

Delegating Powers to the Cabinet: the Efficient Secret of Coalition Governance with decree powers in Brazil after 2001.

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Abstract: In this paper, I explore how a change in the decision-making process of the presidential decree authority in 2001 increased the benefits of coalition partners over policy contents of the presidential decrees. The reform of 2001 limited the capacity of the president to legislate unilaterally; instead, it became strategic for the president to initiate legislative changes by Executive decrees only with legislative support based on the cabinet positions in the government. I suggest that the new rule has influenced the policy content of decrees that affect the policy-making strategies of presidents. The empirical analysis of changes to presidential decrees over time suggests that the value of belonging to the ruling coalition increases with the procedural advantages of the government's legislative power. The majority, in turn, provide the numbers to keep the coalition hold on power secure. My hypothesis is that balance between policy and legislative support is achieved through the elaborate intra-legislative distribution of procedural privileges. My empirical analysis will test a spatial model based on changes of decree power procedures in the Brazilian multiparty system. I suggest that the effect of the reform of the presidential agenda powers increases the policy advantages that coalition members with cabinet positions can extract from the participation in the Government.

Keywords: Institutional choice, contract theory, coalitions, presidential systems, cabinet governance.

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Introduction

The essence of presidentialism is the separation of powers, but the overlapping notion of checks and balances has significant variation in the president's legislative authority in presidential regimes (Shugart and Carey, 1992). In most post-authoritarian presidential systems, independently elected presidents have constitutionally increased lawmaking abilities (1992, 19). While the literature has acknowledged the impact of president's legislative powers on overall legislative production, the characteristics of the laws produced in such contexts have not been fully explored. This paper explains how the institutional reform of 2001 in Brazil, designed to limit the legislative decree powers of the executive, increased the lawmaking abilities of the government coalition.

These questions are especially pertinent for those studying legislative politics in presidential democracies outside the U.S, where presidents are often the principal initiators of legislation, and decree authority is a common method by which presidents control legislative agendas. Decree authority is the capacity of presidents legislates unilaterally, and it raises legitimate concerns about the viability of legislatures in new democracies. At the same time, legislatures often choose to delegate authority via executive decrees, legitimizing the perception that decrees do not represent presidential usurpation of legislative authority (Carey and Shugart 1998).

In practice, in various cases, presidents have taken full advantage of these powers to stretch the constitutional limits of their offices. Nominal constraints, such as a requirement to seek ex-post legislative approval are only sometimes effective and, in any case, cannot undo the consequences of decrees that have already been enacted.

In response to these concerns, Brazil and other presidentialist countries have

amended their constitutions and designed new checks on their presidents. For example, Argentina enacted constitutional reforms in 1994 to regulate the issue of decrees after president Menen abuse of the prerogative during the economic crisis of the 90's. In a constitutional reform in 1995, Nicaragua abolished executive decree initiative on fiscal issues. In 1996, Ecuador enacted a constitutional amendment that limited the number of decrees that could be made annually. Finally, Brazil enacted a constitutional reform in 2001 limiting the areas that executive decrees could cover and also constrained their policy-making process.

This paper will focus on the effects of Brazil's 2001 reform of decree powers, which was designed to limit presidential agenda-setting powers. Specifically, the reform was designed to limit the capacity of the president to legislate unilaterally. A constitutional amendment (Amendment 32) limited the policy areas where decrees could be issued. Moreover, the reform changed the decision-making process by enforcing the ex-ante consideration of the decree via the immediate formation of a special committee in congress to limit the possibility of discretion. The amendment also intended to offset the president's ability to reissue expired decrees indefinitely.

I argue that ironically the amendment has had a perverse effect. The amendment did not discourage the strategy of governance through decree powers, as expected by the reformers. Rather, it increased the use of decree powers to implement the government's agenda after 2001. This paper documents and explains this apparent puzzle. I argue that the 2001 reform not have the expected effect occurred because of exploitable features in the institutions established to control the presidency. The presence in the legislature of political allies with cabinet positions meant that decrees powers could serve as a shared instrument of governance to advance the legislative agenda of members of the ruling

coalition.

I advance this new claim by arguing that while the 2001 reform has improved the congressional accountability over unilateral decision-making by the president; it has increased the relative power of parties with cabinet positions in terms of their control of the legislative agenda.

The paper proceeds as follow. In section 1, I review the literature about executive decrees, and describe in detail the institutional change of 2001. I report the unanticipated effect on the total number of decrees after the passage of the reform, in relation to the expectations of the reformers. I argue that the reform of 2001 worked out as an instrument of legislative accountability, but failed to strictly limit government action. In section 2, I illustrate the effects of the changes to legislative accountability over decrees using a simple spatial model. The main result is that the reform changed the default outcome in favor of the majority in congress, from “keep the decree” before 2001 to “reject the decree” after 2001. As a result, the reform limited the presidential unilateral capacity to change the status quo without prior legislative authorization. Because executive decrees can concern matters normally important to congress deliberation, the reform improved congress’ control over executive law making. Finally, I explore preliminary evidences emerging from an original dataset of decree content in the post-reform period. I expect that the increasing number of decrees will reflect pre-agreements on the policy agenda of the government with the member of the ruling coalition. I argue that the legislative process under the new rules diminished the power of the floor of the congress, in terms of members voting for or against the bills that are put on the floor agenda. Instead, I argue that the new rules incentivize key events of the legislative process to occur beforehand; with pre-commitments among coalition partners of the government to determine which bills will be

considered on the floor as a decree. The Brazilian decree-making process has been transformed to give procedural advantage to members of the majority coalition. The cooperation inside the government seems to confer procedural privileges to loyal partners of the government. I conclude that similar to parliamentary regimes, government formation can have effects on decision-making choices of presidential regimes.

Executive Decree Power in Presidential Systems: The Brazilian Case

During the decade following Brazil's transition to democracy and the promulgation of the 1988 Constitution, scholars and political observers alike lamented the rise of an overly powerful executive in Brazil. The constitution gave the president instruments to influence his legislative agenda, such as the line-item veto, fast-track mechanisms (urgency powers), the exclusive prerogative to initiate certain types of legislation, and vast influence over the budget (Pereira and Mueller 2000; Cheibub 2010). Formal constitutional powers also gave the president the ability to pass decrees with the force of law. Article 62 of the country's 1988 Constitution granted the president the power to issue "provisional measures" (*medidas provisórias*) that have the force of law for thirty days in cases of "urgency and relevance". The original version of Article 62 stipulated that these decrees would have immediate legal effect but would expire after 30 days if Congress did not convert them into law. Furthermore, if Congress failed to consider decrees within 30 days, presidents could reissue the expired decrees month after month, sometimes for years at a time.

