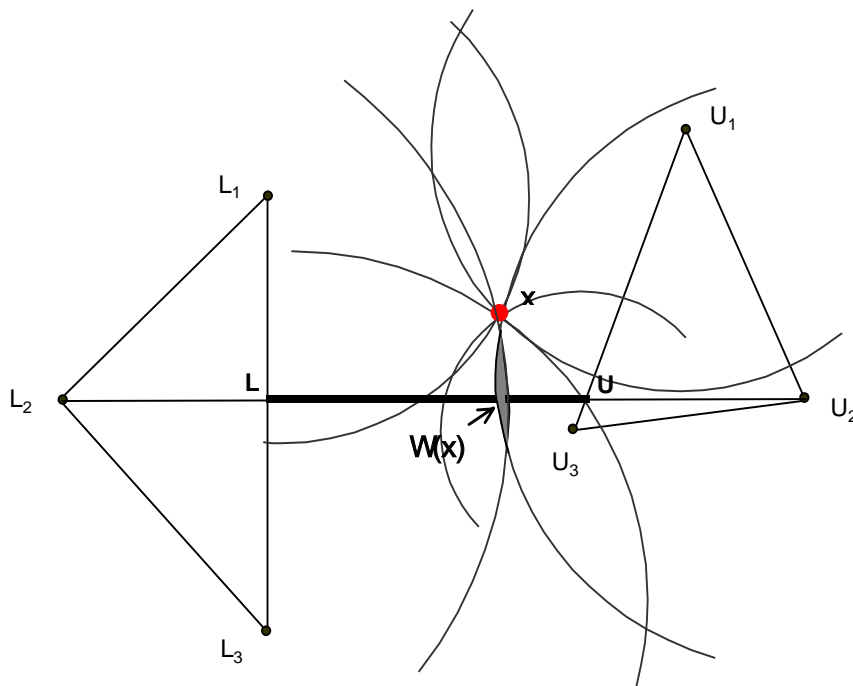
Krehbiel's (1996, 1998) model of lawmaking in the United States assumes one-dimensional policy space and a unicameral congress (although the U.S. Congress is bicameral). His model predicts a "gridlock interval" in the policy space based on two variables: the location of the status quo and the locations of the "pivotal" players. According to Krehbiel, "Among the  $n$  legislators...two players may have unique pivotal status due to supermajoritarian procedures" (Krehbiel 1998: 23). Those supermajoritarian procedures are the U.S. Senate's filibuster procedure, which requires a three-fifth vote to invoke cloture, and the executive veto override, which requires a two-third majority in Congress. The interval between filibuster and veto pivots is a gridlock interval where no policy change is likely to occur. Brady and Volden (1997) also developed a model similar to Krehbiel's in analyzing legislative gridlock in the United States.

The stability (or gridlock)-inducing property of supermajority rules is in fact well known and not new. Greenberg (1979) demonstrated that a core always exists if  $q > \frac{m}{m+1}$ , where  $q$  is the required majority,  $m$  is the number of dimensions, and  $\frac{1}{2} < q \leq 1$ . Tsebelis (2002: 150) argues that a qualified majority core exists more frequently than a bicameral core. What happens when

a bicameral legislature adopts demanding decision rules such as supermajority and unanimity rules?

Figure 2.4 replicates Figure 2.2 with the exception that  $x$  is the status quo now. With a simple majority rule, points on and inside the shaded area (the winset of  $x$  denoted  $W(x)$ ) defeat  $x$  with a concurrent majority of the upper ( $U_2$  and  $U_3$ ) and lower ( $L_2$  and  $L_3$ ) houses. However, if a unanimity rule is adopted, the winset of the status quo is empty. Hence there is no policy change. In general, a combination of bicameralism and supermajority decision rules increases the probability of gridlock because it reduces the size of the winset of the status quo.

**Hypothesis 6:** Legislative gridlock increases with the number of votes required to pass legislation.



**Figure 2.4: Winset of X under Simple Majority (and Empty Winset under Unanimity) in a Bicameral Legislature**

In addition to decision rules, bicameral conflict resolution procedures may affect the propensity for gridlock. Conferring on one chamber (typically the lower house) the power to be decisive in case of bicameral disagreements is a conflict resolution mechanism adopted in many bicameral systems. Another exemplary procedure for bicameral conflict resolution is *navette* in which bills shuttle between the two chambers until they reach an agreement or the bills are aborted. There is also a conference committee in which select members of the two houses draft a compromise bill to be voted in each house under a closed rule (without amendments).

Conference committees are often adopted in the United States and France.



Lijphart (1999) calls two chambers with equal constitutional prerogatives and democratic legitimacy (i.e., whether members are appointed or selected through popular elections) *symmetric* and ones that lack these qualifications as *asymmetric*. The navette procedure (without a stopping rule) is an instance of symmetric bicameralism (assuming equal democratic legitimacy of the two houses) and rules that give one of the chambers prevalence over the other is asymmetric bicameralism. If, in symmetric bicameralism, the composition of the two chambers differs with respect to the characteristics of membership and their preferences (that is, if the two chambers are *incongruent*), policy immobility likely results. It is also likely to take longer to strike a deal under symmetric bicameralism than under asymmetric bicameralism. By contrast, an asymmetric bicameral procedure facilitates legislation even if the two houses are incongruent because the more powerful chamber is likely to overshadow the less powerful one. If there is bicameral congruence in either symmetric or asymmetric bicameralism, policy change should not be difficult, if so desired by all actors. To summarize,

**Hypothesis 7:** Legislative delay and immobility are more likely under symmetric bicameralism than in asymmetric bicameralism.

## 2.4. RECAPITULATION

Social choice theories of bicameralism posit that bicameral legislatures reduce the propensity for policy change than unicameral legislatures. Bicameralism induces policy immobility when the ideal points of the two houses are sufficiently apart from each other. When their ideal points overlap, however, policy change is as likely to occur in bicameralism as in

unicameralism. Therefore, the stability-inducing property of bicameralism critically depends upon the two houses having divergent preferences.

When both houses desire a policy change, bargaining is a key to understanding both the timing of new legislation and its location in a policy space. In the bargaining theory, the players are assumed to be impatient, i.e., they prefer to reach an agreement sooner than later. Although under the assumption of complete information, the players theoretically always reach an agreement in the first round (hence there is no real bargaining), under incomplete information, rational delay in concluding an agreement can occur. Section 2.2 posited three hypotheses based on Rubinstein's and Alesina and Drazen's bargaining models. First, impatience reduces the propensity for legislative delay. Second, the longer the expected duration of legislation, the longer will be the bargaining in a pre-legislation period. And finally, the house that initiates a consideration of a bill is likely to compromise less than the reviewing house.

Chapter 2 also discussed the effects of informational expertise. Rogers argued that bills initiated by the lower house are more likely to be approved than bills initiated by the upper house because of the former's lower cost of information acquisition. Interestingly, this argument counters the conventional wisdom of bicameralism that highlights senatorial expertise in lawmaking. Empirical tests of the two opposing views will contribute to a better understanding of bicameralism.

Finally, I argued that legislative rules and bicameral "types" are likely to affect lawmaking. Supermajority rules increase the propensity of legislative gridlock because it reduces the size of the winset of the status quo policy. In addition, delay and gridlock are more likely when the legislative powers of the two houses are symmetric than when they are asymmetric.

In the subsequent chapters, I will test the hypotheses quantitatively and qualitatively with case studies using Brazilian legislative data. In Chapter 4, I test all hypotheses, except for hypothesis 4 (first mover advantage), with an event history analysis of legislative timing and outcomes. Chapter 5 (pension reform) examines hypotheses 1 (bicameral divergence), 2 (impatience), and 6 (supermajority rule). I investigate hypotheses 1 and 2 again in Chapter 6 (presidential decree authority). In Chapter 7, I analyze hypotheses 1 (bicameral divergence), 4 (first mover advantage), and 7 (asymmetric bicameralism). However, before moving to empirical analyses of lawmaking, I will review the legislative rules and processes in the Brazilian bicameral legislature in Chapter 3.

### **3. CHAPTER 3: THE LEGISLATIVE PROCESS IN BRAZIL**

#### **3.1. INTRODUCTION**

Institutional arrangements and decision-making rules determine who can propose a bill and who participates in the legislative process. They also affect the likelihood of a policy change. This chapter describes formal legislative rules and informal practices under the 1988 Constitution. It also discusses the characteristics of Brazilian deputies and senators in terms of their political trajectories and electoral mandates.

The chapter is organized as follows. Section 3.2 discusses institutional actors in Brazilian lawmaking. The 1988 Constitution endowed Brazilian presidents with substantial legislative powers. Brazilian presidents have the prerogatives not only to propose and veto legislation but also to issue decrees with immediate force of law. The Brazilian Congress consists of the Chamber of Deputies and the Federal Senate. The most significant actors within each house are the presiding officers, who retain agenda-setting power, and party leaders, who appoint and discharge committee members and make recommendations for votes. The degree of control that party leadership has over the rank and files is a matter of contention, however. Many parties have experienced defection by their members in important voting.

Section 3.3 describes decision rules and procedures. Adoption of a constitutional amendment requires that an identical text be approved by the Chamber and the Senate by three-fifth majorities. In contrast, ordinary and complementary laws require only simple and absolute majorities, respectively, in each house to pass Congress. However, statutory bills are subject to

presidential sanction and veto. Besides constitutional amendments and ordinary and complementary laws, there is a third venue for policy change: presidential decrees. Brazilian presidents have used decrees rather frequently. Under the original 1988 Constitution, presidential decrees were effective for 30 days, and the National Congress was to convene immediately after the issuance of a decree to examine it. By the mid-1990s, however, many legislators argued for sweeping changes in the rules of the usage and examination of decrees in order to restrict this powerful presidential prerogative. In this chapter, I discuss the rules and procedures of using and examining presidential decrees before and after the adoption of the 2001 constitutional amendment that altered them. I will return to the issue in Chapter 6.

Finally, Section 3.4 discusses the characteristics and career trajectories of federal deputies and senators. I draw from those features implications for deputies' and senators' legislative behavior. The open-list rule electing deputies and short electoral cycles motivate many deputies to seek federal largesse and make them vulnerable to cooptation by the government. In contrast, longer tenure and high name recognition tend to make senators more independent legislators. These implications will be explored in case studies.

### **3.2. INSTITUTIONAL ACTORS**

The 1988 Brazilian Constitution continued a presidential bicameral system for the country. Under this institutional arrangement, the president and the two houses of Congress are the principal institutional actors in lawmaking. There is also an independent judiciary whose

major legislative role is a judicial review of new legislation. The judicial branch can also propose bills but in limited areas only.

Unlike the U.S. president, the Brazilian president is endowed with substantial legislative prerogatives. In the Shugart and Carey (1992) classification assessing presidential legislative powers, the Brazilian president ranks among the most powerful presidents in the world. For example, the Brazilian president enjoys tremendous agenda-setting power. The Brazilian Constitution grants the president the power to propose constitutional amendments and new legislation. Presidents can also request from the congress an expedited consideration (known as a *pedido de urgência*) of statutory bills that he has proposed. This request sets a deadline for a bill's consideration in each chamber of Congress. Should either house fail to conclude its deliberation within the deadline, the deliberation of any other proposition is suspended in that house until the bill is voted.<sup>18</sup> In addition, the Brazilian president retains the exclusive right to propose budgetary bills and various administrative changes.

The Brazilian president also has both line-item and package veto powers. Traditionally, Brazilian presidents have amply used these prerogatives by vetoing, in entirety or partially, legislation approved by Congress. Although Congress is entitled to override the president's vetoes by an absolute majority of each chamber's vote,<sup>19</sup> it has been very rare that Congress override presidential vetoes. In fact, at this writing, Congress has overturned presidential vetoes only thirteen times in the post-Constituent period (since 1988).<sup>20</sup>

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<sup>18</sup> An exception is applied for presidential decrees that also have constitutionally determined deadlines for deliberation by Congress

<sup>19</sup> Although joint sessions of the Chamber of Deputies and the Senate (called the "National Congress") deliberate presidential vetoes in Brazil, votes are taken sequentially in a joint session, beginning with votes by the Chamber of Deputies. See the section on *Presidential Veto* in this chapter for details.

<sup>20</sup> Although why the Brazilian Congress rarely overturns presidential vetoes is an interesting question, it is not a subject of inquiry of this dissertation.

The most controversial among presidential prerogatives in Brazil is probably executive decree authority called provisional measure (*medida provisória* in Portuguese). Although the Brazilian Constitution allows the use of presidential decrees only in the matters of “urgency and relevance” (article 62), Brazilian presidents have used this prerogative in a wide range of areas—from purchasing an automobile for the vice president to shutting down bingo games to introducing new currencies. The range and frequency of policy changes enacted through presidential decrees have been such that many prominent members of Congress deplored that provisional decrees were more authoritarian than the infamous institutional acts of the military regime.<sup>21</sup>

Presidential decrees introduce to the legislative process dynamics different than normal routes of bill initiation and appreciation because the president changes policies bypassing congressional debates and approval. When it is time for Congress to debate the desirability and appropriateness of a policy change, the status quo has already been altered. With a stroke of a pen, presidential decrees force Congress and society to face a new reality. The frequent use of decrees by Brazilian presidents has reinforced the image that the Brazilian president is “proactive” and Congress “reactive” (Cox and Morgenstern 2002).

The Brazilian Congress consists of two independent houses: the Chamber of Deputies and the Federal Senate. The Chamber of Deputies is comprised of 513 federal deputies and the Senate of 81 senators. Each house separately elects the members of the Executive Board of the house (called *Mesa*) for two-year terms. The president of the respective house presides over the executive board. The president of the Senate is the president of the National Congress.

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<sup>21</sup> See, for example, “Uso abusivo de MPs contraria Congresso,” *Jornal do Brasil*, January 29, 1995, p. 3, and “Congresso limitará edição de MP,” *Jornal do Brasil*, October 23, 1995.

Although any member of Congress can propose a statutory bill, house presidents possess enormous agenda-setting power in both houses.

In each house of Congress, the house president is responsible for organizing the legislative agenda every month upon consultation with the College of Leaders composed of party leaders, minority and majority leaders, and a deputy or senator representing the government in the respective house. In addition to setting the monthly legislative agenda, the president also arranges daily session agendas called *Ordem do Dia* according to the legislative agenda of the month. These prerogatives give the house president the ability not only to select the materials to be discussed in the chamber but also to decide when they are voted. The presidents of the Chamber and the Senate can also call for extraordinary daily sessions as needed, and they jointly can convoke an extraordinary legislative session during seasons of congressional recess to deliberate the materials of legislative priorities.<sup>22</sup> The house president can also install *ad hoc* and special committees to consider issues of particular importance.

Party leadership also has significant control over the organization of legislative work in Congress. Party leaders influence legislative priorities through the College of Leaders (*Colégio de Líderes*) upon which the house president draws recommendations in organizing the legislative agenda. Decisions in the College are made by consensus whenever possible, but when it is not possible, they are made by an absolute majority of votes weighted by the size of each party in that house (Article 20 of the Internal Rules of the Chamber of Deputies). Party leaders also give recommendations on votes for members of their parties and appoint (and discharge) their members to (or from) committees.

Those party leaders' prerogatives notwithstanding, however, the actual degree of control that party leadership has over individual party members is a matter of contention in Brazil.

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<sup>22</sup> The President of the Republic is also entitled to convoke an extraordinary legislative session.



Brazil adopts an open-list proportional representation system to elect federal deputies. Under this system, voters can vote either for individual candidates or parties (and most voters choose to vote for candidates) and candidates are ranked in the lists according to the number of votes cast for each candidate. Party leaders have no control over the ranks of the candidates in the lists. Shugart and Carey (1995) place this Brazilian electoral rule among the systems that offer the highest incentives to seek ‘personal votes.’ Mainwaring (1999) and Ames (2001) contend that the open-list rule used to elect members of the Chamber of Deputies combined with strong federalism fragment the Brazilian party system and weaken party discipline in Congress. However, Figueiredo and Limongi (1995, 2001) argue that the highly centralized internal organization of the Chamber of Deputies makes political parties cohesive and disciplined. Part of this contention results from the disagreement over the level of party unity that makes parties “disciplined.” Using the Rice index of party unity,<sup>23</sup> which shows that at minimum 85 percent of the members of Brazilian parties vote in the same way within each party, Figueiredo and Limongi find that Brazilian parties are disciplined. However, Ames argues that even these scores are much lower compared to those of other Latin American countries such as Argentina and Venezuela.<sup>24</sup>

Regardless of the overall level of party discipline in Congress, the difficulties of party leaders in controlling party members’ votes in certain key legislation appear to have troubled Brazilian political leaders. Although the Brazilian Congress approves a significant number of bills every year, it can take many years to pass important bills. For example, the approval of the pension reform bill took more than three years despite the fact that it was one of the key reforms put forward by President Cardoso in 1995. Moreover, the bill almost died in the Chamber of

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<sup>23</sup> The Rice index measures the degree to which the members of a party oppose to each other in roll call votes.

<sup>24</sup> Ames also mentions other factors, such as party switching and the problem of non-decisions, that complicate the inference of party discipline from roll call data (Ames 2001, 190-204).

Deputies when this house rejected the special committee's substitution bill by 294 in favor to 190 against (with 8 abstentions) in 1996. To approve this bill, at least 308 favorable votes were necessary. If all members of the political parties in President Cardoso's governing coalition had voted in favor of the bill, it would have passed easily in the Chamber. The pension reform bill was resurrected only by a maneuver of Cardoso's allies in the Chamber in interpreting internal rules of this house.<sup>25</sup>

The behavior of Brazilian elected officials is not unpredictable, however. Party leaders usually know the positions of their party members before an important vote takes place. It is a common practice to map the intended votes of party members and postpone voting until the approval of a contested bill becomes certain. Party leaders and the government often use administrative appointments and the release of funds to benefit congressional members' constituencies as a way of influencing their votes. These strategies work better in the Chamber than in the Senate because many deputies do not have high recognition in their states and thus rely on delivering particularized benefits to their target constituencies to advance their political careers. In contrast, most senators are already prominent politicians at the national or state level and hence more independent of government favors for their political survival.<sup>26</sup> Due to the relative political independence of many senators, party leaders also enjoy less influence over senators than deputies. Former Leader of the PMDB in the Senate, Jader Barbalho said, "Here, there is no rank and file. I don't convoke them [PMDB senators to meetings]. I invite them."<sup>27</sup> These differences between the senators and deputies have important implications for policymaking. When political leaders deal with a recalcitrant Chamber, they may use the

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<sup>25</sup> President Cardoso's allies in the Chamber of Deputies argued that the house could still vote on the original bill proposed by the government even after the special committee's substitution bill was rejected.

<sup>26</sup> Interview with Senator Pedro Simon (PMDB-Rio Grande do Sul) on May 27, 2004.

<sup>27</sup> Special Edition of *Folha de São Paulo*, March 22, 2000, A-6.

strategy of cooptation through exchange of favors. But when one is faced with a rebellious Senate, that strategy may not work as effectively as in the Chamber.

### **3.3. DECISION RULES AND PROCEDURES**

This section describes the rules and procedures for the deliberation of constitutional amendments, statutory bills, and presidential decrees. In each case, the principle of bicameralism is maintained in the sense that floor votes always occur separately in the Chamber of Deputies and the Senate. This is the case even when a joint committee is established to consider certain bills or to appreciate presidential vetoes. There is also no conference committee in the Brazilian Congress. The Chamber and the Senate have separate staff, libraries, and printing offices, and the communication between the two houses is either non-existent or minimal even within the same parties.

#### **3.3.1. Constitutional Amendment**

Constitutional amendments are frequent occurrences in Brazil. The 1988 Constitution originally had 245 articles and additional 70 articles of transitory constitutional acts, together containing nearly 2,400 constitutional provisions. The magnitude of details that the constitution covers impressed Giovanni Sartori, who said “[I]t is a novel of the size of a telephone catalogue....It is a Constitution replete with not only trivial details but also almost suicidal provisions and promises that are impossible to fulfill” (Sartori 1996: 211). Since the birth of the

constitution, in addition to the six amendments promulgated with the constitutional revision of 1994, there have been 42 constitutional amendments only in sixteen years. Federal Deputy Luiz Carlos Santos, former Minister of Political Coordination during the first term of President Cardoso, pointed out that the extremely detailed texts of the Constitution have made it practically impossible to govern unless the Constitution is substantially modified.<sup>28</sup> Concerns about constitutional reform have echoed in Congress as well. In fact, most of the proposals for constitutional amendments have origins in Congress. At this writing, approximately 2,000 constitutional amendment proposals are circulating in the Brazilian Congress.

Article 60 of the Constitution states that a constitutional amendment may be submitted by: (1) at least one-third of the members of the Chamber of Deputies or of the Senate; (2) the President of the Republic; or (3) more than one half of the Legislative Assemblies of the units of the Federation, each of them having a majority of members in favor of the amendment. In practice, all proposals for constitutional amendment have been submitted by the executive or Congress. The initial hurdle for proposing a constitutional change is also high compared to a statutory change, which may be proposed by individual members of Congress. The initial house of deliberation depends on the author of the proposal. The Chamber of Deputies is the first house to consider bills proposed by deputies and the president. The Senate is the initial house to consider bills proposed by senators. The initial house may approve the bill as it is, approve the bill with amendments, or reject the bill. An approval of a constitutional amendment proposal requires favorable votes by a three-fifth majority of its members voted on two separate rounds. If the initial house approves the proposal, it is then sent to the second house for a review.

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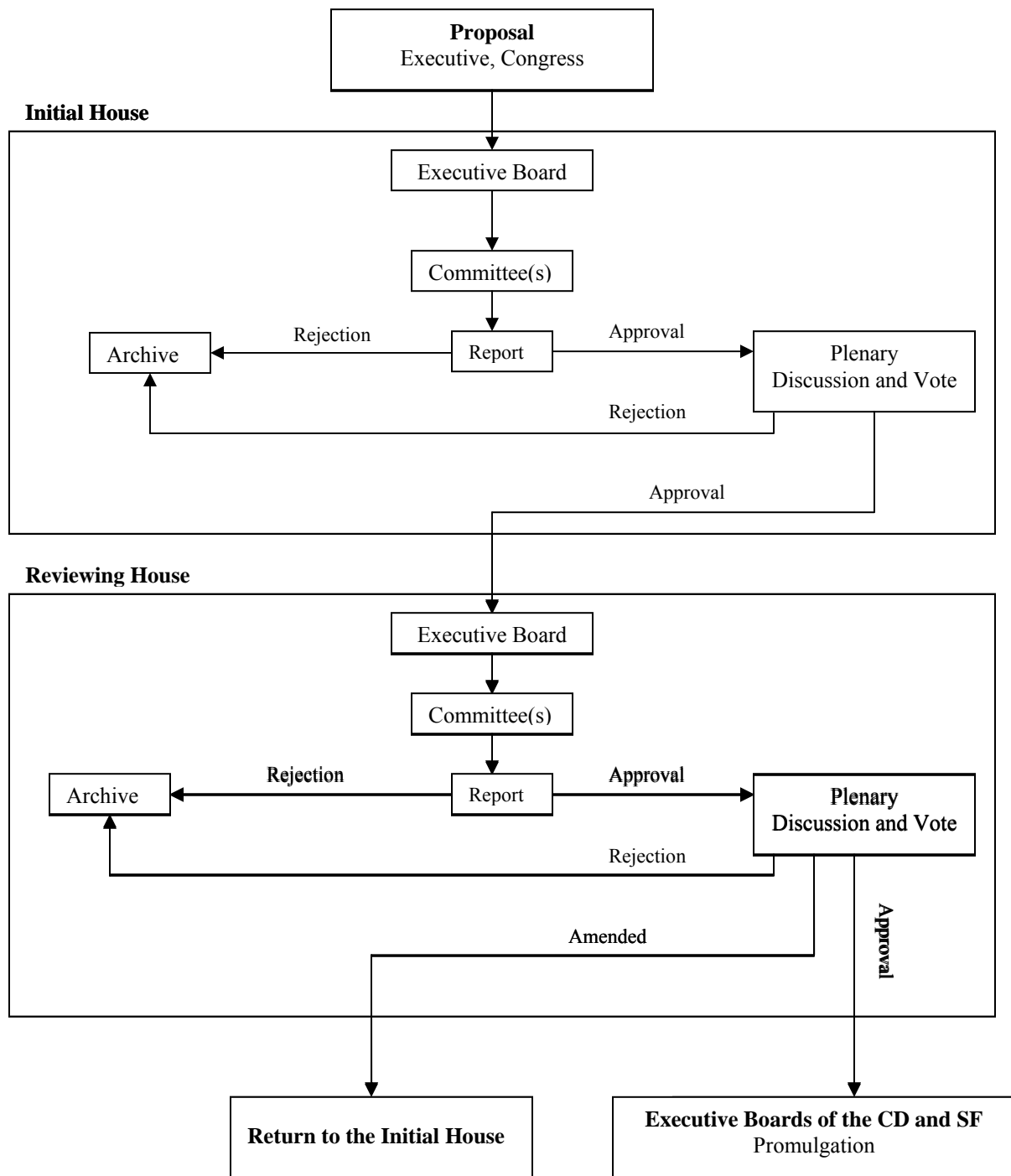
<sup>28</sup> Interview on December 2, 2003. Deputy Luiz Carlos Santos was responsible for executive-legislative relations to realize the reform of the economic order and presidential re-election, both of which required constitutional changes.

The reviewing house also has three options: approve the bill as it is, approve the bill with amendments, or reject the bill. If the reviewer house approves exactly the same text as the one approved by the first house in two rounds with three-fifth majority votes, the executive boards of the Chamber and the Senate promulgate the constitutional amendment. If the reviewer house rejects the bill, it is sent to an archive. If the reviewer house approves the bill but with amendments, the bill must be considered by the first house once again *as a new proposal*. It is worth re-emphasizing that the Brazilian Constitution requires that an identical text of a constitutional amendment be approved by the two houses of Congress to promulgate it. Until an identical text is approved, the bill shuttles between the two houses indefinitely unless it is rejected. Therefore, holding all else equal, there is no built-in advantage to be the first house to consider a proposal for a constitutional amendment. Put differently, the powers of the Chamber of Deputies and the Senate are symmetric in this case. In addition, urgency may not be requested for an appreciation of constitutional amendments. All votes on constitutional amendments use roll calls. Figure 3.1 summarizes the flow of the legislative process for constitutional amendments.

In both houses, a proposal for constitutional amendment is first reviewed by committees. In the Chamber, the Committee on Constitution, Justice and Citizenship (*Comissão de Constituição e Justiça e Cidadania*—CCJC) considers the bill and produces a report on its admissibility. In the case of inadmissibility, the author of the proposal, with the support of at least one-third of deputies, may appeal to the floor to consider the reversal of the CCJC's decision. If the CCJC or the floor votes in favor of admissibility, the president of the Chamber designates a special committee to examine the merit of the proposal. The special committee has forty sessions to produce its report. Amendments to the proposal must be submitted to the

special committee with a support by at least one-third of the members of the house. After the appreciation by the special committee, the proposal is discussed and voted in the floor.

In the Senate, a constitutional amendment proposal directly proceeds to the floor for discussion after an examination by the Committee on Constitution, Justice and Citizenship (*Comissão de Constituição e Justiça e Cidadania*—CCJ). The Senate's CCJ analyzes the merit as well as the admissibility of the proposal and has thirty business days to submit a committee report. Only the members of the CCJ are allowed to submit amendments with their individual signatures during this phase. If the CCJ approves the proposal, it is discussed in the floor for five sessions. Senators may submit amendments during those five sessions with signatures of at least one-third of the members of the house. If no amendment is submitted, the bill is put for a vote at the fifth session. Should amendments be submitted, however, the bill returns to the CCJ for the analysis of the amendments. The proposal and amendments are voted in the floor after the CCJ reports its analysis to the plenary. The rest of the deliberation follows the rules and processes described earlier and in Figure 3.1.



**Figure 3.1: Consideration of Constitutional Amendments**

### 3.3.2. Statutory Bills

In contrast to the rules and procedures to consider proposals for constitutional amendment, the 1988 Constitution and the internal rules of the Chamber of Deputies and the Senate established various procedures by which to make expedited examinations of statutory bills possible. Article 58, Paragraph 2 of the Constitution grants committees the power “to debate and vote on bills of law which...are exempt from being submitted to the Plenary Assembly, except in the event of an appeal from one-tenth of the members of the respective house.” This summary process is called conclusive power (in the Chamber) or terminative power (in the Senate). In addition, as discussed previously, the President of the Republic also holds a constitutional right to request urgency in the examination of bills of his/her own initiative (Article 64). If urgency is requested by the president, the Chamber of Deputies and the Senate each must vote the bill within forty-five days. The failure to do so leads to the suspension of the deliberation of all other materials in the respective house, except for those with constitutional deadlines, until the bill is voted. Deputies and Senators can also request urgency in deliberation, but unlike the president’s request, it must be supported by between one-fourth to two-thirds of the members of the respective house, depending on the case in consideration, and approved by the plenary.

There are two types of laws in Brazil: ordinary law (*lei ordinária*) and complementary law (*lei complementar*). The fundamental qualitative difference between the two types of bills is whether the Constitution explicitly stipulates that a particular clause be regulated by a complementary law. If there is no reference to complementary law in the Constitution, then ordinary law is used. In terms of rules and procedures, an approval of a bill of ordinary law



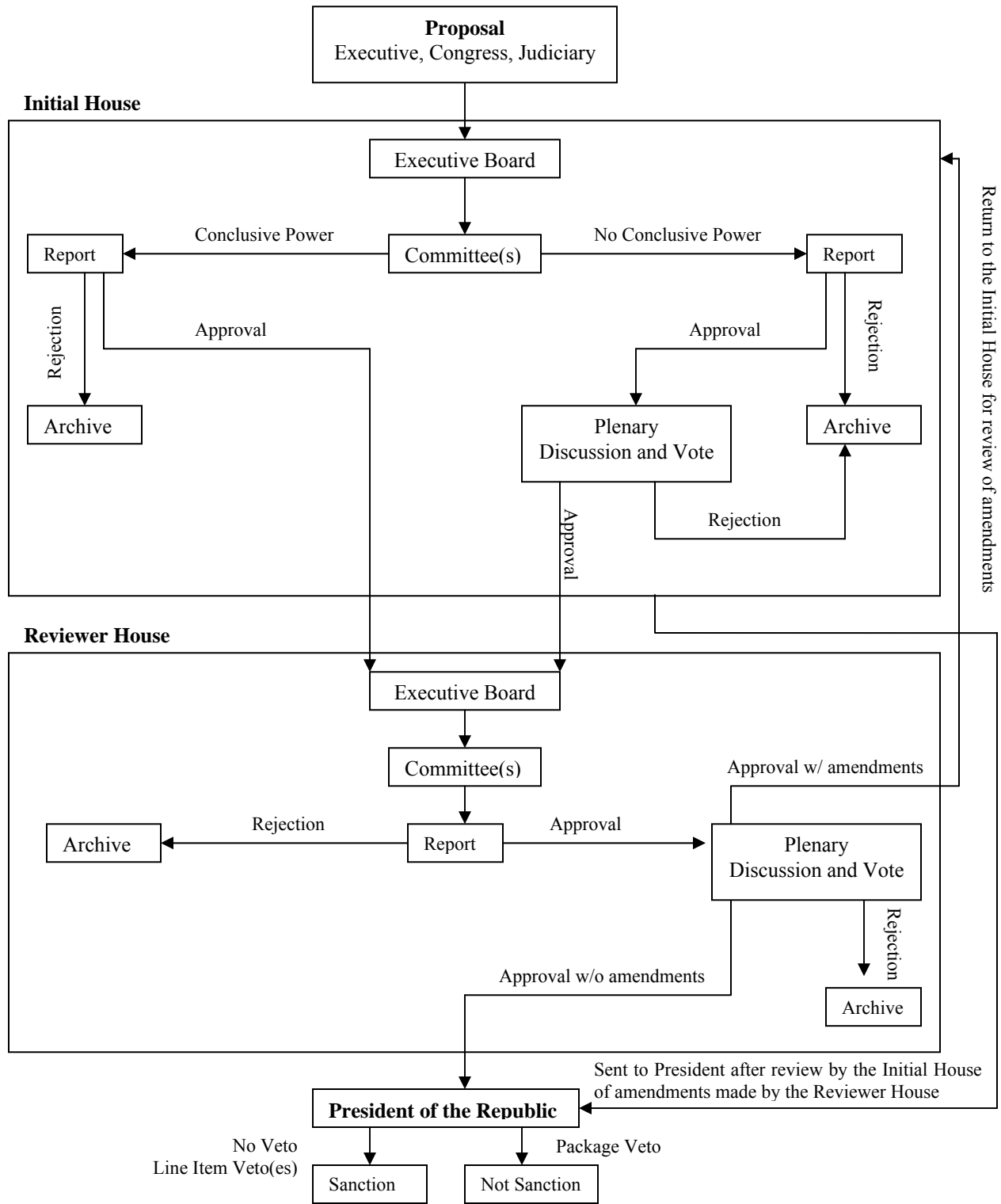
requires a simple majority whereas it is necessary to have at least an absolute majority to pass a bill of complementary law. Furthermore, roll calls are required by the Constitution to vote on a complementary law bill, but symbolic voting is usually used to vote on an ordinary law bill<sup>29</sup> unless a roll call is requested by six percent of deputies or three senators in the respective house. Another difference in the mode of consideration between bills of ordinary law and complementary law is that the former needs only one round of voting while the latter calls for two separate rounds of voting in the Chamber unless it is a bill that originated in the Senate. Both types of bills are voted only once in the Senate. Moreover, bills of complementary law are not subject to the conclusive or terminative power of committees. In short, the rules and procedures are more rigid for complementary law than for ordinary law.

Proposals for both ordinary and complementary laws may be submitted by any of the following individuals or collectives within their competence (Art. 61 of the Constitution): any member(s) or committee of the Chamber of Deputies, the Senate, or the National Congress; the President of the Republic; the Supreme Federal Court; the Superior Courts; the Prosecutor-General; and the citizens. The citizens' initiative may be exercised "by means of the presentation to the Chamber of Deputies of a bill of law subscribed by at least one percent of the national electorate, distributed throughout at least five states, with not less than three-tenths of one percent of the voters in each of them" (Paragraph 2, Art. 61). The President of the Republic retains an exclusive initiative to propose in many areas pertaining to the administrative organization of the federal government, national public enterprises, and budgetary matters. The Chamber of Deputies is the first house to examine bills of law that are the initiative of the President, the Supreme Federal Court, and the Prosecutor-General as well as those of deputies

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<sup>29</sup> Symbolic vote is equivalent to voice vote in the United States. In the Brazilian Congress, those who are in favor of the bill in discussion remain seated whereas those who are against are asked to stand up.

and citizens. Figure 3.2 shows a 'normal' flow of the legislative process for statutory bills, i.e., when urgency is not requested.



**Figure 3.2: Legislative Process-Statutory Bills**

Once a statutory bill is submitted, the president of the house distributes it to relevant committees, indicating whether the bill follows a normal or summary process. In the Chamber of Deputies, the bill must be examined by the CCJC and the Finance and Tax Committee (*Comissão de Finanças e Tributação*—CFT) when it has financial or budgetary implications, in addition to a thematic committee(s). The approval by the CCJC and CFT (if required) is a requisite for the house to pass the bill regardless of whether a normal or summary process is adopted. If the substance of the bill falls under the jurisdiction of more than three thematic committees, a special *ad hoc* committee is created. In the Senate, only thematic committee(s) examine(s) the bill. In the case of a summary process, members of the respective house submit amendments to the committees and the reporting officers of the committees (called *relator*) prepare their analyses of the bill and amendments and make recommendations of vote. The committees then vote on the bill and the amendments. Committee decisions are made by simple majority. If the committees approve the bill, it is sent to the reviewer house for appreciation. If the committees reject the bill, it is sent to an archive. Deputies or senators who do not agree with the committee's decision may appeal to the plenary if they have the support of at least one-tenth of the members of their respective house. In the case of disagreements among competent committees over approval or rejection of the material, the bill is also taken to the floor for voting.

There are a few major differences from a summary process in the case of a normal process. First, only members of competent committees may present amendments during the examination in the committees. Non-members may submit amendments during floor sessions. Second, the approval of a bill by a committee(s) does not warrant its passage. Although a rejection by a committee(s) leads to a termination of a bill's examination (unless the committee decision is appealed), its approval by a committee(s) leads to a further deliberation and voting in

the plenary. In the event of an approval in the floor, the bill is sent to the other house for a review. Finally, bills pertaining to codes (penal, civil, electoral, and transit codes) and complementary laws always follow the normal processes.

When a bill reaches the reviewer house after its passage by the initial house, the executive board distributes it to relevant committees. The deliberation in the reviewer house uses the normal process. The committee(s) may approve, approve with amendments, or reject the bill. A rejection by committees discontinues the examination of the bill in that house (unless there is an appeal). In the case that the committees approve the bill with or without amendments, it is discussed and voted in the floor.

The reviewer house may approve the bill as it came from the initial house (i.e., without amendments), approve it with amendments, or reject it. In the first case, the reviewer house sends the approved text to the President of the Republic for sanctioning. If the reviewer house approves the bill but modifies the text, the bill is returned to the initial house for a review of the changes made by the reviewer house. It is the prerogative of the initial house to accept or reject the modifications made by the reviewer house. The initial house may disregard all the amendments of the reviewer house and send the original text approved by the initial house to the President for sanctioning. Hence, there is a substantial advantage to be the first house to consider statutory bills. However, the reviewer house retains veto power upon the bill's arrival in the house. That is, if the reviewer house rejects the bill, there will be no further discussion about it. Therefore, a bicameral agreement in the fundamental merit of the bill is still necessary. Finally, the issue dealt with in a rejected bill may not be proposed during the same legislative session (one calendar year) unless such proposal is supported by an absolute majority of the members of the Chamber or the Senate (Art. 67 of the Constitution).

In Brazil, the President of the Republic holds partial (or line-item) and total (or package) veto powers (Art. 66 of the Constitution). Presidents sanction bills passed by the Congress if they concur. When presidents consider bills to be unconstitutional or contrary to public interest, they may veto them partially or in entirety. Formally, a presidential veto triggers an installment of a joint committee of the National Congress composed of three deputies and three senators. The committee must produce a report on the veto within twenty days of its installation (Arts. 104-106 of the Common Rules of the National Congress). With or without a report by the committee, by Constitution the National Congress must determine, with secret voting in a joint session, whether or not it shall overturn the presidential veto within 30 days of the date of the acknowledgement of the veto. Even though a presidential veto is examined in a joint session of the Chamber and the Senate, votes take place sequentially beginning in the Chamber. If the Chamber votes in favor of overriding a presidential veto, then a vote in the Senate follows. It requires an absolute majority of votes in each house to override a presidential veto.