In practice, Brazil's presidents have wielded their decree powers in ways go beyond the 1988 Constitution's original intent. In all these situations, they have asserted the legality and constitutionality of their actions, and if Congress has not explicitly

accepted or rejected a decree, it remains in effect during congressional inaction and could be reissued indefinitely. Thus, decree power has provided a first mover advantage for the president to initiate policy changes before securing congressional support (Shugart and Carey 1998).

As a result, the literature on Brazilian politics has recognize that legislation by decree represents one of the main agenda-setting strategies of the Brazilian government after the redemocratization of the country (Amorim Neto 2006; Amorim Neto, Cox McCubbins 2008). A key characteristic of decree powers in Brazil is the fact that they have become part of the regular presidential policy-making strategy (Amorim Neto, 2006). Decree power never followed its extraordinary prerequisite to be used as an instrument for policy-making in urgent situations. Rather, the governance by decree became a recurring strategy of the presidents to push its ordinary policy priorities (Figueiredo and Limongi, 2000). The constitutional requisite of “relevance and urgency” was sufficiently vague to allow presidents to legislate on topics ranging from severe financial crisis to fishing rights in the Amazon river (Amorin, Cox, and McCubbins, 2006 p. 560)

However, not long after the recurring use of decrees by the first elected president in 1989, the Brazilian Supreme Court authorized the executive to reissue decrees the Congress had not considered in due time. In practice, when decrees were not converted into laws within the terms provided by the constitution, they were issued once more and so maintained the force of law. This precedent led to increase the reissuing of lapsed decrees for long periods without legislative approval.

Between the approval of the 1988 Constitution to 2001, Brazilian presidents issued 5,491 decrees. Notably, only 619 were original decrees; that is, 88% of the presidential

decrees issued during the period were reiterations of expired decrees that had not approved on time. At least since the first Fernando Henrique Cardoso Government (1995-1998), the number of decrees reissued were increasingly persistent: from the 160 decrees proposed during his first term, which endured four years, there have been 2, 449 reissued decrees, which means that every decree was generally reissued more than 15 times, and lasted without a final legislative decision for one year and three months on average. Under this process, the president could easily control the legislative agenda with decrees that legislators did not have enough time to review. Moreover, the continuous use of this strategy imposed policies that the Brazilian Congress has not had time to consider.

Congress has responded to this apparent misuse of constitutional decree powers by amending the Constitution. Several constitutional amendments were floated in Congress in the early 1990s, but none of the efforts at reforming Article 62 have intended to abolish executive decree authority.

In September of 2001, the Brazilian Congress amended the 1988 Constitution to control and diminish the unilateral legislative powers of the Brazilian presidency by reforming the executive's decree power prerogatives. The Brazilian Congress approved Amendment 32, which limited the capacity of the President to legislate unilaterally. The reform was designed to limit the areas where decrees could be issued. Moreover, after the reform all decrees would have an immediate consideration by a special committee constitutionally created to consider *ex-ante* its political relevance, and Congress would now be required to vote on all decrees within a fixed period of time. Finally, the reform also intended to offer a solution to the fact that presidents could reissue expired decrees indefinitely. The new reform not only restricted the reissue of expired decrees by the Brazilian president, but also enforced the invalidation of expired decrees that were not

approved on time. Table 1 shows the specific constitutional changes inaugurated by the amendment 32 in Brazil.

Table 1 - Decision Making Process of Decree Powers before and after the 2001 Amendment in Brazil		
Action	Constitution of 1988. Art.62	After Amendment 32 of 2001
<i>Official Publication of the Decree</i> <i>Dispatch to the Congress</i>	Immediately	Immediately
<i>Party leaders indicate the members of the Special Committee</i>	Not specified	24 hours after issued (Art. 62.4)
<i>Timing for the deliberation of the Committee (Yes or No Vote)</i>	None	48 hours after issued
<i>Area Limitations</i>	None	<ul style="list-style-type: none"> - Nationality - Citizenship - Political rights - Political parties - Electoral law - Criminal law - Criminal process - Civil process - Organization of Judiciary and -General Attorney, career and guarantees to members - Multi-annual budgets - Budgetary process - Budget - Additional and supplementary credits (except art. 167 § 3)
<i>Timing for Congress final vote</i>	30 days (not enforced)	45 days (enforced) Art. 62.4
<i>Timing extension in case of no deliberation</i>	No limit (reissued indefinitely)	Maximum 60 days (default: no decree) Art. 62.4

*Source: Article 62, 1988 Constitution, Brazil.

According to Table 1, the president must submit the decree to a special Bicameral Congressional Commission no more than 24 hours after its enactment. The Commission's membership proportionally reflects the political representation of the parties in each House. The Commission then has 48 hours to issue its deliberation and send it to the plenary of both Houses for immediate consideration. Forty-five days after its enactment, if Congress has not given consideration to a decree, it would displace all other issues on the legislative

voting agenda until a vote on the decree is taken.

The new constitutional provisions constrain the President, but at the same time, they increase the capacity of the majority leadership in Congress.

The next table, Table 2, illustrates the effects of the Amendment 32 during the second Cardoso government (1999-2002).

Table 2 - Use of Decree Power by Brazilian Presidents, 1988-2005				
President	Original Decrees	Monthly Mean of Original Decrees	Reissued Decrees	Monthly Mean of Reissues
José Sarney, 1988–1990	125	5.2	22	0.9
Fernando Collor, 1990–1992	89	2.9	70	2.3
Itamar Franco, 1992–1994	142	5.3	363	13.4
Fernando H. Cardoso first term, 1995–1998	160	3.3	2,449	35.4
Fernando H. Cardoso second term, pre-Amendment 32 (1999–9/10/2001)	103	3.1	2,587	78.4
Fernando H. Cardoso second term, post-Amendment 32 (9/11/2001–2002)	102	6.8	N/A	N/A
Lula, 2003–12/31/2005	171	4.8	N/A	N/A

Note: After Amendment 32 limited presidents to one reissue of a decree, statistics on reissues were no longer kept.
Source: Presidência da República, Casa Civil, Subchefia para Assuntos Jurídicos (www.planalto.gov.br).

Amendment 32 was intended to put an end to the practice of continuous reissuing, and it immediately succeeded.

The reformers' expectation was also that the number of decrees would decline with the amendment. The reformers proclaimed that the overall level of reliance on decrees

would decrease because of the new institutional checks.

Such a belief was based largely on the restriction on policy areas that could be changed by presidential decree initiative. This restriction applies to changes in the legislation about nationality and citizenship, political rights, political parties, criminal law, changes in the Judiciary, budget laws and new spending policies. Only situations of war and internal calamity would justify legal decrees in such areas. A special committee formed by members of Congress would be formed in 48 hours to deliberate about the relevance of the decree initiative. This committee has the power not only to deliberate about the constitutional prerequisites of the Congress, but also to decide about the relevance of the decree and consider whether it should be immediately invalidated.