In reality, a joint committee to examine a presidential veto is rarely installed, and the National Congress almost never convenes to vote on a presidential veto within the constitutional deadline of 30 days. Rather than convening a joint session for an examination of each single veto, many presidential vetoes are voted together in a single session. The president's allies in the legislature also make sure that presidential vetoes are not overturned by the Congress and try to postpone the consideration of vetoes until there is a consensus enough to uphold them. This strategy has worked well thus far: of 453 presidential vetoes recorded since October 1988, Congress has defeated only thirteen vetoes.

### 3.3.3. Presidential Decree

Instead of the normal route to propose a statutory change described in the previous section, Brazilian presidents have frequently chosen to issue a presidential decree called *medida provisória* (or provisional measure). Article 62 of the 1988 Constitution stipulates, “In case of relevance and urgency, the President of the Republic may adopt provisional measures with the force of law.” However, because of the lack of a clear definition of what constitutes “relevance and urgency,” successive Brazilian presidents have exercised this constitutional prerogative to effect immediate policy change. The number of presidential decrees issued (and re-issued) by Brazilian presidents is indeed impressive. President Sarney (1985-90) issued and reissued 147 provisional measures,<sup>30</sup> President Collor (1990-92) 159, President Franco (1992-94) 505, and President Cardoso (1995-98, 1999-2002) 5,401 decrees. President Lula issued 124 presidential decrees thus far in less than two years of his presidency, averaging more than five decrees per month (Subchefia para Assuntos Jurídicos, Casa Civil da Presidência da República). Frustrated with the frequent use of decrees by the president and their coverage, Congress attempted to regulate and restrict this powerful presidential power, which culminated in Constitutional Amendment No. 32 of 2001.

Under the original 1988 Constitution, presidents issued decrees for almost all areas regulated by ordinary and complementary laws. Provisional measures were effective for thirty days. Upon the publication of a provisional measure, the president was to notify the National Congress immediately, which would then convene for a special joint session within five days to examine and vote on the decree. If Congress neither approved the decree by converting it into

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<sup>30</sup> The number of provisional measures issued and reissued by President Sarney is for the period 1988-90 since this presidential instrument is an invention of the 1988 Constitution.

law nor rejected it, the measure was to lose its effectiveness from the date of its issuance. If Congress rejected the decree or it lapsed because the legislature failed to manifest its position by means of voting, it was Congress's responsibility to regulate legal relations arising from the termination of the decree. However, as in the case of presidential vetoes that also call for joint sessions, joint committees to examine presidential decrees were almost never established and the National Congress rarely voted on provisional measures within the constitutionally determined thirty-day deadline.<sup>31</sup> As such, Brazilian presidents issued and re-issued decrees until they were converted into law or rejected by Congress.

In 1995, this mighty presidential prerogative suffered a setback. Constitutional amendments of economic liberalization in 1995 included a new article (Art. 246) forbidding the adoption of provisional measures for the regulation of any constitutional provision that had been an object of constitutional amendment since 1995. Yet, only with a constitutional amendment of 2001 did far-reaching changes in the regime of provisional measures come into existence.

The new rules established by the 2001 constitutional amendment prohibit the adoption of presidential decrees over matters related to rights, codes, and budgets. It is also banned the use of decrees for areas reserved for regulation by complementary law, the organizations of the Judicial Branch and the Public Prosecutor's Office, and subjects that have already been passed by Congress and await presidential sanction or veto. Moreover, reissuing of provisional measures by the president is forbidden. Instead, provisional measures are now valid for sixty days, and are automatically renewed only once if Congress fails to vote on them expeditiously. The new rules also provide that the failure to vote on provisional measures within forty-five days

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<sup>31</sup> The principal reason for the difficulty of convening a joint session of the National Congress is that such session is always extraordinary. It is difficult to schedule an extraordinary session. Even when it is scheduled, many deputies and senators fail to show up in a joint session, making it unable to deliberate due to a lack of a quota.



triggers a suspension of deliberation of all other legislative activities in the respective house until final voting occurs.

With respect to the congressional examination of presidential decrees, the National Congress no longer meets in a joint session to consider them. An installment of a joint committee of the Chamber and the Senate is still required to examine provisional measures and issue a report thereon before their submission to floor voting in each house (although it remains rare to install such a committee). However, the new rule establishes that the examination of presidential decrees be initiated in the Chamber of Deputies, followed by a deliberation in the Senate. The significance of this new rule should not be underestimated. By conferring on the Chamber the prerogative to initiate the consideration of provisional measures, the new rule instituted the Chamber's supremacy vis-à-vis the Senate in the deliberation of presidential decrees. The Chamber, now as the initial house for deliberating decrees, retains the last word on the text of new legislation arising from the appreciation of provisional measures. On the other hand, while the Senate may still modify the text sent by the Chamber, there is no mechanism to guarantee that the lower house honors the upper house's amendments once the bill returns to the initial house. However, the Senate may reject provisional measures and thus bury them in its archive.

### 3.4. DEPUTIES AND SENATORS CONTRASTED

In addition to formal rules and informal practices, the characteristics of the members of Congress may shape their preferences and strategies. This section depicts contrasts in the electoral mandates and political profiles of deputies and senators.

Formally, federal deputies are representatives of the people and senators represent the states and the Federal District (Arts. 45 and 46 of the Constitution). Deputies are elected by proportional representation in each state via an open-list rule by which voters vote for either individual candidates or parties. The Chamber of Deputies is composed of 513 members. District magnitudes vary from eight to seventy (i.e., Sao Paulo). The caps on the lowest and highest numbers of representation are the cause for serious malapportionment even in the Chamber that represents people rather than states.<sup>32</sup> The minimum age to run for a deputy's seat is twenty-one. Deputies' terms of office are four years and reelections are allowed. Most deputies seek reelection but the average turnover rate in the Chamber has been about 50%. In addition, many deputies run for mayoral elections that occur in the mid-term of the four-year legislative period. Therefore, most deputies run for elections at least every four years and those with ambitions for municipal executive offices face another election within two years of their election to the Chamber.

Moreover, because of the open-list nature of the electoral system, cultivating personal ties with constituencies is highly important to get elected. Since states are at-large electoral districts, deputies may seek votes anywhere in their states. However, most deputies concentrate their

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<sup>32</sup> For example, according to the 2000 census, the least populous state (Roraima) had a population of 324,000 and eight federal deputies while the most populous state (Sao Paulo) had a population over 37 millions and seventy deputies (Instituto Brasileiro de Geografia e Estatística 2000). These numbers translate into 40,500 persons represented per deputy in Roraima versus 528,571 persons represented per deputy in Sao Paulo.

campaigns on the discrete geographical areas that Ames (1995, 2001) calls bailiwicks. Delivering pork to those informal districts is a key campaign strategy for many deputies. Thus many deputies tirelessly lobby in ministries to execute the programs that they authored when elaborating annual federal budgets. Furthermore, many deputies believe that their elections to the Chamber were the fruit of their personal appeals and that their parties contributed little, if any, to their elections. Of thirty-four incumbent deputies I interviewed during 2003-04, only six (of whom three deputies were members of the Workers' Party) responded that their parties contributed more than they personally did to their elections. In comparison, eleven claimed that their elections depended only on their personal attributes and that their parties made no contribution.<sup>33</sup> In short, electorally motivated deputies tend to view the distribution of geographically separable goods as attractive and useful campaign strategies. Since they operate in relatively short time horizons—facing new elections at least every four years and for some every two years (if they run for municipal elections and are defeated), they must deliver pork to their constituents fairly quickly.

In contrast to the members of the Chamber of Deputies, senators enjoy long tenure. Senators are elected for eight-year terms by a statewide majoritarian system. Each state and the Federal District have three representatives to the Senate, totaling eighty-one members in the house. The Senate's seats are renewed every four years, electing one or two representatives alternately. The minimum age to run for a Senate's seat is thirty-five years.

The Senate is indeed the house of federation. In the 49<sup>th</sup> Congress (1991-94), twenty-two members (27.2%) of the Senate had administered their states as state governors or vice-governors before joining the house. In the 50<sup>th</sup> (1995-98) and 51<sup>st</sup> (1999-2002) Congresses, the

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<sup>33</sup> Those interviews were conducted from November 4, 2003 through May 12, 2004. They include members of the PMDB (5), PSDB (7), PT (4), PFL (7), PP (4), PL (3), and PTB (4).

state representation in the Senate by ex-governors and ex-vice governors increased to thirty-one and twenty-eight members (or 38.3% and 34.6%), respectively (Lemos and Ranincheski 2002). Moreover, between 1987 and 1999, 6 percent of the senators on average had been former ministers of the federal government, compared with 2.5 percent of the deputies with ministerial experience. Furthermore, 14 percent of the senators had headed public institutes and enterprises with administrative autonomy and their own budgets (Lemos and Ranincheski 2002). The 52<sup>nd</sup> Congress (2003-2006) is hosting an ex-president of the republic and an ex-vice president of the republic. Therefore, in addition to being the house of federation, the Senate is also the house of ex-administrators.

The fact that the Senate is the house of ex-governors and ex-administrators, combined with their long tenure, has certain implications for lawmaking. First, most senators are political elites par excellence with high name recognition nationally and within their own states. Their privileged status may make the government strategy of co-optation through distribution of posts and resources less efficient and effective with senators than with deputies.<sup>34</sup> Senators' long tenure security also makes them less susceptible to electoral pressures than deputies whose electoral cycles are much shorter than the senators'. Second, senators, as ex-governors and administrators, tend to be more sensitive to issues of fiscal and administrative responsibilities than deputies. As former administrators of states and ministries, many senators have first-hand experiences of the need for a fiscal balance and adjustment. Thus, proposals aimed at fiscal adjustments and administrative efficiencies may be easier to pass in the Senate than in the Chamber. Subsequent case studies explore these points.

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<sup>34</sup> Deputies with career profiles similar to those of senators (i.e., former ministers and governors) should also tend to be more independent than other deputies. Among the deputies that I interviewed during 2003-04, deputies with such career profiles consistently weighed their personal beliefs more than the opinions of presidents and governors of their states and party orientation when asked about the factors that influence their parliamentary activities. The responses by deputies with other career trajectories to the same question varied considerably.

Finally, proposals that alter federal relations may encounter severe resistance in the Senate. Although both deputies and senators can be considered delegates of states (Samuels 2002), senators tend, due to the at-large statewide electoral districts, to be more explicit about protecting the interests of the states they represent because of their constitutional role as representatives of states and because of their particularly close ties with state governments. Furthermore, the interests of the northern, northeastern, and central western regions, with a combined population of 42% of entire Brazil, are overrepresented in the Brazilian Congress, especially in the Senate. Those three regions have 257 votes (50.1%) in the Chamber and 60 votes (74.1%) in the Senate. Therefore, those three regions with 42% of the Brazilian population can block any legislation certainly in the Senate, if not in the Chamber (see Backes 1999).

### **3.5. CONCLUSION**

This chapter discussed formal legislative rules and informal practices under the 1988 Brazilian Constitution. It showed that the Chamber and the Senate possess constitutionally equal legislative prerogatives, but their powers vary depending on the type of a bill considered and which house initiates the process. The president, with the power to propose and veto legislation and issue decrees, is also a key player in the legislative process. In addition, the chapter compared Brazilian deputies and senators in terms of their political trajectories and electoral mandates. The open-list rule electing deputies and short electoral cycles motivate many deputies to seek pork and patronage and make them vulnerable to cooptation by the government. In contrast, longer tenure and political visibility tend to make senators more independent legislators.

Subsequent case studies (Chapters 5-7) examine the implications and propositions generated from a brief review of the political profiles of senators and deputies. But before moving to case studies, I will present in the next chapter a quantitative study of legislative dynamics in the Brazilian Congress.

#### **4. CHAPTER 4: BICAMERALISM AND THE DYNAMICS OF LAWMAKING IN THE BRAZILIAN CONGRESS: A QUANTITATIVE ANALYSIS**

This chapter tests the hypotheses developed in Chapter 2 regarding bicameral divergences, various decision rules, the impatience of the actors to approve bills, and bicameral sequence. I explain why the analyses of roll calls and approved bills are not sufficient in understanding legislative dynamics. I argue that greater attention should be given to analyzing the timing of legislation as well as legislative outcomes. I offer the event history method as an alternative way to analyze the dynamics of legislative successes and failures.

##### **4.1. MEASURING LEGISLATIVE CAPACITY**

As I stated at the beginning of this dissertation, legislative capacity has at least two aspects that need to be considered. One relates to the efficiency aspect of legislative capacity, that is, the degree to which a passage of a bill requires additional negotiations between and among legislative actors. Those negotiations may involve the strategies of persuasion, alteration in the text of legislation, logrolling, and/or co-optation through the distribution of pork and appointive posts, but the degree of difficulties in negotiation is usually correlated with the time it takes until a bill gets voted (if it is ever voted).

The other aspect of legislative capacity has to do with legislative outcomes, i.e., if a proposed policy change is approved or gridlocked. In this chapter, I differentiate legislative gridlock from policy gridlock. I consider policy gridlock broadly: it occurs when the status quo

policy continues to prevail even though a change of a policy is desired by society. Policy gridlock may arise because there is no formal action toward a change of the policy (e.g., no bill has been submitted in Congress regarding the policy) for one reason or another. Policy gridlock may also result from legislative gridlock. Legislative gridlock occurs when a policy change is proposed and yet the bill does not find a way to become law because Congress either rejects it or simply fails to vote on it, or because the president vetoes the bill passed by the legislature.

Many scholars of legislative politics have proposed alternative ways to evaluate legislative capacity. One way to assess legislative capacity is to count the number of laws enacted per certain intervals. Mayhew (1991) and subsequent research inspired by his work uses this method. Mayhew identified 267 significant laws enacted per Congress from 1946 to 1990 in order to investigate whether “legislative effectiveness” falls during a divided government compared with a period during a unified government in the United States (Mayhew 1991: 34). His careful research and regression analysis show that the U.S. Congress and government produce as many important laws under a divided government as under a unified government.

Binder (1999, 2003) improved Mayhew’s widely used method to measure legislative productivity of the U.S. Congress. By claiming that Mayhew’s measure of gridlock lacks a denominator, Binder (2003: 35) defines legislative gridlock as “the share of salient issues on the nation’s agenda that is left in limbo at the close of a Congress.” Binder uses daily editorials of a major national newspaper (*New York Times*) to reconstruct the political agenda for each Congress, which serves as the denominator of her “gridlock score,” i.e., the percentage of failed legislation on the political agenda by the close of a Congress. Measuring this way, Binder finds that both a divided government and bicameral disagreements significantly increase the incidence of legislative gridlock.



In the study of Brazilian legislative politics, Figueiredo and Limongi (2001) conducted an elaborate analysis of bills made into law by examining who proposed them. The authors argue based on the data they meticulously collected that presidents, who proposed a predominant majority of laws passed by Congress, dominate Brazilian legislative processes. Although Figueiredo and Limongi made a valuable contribution to understanding law production in Brazil, their data unfortunately do not include bills that were not converted into law, and thus Binder's critique of Mayhew's research (that it lacks a denominator) is also applicable to Figueiredo and Limongi's study.<sup>35</sup> In fact, Ames's (2001) work casts some skepticism as to how powerful Brazilian presidents are in lawmaking. Ames surveyed news media to identify the legislative agenda of each president in post-authoritarian Brazil and traced the fate of every issue on the agenda. The tables Ames constructed demonstrate that Brazilian presidents have faced difficulties in passing bills in Congress: many executive bills that did pass were scratched and required side payments for their approval, and some others were abandoned.

More generally, there are various deficiencies with the method of counting the number of bills passed by Congress as an approach to determine legislative capacity. First, the counting method underutilizes the information on the nature of bills and their legislative processes. That is, by summing up different types of bills over a legislative period, it disregards information such as policy areas and different decision rules associated with the examination of those bills that may influence legislative production and gridlock. Second, aggregating the number of bills passed per Congress also neglects the efficiency side of legislative capacity by not taking into account the time it takes until bills get approved or rejected. However, the timing issue is often of crucial concern to many policymakers and political scientists. Many care not only whether a

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<sup>35</sup> Similar work can be found in Siavelis (2002) on Chile and Casar (2002) on Mexico.

bill will be passed but also how fast it will be passed.<sup>36</sup> Then, the aggregation method misses an important piece of information in an analysis. Furthermore, counting approved bills per Congress may not be an appropriate way to capture the dynamics of bill approval and gridlock in legislatures like Brazil's whose archival rules are more complex than their U.S. counterpart. As opposed to the U.S. Congress, where all bills not voted within a two-year legislative period are terminated, in Brazil bills that do not reach final voting within a four-year legislative period may be terminated or carried over to the next legislative period. Some important and controversial bills stay in Congress for many years, even decades. Thus the timing of approval or rejection as well as final outcomes should be of great analytic interest.

Another approach frequently adopted in the study of legislative behavior and efficiency is the analysis of roll call votes. Research on the U.S. Congress has used roll call data extensively (e.g., Cooper, Brady, and Hurley 1977; Cox and McCubbins 1993; Aldrich 1995; Poole and Rosenthal 1997). In Latin America, the democratization of authoritarian regimes has opened up new areas of legislative research, including the analysis of roll call votes, in recent years (e.g., Ames 2001; Figueiredo and Limongi 1995; Jones 2002; Carey 2002; Morgenstern 2004). Generally, those studies seek to explain legislative behavior of the members of Congress and parties, executive-legislative relations, and legislative capacity, and have revealed interesting patterns of legislative behavior in Latin American countries.

While roll call research has burgeoned in Latin America, this approach to legislative politics has at least two major limitations.<sup>37</sup> First, since roll call data only reflect votes that reached the floor, we cannot learn from such data about the issues that never come up to a vote. To the extent that many bills do fail to reach the floor, roll call data are biased samples of

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<sup>36</sup> For example, there is a cost in delaying the adoption of legislation aimed to improve the fiscal balance as deficits grow in its absence.

<sup>37</sup> See Ames (2001: 188-204) for more discussion on the limitations of roll call data.

legislative decisions. In addition, most bills that do reach the floor are voted symbolically (e.g., voice vote), without recording how legislators vote. Second, roll call data do not reflect the costs of bringing bills to a vote. Roll call votes are really the final stage of frequently protracted and cumbersome legislative processes. Negotiations to ensure the approval of a bill, involving side payments, bargains, and logrolls, almost always take place before floor voting. In other words, roll call data fail to spot the essence of politics.

Rather than aggregating the passages of bills per Congress or using roll call votes, I analyze the fates and histories of individual bills proposed to the Brazilian Congress since the promulgation of the 1988 Constitution. Specifically, I consider significant bills for the subsequent quantitative analysis. I define a significant bill as one that is regarded at least by a legislative body of origin where it is proposed as worthy of pursuing given its internal rules of decision-making and the policy agenda. In practical terms, this means that I consider all executive and judiciary proposals submitted to the Brazilian Congress. With respect to congressional proposals, the data set includes all bills that were approved at least by the house of origin. That is, all the congressional bills considered here were approved by the Chamber of Deputies if proposed by a deputy or approved by the Senate if proposed by a senator. Put differently, I consider only those bills that cleared the first hurdle of approval at least in the legislative body of origin, be it the Executive, Judiciary, Senate, or Chamber of Deputies. As stated above, this method allows me to focus only on those bills that are regarded as, at least by a house or branch of origin, important enough to pursue, and I can safely eliminate those bills that were proposed for the sake of proposing (which many members of Congress do). The “history” of each of those bills was traced until July 31, 2004, on which date it was “right-censored” if a

bill had not been approved, rejected, withdrawn, or sent to an archive.<sup>38</sup> I will discuss the data set in greater details in Section 4.3.

## 4.2. ESTIMATING LEGISLATIVE CAPACITY: THE MODEL

In this chapter I examine the dynamics of legislative approval and gridlock in the Brazilian Congress. I posited seven hypotheses in Chapter 2 as follows.

H1: The greater the distance of policy preferences between the two chambers, the greater is the likelihood of gridlock.

H2: Impatience reduces the propensity for legislative delay.

H3: Legislative delay is positively related to the duration of legislation proposed.

H4: Holding the levels of impatience constant, the house that initiates a bill compromises less than the reviewing house in the content of legislation over which they are bargaining.

H5: Bills initiated by the lower house are more likely to have speedy approval than bills initiated by the upper house.

H6: Legislative gridlock increases with the number of votes required to pass legislation.

H7: Legislative delay and immobility are more likely under symmetric bicameralism than in asymmetric bicameralism.

I test six of these hypotheses (H1, H2, H3, H5, H6, and H7) using event history analysis in this chapter. I will examine H4 in a case study chapter (Chapter 7) because it requires a close look at the evolution of the text of the bill over which the two houses bargain.

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<sup>38</sup> Right-censoring of data occurs when the full history of the cases are unobserved. In my data set, many bills were still being examined in Congress as of July 31, 2004 at the close of the data set. Rather than excluding those pending bills, which would cause a selection bias, I recorded their histories until the close of the data set.

In the past, scholars estimated legislative delay and gridlock using cross-tabulations, linear regressions, and/or logit or probit models (e.g., Figueiredo and Limongi 1996; Mayhew 1991; Krehbiel 1998; Binder 1999, 2003). Since we are interested in estimating the time until the deliberation of a bill is concluded in Congress (commonly referred to as a survival time, denoted as  $T$ ), we might be tempted to fit an ordinary least-squares linear regression model

$$T = B_0 + XB + \varepsilon, \quad \varepsilon \sim N(0, \sigma^2)$$

where  $X$  is a vector of covariates expected to influence the duration of bills in Congress. However, it turns out that this approach to survival times is problematic. First, the linear regression model may predict negative values although survival times are always positive. Second, we may not have observed the entire spans of bill examination in Congress by the time of a data analysis. If we exclude pending cases from the analysis, in addition to a loss of information, our estimation may be tainted by a selection bias. Moreover, regressing covariates on time tells nothing about the outcomes of deliberation. But if we use a binary outcome (for example approved = 1 and otherwise = 0) and run a standard logit or probit regression, information on the process leading up to the event is ignored. As discussed in the previous section on the limitations of roll call data, this is a great loss of information because most of the real things of politics—bargaining, persuasion, deal-making, etc.—occur before the final stage.

The most serious problem with using a linear regression model to analyze survival data rests on the assumption regarding the distribution of the residuals,  $\varepsilon$  (Cleves, Gould, and Gutierrez 2002, 2). The normal distribution of error terms assumed in linear regression models often does not hold for survival data. While OLS is noted for its robustness to deviations from normality, according to Cleves, Gould, and Gutierrez (2002, 2), “[t]he problem is that the distributions for time to an event might be quite dissimilar from the normal—they are almost

certainly nonsymmetric, they might be bimodal, and linear regression is not robust to these violations.”

Event history analysis (also referred to as survival or duration analysis) is a more appropriate approach to analyze duration data such as the life-span of bills when one’s research question pertains to both the timing and outcomes of social phenomena.<sup>39</sup> The goal of this chapter is precisely that, i.e., to evaluate the impact of the covariates on the Brazilian Congress’ decisions on important bills and their timings. A brief review of event history analysis may be useful.

Event history analysis is concerned with the time until an occurrence of an event. Let  $T$  be a nonnegative random variable denoting the time to an occurrence of an event. The *hazard rate*,  $h(t)$ , is the instantaneous rate of an event’s occurrence, i.e., the probability that an event occurs at a particular point in time, given that the case has survived until  $t$ :

$$h(t) = \lim_{\Delta t \rightarrow 0} \frac{\Pr(t \leq T \leq t + \Delta t | T \geq t)}{\Delta t}.$$

The hazard rate can also be expressed as

$$h(t) = \frac{f(t)}{S(t)},$$

where  $f(t)$  is the failure function, or the rate at which cases fail, and  $S(t)$  is the survivor function, or the probability of the cases surviving beyond time  $t$ .

Performing an event history analysis involves choosing among alternative models to parameterize possible time dependency in the data. Box-Steffensmeier and Jones (2004) recommend a semi-parametric model developed by Cox (1972). The advantage of the Cox model compared to alternative parametric models (such as exponential and Weibull models) is

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<sup>39</sup> See Box-Steffensmeier and Jones (2004) for a comprehensive review of event history analysis.

that it estimates the effects of the covariates on the hazard rate without specifying the distribution of the baseline hazard function (that is, duration dependency). The hazard rate in the Cox model is specified as

$$h(t|X) = h_0(t) \exp(\beta X),$$

where  $h_0(t)$  is the baseline hazard function left unparameterized, and  $\beta X$  is a vector of covariates and regression parameters. The Cox model is a proportional hazard model, namely

$$\frac{h(t|X_j)}{h(t|X_m)} = \frac{\exp(X_j \beta_x)}{\exp(X_m \beta_x)}.$$

This means that the hazard ratio of the covariates  $X_j$  and  $X_m$  is constant over time.

Cox regression estimates are obtained by maximizing the conditional probability of failure, or an event's occurrence. Let  $R(t_i)$  be the number of cases that are at risk of failing at time  $t_i$ . The probability that the  $j$ th case will fail at time  $T_i$  is given by

$$\Pr(t_j = T_i | R(t_i)) = \frac{e^{\beta X_i}}{\sum_{j \in R(t_i)} e^{\beta X_j}}.$$

The Cox partial likelihood function is derived by taking the product of the conditional probabilities,

$$L(\beta) = \prod_{i=1}^K \left[ \frac{e^{\beta X_i}}{\sum_{j \in R(t_i)} e^{\beta X_j}} \right]^{\delta_i},$$

where  $K$  is the number of observed failure times and  $\delta_i$  is the censoring indicator taking 0 if a case is right-censored and 1 if it is not censored. Estimates of the  $\beta$  are obtained by maximizing the natural logarithm of  $L(\beta)$ ,

$$\log L(\beta) = \sum_{i=1}^K \delta_i \left[ \beta X_i - \log \sum_{j \in R(t_i)} e^{\beta X_j} \right].$$

The above model is appropriate when only one type of events exists or when there is no substantive interest in differentiating various forms of events that cases are at risk of experiencing. However, the modes of bill termination in Congress—whether congressional deliberation ended in the approval or rejection of a bill—and not just the durations of deliberation, are of great interest for students of legislative politics. “Competing risks” models can be used to examine multiple modes of risks such as bill approval and rejection. The novel element of competing risks models is risk-specific hazard rates  $h_k(t|\beta_k, X_k)$  where  $k = 1, \dots, r$  possible events that a case is at risk of experiencing. A competing risks model can be specified using the latent survivor time approach.<sup>40</sup>

The latent survivor time approach assumes that there are  $K$  specific events that a case is at risk of experiencing but only the incidence of the first event is observed. For example, if we observe a rejection of a bill in Congress, we would not observe its approval that might eventually occur were it continue to stay in Congress. The likelihood function of a sample of size  $n$  and  $k$  specific outcomes is given by

$$L = \prod_{i=1}^n f_k(t_i | X_{ik}, \beta_k) \prod_{k=1}^r S_k(t_i | X_{ik}, \beta_k).$$

Yet, since the shortest failure time is observed (i.e.,  $T_k = \min\{T_1, \dots, T_r\}$ ), the likelihood function can be expressed as

$$L = \prod_{k=1}^r \prod_{i=1}^{n_k} f_k(t_i | X_{ik}, \beta_k) S_k(t_i | X_{ik}, \beta_j).$$

Then we define a censoring indicator  $\delta_{ik} = 1$  if  $i$  failed due to risk  $k$ , and 0 otherwise (i.e., the observation is right-censored). Adding  $\delta_{ik}$  to the likelihood function,

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<sup>40</sup> Diermeier and Stevenson (1999) use the latent survivor time approach in their analysis of cabinet duration.



$$L = \prod_{k=1}^r \prod_{i=1}^n f_k(t_i | X_{ik}, \beta_k)^{\delta_{ik}} S_k(t_i | X_{ik}, \beta_k)^{1-\delta_{ik}}.$$

This approach assumes conditional independence of competing risks.

The goal of this quantitative analysis is to estimate risk-specific hazard rates of bill deliberation in the Brazilian Congress by identifying a set of covariates that influence them.<sup>41</sup>

There are multiple modes of terminating bill examination in the Brazilian Congress. A bill may be approved or rejected. But many bills actually do not reach the final stage of deliberation but are aborted in the process. For example, some bills are withdrawn by their sponsors, and others are declared impaired due to the approval of similar bills. However, the most common cause of termination of deliberation other than approval or rejection is a reorganization of pending bills at the beginning of a new Congress when a number of pending bills are dispatched to an archive.<sup>42</sup> Thus, although there are various modes of bill termination, the more theoretically interesting cases are approvals and rejections. Hence, the subsequent analysis will focus on the discussion of the causes and timing of bill approval and rejection. However, the reader should be reminded that the information on all forms of bill termination as well as pending bills is used to estimate the hazards of approval and rejection.

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<sup>41</sup> The regression analyses in this chapter focus on the passage and rejection of bills in the Brazilian Congress. The bills approved by Congress may be subsequently sanctioned or vetoed by the nation's president. An analysis of the determinants of presidential vetoes and veto overrides by Congress is beyond the scope of this chapter. Such analysis would require different models and additional variables.

<sup>42</sup> The author of a bill may appeal the decision to the executive board of the house.

### 4.3. DEPENDENT AND INDEPENDENT VARIABLES: DATA AND OPERATIONALIZATION

#### 4.3.1. The Dependent Variable

The dependent variable is the timing and outcome of bill examination in the Brazilian Congress. The legislative data set I constructed includes proposals for constitutional amendment and two types of statutory bills—ordinary and complementary.<sup>43</sup> As discussed previously, the data set includes all executive and judiciary proposal submitted to the Brazilian Congress from October 5, 1988 (the promulgation of the current constitution) through December 31, 2003. With respect to congressional proposals, the data set includes all bills submitted during the same period and subsequently approved at least by the house of origin. In total, the data set contains 3,066 bills that meet those criteria.

Using the Senate's and Chamber's online legislative databases and information obtained through the Senate's Subsecretaria de Informações, I recorded the "history" of each of those bills. The data include information on (1) the date in which the bill was introduced in Congress; (2) its sponsor; (3) the type of the bill (i.e., ordinary bill, complementary bill, or constitutional amendment proposal); (4) the house that examined the bill first; (5) the time (in days) it spent in Congress; and (6) its final outcome. There are several modes of bill termination in the Brazilian Congress. First, using the classification employed by Congress, I classified the bills into (a) approved, (b) rejected, (c) impaired, (d) withdrawn, and (e) pending. Impaired (or *prejudicado* in Portuguese) bills include bills terminated due to the reorganization of the legislative agenda at

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<sup>43</sup> I thank Fernando Limongi for sharing Cebrap's legislative dataset. I benefited from their coding schemes in constructing my dataset.

the beginning of a new Congress, approval or rejection of another bill dealing with the same or similar subject, and other reasons. Most bills that were terminated before their examinations in the floor occurred because of the reorganization of the legislative agenda or approval or rejection of related bills. I then created a new category for bill termination other than approval or rejection by adding together impaired and withdrawn bills. Hence, there are four classifications of outcomes in the data set: approved, rejected, terminated without approval or rejection, and pending. The histories of those bills were traced from their introduction to Congress to their termination, or in the case of pending bills until July 31, 2004, on which date they “exit” the data set.

The data set does not include budgetary bills because they follow calendar deadlines. Also excluded from the data set are presidential decrees. Although Brazilian presidents use decrees frequently as a means of lawmaking, they are different from other types of bills in that decrees enact policy change immediately upon their issuances and are submitted a posteriori to the Congress for examination.<sup>44</sup> Furthermore, the examination of presidential decrees in Congress must adhere to constitutionally determined deadlines and thus are not suited for event history analysis. Tables 4.1 and 4.2 provide descriptive statistics of the proposals used for the subsequent analysis.

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<sup>44</sup> Therefore presidential decrees are technically not “bills.”

**Table 4.1: Life-Span of Bills by Their Types (in days)**

	<b>No of Bills</b>	<b>Mean</b>	<b>Median</b>	<b>Min</b>	<b>Max</b>
<b>Ordinary</b>	2842	1498	1162	2	5777
<b>Complementary</b>	119	1417	713	20	5630
<b>Constitutional</b>					
<b>Amendment</b>	105	1204	964	11	4629
<b>All Bills</b>	3066	1485	1140	2	5777

**Table 4.2: Outcomes and Life-Span of Bills in Congress (in days)**

	<b>No of Bills</b>	<b>Mean</b>	<b>Median</b>	<b>Min</b>	<b>Max</b>
<b>Approved</b>	1344	759	509	2	5155
<b>Rejected</b>	416	1376	1257	41	4282
<b>Other</b>					
<b>Termination</b>	373	1864	1828	7	4830
<b>All Bills*</b>	3066	1485	1140	2	5777

\*The figures include censored and non-censored cases. There are 933 censored bills.

Table 4.1 presents the number of bills by type and the time until they exit the data set. The figures include both censored and non-censored cases. There are 2,842 bills of ordinary law included in the data set. Their median time is 1,162 days (or over 3 years), with the minimum of 2 days and the maximum of 5,777 days (or nearly 16 years). Those figures demonstrate that there is much variation in the bills' life-span. The bills with 5,777 days of recorded time were still pending in Congress as of July 2004, indicating that certain bills stay in Congress for an awfully long time without any decision. Both bills of complementary law and constitutional amendment follow similar patterns. There are 119 complementary law bills and 105 constitutional amendment proposals with their respective median times being 713 and 964 days. The greater mean time compared to the median time for all these three types of bills suggest that the survival times are skewed towards those that stayed in Congress for extended periods.

Table 4.2 shows the life-span of bills in Congress by their outcomes. The data reveal that approved bills have the shortest life-span of the three bill types. There are 1,344 approved bills with the mean and median survival times of 759 and 509 days, respectively. Although the Brazilian Congress passed more than half of the approved bills in less than two years, it took much more time to pass some bills—it could take as long as 5,155 days (or 14 years)—that it eventually approved. Compared to approved bills, the bills that were eventually rejected or terminated for other reasons tend to stick in Congress much longer. For example, the median number of days in Congress for rejected bills ( $n = 416$ ) is 1,257, which is 2.5 times as much as the mean number of days for approved bills. Finally, the data set contains 933 censored cases.

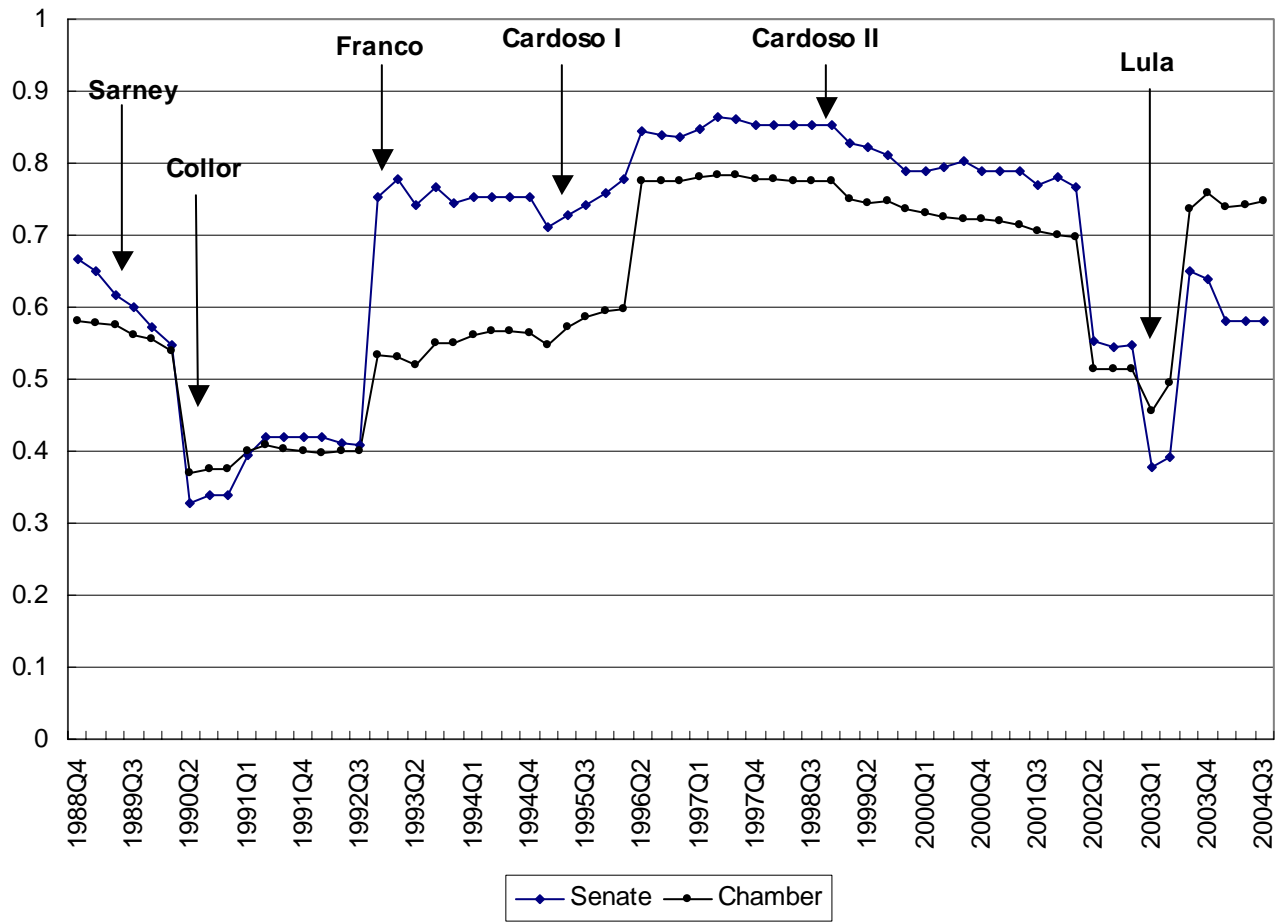
### 4.3.2. The Independent Variables

The covariates included in the analysis are as follows. H1 predicts a greater likelihood of legislative gridlock as bicameral divergences increase. Brazil's multiparty system poses a challenge to a researcher in measuring the degree of bicameral divergence over time. For example, there is no simple and meaningful way to calculate the difference between the partisan compositions of the Senate and the Chamber as it would be possible in a two-party system. However, Brazilian legislative parties do tend to cluster together into two camps: one supporting the president and the other acting as opposition to the president's government. Therefore, as an alternative to a bipartisan difference, I use the percentage difference in seat shares of the parties in the presidential coalition in the Senate and in the Chamber (labeled INCONGRUENCE) to measure the degree of bicameral divergence. This measure, of course, is not perfect and it assumes that the members of the parties in the presidential coalition have similar preference portfolios with respect to important legislation. A better alternative would be to use ideological information of the individual members of Congress. However, no such data are available for both houses that meet the exigencies of time intervals necessary to perform an event history analysis with time varying covariates (including bicameral divergence). Hence, I opted to use "practical" preferences of the members of Congress. After all, there are reasons for political parties and their members to be in the president's support coalition and many of them try to vote with the government whenever possible.

Since presidents are important legislative actors in Brazil, I created another measure of legislative preferences that take into account the congruence of the president and the two legislative houses. PRESIDENTIAL BICAMERAL MAJORITY is a dummy variable and takes

the value of 1 when the president has majorities in both the Senate and the Chamber, and 0 otherwise. Both incongruence and presidential bicameral majority are measures of legislative preferences. I expect that the larger values of incongruence increase the risk of bill rejection and that presidential bicameral majorities raise the chance of bill approval. I obtained the information on the partisan compositions of the Chamber and the Senate through the Chamber's Secretaria-Geral da Mesa and Centro de Documentação e Informação, and the Senate's *Relatório da Presidência*. I used records on the changes in party affiliations of individual members of Congress in order to have accurate accounts of the size of each party in Congress over time. Appendix 4.1 of this chapter provides information on the parties in presidential coalitions.

Figure 4.1 displays the shares of the seats held by the parties in the presidential coalition in the Chamber and the Senate from October 1988 to July 2004. Although no presidents achieved legislative majorities solely with their own parties, many presidents did attain coalitional majorities. The only minority presidents during this period were President Collor (1990-92) and President Lula (2003-Present) during his first two quarters. The figure also reveals that Brazilian presidents had greater coalitional majorities in the Senate than in the Chamber except for Lula whose bases of support were much smaller in the upper house than in the lower house. Finally, the figure points out that the largest bicameral discrepancies in the sizes of presidential coalitions occurred during the presidencies of Franco and Lula and the beginning of Cardoso's first term.



**Figure 4.1: Size of Presidential Coalitions in the Chamber and Senate, 1988-2004**  
 (Shares of Seats Held by Parties in Presidential Coalitions)

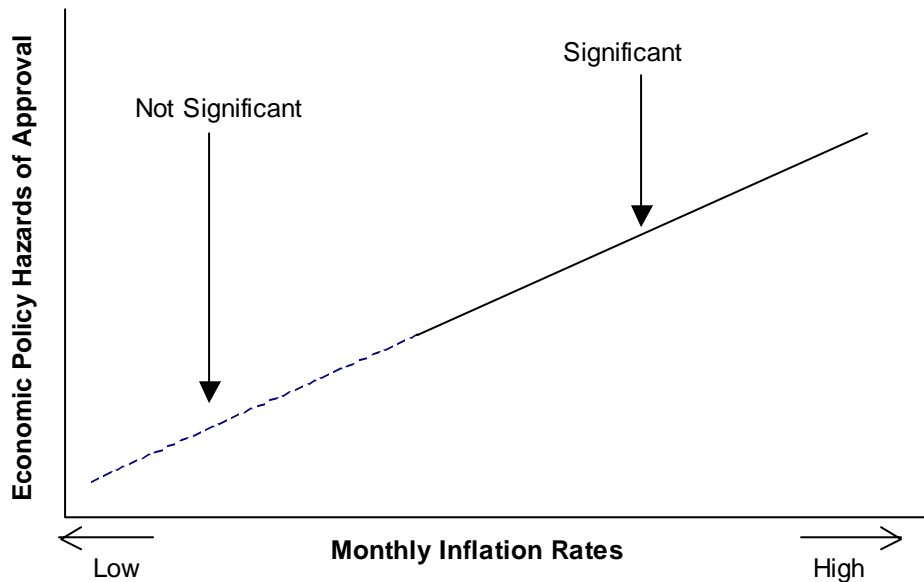


For decision rules and bicameral types (hypotheses 6 and 7), I use dummy variables that represent supermajority-symmetric bicameralism (i.e., constitutional amendment proposals) and absolute majority-asymmetric bicameralism (i.e., bills of complementary law). Proposals for constitutional amendments require a three-fifth majority in favor of the proposals in each house of Congress and they shuttle between the two houses until the Chamber and the Senate agree on the exact texts. In contrast, complementary law requires an absolute majority of votes in each house and the initiating house has the last word on the text of the bill. The base category is simple majority-asymmetric bicameralism (i.e., bills of ordinary law). I refer the reader to Table 4.1 for the descriptive statistics of those bills. It should be more difficult to approve a bill under supermajority-symmetric bicameralism than under absolute and simple majority-asymmetric bicameralism. Likewise, the chances of bill approval should be lower for bills examined under an absolute majority rule than under a simple majority rule.

The data analysis examines two factors that may elevate the level of impatience among legislative actors, which is the subject of hypothesis 2. First are legislative and presidential elections. Elections may increase legislative activities because legislators and the president's allies in Congress are likely to wish to deliver results to their constituencies when facing upcoming elections. Legislative elections, which occur in October of every four years, also coincide with the end of legislative periods. I coded 1 for the quarter in which legislative and presidential elections take place and three quarters prior to it. Based on the impatience hypothesis, I expect that legislative productivity generally increases in pre-electoral periods compared to non-election years. However, there is a possibility for an alternative hypothesis. Since most Brazilian legislators campaign locally and prefer to stay close to their constituencies during election years, their presence in the capital tends to diminish during campaign periods.

As such, legislative productivity may actually decline during election years. If such is the case, the hazards of legislative elections will be lower both with respect to approval and rejection of bills.

The second operationalization of impatience employs an economic variable. Many developing countries experience severe economic problems rather frequently. I expect that politicians' and policymakers' imperatives to promptly cope with economic difficulties become elevated during times of economic crises. One of the chronic economic problems that Brazilian governments have faced is inflation. As such, I use monthly inflation rates as a measure of economic problems and interact it with bills proposing economic policies. Economic policy bills' hazard rate should be significantly positive only when inflation rates become 'very high.' Rather than arbitrarily deciding the threshold for very high inflation, I will leave the data to determine such level and limit my prediction to describing a general pattern. The relationship between inflation rates and the chances that economic policy bills will be approved should exhibit the behavior described in Figure 4.2. At low inflation rates, being an economic policy bill does not increase its chance of approval (indicated by a discontinuous line). However, as inflation rates rise, the probability that economic policy bills will be approved increases. Inflation data are obtained through the Central Bank of Brazil.



**Figure 4.2: Hypothesized Relationships between the Hazards of Economic Policy Bills and Inflation**

Hypothesis 3 pertains to the anticipated duration of legislation. I assess the impact of the expected duration of legislation by including a dummy variable representing bills proposing a temporary policy change rather than a permanent one. Temporary policy changes include those with pre-determined expiration dates (e.g., provisional taxes) and those that are subject to periodic re-examinations (e.g., minimum wages). In total, 103 bills are coded as temporary legislation. The relative ease of bargaining is expected to facilitate the approval of bills proposing temporary change compared to those proposing permanent change.

Hypothesis 5 is about the impact of the sequence of deliberation. It states that the bills whose examination begins in the lower house have higher chances of approval than the bills

initiated by the upper house. I coded 1 for those bills which the Chamber was the first house to deliberate, and 0 if the Senate was the initial house to examine.

Finally, the data analysis takes into account the following factors. First, the extant literature (e.g., Figueiredo and Limongi 2001) on Brazilian legislative politics indicates that the executive is the principal agent of legislation. Thus, I include dummy variables for congressional and judicial proposals, having executive bills as the base category. Second, the beginning of each legislative period may represent changes in preferences with respect to status quo policies as new members join Congress and some old ones leave it. Turnover rates of the members of Congress in Brazil are quite high, especially in the Chamber of Deputies, where reelection rates have been only slightly over 50 percent in the last two decades. Hence, I coded 1 for the first year of each four-year legislative period and 0 otherwise. Third, in addition to economic policy, the data analysis includes policy areas concerning administrative issues, rights and codes (such as civil and penal codes), political and institutional questions, and tributes (such as renaming a highway honoring a famous politician). The base category is social policy. Finally, the models are estimated with a series of dummy variables representing different administrations since the promulgation of the 1988 Constitution.

**Table 4.3: Descriptive Statistics of Incongruence and Inflation**

	<b>Mean</b>	<b>Minimum</b>	<b>Maximum</b>
<b>Incongruence</b>	9.11	0.36	24.83
<b>Monthly Inflation</b>	10.3	-0.28	75.22

Incongruence and inflation variables are time-varying covariates. For computational convenience, continuous variables are first recorded on monthly bases, next summed up for each quarter, and then divided by three. That is, both incongruence and inflation rates are monthly averages over a quarter. Incongruence has a mean of 9.11 ranging from 0.36 to 24.83. Monthly inflation rates ranged from -0.28 percent to 75.22 percent during October 1988 through July 2004 with an average of 10.3 percent.

#### **4.4. ESTIMATION RESULTS**

Table 4.4 presents the results of a Cox competing risks model of bill approval and rejection in the Brazilian Congress. The first column is a “pooled” model that does not distinguish among the ways in which bills’ deliberations were terminated, be it approval, rejection, withdrawal, or otherwise. It is provided as a reference. The more interesting findings are found in the second and third columns where the effects of covariates are estimated separately for bill approval and rejection. As explained in Section 4.2, a hazard rate is the instantaneous rate of an event’s occurrence, i.e., the probability that an event (i.e., bill approval or rejection) occurs at a particular point in time, given that the case (i.e., a bill) has survived until  $t$ .

**Table 4.4: Cox Competing Risks Model of Bill Approval and Rejection**

	<b>Pooled</b>	<b>Approval</b>	<b>Rejection</b>
Bicameral Incongruence	0.03****	0.02	0.04**
Presidential Bicameral Majority	-0.09	0.72***	0.50
Supermajority/Symmetric	0.07	-0.09	-0.33
Absolute Majority/Asymmetric	-0.01	0.23	-0.47
Congressional Election	-0.14	-0.25*	0.64*
Presidential Election	0.07	0.28**	-0.90**
Beginning of Legislature	0.52****	0.31****	0.91****
Congressional Proposal	-0.82****	-0.99****	1.29****
Judicial Proposal	0.53****	0.66****	--
CD First House	0.41****	0.95****	-0.54****
Temporary Change	1.39****	1.51****	-0.40
Inflation	-0.002	-0.003	-0.01
Inflation*Economic	0.01****	0.01**	0.02**
Economic	-0.04	-0.07	0.08
Administrative	0.28****	0.26***	0.19
Rights & Codes	-0.18**	-0.41****	0.11
Tribute	0.64****	0.90****	-0.06
Political-Institutional	-0.02	-0.14	0.10
Log Pseudo-Likelihood	-15165	-9592	-2868
N	52950 (2133)	52950 (1344)	52950 (416)

Note: \* =  $p \leq 0.1$ , \*\* =  $p \leq 0.05$ , \*\*\* =  $p \leq 0.01$ , \*\*\*\* =  $p \leq 0.001$ . Entries are coefficients. Significance tests used a two-tailed test and robust standard errors. There is no rejected judicial proposal. Coefficients are estimated with various government dummies (not shown in the table).

As predicted, bicameral incongruence has a positive and significant effect on bill rejection. The hazard ratio can be obtained by exponentiating the coefficient,  $\exp(0.04) = 1.04$ . Since the values of incongruence ranges from 0.36 to 24.83 and their corresponding hazard ratios from 1.01 to 1.58, going from the minimal value of bicameral incongruence to that of the maximal value raises the risk of bill rejection by 56.4 percent.<sup>45</sup> In other words, when the difference in the shares of seats held by presidential coalitional parties in the two houses grows from 0.36 percent to 24.83 percent, the probability that a bill gets rejected at a given moment increases by 56.4 percent. Bicameral incongruence has no statistically significant impact on bill approval, however. This finding suggests that bicameral incongruence is an important determinant of bill rejection but has no influence on bill approval.

What does affect the chances of bill approval is the congruence of the three legislative actors operationalized as presidents having majorities in both houses of Congress. When presidents hold bicameral majorities, the likelihood of bill approval increases by 105% compared to when they lack such majorities. However, such majorities do not influence the hazard of bill rejection.

Counter to the hypothesis, decision rules/bicameral type variables do not have statistically significant effects on bill approval or rejection. This finding is surprising given that extant work has demonstrated the propensity of supermajority rules to cause legislative gridlock (e.g., Krehbiel 1996, 1998; Brady and Volden 1998). The non-significance of those variables may be due to the possibility that overcoming the initial hurdle of approval in the legislative body of origin under supermajority rules is very difficult and that once that barrier is surpassed, the likelihood of bill approval under supermajority rules in subsequent stages may become

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<sup>45</sup> Percentage change in the hazard rate is calculated by  $\% \Delta h(t) = \left[ \frac{e^{\beta(x_i=X_1)} - e^{\beta(x_i=X_2)}}{e^{\beta(x_i=X_2)}} \right] * 100$ .

indistinguishable from that under less rigid rules. On the other hand, a recent study by Binder (2004, 72) shows that the propensity of a supermajority rule (filibuster threats in the U.S. Senate) to cause legislative gridlock ceases to be significant when that variable is entered simultaneously in her model with other explanatory variables such as bicameral differences and partisan polarization. König's (2001) research on German bicameralism also did not find evidence that would support differential effects of "strong" and "weak" bicameralisms. In any event, the effects of bicameral types and legislative rules warrant further exploration.

Turning to the impatience variables, the estimation results of electoral periods are interesting in that they point to opposite effects of presidential and legislative elections. That is, the hazard of bill approval decreases during legislative election periods whereas it rises during presidential election years (with the coefficients of -0.25 and 0.28, respectively). In contrast, the hazard of bill rejection increases during legislative election years but diminishes during presidential election years (with the coefficients of 0.64 and -0.90, respectively). Since these findings may be artifacts of not separating years in which presidential and legislative elections occurred concurrently from the periods in which presidential and legislative elections were non-concurrent,<sup>46</sup> I re-estimated the models by including an interaction of presidential and legislative elections to capture any effects that concurrence or non-concurrence of elections may have on legislative activities. However, I did not find any substantial changes in the coefficients of the election variables.<sup>47</sup> (The estimation results are found in Appendix 4.2.)

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<sup>46</sup> Presidential and legislative elections became concurrent from 1994.

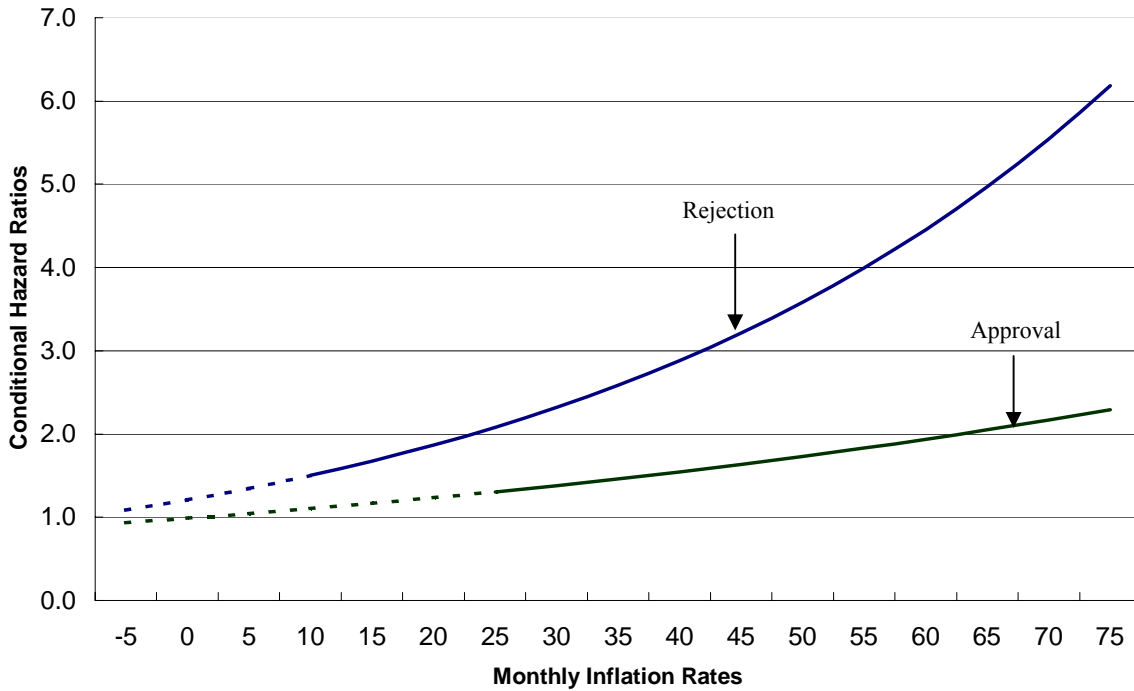
<sup>47</sup> When the Cox models are re-estimated with the interaction variable representing concurrent elections, the results for the approval model indicate that the coefficients of the electoral variables cease to be significant although the directions of the signs remain the same. The rejection model with the interaction variable also did not produce substantively different results than the model without it. The coefficient of non-concurrent legislative elections (0.79) is positive and significant, but when both concurrent and non-concurrent legislative elections are jointly considered, its coefficient is no longer significant. On the other hand, the coefficient of non-concurrent presidential elections is not significant but the additive effect of concurrent and non-concurrent presidential elections is negative and significant with a coefficient of -1.06.



The puzzle really lies in the effects of legislative elections because the findings for presidential elections are consistent with the theoretical prediction. The findings of legislative elections, however, are not consistent with either the impatience hypothesis or the alternative hypothesis. If the impatience hypothesis were correct, legislative elections' coefficient would be positive (but it is negative and significant) for bill approval. If the alternative hypothesis (that legislative activities decline during legislative election years because legislators are on campaign tours) were right, then the coefficient for bill rejection should also be negative (but it is positive). One of the possible explanations to account for these findings may be that legislators are more eager to reject and postpone the approval of the bills that would adversely affect their constituencies, hence the positive coefficient for bill rejection and the negative coefficient for bill approval. This possibility will be explored in case studies.

Another measure of impatience is inflation rates. The interaction of inflation rates and economic policy bills is positive and significant, suggesting that inflation raises the hazard of bill approval and rejection in the economic policy areas. Figure 4.3 shows conditional hazard ratios of economic bills (the y-axis) at various inflation rates (the x-axis). The solid lines indicate where hazard ratios are significant at least at the  $p = 0.1$  level and the discontinuous lines are those that do not achieve statistical significance. Note that the hazard ratios are only significant at higher inflation rates (monthly inflation rates of 10% or higher for rejection and 25% or higher for approval), confirming the hypothesis that only economic crises, but not economic problems, compel politicians and policymakers to work more efficiently in approving and rejecting bills. The results also show that the chances of economic policy bills being approved and rejected grow progressively higher as inflation rates become elevated. For instance, the likelihood that economic policy bills will be approved is 24 percent higher than that for social policy bills (i.e.,

the base category) when a monthly inflation rate is 25 percent; however, at a monthly inflation rate of 75 percent, such likelihood is 120 percent greater for economic policy bills compared to social policy bills. .



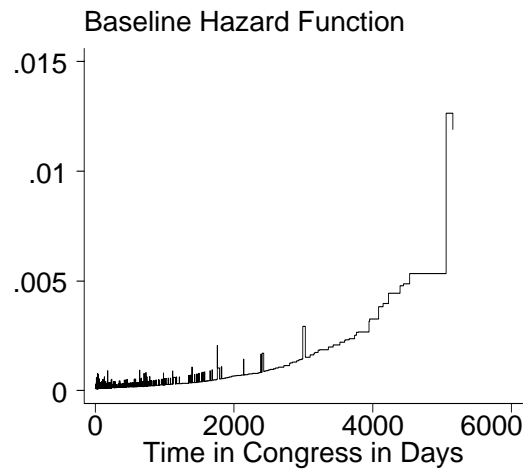
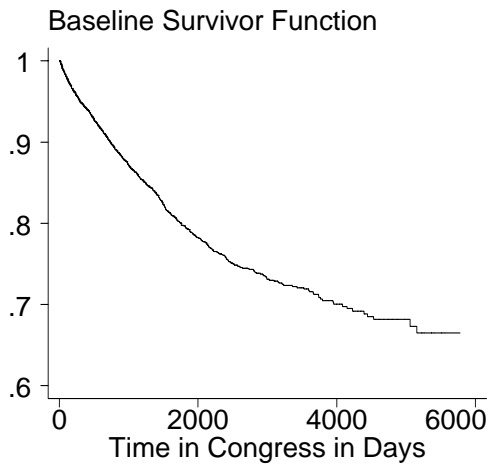
**Figure 4.3: Conditional Hazard Ratios of Economic Bills at Various Inflation Rates**

As expected, bills proposing a temporary change have a higher hazard of being approved than those proposing a permanent change. A bill proposing a provisional change is 3.54 times more likely to be approved than a bill proposing a permanent change. This finding suggests the relative ease of bargaining in striking an agreement when one proposes a short-term change rather than a long-term change.

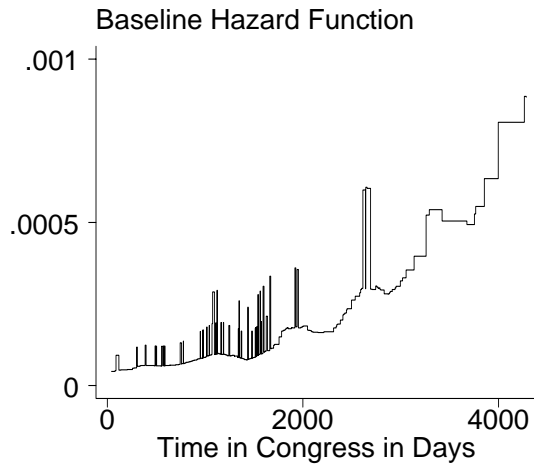
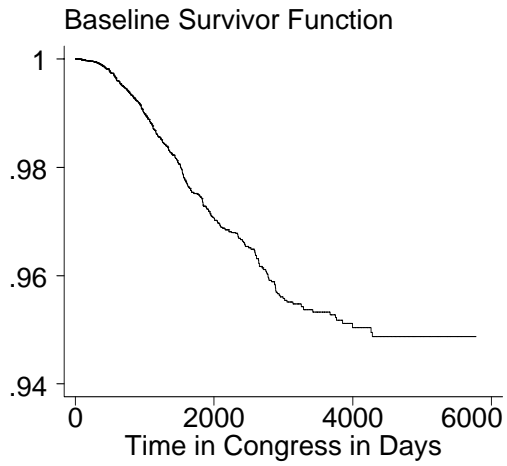
With respect to the effects of bicameral sequence, when the Chamber of Deputies is the first house to deliberate (and pass) a bill, it has a much higher chance of being approved subsequently (180 percent higher) and a lower risk of being rejected (42 percent lower) compared to when the Senate is an initiating house on a given day. These findings support hypothesis 5. Although they give evidence for a sequential advantage of being examined in the lower house first, however, the estimation results indicate that congressional bills as a whole do not fare very well. Congressional proposals face a hazard of approval 63% less than executive bills, while the hazard of rejection of congressional proposals are 3.62 times higher than that of executive bills.

Finally, the beginning of a legislative period induces greater legislative activities in both approving and rejecting bills. These findings are consistent with the expectation that fundamental changes in the institutional legislative preferences occur at the beginning of each Congress due to the departure of many former incumbent legislators and the arrival of new ones.

Figure 4.4 shows baseline survivor and hazard functions for the approval and rejection models retrieved from the analysis. Those functions represent when the values of binary variables equal zero and those of continuous variables are held at their means. In general, approval and rejection hazards follow the same pattern: the hazards of approval and rejection are low at the beginning but increase monotonically as time progresses. Survivor functions also suggest that bills that are eventually rejected tend to stick longer in Congress than bills that are eventually approved.



### Approval Model



### Rejection Model

**Figure 4.4 Baseline Survivor and Hazard Functions for Approval and Rejection Models**

#### **4.5. CONCLUSION**

Much too often scholars studying newly democratized presidential regimes have focused on their executives in analyzing legislative politics. In recent years, research that does examine legislatures has begun to appear. However, most of those studies tend to model bicameral legislatures as single-chamber congresses. Using the Brazilian legislative data, Chapter 4 demonstrated that bicameral divergences are consequential for the legislative capacity of a transitional presidential democracy. In particular, bicameral incongruence raises the risk of legislative gridlock but the president having (coalitional) majorities in both houses of Congress speeds up legislative approval. Modeling bicameralism explicitly in legislative research enhances a better understanding of the dynamics of lawmaking.

The next three chapters closely examine several important legislative issues that have been debated in post-authoritarian Brazil. While quantitative studies are informative of general patterns, detailed case studies allow for closer examinations of strategic interactions between the nation's executive and its bicameral legislature as well as the evolution of the contents of legislation as a result of those interactions.

### Appendix 4.1: Parties in the Presidential Coalition

Sarney	Collor Mar 90	Franco Oct 92	Franco Aug 93	Cardoso Jan 95	Cardoso May 96	Cardoso Mar 02	Lula Jan 03	Lula Jun 03	Lula Dec 03
PFL	PDS	PFL	PP	PFL	PPB	PPB	<b>PT</b>	<b>PT</b>	<b>PT</b>
<b>PMDB</b>	PFL	PTB	PFL	PTB	PFL	PTB	PC do B	PC do B	PC do B
	PTB	<b>PMDB</b>	PTB	PMDB	PTB	PMDB	PL	PL	PL
	<b>PRN</b>	PSDB	<b>PMDB</b>	<b>PSDB</b>	PMDB	<b>PSDB</b>	PPS	PPS	PPS
	PSC	PSB	PSDB		<b>PSDB</b>		PSB	PSB	PSB
							PV	PV	PV
							PSC	PSC	PSC
							PSL	PSL	PSL
							PDT	PDT	PMDB
							PTB	PTB	PP
							PMN	PMN	PTB
								PMDB	
								PP	

Note: The months indicate when there was a change in the composition of the parties supporting the president. The parties in bold fonts are presidents' own parties.

### Appendix 4.2: Re-estimation of Cox Competing Risks Model

	Approval	Rejection
Bicameral Incongruence	0.02	0.04*
Presidential Bicameral Majority	0.72***	0.52
Supermajority/Symmetric	-0.09	-0.33
Absolute Majority/Asymmetric	0.23	-0.47
Congressional Election	-0.18	0.79**
Presidential Election	0.42	0.51
Concurrent Election	-0.21	-1.57
Cong + Concurrent Election	-0.40	-0.78
Pres + Concurrent Election	0.21	-1.06***
Beginning of Legislature	0.32****	0.93****
Congressional Proposal	-0.99****	1.29****
Judicial Proposal	0.66****	--
CD First House	0.95****	-0.54****
Temporary Change	1.52****	-0.40
Inflation	-0.002	-0.01
Inflation*Economic	0.01**	0.02**
Economic	-0.07	0.07
Administrative	0.26***	0.19
Rights & Codes	-0.41****	0.11
Tribute	0.90****	-0.06
Political-Institutional	-0.14	0.10
Log Pseudo-Likelihood	-9592	-2868
N	52950 (1344)	52950 (416)

Note: \* =  $p \leq 0.1$ , \*\* =  $p \leq 0.05$ , \*\*\* =  $p \leq 0.01$ , \*\*\*\* =  $p \leq 0.001$ . Entries are coefficients. Significance tests used a two-tailed test and robust standard errors. There is no rejected judicial proposal. Coefficients are estimated with various government dummies (not shown in the table).

## 5. CHAPTER 5: THE REFORM THAT NEVER ENDS: PENSION REFORM IN BRAZIL

*“We know that the margin of 413 allies [in the Chamber] is an illusion.”* Deputy José Aníbal, Leader of the PSDB in the Chamber, commenting the difficulties in approving pension reform during the Cardoso government (1996).<sup>48</sup>

*“The Senate should act on behalf of national sentiment by approving a new proposal that radically eliminates all the privileges maintained by the Chamber.”* Luiz Carlos Santos, Brazilian Minister of Coordination of Political Affairs (1996).<sup>49</sup>

### 5.1. INTRODUCTION

This chapter analyzes pension reform under the Cardoso and Lula governments. Pension reform has often been discussed in Brazil as a constitutional reform. Although both presidents managed to approve constitutional amendment bills, the reforms that eventually came out of Congress were far short of what the governments originally intended. The deficiencies in the Cardoso reform led Lula to undertake another pension reform in 2003. This chapter will highlight the difficulties of passing controversial legislation under a qualified majority rule, especially in the system with weak party discipline as Deputy José Aníbal’s comment above

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<sup>48</sup> “Líderes ameaçam isolar parlamentares disidentes,” *Estado de São Paulo*, May 24, 1996, A4.

<sup>49</sup> Comment on the defeats in the Chamber of Deputies of the key provisions of social security reform proposed by the Cardoso government (quoted in *Folha de São Paulo*, May 25, 1996, 1-4). The Cardoso government and Senate leaders sought to resurrect the essence of the reform in the Senate.



indicates. It will also demonstrate the striking impact that impatience (Alesina and Drazen 1991) has on the timing of a proposal's passage.

I will probe in particular three hypotheses developed in Chapter 2. Hypothesis 1 states that bicameral incongruence of policy preferences increases the likelihood of gridlock. I will draw upon the career profiles of the members of each house and their partisan composition to locate the Senate and Chamber on the pension policy spectrum. The passage of reform should be less difficult when both houses favor pension reform than when neither or either house objects to it.

Hypothesis 6 concerns voting quotas: the likelihood of gridlock increases with the number of votes required to pass legislation. Both Cardoso's and Lula's pension reforms required constitutional revisions, and as such they needed supermajority (three-fifths) votes. The degree of concessions that had to be made in order to pass the reform bills, in addition to the voting outcomes, will be evidence for the difficulty of passing a reform under a supermajority rule compared to a simple or absolute majority rule.

Finally, since the problem of the Brazilian pension system has been mainly considered a problem of public finance, the nation's economic conditions are likely to influence the degree of legislators' patience with additional delays in the passage of the reform. The deterioration in economic conditions (or expectations thereof) should elevate impatience, which, per hypothesis 2, is likely to lead to the reform's passage.

This chapter is organized as follows. First, I provide an overview of the pension system's problems. Next, I discuss pension reform under the Cardoso government, followed by an examination of pension reform proposed by the Lula government. In the last section I compare the hypotheses against evidence.

## 5.2. PROBLEMS WITH THE PENSION SYSTEM IN BRAZIL

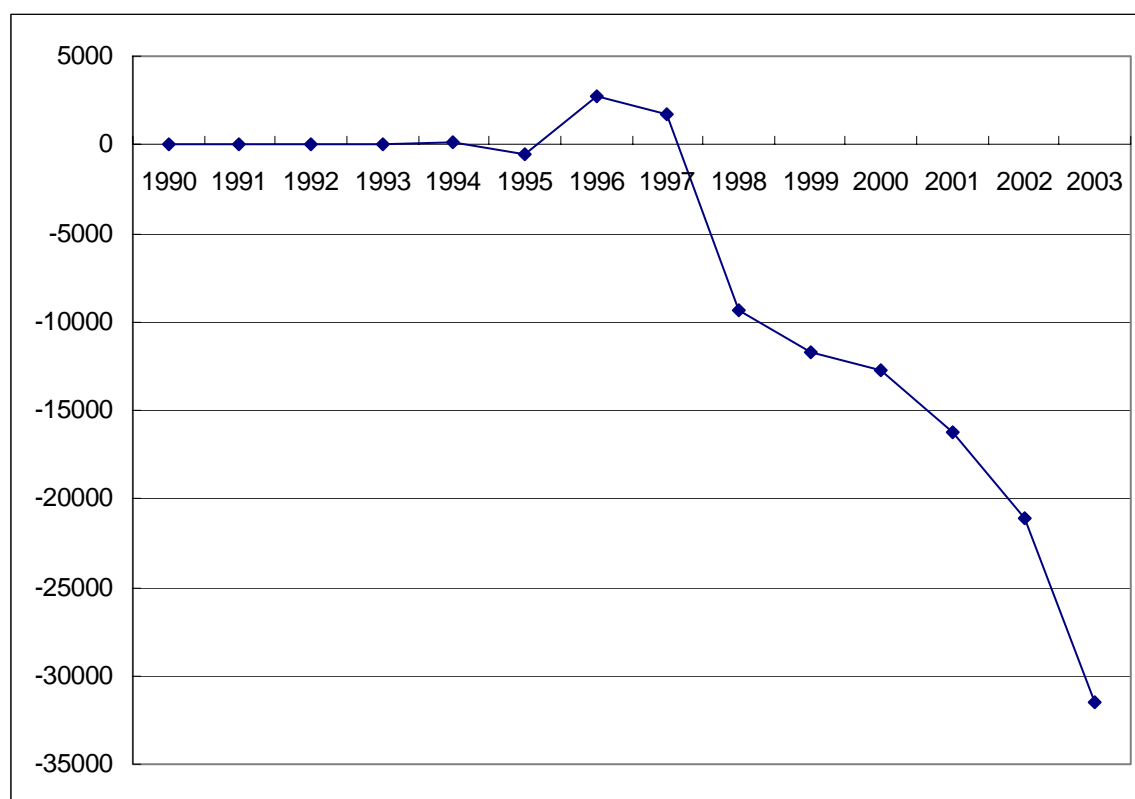
The 1988 Brazilian Constitution established a very generous public pension system. It instituted special privileges for narrow segments of the population such as public servants, judges, teachers, and the members of Congress.<sup>50</sup> The eligibility criteria were based on years of service (i.e., how many years a worker worked before retirement) rather than years of contribution (i.e., how many years a worker paid social security taxes before retirement). Retirement by years of service combined with what is known in Brazil as proportional retirement (*aposentadoria proporcional*) permitted retirement with the right to receiving pensions as early as at the age of 49. The pension system also allowed the accumulation of salaries and retirement benefits, which in effect encouraged early retirement in one position in order to seek another post in public service; the worker would then work for a few years to be eligible for additional pension benefits. The pension problem was especially severe in the public sector in which pension payments for retired public servants were equal to the last salary (often with a raise of 5-20% upon retirement) (*integralidade*). In addition, there were automatic adjustments of benefits whenever there were changes in the wages and benefits in their former posts (*paridade*). Neither of these arrangements exists in any other pension system in the world (Amaro 2004, 5).<sup>51</sup>

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<sup>50</sup> Those privileges include (but not limited to) early retirement, retirement at the full value of the last salary, special pension regimes distinct from the general pension systems, and so forth.

<sup>51</sup> According to a specialist in the Senate, one of the major problems that the 1988 Constitution brought in to the Brazilian pension system was the introduction of *paridade*. Before 1988, *paridade* did not exist and the country's high inflation eroded the values of pensions, making it difficult to live on them after retirement. This experience was the primary motivation for the inclusion of the automatic adjustments between pensions and remunerations of retired and active civil servants. Author's interview with Gilberto Guerzoni, Specialist in Pension System for Public Servants in the Senate' *Consultoria Legislativa*, April 27, 2004.

By the mid-1990s, these problems caused serious pressures on the financial sustainability of the pension regime. From 1988 to 1994, high inflation, which eroded the real values of payments, made it possible for the system to keep up with the promises embraced in the Constitution. However, the Real Plan launched in 1994 ended the cycle of hyperinflation in Brazil. Ironically, the success of the stabilization plan made visible the distortions of the pension system that had been hidden under the mask of chronicle high inflation (Pinheiro 2004, 123). As Figure 5.1 shows, the payments and revenues of the social security regime was more or less balanced until 1995. From that time on, social security deficits spiraled. In 2003, the Brazilian social security system ran a deficit of R\$31.5 billion (or approximately 2 % of GDP).



Source: Anuário Estatístico da Previdência Social, Ministério da Previdência Social.

**Figure 5.1: Brazilian Social Security System Deficits, 1990-2003 (in R\$ million)**

In terms of the payments of pension benefits for retired civil servants, which are paid from the government's budget, such expenditures were more than 20 percent of the federal government's total net revenue in 1997 and 19.6 percent in 1998 (Ministério da Previdência Social 2005). In 2002, there were nearly 944,000 pensioners on the federal government's payroll for whom it paid R\$31.7 billion. In the same year, the government received only R\$3.2 billion in pension contributions from 883,000 active servants (Amaro 2004, 6). The budget situation was even worse for many state governments, which administer pension benefits for their retired employees.<sup>52</sup> Between 1997 and 2001, 22 of the 26 states and the Federal District spent over 10% of their total net revenues on pension benefits. Pension payments of ten states exceeded 20% of total net revenues. The state of Rio Grande do Sul spent a record 38.6% of its net revenue on pension payments in 2000. Therefore, pension reform has been of great interest not only to the federal government but also to state governments. Those governments regarded the problem of the pension system principally as that of finance and not so much as a social question. As such, they formulated reform proposals designed to increase contributions while decreasing payments.

### **5.3. PENSION REFORM UNDER CARDOSO: COOPERATIVE SENATE, RECALCITRANT CHAMBER**

#### **5.3.1. The Positions of the Chamber and Senate on Cardoso's Proposal**

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<sup>52</sup> Each of the federal, state, and municipal governments is responsible for providing pensions for its retired employees.

Arguing that the existing pension system was unsustainable, the government of President Fernando Henrique Cardoso established pension reform as one of the pillars of the constitutional reforms embarked in 1995. The government's proposed constitutional amendment submitted to the National Congress in March 1995 had the following objectives (see Appendix 5.1 for details).

1. Unify the rules of the pension regimes for the public and private sectors;
2. Remove from the Constitution the details of pension regimes (“deconstitutionalization”). Eligibility criteria and formulae for calculating pension benefits were to be regulated by ordinary and complementary laws, which could be approved by simple and absolute majority votes, respectively, and would be subject to presidential vetoes, rather than by constitutional amendments, which require a three-fifths majority and cannot be vetoed;
3. Make it the exclusive competence of the executive branch to initiate laws pertaining to the finance of the social security system;
4. Elevate the eligibility criteria by introducing a minimum age for retirement with pension, replacing years of service with years of contribution, and ending proportional retirement;
5. Eliminate special privileges for public employees, teachers, judges, and legislators;
6. Demand contributions to the pension system from the recipients of pension benefits and non-profit and religious institutions;
7. Allow the disclosure of financial information of individuals who owe social security taxes; and
8. Modify the provisions of universal and free public health service.

The viability of pension reform depended upon the willingness of the Congress to pass the executive proposal. As stated previously, since pension reform was a constitutional reform,

it required a supermajority in each house. The legislative parties supporting President Cardoso's government held more than a majority seats in both the Chamber and the Senate. Initially, the government had "only" a little over 50 percent of the seats in the Chamber, but by 1996, primarily as a result of the migration of deputies to government-supporting parties, this figure increased to more than 70 percent. In reality, not all deputies in the government coalition voted with the government all the time. According to one estimate (DIAP 1998, 18), the Cardoso government was able to count on the consistent support of 296 deputies (or 57.7%), 12 short of the votes needed to approve constitutional amendments. The votes of the remainder of the deputies in the coalition were subject to negotiation. In contrast, the government had a more solid base of support in the Senate, retaining a consistent support of well over 70 percent of the senators.