However, as we see in Table 2, the enactment of original decrees remained at levels comparable to those prevailing before the amendment. Even with the new restrictions, the presidential strategy to initiate legislation by decree was not dramatically curtailed as expected. The rationality behind such expectation was based on the capacity of veto power of the special committee, and the new voting requirement that would enforce a limitation on the period of time to vote on new decrees before they lose effect. According to the chair of the Congress in the time, deputy Aécio Neves, the new timing requirement introduced by the reform seemed likely to increase the threat of veto by the legislature against less urgent decrees; and it would diminish the president strategy to enact decrees to sidestep congress in its legislative role.¹

However, the amendment appears to have had different consequences from what was expected. Not only did the total number of decrees issued each month not decrease, but also the reliance on decrees seems to have increased.

¹ Folha de São Paulo, September 05 of 2001. (Brazilian Journal) Page 3, Section Politics. Aécio Neves interview.

Table 3 – Decrees approved by year

Year	TOTAL	Approved/Total
1988	15	0.73
1989	83	0.96
1990	87	0.85
1991	8	0.87
1992	10	0.70
1993	47	0.59
1994	91	0.43
1995	30	0.52
1996	39	0.38
1997	33	0.93
1998	55	0.27
1999	45	0.73
2000	25	0.72
2001	34	0.75
2001/reform	20	0.90
2002	82	0.80
2003	58	0.98
2004	73	0.90
2005	42	0.80

The average success rate (approved/issued) before the reform was 0.62, while the average success rate after the reform was 0.87. The difference of means between these success rates is significant at 95%.

In terms of decree law procedures, before the reform, the Executive took advantage of the power to issue decrees since they became law immediately and remained in effect for thirty days without parliamentary approval. In addition to this, before Amendment 32, the consolidated practice to "reissue" them after the period of validity provided less control to the legislators of the voting requirements of new decrees.

As stated above, the intent of Amendment 32 was to generate a set of mutually reinforcing disincentives against the indiscriminate use of new decrees and reissuing of old ones. In fact, without the ex-post control of the final vote of the Congress, the space for executive discretion has remained. Because a lapsed or rejected decree cannot be reintroduced in the same legislative session after 2001, presidents have only one chance to

get it right—they have up to 120 days, maximum, in which to form a majority around some version of the decree. These rules, along with the restrictions on various types of content, were intended to “raise the bar” for the use of decrees. In the literature, Carey and Shugart (1998, 1-29) argue that legislatures are more likely to delegate decree authority to the extent that they face severe bargaining problems or when concerns about agency loss are not severe. The authors support the view that decree authority is frequently a matter of rational delegation by legislatures rather than usurpation of authority by powerful presidencies. But how did the new rule work?

In the next section I use simple spatial model that helps to illustrate the changes the reform produced on legislative strategies. Most of the spatial model was based on Moe and Howell (1999) presidential unilateral action model, and I add strategic game trees to interpret the differences on the outcomes.

Spatial Model of Policymaking by Decree and the Effects of the Constitutional Change of 2001

Spatial models are a standard tool for exploring struggles among political actors over policy and power. Such models are incomplete in this case, because some important features of the problem (discussed in the section below) cannot readily be taken into account. Nonetheless, I think it is useful at this point to consider very briefly a simple model that helps illustrate the kind of strategic responses presidents have before and after the changes in the rules of 2001. The policy dimensions can be arrayed along a single dimension and that players have ideal points along this continuum. The president’s ideal

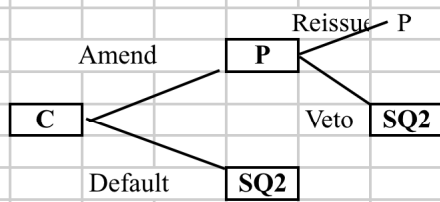
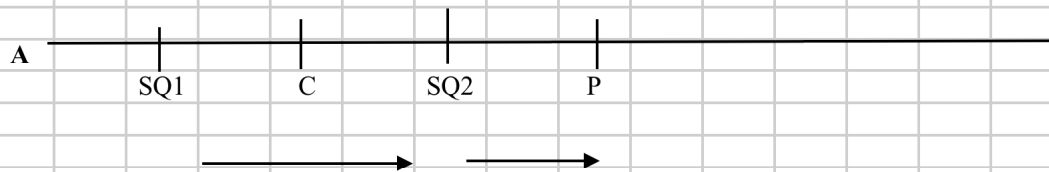
point is P, and Congress is treated as an unicameral body whose median legislator's ideal point is C.

Simple Spatial Model - Presidential Decree Power - Brazil

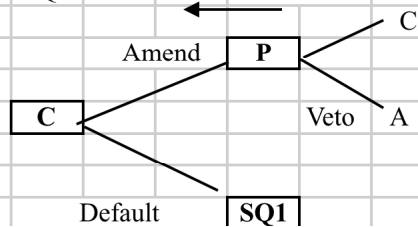
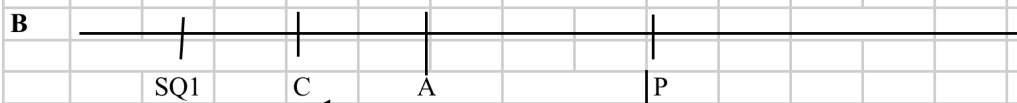
- P** = President
- C** = Congress Majority
- SQ1** = Status Quo before Decree issued
- SQ2** = New Status Quo

Spatial Model 1 - 1988- 2001

Countries: G Brazil



Spatial Model 2 - After 2001



In this simple scenario, I will consider only a configuration where the president wants to move the status quo close to her ideal point, and against congress most preferred policy. This configuration is the most adequate to understand the possibility of discretion of a president with decree power initiative.

Spatial model 1 illustrates what happens when policy is generated according to the constitutional rules of the Constitution of 1988. When the president is able to take unilateral action via unconstrained executive decree, as depicted in Figure A, the president can act on his own to move policy from SQ1 all the way to SQ2, and this new policy would be the new status quo. If Congress amends the decree, Congress would like to move policy back toward C. But any move in that direction would be successfully vetoed by the president, which would get SQ2. I am considering in this scenario that Congress can be indifferent between SQ1 and SQ2, and the default outcome would make the president better off at SQ2.

Thus, decree power before the amendment of 2001 allows the president to achieve legislative outcomes much closer to his ideal point, while Congress is correspondingly indifferent between SQ1 and SQ2. Note that the president does not get everything he might want. He would really prefer to move policy all the way to P. Now consider the possibility of continuously reissue a decree if Congress did not organize timely a majority opposition. The president could always reissue a modified decree. If Congress cannot take action to reject nothing better than the default outcome SQ2, it opens the possibility to the president to shift policy to the right of SQ2 issuing a new decree. A successful policy change at SQ2, and the political credits of the initiative, would open the possibility to move the policy all the way to P in case of Congress inaction.

Now consider the game tree of the spatial model 1, the default outcome in such

game tree for the congress would be “keep the decree”, and get SQ2 (the new status quo) avoiding the possibility of a reissue to P. In case of inability to act timely, Congress would end worst off and did not have enough power to avoid the first move advantage of a president moving in the direction of P. The reissuing of expired decrees could move the new status quo continuously closer to the president’s ideal point, considering the changing circumstances of an established new policy.

Now, consider the Figure B, Spatial model 2. This represents the new situation after the reform of 2001. I am also considering only one configuration in the spatial model.

The formation of a special committee to consider the decree issued in less than 48 hours Congress gives time to quick consider any move from SQ1 before the decree actually produce lasting effects. This gives capacity to the congress leadership to check presidential unilateral action by bargaining over the necessity and urgency of the initiative at SQ1 (the original status quo). If the Congress decides to consider the decrees after the reform, they would have 60 days to consider the new presidential proposal and propose amendments close to their ideal point. Congress would simply work to amend the decree imposing C as the new policy. The president—although he would like a further shift to the right—would have to accept any change closer to C; instead they would get SQ1, or would have to propose an ordinary legislative initiative. Decrees in this case would be a fast and effective way to enforce pre-agreements of the majority with the president. If the move of the policy change by decree favors both Congress and the president in the same direction, the majority and the president would be always better off and the opposition would never have the possibility to negotiate amendments or use delay tactics to avoid the policy change, as the ordinary lawmaking process would admit. If we assume that ordinary legislative initiatives of the majority have to have the vote and the amendments of both houses, and the

deliberation of at least two committees before being accepted as a law, the decree power would enforce an agreement on a new law in only 48 hours. The game tree illustrates the change in the default outcome. The default after the reform is to reject the decree, and continue at SQ1 when they cannot find an agreement to move the status quo for a new position. In such case, the game is similar to the ordinary law making.

This simple model that leaves out key aspects of the bargaining process after the constitutional amendment of 2001.

- 1) The reform controlled the presidential capacity to move the status quo *ex ante* by adding a veto point (the special committee).
- 2) The majority in Congress is better off under the new rules. They can negotiate any policy change in the direction of their ideal point.
- 3) The default outcome after 2001 is the rejection of the decree, and the punishment of the presidential initiative

The spatial analysis interpreted the institutional change of 2001 as beneficial to the majority in congress. More than a simple restriction to presidential decree powers, the change in the default outcomes seems to have redirected the presidential decree initiative as delegated instrument to push law agreements between the majority and the president.

Early works on Brazilian decrees have also interpreted their enactment as a form of delegation from the majority to the president. However, the delegation mechanism is interpreted as a process of abdication, not as a pre-commitment. Members of congress would delegate decree initiatives to enable policies that they favored without having to absorb any of the costs possibly linked to the policies (Figueiredo and

Limongi 1997). As I illustrate, this interpretation is not possible anymore because after 2001 the final vote is a constitutional requirement, as well the urgency prerequisite discussed in the special committee.

Spatial model 1 confirms the interpretation of Power (2008) about the consequences of decree powers in the Constitutions of 1988. Power (1998) claims that the notion that congress had delegated decree authority in 1988 to improve the prerogative of the authoritarian period did not foresee that the executive would make abusive use of the prerogative (Power 1998). As the figure shows, the possibility of reissuing would open the possibility to move the initiative from SQ2 to P when congress does not vote on the decree.

Also interpreting the period after 1988 based on the assumptions of delegation theory, Amorim Neto and Tafner's (2002) claim that the choice between the enactment of decrees and statutes are intrinsically related processes. Amorim Neto, Cox and McCubbins (2003) advance such a claim and argue that presidents choose strategically policy-making instruments. The choice is between the standard lawmaking procedures (statutes, complementary laws, and constitutional amendments), on the one hand, and decrees, on the other. According these authors, if the president is able to form a legislative cartel (a majority coalition), then he will typically have enough political support to pursue his legislative agenda by standard lawmaking procedures, rather than by decrees. If the president is unable or unwilling to form a cartel, then his weak legislative support will predispose him to govern by a unilateral policy-making instrument, that is, decrees. They propose that varying coalition formation styles imply different relationships between the executive and the legislative branches, and this ultimately affected the use of decrees, their reissuing, or the presidential initiation of bills in congress. Comparing the two

prevailing explanations of the use of decrees for the institutional framework of the 1988 constitution- unilateral action theory and delegation theory- Amorim Neto, Cox and McCubbins (2003) find inconsistent support for both theories, and they conclude that “there is no one-size-fits-all” theory of presidential action.

I propose to test my model for the effects of the 2001 reform from a different standpoint. My model assumes that the reform of 2001 created sufficient checks on the presidential initiative to initiate legislation by decree powers. I claim that the new institutional configuration transformed decrees in an efficient instrument of legislative delegation from the majority in Congress to the presidential office. Different from the previous literature, it implies that differences in preferences between Congress and the president preferences does not determines executive's choice between decrees or statutes after the 2001 reform. It implies that the new institutional configuration would determine the agreements around the content of decrees enacted.

My hypothesis for the effects of the reform suggests that when presidents face a multiparty assembly in which their own party is short of a majority, and they engage in coalition-making with parties and factions in the assembly to have a majority, the use of decrees would be part of a pre-agreement around the content of the decree enacted. Decree powers would help in the coalition-making process if they may be work as Cox and Morgenstern (2001) refer to as “integrative” powers. These are powers that permit the president to control the agenda of the congress, by declaring bills urgent or restricting amendments. As Cox and Morgenstern note, these powers make the president's role in some respects more akin to that of prime ministers in parliamentary systems, in that they allow the president to reach inside the legislature and shape its own internal bargaining.

Where such powers are provided constitutionally, presidents may seek to exercise them by building coalition cabinets somewhat resembling those of multiparty parliamentary systems.

My argument suggests that decree powers works better as an instrument of bargaining inside the majority coalition after 2001, which implies that government formation matters for the strategic use of procedural advantages, e.g, decree powers.

I derive some hypotheses from this claim suggesting that:

(a) Amendment 32 will have a positive effect on the frequency of decrees in majority cabinet coalitions.

Compared with situations of minority governments, decrees would be only effective for presidents with support of coalitions in the legislature.

(b) The frequency in the use of decrees is related to the ongoing levels of support for the president, and agreements inside the government over policy content;

(c) The choice for a decree initiative is related to the decree's content, and the distribution of power inside the Congress. Strategic ministers, and big parties within the coalition will have more procedural advantages to enact policies using decrees, than small parties, or parties without cabinet positions.