The size of leftist parties linked to unions and civil servants were also greater in the Chamber than in the Senate. The leftist parties held about 100 seats (or 20%) on average in the lower house during 1995-1998 and were staunch opponents of the pension reform proposed by the Cardoso government. In addition, the Chamber is generally more vulnerable to pressure groups than the Senate because deputies face more frequent elections and many of them have narrow constituencies tied to specific geographic areas or special interests. The groups that would be affected by the pension reform engaged in extensive lobbying in the Congress, especially in the Chamber, trying to convince their representatives to vote against the reform.

By contrast, leftist parties in the Senate, holding only slightly over 10 percent of the seats, did not constitute a meaningful obstacle to the government's initiative. Senators' long tenure (eight years) also gave them relative insulation from pressure groups. Moreover, as ex-governors and ex-administrators, many senators were more susceptible to the idea of the need to

undertake a reform of the pension system that was also causing administrative and financial difficulties for state governments.<sup>53</sup>

Figure 5.2 exhibits the ideal points of the Cardoso government, Senate, and Chamber inferred from the original proposal, career profiles of the senators and deputies, partisan compositions, and anecdotal evidence. Given the three-fifth majority rule to consider a constitutional amendment, the 308<sup>th</sup> deputy and 49<sup>th</sup> senator were the pivotal voters of each house, and the Chamber's and Senate's inferred ideal points reflect the positions of these legislators. The existing pension system (SQ) was very "generous" in the pension payments and eligibility criteria. The government desired to tighten the eligibility criteria, demand contributions from groups formerly exempt from such coverage, and reduce the values of pension benefits. Most senators agreed with the essence of the government's proposal with some reservations. In the Chamber, the deputies with critical votes were not the government's loyalists or opponents; they were those whose votes were conditional upon the nature of the government's proposal and largesse. The unpopular nature of the pension reform (because it imposed immediate costs on politically active groups) led those deputies to take a position against most of the items on the government's proposal, although many understood that some reform would be inevitable in the near future.



<sup>53</sup> Author's interview with Senators Eduardo Azeredo (PSDB-Minas Gerais), June 9, 2004, and César Borges (PFL-Bahia), May 3, 2004.

## **Figure 5.2: Positions of the Government, Senate, and Chamber on Pension Reform under Cardoso**

Several features of the pension reform should be highlighted. First, although the Cardoso government was the proposer of the reform, it was not a veto player. In constitutional revisions, the federal government may submit proposals; however, it does not have a formal veto power. In contrast, the Chamber and the Senate were veto players. An enactment of a constitutional amendment requires the concurrence of the two legislative houses. Second, both houses held the power not only to veto but also to add and change the proposal. Third, given the unanimity rule between the two houses and the location of the status quo, the actual reform should occur between the Chamber's and Senate's ideal points. On the other hand, had there only been the Chamber, the pension reform should have resulted in the location of its ideal point. Fourth, between the ideal points of the Chamber and Senate should bicameral bargaining over the location of new policy occur. And finally, navette was the rule of bicameral conflict resolution. In other words, the proposal had to shuttle between the two houses until both houses agreed on the same text.

### **5.3.2. The Government Meets Resistance: The First Round in the Chamber**

The Cardoso government sent the pension reform proposal on March 17, 1995 to the Chamber of Deputies. As anticipated, the proposal encountered enormous resistance in that house. Although the government used every possible resource available to them to conquer resistance at each step of examination in the Chamber, it nonetheless suffered defeats on many



occasions. The pension reform proposal was passed by the Chamber in the end, but without its core.

The first government defeat occurred in the Constitution, Justice, and Editing Committee (CCJR). Arguing that the government proposal included diverse items that should not be treated in a single bill, the CCJR's reporting officer, Deputy Roberto Magalhães (PFL-Pernambuco) divided it into four distinctive bills, contrary to the government's intention to implement a broader reform of the social security system. Those four bills were subsequently examined separately, and two of them (one dealt with the proposal power of social security bills and the other financial disclosures) were rejected by the CCJR. One that foresaw changes in the health care system was withdrawn by the government in November. Only the bill concerning the pension reform survived the CCJR. In order to pass the bill in the committee, however, the government had to concede on the social security contributions that it intended to levy from pension recipients and humanitarian and religious organizations.

The Cardoso government continued to face tremendous difficulties in the special committee (CESP) on pension reform installed to examine the merit of the proposal in September 1995. First, the reporting officer of the CESP, Deputy Euler Ribeiro (PMDB-Amazonas) did not accept many of the government's arguments regarding the reform. Ribeiro argued for the need to maintain public servants' rights to retire with full salary and automatic adjustment of their pension benefits. He also sought to maintain special retirements for rural workers, judges, and teachers of 1<sup>st</sup> through 8<sup>th</sup> grades and an early retirement for women. In addition, Ribeiro refused to apply new rules to those already in service. If the new rules could only be applied to those who began to work after the promulgation of the amendment, it in practice meant that the pension system would not be altered until at least 2030. This led Social

Security Minister Stephanes to call Euler's proposal "totally innocuous, unnecessary, and even ridiculous."<sup>54</sup> Only after long and repeated negotiations did Ribeiro and the government reach an agreement in which the deputy accepted to accelerate the rules of transition to the new regime and remove the right to automatic adjustments of pensions for retired public servants. Ribeiro also reintroduced in his substitution bill a social security contribution by pension recipients that had been rejected as unconstitutional by the CCJR.

Second, the CESP's chairman, Jair Soares (PFL-Rio Grande do Sul) troubled the government as well. Although Soares was nominated to the chairmanship by Cardoso's vice-president's party, PFL, he was sympathetic to the opposition's obstructionist strategies to delay the vote of the substitution bill. The exchange of accusations regarding the conduct of the committee within the *governistas* and between the *governistas* and the opposition culminated in the resignation of Soares as committee chairman. Assessing that the government had lost control of the committee, Cardoso's prominent ally in the Chamber, Luís Eduardo Magalhães (PFL-Bahia), using his authority as the president of the house, closed the CEPS without a final vote and took the material directly to a consideration in the floor in February 1996.

Although the crisis of the CESP led the government to reinforce its effort to mobilize votes in favor of its pension reform, it suffered a serious defeat in the floor vote that could have forced the government to abandon the proposal. On March 6, 1996, almost a month after the closure of the CESP, Ribeiro's substitution bill on the pension reform was up for floor voting. The final tally was 294 in favor of the bill, 190 opposed, and 8 abstained. The government needed 14 more votes to approve the bill. Ninety-six deputies in the government coalition did not vote with the government, with 40 dissenters from the PMDB, 29 from the PPB, 10 from the PFL, 9 from the PSDB, and 8 from the PTB. Government leaders speculated about the causes of

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<sup>54</sup> "Para ministro, parecer de relator é inócua e ridículo," *Folha de São Paulo*, November 8, 1995, 1-4.

the defeat, attributing them to the upcoming municipal elections in which many deputies were mayoral candidates, the negative repercussions of the installation of the parliamentary investigation commission on banks, and the possibility of the extinction of the Institute of Social Security for the Members of Congress. However, the most important factor for the defeat in their assessment was the general discontent of the *governista* deputies with the government with respect to political appointments and the release of budgetary funds. In retrospect, the vice-leader of the government in the Chamber, Arnaldo Madeira, stated, “We erred in the calculation. We could not measure the size of dissatisfaction in the government base.”<sup>55</sup> The Chamber’s President ended the session without proceeding to the next item in line for a vote, the original government proposal, which imposed stricter terms of eligibility and benefits and therefore was sure to be defeated.

The government and its leaders in the Chamber devoted the next few weeks to negotiating with dissident deputies. The government strategies included threats of retaliation to dissenters, promises of funding for public works projects, personal telegrams from President Cardoso, and the adjustments of the text being elaborated by the new reporting officer, Michel Temer (PMDB-Sao Paulo) to make it more acceptable to the rebellious deputies. In order to reverse the votes of dissenters in the PPB—the party that contributed 29 votes to the opposition—the government promised one ministerial post and gained the support of the *pepebista* mayor of Sao Paulo with the transfer of R\$3.3 billion city debt to the federal government. In addition, two deputies on leave reclaimed their mandates in order to increase the margin of favorable votes because their replacements (*suplentes*) intended to vote against the

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<sup>55</sup> “Câmara derruba parecer da Previdência.” *Jornal do Brasil*, March 7, 1996, 4.

reform.<sup>56</sup> The strategies worked and the proposal was approved by 351 to 139 with 2 abstentions. The number of the deputies in the coalition who voted against the proposal diminished substantially: 15 from the PMDB, 12 from the PPB, 8 from the PSDB, 2 from the PTB, and only 1 from the PFL. Twenty-one deputies of the PMDB, 17 of the PPB, 7 of the PFL, 3 of the PTB and 1 PSDB deputy who had voted against the bill in the earlier vote voted in favor this time.<sup>57</sup>

Despite its importance, the approval of the basic text was nonetheless only a first victory for the Cardoso government because controversial changes were left to be voted separately (known as *destaque de votação em separado* or DVS). The Chamber voted numerous DVS's and amendments during the next three months in which the government came across a series of defeats. The text finally passed by the Chamber in late June lost most of the core of the executive proposal. Although the approved text did away with the accumulation of pensions and retirement by years of work (replacing it with years of contribution), it maintained proportional retirement, special rules for a range of categories, and retirement for full salary and automatic pension adjustments for public servants. No minimum age (originally intended to be at 65) was established (see Appendix 5.1). With respect to years of contribution, however, the Chamber included in the text a provision that considered a range of years of service equivalent to years of contribution. There were also no new groups from whom the government could levy additional social security taxes.

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<sup>56</sup> See "Governno ameaça os rebeldes," *Jornal do Brasil*, March 7, 1996, 4; "Governno decide votar hoje reforma da Previdência," *Jornal do Brasil*, March 21, 1996; "Operação de Guerra garante votos ao governo," *Estado de São Paulo*, March 22, 1996, A5; and "Custo para o Tesouro sera elevado," *Estado de São Paulo*, March 22, 1996, A5.

<sup>57</sup> "Operação de Guerra garante votos ao governo," *Estado de São Paulo*, March 22, 1996, A5

### 5.3.3. The Senate as a Savior of Pension Reform

The task of the Senate was to recompose the proposal in order to bring back the fundamental changes sought in the original government's proposal. The advantage of the government in the upper house was obvious. In addition to the sensitivities of the senators with administrative and budgetary issues, the government bloc in the Senate counted 69 of the total 81 members (or 85%), of which only four regularly voted against the government. There were also no significant pressure groups in the Senate unlike as was the case in the Chamber.<sup>58</sup> Therefore, the government and the Senate's and Chamber's *governista* leaders started discussing the possibility of resurrecting the principal points of the government proposal in the upper house as they observed successive defeats in the DVS's in the Chamber. The government assessed that the end of municipal elections by the time the proposal returned to the Chamber would ease pressures on many deputies. Meanwhile the government would invest in changing the internal rules of the Chamber in order to make it more difficult to request DVS's.

In a nutshell, the Cardoso government sought to reestablish the following points in the Senate: the end of automatic adjustments of pension benefits of retired civil servants to match remunerations of active servants; the end of retirement at last full salary for civil servants; the establishment of a minimum retirement age; and taxation of social security contribution on pension recipients.<sup>59</sup> The government and the reporting officer of the Committee on Constitution, Justice, and Citizenship (CCJ) in the Senate, Beni Veras (PSDB-Ceará) worked closely in preparing a substitution bill. Veras restored practically all the fundamental points of the original idea of the pension reform by establishing minimum ages, using a clear definition of

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<sup>58</sup> "Emenda da Previdência recomeça do zero," *Gazeta Mercantil*, May 27, 1996.

<sup>59</sup> Author's interview with Gilberto Guerzoni, April 27, 2004.

years of contribution, ending proportional retirement, allowing taxation on pension benefits, and practically terminating retirement at full salary for the public servants who earned more than R\$1200. However, Veras did not agree to end *paridade* (adjustments of pensions and remunerations of active public servants). Veras and other senators also refused to leave many of new rules to be regulated by ordinary or complementary laws as the government desired; instead, they put almost everything that the government asked in the Constitution. Although senators cooperated with the government in the pension reform, they refused to give it a “blank check” (Guerzoni 2004).

After various adjustments, Veras’ substitution bill was approved in the CCJ by 16 to 2 in July 1997 and in the floor in September by 59 to 12. Among the members of the government coalition, only three PMDB senators voted against the basic text. In contrast to the negotiations in the Chamber, there was not much media coverage regarding releases of public funds or nominations on the eve of the floor vote. Nonetheless, the government suffered three defeats on the floor: judges and legislators were allowed to continue to have their own pension regimes and an amendment to transform a provisional tax on financial transactions (collected to help finance the social security system) into a permanent tax was rejected.

#### **5.3.4. The Chamber Accepts Greater Reform**

The Chamber received the Senate’s substitution bill in October 1997. In the first round, it took seventeen months until the passage of the proposal in the Chamber, and the text approved was so altered that in the government’s point of view, it became ineffective. This time, the Chamber approved the bill in fourteen months and the text approved retained some of the

provisions that the house had rejected in the earlier round. The comparison of the government forces in the Chamber during the 1995-96 and 1997-98 periods indicates no significant change: the Cardoso government had about 77 percent of the deputies in its coalition at least numerically. There was no indication that party discipline increased during the second period: the media reported extravagant uses of resources by the government in both cases to mobilize votes. The municipal elections that led some deputies not to vote for the unpopular reform in 1996 were only replaced by legislative elections scheduled in October 1998.

However, there are two factors that had changed since the earlier round. One was the alteration in the internal rules of the Chamber by which it became more difficult to force separate votes on the items in the proposal. Second was the threat of an economic crisis that began in Asia in 1997 and spread to Russia in 1998. During 1995 and 1996, the Brazilian economy was improving. However, by 1998, Brazil was under strong economic pressure. International investors speculated that Brazil was next in line for an economic crisis and Cardoso's pension reform was seen as a critical test of the government's and Congress' ability to overcome the challenge.<sup>60</sup> Fiscal adjustment, of which an effective reform of the pension system was essential, was the condition for the emergency loan that the International Monetary Fund provided to Brazil in the anticipation of speculative attacks on the nation's currency. The anticipation of an economic crisis in 1998 thus elevated the need to approve an effective reform swiftly.

Initially, the examination of the Senate's substitution bill in the Chamber was as tumultuous, if not more, as before. After the CCJR approved by 35 to 13 the Senate's bill without modifications, a new CESP was created in January 1998 to examine the bill. However, legislative elections were scheduled in October that year, and many deputies in the government

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<sup>60</sup> Author's interview with Sandra Cristina F. de Almeida, specialist in the area of pension reform in the Chamber's Consultoria Legislativa, May 6, 2004.

coalition threatened that they would vote against the reform that might hurt them electorally. As was often the case, the PMDB was one of the most divided parties with respect to the pension reform: of the 86 PMDB deputies, 35 declared in January that they were against the reform. In the PPB, the number of dissenters was even larger: about a half of the 80 PPB deputies were against the reform.<sup>61</sup> However, the CESP's reporting officer, Deputy Arnaldo Madeira (PSDB-Sao Paulo), produced an analysis in favor of the Senate's bill and rejected all amendments submitted in the committee. The vote in the CESP that occurred on February 5, 1998 was marked by disorder. Labor unions protested against the reform in the CESP meeting while the oppositionists engaged in countless attempts at obstruction and squabbled about how the committee's work was conducted. The *governistas* managed to approve the bill after the oppositionists withdrew themselves in protest and protesters marched into the plenary and invaded the floor.

The *governistas* were afraid of the negative repercussions that the protest might have on the deputies in the forthcoming floor vote. In the next week, reports of releases of public funds to contain rebels dominated the media coverage.<sup>62</sup> The government also agreed to the demand of the *governistas* in the Chamber to remove from the text the provision on the social security tax on pensioners. With the releases of resources and concessions, the Chamber approved the basic text of the proposal by 346 to 151 on February 12. In the next few months, the *governistas*

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<sup>61</sup> "Previdência assusta a base governista," *Jornal do Brasil*, January 22, 1998, 4.

<sup>62</sup> For example, *Folha de São Paulo* (February 12, 1998, 1-10) reported that the Cardoso government promised to release R\$22 million for public works projects benefiting governista deputies' constituencies. According to *Gazeta Mercantile* (February 12, 1998, A-14), Planning Minister Kandir telephoned a government owned bank (Caixa Econômica Federal) to hasten the liberation of the funds for deputies' budget amendments, resulting in the distribution of more than R\$4 million in only two weeks in February. *Folha de São Paulo* (February 13, 1998, 1-4) also reported that only in one month before the first round of the floor vote, the PFL, PSDB, PMDB, and PPB deputies had 50%, 58%, 43%, and 48% of their total authorized budgets for their amendments released, respectively. In addition, the government released additional R\$350000 extraordinary funds (not on the budget) during five hours before the floor vote on February 11 (*O Globo*, February 12, 1998, 3).



sought to vote on the polemic items such as minimum ages for retirements in the private sector, which they lost in the DVS by just one vote.

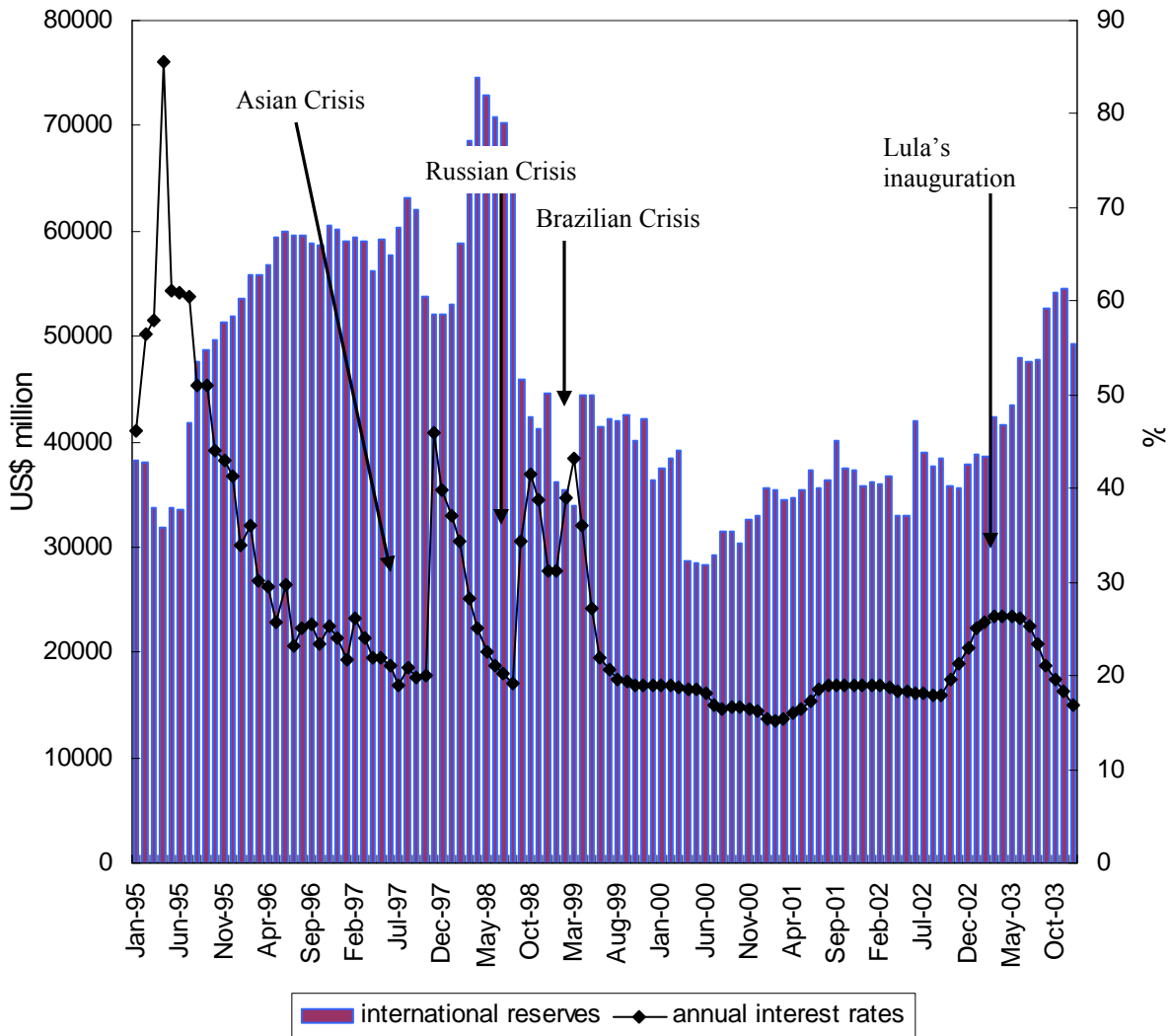
The beginning of the second round of voting that started in June was equally difficult for the government. With legislative elections only a few months away, the government was defeated in an important vote for a 30% discount on pensions over R\$1200 that would deal with the problem of retirement at full salary and was critical to improve fiscal balance. The government forces suspended the remainder of votes in order to avoid further defeats.

The Chamber resumed voting of the pension reform proposal in November 1998 after nearly five months of postponement. By that time, Brazil was facing an imminent economic crisis. The country's international reserves that amounted nearly US \$75 billion in April dwindled to US \$41 billion by November (see Figure 5.3). Brazil's crawling peg exchange rate regime was under constant attacks. The government raised interest rates to close to 40 percent annually in order to protect the exchange rate arrangement and prevent capital flight, but international reserves continued to decline. Thus under strong economic pressures, the Chamber voted on the opposition's DVS on the creation of supplementary funds for federal, state, and municipal public servants who earned more than R\$1200. The creation of supplementary funds for public servants was an important beginning to impose a ceiling on pension benefits equivalent to the one in the private sector. Government leaders argued that the approval of this provision was important because it served as a signal to the international financial market that the Brazilian Congress was capable of passing fiscal adjustment measures and that the country would overcome the crisis it was confronting.<sup>63</sup> In contrast to the earlier rejection of the discounting of pensions, this provision was approved by an overwhelming majority of 343 in favor to 125 opposed with 8 abstentions. The PSDB leader, Deputy Aécio Neves claimed that

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<sup>63</sup> "Governo conquista primeira vitória," *Jornal do Brasil*, November 5, 1998, 3.

the defeat of the DVS was facilitated because legislators interpreted the vote as the first step of much needed fiscal adjustment. The remainder of the votes proceeded rather smoothly and quickly and Constitutional Amendment No. 20 was promulgated in December 1998, just one month before Brazil devalued its currency.



Source: Banco Central do Brasil.

**Figure 5.3: Economic Indicators in Brazil, 1995-2003**

To recapitulate achievements and failures, after the Chamber's disfigurement of its pension reform proposal, the Cardoso government tried to reestablish it in the Senate where the government had a reliable majority. The parts that it attempted to resurrect were *paridade* (which the Senate did not accept) and *integralidade*, minimum ages, and social security taxes on pensions. Taxation on pensions, a 30 percent discount on pensions (partial solution for the problem of *integralidade*), and minimum retirement ages in the private sector were once again rejected in the Chamber. However, minimum retirement ages for public servants and a creation of a supplementary fund for them (partial solution for the problem of *integralidade*) were approved upon the proposal's return to the Chamber. Three factors were particularly important to understand Cardoso's pension reform. First, the extent of the pension reform was possible because the Senate's preference was aligned closer to the executive's rather than the Chamber's. Second, a qualified majority rule makes it particularly difficult to approve unpopular measures. Although more than a majority of deputies voted with the government, the government lost in various provisions because vote tallies fell short of three-fifth majorities required for constitutional reform. Third, the imminence of an economic crisis helped a rather swift conclusion in 1998 of the votes and the approval of some of the provisions rejected earlier.

## 5.4. PENSION REFORM UNDER LULA: FRIENDLY CHAMBER, TOUGH SENATE

### 5.4.1. The Positions of the Chamber and Senate on Lula's Proposal

Cardoso's pension reform left many problems unresolved, and all levels of government continued to struggle to pay for pension benefits from their scarce resources. In 1999, the Ministry of Social Security estimated that the total fiscal impact of the pension reform for the next twelve months would be R\$7.7 billion in reducing the deficit. However, even with the reform, the fiscal balance of the general social security regime for the private sector deteriorated (see Figure 5.1) and the government expenditures to finance pensions for retired public servants and their families continued to increase. The federal government spending on pension benefits in 1998 was R\$20.5 billion. By 2001, it reached R\$28.1 billion, an increase of nearly 40 percent from 1998 (See Table 5.1). State governments' expenditures on their retired employees similarly continued to rise.

**Table 5.1: Government Expenditures on Pension Benefits (in R\$ million)**

	1997	1998	1999	2000	2001
<b>Federal Government</b>	19,514	20,466	23,060	24,468	28,104
<b>State Governments Total</b>	15,788	17,714	17,935	23,793	24,644

Note: State governments total includes Federal District. These figures represent government expenditures on pension benefits for retired public servants and their families and do not include pension payments for the retirees in the private sector.

Source: Anuário Estatístico da Previdência Social, Ministério da Previdência Social.

In a historic reversal of the PT's staunch and constant opposition to Cardoso's pension reform, new President Luiz Inácio Lula da Silva proposed in 2003 another reform that was practically equivalent to that of its predecessor. Since most of the outstanding problems were found in the pension regime for public sector employees, Lula's reform plan focused on that sector.<sup>64</sup> Overall, the Lula government sought the following changes in the system (see Appendix 5.2 for details).

1. The end of retirement at full last salary (*integralidade*) and adjustments of pension benefits of the retired servants to changes in the remunerations of active servants (*paridade*);
2. Establishment of a ceiling on pension benefits for retired public servants;
3. Taxation on pension benefits to contribute to the social security system; and
4. Creation of supplementary pension funds for public servants.<sup>65</sup>

All of these items had also been proposed by the Cardoso government in 1995 and opposed by Lula's party, PT.

The approval in the Chamber of the pension reform was expected to be facilitated by the fact that former staunch opponents of such reform, including the PT, were now in the government pursuing the reform. Moreover, the 2002 elections made the PT the largest party in the Chamber in the 52<sup>nd</sup> Congress surpassing the PMDB and PFL. Although not all members of the party concurred with the Lula government's pursuit of the pension reform, with threats of punishment for undisciplined behavior, most were expected to follow the government's and

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<sup>64</sup> Most of the remaining issues with the pension system for the private sector were dealt with by ordinary and complementary laws during Cardoso's second term.

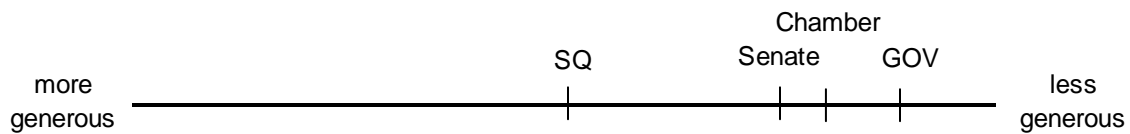
<sup>65</sup> Supplementary funds approved in the constitutional amendment during the Cardoso government did not exist as of 2003 due to lack of regulations by statutory regime.

party leadership's orientation to support the reform. It would also be difficult to oppose a program of the government led by the leaders of their own party.

Lula's team in the Planalto (presidential palace) also sought, successfully, to incorporate the PMDB and PP (formerly PPB) in the government's legislative base to aid in "governability," although oppositionist factions persisted in those two parties, especially in the PMDB.

Therefore, even though the Lula government started as a minority government, by the end of the second quarter, it was supported by parties that in total controlled over 70 percent of the Chamber's seats. Also differently from the experience of the Cardoso government, the opposition parties, primarily the PFL and PSDB that promoted a pension reform previously, did not intend to launch fierce opposition to Lula's pension reform. In fact, most PSDB members and many PFL members supported the reform in order to maintain consistency.

In contrast to the Chamber, opposition forces were stronger in the Senate and, even after the incorporation of the PMDB in the coalition, the Lula government did not have a comfortable qualified majority in the upper house. However, except for the reasons of partisan politics, there is no evidence to suggest that average senators' positions to the pension reform had changed since the Cardoso era. Hence the Senate should be generally in favor of the pension reform. Figure 5.4 is a graphical representation of the positions of the government, Chamber, and Senate. I place the Senate slightly to the left of the Chamber in order to take into account possible partisan effects. The important point to notice is that the preferences of all three actors tend to converge, particularly relative to their positions during the Cardoso government.



**Figure 5.4: Positions of the Government, Senate, and Chamber on Pension Reform under Lula**

Finally, Lula’s pension reform proposal was discussed in a context of economic urgency. Weary about the Lula government and the PT reputation of being radical opponents of neoliberal economic policy and their ability to govern the country, business communities both inside and outside Brazil closely watched the fate of the pension reform as a test of the credibility of the new government to undertake changes necessary to put the country back on the growth path. Two thousand three began with the continual depreciation of the Brazilian currency and high interest rates set at over 25 percent annually. My interviews with congressional leaders, both in government and in the opposition, and their staff confirmed that such concern was present throughout the congressional debates.<sup>66</sup> The goal of the Lula government was to approve the constitutional amendment as soon as possible, by the end of 2003 at the latest, in order to signal positive news to the international market. Therefore, the examination of the pension reform proposal occurred under high impatience, which should lead to a swift passage of the bill.

<sup>66</sup> Author’s interviews with Deputy Sigmaringa Seixas, then Vice Leader of Government on December 18, 2003, Deputy Jutay Junior, then Leader of the PSDB on January 29, 2004, and Meiriane Nunes Isidorio, specialist in the pension system for the private sector, and Gilberto Guerzoni, specialist in the pension system for public servants, both in the Senate’ *Consultoria Legislativa*, April 26 and 27, 2004, respectively.

#### 5.4.2. Examination in the Chamber

On April 30, 2003, President Lula, accompanied by 27 governors, 10 mayors of state capitals, and 22 ministers, personally handed in to the Brazilian Congress two proposals for constitutional amendments. One was tax reform, and the other, pension reform. Determined to achieve a speedy approval of those bills in the legislature, Lula's Chief of Staff, Minister José Dirceu, demanded absolute support of PT members and other parties in the governing coalition while seeking to expand the government's support in Congress. The largest resistance to the reform was likely to come from within the traditional left in government for whom unions and public servants had been important constituencies. Therefore, the government strategies centered on imposing discipline in voting with threats of punishment (including expulsion) and simultaneously seeking opposition parties' support for the reform. In addition, the government used the power of the purse and appointments to increase margins of votes.

The Chamber's CCJR approved the government proposal practically unaltered on June 5 by an overwhelming majority of 44 in favor versus 13 opposed. Before the votes, the *governista* leaders discharged eleven members of the committee who were against all or parts of the reform and replaced them with government loyalists in order to ensure its victory.<sup>67</sup> The *governistas* also rejected five DVS's that sought changes in the text.

The examination in the special committee (CESP) occurred under intense pressure by civil servants and judges protesting against the pension reform inside and outside the Congress and Planalto. The traditional left of the PT and PC do B intensified their criticisms against the government proposal while the PTB, PMDB, and PP demanded ministerial posts and other

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<sup>67</sup> For example, "under the largest pressure" from his party, Deputy Roberto Magalhães, who had once presided the CCJ and was against taxation on pension benefits, was discharged from the committee by the PTB leader (Magalhães 2004).



nominations that had been promised to them. Initially, the Lula government refused any negotiations to alter the fundamental points of the proposal. However, strong resistance by many deputies in the coalition and the judges of the Supreme Federal Court (STF) made the government concede on the issues of *integralidade* (maintained only for current public servants who meet certain requirements) and pensions for the families of deceased servants (no discount up to R\$1058). The *governista* deputies, however, insisted on maintaining *paridade* for current servants, and despite the government's opposition, Deputy José Pimentel (PT-Ceará), reporting officer of the CESP, included in his substitution bill adjustments of pensions to the remunerations of active servants to be determined by law. With those modifications in the proposal, the parties in the government coalition, with the exception of the PDT, imposed discipline in the vote and discharged likely dissenters to ensure its approval.<sup>68</sup> The CESP approved the Pimentel report by symbolic voting on July 23 amidst uproar by public servants. Of the twelve parties represented in the committee, only three (PFL, PDT, and Prona) voted against it.

The vote on the floor was scheduled for August 5. The calculation of the votes by *governista* leaders indicated that the government did not have sufficient votes to approve the text without alteration. The members of the PT, PSB, PC do B, PMDB, and PL reported to the leaders that it would be difficult to vote with the government.<sup>69</sup> The lack of sufficient votes forced the Lula government to concede further in the questions of the “sub-ceiling” (*subteto*) on the salaries of state judges (increased from 75% of the remunerations of the STF ministers to 85.5%), pensions for the families of deceased servants (no discount up to R\$2400), and taxation on pension benefits (exempt up to R\$1200). The government also sought governors, especially

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<sup>68</sup> “Governo reage à greve de juizes e acelera a reforma,” *O Globo*, July 23, 2003.

<sup>69</sup> “Mudança de última hora,” *Correio Brasiliense*, August 6, 2003.

of the opposition PSDB and PFL, to convince deputies from their states to vote in favor of the reform. Furthermore, it reaffirmed its intention to offer ministerial posts to the PMDB after the passage of the proposal. There were also distributions or promises of the distributions of public funds to reward legislators who voted in favor of the proposal.<sup>70</sup>

In the end, the basic text of the proposal was approved by 358 to 126, 50 votes more than the minimum 308 to pass a constitutional amendment. However, the final tally also showed that this victory was precarious. In total, 63 deputies in the coalition defected in the vote, including three *petistas* who voted against it and other eight who abstained. This would have left the government with only 296 votes, falling short by 12 votes to pass the proposal. The votes from the opposition were crucial for the approval of the text. The PSDB, whose leadership recommended a favorable vote, contributed 29 votes to its approval, and the PFL, whose leadership recommended a contrary vote but allowed its deputies to vote as they wished, gave 33 votes.<sup>71</sup>

Although the government managed to approve the basic text of the proposal in the Chamber, it still needed to bring together at least 308 votes necessary to maintain controversial provisions of the reform in each DVS. Violent demonstrations by public servants following the passage of the basic text, which mobilized 50,000 people and caused destructions of the Chamber's property, made it even more difficult to approve the polemical items. An agreement was reached in emergency meetings of Chamber leaders and the government in which the

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<sup>70</sup> The media reported that R\$1.3 billion of investment allocated for year 2002's "restos a pagar"(to be paid) was dispersed by November 7, 2003. Most of the dispersions were concentrated in the months of July, August, and September during which the Chamber voted pension and tax reforms. It also reported that the majorities of the deputies who received funds for their budget amendments voted in favor of the pension reform. PSDB and PFL deputies who helped to approve the pension reform also received twice as much resources from the Lula government as those who voted against it. See *Correio Brasiliense*, "Clientelismo à moda petista," December 2, 2003, and "Verbas para agradecer a oposição," January 20, 2004.

<sup>71</sup> Author's interview with Deputy Jutay Junior, then Leader of the PSDB, January 29, 2004, and Deputy José Carlos Aleluia, then Leader of the PFL, December 4, 2003.

government conceded once again to increase the sub-ceiling of the salaries of state judges and the exemption from social security taxation of pension benefits. Minister Dirceu also requested assistance of pro-government PFL Senators Antonio Carlos Magalhães and Roseana Sarney (daughter of José Sarney, ex-President of the Republic and then President of the Senate) to change the votes of *pefelista* deputies against the party's orientation to vote against the controversial provisions, especially the taxation on the pensions of retired servants. With the support of the segments of the opposition, the government managed to defeat all the DVS's. The most polemical question, the taxation on the retired servants, was approved, however, with only 326 votes in favor, just 18 votes more than required. The Chamber approved the proposal in the second round on August 27. Although the proposal suffered certain modifications, it took only four months to pass the lower house.

#### **5.4.3. Examination in the Senate: Emergence of “PEC Paralela” as a Solution to Stalemate**

The government's euphoria with the passage of the proposal in the Chamber ended shortly. The Senate received the proposal from the Chamber on August 28, and the oppositionists and certain members of the parties in the government coalition in the house soon began to express their dispositions to alter the text.<sup>72</sup> Opposition forces were stronger in the Senate than in the Chamber, and the Lula government did not have sufficient votes to approve the proposal. The opposition had 33 of the 81 senators, a number enough to block the approval

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<sup>72</sup> For example, the PFL leader, Senado José Agripino, declared: “This was a temporary submission of a proposal that will return to the Chamber. The text will certainly be amended here in the Senate.” The PSDB leadership in the Senate also took a more oppositionist stance than its counterpart in the Chamber. Newly elected Petista Senator Paulo Paim, with a background in union movements, also stated: “If the Senate does not discuss such an important issue, it loses its reason for existence. The text, as it is now, will not pass.” See “A rebelião dos senadores,” *Correio Brasiliense*, August 29, 2003.

of a constitutional amendment proposal, which requires at least 49 votes. The Lula government's coalition had only 48 senators, and at least four PT senators were opposed to the reform as it came from the Chamber. Therefore, the Lula government needed the votes of the opposition parties and the PMDB to pass the reform in the Senate, even more so than in the Chamber. Moreover, the government needed to avoid new alterations in the text of the proposal in the Senate, which would cause a significant delay in the promulgation of the amendment due to a return of the proposal to the lower house for yet another examination. This was the fundamental problem of the government in the Senate.

The deliberation of the proposal generated heated discussions both in the CCJ and the floor of the Senate. The principal points of contestation were taxation on pensioners, rules of transition, adjustment of pension benefits (*paridade*), salary ceilings, the compulsory retirement age for public servants, and the return to a state-managed insurance for work-related accidents (which had been privatized during the Cardoso government and thus was opposed by PFL and PSDB senators). One study based on a survey of 69 of 81 senators indicated that only 16 percent of the senators were in favor of the taxation on pensioners as it was in the text; 55 percent of the senators saw the need to expand categories of exemption to include retired servants with advanced age.<sup>73</sup> Seventy-one percent of the senators disagreed with the sub-ceilings of salaries for each branch of state government. Nonetheless, the reporting officer of the CCJ, Senator Tião Viana (PT-Acre), rejected in his report all of the more than 300 amendments submitted to the committee, generating strong reaction by both oppositionist and *governista* senators alike. The approval of the bill without any adjustments was highly unlikely in front of such a great majority of senators disagreeing with the terms of the pension reform.

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<sup>73</sup> The survey was conducted between September 29 and October 6, 2003 by the Instituto Brasileiro de Estudos Políticos and reported in "Maioria do Senado rejeita contribuição de inativos, diz pesquisa," *Folha de São Paulo*, online version, October 8, 2003.

The solution proposed by Viana to resolve the impasse was what came to be known as a “parallel amendment” (*PEC paralela*). Viana proposed to create a new constitutional amendment in which the senators would change the terms of the pension reform now in discussion while maintaining the existing proposal unaltered. Put simply, the parallel amendment was a proposal to modify the constitutional amendment that still did not exist. For the parallel amendment to be effective, however, the Senate must approve the Chamber’s substitution bill as it was and depend upon the “good will” of the government and the Chamber to pass the parallel amendment. The opposition parties, suspicious about the government’s commitment, initially rejected the proposal and challenged its legality. However, it was well received by *governista* senators who insisted on moderating the terms of the pension reform but desired not to break with the government. The CCJ approved the Viana report on October 7.