(d) The party of the president would be disproportionately favored only in case they were the biggest party in the house, and control the passage on the special committee.

Data and Evidence

My data analysis has several limitations to find statistically significant results for the hypothesis formulated. I depart from previous analysis of the topic (Amorim Neto Cox McCubbins 2006; Renno, Pereira and Powell 2009), by analyzing the content the all decrees before and after the Amendment of 2001.

My working hypothesis is that the restriction on decrees after 2001 makes it difficult to the president strategy to initiate policy change without legislative support. The character of the governance by decree has changed after the 2001 reform, and all decrees can only pass with an agreement inside the majority coalition in Congress, or in other words, as a collective instrument of the majority coalition inside the government. As the spatial model predicts, decrees without majority support in the Congress do not change the position of the status quo. The main difference is that initiative by decree gives advantage to the majority within the Congress to pass legislation with a procedural advantage and timing advantage, particularly in relation to the ordinary law-making process.

In order to understand how decrees relate to areas of the government connected with the supporting legislative majority as opposed to being merely presidential unilateral strategy, I classified all decrees according to areas of government action. At this point of the research I do not have information of the initiatives area by area according to each coalition member. However, I can estimate the effect of the changes on each area over time, and identify a possible effect of the 2001 reform on the general pattern.

In the next Table I explain the code of all policy areas in which decrees were issued between 1988 and 2006.

At this stage of the research, I have only classified the decrees according to areas where the president has exclusive initiative guaranteed by the constitution on one side, such as fiscal policy, budget policy, and administrative procedures; and policy initiatives that reflect legislative responsibilities, such as economic policies, and social policies. I expect that if economic and social policies were affected by the reform of 2001, the majority in the legislature have more participation on the government initiatives.

All decrees were fully read and classified. I compared the results with the government classification only disaggregating the economic dimension on budget and strict economic, and aggregating all other categories of policies as Social Policy. At this point it is not possible to classify each one according to the political relevance, but I think this initial classification can illuminate the areas where decrees were enacted in Brazil since the redemocratization.

Table 4 - Coding of Government Decrees and Classification by Policy Dimension

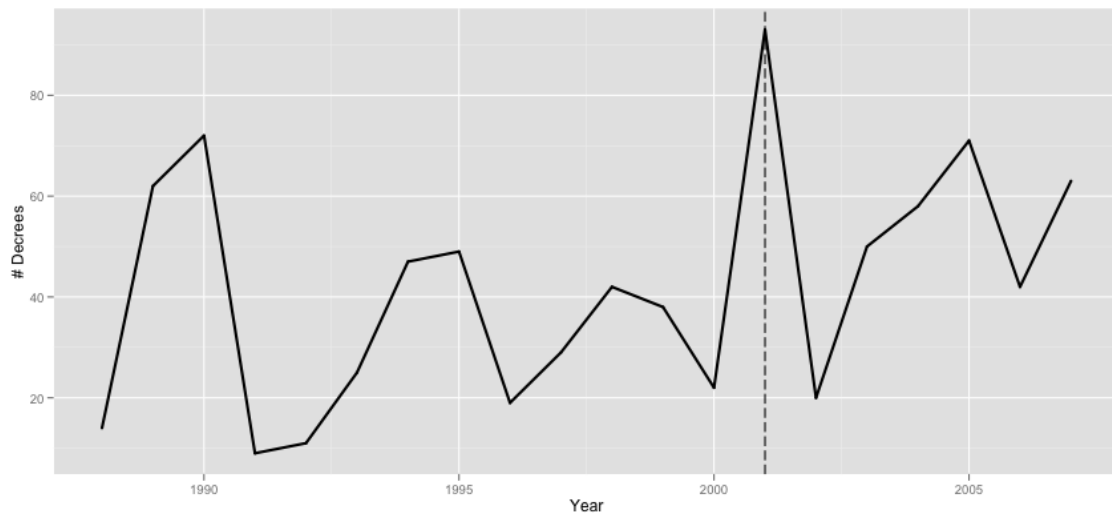
Policy Dimension	Types of Decrees Classified
Tax Policy	Income taxes, value-added tax, tax allowances, tax benefits,
Administrative Policy	State-owned corporations, foreign policy, agencies, bureaucratic management, regional policy administration, new ministers and policy jurisdictions
Budget Policy	Budget credits, budget process, budget regulation, new spending
Economic Policy	Industrial production levels, industrial relations, market (de-)regulation, unions and employer, privatization, associations, wage policy, job training, economic competitiveness, quota levels and price regulation of agriculture , farm subsidies, monetary policy, economic plans
Social Policy	Welfare, health services, Education, pollution, ecological preservation, “morality” issues, disabled workers’ benefits, family allowances, Environmental policy, Agricultural policy,

* Brazilian Presidency, n.d. Official website. Available <http://www.planalto.gov.br>.

In light of this classification of decrees' content, I show how the changes on each group of decrees were affected by the constitutional reform of 2001.

In the next graph (Graph-1), I illustrate the general distribution of decrees over time in the period analyzed.

Graph 1 – Number of Decrees enacted over time and the 2001 reform (1988 – 2006)



One important information of graph 1 is that the 2001 amendment had the expected effect of the reformers in decreasing the issue of new decrees immediately after the amendment. We can observe a drastic reduction in the total number of decrees after the peak of the second Cardoso government (1998-2002). The dotted line corresponds to the period after September of 2001, month of the change, where we can observe the gradual increase of decrees enacted after the reform.

In order to know if the 2001 amendment had any systematic effect on the distribution of the decrees, I applied a procedure used by Taylor (2000) for performing a

change-point analysis, which iteratively uses a combination of cumulative sum charts (CUSUM) and bootstrapping to detect changes in historical data.

The first important question to answer is: Did a change really occur on the patterns of decree enactment? When did the changes occur? What the influence of the threshold of the 2001 change for the general pattern? All these questions were analyzed by graphs with the technique of the change-point analysis.²

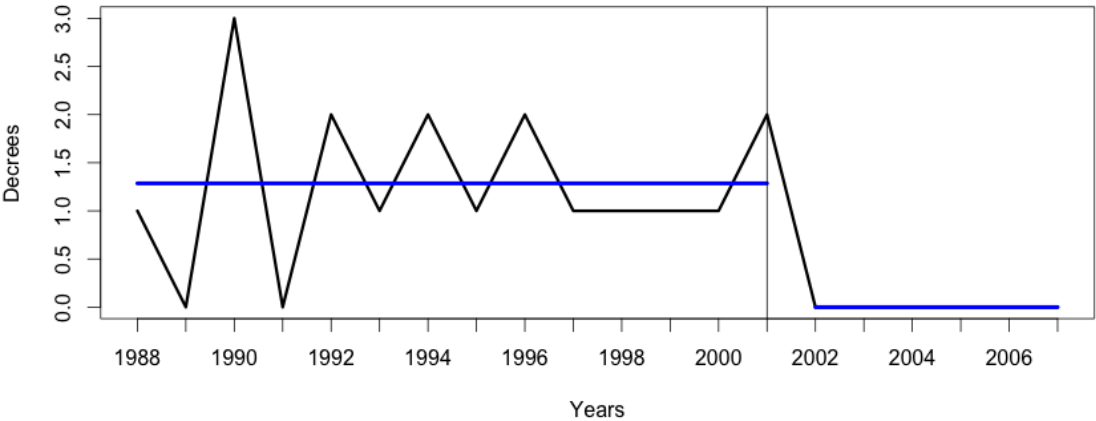
The change-point analysis is capable of detecting multiple changes on historical patterns. For each change it provides the likelihood that a change occurred and a confidence interval indicating when the change occurred. It is usually performed on time ordered data. One benefit of a change-point analysis is that it controls the change-wise error rate. As a result, each change detected is likely to be real. Control charts control the point-wise error rate. When there are thousands of data points, numerous points can exceed the control limits even when no change has occurred.

Suppose that during a period of time the values tend to be above the overall average. Most of the values added to the cumulative sum will be positive and the sum will steadily increase. A segment of the CUSUM chart with an upward slope indicates a period where the values tend to be above the overall average. Likewise a segment with a downward slope indicates a period of time where the values tend to be below the overall average. A sudden change in direction of the CUSUM indicates a sudden shift or change in the average. Periods where the CUSUM chart follows a relatively straight path indicate a period where the average did not change.

² Taylor, Wayne (2000), Change-Point Analyzer 2.0 shareware program, Taylor Enterprises, Libertyville, Illinois. Web: <http://www.variation.com/cpa>. The R package for changing point analysis is on <http://cran.r-project.org/web/packages/changepoint/index.html>. The codes used were based on <http://cran.r-project.org/web/packages/changepoint/changepoint.pdf>, with the general information about how to interpret the technique.

In order to test the efficiency of the technique I started analyzing the decrees on budget issues of the period. It is important to remember that the 2001 amendment forbid decrees on budget. In the next graph I will expect a very predictable pattern of no decrees after 2001.

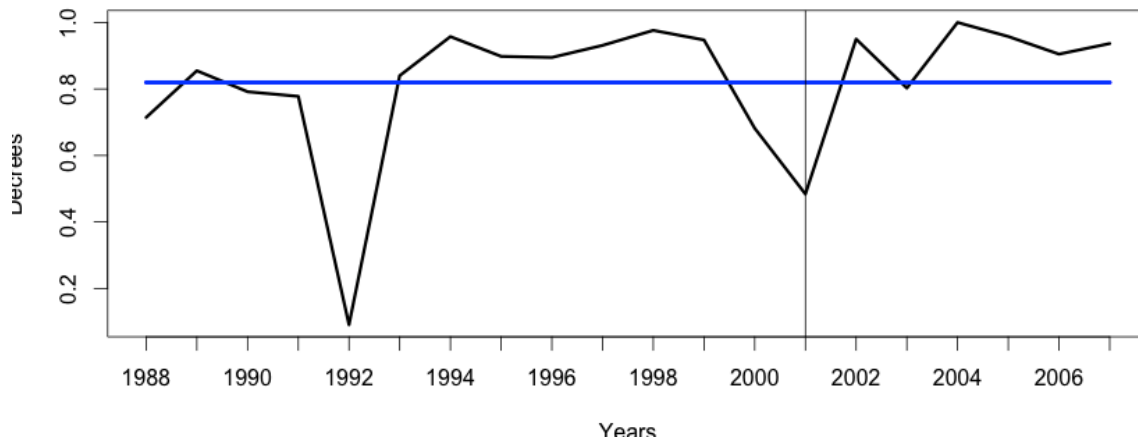
Graph 2 – Budget Decrees over time (1988 – 2006)



The institutional change of 2001 had the obvious effect push the pattern below the historical average. The interesting result is that the technique was able to capture the 2001 threshold exactly at the point where the pattern changes, and the average went to 0. It means that the reform of 2001 completely eliminate decrees on budget initiative by the president, something that the amendment forbid after the institutional change. Before 2001, presidents have had a more constant pattern of changes in the budget using decree powers. The control over changes on budget is an important effect of the reform of 2001. Usually they were very significant decrees because it could change the content of the budget law, the budget process, and the amendments on the budget made by the legislators.

In the next Graph (Graph 3) I explore the approval rates.

Graph 3 – Decrees Approved over time (1988 – 2006)

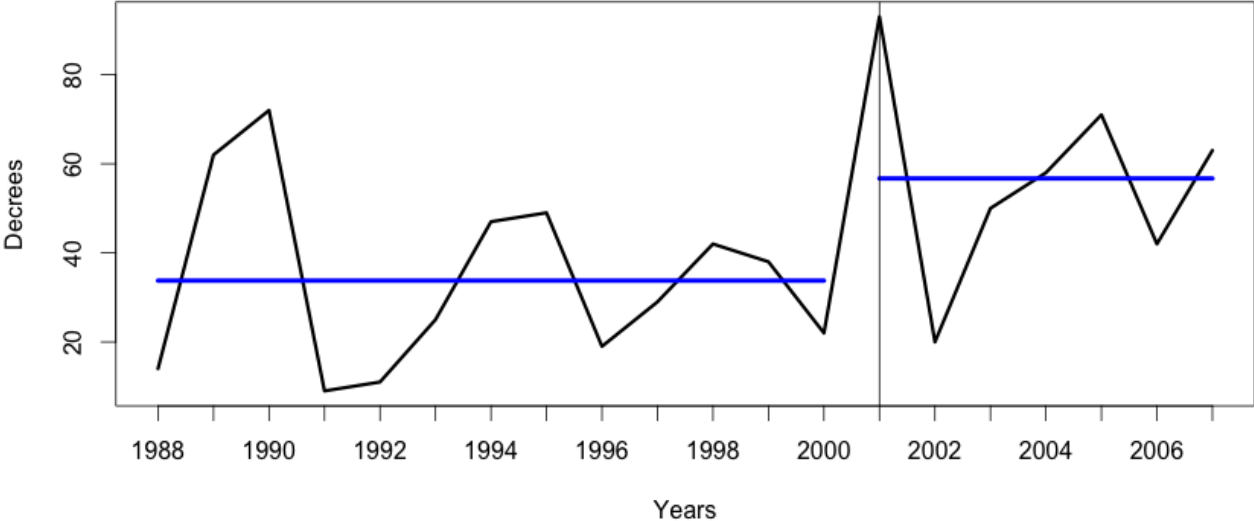


When analyzing the change in the patterns of the approval rates, we can see that the 2001 reform did not produce any effect before and after the threshold of 2001. We can conclude that despite the changes in the voting requirement after 2001, there is no general average change in the historical pattern of decrees approved in different governments, and under different rules. There is a movement in 1992, year of the minority government of Fernando Collor, but it did not produce an average change on the pattern for the subsequent periods.