Despite the victory in the CCJ, the government still did not have enough votes to approve the proposal in the floor. The simulation of votes brought by Senator Roseana Sarney (PFL-Maranhão) on November 11 indicated that in the best of scenarios, the government had only 49 votes, including those of the opposition, in favor of the proposal.<sup>74</sup> The government could not put the material on vote with such a tight margin since any “accident” could defeat the pension reform. The *governistas* in the Senate had to postpone the proposal’s vote.

The strategies of the *governistas* to increase favorable votes included an appeal to state governors, especially of the opposition parties, to influence the votes of the senators of their states and parties. The three senators of Bahia, all of the PFL, were considered secure votes in favor of the reform because the state was already levying social security taxes from retired servants and the Bahia governor was one of those who lobbied tirelessly for the taxation in the proposal. Moreover, the leader of the PFL Bahia was Senator Antonio Carlos Magalhães, then

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<sup>74</sup> “Previdência corre risco no Senado,” *Correio Brasiliense*, November 12, 2003.

Lula's major ally in the legislature. The President of the Senate, José Sarney, also promised two PFL votes from Maranhão.<sup>75</sup> The greatest uncertainties were found in the PSDB and PMDB. After the divulgation of Roseana Sarney's vote count, the eight PSDB governors immediately had a meeting with PSDB senators in which they decided to support the pension reform by allowing the party's senators to vote however they saw the most appropriate.<sup>76</sup> The opposition PDT, which had five senators, imposed discipline and instructed members to vote against the proposal. In order to change the votes of the PMDB senators, the government directly negotiated with the PMDB governor of Rio Grande do Sul, who had insisted on eliminating salary subceilings in states and promised the party's leader in the Senate that the government would accelerate ministerial reform in which two posts would be given to the party. Finally, in order to contain dissidents within the PT, President Lula personally telephoned Senator Paulo Paim on the eve of the vote to assure him that the parallel amendment would be approved swiftly in the Chamber.<sup>77</sup>

Roseana Sarney reported to the Senate's president a new mapping of votes on November 24. The time appeared opportune for floor votes: it indicated that the proposal would be approved with between 53 and 55 votes.<sup>78</sup> The Senate voted the proposal on November 26. The final tally was 55 votes in favor to 25 opposed. The parties in the government coalition gave 42 favorable votes; the PSDB and PFL together provided 13. In separate votes on the polemical

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<sup>75</sup> Those are Roseana Sarney's and Edison Lobão's.

<sup>76</sup> The PSDB's leader, Senator Artur Virgílio, recommended a contrary vote in the floor not because of the party's opposition to the reform (the PSDB in fact supported the reform) but as a protest to "the government's disrespect to the opposition." The senator specifically cited the episode in which over 400 amendments proposed both in the CCJ and the floor to improve the reform were rejected by the government (Author's interview, April 22, 2004). However, the PSDB chose to liberate the votes of the members in order for the proposal to pass the Senate. Therefore, Senator Eduardo Azeredo, who understood the necessity of the reform as a former governor of Minas Gerais (1995-98), for example, was able to vote for the reform despite the fact that he was the PSDB's vice-president (Author's interview, June 9, 2004).

<sup>77</sup> Author's interview, April 29, 2004.

<sup>78</sup> "A vez da Previdência no Senado," *Correio Brasiliense*, November 25, 2003.

provisions, the Senate rejected the return of a state-managed insurance for work-related accidents but approved all other items promised to be modified by the parallel amendment. The Senate approved the proposal in the second round of voting on December 11, followed by the approval of the parallel amendment proposal four days later. Lula’s pension reform was promulgated on December 19, 2003, after 233 days of deliberation in Congress.

## 5.5. CONCLUSION: RETURNING TO HYPOTHESES IN LIGHT OF EVIDENCE

For the Cardoso government, it took nearly four years to pass a pension reform proposal in the Brazilian Congress and the reform that emerged out of the Congress effected much less changes than what the government proposed originally. In contrast, Congress approved the Lula government’s pension reform proposal in less than a year. In addition, the fundamental items of Lula’s reform proposal suffered only minor adjustments. In this concluding section, I will revisit the hypotheses in light of evidence, which will explain the differences between Cardoso’s and Lula’s pension reforms.

**Table 5.2: Summary of Hypotheses and Evidence**

	<b>Preference (H1)</b>	<b>Impatience (H2)</b>	<b>No of votes required (H6)</b>	<b>Predicted outcome</b>	<b>Predicted time in congress</b>	<b>Actual outcome</b>	<b>Actual time in congress</b>
<b>Cardoso’s Reform</b>	Divergent	Low→High	3/5	Minimum reform	Long	Medium reform	1369 days
<b>Lula’s Reform</b>	Convergent	High	3/5	Full reform	Short	Full reform	233 days

Three hypotheses were particularly relevant in Chapter 5. Table 5.2 summarizes the hypotheses and findings. The preference hypothesis (H1) states that bicameral divergences of preferences increase the likelihood of gridlock. The preferences of the Senate and the Chamber with respect to the pension reform during the Cardoso's term were divergent. Although anecdotal evidence shows that most members of both houses considered some reform was necessary, they disagreed on the extent of the reform. Deputies desired a very small, less painful (thus less effective) reform whereas senators supported a more radical reform in line with the government's proposal. By contrast, the Senate's and Chamber's preferences were relatively convergent with respect to Lula's pension reform due mainly to the historic reversal of the positions of the parties of the left. Therefore, the bicameral preferences during the two periods suggest that there was a greater chance of gridlock for Cardoso's reform than for Lula's reform.

Evidence provides support for the preference hypothesis. The Chamber and the Senate approved Lula's proposal virtually intact, involving only minor adjustments in the terms of key provisions. This compares with the struggle of the Cardoso government in passing the proposal in the Chamber. Cardoso's reform was not only defeated in some of the principal items of the reform; the entire reform proposal was once rejected on the floor of the Chamber whose members' preferences were far from those of the senators (and thus that of the president). Only political maneuvering of the legislative process saved Cardoso's proposal in the lower house.

It is important to note, however, that the divergent preferences of the lower and upper houses—distant from each other but both located to the right (the less generous side) of the status quo—allowed for a greater extent of reform than what would have been possible if the president had faced only the lower house during the Cardoso government. Since the president had no veto



power, had there been only the Chamber of Deputies, its most preferred position (closer to the status quo) would have prevailed. In fact, the proposal approved by the Chamber in the first round of deliberation was so shattered that government leaders thought it became innocuous. The return of some of the fundamental provisions was possible only because the Senate, with its preference close to the government's, reinstated them in the proposal sent back to the Chamber, which examined under pressure of an impending economic crisis and accepted most of them that time.

The bargaining hypothesis (H2) maintains that impatience reduces delays in legislation. The pension reforms in Brazil were considered primarily a question of public finance. Thus, economic contexts in which the issue was debated affected the levels of impatience of legislative actors. Cardoso's pension reform began in the environment of economic improvement, and as such, it entailed prolonged negotiations. The reform was enacted only when those actors perceived that an economic crisis was imminent. On the other hand, adverse economic situations marked Lula's inauguration in 2003. Legislative actors understood that the approval of the pension reform was a necessary step to restore Brazil's credibility in the eyes of international and domestic investors. Hence, Lula's pension reform was examined in a context of high impatience. A comparison of the time until the passage of the proposals by the Cardoso and Lula governments is really striking: while it took 1369 days for Cardoso's proposal to pass the Brazilian Congress, Lula's reform was promulgated in only 233 days from its submission to the legislature. This provides strong support for the bargaining hypothesis.

Finally, the voting quota hypothesis (H6) predicts a greater probability for gridlock as the number of votes required to pass legislation increases. Both Cardoso's and Lula's pension reforms were constitutional amendment proposals, and thus they required three-fifth majorities in

both houses of the legislature. Anecdotal evidence shows that the governments did not have to give as many concessions as they actually did had the proposals been examined under simple or absolute majority rules. Both Cardoso and Lula (especially the former) were forced to bargain with legislators by attenuating the proposed changes, funding deputies' pork projects, and promising nominations in order to increase the margins of votes to secure comfortable three-fifth majorities. Moreover, the Cardoso government had more than an absolute majority votes even in the cases where it was defeated. These findings are consistent with the voting quota hypothesis.

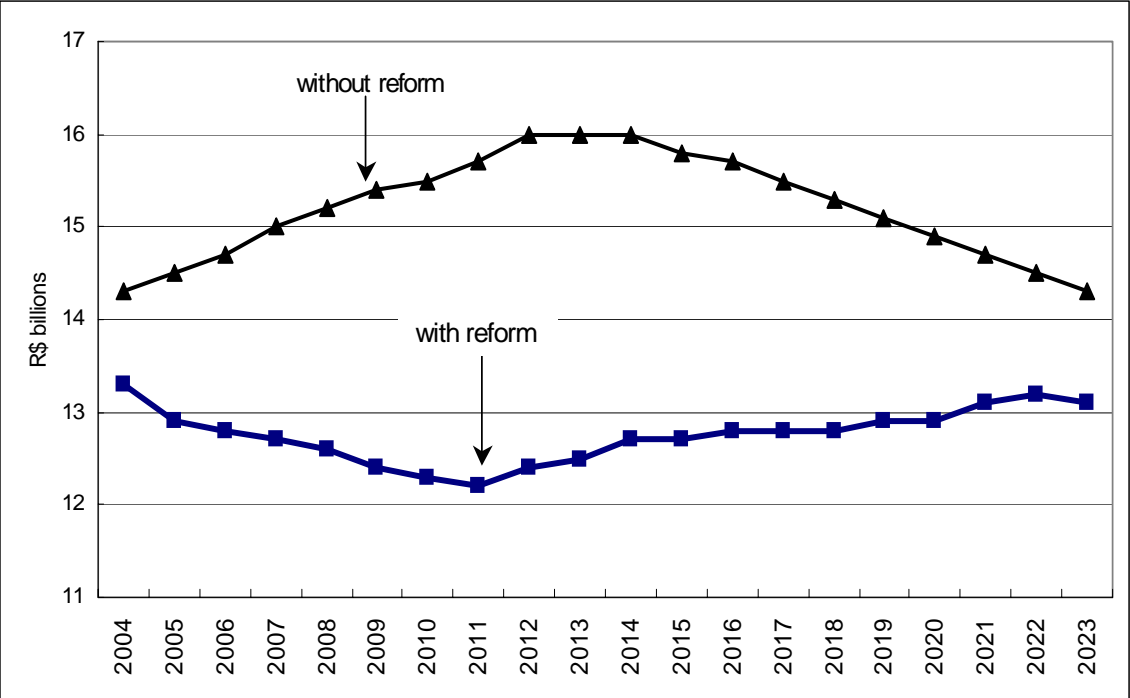
Chapter 5 thus provides strong evidence to support the preference, impatience, and voting quota hypotheses. The two case studies demonstrated the difficulties of passing unpopular legislation under divergent bicameral preferences, low impatience, and supermajority rule. The next chapter probes a case in which proposed legislation was desired by almost all legislators but its passage involved significant delays in Congress.

Although Lula had a greater success than Cardoso in maintaining pension reform's key provisions, many legislators and government officials agree that the issue would have to come back to the legislative agenda in the next few years.<sup>79</sup> The Lula government repeatedly stated that the reform was not perfect but one that was politically possible. Moreover, in the process of negotiating with Congress, the government had to concede on various modifications to make the proposal more amenable. As a result, although the 2003 reform is expected to reduce deficits in pension payments, it will continue to draw upon significant portions of government budgets. Figure 5.5 exhibits the estimated need for the financing of pensions for retired civil servants (executive and judiciary) over time with and without the 2003 reform (Ministério da Previdência Social 2004). The figure shows that the reform reduced the estimated costs of financing

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<sup>79</sup> Author's interview with Deputy Delfim Netto (PP-Sao Paulo), March 3, 2004 and Senator Eduardo Azeredo (PSDB-Minas Gerais), June 9, 2004.

compared to the estimated costs of financing without it. The estimated savings over 20 years between 2004 and 2023 amount to R\$49 billions. However, the data also demonstrate that the estimated deficits will remain very high exceeding R\$12 billion every year in the next 20 years. Indeed, pension reform appears to be a reform that never ends, a difficult issue that future presidents also must face.



Source: Ministério da Previdência Social (2004, 65).

**Figure 5.5: Estimated Deficits in the Pension Benefits for Retired Civil Servants with and without the 2003 Reform, 2004-2023**

### Appendix 5.1: Comparative Table of Pension Reform under Cardoso

<b>Social Security System in Force (1995)</b>	<b>Gov Proposal (March 1995)</b>	<b>Chamber (July 1996)</b>	<b>Senate (October 1997)</b>	<b>Chamber (Const'l Amendment No. 20) (December 1998)</b>
<u>Eligibility</u>				
Years of service at 35 (m), 30 (f)	Years of contribution	Years of contribution but a range of time of service is considered time of contribution	Years of contribution	Years of contribution
Proportional retirement at 30 (m), 25 (f) based on years of service	No proportional retirement allowed	Proportional retirement at 30 (m), 25 (f) based on years of contribution	No proportional retirement allowed	No proportional retirement allowed
Special rules of retirement for rural workers, judges, teachers, and legislators	Removal of special rules for rural workers, judges, teachers, and legislators	Special rules of retirement for rural workers, judges, teachers, and legislators maintained	No special rules for university professors. Special rules maintained for rural workers, judges, teachers, and legislators	No special rules for university professors, judges, and legislators. Special rules maintained for rural workers and teachers
Practically no minimum age for retirement due to eligibility resulting from proportional retirement and years of service	Universal minimum age for retirement to be set at 65	No minimum age established	Minimum age is 60 (m) and 55 (f)	Minimum age is 60 (m) and 55 (f) for public servants. No minimum age for the private sector
<u>Social security contribution</u>				
No SS tax for pension recipients	Demand SS tax from pension recipients	No SS tax for pension recipients	Demand SS tax from pension recipients	No SS tax for pension recipients
No SS tax for non-profit and religious institutions	Demand SS tax from non-profit and religious institutions	No SS tax for non-profit and religious institutions	No SS tax for non-profit and religious institutions	No SS tax for non-profit and religious institutions
<u>Benefits</u>				
Accumulation of pensions or pensions with salaries for public office permitted	Accumulation of pensions or pensions with salaries for public office not permitted	Accumulation of pensions or pensions with salaries for public office not permitted	Accumulation of pensions or pensions with salaries for public office not permitted	Accumulation of pensions or pensions with salaries for public office not permitted

Appendix 5.1 (continued).

Benefits for retired public employees equal their last remunerations (often with retirement bonus) ( <i>integralidade</i> )	No <i>integralidade</i> or retirement bonus. Creation of a supplementary fund for public employees	<i>Integralidade</i> or retirement bonus maintained	<i>Integralidade</i> maintained up to R\$1200, beyond which a 30% discount is applied. Creation of a supplementary fund for public employees	Creation of a supplementary fund for public employees
Automatic adjustments between pension benefits of retired public employees and remunerations of active public employees ( <i>paridade</i> )	No <i>paridade</i>	<i>Paridade</i> maintained	<i>Paridade</i> maintained	<i>Paridade</i> maintained
<u>Other</u>				
Legislation pertaining to pension system may be proposed by the government or legislators	Proposal of legislation pertaining to pension system is exclusive competence of the government	Status quo maintained	Status quo maintained	Status quo maintained
Disclosure of financial information of individuals owing social security taxes not allowed	Disclosure of financial information permitted	Status quo maintained	Status quo maintained	Status quo maintained
Universal and free public health service	Universal and free public health service will be changed (to be determined by ordinary law)	Status quo maintained	Status quo maintained	Status quo maintained

## Appendix 5.2: Comparative Table of Pension Reform under Lula

<b>Government Proposal</b> (April 2003)	<b>Chamber</b> (August 2003)	<b>Senate (Constitutional Amendment No. 41)</b> (December 2003)
<p>Calculation of benefits (end of <i>integralidade</i>)</p> <ul style="list-style-type: none"> <li>• Current public servants: average of contributions over entire service</li> <li>• Future public servants: average of contributions up to the R\$2400 ceiling</li> </ul>	<p>Calculation of benefits</p> <ul style="list-style-type: none"> <li>• Current public servants: <i>integralidade</i> maintained for servants who complete certain requirements; otherwise, average of contributions over entire service</li> <li>• Future public servants: average of contributions up to the R\$2400 ceiling</li> </ul>	<p>Calculation of benefits</p> <ul style="list-style-type: none"> <li>• Current public servants: <i>integralidade</i> maintained for servants who complete certain requirements; otherwise, average of contributions over entire service</li> <li>• Future public servants: average of contributions up to the R\$2400 ceiling</li> </ul>
<p>Adjustment of benefits (end of <i>paridade</i>): adjusted to inflation</p>	<p>Adjustment of benefits: servants who are qualified for <i>integralidade</i> will have partial <i>paridade</i>, determined by law; otherwise adjusted to inflation</p>	<p>Adjustment of benefits: servants who are qualified for <i>integralidade</i> will have partial <i>paridade</i>, determined by law; otherwise adjusted to inflation</p>
<p>Benefits for the families of deceased servants: discounted at least by 30%</p>	<p>Benefits for the families of deceased servants: discounted by 30% if it exceeds R\$2400</p>	<p>Benefits for the families of deceased servants: discounted by 30% if it exceeds R\$2400</p>
<p>Benefit ceiling for private sector: R\$2400</p>	<p>Benefit ceiling for private sector: R\$2400</p>	<p>Benefit ceiling for private sector: R\$2400</p>
<p>Benefits for early retirement by transitional rule discounted by 5% for each year</p>	<p>Benefits for early retirement by transitional rule discounted by 3.5% (if retire by 2005) and 5% for each year</p>	<p>Benefits for early retirement by transitional rule discounted by 3.5% (if retire by 2005) and 5% for each year</p>
<p>Salary ceiling for public servants: remunerations of the ministers of Federal Supreme Court (union), governors (states), and mayors (municipalities)</p>	<p>Salary ceiling: remunerations of STF ministers (union) and mayors (municipalities). Three sub-ceilings exist for states: judiciary (90.25% of STF ministers), executive (governor's salary), and legislature (deputies' salaries)</p>	<p>Salary ceiling: remunerations of STF ministers (union) and mayors (municipalities). Three sub-ceilings exist for states: judiciary (90.25% of STF ministers), executive (governor's salary), and legislature (deputies' salaries)</p>
<p>Incentive to stay in service after fulfilling requirements for retirement: 11% increase in salary</p>	<p>Incentive to stay in service after fulfilling requirements for retirement: 11% increase in salary</p>	<p>Incentive to stay in service after fulfilling requirements for retirement: 11% increase in salary</p>
<p>Social security contribution by retired servants: 11% over R\$1058 for currently retired and 11% over R\$2400 for future retirees</p>	<p>Social security contribution by retired servants: 11% over R\$1440 for currently retired and 11% over R\$2400 for future retirees</p>	<p>Social security contribution by retired servants: 11% over R\$1440 for currently retired and 11% over R\$2400 for future retirees</p>
<p>No states or municipalities are allowed to levy social security taxes at a rate less than that of Union</p>	<p>No states or municipalities are allowed to levy social security taxes at a rate less than that of Union</p>	<p>No states or municipalities are allowed to levy social security taxes at a rate less than that of Union</p>

Appendix 5.2 (continued).

Minimum age: 60 (m) and 55 (f)	Minimum age: 60 (m) and 55 (f). Current civil servants may use transitional rules for early retirement	Minimum age: 60 (m) and 55 (f). Current civil servants may use transitional rules for early retirement
Creation of supplementary pension funds for future retirees	Creation of supplementary pension funds for future retirees	Creation of supplementary pension funds for future retirees
State-managed insurance for work-related accident	State-managed insurance for work-related accident	Maintained privatization

## 6. CHAPTER 6: CHANGING THE RULES OF THE GAME: THE CONGRESS CONFRONTS THE PRESIDENT

*“[A]t that moment [in 2001], it was necessary to approve the proposal that...was being examined by the Federal Senate for the third time after six years of deliberation [in Congress]....We can affirm that [the adoption of the text of the Chamber of Deputies]...was a correct decision made given the circumstance that the approval of the constitutional amendment regarding presidential decree authority could not be postponed.”* Senator José Jorge (2003).<sup>80</sup>

### 6.1. INTRODUCTION

This chapter examines the attempt by the Brazilian Congress to restrict presidential decree authority. Brazil’s 1988 Constitution grants the president the power to issue a decree with the force of law called provisional measure (*medida provisória* or MP). Successive Brazilian presidents have amply exercised this powerful prerogative as a means to force immediate policy change. The rampant usage of the decree power by the presidents elevated tensions in executive-legislative relations, and most members of Congress agreed that this presidential authority must be restricted and regulated. However, only in 2001—after thirteen years of coexistence with MPs—did Congress pass a measure to limit presidential decree authority. Why did it take so

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<sup>80</sup> A quote from Proposta de Emenda à Constituição (Proposal for Constitutional Amendment) No. 27 of 2003 submitted by Senator José Jorge and others regarding presidential decree authority.



long for the Brazilian Congress to approve the bill that was supported by almost all members of Congress?

The recent literature on executive decree authority has spurred discussions about whether decrees represent delegation of authority to the executive by the legislature or usurpation by the executive of such a prerogative from the legislature (see, for example, a collected volume by Carey and Shugart 1998). The widespread use of executive decrees by Brazilian presidents has stimulated research in this area as well. For example, Reich (2002) argues that executive decree in Brazil is a rational delegation of authority by the legislators who allow the president to use decrees in a broad range of policy areas and then oversee the president's use of decrees by amending them, case by case. Pereira, Power, and Rennó (2005) caution such a generalization and instead maintain that presidents' reliance on decrees depends upon broader political contexts in which they operate.

This chapter contributes to the literature on executive decree authority by showing that the lack of a congressional action to limit presidential decree power is not always evidence for legislators' implicit or explicit approval of the unrestrained use of this presidential power. In Brazil, the delay in the congressional action to curtail such power reflected problems with bicameral bargaining. Although almost all members of Congress—both deputies and senators alike—agreed that presidential decree power should be restricted and regulated, they disagreed on two points: the extent to which decree power should be restricted; and which of the legislative house should review decrees first, thus retaining final words.

In the bargaining literature, the difficulty of negotiations is a function of two key variables. First, the distance between the actors' ideal points indicates the degree of compromise necessary to reach an agreement: the greater the distance between the ideal points, the greater the

difficulty to change policy. Second, the impatience of the actors—the desire of actors in negotiation to strike a deal sooner than later—influences the timing of the conclusion of an agreement and the division of the burdens and benefits of the final outcome. In this chapter, I thus examine two variables—preferences and impatience—to analyze how they affected the politics of an institutional change in Brazil.

The organization of this chapter takes the following format. First, I present the problems with presidential decree authority in Brazil. I then discuss the first congressional attempt to limit decree power during the President Collor era. Next, I analyze the second congressional attempt during President Cardoso's terms, which culminated in the 2001 constitutional amendment on decree power. In the conclusion, I assess the hypotheses in light of evidence.

## **6.2. THE PROBLEMS: THE 1988 CONSTITUTION AND PRESIDENTIAL DECREE AUTHORITY IN BRAZIL**

The 1988 Constitution gave birth to a powerful legislative instrument called the provisional measure to the Brazilian president in a democratic regime. The inception of this presidential decree authority was somewhat of a historical contingency. After the end of a long military rule in 1985, the National Congress elected in 1986 met as a constituent assembly (ANC-*Assembléia Nacional Constituinte*) during 1987-88 to draft a new constitution for the country. Most participants of the constituent assembly were eager to dismantle the remains of the authoritarian rule, and the much hated *decreto-lei*, the executive decree power used by the military government, was one of them. Despite the zeal of former authoritarian opposition to

bring *decreto-lei* to an end, however, the new constitution kept presidential decree authority under a different name.

Although no one argued to retain the *decreto-lei* of the authoritarian era, many ANC members were not ready to deprive the nation's executive of all and any form of extraordinary measures. Brazilian presidents had decree power even before the military rule. Moreover, the country was undergoing severe and recurrent economic crises in the 1980s, which provided some justification to equip the executive branch with emergency measures to readily address difficult and urgent situations.

Then Deputy Nelson Jobim (PMDB-Rio Grande do Sul) was a leading advocate of provisional measures. Jobim and his collaborators proposed to include in the Brazilian constitution a provision modeled after the Italian regime of executive decree authority (Article 77 of the 1947 Italian Constitution) almost word by word. The importation of this Italian institution was justified on the ground that Brazil would adopt a parliamentary system, which in 1987 appeared to be very likely. The advocates of executive decree authority maintained that abuses of such power by the executive would be constrained in a parliamentary regime, because if the government decreed without an explicit or at least implicit consent by the parliament, it would fall with a vote of no confidence. However, the presidentialists eventually triumphed over the parliamentarists, with the final decision on the form of government to be left for the constitutional revision that was to take place in five years. The language for a parliamentary regime was henceforth removed from the constitution, yet the ANC did not remove with it the executive decree authority.

The provisional measure is enshrined in Article 62 of the 1988 Constitution. For such a controversial executive instrument, Article 62 was oddly brief and vague, especially considering

the degree of details specified in other constitutional provisions.<sup>81</sup> Originally, Article 62 read as follows:

In case of relevance and urgency, the President of the Republic may adopt provisional measures with the force of law and shall submit them to the National Congress immediately. If Congress is in recess, a special session shall be called to meet within five days. Sole paragraph—Provisional measures shall lose effectiveness from the date of their issuance if they are not converted into law within a period of thirty days from their publication. The National Congress shall regulate the legal relations arising therefrom.

Power (1998: 220) aptly summarizes the problems with Article 62.

Article 62 of the 1988 Constitution is an invitation to chaos. In three striking ways, the article is a lesson in how *not* to draft a constitutional provision. First, on the issue of who is to define “urgency and relevance,” its language is ambiguous. Second, Article 62 places no restrictions on which policy areas are subject to presidential decree. Third...whether a president may renew an expired MP—the Constitution is silent altogether.

The ambiguity of Article 62 allowed the Brazilian presidents to interpret the article self-servingly.

The first president who employed this decree authority was President Sarney. As the first one to use the decree power, Sarney also set controversial precedents to be followed by his successors (Power 1998). One relates to what constitutes “urgency and relevance.” The intention of the constitutional drafters to include this phrase was to restrict the application of presidential decrees only to extraordinary circumstances. However, Sarney did not take the urgency and relevance requirement seriously and issued MPs to regulate emergency and non-

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<sup>81</sup> Recall that Sartori called the Brazilian Constitution a telephone catalogue. The Brazilian Constitution was (and still is) extremely detailed indeed. For example, it specified from a ceiling on the nation’s real interest rates to social security contributions.

emergency situations alike. For example, the first decree that Sarney issued was a fishing regulation, which could have been sent to Congress in the form of a regular bill.

The second precedent that President Sarney created in the use of decrees concerns the question of what to do with lapsed MPs. Sarney assigned his chief legal advisor, Saulo Ramos, a complete study of the regime of provisional measures. The study, published in *Diário Oficial* in June 1989, concluded that re-issuing expired MPs was not unconstitutional. Hence Sarney began re-issuing lapsed decrees on which Congress did not act within thirty days. The nation's Supreme Federal Court later ruled that it was not unconstitutional to re-issue lapsed decrees. From that time on re-issuing of expired decrees became a common practice. In short, Sarney's practice created important precedents to be followed; the study and the Supreme Court ruling gave juridical justification for it.

The first serious attempt by Brazilian legislators to limit the abuses of decree power by presidents occurred in the early 1990s. Immediately after Fernando Collor de Mello sworn in the presidency in March 1990, he signed many MPs to introduce his economic stabilization plan. The president justified his reliance on decrees on the ground that economic stabilization needed shock treatments. However, the president also used decrees in implementing controversial measures anticipating opposition in the legislature and society. In June 1990, President Collor challenged the limit of his authority and congressional tolerance. He issued a new decree (MP 190) to replace the old one that the Brazilian Congress explicitly rejected only one day before. This act was immediately condemned by legislators and jurists, and the prosecutor-general took the case to the Supreme Court, which defeated MP 190 in a unanimous vote. Despite public condemnation of the abuses of decree authority, however, MPs remained as the president's most preferred tool of governance. Opposition in Congress mobilized and a momentum developed

that seemed to bring an end to the abusive use of decrees by the president. However, the impetus slowly dissipated and President Collor suffered impeachment in 1992 before seeing his decree authority restrained by Congress.

The departure of Collor from the presidency did not diminish the executive's reliance on MPs as the primary tool of governance. Table 6.1 is the summary of MPs issued and re-issued by each government since Sarney. The monthly issuance of new MPs per government was relatively stable over time, averaging between 3 and 5 MPs per month per government. However, the number of MPs re-issued per government multiplied over time. Sarney re-issued less than one MP per month. Collor re-issued 2.3 MPs per month. The per month re-issuance rate surged dramatically during Franco's government, exceeding 13 MPs per month. During Cardoso's first term, it increased even more, averaging 35 re-issued MPs per month, or more than one per day. This tendency only exacerbated during Cardoso's second term until September 2001 during which the president re-issued more than 78 MPs per month.

**Table 6.1: Presidential Decrees in Brazil, 1988-2001**

	<b>Sarney 03/88-03/90</b>	<b>Collor 03/90-10/92</b>	<b>Franco 10/92-12/94</b>	<b>Cardoso I 01/95-12/98</b>	<b>Cardoso II 01/99-09/01</b>
<b>Total</b>	147	159	505	2609	2690
<b>Original</b>	125	89	142	160	103
<b>Average per Month</b>	5.21	2.92	5.26	3.33	3.12
<b>Reissued</b>	22	70	363	2449	2587
<b>Average per Month</b>	0.92	2.3	13.44	35.44	78.39
<b>Converted into Law</b>	96	74	71	130	98
<b>Rejected</b>	9	11	0	1	1

*Source:* Presidência da República, Brazil.

In 1995 Fernando Henrique Cardoso was sworn in, ready to undertake the economic restructuring that was in his campaign platform. Cardoso, a former leading critic of presidential decree authority, did not hesitate to use MPs as a measure to pursue his policies. The new president's alarming behavior led to two key developments in Congress in 1995. First, when Congress passed the constitutional amendments regarding economic reform that year, it included a provision vetoing the use of presidential decrees over matters that were subject to the constitutional amendments since 1995 (Article 246). The members of Congress viewed this limitation as imperative because the executive was intent on "deconstitutionalizing" the nation's economic and social security systems, thereby policy changes in those areas could be pursued by altering statutory regimes. Without that prohibition, legislators were afraid that the executive would resort to decrees in order to bypass lengthy discussions and cumbersome negotiations with Congress. Another significant development was the resurgence of keen interest in limiting

presidential decree authority. Serious concerns about the unrestrained use of decrees by the executive led to the creation of special committees both in the Chamber and in the Senate to study the restriction and regulation of the powerful presidential prerogative. Section 6.4 addresses this case.

To summarize, in the post-1988 Constitution era, presidential decree authority has always been a very controversial executive instrument. It may not be too much of an exaggeration to affirm that it has been the single most important constant source of executive-legislative tensions. From Sarney to Lula, the short history of post-authoritarian Brazil has proved that presidents, once in office, do not hesitate to use this powerful and contentious prerogative to legislate. This is true even for Cardoso and Lula, who were once staunch opponents of decree authority before becoming presidents. The widespread use of MPs has irritated even presidential allies in Congress. It has also created judicial problems. Paulo Costa Leite, former President of the Superior Court of Justice, along with six ministers of the Court, declared in 2000 that the frequent use of provisional measures was causing juridical instability. He said, “In a figurative language, applying ordinary law is like wandering in the swamp because a law that is in force today is applied and the next day a judge is surprised by the fact that part of the law is suddenly revoked by a provisional measure.”<sup>82</sup> Indeed, it seemed that a near consensus existed from the early 1990s both in Congress and society that presidential decree authority should be rigorously restricted and regulated.

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<sup>82</sup> “Ministros do STJ criticam excesso de MPs.” Estado de São Paulo, August 22, 2000, p. A-7.



### **6.3. CHALLENGING DECREE AUTHORITY UNDER COLLOR: THE JOBIM BILL**

The first real threat to limit presidential decree authority emerged in 1990. Within a matter of few days of his inauguration, it became clear to the members of Congress that the new president, Fernando Collor de Mello, backed by a high popularity among citizens but lacking majorities in Congress, was intent on pursuing his agenda through decrees. The minority president did not hesitate to employ MPs even with unpopular and sensitive matters such as freezing bank accounts and imprisoning suspected tax evaders. Many proposals to limit presidential decree power were thus submitted, and one of them made a significant advance in Congress. This bill was authored by no other than Deputy Nelson Jobim, who was the primary architect of provisional measures in the 1988 Constitution. Jobim argued that it was necessary to modify the regime of provisional measures in order to “attend to juridical and political questions of the present moment in the Brazilian history” (Jobim 1990). The criticisms and worries on the excess of decrees mounted not only in Congress but also among societal actors including an attorneys’ association and labor unions, who felt decrees closed off the venues of their influence in the political processes.<sup>83</sup>

#### **6.3.1. The Jobim Bill and the Preferences of the Chamber, Senate, and President**

Jobim submitted a bill of complementary law on April 9, 1990 in the Chamber of Deputies. The Jobim bill sought to regulate the conditions under which the president could use decree power. The principal changes proposed addressed major concerns of legislators and society. First, it required that the president justify urgency and relevance for decrees. In case

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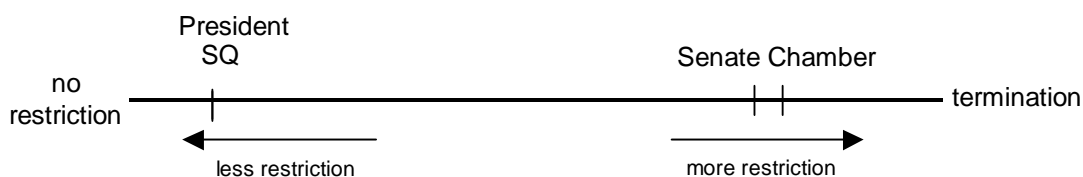
<sup>83</sup> “Excesso de medidas leva entidades à mobilização.” *Jornal de Brasília*, May 10, 1990, 4.

Congress determined that a decree was not justifiable in terms of urgency and relevance, it would be converted into a bill of ordinary law. Second, the bill sought to forbid the use of MPs on a number of areas including: (1) materials regulated by complementary laws and constitutional amendments; (2) those related to political, civil, and economic rights, nationality and citizenship; (3) budgets and taxation; (4) the organization of the Judiciary and Prosecutor's Office; (5) areas of exclusive competence to the National Congress; and (6) the subjects already rejected by Congress. Third, it permitted only one renewal of MPs (Article 9).

The Jobim bill was a bill of complementary law, which had several implications for the legislative process. First, the passage of the bill by Congress required an absolute majority of votes in each house of Congress. Second, roll call votes had to be used for all voting, which would force legislators to take clear positions on the issue. Third, the Chamber, as the initiating house, would have the final say on the legislation should bicameral disagreements arise on the specifics of the bill. Finally, as opposed to the cases of constitutional amendments, which do not depend upon presidential sanction for promulgation, the president had the power to veto (or sanction) bills of complementary law.

Although Congress could overturn presidential vetoes with absolute majorities in both the Chamber and the Senate (i.e., the same quota as required for the passage of complementary law bills), two features of veto sessions made it difficult to override presidential vetoes. One is that vetoes are examined in bicameral joint sessions and the lack of a quorum in one house impedes an opening of a joint session. The other feature is that veto sessions are *always* extraordinary sessions. The president of Congress must find time that does not interfere with normal sessions of both houses and is convenient for more than a majority of deputies and senators. Thus, scheduling a veto session is a difficult task. In practice, most vetoes are examined in a hasty

manner after several months or years have passed and the momentums have waned, and as such Congress rarely overturns them. These features made President Collor an effective veto player and not simply a nominal holder of veto power.



**Figure 6.1: The Preferences of the Chamber, Senate, and President Collor on MP**

Figure 6.1 depicts the positions of President Collor, the Chamber and the Senate with respect to the regime of decree authority inferred from bicameral partisan compositions and media coverage. The figure locates their positions in a single dimension that runs from no restriction on decree authority to its termination. Since the original 1988 Constitution was ambiguous about the limits of MP authority, and since Brazilian presidents interpreted the constitution self-servingly in the use of MPs, I placed the status quo (SQ) at the point where there is little restriction.

President Collor is positioned at the location of the status quo because he opposed any changes that would diminish MP authority. Collor resisted most Article 9 of the Jobim bill, which limited the renewal of decrees to only once, and the prohibition of the use of MPs in taxation and budgetary matters. Initially, Collor refused to negotiate with Congress. Collor and his aides argued that the Jobim bill was unconstitutional because Article 62 of the Constitution

that defined provisional measures did not mention their restrictions or regulations by complementary law. Collor threatened that he would veto the bill if Congress approved it, and should Congress overturn the presidential veto, the government would take the case to the Supreme Federal Court.

In the Chamber, the Jobim bill was supported by all major opposition parties (PMDB, PSDB, PT, PDT, and others), which altogether constituted a comfortable majority of more than 60% of the members of the Chamber. In addition, many members of government parties, the PRN (Collor's party) and PFL, supported the measure at least in principle. In the Senate, the opposition forces also held more than a majority seats and they were in favor of limiting presidential decree authority. Although government parties increased seat shares in the Senate over time, they never attained a majority during Collor's term. Thus, I place the Chamber and Senate, or their median voters to be more precise, to the right of the status quo favoring restrictions on MP authority. The Senate is positioned slightly to the left of the Chamber because Collor's support base in the upper house was larger than in the lower house.

### **6.3.2. The Deadlock of the Jobim Bill**

Collor's veto threat did not dissuade the Chamber's oppositionists from pursuing the Jobim bill. In June 1990, the Chamber's Constitution, Justice, and Editing Committee (CCJR) approved the Jobim bill on constitutional and juridical grounds. Upon the party leaders' petition, the Chamber also adopted an urgency procedure. On March 6, 1991, the Jobim bill was scheduled for a floor vote. Two hours before the beginning of the vote, the government finally

admitted defeat and abandoned an intransigent posture of not negotiating and accepted to concede in certain points in order to lessen damages to the president's authority.

During the pre-vote bargaining, the Collor government asked to remove the limitations on renewal and taxation from the text. In exchange, it allowed the members of the government parties to freely vote. The opposition did not accept these demands; however the government earned sympathy of the majority of deputies in the coalition.<sup>84</sup> This government strategy worked. Although the Chamber approved the basic text of the Jobim bill by an overwhelming majority of 415 to 13, the government was able to force separate votes (known as *destaque de votação em separado* or DVS) for the provisions on taxation and reissuing of decrees and subsequently defeated the former by 210 in favor of prohibition and 167 against it. The opposition had needed to garner at least 252 (absolute majority of 503 total votes) votes in favor of the change.