In the Graph below (Graph 4), we have a very interesting pattern of the effect of the 2001 amendment on the total number of decrees. Different from the expectations of the reformers, the 2001 amendment increased the average number of decrees issued by the president. The decrease after the amendment did occur just after 2001, for the year 2002.

However, the pattern changes after 2003, which can be producing the increasing in the historical pattern. The graph is not exactly precise providing an explanatory power for the threshold, since it can be correlated with the beginning of a new government in 2003. In order to investigate the effect I am looking for, I will disaggregate the following graphs to understand the effect on each policy category of decrees issued in the period.

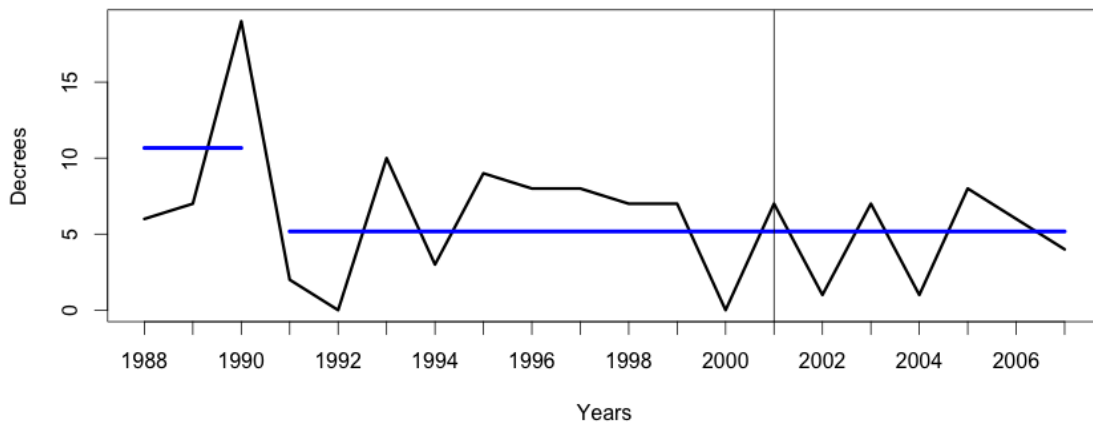
Graph 4 - Total Number of Decree over time (1988 – 2006)



The following Graph (Graph – 5) on fiscal policies shows that the change occurred around 1990 on the average pattern. It can be interpreted as an effect of the new economic policies of the beginning of the democratization period, and the tendency to less presidential discretion on tax policies by the use of decrees. Fiscal policy in Brazil is an exclusivity of president initiative on legislation according to the Constitution. It seems that

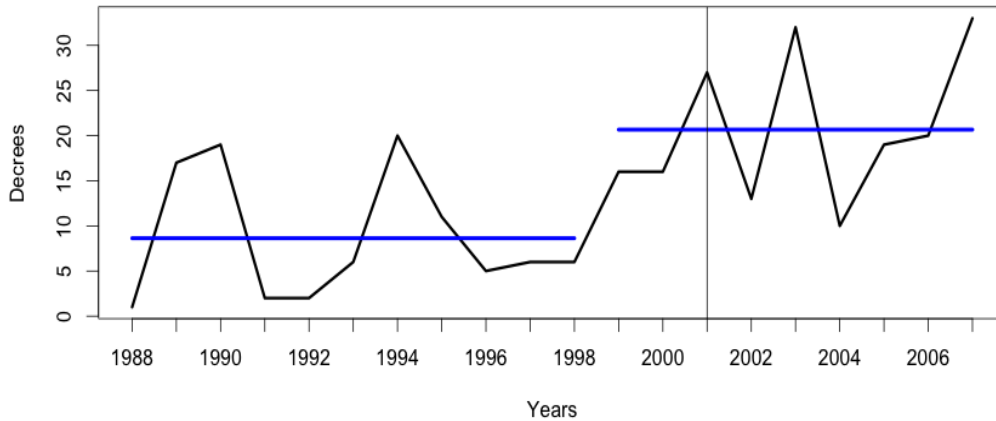
the reform did not affect the decrees on fiscal policy enacted by the president on the period of the reform. The pattern is interesting to consider how constant the changes on fiscal policy were made using decree powers.

Graph 5 – Fiscal Policy Decrees over time (1988 – 2006)



In the next graph about economic policies, I would expect some effect after the reform. If the reform has the effect that I am expecting, the reform will produce a new pattern on agreements around policies that affects the legislators' interest, and interest groups represented in congress. However the pattern of decrees on economic issues maintains the average of the Cardoso Government before and after the reform. The real effect seems to be the beginning of Cardoso government, 1998, and maintained even after the control of 2001.

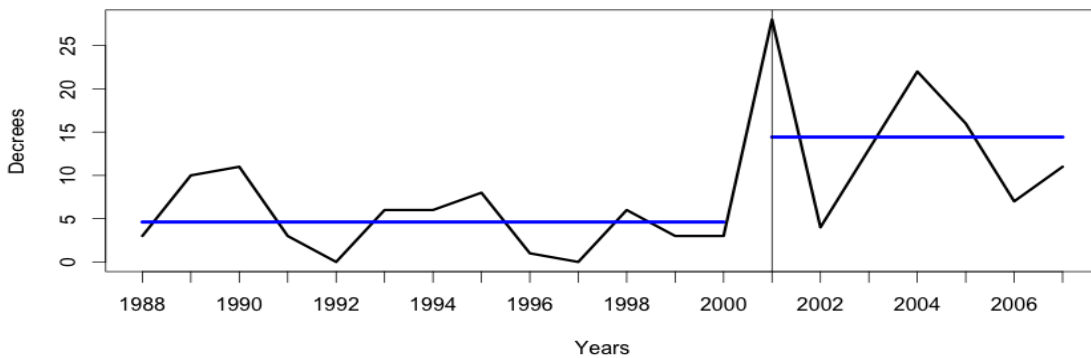
Graph 6 – Economic Policy Decree over time (1988 – 2006)



The interference in the economy via decree powers does not seem affected by the reform. Other factors, such as difference in governments, or the economic crisis after 1999, inaugurated a pattern that on average is more constant in both the last Cardoso government (1998-2002), and the first Lula government (2003-2006).

The most interesting result of the analysis seems plausible when we analyze the effects of the reform on areas where politicians in the legislature, and cabinet partners, care more, that is, actual policies and social programs. The effect of the reform on social policies seems affected after the 2001 reform, and shows a pattern that coincides with the end of the Cardoso Government and the beginning of the leftist Lula government. The effect of the Lula government seems a plausible rival hypothesis at this point because I did not control for other variables. But the next graph (Graph -8) suggests evidences for my theory about a pre-commitment around the use of decree powers a procedural advantage of the majority coalition in government.

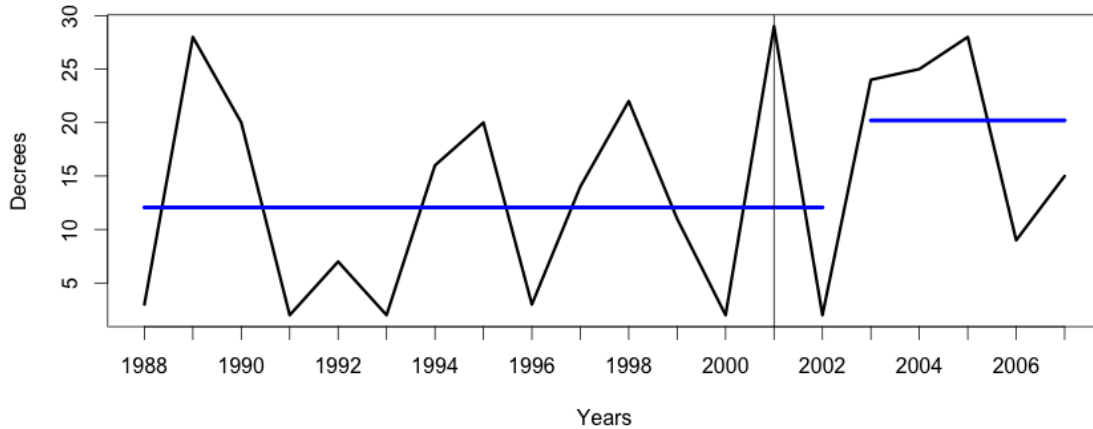
Graph 7 – Decrees on Social Policy over time (1988 – 2006)



One can argue that the last Cardoso government is pushing the average. But I use as the threshold the exact month of the change, September of 2001, as the threshold for the distribution. This period need more investigation, but the analytic technique provides very good evidence for the effect of the reform on social policies.

When we analyze the administrative decrees, which are mainly correlated with new bureaucratic positions, new agencies and ministerial positions, we could perceive the effect of the first Lula government (2003-2006) in decrees that usually benefits coalition partners with positions in the government. In this case the threshold did not have an apparent effect, and the new government after 2003 seems to been changing the pattern.

Graph 7 – Administrative Policy Decrees over time (1988 – 2006)



DISCUSSION

My hypothesis is that presidents can forge government exchanges about the use of procedural privileges after 2001. Therefore, the chance of success of the initiative would have more probability of support by the parties in the Legislature.

My interpretation of the pos-reform system in Brazil planned to clarify the possibility of an agreement inside the majoritarian coalition around the use of decree powers. The reform of 2001 increased the control of the majority of the Congress giving the possibility to bargain *ex-ante* the use of decree powers with the majority coalition.

I suggest, that the president could use the decree powers as part of the exchanges of legislative privileges among partners with cabinets in the government coalition, mainly

after 2001 when the powers of discretionary decrees were limited. My focus, different from the literature, is that executive control of the agenda is a choice made by a Congress to obtain gains from government formation. As McCubbins (1985) argued, delegation is not an all-or-nothing decision. Procedures determine the timing, the participation, and the capacity to challenge executive's decisions, and organize different forms of participation on delegated processes. Governments can use procedures to enfranchise partners and exclude others. By specifying who has access to the government cabinet, president can gain loyal partners, and the control of the procedures can increase the participation on government decisions and effectively push policy preferences of the participants of the government.

The effect of the 2001 reform created a scenario where the congress appears to care more about the outcomes of at least some delegated policy decisions. When delegating policymaking tasks, legislators might prefer to give the president ample power and discretion to effectively accomplish policymaking—if the president's policy preferences coincide with those of legislators. But the informational asymmetries inherent in this relationship mean that legislators run the risk that the president will use this discretion to pursue outcomes that conflict with their interests.

When considering delegation, legislators are likely to prefer an institutional design that allows them to monitor the president's behavior. By carefully designing and choosing what and how much to delegate, Congress can reduce the president's flexibility in ways that allow legislators to perceive any violation of their own preferences before such deviations become firmly established (Lupia and McCubbins).

In parliamentary systems, Laver and Shepsle (1996) have proposed a model of ministerial discretion over policy jurisdictions. Their argument is not that ministers have

exclusive decision-making rights in their area (although their models can be interpreted that way), but that they are making the proposals to the government on areas that no other person has the expertise and consequently are able to shape the government proposals. In their words: “Ministerial discretion results from the minister’s ability to shape the agenda of collective cabinet decisions rather than to determine cabinet decisions once the agenda had been set.” (Laver and Shepsle 1996: 33). In its turn, in Presidential regimes the government makes these proposals to the Congress using different policy-making strategies. Perhaps the most distinctive feature of my approach is the assumption that important policy decisions are taken by the executive with parties in the coalition. The new reform appears to increase the gains from government participation and decreases

the potential executive discretion. Ruling coalition members can have a vested interest in the government’s legislative success since their policy rents keep flowing as long as their coalition stays in power. Therefore, since ruling coalition partners are more likely to support the government, the participation on the agenda setter decisions can increase the benefits even more. This raises the value of coalition membership even further. In resume, the shared policy-making strategies create a mutually advantageous relationship between agenda setters and ruling coalition members. Because a failed decree does change the balance of political power in the legislature, given that decrees change the status quo immediately— the value of belonging to the ruling coalition does depend on the government’s power: more agenda power multiplies the policy rents that coalition members extract from the opposition. An ad-hoc agreement spreads out the rents over more coalition partners, decreasing the stake of each individual member, and with it their support. The combination of multiparty coalition presidency, even with strong agenda powers, seems to be a plausible agreement on governance.

The reform in Brazil created incentives for the president combine his own agenda powers with those of a legislative majority and the coalition thus formed could operate along the lines of a majority. I suggest that coalitional partners can bargain over the use of procedures to obtain the collective goals of the government.

Conclusion

The empirical analysis of the content of presidential decrees over time in the presidential Brazil suggests different patterns on decrees content after the 2001 reform. The example analyzed is when the strategy to initiate legislative changes by executive decrees is associated with policy areas of the interest of the majority coalition in Congress, and when they are more connected with executive exclusive initiatives. My finding is that the reform of 2001 has inaugurated a form of efficient secret inside the Brazilian government in Walter Bagehot terms. The delegation of powers of the majority to the government as a whole, or the delegation to a multiparty cabinet where legislators can influence decree's content.

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