The defeat in the DVS of taxation compelled the opposition to reassess the likelihood of success with the vote on Article 9 (MP's renewal). In the next two weeks, the PMDB's leader led the opposition in obstructing the vote in the fear that they did not have sufficient votes to approve the provision. Without Article 9, which the opposition considered the essence of the Jobim bill, the bill would be innocuous. At the same time, Collor and his Chamber allies worked diligently to defeat Article 9. In order to reduce hostility in the largest opposition party, PMDB, which controlled 112 of 503 seats in the lower house, Collor met with former president and then Senator José Sarney (PMDB-AP) to lessen the possibility that a group linked to the ex-president support the limitation on the re-issuing of decrees. The government's leader, Deputy Ricardo

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<sup>84</sup> "Governo liberou deputados." *Jornal do Brasil*, March 6, 1991, 6.

Fiuza (PFL), meanwhile repeated that the president would veto the bill should Congress pass it with Article 9.<sup>85</sup>

The repeated veto threat and the change in the government's attitudes toward the issue led many members of the government parties and some members of the opposition parties to reconsider their strategies. The possibility of a defeat in the key provision led the opposition to seek a negotiation with the government by offering to allow re-issuing of decrees twice instead of once. However, Collor, convinced of his victory, rejected the deal.<sup>86</sup> Without a deal, the opposition lost in the vote on the renewal of MP just by five votes.

The opposition soon declared that it would try to restore in the Senate the provision limiting the re-issuing of decrees. As in the Chamber, Collor lacked a majority in the Senate. The Senate presidency was also controlled by a *peemedebista* senator, Mauro Benevides, who announced a fast examination of the Jobim Bill in the upper house. In search of opposition members' support, Collor's allies in the Senate warned that the approval of Article 9 would cause ungovernability and generate open confrontation with the government. However, the PMDB leadership defied and, in an unprecedented move, the party's national executive voted to impose discipline in the vote on the bill. By mid-April 1991, the opposition estimated that it had 53 of 81 votes on its side, including 24 from the PMDB, 10 from the PSDB, 6 from the PDT, 7 from the PTB, 3 from the PFL, and 1 from each of the PSB, PT, and PDS.<sup>87</sup> In the first oppositionists' victory in the Senate, the Constitution, Justice, and Citizenship Committee (CCJ) approved the report prepared by Senator Pedro Simon (PMDB-Rio Grande do Sul) resurrecting Article 9 and the prohibition of decrees on tax-related materials, both defeated earlier in the Chamber.

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<sup>85</sup> "Limitação de MPs fica sem acordo." *Correio Brasiliense*, March 20, 1991, 4.

<sup>86</sup> *Ibid.*

<sup>87</sup> "Senado pode limitar as MPs." *Correio Brasiliense*, April 17, 1991, 4.

Acknowledging that the strategy of persuasion was not sufficient, President Collor sought to conquer votes by establishing more amenable relationships with state governors. In order to influence the votes of senators from northeastern states, the government renegotiated their states' debts and promised new lines of credit. Collor also substantially reduced the use of MPs to demonstrate that he would refrain himself from using MPs even in the absence of formal restrictions.<sup>88</sup>

In late April, the PMDB leader, Senator Humberto Lucena, proposed to party leaders to sign a petition for an immediate vote of the Jobim bill in the floor (*urgência urgentíssima*), but the government leader in the Senate, Marco Maciel, refused to do so. Without a special deliberation of urgency, the bill would have to go through the slow and normal legislative process. Opposition leaders admitted, for the first time, that the approval of the Jobim bill might be difficult. Three PTB senators of the seven who had supported the Jobim bill earlier were no longer committed to it.<sup>89</sup> The government also intensified pressure on other opposition senators. Then in May 1992, a massive corruption scandal hit Collor and his government, leading to the president's impeachment in September 1992. With the removal of the president, the anti-decree thrust also dissipated.

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<sup>88</sup> "Senado testa nova política de Collor." *Jornal do Brasil*, April 21, 1991, 2.

<sup>89</sup> "Dissidências enfraquecem a oposição." *Correio Brasiliense*, April 24, 1991, 3.

## **6.4. LIMITING DECREE AUTHORITY UNDER CARDOSO: CONSTITUTIONAL AMENDMENT**

### **6.4.1. Overview**

Brazil saw in 1995 the revival of congressional movements to limit presidential decree authority. In just two weeks of his inauguration in 1995, President Fernando Henrique Cardoso signed one new decree and re-issued twelve old ones, embarking on the path to breaking the record number of MP re-issuance. The discontent with the abusive use of this constitutional instrument was generalized both among legislators of government and opposition parties alike. There were those who supported a termination of the instrument and others who wanted to impose limits on its use. The long line of decrees awaiting examination had also congested the congressional agenda. The advocates of restrictions on decree authority in Congress believed that the absence of clear rules ended up transforming MPs into an instrument practically without limits.

Many legislators also acknowledged that the existing mechanism to examine MPs was not functioning effectively. Under the 1989 Resolution No. 1 of the National Congress (1997), presidential decrees were examined in the following sequence. First, after a reading of a decree, a mixed committee would be created consisting of seven deputies and seven senators in order to examine its constitutionality. In practice, this committee was almost never installed. Second, deputies and senators, if desired, would submit amendments to the committee within five days and the committee's reporting officer would prepare an analysis of the decree and amendments to be voted in the committee. However, the reporting officer in practice reported directly to the floor in the joint session of the National Congress without having the committee's prior

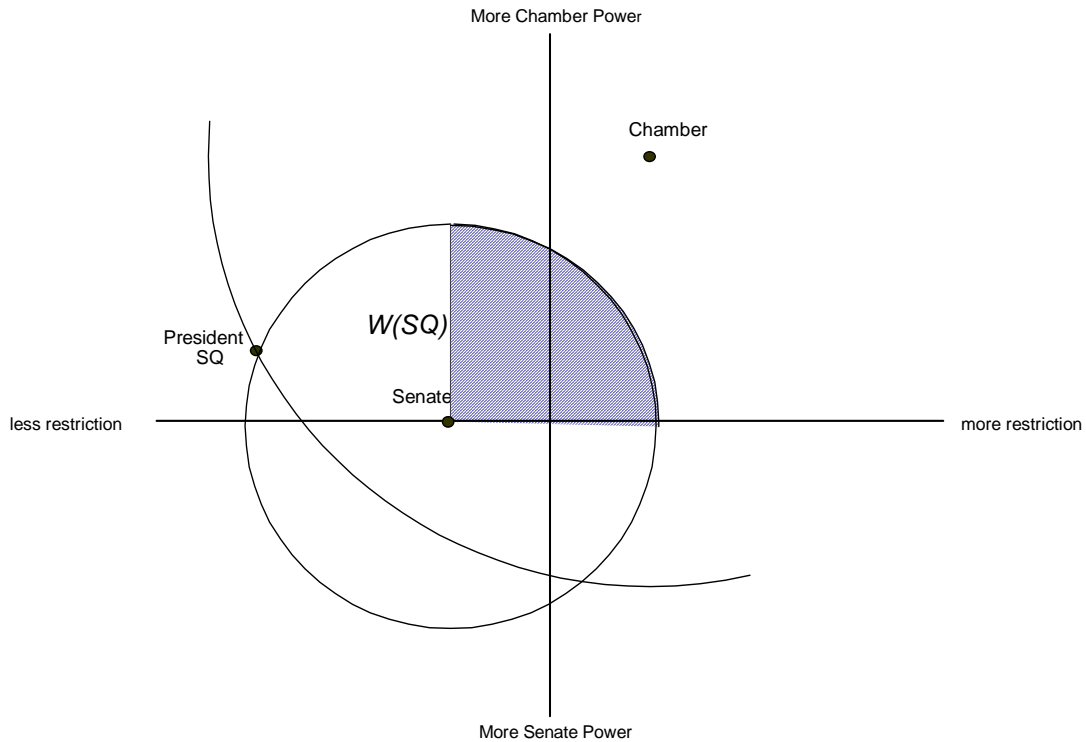


approval. If the reporting officer's report was favorable with respect to the MP's constitutionality, then the mixed committee (if installed) would prepare a report on its merits and the amendments submitted. The MP would then return to the floor, for examination and voting. In reality, due to the lack of a quorum, most MPs were never voted before they expired. Therefore, the president would re-issue lapsed decrees successively. As Table 6.1 shows, the problem of re-issuance of decrees multiplied during the Itamar Franco period and was further exacerbated with Cardoso.

In general, short of terminating presidential decree authority, Brazilian legislators—senators and deputies and government allies and opposition alike—agreed that at least the following changes were needed.

1. restrictions on the re-issuance of lapsed MPs;
2. delineation of the areas where the use of MPs would be banned; and
3. adoption of a new mechanism to examine MPs in Congress.

However, disagreements existed as to: (a) the duration of an MP's validity; (b) specific areas over which MPs must not be used; and (c) new rules of examination. These disagreements and the Senate-Chamber rivalry over their versions of the proposal caused significant delays in the passage of the constitutional amendment proposed in 1995, which shuttled back and forth between the two chambers a few times before its adoption.



**Figure 6.2: The Chamber’s and Senate’s Positions on Presidential Decree Authority circa 1995-97**

Figure 6.2 depicts the positions of the Chamber and Senate with respect to the regime of presidential decree authority based on the bills they were studying *separately* during 1995-97. In 1995, the Chamber and the Senate both separately and independently began drafting proposals for constitutional amendment to alter the regime of MP authority by creating special ad hoc committees to study the subject. The Senate voted and approved its bill in 1997 and sent it to the Chamber. The Chamber’s bill was ready for a floor vote when the lower house received the Senate’s bill. Figure 6.2 is based on those two bills.

Although the actual debates included many different areas of MP (which will be discussed later), there were two fundamental differences in the two houses' bills. The first is the extent to which MP authority should be restricted. This included the substantive areas where MPs could not be used and an MP's duration. This dimension is represented in Figure 2 by the x-axis. The existing MP regime had almost no restrictions on its application, and as such the status quo is placed at the far left of the continuum. The Chamber's bill included many areas, such as civil, political and economic rights, in which MPs were not allowed. It also permitted an MP's renewal only once but extended its validity from 30 days to 60 days. The Senate's version had various overlaps with the Chamber's bill, but it had less substantive areas where MPs were forbidden. In addition, the Senate's bill proposed to extend an MP's validity to 90 days, renewable only once. Therefore, the Chamber overall desired greater restrictions on MP authority than the Senate.

The other significant bicameral difference rested in the new rules to examine presidential decrees (the y-axis in the figure). Under the existing system, deputies and senators met in joint committees and joint sessions to examine MPs. This arrangement ostensibly gave equal power to the Chamber and the Senate in the examination and voting of MPs. However, the sequential nature of voting even in joint sessions—in which the Chamber voted first on an MP and its amendments and the Senate voted only up or down on the text approved by the lower house—gave the Chamber a greater influence in the MP's outcome. The Senate proposed to change the rules of MP's examination by installing a system of separate examination based on the principle of alternation between the lower and upper houses in initiating the process. Under the new rules, the house that initiated the examination of an MP would have the last word. And since the two houses would alternate in the initiation of the examination, the new system would overall give

equal power to the Chamber and Senate. The Chamber, however, was not prepared to accept a reduction in its power. Many deputies had considered that the examination of MPs should follow the same rules as other executive bills in which their considerations would always begin in the lower house with its last word prerogative. Short of that, the Chamber preferred to maintain joint sessions, thus retaining some advantage over the Senate in the MP's examination. In order to force Congress to vote MPs in a timely manner, the Chamber proposed a new rule that would suspend all deliberative sessions until they were voted.

Different from the previous attempt to control presidential decrees, Congress this time sought to alter presidential decree authority through a constitutional amendment. The adoption of a constitutional amendment eliminated certain problems that the Jobim bill had encountered, such as the constitutionality issue and the president's veto threat. However, it entailed other challenges—that the Senate and Chamber had to adopt exactly the same text; that the bill must be shuttled between the two houses until they adopted the same text; and that the voting quota for the approval of a constitutional amendment was much higher, requiring a three-fifth majority in each house.

In Figure 6.2, the winset of the status quo (the set of points that can defeat the status quo), denoted  $W(SQ)$ , includes the points on and inside the intersection between the indifference curves of the Chamber and Senate. The president, whose ideal point coincided with SQ, was not a veto player (at least formally), and as such no indifference curve was drawn for him. Although any point in  $W(SQ)$  can theoretically defeat SQ, the new policy that is eventually adopted is likely to be found in the shaded area bounded by a line segment extending upward from the Senate's ideal point (because any point to the left of that line segment will be farther from the ideal points of both houses) and another line segment extending downward from the Senate's

ideal point (because any point below that line segment will be farther from the ideal points of both houses). Hence, bicameral bargaining should occur in the shaded area.

As discussed in Chapters 1 and 3, the Chamber and Senate possess equal constitutional prerogatives in the examination and adoption of constitutional amendments. Therefore, the location of a new MP regime to be adopted, i.e., whether it would be closer to the Chamber's or the Senate's ideal point, depended upon the levels of impatience. In the constitutional reform of the MP regime, one factor that raised the level of impatience was the risk that the bill might be aborted in the next round of negotiation. Another factor was changes in the environment, such as an outbreak of scandals, that likely elevated the need to pass a reform long awaited by legislators and society. These factors determined the timing and location of the new MP regime in Brazil.

#### **6.4.2. The Senate's Version—The First Round**

On February 16, 1995, immediately after the opening of the 50<sup>th</sup> Congress, Senator Esperidião Amin (PPR-Santa Catarina) presented a constitutional amendment proposal no. 1/1995 to the Senate. The proposal included restrictions on the areas in which provisional measures could not be used, denied reissuing of a lapsed decree within the same year, and extended the validity of a decree from 30 to 60 days. The proposal was immediately sent to the CCJ, and the committee's reporting officer, Senator Josaphat Marinho (PFL-Bahia), voted in favor of the material. Observing the revival of congressional movements to limit MP authority, President Cardoso met with Senate President José Sarney and eight other senators from Cardoso's coalition parties, the PMDB, PFL, and PSDB, to develop a new formula to reduce the massive flow of decrees into Congress. By the agreement, the Senate would prepare a new

constitutional amendment proposal that would limit the use of decrees to the economic, financial, and defense areas. In exchange, it would allow the president to make administrative changes, such as the creation and extinction of ministries and public organs, without having to submit bills to Congress.<sup>90</sup> On May 8, 1996, Senate President Sarney created a special committee (*comissão especial* or CESP) to consolidate six proposals circulating in the house treating the same subject.

The cooperative relationship between Cardoso and the Senate changed when the president signed a decree in which he secretly included a policy that had been rejected by the Chamber earlier in that year.<sup>91</sup> The Senate reacted immediately, threatening to vote on the Jobim bill right away. Although Cardoso's Minister of Political Coordination, Luiz Carlos Santos, managed to appease the tensions, senators' irritation with the government's foul tactic resulted in a proposal that was more stringent than Cardoso was willing to accept.

The CESP proposal extended the validity of provisional measures from 30 to 60 days but forbade its renewal in whole or part. If Congress failed to vote within 60 days, the decree would be converted into a regular bill (*projeto de lei*) examined in a slow and normal process in the Chamber and the Senate. It also determined that MPs not be issued within the same year over the subjects already rejected by Congress. The proposal also prohibited the use of MPs in the areas of taxation and the penal code.

The substitution proposal adopted by the CESP was then analyzed in the CCJ. The CCJ's reporting officer, Senator José Fogaça (PMDB-Rio Grande do Sul), presented a new substitution bill and an accompanying proposal for a resolution of the National Congress revoking Resolution no. 1 of 1989 and offering new rules for the examination of MPs. The Fogaça proposal maintained a decree's validity of 60 days and the prohibitions of its renewal and of application to

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<sup>90</sup> "Emenda restringe MPs e desobriga governo." *Folha de São Paulo*, March 17, 1995, 1-7.

<sup>91</sup> The MP was on the minimum wage but Cardoso included in it a creation of a social security contribution by retired public servants, which had nothing to do with the minimum wage policy.

the penal code as proposed by Marinho. The principal departures from the CESP proposal included establishing a permanent mixed committee to examine MPs, separate examination and voting in the Chamber and Senate floors based on the principle of simple alternation in initiation, and the adoption of the urgency rule in case 60 days had passed without a final vote. In addition, the Fogaça bill added the areas reserved for complementary law to the list of fields where MPs may not be used but dropped taxation from the list. In December 1996, the CCJ approved Fogaça's substitution proposal by 13 to 7. The seven senators who voted against the Fogaça bill did so because they either preferred the CESP proposal or wanted much stricter restrictions, and not because they were against the idea of restricting decree authority.

On March 12, 1997, the CCJ's substitution bill was ready for an inclusion in the deliberative session, but Cardoso's loyal allies in the Senate requested that the material be returned to the CCJ for reexamination. They emphasized that certain changes in the proposal were necessary to harmonize the texts being examined separately in the two houses of Congress in order to expedite the eventual passage of the amendment by Congress. Senator Fogaça and Deputy Aloysio Nunes Ferreira, the reporting officer in the Chamber, were discussing the convergence of the proposals being examined in each house (Senado Federal 1997a). The Senate presidency approved the petition and returned the material to the CCJ. This also gave the government time to negotiate terms with party leaders in the Chamber and the Senate.

The final version up for a floor vote in April included more areas in which decrees were not allowed (adopted from Deputy Aloysio Nunes' substitution bill in the Chamber) but extended their validity to 90 days instead of 60 and allowed for one renewal (per the government's demand). In addition, it maintained a separate and sequential examination of decrees with the alternation of initiation between the Chamber and the Senate (per the Senate's

preference). Fogaça called this new system of alternation “a celebrated, extraordinary, and very important conquest of the Senate” (Senado Federal 1997b). The proposal also allowed the president to use administrative decrees (*decreto*, not *medida provisória*), which would not require congressional approval, to manage administrative matters of government. It also determined that MPs issued before the promulgation of the amendment would stay in force until the National Congress voted or the president revoked them. The appendix to this chapter elaborates on the details of the proposal approved by each house of Congress at each sequence. The Senate approved the proposal by 57 votes in favor and 7 votes opposed with 2 abstentions. The PSDB, PFL, PMDB, and PTB, as well as the government’s leader in the Senate recommended a favorable vote for the proposal. The PPB liberated its members’ votes. The opposition bloc recommended a favorable vote for the text conditional upon the changes it sought to make in separate votes (DVS’s) on controversial provisions.

One of the contested provisions of the new proposal was the extended validity of 90 days with a possibility of one renewal. Proponents of the new arrangement—mostly Cardoso’s allies—argued that it would give a reasonable time for Congress to examine MPs. Its opponents—opposition senators and some dissenters of government parties—contended that it would make Congress an institution that would simply rubber stamp the executive’s decrees since it would be difficult to reject them after their six months in force. Therefore, the opposition forced a separate vote on the renewal clause, in which it lost by 50 votes in favor and 15 against, thus maintaining the renewal clause. The government, however, lost in one of the DVS’s pertaining to the extent to which the government could exercise its new administrative decrees. In the vote on whether the government could use administrative decrees to create



ministries or public organs, Cardoso's allies lost by 3 votes. The proposal passed the second round of voting on May 14, 1997, 57 to 12.

### **6.4.3. The Chamber's Version—The Second Round**

When the new Senate president, Antonio Carlos Magalhães (PFL-Bahia) declared that the war against the excess of provisional measures was nearing, the new president of the Chamber, Michel Temer (PMDB-São Paulo) agreed.<sup>92</sup> This, with the prior agreement reached between Senate and Chamber leaders that led to the modification of the Fogaça substitution bill, raised an expectation that the Senate's proposal would see a quick approval in the Chamber. However, when the Chamber received the Senate's proposal in May 1997, there was another proposal intended to regulate and restrict presidential decree authority. This proposal was submitted in February 1995 and had already been approved by the Chamber's CCJR and CESP. Therefore, with the arrival of the Senate's proposal in the Chamber, there were two bills dealing with the same subject, one originated in the Senate, and the other in the Chamber.

Subsequent debates in the Chamber focused on which text should be voted and, consequently, adopted. As in the upper house, President Cardoso enjoyed a comfortable majority in the Chamber with the parties in alliance controlling more than 70 percent of the seats (at least numerically, without discounting frequent defections by some deputies). However, both Cardoso's friends and opponents in the Chamber desired to limit presidential decree power. "We approved everything that the government wanted. Now we will vote on the bill that will discipline the use of provisional measures," announced the PFL leader, Inocêncio Oliveira.<sup>93</sup> An

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<sup>92</sup> "Congresso limitará edição de MPs." *Jornal de Brasília*, February 24, 1997, 3.

<sup>93</sup> "Aliados se unem à oposição para limitar uso de MP." *Jornal de Brasília*, February 28, 1998, 2.

ex-leader of government in the National Congress, Deputy Germano Rigotto (PMDB-Rio Grande do Sul), concurred; “It (a new constitutional amendment) will bring to an end the successive reissuing of decrees as it happened with the Real Plan, which was issued 20 times before its approval by Congress.”<sup>94</sup> While *governistas* insisted on using the Senate’s text, oppositionists were adamant about continuing with the more stringent Chamber’s text and thus imposing more limits on the president.

Main differences between the Senate’s bill and the Chamber’s version included the duration of the validity of provisional measures. Senators gave Congress 90 days to examine MPs, extendable for 90 more days, without counting the period of congressional recess. The Chamber’s bill allowed only 60 days with a possibility of one renewal for the same period. The Chamber’s text was also more restrictive in that it denied the use of decrees in the areas related to detention or confiscation of goods, popular savings, or any other financial properties (due to the appalling experience with former president Collor) and the subjects that had been vetoed by the president pending congressional action. It also stated that MPs pertaining to taxation would go into effect only in the following fiscal year if and only if Congress converted them into law before the end of the year in which they were issued. Moreover, the Chamber’s text maintained that the MPs currently in force be voted on within 180 days of the promulgation of the constitutional amendment, while the Senate did not specify a deadline for the examination of the pending decrees. Another important divergence in the two texts was found in the examination of decrees in Congress. The Senate proposed separate examinations with an alternation in initiation. The Chamber maintained deliberation in joint sessions of the National Congress.

The strategy of the government leaders in the Chamber was to vote the less stringent Senate bill instead of the more rigorous Chamber’s CESP version. The CCJR approved in

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<sup>94</sup> Ibid.

October 1997 the Senate's proposal eliminating the two articles that allowed the president to use administrative decrees. Deputy Luís Eduardo Magalhães (PFL-BA), the government's leader in the Chamber, immediately appealed to the floor and managed to maintain them. The opposition argued that, instead of restricting presidential power, the Senate's bill would increase President Cardoso's power.

On May 19, 1999, the Senate bill was finally up for a floor vote. The opposition and many deputies of the government parties had insisted on voting on the more rigorous CESP's text elaborated in the Chamber. With the division over the two texts, it was not certain whether either of the two texts had 308 (three-fifths) or more votes necessary for its approval. A deal was struck after intensive negotiations in which neither side would emerge as a loser. The CESP's reporting officer, Deputy Aloyio Nunes Ferreira, presented, verbally, a new substitution bill in the plenary based on the special committee's original report approved before the arrival of the Senate bill but also admitted the restoration of administrative decrees for the president found in the Senate's bill. However, the system of alternation that the senators celebrated was not included in the text. Deputies did not accept the new system that would reduce the Chamber's influence by giving the Senate the last word prerogative half of the times if the upper and lower houses alternated the initiation of MPs' examination. By the leaders' agreement, all of the parties' leaderships recommended a vote in favor of the substitution bill and the bill passed by a near unanimity: 453 in favor to 1 opposed and 1 abstained. Although it appears that the Chamber almost unanimously accepted the Senate's bill if one looks only at the roll calls, what actually happened was that the lower house, by approving the CESP's substitution bill, proposed to the upper house a much stricter version that was born in the Chamber.

#### **6.4.4. The Senate's Response—The Third Round**

When the Senate received the Chamber's substitution proposal in June 1999, more than four years had passed since the bill was originally proposed. In the CCJ, Reporting Officer Senator Fogaça accepted more restrictions on decrees added by the Chamber. He also accepted the change in the validity of provisional measures from the Senate-proposed 90 days to the Chamber-proposed 60 days. However, Fogaça restored the Senate's original versions in two key aspects over which the lower house made modifications. One related to the treatment of the decrees in force before the promulgation of the amendment. The Chamber decided that decrees be voted within 180 days from the promulgation of the amendment. The Senate, in contrast, had proposed to keep them in effect indefinitely until they were voted by Congress or revoked by the president.

The other significant source of bicameral disputes rested in the examination of decrees in Congress. The Chamber did not accept the Senate's proposal of separate deliberations with a system of alternation. However, Fogaça continued to defend voting in separate sessions in order to prevent a lack of a quorum in one house from impeding voting in the other house. In addition to that, many senators considered the new arrangement as strengthening the Senate's power. In the existing arrangement, although votes took place in a joint session, the Chamber voted first on the MP and amendments to it if any, and, if approved by the Chamber, senators could vote only up or down on what the lower house had approved. In November, the CCJ unanimously approved the Fogaça report, which concluded in favor of the proposal with a substitution bill. By that time President Cardoso had signed more than 3,500 MPs.

Eager to impose limits on decree authority quickly, by an accord the CCJ's substitution bill was immediately included in the deliberative session in the Senate. At the same time, Senate leadership sought an agreement with Chamber leadership in order to avoid new alterations in that house. Any new changes in the Chamber would require that the bill be sent back to the Senate once again, further delaying the enactment of the new constitutional amendment that a significant majority of legislators regarded as urgently imperative.

The first round of voting took place on November 17, 1999. The CCJ's substitution bill was approved with 64 votes in favor. Not one senator voted against the bill. Even those PFL and PSDB senators who were closely linked with Cardoso did not vote against it; they chose to abstain. Viewing that the limitations on the powerful presidential tool was imminent, President Cardoso pressured senators not to approve the bill. This Cardoso's strategy backfired and the bill was approved with no difficulty in the second round on December 1. With the defeat in the Senate, Cardoso started working with his allies in the Chamber to modify the bill.

#### **6.4.5. Economic Crisis, Government Strategies, and the Chamber's Response to the Senate—The Fourth Round**

The Chamber received the text approved by the Senate on December 7, 1999. In the CCJ, Deputy Paulo Magalhães (PFL-Bahia), who is a nephew of then Senate President and leading advocate of the restrictions on presidential decrees, Antonio Carlos Magalhães, was assigned to be the reporting officer. Magalhães suggested a favorable vote without alterations for the admissibility of the Senate's bill, and the CCJ approved the deputy's report by a unanimous vote in January 19, 2000. However, the Senate's substitution bill suffered many significant alterations thereafter.

The environment in which the proposal on presidential decrees was discussed had changed dramatically in the Chamber since the earlier round, which worked in President Cardoso's favor. Cardoso had five main issues with respect to the latest text.<sup>95</sup> First, as always, Cardoso was against the prohibition of an MP's re-issuance. Second, the president opposed a new rule that would suspend the legislative agenda of the Congress after 45 days of an MP's issuance. This rule was included in the proposal as a way to expedite the deliberation of decrees in Congress. Third, in exchange for accepting certain limitations on his decree power, the president demanded that Article 246 of the Constitution be revoked. Article 246 barred the use of MPs with respect to the issues that had been subjects of constitutional amendments since 1995. This restriction had frustrated Cardoso in his pursuit of economic reform.<sup>96</sup> Cardoso was also against the prohibition of the use of decrees to legislate matters of taxation and the vetoed materials pending congressional deliberation. Cardoso argued that the National Congress was too slow in examining presidential vetoes.

One of the events—perhaps the most important—that transformed the ambiance in which the decree authority was discussed was the currency crisis that hit Brazil in 1999 and led to the abandonment of the long-cherished crawling peg exchange rate arrangement. The episode of the currency crisis reminded many of the importance of the government's ability to act quickly in urgent situations. Hence the leadership of Cardoso's PSDB in the Chamber worked to postpone the voting of the material while seeking to modify the bill. The PSDB leaders argued particularly that Article 246 of the Constitution and the proposed prohibition of MPs on finance

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<sup>95</sup> See, for example, "Como ficam as MPs" in *O Globo*, February 22, 2000, 8.

<sup>96</sup> For example, one of the legislative priorities of the Cardoso government was to grant the nation's central bank legal independence. However, giving central bank independence required a constitutional amendment of Article 192 pertaining to the financial system. The fear of losing the ability to decree on materials related to finance had deterred the government from pursuing central bank independence, but Cardoso's economic team recognized that central bank independence was necessary in order to increase Brazil's credibility in front of foreign investors.

and taxation would compromise the government's ability to govern and would leave the country without mechanisms to confront economic crises.

The second turning factor was the souring of Chamber-Senate relationships. The Senate's president at that time was Antonio Carlos Magalhães. Elected from the northeastern state of Bahia on the PFL plate, Senator Magalhães was (and continues to be) known for his charisma and also for his erratic personality. During Cardoso's first term, Magalhães was one of the president's principal allies in Congress and played an instrumental role in the earlier pension reform. However, the senator's relationship with Cardoso deteriorated since then and the reform of presidential decree authority became his number one priority. As Magalhães became fixated on this agenda, he openly began pressuring the Chamber's leadership for a swift approval of the bill with no alteration to avoid the return of the text to the Senate yet another time. Magalhães' attitude irritated Chamber leadership and contributed to the deterioration of the relationship between the two houses,<sup>97</sup> which ironically helped to strengthen support for Cardoso.

While Magalhães was pressuring the Chamber for a speedy approval of the text, the Cardoso government sought the support of the PMDB, with the help of the Chamber President, Michel Temer, and with less radical sectors of the PFL, with the help of Cardoso's Vice-President Marco Maciel and the head of the PFL, Jorge Bornhausen. The government evaluated that it had recuperated its political capital by successfully controlling public finances and containing the spillovers of the currency crisis to other areas. Cardoso's team assessed that the

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<sup>97</sup> For example, When the PSDB's leader, Deputy Aécio Neves, and Leader of Government in the National Congress, Deputy Arthur Virgílio Neto, announced the party's intention to modify the text of the bill in the Chamber, Magalhães suggested that they renounce their mandates if they were not willing to defend the institution they represented. Virgílio demanded that Magalhães respect him and said that "If either one of us must renounce, it is him, not me." (See "A guerra das MPs" in *Correio Brasiliense*, December 4, 1999, 17). In another occasion, Magalhães pushed hard the Chamber's party leaders to vote the amendment proposal immediately, provoking the Chamber President, Michel Temer, to warn, "The prerogative to put this material for a vote in the plenary is mine" ("Divergências atrasam definição de novos limites para edição de MPs." *Estado de São Paulo*, January 11, 2000, A-4).

betterment of the economy should improve the government's relationship with Congress because in a good political-economic scenario, suspension or breakup of the relationship with the government would not interest its congressional allies. Moreover, the year 2000 was a municipal election year and a number of federal deputies had ambitions for winning municipal executive offices. Even the PFL's leader in the Chamber, Inocêncio Oliveira, who was close to Magalhães gave a signal that it was possible to make concessions to the government, especially with Article 246 of the Constitution.<sup>98</sup>

In late February, Cardoso and *governista* leaders of the PFL, PMDB, and PSDB reached an agreement to break the impasse. According to the agreement announced by Deputy Roberto Brant (PFL-Minas Gerais), the reporting officer of the Chamber's CESP, Article 246 would be revoked in exchange for the approval of the proposal. In addition, the CESP's former reporting officer and then Secretary-General of Government Aloysio Nunes Ferreira proposed a creative solution for the controversial question of MPs and taxation. Thus far, the text pertaining to taxation used the Portuguese word *tributo*, which is a comprehensive term that includes all forms of government levies. Ferreira's suggestion, which was accepted by those present at the meeting, was to substitute the term *imposto* for *tributo*. That way, although a decree to create or increase, for example, income tax (*imposto de renda*) would not go into effect until the following year, one that would create or raise fees (*taxa*) and contributions (*contribuição*) could have an immediate effect at any moment.<sup>99</sup> Anticipating opposition in the floor, the government promised to issue an MP to release resources before a floor vote in order to secure support for the new agreement.

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<sup>98</sup> "Planalto manobra para conter ACM." *Gazeta Mercantil*, January 6, 2000, A-6.

<sup>99</sup> "Acordo das MPs amplia poder de FHC." *Folha de São Paulo*, February 23, 2000, 1-8.



In April, Deputy Brant submitted his report to the CESP in favor of the material with a substitution bill. The Brant substitution bill maintained those terms agreed upon by the government and *governista* leaders in the Chamber in the earlier meeting. The Brant report was approved in the CESP with only oppositionist deputies voting against it.

The proposal fell into a limbo once again after its approval in the CESP. Although all parties and nearly all deputies still concurred that presidential decree authority needed to be restricted and better regulated, the oppositionists did not accept the suppression of Article 246. The opposition PDT's leader, Deputy Miro Teixeira, argued that the elimination of Article 246 from the Constitution would nullify "all and any benefits that the proposal would bring about."<sup>100</sup> On the other hand, presidential allies in the Chamber did not concede on the revocation of the article. Neither side had the 308 votes required to approve the proposal.

The impasse was finally resolved when the new President of the Chamber, Aécio Neves (PSDB-Minas Gerais) personally mediated the disputes between the *governistas* and oppositionists.<sup>101</sup> The solution reached was to "freeze" the effects of Article 246. Instead of revoking Article 246 once and for all, the proposal forbade the use of MPs on the issues subject to constitutional amendments between 1995 and the promulgation of this amendment. Consequently, the president would be able to decree on the materials modified by constitutional amendments after the enactment of the amendment on decree power. Thus, the new proposal originally intended to limit presidential decree authority now would also provide an *expansion* of the president's decree prerogative. The government gained in enticing oppositionists' concessions also on the issues of taxation, vetoed materials pending congressional deliberation, and the expansion of the themes over which the president would be allowed to use administrative

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<sup>100</sup> "Oposição quer modificar emenda que limita MPs." *Estado de São Paulo*, May 29, 2000, A-4.

<sup>101</sup> "Projeto que limita uso de MPs é aprovado." *Folha de São Paulo*, June 21, 2001, A-10.

decrees. In exchange, the opposition managed to maintain in the text almost all the areas where they argued that MPs should not be employed. The final text of the proposal to be voted in the floor was produced after various meetings between government and opposition leaders in the Chamber, involving many consultations with President Cardoso, Secretary of Federal Revenue, and Cardoso's Attorney General.<sup>102</sup> The Senate was not represented in those meetings.

The voting took place on June 20, 2001. A new substitution proposal (*emenda aglutinativa*) including all terms of the accord was submitted to the plenary. The plan of action was first to reject the CESP's substitution bill in order to avoid approving the Senate's substitution bill, and then vote and approve the new substitution proposal just submitted. Chamber President Neves began the voting session stating "[a]ccording to the agreement, party recommendations should be a vote against the CESP's substitution bill" (Câmara dos Deputados 2001: 30157). All parties recommended a "no" vote and the bill was rejected 389 to 3. The voting of the alternative proposal immediately followed, which the Chamber passed by 417 to 1.

To the senators' surprise, the proposal approved by the Chamber actually included not only those terms of negotiation broadcasted as having reached by *governistas* and opposition deputies but also a change in the rules of MPs' examination, which was one of the most contentious points in the bicameral disputes. The approved text provided that the Chamber initiate the examination of decrees and eliminated the system of alternation proposed by the Senate. This change was "smuggled" into the proposal quietly because it was not part of the agreement made in the Chamber. Then Leader of Government in the National Congress, Deputy Arthur Virgílio, revealed in an interview with the author what happened in the floor on the day of voting.

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<sup>102</sup> Ibid.

What happened was what we call “*contrabandinho*” (or literally “little contraband”) of the Chamber. That provision was changed at the last minute....Many deputies in opposition and even in the government base wanted to initiate the deliberation of the provisional measures in the Chamber. The Chamber wanted to increase its power.<sup>103</sup>

The Chamber celebrated the approval of the new rule benefiting the house. Deputy Pauderney Avelino (PFL) spoke in the plenary: “It is a considerable victory for this house which will come out stronger, once all votes begin in the Chamber” (Câmara dos Deputados 2001: 30176). If approved by the Senate, the new rule would give the Chamber the last word prerogative in the examination of decrees.

#### **6.4.6. The Senate Accepts the Chamber’s Version—Promulgation of the Amendment**

The senators, of course, did not welcome the “little contraband.” However, at least three factors weakened the Senate’s bargaining leverage vis-à-vis the Chamber and elevated the senators’ desire to approve the proposal and promulgate the constitutional amendment immediately. First is a series of scandals that hit the Senate in 2001. The exchange of accusations and personal attacks between the two of the most influential members of the Senate, Jader Barbalho, then incumbent Senate President, and his predecessor, Antonio Carlos Magalhães, culminated in the outbreak of a corruption scandal that ended in Barbalho’s resignation. A new scandal battered the upper house soon after Barbalho’s resignation, this time involving Senators Magalhães and Arruda, Cardoso’s key envoy in the Senate, leading their resignations. As such, the Senate lost principal figures of the house in 2001, and when the Chamber President Aécio Neves personally delivered the proposal approved by the lower house

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<sup>103</sup> Interview with the author. April 22, 2004. Virgílio was Senator and Leader of the PSDB in the Senate when interviewed.

in August, the upper house was still in dismay from the successive scandals. Senators only desired to pass the constitutional amendment that they and many sectors of society considered necessary to discipline the use of decrees by the president, and they did not wish to be made responsible for further delays in its enactment by altering the rules of examination and thus sending it back to the Chamber once again. The Senate needed to recuperate its reputation, not damage it further.<sup>104</sup>

There was also a significant risk that the proposal might be aborted if it were returned to the Chamber. In the last round of negotiations, the Chamber's government leadership came to admit that there was a strong possibility that the proposal would not be voted on at least until the end of Cardoso's term, or "never."<sup>105</sup> In addition, the fact that the following year would have a general election also increased uncertainties regarding the likelihood that the proposal would be approved again should it return to the lower house. There were rumors that the opposition, especially the PT, with the anticipation of Lula's victory in the upcoming presidential election, had lost interest in limiting decree authority.<sup>106</sup>

Finally, there was a threat of intervention by the Supreme Federal Court in this matter. In June 2001, the Court's president, Marco Aurélio de Mello, criticized congressional delays in approving the proposal. He warned that the Court would take charge of limiting decrees if Congress failed to do so promptly by constitutional amendment.<sup>107</sup> The Court's action, should it occur, would give the National Congress a stamp of inefficiency and incapacity. Moreover, Congress needed to guard its jurisdictions.

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<sup>104</sup> The concern for recuperating its image was shown in the CCJ's report on the proposal. Senator Osmar Dias, the committee's reporting officer, wrote: "The approval of the limitation to the use of provisional measures, brought by the proposal in examination, is an indispensable step for the recuperation of the prestige of the Legislative Power, and it cannot be postponed any more" (Senado Federal 2001a).

<sup>105</sup> Comment attributed to the PFL's leader, Deputy Inocêncio Oliveira. "Aliados adiam votação sobre MPs." *Folha de São Paulo*, June 7, 2001, A-7.

<sup>106</sup> "Impasse deve adiar proposta que limita MPs." *O Globo*, June 5, 2001, 5.

<sup>107</sup> "Presidente do STF ameaça limitar MPs." *O Globo*, June 6, 2001, 3.

Thus, as soon as the interim president of the Senate, Edison Lobão, received the Chamber's substitution bill, he circulated a communiqué to the members of the house. It stated that the examination of the Chamber's substitution bill would be limited to those provisions that had been modified by that house. It continued:

This decision of the Presidency [of the Senate] has the objective of avoiding the so-called “ping pong” phenomenon [whereby a bill shuttles between the Chamber and Senate indefinitely] that is being observed in the deliberation of this proposal, which now will be examined for the third time in the Federal Senate, [which is an] *unprecedented fact in the History of this house* (Senado Federal 2001b; original emphasis was in bold).

Nevertheless, the reporting officer of the CCJ, Senator Osmar Dias, sought to reinstall the system of alternation. He argued that, if the Chamber always initiated the examination of decrees, “the Senate will be a house that simply confirms a provisional measure, which will always arrive [in the Senate] at the last moment, without time for a careful examination.”<sup>108</sup> Like Dias, Senate leaders understood the consequences of approving the Chamber's text without alteration. Nonetheless, they pressured him not to make any change to the text in order to avoid further delays in its approval. Dias accepted the argument, and the CCJ approved Dias' report with no alterations in the text. By a supra-partisan agreement, the Senate dispensed the five-day interval required before the discussion of a constitutional amendment proposal on the floor could begin, and the proposal went up for a vote on August 15, 2001. Without any discussions, the proposal was approved in less than ten minutes with 65 senators voting in favor of the proposal to one abstention and one against. The second round of voting took place on September 5, and Constitutional Amendment No. 32 was promulgated on September 11, 2001.

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<sup>108</sup> “Relator quer mudar emenda das PMs e governo vai reagir.” *Estado de São Paulo*, August 8, 2001, A7.

## 6.5. CONCLUSION

The Brazilian president's provisional measure has always been a controversial instrument since its inception by the 1988 democratic constitution. The unrestrained use of decree authority led the Brazilian Congress to seek to limit this powerful presidential authority in the 1990s. The first major congressional attempt to limit decree authority occurred in the early 1990s in response to President Collor's (perceived) abuse of the instrument. The second such movement began in 1995 under President Cardoso during which Congress was no longer able to keep up with the pace of issuance and re-issuance of MPs that averaged well over 30 per month. How did the preference and impatience hypotheses do in light of these two episodes?

**Table 6.2: Summary of Hypotheses and Evidence**

	<b>Preference (H1)</b>	<b>Impatience (H2)</b>	<b>Presidential Veto</b>	<b>Predicted outcome</b>	<b>Predicted time in congress</b>	<b>Actual outcome</b>	<b>Actual time in congress</b>
<b>Collor</b>	Convergent	Unknown	Yes	No reform	Short	Aborted	--
<b>Cardoso</b>	Divergent	Medium→ Low (Chamber) Medium→ High (Senate)	No	Reform in Chamber's terms	Long	Reform in Chamber's terms	5 years and 7 months

Table 6.2 is the summary of hypotheses, predictions and findings. During Collor's term, the Chamber's and Senate's positions with respect to the Jobim bill were relatively convergent in favor of imposing limitations on presidential decree authority. The convergence of bicameral preferences would have led to a speedy passage of the bill by Congress. However, since the

Jobim bill was a statutory bill, it would have been subject to a presidential veto, which Collor had made clear from the outset. Unfortunately, the president's impeachment in 1992 led to the tabling of the bill, and therefore we have inconclusive results.

By contrast, the constitutional amendment proposal submitted in 1995 during Cardoso's term was voted and approved by Congress. In this case, the Chamber and the Senate had to bargain on at least two critical points: the extent to which presidential decree authority should be limited and the new rules of MPs' examination in Congress. The Chamber proposed a more restrictive MP regime than the Senate. The Senate insisted on new rules that would enhance its power, which the Chamber opposed. Thus, the two houses' preferences were divergent on the details of a new MP regime despite the fact that there was a near consensus on the need to limit and regulate MP authority. Since the two houses had to resolve their divergences by the navette rule and since their initial levels of impatience were not high, the theory predicted a long delay until the passage of the bill by Congress. In 2001, three factors raised senators' impatience: the increased likelihood that the bill would be aborted should it return to the Chamber; the outbreak of a series of scandals that led to the resignations of senate leaders; and the threat of an intervention by the Supreme Federal Court. As predicted, the Senate's elevated impatience led to accepting the Chamber's version of the proposal in 2001. Congress finally promulgated the constitutional amendment after almost six years of the bill shuttling back and forth between the two chambers.

The two episodes of congressional attempts to limit presidential decree authority also provided valuable lessons. First, it is important to recognize that not having a law restricting presidential decree authority does not evidence the legislators' passive approval of the unrestrained use of decree power by the president. The Brazilian Congress eagerly sought to

institute new rules to limit and regulate the president's use of decree power. Rather, the long absence of such regulations reflected the bargaining problems that the two chambers of Congress had to resolve in order to pass the reform.

Second, these cases showed that policy dimensions may not be necessarily fixed as often assumed in spatial models of decisionmaking. This assumption may hold if decisions are made instantaneously. However, when there are significant delays in making decisions, a possibility exists that political players add new dimensions or come up with creative solutions. Given the Collor government's argument that presidential decree authority could not be modified by a complementary law, Brazilian legislators resorted to a constitutional amendment. With an impossibility of reaching an agreement over the issue of taxation, the term *tributo* was replaced by the term *imposto*, thereby allowing decrees on certain types of taxes to go into effect immediately. Moreover, the stalemate of the proposal in Congress gave President Cardoso an opportunity to negotiate an *expansion* of decree authority by introducing a new dimension (Article 246 of the Constitution) that was not originally included in either the Senate's or Chamber's proposal.



## Appendix 6.1: Evolution of the Proposal on Presidential Decree Authority

<b>Constitution</b>	<b>Senate Text 1</b> (May 1997)	<b>Chamber Text 1</b> (June 1999)	<b>Senate Text 2</b> (Dec 1999)	<b>Chamber Text 2</b> (Aug 2001)	<b>Senate Text 3</b> <b>Promulgation</b> (Sep 2001)
--	Alters Arts. 48, 62 and 84	Alters Arts 48, 57, 61, 62, 64 and 84	Alters Arts 48, 57, 61, 62, 64, 66 and 84	Alters Arts 48, 57, 61, 62, 64, 66, 84, 88 and 246	Alters Arts 48, 57, 61, 62, 64, 66, 84, 88 and 246
President regulates administrative matters of government by bill of law ( <i>projeto de lei</i> )	President regulates administrative matters of government by administrative decree ( <i>decreto</i> )	President regulates administrative matters of government, including creation of ministries and organs, by decree	President regulates administrative matters of government, including creation of ministries and organs, by decree	President regulates administrative matters of government, including creation and extinction of ministries and organs, by decree	President regulates administrative matters of government, including creation and extinction of ministries and organs, by decree
The CN will be convoked extraordinarily, within 5 days after the publication of an MP, if it is in recess, to examine it.	The validity of MPs will not count the days during a congressional recess.	The validity of MPs will not count the days during a congressional recess. If the CN is convoked for extraordinary legislative sessions, MPs will automatically be included in the legislative agenda.	The validity of MPs will not count the days during a congressional recess. If the CN is convoked for extraordinary legislative sessions, MPs will automatically be included in the legislative agenda.	The validity of MPs will not count the days during a congressional recess. If the CN is convoked for extraordinary legislative sessions, MPs will automatically be included in the legislative agenda.	The validity of MPs will not count the days during a congressional recess. If the CN is convoked for extraordinary legislative sessions, MPs will automatically be included in the legislative agenda.

Appendix 6.1 (continued).

<p>--</p>	<p>MPs may not be used to regulate materials related to:</p> <ul style="list-style-type: none"> <li>a. nationality, citizenship, political and electoral rights</li> <li>b. penal code,</li> <li>c. organization of the Judiciary and Ministry of Public Prosecution,</li> <li>d. budgetary matters,</li> <li>e. those reserved to complementary law</li> <li>f. those that have been approved by the CN, pending sanction or veto by the President, and</li> <li>g. those that contain provisions at odd with respect to the objects of an MP</li> </ul>	<p>MPs may not be used to regulate materials related to:</p> <ul style="list-style-type: none"> <li>a. nationality, citizenship, political and electoral rights, and</li> <li>b. penal and civil codes,</li> <li>c. organization of the Judiciary and Ministry of Public Prosecution,</li> <li>d. budgetary matters,</li> <li>e. detention or confiscation of goods, popular savings, or any other financial properties,</li> <li>f. those reserved to complementary law,</li> <li>g. those that have been approved by the CN, pending sanction or veto by the President, and</li> <li>h. those that have been vetoed by the President, pending deliberation by the CN</li> </ul> <p><i>("g" in Senate Text 1 deleted)</i></p>	<p>MPs may not be used to regulate materials related to:</p> <ul style="list-style-type: none"> <li>a. nationality, citizenship, political and electoral rights, and</li> <li>b. penal and civil codes,</li> <li>c. organization of the Judiciary and Ministry of Public Prosecution,</li> <li>d. budgetary matters,</li> <li>e. detention or confiscation of goods, popular savings, or any other financial properties,</li> <li>f. those reserved to complementary law,</li> <li>g. those that have been approved by the CN, pending sanction or veto by the President</li> <li>h. those that have been vetoed by the President, pending deliberation by the CN</li> </ul>	<p>MPs may not be used to regulate materials related to:</p> <ul style="list-style-type: none"> <li>a. nationality, citizenship, political and electoral rights, and political parties,</li> <li>b. penal and civil codes,</li> <li>c. organization of the Judiciary and Ministry of Public Prosecution,</li> <li>d. budgetary matters,</li> <li>e. detention or confiscation of goods, popular savings, or any other financial properties,</li> <li>f. those reserved to complementary law,</li> <li>g. those that have been approved by the CN, pending sanction or veto by the President</li> </ul> <p><i>("h" Senate Text 2 deleted)</i></p>	<p>MPs may not be used to regulate materials related to:</p> <ul style="list-style-type: none"> <li>a. nationality, citizenship, political and electoral rights, and political parties,</li> <li>b. penal and civil codes,</li> <li>c. organization of the Judiciary and Ministry of Public Prosecution,</li> <li>d. budgetary matters,</li> <li>e. detention or confiscation of goods, popular savings, or any other financial properties,</li> <li>f. those reserved to complementary law,</li> <li>g. those that have been approved by the CN, pending sanction or veto by the President</li> </ul>
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Appendix 6.1 (continued).

--	--	MPs that imply a creation of new taxes or tax increases (tributos), except for taxes on trade, industrial products, operations of credit, foreign exchange, security or other movables, and emergency war taxes, will have effects in the following financial year only if they are converted into law before the last day of the year in which they are published	MPs that imply a creation of new taxes or tax increases (tributos), except for taxes on trade, industrial products, operations of credit, foreign exchange, security or other movables, and emergency war taxes, will have effects in the following financial year only if they are converted into law before the last day of the year in which they are published	MPs that imply a creation of new taxes or tax increases (impostos), except for taxes on trade, industrial products, operations of credit, foreign exchange, security or other movables, and emergency war taxes, will have effects in the following financial year only if they are converted into law before the last day of the year in which they are published	MPs that imply a creation of new taxes or tax increases (impostos), except for taxes on trade, industrial products, operations of credit, foreign exchange, security or other movables, and emergency war taxes, will have effects in the following financial year only if they are converted into law before the last day of the year in which they are published
MPs will lose their effects if not converted into law within 30 days of their publication, obliging the CN to discipline their juridical relations.	MPs will lose their effects, from their publication, if not converted into law within 90 days, renewable for the same period, obliging the CN to discipline their juridical relations by legislative decree ( <i>decreto legislativo</i> )	MPs will lose their effects, from their publication, if not converted into law within 60 days, renewable once for the same period, obliging the CN to discipline their juridical relations by legislative decree.	MPs will lose their effects, from their publication, if not converted into law within 60 days, renewable once for the same period, obliging the CN to discipline their juridical relations by legislative decree.	MPs will lose their effects, from their publication, if not converted into law within 60 days, renewable once for the same period, obliging the CN to discipline their juridical relations by legislative decree.	MPs will lose their effects, from their publication, if not converted into law within 60 days, renewable once for the same period, obliging the CN to discipline their juridical relations by legislative decree.

Appendix 6.1 (continued).

--	Not issued a legislative decree within 60 days of rejection or loss of validity of an MP, juridical relations and acts practiced while an MP was in force will have full juridical validity (validade jurídica plena).	Not issued a legislative decree within 60 days of rejection or loss of validity of an MP, juridical relations and acts practiced while an MP was in force will be maintained.	Not issued a legislative decree within 60 days of rejection or loss of validity of an MP, juridical relations and acts practiced while an MP was in force will be maintained.	Not issued a legislative decree within 60 days of rejection or loss of validity of an MP, juridical relations and acts practiced while an MP was in force will be maintained.	Not issued a legislative decree within 60 days of rejection or loss of validity of an MP, juridical relations and acts practiced while an MP was in force will be maintained.
--	--	If an MP is not voted within 45 days of its renewal, all deliberations of the CN and its Houses will be suspended until the examination of the MP is concluded, except for those that have constitutionally determined deadlines.	If an MP is not voted within 45 days of its publication, it will enter legislative agenda with regime of urgency until its vote, in each one of the Houses of the CN, suspending all other deliberations of the House where it is being examined.	If an MP is not appreciated within 45 days of its publication, it will enter legislative agenda with regime of urgency until its vote, in each one of the Houses of the CN, blocking all other deliberations of the House where it is being examined.	If an MP is not appreciated within 45 days of its publication, it will enter legislative agenda with regime of urgency until its vote, in each one of the Houses of the CN, blocking all other deliberations of the House where it is being examined.
--	MPs will have their voting initiated in the CD or SF based on the principle of alternation between the two Houses.	MPs will be deliberated in the CN.	MPs will have their voting initiated in the CD or SF based on the principle of alternation between the two Houses.	MPs will have their voting initiated in the CD.	MPs will have their voting initiated in the CD.
--	The reviewing house is not allowed to alter the text of a bill of conversion ( <i>projeto de conversão</i> ) except for suppression of parts of the text.	<i>(deleted)</i>	--	--	--

Appendix 6.1 (continued).

--	A mixed committee of the CD and SF will examine and report on MPs before they are examined in the floor of the CD and SF.	<i>(deleted)</i>	A mixed committee of the CD and SF will examine and report on MPs before they are examined in the floor of the CD and SF.	A mixed committee of the CD and SF will examine and report on MPs before they are examined in the floor of the CD and SF.	A mixed committee of the CD and SF will examine and report on MPs before they are examined in the floor of the CD and SF.
--	MPs that have been rejected or expired may not be re-issued in the same legislative session.	<i>(deleted)</i>	MPs that have been rejected or expired may not be re-issued in the same legislative session.	MPs that have been rejected or expired may not be re-issued in the same legislative session.	MPs that have been rejected or expired may not be re-issued in the same legislative session.
--	--	Approved a bill of conversion altering the original text of an MP, the latter will be maintained in its integrity until the bill is sanctioned or vetoed.	Approved a bill of conversion altering the original text of an MP, the latter will be maintained in its integrity until the bill is sanctioned or vetoed.	Approved a bill of conversion altering the original text of an MP, the latter will be maintained in its integrity until the bill is sanctioned or vetoed.	Approved a bill of conversion altering the original text of an MP, the latter will be maintained in its integrity until the bill is sanctioned or vetoed.
Art 246. An MP may not be used to regulate an article of the Constitution amended in 1995 and thereafter.	--	--	--	Art 246. An MP may not be used to regulate an article of the Constitution amended between 1995 and the promulgation of this amendment.	Art 246. An MP may not be used to regulate an article of the Constitution amended between 1995 and the promulgation of this amendment.

Appendix 6.1 (continued).

--	MPs issued before the promulgation of this amendment will stay in force until the conclusion of their examination by the CN or revocation by the President.	For MPs issued before the publication of this amendment, the rules in effect on the dates of their publications will be applied. However, they must be appreciated within 180 days from the promulgation of this amendment, suspending all other deliberations of the CN and of its Houses, except for those with constitutionally determined deadlines.	MPs issued before the publication of this amendment will stay in force until new MPs explicitly revoke them or until the CN deliberate them.	MPs issued before the publication of this amendment will stay in force until new MPs explicitly revoke them or until the CN deliberate them.	MPs issued before the publication of this amendment will stay in force until new MPs explicitly revoke them or until the CN deliberate them.
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Notes

MP: Medida Provisória (Provisional Measure)

CD: Câmara dos Deputados (Chamber of Deputies)

SF: Senado Federal (Federal Senate)

CN: Congresso Nacional (National Congress)

## 7. CHAPTER 7: ASYMMETRIC BICAMERALISM: POLITICAL REFORM AND GUN CONTROL IN CONTRAST

*“The way to restrict arms is for the Senate to make the final decision.”* Senator Renan Calheiros, Leader of the PSDB in the Senate, commenting the disfigurement of the gun control bill in the Chamber (2003).<sup>109</sup>

### 7.1. INTRODUCTION

This chapter discusses lawmaking in a context of asymmetric bicameralism. Unlike pension reform and presidential decree authority examined in the previous chapters, the gun control bill was a statutory bill intended to regulate the trade and possession of guns by ordinary law. Likewise, the political reform that has been on the agenda of the Brazilian government and Congress in the last decade envisions statutory changes in the electoral and party laws. That gun control and political reform proposals are both statutory (ordinary) bills had two important consequences for the legislative process. First, their passage required only a simple majority in the Chamber and Senate and thus the threshold of the required vote was lower than the previous two cases. Second, and more importantly for bicameral politics, the house that initiated the bill held the last word prerogative. This last point is the focus of this chapter.

The bargaining model in Chapter 2 showed that, holding everything else constant, the degree of compromise is less for a bill's initiator than for its reviewing house when there is a

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<sup>109</sup> “Relação azeda, de novo.” *Correio Brasiliense*, October 11, 2003.

bicameral conflict over the content of legislation. Moreover, under the assumption of complete information, the model demonstrated that bargaining is always concluded in the first round. In reality, however, the assumption of complete information is often untenable and as such rational delay is possible (Alesina and Drazen 1991). Furthermore, bargaining also depends upon the locations of the ideal points of the two houses. The further away the ideal points are from each other, the harder it is to reach an agreement. Bicameral legislatures also adopt various mechanisms of conflict resolution. In Brazil, for the passage of statutory bills the house that initiates a bill is decisive over the content of legislation as long as the reviewing house approves it.

In this chapter, I explore in particular three hypotheses elaborated in Chapter 2. Hypothesis 1 states that bicameral divergences increase propensity for gridlock. As I will show in subsequent sections, the resistance for change was greater in the Chamber than in the Senate in both gun control and political reform cases. However, in the case of gun control, an ad hoc joint bicameral committee helped to consolidate a bill that was acceptable to both houses. By contrast, both the Chamber and Senate had special committees on political reform separately and independently. As a result, although both houses have been discussing similar proposals, there has been no joint attempt to harmonize various bills on political reform. In general, therefore, bicameral preferences were relatively convergent with respect to the gun control bill while they were divergent in regards to political reform bills. Hence, gridlock is more likely for political reform than for gun control.

Hypothesis 4 maintains that the house that initiates a bill compromises less than the reviewing house. The Senate approved both political reform and gun control bills before the Chamber, making the former the initiating house. Thus, the Senate should, *ceteris paribus*,



compromise less than the Chamber over the contents of those bills. Moreover, since the Brazilian bicameral congress adopts an asymmetric rule by granting the initial house the last word prerogative, I examine hypothesis 7, which predicts less likelihood of legislative delay and immobility under asymmetric bicameralism than the symmetric one. I examine the hypothesis with counterfactuals, i.e., what would happen if the deliberation occurred under a symmetric, navette rule. The three hypotheses combined leads one to expect a swift approval of the gun control bill in line with the Senate's preference and a rejection or stalemate of the Senate's political reform bills in the Chamber.

This chapter is organized as follows. The next section presents the politics of gun control. I identify the preferences of the deputies and senators and highlight the points of bicameral disagreements. It will be shown that legislators understand the implications of the asymmetric rule, which invoked strategic interaction between senators and deputies over the last word prerogative. Section 7.3 discusses political reform. Since most of the proposed changes would affect deputies more profoundly, the Chamber elaborated its own bills even though an adoption of the Senate's proposals would expedite the passage of political reform. Finally, in the concluding section I will evaluate the hypotheses in light of evidence.

## 7.2. THE GUN CONTROL BILL

### 7.2.1. Public Security and Gun Control in Brazil

Public safety is one of many major concerns for Brazilians. Statistics shows that every thirteen minutes someone is killed by a gun in Brazil.<sup>110</sup> According to a public opinion survey conducted in February 2002 (Datafolha 2002), 21 percent of those interviewed considered violence and public safety as the principal problem of the country, up from a 1996 survey when only 2 percent of the respondents pointed it as the most pressing problem. The concern for public safety was well above those for health (10%) and poverty (9%), and only second to unemployment (32%). Furthermore, according to the United Nations, Brazil is the country with the highest rate of homicide caused by firearms in the world.<sup>111</sup> In 2003 when the Brazilian Congress was discussing a gun control bill called the Statute of Disarmament (*Estatuto de Desarmamento*), non-governmental organizations organized marches in major Brazilian cities such as Rio de Janeiro, Sao Paulo, Vitória, Salvador, Porto Alegre, Curitiba, Manaus, and Brasília in favor of a gun free society. In October 2003, when asked about their opinion on the gun control bill, 74 percent of the survey respondents said they were in favor of prohibiting sales of firearms whereas only 23 percent responded that they were against such a measure (CNT/Sensus October 2003). Therefore, the Brazilian Congress examined the gun control bill under a climate of public approval.

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<sup>110</sup> "Brazil wants tighter gun laws," *Viva Rio News*, October 24, 2003.

<sup>111</sup> Cited in "Brasília unida contra as armas," *Correio Brasiliense*, October 20, 2003.

### **7.2.2. Joint Committee and the Positions of the Chamber and Senate on Gun Control**

Even before the gun control bill drew extensive media attention, many senators were interested in the issue. In fact, the Senate had been discussing gun control since 1999. In early 2003, with rising violent crimes especially in Rio de Janeiro, the Senate created a subcommittee within the CCJ (Committee on Constitution, Justice, and Citizenship) to study and consolidate various bills proposing restrictions on the sale and control of handguns. However, with mounting pressures by citizens' organizations and increasing media attention to gun control, Congress installed in July a bicameral joint committee in order to consolidate over 70 proposals in both houses dealing with the question and produce a consensus bill to accelerate passage.

The joint committee studied issues pertaining to the registration, bearing, sales, and trafficking of firearms and munitions. The principal points of the joint committee's substitution bill included the following.

1. Centralization of the registration of firearms in the Federal Police;
2. To possess a gun, a person must be at least 25 years of age, have no previous criminal record, and hold licit occupation and fixed residence;
3. An illegal purchase, possession, or furnishing of arms will be a crime without a possibility of bail;
4. A popular referendum in October 2005 will decide whether the sales of arms and munitions will be completely prohibited; and
5. Only members of the armed forces, prison guards, and police will be allowed to carry guns.

Originally, the joint committee's final text was prepared to become a substitution bill for a proposal authored by a deputy,<sup>112</sup> which would make the Chamber the first mover. There was also an agreement between the leadership of the Senate and the Chamber that this bill would be voted under urgency in both houses. They aimed for sanctioning the new legislation by the president in the month of July.

A predominant majority of senators were in favor of gun control under the terms found in the joint committee's substitution bill. Senator Renan Calheiros, the PMDB's leader in the Senate and former Minister of Justice, had a particularly strong interest. Certain senators desired to ban the sales of arms and munitions once and for all. However, the joint committee's reporting officer, Deputy Luiz Eduardo Greenhalgh (PT-Sao Paulo), warned that it would not pass the Chamber in the current form. Therefore those senators agreed to leave the decision to a popular referendum as mentioned in the substitution bill.<sup>113</sup>

Deputies' stances on the gun control bill were more divided, however. Although the PMDB in the Senate was a fervent supporter of the gun control bill, the Chamber's PMDB was divided on the issue. In addition, other mid-sized parties in the government coalition, including the PTB, PP, and PL, were the bill's leading critics. Deputies with linkages to the police, municipal guards, military and arms industry (located in Sao Paulo and especially Rio Grande do Sul) were the bill's primary opponents. In addition, more than 5 percent of the 513 deputies received campaign contributions from arms industry, especially in Rio Grande do Sul. This stands in sharp contrast with the Senate where not single senator reported to the Superior Electoral Tribunal to have received contributions from the industry.<sup>114</sup> The PT, PSDB, and many

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<sup>112</sup> Author's interview with Fabiano Augusto Silveira, Specialist on the Statute of Disarmament in the Senate's Consultoria Legislativa, April 28, 2004

<sup>113</sup> Author's interview with Sheila Cunha, Senator César Borges' legislative advisor, May 3, 2004.

<sup>114</sup> "Todos contra as armas," *Correio Brasiliense*, November 11, 2003.

smaller parties ardently supported the gun control bill in the Chamber. The PFL had some reservations but its leadership supported the measure.

The Lula government's position on the gun control issue was ambivalent. Gun control was initially not among its priorities. However, with media attention and public outcry rising, the government included gun control in the agenda for the extraordinary session that it convoked in July and made public statements in its support. Nevertheless, at least three issues complicated the government's stance on the question. First, many parties that were critical of the bill were in the government coalition. The government depended upon their cooperation to pass other key reforms (i.e., pension and tax reforms) on its agenda, which deterred it from aggressively pursuing its passage. Second, the bill dealt with many questions that were of the executive's competence. Municipal guards, of whom the joint committee's bill dismantled the right to arm themselves, lobbied intensively with the federal government to remove this provision. Finally, the Ministry of Defense and the army demonstrated some reservations with the bill, although they did not put themselves clearly against it because of the societal pressure in favor of gun control (Silveira 2004).



**Figure 7.1: The Chamber’s and Senate’s Positions on the Gun Control Bill in 2003**

Figure 7.1 depicts the inferred positions of the joint committee, Chamber, Senate, and the government on the committee’s substitution bill. As discussed above, the Senate’s preference is almost perfectly aligned with the joint committee’s position because the senators were almost unanimously in favor of the proposal. On the other hand, the Chamber’s position given its median voter’s ideal point would be to the right of the Senate’s, favoring less restrictive gun control legislation. I place the government, which holds package and line-item veto power over statutory bills, slightly to the right of the Senate due to the three aforementioned complications.

**7.2.3. The Senate’s Strategy and the Chamber’s Responses**

The joint committee’s text was initially to substitute a bill that originated in the Chamber. This would result in an examination of the gun control bill first in the Chamber, thereby giving the lower house the last word prerogative in an event of bicameral disagreements. It would not be a problem if the deputies passed the substitution bill without modifications as agreed upon by the leadership of the two houses including their presidents. However, at least some senators did

not trust the Chamber's ability to pass it in a timely manner and without altering the text. Moreover, many senators were keenly interested in the subject—they had been studying gun control since 1999—and thus were not ready to give up the last word prerogative to the Chamber.<sup>115</sup>

A decisive moment emerged at the close of the joint committee on gun control when Senator Calheiros, with support of all party leaders in the Senate, submitted on July 16 a petition for urgency in the deliberation of a gun control bill authored by another senator in conjunction with the committee's substitution bill. The urgency petition triggered an immediate examination of those bills by the Senate. The CCJ's (Committee on Constitution, Justice, and Citizenship) reporting officer, Senator César Borges (PFL-Bahia), collaborated with Deputy Greenhaugh, the joint committee's reporting officer, in preparing his report. Borges reproduced the committee's text nearly identically in his substitution bill. The Senate then quickly moved to a floor vote in less than a week (July 23) where the substitution bill was approved unanimously. On July 25, the Senate sent the bill to the Chamber for an examination. By this action, the Senate acquired the last word prerogative. In other words, the final decision regarding the legislation now would stay in the senators' hands.

In the Chamber, by the decision of the house's president, João Paulo Cunha, the bill followed a normal process of deliberation involving lengthy discussions in each relevant committee despite the prior bicameral agreement that it would be examined under urgency in both houses. The Senate's bill was first examined in the Committee on Public Security and Combat to Organized Crime (CSPCCO). Deputy Laura Carneiro (PFL-Rio de Janeiro) assumed the responsibility of the committee's reporting officer. As the senators anticipated, there was sizeable opposition to the gun control bill in the Chamber. In order to pass the bill in the

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<sup>115</sup> Author's interview with Fabiano Augusto Silveira and Sheila Cunha (2004).

committee, Carneiro enlarged the number of professional categories permitted to carry guns, reduced the minimum age allowed to possess firearms to 21, and revoked the provision that made the illegal bearing of firearms a crime without a possibility of bail, to name a few. With these changes and a previous accord by party leaders, the CSPCCO approved Carneiro's substitution bill by 29 to 2. However, the CSPCCO made a total of 43 alterations to the Senate's original text. Although the supporters of the gun control bill managed to restore the minimum age to 25 during the committee votes, its critics also succeeded in rejecting central points of the bill, such as the referendum in 2005 and the concession of the permit to possess firearms exclusively by the federal police. The extent to which the bill was disfigured by the committee was such that Deputy Greenhalgh affirmed, "What emerged [from the CSPCCO] was the Statute of Armament (as opposed to the Statute of Disarmament)."<sup>116</sup> Senator Calheiros also emphatically criticized the disfigurement in the Chamber, accusing deputies of being sympathetic to arms industry.

The CCJC's (Committee on Constitution, Justice, and Citizenship—formerly CCJR) reporting officer was Deputy Greenhalgh, who was also the joint committee's reporting officer. Although the deputy initially promised to restore the principal points of the gun control bill, he had to concede on certain points in the face of strong opposition to the bill in the committee. The report that Greenhalgh prepared reinstated a popular referendum, the emission of authorization to bear arms by the federal police, and the determination that the illegal bearing of guns be an offense without bail. However, it permitted bail if the bearer carried registered guns but without the authorization for bearing them. It also allowed the Ministry of Justice to arrange a covenant with state governments about the authorization of bearing arms.

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<sup>116</sup> "Estatuto do Desarmamento chega à CCJR," *Jornal da Câmara*, September 19, 2003.



These concessions did not satisfy the critics of the gun control bill. They insisted that the provision of a popular referendum—one of the pillars of the bill—be removed. With the impasse in the CCJC between the bill’s proponents and opponents, the government and the president of the Chamber intervened. First, they proposed the removal of the referendum provision in order to reach an accord to bring the bill to a committee vote. However, critics continued to resist the vote due to the fact that the Senate held the last word on the bill—that the upper house was not obligated to accept changes made by the Chamber. A PMDB deputy opposed to the referendum argued that “it is difficult to discuss a text that can be totally altered in the Senate....The senators can ignore our accord and return to their original text.”<sup>117</sup> Deputy Roberto Jefferson, the president of the PTB, summarized the problem of the gun control bill by saying, “What’s bad about the bill is that we cannot trust the Senate.”<sup>118</sup> Although both the president of the Chamber and Deputy Greenhaugh sought an agreement with senators not to alter the text approved by the lower house, they rejected this proposal completely. The other strategy that the Chamber president and the government contemplated was for the government to send a new gun control bill to Congress. Since the examination of all government proposals begin in the Chamber, this would give the lower house the last word prerogative. This strategy was abandoned in the face of a furious reaction by Senator Calheiros, one of the most important government allies in the upper house.

The impasse was only resolved after anti-gun marches in the capital that united 10,000 people and repeated pronouncements by the senators in the plenary and media blaming the Chamber for the delay of the legislation that the public opinion strongly favored. On October 22,

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<sup>117</sup> Statement by Deputy Mendes Ribeiro (PMDB-Rio de Janeiro) cited in “Hora de testar o poder de fogo,” *Correio Brasiliense*, October 21, 2003.

<sup>118</sup> Cited in “‘Não podemos confiar no Senado,’ diz presidente do PTB,” *Folha de São Paulo*, October 21, 2003, online version.

the CCJC passed the bill by symbolic voting (i.e., without taking rolls), but nine deputies, of whom four were from Rio Grande do Sul, registered their votes against it. The approved text maintained the referendum provision, but the date for its implementation was removed. Following its approval in the CCJC, the floor approved the petition of urgency for the examination of the material. The members of the so-called “bloc of bullets” requested a roll call voting in the floor, but it was rejected. Instead the party leaders agreed to proceed with symbolic voting in order to protect deputies linked to anti-gun control lobbies from pressures to vote against the bill.<sup>119</sup> The bill passed the Chamber after three months of heated debates and standoffs in that house.

In the Senate, the bill was sent to the CCJ for reexamination. Although the committee members were unanimously in favor of the bill, there emerged some concerns about disarming municipal guards and certain categories of civil servants with duties that frequently involved threats to their safety. The CCJ’s reporting officer, Senator Borges, attended to those concerns by retaining certain changes made by the Chamber, while rejecting other modifications by restoring the Senate’s original provisions. The most controversial change that the Chamber made was the removal of the popular referendum’s date. This point, which was emphatically defended by senators, returned to the text.<sup>120</sup> The CCJ approved both Borges’ report and an urgency petition unanimously in early December. The bill was quickly approved on the floor and President Lula signed the legislation on December 22, 2003 without a veto.

To recapitulate the main points, the last word prerogative that the Senate acquired with respect to the gun control bill was both a cause of bicameral conflict and the factor that made it possible to enact sweeping gun control legislation. Understanding the strategic importance of

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<sup>119</sup> Author’s interview with Deputy Jair Bolsonaro (PTB-Rio de Janeiro), February 11, 2004.

<sup>120</sup> Author’s interview with Senator César Borges (PFL-Bahia), May 4, 2004.

being the first house to pass a bill, the senators used an urgency petition to expedite its passage. In addition to the difficulty in reaching a consensus on the content of the bill, the Senate retention of the last word prerogative generated impasse in the Chamber. Although the Chamber sought a new accord with the Senate, senators rejected such a proposal and restored the central points of legislation lost in the Chamber upon the bill's return to the upper house.

### **7.3. POLITICAL REFORM**

#### **7.3.1. Current Debates on Political Reform in Brazil**

If the gun control legislation was a solution, albeit an imperfect one, for violence in Brazil, many consider political reform as the key to increase governability, strengthen the party system, enhance representation and accountability, and combat corruption. Senator Marco Maciel defends a reform of the electoral party system to enhance governability, as do many experienced Brazilian politicians:<sup>121</sup>

We need to improve our electoral party system. Our electoral system must be changed so that we have fewer parties, and parties that are more programmatic and solid. I am in favor of a mixed system or closed list system. Our system—open list—doesn't strengthen parties. In closed list systems, voters first think about parties. I believe that the chain of link in a democracy must be from the electorate to a party to a candidate, but the open list system makes it from the electorate to a candidate to a party. It is bad. It doesn't give sufficient governability to the country. Either we do political reform, or we don't have governability. It is not

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<sup>121</sup> Marco Maciel was Vice President during the Cardoso government (1995-2002) and served as the Collor government's leader in Congress (1991-92) and as President Sarney's Minister of Education and Culture (1985-86) and Chief-Minister of Staff (1986-87).

that we have no governability but that we need to strengthen it. Brazil has many challenging problems that need to be resolved. To resolve them, we need governability....Governability is fundamental to construct a country that we dream of, a country that is less unequal, more just, more developed socially and economically, with more external credibility. For this, I think political reform is fundamental. We also need to put an end to elitism and corruption.<sup>122</sup>

Likewise, Deputy Luiz Carlos Santos, who was President Cardoso's government leader in the Chamber and later Minister of Political Coordination, contends:

[Brazil] is technically ungovernable in the sense that there is no stable majority to govern. The majority in Congress is reached through negotiations, concessions, exchange of favors, and patronage. Since there are no solid parties or institutions, the conquered majorities are ad hoc. The fragility of the parties is frightening: only in the last year, nearly 130 deputies changed their parties (Santos 2004).

Short of a constitutional revision, the deputy defends political reform to strengthen the party system in Brazil.

Like Senator Maciel, many practitioners and analysts of Brazilian politics point to the open-list proportional representation system of electing federal deputies as a source of the weak party system, poor linkages of the electorate and the elected, and the governability problem in Brazil (see Ames 2003; Mainwaring 1999). In the open-list system, voters cast votes for either candidates or parties (and most Brazilian voters choose to vote for candidates), and candidates are ranked by the number of votes cast for them. This candidate-centered electoral rule is a cause for the weak party system because party leadership does not have control over the list and elected deputies tend to attribute their elections to their personal qualities rather than their parties. Thus, they claim that the mandates are theirs, not their parties'. Accordingly party-switching is justified. However, in reality only very few deputies (13 and 28 of 513 deputies in

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<sup>122</sup> Author's interview with Senator Marco Maciel (PFL-PE), May 19, 2004.

the 1994 and 1998 elections, respectively) were elected with their own votes and others rely on the votes cast for other candidates to get elected. Moreover, the open-list system stimulates candidate-centered electoral campaigns, which became increasingly expensive. The high costs of electoral campaigns, it has been argued, have made financial power dominant in the electoral processes and motivated corruption.<sup>123</sup>

The lack of party fidelity in Brazil is indeed astonishing. Table 7.1 shows the percentage of deputies who switched parties during each legislative period. The rate of party switching in the Chamber of Deputies since democratization has averaged approximately 30 percent. During the last Congress (1999-2003), 26.3 percent (135 deputies) switched party affiliations at least once. Furthermore, between 1985 and 2001, 138 deputies changed parties at least twice during the same legislative period (4 years), of which 30 members switched parties at least three times. In some extreme cases, certain deputies change parties 6 or 7 times within the same legislative period. Most party switching occurs during the first year when many members migrate to the parties in the governing coalition and during the third year when deputies switch parties for electoral convenience.<sup>124</sup>

**Table 7.1: Percentage of Deputies who Switched Parties in Each Congress**

	1983-87	1987-91	1991-95	1995-99	1999-2003
% Deputies who switched parties	31.3	27.5	32.3	26.9	26.3

Source: Report prepared by Deputy Ronaldo Caiado, reporting officer of the Comissão Especial de Reforma Política, for the meeting on August 6, 2003, Câmara dos Deputados.

<sup>123</sup> Various conversations with Deputy Bonifácio de Andrada (PSDB-Minas Gerais), member of the Committee on Political Reform in the Chamber of Deputies, 2003.

<sup>124</sup> Legislative elections occur in October of the fourth year in Congress. By law incumbents are not allowed to switch parties within one year of election.

The frequency of party switching by deputies has caused distortions in representation of the Chamber of Deputies. Table 7.2 presents the distribution of seats per party according to the results of the October 2002 elections and the distribution of seats in the Chamber as of June 2005. It shows that the parties in the governing coalition gained many seats at the expense of opposition parties. For example, the opposition PFL, which elected 84 deputies, lost 24 seats by 2005. Likewise, the PSDB's seat share decreased by 30 percent during the same period. On the other hand, the *governista* PMDB, PP, PL, and PTB increased their seat shares by 13.3 percent, 10.2 percent, 96.3 percent, and 80.8 percent, respectively. Consequently, there are enormous discrepancies between the number of seats elected per party and the number of seats that parties control once an election is over.

**Table 7.2: The Distribution of Seats per Party at 2002 Election and 2005 in the Chamber**

<b>Parties</b>	<b>Seats at Election</b>	<b>Seats in June 2005</b>	<b>% Change</b>
PT	91 (1)	91 (1)	0
PFL	84 (2)	60 (3)	-28.6
PMDB	75 (3)	85 (2)	+13.3
PSDB	70 (4)	49 (6)	-30.0
PP	49 (5)	54 (4)	+10.2
PL/PSL bloc	27 (6)	53 (5)	+96.3
PTB	26 (7)	47 (7)	+80.8
PSB	22 (8)	17 (8)	-22.7
PDT	21 (9)	14 (10)	-33.3
PPS	15 (10)	17 (8)	+13.3
PCdoB	12 (11)	9 (11)	-25.0
PRONA	6 (12)	2(14)	-66.7
PV	5 (13)	7 (12)	+40.0
PSD	4 (14)	0	-100.0
PST	3 (15)	0	-100.0
PMN	1 (16)	0	-100.0
PSC	1 (16)	2(14)	+100.0
PSDC	1 (16)	0	-100.0
Without Party	0	6 (13)	--
Total	513	513	--

Note: The second column is the distribution of seats per party according to the results of the October 2002 elections. The third column is the distribution of seats in the Chamber of Deputies as of June 2005. The numbers in the parentheses are the ranking of parties according to their size.

Source: Calculated from the information obtained through Secretaria Geral da Mesa, Câmara dos Deputados.

A number of proposals have been submitted to remedy these defects in the Brazilian political system. Although proposals range from changing the system of government (from presidentialism to parliamentarism) to a party fidelity law, current congressional debates concentrate on the changes that can be made through ordinary legislation, which requires only a simple majority to approve, and leave for future agendas constitutional changes, which require three-fifth majorities (Cintra 2004). The principal changes proposed to strengthen the party system, representation and accountability, and governability are the adoption of a closed-list proportional representation (PR) electoral system, a stricter party fidelity law to discourage party switching, and banning ad hoc electoral alliances in elections by PR. Specifically, a new party fidelity law would impose two to four years of a mandatory period of affiliation with the parties by which legislators are elected. Those parties that wish to form an electoral alliance may construct an electoral and legislative front (called party federation or *federação partidária* in Portuguese), but they must remain in the alliance for a certain period beyond elections. The current ad hoc electoral alliances have been purely of electoral convenience, often formed by parties that are ideologically so diverse, and dissolved after elections. As an anti-corruption measure, Brazilian legislators proposed public financing of electoral campaigns. The public funds would be distributed to political parties exclusively in order to facilitate their oversights, and private financing would be prohibited.<sup>125</sup>

One of the remarkable features of the political reform discussed in the Brazilian Congress over the last decade is that it essentially affects deputies and senators are little affected. The proposals to adopt a closed-list system and prohibit ad hoc electoral alliances only affect candidates in the PR system, which is used to elect federal deputies. Senators are elected through a majoritarian (plurality) rule. The party fidelity law also affect deputies more than

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<sup>125</sup> Cintra (2005) provides an extensive review of the arguments in favor and against those reform proposals.



senators because the deputies' terms of office are four years, and if deputies change their party affiliations during their term, the chance that they cannot run for reelection is quite high (depending on the timing of the moves).<sup>126</sup> In contrast, since the senators' terms of office are eight years, they have a longer period in which they are allowed to change their party affiliations and still run for reelection. Moreover, party-switching is more frequent in the Chamber than in the Senate. Only the exclusivity of publicly financed campaigns would affect both senators and deputies similarly.

### **7.3.2. The Positions of the Chamber and Senate on Political Reform**

The asymmetric impact of political reform generated different attitudes between senators and deputies. Most senators were either in favor of the proposed changes (closed-list PR, party fidelity, publicly financed campaign, and banning ad hoc electoral alliances and its replacement by the federation of parties) or indifferent to them. The PSDB, PFL, PMDB, and PT, which altogether comprised approximately 80 percent of the members of the Senate, supported those measures. Those are also parties with aspiration to govern by winning the presidency. Some resistance was found in small parties that relied on electoral alliances to elect legislators.<sup>127</sup>

In contrast, the positions of the deputies were much more polarized in the Chamber. Since most changes would directly influence deputies, they were either intensely for or against them. As in the Senate, the Chamber's PSDB and PT defended the proposed changes. The PFL and PMDB were more divided than the PSDB and PT because of internal factions that were against one or more of the proposed changes. In the PFL, the Carlista faction from Bahia

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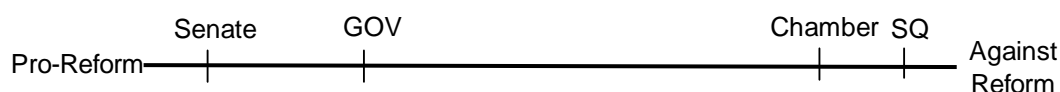
<sup>126</sup> In Brazil, all candidates must be endorsed by a political party to run for election.

<sup>127</sup> Author's interview with Gilberto Guerzoni, Consultor Legislativo do Senado Federal, April 27, 2004.

(named after Senator Antonio Carlos Magalhães), which controls a significant portion of the PFL members, was fervently against the closed list proposal. However, the PFL leadership supported the reform. The PMDB leaders were more cautious about the closed-list system. The PL, PTB, and PP were emphatically against the reform. For example, in the current 2003-06 Congress, the PL decided to impose the party's position against the reform on its members. The proposed changes would harm the PL electorally, because it was one of the parties that benefited from party migration (see Table 7.2). Moreover, many PL members have evangelical bases of support and thus do not rely on expensive campaign strategies. Smaller parties had issue with ending ad hoc electoral alliances.

Both the Cardoso and Lula governments ostensibly supported political reform. As discussed in the previous section, fewer, stronger, more programmatic, and more coherent political parties would facilitate governing and executive-legislative relations by giving the executive a stable base of legislative support. It would dispense the burden of having to negotiate with individual legislators for each policy the government pursues. Hence, political reform would be in the government's interest in the long run. In the short run, however, both the Cardoso and particularly Lula governments benefited from the weakness of the party system. Since party migration generally occurs towards parties in the government from opposition parties, both presidents amplified their support bases in Congress within one year of assuming their presidencies. For example, the Lula government started as a minority government; however, it controlled more than 70 percent of the Chamber's seats within a year. Thus the Brazilian government faces a dilemma: political reform will increase the likelihood of having a stable majority in Congress, which benefits the government, but it is also a direct beneficiary of the weak party system in the short run.

To summarize, the positions of the Chamber, Senate, and government about political reform as defined in section 7.3.1 given the simple majority rule would be as follows. Overall, the Senate favors political reform, the Chamber is against it (i.e., it prefers the status quo), and the government is ambivalent (see Figure 7.2).



**Figure 7.2: The Positions of the Chamber, Senate, and Government on Political Reform**

### **7.3.3. The Deadlock of Political Reform in the Chamber**

Political reform has been on the agenda of the Brazilian Congress over a decade. Brazilians rejected parliamentarism in a referendum in 1993 and the 1994 Constitutional Revision failed to produce any significant changes in the political system. From 1995 onward, every Congress—both the Chamber and Senate—has studied political reform by creating special, ad hoc committees on the subject. As discussed in Section 7.3.1, the debates have centered on the electoral rules and political parties. Unlike the case of gun control, however, these special committees worked separately and independently in the Chamber and Senate, although they examined almost identical issues. Therefore, there was no formal bicameral coordination to create a consensus bill or to arrange which house should initiate the process and thus have the last word prerogative.

In 1995, the Senate installed an ad hoc committee on political parties. The committee understood that the principal problem of the Brazilian political system was the fragility of the party system and exaggerated individualism. It pointed to the open-list PR as the primary cause of party weakness (Senado Federal 1998). This committee recommended the approval of various proposals circulating in the house, including banning ad hoc electoral alliances, adopting a mixed electoral system, increasing the required time for party affiliation, and making electoral campaigns exclusively financed by public funds. With the submission of the final report, the committee was dissolved at the end of 1998.

During the first half of the next Congress (1999-2002), Senator Sérgio Machado (reporting officer of the committee on political parties) and others submitted a series of bills discussed in the special committee. Most of the materials examined in the committee were constitutional amendment proposals. However, since most of the same materials could be addressed by ordinary legislation (which requires only a simple majority to approve rather than a three-fifth majority), the senators chose to present bills of ordinary law to pursue proposed changes. Machado submitted two bills in 1999, one pertaining to ad hoc electoral alliances and the other on the exclusive public financing of electoral campaigns. In the same year, other senators proposed the institution of a closed-list PR and the option for party federation. In the following year, another bill proposing a stricter party fidelity law was proposed. The Senate expeditiously passed these bills, most of which were under urgency, between 1999 and 2001. It is worth noting that the most controversial change in the Chamber, the adoption of a closed-list system, passed the upper house in a year without much opposition. In fact, it was approved by the “conclusive power” of the CCJ (Committee on Constitution, Justice and Citizenship),

dispensing floor examinations. Since these were statutory bills, the Senate would have the last word prerogative should the Chamber pass them.

Once arrived in the Chamber, however, the lower house treated those Senate bills just like any other proposals without priorities. Without legislative priorities, they would face the slow, normal process in which many bills never get out of the committees. In fact, the Senate's political reform bills were sent to the CCJR (Committee on Constitution, Justice, and Editing), some of them as early as 1999, and have stayed there ever since. Instead of examining the Senate bills, the Chamber created yet another ad hoc committee on political reform in 2001.<sup>128</sup> The objective of this committee was to study party fidelity, public finance of electoral campaigns, closed-list rule, and electoral alliances—in other words, the same materials the Senate bills treated—and produce its own bills. However, this committee did not conclude its study on ample political reform because of the difficulty in reaching consensus among different parties.

In 2003, with the beginning of a new Congress, political reform was back in the congressional deliberation and the Lula government. Both the Chamber's and Senate's presidents designated political reform as one of their legislative priorities. Since the Senate had already passed their bills, whether Congress was capable of passing political reform depended upon the Chamber. The new Chamber president, João Paulo Cunha, instituted yet another ad hoc committee on political reform commissioned to study the subject. At the same time, the Chamber president obtained an accord with party leaders to examine under the urgency rule the outcomes of the committee's deliberation by directly taking the bills to the floor bypassing a deliberation in the CCJC.

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<sup>128</sup> The Chamber had another ad hoc committee on political reform during the previous 1995-98 Congress.

Instead of examining the Senate bills, which would speed up the passage of political reform by Congress, the political reform committee once again decided to take on the task of producing brand new bills. The themes remained the same, however: the institution of a closed-list system; the abolition of ad hoc electoral alliances and its replacement by federation of parties; electoral campaigns exclusively financed by public funds; and party fidelity. In spite of the fierce opposition by the PL, PP, and PTB, the committee managed to approve two bills by December 2003, one on party fidelity and the other covering a closed-list system, federation of parties, and public financing of electoral campaigns. When asked why the committee did not adopt the bills that had already been approved by the Senate and pending examination in the Chamber, the committee's reporting officer, Deputy Ronaldo Caiado (PFL-Goiás), stated that each of the Senate bills dealt with a specific issue and the committee was looking for a more systemic change. Thus, the deputy proposed a new bill that was more comprehensive than any single one of the Senate's proposals.<sup>129</sup> Despite the initial agreement to take the committee's proposals directly to the floor, however, with the vetoes by the parties in the government coalition—PP, PL, and PTB, the Chamber president instructed that the bills be examined by the CCJC. At that point, it appeared that they would stay in the CCJC forever, following the fate of the Senate bills.

A corruption scandal that broke out at the beginning of 2004 reinvigorated the enthusiasm for political reform in the Chamber as well as in the Senate and the government.<sup>130</sup> By defining the defects of the existing electoral rules as the root cause of the ubiquitous corruption, Chamber President Cunha convoked a meeting of the College of Leaders in order to

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<sup>129</sup> Author's interview with Deputy Ronaldo Caiado, March 3, 2004.

<sup>130</sup> The scandal involved the then under-chief of parliamentary affairs of the Presidential Office who was shown in a video tape requesting money illegally ostensibly for the PT's 2002 electoral campaigns. Within 48 hours of its publication, political reform turned into a number one priority of the government and the presidents of the Chamber and the Senate.

expedite the passage of political reform. However, the leaders of the PTB, PP, PL, and PDT refused to sign an urgency petition.<sup>131</sup> The PT, which signed the petition initially, pressured by its legislative allies also withdrew its signature. As the preoccupation with the scandal dissipated, so did the zeal for political reform. Although many senators expressed their concerns about the delays in the examination of political reform, they did not exercise the extent of the pressure they did to approve gun control. As of this writing, political reform bills sit still in the Chamber's CCJR.

#### 7.4. CONCLUSION

Both gun control and political reform were statutory bills with their origins in the Senate, but their fates proved to be different. In 2003, the gun control bill was approved by Congress and sanctioned by the president. Political reform, which has been on legislative agenda for more than a decade, seems to have suffered a legislative lapse in Congress once again. What accounts for the difference?

One of the important features of statutory bills is that the house of origin makes the final decision in case of bicameral disagreements. This means that Brazilian bicameralism is asymmetric in the examination of statutory bills. Hypothesis 7 states that legislative delay and gridlock are less likely under asymmetric bicameralism than symmetric bicameralism. Moreover, the combination of the last word prerogative accorded to the initiating house under asymmetric bicameralism and hypothesis 4, which predicts less compromise for the initial house

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<sup>131</sup> "Atraso na reforma política," *Correio Brasiliense*, March 5, 2004.

than for the reviewing house, suggests that gun control and political reform, if passed by Congress, should be closer to the upper house’s ideal points than those of the lower house. However, the passage of those bills also depended upon another variable: bicameral preferences. When bicameral preferences are convergent, the expected outcome is a bill’s passage. By contrast, when bicameral preferences are divergent, the expected outcome is gridlock regardless of the bicameral type.

**Table 7.3: Summary of Hypotheses and Evidence**

	<b>Preference (H1)</b>	<b>Initial house advantage (H4)</b>	<b>Bicameral type (H7)</b>	<b>Predicted outcome</b>	<b>Actual outcome</b>
<b>Gun Control</b>	Convergent	Yes	Asymmetric	Approval in line with initial proposal	Approval in line with initial proposal
<b>Political Reform</b>	Divergent	Yes	Asymmetric	Rejection or stalemate	Stalemate

Table 7.3 summarizes the hypotheses and findings in this chapter. The analysis of the gun control legislation showed that both the Senate and Chamber desired stricter gun legislation. However, there was some notable opposition in the Chamber to that measure. In order to resolve bicameral disagreements, the Senate and Chamber held a joint committee to produce a consensus bill, making bicameral preferences relatively convergent with respect to the bill. Subsequently the Senate passed the bill first, thereby acquiring the first word prerogative. Although the bill suffered certain modifications in the Chamber, the Senate reinstated the principal points of the legislation lost in the lower house and sent the bill to the president for sanctioning. This finding is consistent with the theoretical expectation. Were it deliberated under the symmetric, navette



rule, the bill would have been required to return to the Chamber as a result of the modifications made by the Senate, causing further delays in its passage.

In contrast to the gun control bill, the Senate's political reform bills, once arrived in the Chamber, were practically buried in a committee. Since political reform proposals were also bills of ordinary law, as the initiating house, the Senate held the last word prerogative. What was different between the cases of gun control and political reform was that, in the case of the latter, many deputies were intensely against the proposed changes and others had many reservations with certain points of the reform. Thus, despite much talk, deputies on average seem to have preferred the preservation of the status quo to radical changes in the electoral rules and party behavior. Once again, this case demonstrated the importance of bicameral convergence of preferences for a passage of a bill. Institutions are mechanisms by which preferences are processed. If preferences are divergent enough, institutions do not wield much impact in the political process.

Political reform is one of those reforms that are permanently on the agenda. Each and every Congress declared political reform as one of the legislative priorities. In each Congress, an ad hoc committee on the subject was created. However, political reform was never approved. If the Senate passed it, it became stalled in the Chamber, but the Chamber does not pass its own bills. At every scandal, many legislators cry for political reform. But as the political scandal subsides, so does the zeal for reform.

Those case studies also revealed that legislators are not simply passive followers of the rules of the game. Understanding the implications of the asymmetric rules, both senators and deputies tried to maneuver. With respect to gun control, the insistence of the senators to have the last word prerogative led Senator Calheiros, with support of his colleagues, to petition urgency at

the close of the joint committee. This was a decisive moment that gave the Senate the right to make the final decision on the legislation. This last word prerogative acquired by the Senate in turn caused repercussions in the Chamber. The critics of the gun control bill refused to vote it in the fear that any compromise reached in the Chamber would not be honored in the Senate. The Chamber president attempted to resolve the impasse by requesting the executive to send a new bill on gun control, which would give the lower house the last word prerogative. In the case of political reform, it appears that the insistent refusal of the Chamber to examine and approve the Senate bills stemmed, at least in part, from the fact that doing so would give the upper house the last word prerogative. Since the bills of both houses proposed almost identical changes, the Chamber could have examined the Senate bills instead of newly drafting its own bills. But the fact that most of the proposed changes would affect deputies much more than senators must have led even its advocates to refuse to accept the Senate proposals.

## 8. CHAPTER 8: CONCLUSION

This dissertation had two objectives. First, I sought to demonstrate that bicameral politics are consequential even in president-dominant new democracies such as Brazil. Previous work on legislative politics in nascent presidential democracies has too often focused on the executive or the lower chamber even where the legislature is bicameral. I argued that bicameralism affects legislative capacity, i.e., the ability to make law effectively and efficiently. My second objective was to uncover the ways in which bicameralism impacts legislative capacity. Bicameralism affects legislative capacity but their effects are mediated by various factors, namely the location of preferences, legislative rules, and the context in which inter-chamber bargaining occurs. The previous chapters provided strong support for the arguments of this dissertation.

Chapter 2 discussed theories of lawmaking in a bicameral legislature and put forward a set of hypotheses. Social choice theories posit that bicameralism reduces the propensity for policy change than unicameralism. Bicameralism induces policy immobility when the ideal points of the two houses are sufficiently apart from each other. When their ideal points overlap, however, policy change is as likely to occur in bicameralism as in unicameralism. Therefore, the stability-inducing property of bicameralism critically depends upon the two houses having divergent preferences.

When both houses desire a policy change, bicameral bargaining is a key to understanding both the timing of new legislation and its outcome. Rational delay in passing legislation can occur under the assumptions of impatience and incomplete information. I highlighted three hypotheses based on Rubinstein's (1982, 1985) and Alesina and Drazen's (1991) bargaining

models. First, impatience reduces the likelihood for legislative delay. Second, the longer the expected duration of legislation, the longer will be the pre-legislation bargaining. Finally, the house that initiates a bill's consideration is likely to compromise less than the reviewing house.

In addition, Chapter 2 also discussed the effects of informational expertise. Rogers (1998) argued that bills initiated by the lower house are more likely to be approved than bills initiated by the upper house because of the former's lower cost of information acquisition. Finally, I argued that legislative rules and bicameral "types" are likely to affect legislative capacity. Supermajority rules raise the probability of legislative gridlock because it reduces the size of the winset of the status quo policy. There is also a greater likelihood of legislative delay and gridlock under symmetric bicameralism than under asymmetric bicameralism.

Chapter 3 discussed formal and informal legislative rules and practices under the 1988 Brazilian Constitution. It identified the actors and decision rules with respect to constitutional amendments, statutory bills, and presidential decrees. The chapter also compared Brazilian deputies and senators in terms of their political trajectories and electoral mandates, and drew their implications for legislative behavior.

In Chapter 4, I tested the hypotheses developed in Chapter 2. By arguing that greater attention should be given to analyzing the timing of legislation as well as legislative outcomes, I used event history analysis to examine the dynamics of legislative successes and failures. The results of statistical analyses with Brazilian legislative data (1988-2004) supported various hypotheses of this dissertation. The data analysis demonstrated that bicameral divergences are indeed consequential for legislative capacity in Brazil. In particular, bicameral incongruence raises the risk of legislative gridlock but the president having (coalitional) majorities in both houses of Congress speeds up legislative approval.

In order to assess the impact of impatience on lawmaking, I used two indicators that measure the desire to legislate sooner than later. One measure of impatience was presidential and legislative elections. Their findings were interesting in that they pointed to opposite effects of presidential and legislative elections. The estimation results showed that the likelihood of bill approval decreases during legislative election periods whereas it rises during presidential election years. In contrast, the risk of bill rejection increases during legislative election years but diminishes during presidential election years. Thus, I did not find conclusive evidence for the effects of impatience when it was measured by elections. However, when impatience was measured by inflation rates, I found clear effects on legislative activities: high levels of inflation increase both bill approval and rejection, but low inflation has no impact on such activities.

Other notable findings include that the chances of approval are higher for bills proposing a temporary change than those proposing a permanent change. This finding suggests the relative ease of bargaining in striking an agreement when one proposes a short-term change rather than a long-term change. With respect to the effects of bicameral sequence, when the Chamber of Deputies is the first house to deliberate (and pass) a bill, it has a much higher chance of being approved subsequently and a lower risk of being rejected compared to when the Senate is an initiating house. Finally, contrary to the hypothesis, I found no statistical evidence indicating that decision rules and bicameral types impact bill approval or rejection.

The next three chapters investigated several important legislative issues discussed in Brazil since democratization. Chapter 5 examined pension reform under Presidents Cardoso and Lula. It took nearly four years for Cardoso's pension reform to pass the Brazilian Congress, and the reform that Congress passed was far from what the government had originally proposed. In

contrast, Congress approved Lula's pension reform rather quickly, in less than a year. In addition, the fundamental items of Lula's reform proposal suffered only minor adjustments.

The chapter highlighted the difficulties of passing controversial legislation under a qualified majority rule, especially in the system with weak party discipline, and the striking impact that impatience has on the timing of a proposal's passage. The bargaining hypothesis maintains that impatience speeds up the passage of legislation. The pension reforms in Brazil were considered primarily a question of public finance, and as such economic contexts in which the issue was debated affected the levels of impatience of legislative actors. Cardoso's pension reform began in the environment of economic improvement, and consequently it entailed prolonged negotiations. The threat of an imminent economic crisis led to the reform's passage at the end of 1998. Contrary to Cardoso's experience, adverse economic situations marked Lula's inauguration in 2003. Legislative actors understood that the approval of the pension reform was a necessary step to restore Brazil's economic credibility. Hence, Lula's pension reform was examined in a context of high impatience, and the proposal passed in less than a year.

Both Cardoso's and Lula's pension reforms were constitutional amendment proposals, and thus they required three-fifth majorities in both houses of the legislature. Anecdotal evidence showed that the governments did not have to concede as much as they actually did had the proposals been examined under simple or absolute majority rules. The need to secure comfortable supermajority votes compelled both Cardoso and Lula to bargain with legislators by attenuating the proposed changes, funding deputies' pork projects, and providing patronage. These findings are consistent with the hypothesis that supermajority rules raise the hurdle of a bill's passage.

Evidence also provided support for the preference hypothesis. The preferences of the Chamber and the Senate were relatively convergent on Lula's pension reform, and consequently Congress passed the president's proposal virtually intact, involving only minor adjustments in the terms of key provisions. This compared with the struggle of the Cardoso government in passing the proposal in the Chamber. Although a predominant majority of senators supported the reform, most deputies were either against the entire proposal or had some reservations with it. Therefore, not only were some of the principal items of Cardoso's reform defeated; the entire reform proposal was once rejected on the Chamber floor. Only political maneuvering of the legislative process saved the proposal in the lower house.

I also pointed out, however, that the divergent preferences of the lower and upper houses—distant from each other but both located in one side of the status quo (favoring a less generous pension system)—allowed for a greater extent of reform than what would have been possible if the president had faced only the lower house. Since Cardoso did not have veto power, the Chamber's most preferred position (closer to the status quo) would have prevailed if it were the sole house. In fact, the proposal approved by the Chamber in the first round of deliberation was so shattered that government leaders thought it became innocuous. The return of some of the fundamental provisions was made possible only because the Senate, with its preference close to the government's, reinstated them in the proposal sent back to the Chamber. In addition, the proposal was examined in the Chamber under pressure of an impending economic crisis, and some of the provisions rejected in the first round were accepted this time.

The next chapter considered the impatience and preference hypotheses by examining congressional attempts to limit and regulate presidential decree authority called provisional measure. This was a case in which proposed legislation was desired by almost all legislators but

its passage involved significant delays in Congress. The Brazilian president's provisional measure has always been a controversial instrument since its inception by the 1988 democratic constitution. The unrestrained use of decree authority led the Brazilian Congress to seek a limitation of this powerful presidential authority first in the early 1990s during President Collor's term, and second in the mid-1990s during President Cardoso's era. Unfortunately, Collor's impeachment in 1992 led to the tabling of the bill, and therefore the results were inconclusive.

However, the constitutional amendment proposal submitted in 1995 during Cardoso's term was voted and approved by Congress. In this case, the Chamber and the Senate had to bargain on at least two critical points: the new rules regarding decrees' examination in Congress and the extent to which presidential decree authority should be limited. The Chamber proposed a more restrictive decree regime than the Senate. The Senate insisted on new rules that would enhance its power, which the Chamber opposed. Thus, the two houses' preferences were divergent on the details of a new decree regime despite the fact that there was a near consensus on the need to limit and regulate decree authority. Since the two houses had to resolve their divergences by the navette rule, and since their initial levels of impatience were not high, they were unable to reach a compromise to pass the bill. In 2001, three factors raised senators' impatience: the increased likelihood that the bill would be aborted should it return to the Chamber; the outbreak of a series of scandals that led to the resignations of senate leaders; and the threat of an intervention by the Supreme Federal Court. Consequently, the Senate's elevated impatience led to accepting the Chamber's version of the proposal in 2001. Congress finally promulgated the constitutional amendment after almost six years of the bill shuttling back and forth between the two chambers.



The case of presidential decree authority also suggested that policy dimensions may not be necessarily fixed as often assumed in spatial models of decisionmaking. The assumption of fixed policy space may hold if decisions are made instantaneously. However, if bargaining involves significant delays, a possibility exists that political players add new dimensions or come up with creative solutions. Given the Collor government's argument that presidential decree authority could not be modified by a complementary law, Brazilian legislators found a constitutional amendment as a way to impose limitations on the power. With an impossibility of reaching an agreement over the issue of taxation, the term *tributo* was substituted for by the term *imposto*, thereby allowing decrees on certain types of taxes to go into effect immediately. Moreover, the stalemate of the proposal in Congress gave President Cardoso an opportunity to negotiate an *expansion* of decree authority by introducing a new dimension (Article 246 of the Constitution) that was not originally included in either the Senate's or Chamber's proposal.

Chapter 7 analyzed gun control and political reform. Both gun control and political reform were statutory bills with their origins in the Senate, but their fates diverged. In 2003, Congress passed the gun control bill and it was subsequently sanctioned by the president. Political reform, which has been on the legislative agenda for more than a decade, seems to have suffered a legislative lapse in Congress once again. One of the important features of statutory bills is that the house of origin makes the final decision in case of bicameral disagreements. This means that Brazilian bicameralism is asymmetric in the examination of statutory bills. The theory predicted a lower likelihood of legislative delay and gridlock under asymmetric bicameralism than symmetric bicameralism. In addition, the combination of the last word prerogative accorded to the initiating house and the hypothesis that predicts less compromise for the initial house than for the reviewing house suggests that gun control and political reform, if

passed by Congress, should be closer to the upper house's ideal points than those of the lower house. However, the passage of those bills also depended upon another variable: bicameral preferences. Convergent bicameral preferences predict a bill's passage while divergent bicameral preferences predict non-passage.

The analysis of the gun control legislation showed that both the Senate and Chamber desired stricter gun legislation. However, there was some notable opposition in the Chamber to that measure. In order to resolve bicameral disagreements, the Senate and Chamber held a joint committee to produce a consensus bill, making bicameral preferences relatively harmonious with respect to the bill. The Senate subsequently passed the bill first, thereby acquiring the first word prerogative. Although the bill suffered certain modifications in the Chamber, the Senate reinstalled the principal points of the legislation lost in the lower house. The new gun control law was sanctioned in December 2003 in less than six months of creating a joint committee. Were it deliberated under the symmetric, navette rule, the bill would have been required to return to the Chamber as a result of the modifications made by the Senate, causing further delays in its passage. Thus, the case of gun control supported the hypotheses.

In contrast, the Senate's political reform bills, once arrived in the Chamber, were practically buried in a committee. Since political reform proposals were also bills of ordinary law, as the initiating house, the Senate held the last word prerogative. What distinguished political reform from gun control was that, in the case of the former, many deputies were intensely against the proposed changes and others had many reservations with certain points of the reform. Thus, despite much talk, deputies on average seem to have preferred the preservation of the status quo to radical changes in the electoral rules and party behavior. Once again, this

case demonstrated the importance of bicameral convergence of preferences for the passage of a bill.

One of the important lessons that emerged from these case studies is that legislators are not simply passive followers of the rules of the game. Understanding the implications of the asymmetric rules, both senators and deputies tried to maneuver. With respect to gun control, the insistence of the senators to have the last word prerogative led them to petition urgency at the close of the joint committee. This was a decisive moment that gave the Senate the right to make the final decision on the legislation. This last word prerogative acquired by the Senate in turn caused repercussions in the Chamber. The critics of the gun control bill refused to vote on it in the fear that the accords made within the Chamber would not be honored in the Senate. The Chamber president attempted to resolve the impasse by requesting the executive to send a new bill on gun control, which would give the lower house the last word prerogative. In the case of political reform, it appears that the Chamber's refusal to examine and approve the Senate bills stemmed, at least in part, from the fact that doing so would give the upper house the last word prerogative. Since the bills of both houses proposed almost identical changes, the Chamber could have examined the Senate bills. However, the lower house chose instead to draft its own bills. The fact that most of the proposed changes would affect deputies much more than senators must have led even its advocates to refuse to accept the Senate proposals.

The previous chapters thus demonstrated that modeling bicameralism explicitly in legislative research enhances a better understanding of the dynamics of lawmaking. Even the case of presidential decree authority, which is an exemplary case of executive-legislative conflict, revealed that bicameral politics played a critical role in the timing and the outcomes of the reform.

Table 8.1 summarizes the findings of the empirical analyses. The hypothesis that was repeatedly confirmed by the evidence, both quantitatively and qualitatively, regards the distance of bicameral preferences. Evidence showed that convergent bicameral preferences instigated speedy approval of legislation whereas gridlock ensued when bicameral preferences were divergent. The preeminence of bicameral preferences as a determinant of legislative success and failure was particularly clear in the case of political reform. Even though political reform was considered under an asymmetric bicameral rule and a simple majority rule, which would, *ceteris paribus*, prompt speedy approval of legislation (as in the case of gun control), the Chamber's opposition to such reform led to the tabling of the bill. This case demonstrated that if preferences are divergent enough, institutions do not wield much impact in the political process. In other words, preferences dominate institutions.

**Table 8.1: Summary of Findings**

	<b>Quantitative Analysis</b>	<b>Pension Reform</b>	<b>Decree Authority</b>	<b>Gun Control</b>	<b>Political Reform</b>
<b>Bicameral Preference (H1)</b>	O	O	O	O	O
<b>Impatience (H2)</b>	Δ	O	O	--	--
<b>Duration of Legislation (H3)</b>	O	--	--	--	--
<b>First Mover Advantage (H4)</b>	--	--	--	O	?
<b>Lower House Advantage (H5)</b>	O	--	--	--	--
<b>Voting Quota (H6)</b>	X	O	--	--	--
<b>Bicameral Type (H7)</b>	X	--	--	O	?

Note: O = The hypothesis is supported; Δ = The hypothesis has mixed evidence; X = The hypothesis is not supported; ? = Legislation is still under consideration; and -- = The hypothesis is not subject to testing.

The impatience hypothesis was also consistently supported by the case studies. The cases of pension reform and presidential decree authority both showed that elevated impatience led to

greater concessions, thus making it possible to pass these reforms. Furthermore, although the event history analysis produced inconclusive evidence when impatience was measured by upcoming elections, it provided strong support when the variable was measured by inflationary crises.

The event history analysis also strongly supported the hypotheses regarding the duration of legislation and the lower house advantage in lawmaking. While I was not able to test the first mover (initiating house's) advantage over the content of legislation in the quantitative analysis, this hypothesis also found some support in the case of gun control.

The weakest hypotheses turned out to be the supermajority rule and types of bicameralism. Neither of these hypotheses found support in the quantitative analysis. However, their effects were clear in the case studies. As for asymmetric bicameralism, the new gun control legislation that passed the Brazilian Congress maintained the terms defended by the Senate, the holder of the last word in this instance. With respect to the effects of a supermajority rule, the anecdotal evidence revealed that both Presidents Cardoso and Lula, both of whom held comfortable simple majorities but lacked solid supermajorities in at least one of the houses of Congress, had to make significant concessions in the texts of their proposals and distributed or promised to distribute pork and patronage in order to increase the margins of vote to pass their reforms under the supermajority rule. Therefore, the non-results of those variables in the quantitative analysis may be caused by the possibility that the government and Congress expend extra resources to pass bills under supermajority rules. Therefore, an analysis of the costs of supermajority rules need more research.

Future research should also take a step further and identify and include legislative priorities in a quantitative analysis. As Ames (2001) point out, there are many important

legislative issues that never even reach Congress. On the other hand, there are many non-priority and/or non-controversial bills that do get proposed and approved. A more accurate measure of legislative success would thus analyze how priority bills fare in a bicameral (or even in a unicameral) legislature.

Another interesting line of research would be to explore under what conditions bicameral divergences can, paradoxically, lead to greater policy change. The general prediction of bicameral divergence based on spatial models is policy immobility. Nonetheless, prolonged bargaining between the two chambers caused by bicameral divergences may allow for the emergence of innovations and addition of new policy dimensions, as was the case in the reform of presidential decree authority. Legislators' preferences may also shift during protracted negotiations as a result of learning. These and other possibilities call for further research.

This dissertation also has policy implications. First, it pointed to the importance for the president to have solid bases of support in both chambers of Congress in order to strengthen legislative capacity. Both quantitative and case study analyses indicated that the president having bicameral majorities increased legislative success not only in bills' approval in Congress but also in reducing delays in their passage. The research also showed that having a comfortable majority only in one house was not sufficient for legislative success. Cardoso enjoyed a solid majority in the Senate but his base of support in the Chamber—although it was numerically a majority—was precarious. Consequently, the president experienced many defeats in the lower house and had to resort to pork and patronage in order to pass key reforms. Similarly, Lula's coalition in the Senate was much smaller than that in the Chamber. As a result, many initiatives of the Lula government were defeated in the Senate. Moreover, although Lula was able to construct a large coalition in the Chamber, his support base was primarily built around

opportunism rather than a programmatic cohesion. As such, his government had to use pork and patronage in order to pass legislation even in the Chamber where the president had a large majority. One of the remedies to reduce inefficiency in the legislative process and strengthen the government's solid bases of support is political reform. The introduction of a closed list system and stricter party fidelity law that have long been debated in the Brazilian Congress would be an important first step to increase legislative capacity.

Another measure that the Brazilian Congress can adopt to promote legislative efficiency is a conference committee. The creation of joint committees is a rare occurrence in the Brazilian Congress. Even when they are created to draft a common bill, they have no binding power over the two houses. Both the Chamber and the Senate can amend the joint committee's bill, and the bill must follow the normal route of examination just like any other bills. Given that the legislative process in the Brazilian Congress is extremely slow, creating a conference committee to study controversial and/or urgent legislation and giving the Chamber and the Senate the power to vote only up or down the committee's bill would make the process more efficient.

This dissertation also has implications for the design of political institutions more generally. For centuries, political pundits have discussed the merits of bicameralism. Among others, bicameralism has been argued to increase policy stability and improve quality of legislation by providing more opportunities for deliberation and by increasing veto points that would block the passage of flawed bills. In contrast, in the last few decades, many political scientists and policymakers have deplored the state of policy immobility as a consequence of having more veto gates that any legislation must clear before it is implemented. Whether policy immobility is beneficial or detrimental for a society depends upon the current situation. If a prevailing policy is generally considered "good," then policy mobility may be harmful. By

contrast, if a prevailing policy is sub-optimal, or even harmful, then a political system's capacity to change the status quo may be desirable. In this latter sense, a "merit" of bicameralism—stability that bicameralism is argued to induce—may be considered a "liability."

But bicameralism takes a variety of forms. It ranges from a bicameralism where one chamber has virtually no legislative power and little democratic legitimacy (as in the British system) to a bicameralism where both chambers possess equal legislative powers and democratic legitimacy (as in the United States and Brazil). The findings of this dissertation showed that the forms and rules of bicameral legislatures and the configuration of legislative actors' preferences critically determine a political system's legislative capacity.

In the last decade, not-so-democratic leaders of Latin American countries (Presidents Alberto Fujimori of Peru and Hugo Chavez of Venezuela) undertook sweeping institutional reforms. One of the changes made by those leaders was to abolish their countries' bicameral congresses to adopt unicameral legislatures. For reform-minded political leaders, bicameral legislatures mean one more institutional check on their power than single-chamber legislatures would place on them. This additional barrier to reform may frustrate both those political leaders and those who support them. But we have to question—would citizens really want to remove such a hurdle permanently? Once a bicameral legislature is reformed into a unicameral one, returning to bicameralism may be more difficult than one would think, because, as a political science caveat has taught us, whoever is in charge of the legislative process now must be persuaded to accept an institutional constraint on their power.

The forms of institutions that a political system will adopt should ultimately be determined by the citizens. But to make a good decision, citizens and institutional reformers need be informed of various forms that bicameral legislatures can take and their varying



consequences for policymaking processes and their outcomes. I hope this dissertation contributed to such information building.

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