ANALYSIS OF THE LEGISLATIVE FRAMEWORK IN THE BRAZILIAN POLICYMAKING PROCESS

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Abstract

In this dissertation, we aim to provide an analysis of the legislative Brazilian factors which affect the performance of policies. First, we will map the relationship between the Brazilian executive and legislature to assure substantial background to delve further into the analysis of the legislative framework dilemmas, which is our main goal in this work. The consequence of Brazilian presidentialism, the segmented multiparty system, the entrenched party indiscipline and the intricate peculiar federalism have given fragile legislative support to the last presidents in the recent Brazilian history.The analysis will further be based on primary and secondary empirical data that provides evidence of the main legislative problems: the exaggerated use of provisional measures by the president, excess of legislative bodies, overload of proposals, and great flexibility and distortion of roles and functions. The conclusion is that Brazilian institutions contribute to the maximization of legislators' self-interest, thereby causing diffusion and inefficacy in the legislative work and consequently disruption of the final policy results. Some topic recommendations are provided in order to diminish these negative effects and to re-establish the institutional order.

CONTENTS

Analysis of the legislative framework in the Brazilian policymaking process

1. Introduction

Unlike parliamentarian systems, which generally favour the formation of a legislative majority, Brazil, which adopted a presidentialist model and multiple parties at the end of the military dictatorship and resumption of democracy in 1985, has witnessed an eternal struggle for the executive to consolidate a majority in the Brazilian legislature. The Brazilian party system and its complex federalism also contribute to stimulating ambiguous and undisciplined legislators' behaviour. Furthermore, the precarious relationship between the executive and the legislature has also been intensified by the excessive use of authoritarian provisional measures, an executive instrument to enact law without previous legislature agreement.

Consequently, lengthy negotiations between the two powers are necessary to guarantee the approval of bills which are a fundamental part of the most important policies in Brazil. This has led to decisive participation of the legislative houses, the Chamber of Deputies and Federal Senate, in the bills' elaboration. Thus, the first two topics (2.1 and 2.2) of this dissertation are focused on the mapping of the institutional aspects that form this intricate relationship between the executive and the legislature. It is not our goal, however, to tackle the political, electoral and party problems, only highlight them. This map is necessary in stressing the non-legislative variables that affect our main focus: the institutional legislative problems.

Thus, once having the idea of how the Brazilian executive operates with the legislature, the analysis concentrates on the topic of legislative institutional deformities. In this stage, that is central in the dissertation, the analysis will further be based on primary and secondary empirical data that provides evidence of the current, main legislative problems: the exaggerated use of provisional measures by the president, excess of legislative bodies, overload of proposals, and great flexibility and distortion of roles and functions, thereby causing diffusion and inefficacy in the legislative work and consequently disruption of the final policy results. During this approach, the recommendations on solving those problems will be suggested whenever possible and viable, yet not necessarily.

The author has worked at the Brazilian Chamber of Deputies for 12 years, and such experience will be naturally considered in the analyses throughout the entire dissertation, underpinned by the sources and the data consulted. This fact also has facilitated the access to the primary existent data at the National Congress. Albeit the focus of this dissertation is upon the whole legislature, most of the analyses are centred on the Chamber of Deputies that has been more politically decisive to the policies implemented since the re-democratization period of the mid-eighties.

2. The fragile executive-legislature relationship and how it affects policies

2.1. Institutional policy context

In this topic and the next, we introduce a panoramic view of the Brazilian state, and the relationship between the executive and legislature. It is important to contextualize the institutional aspects that influence the political arena in the legislature. Following this, in the second part (topic 3) we will tackle deeper problems of the legislature's framework.

Brazil has three diverse and separate centres of power—the executive, the legislature and the judiciary, based on the United States' model (Martins, 1985, 51). The members of the executive and the legislature are periodically elected, while those of the judiciary are hired after being submitted for questioning in the Federal Senate. Each power has separate functions, but, at the same time, each complements the other to promote the checks and balances of the system (Silva, 1998, 110). This relationship

gains in intensity between the executive and the legislature in areas concerning policymaking.

The judiciary has also had a fundamental role in assisting the institutional balance in struggles between the executive and legislature. In 1992, for example, the Supreme Court was responsible for judging the former President Fernando Collor de Melo in an impeachment trial. The Supreme Court considered him guilty and decreed the loss of his mandate. As well, the judiciary is allowed to declare the unconstitutionality of a law and determine its revocation (Alston *et al*, 2004, 26).

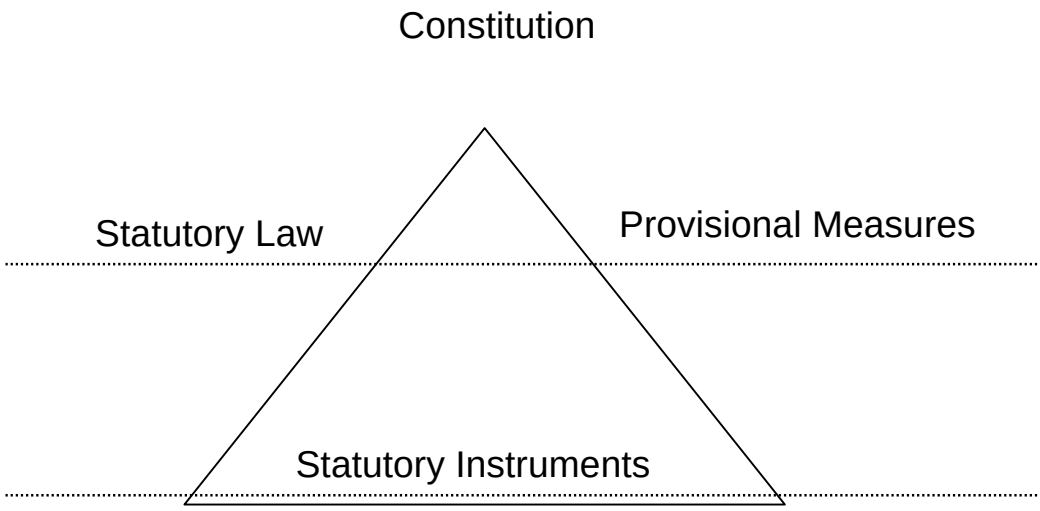
The executive is composed of the president of the republic in addition to the secretaries of state, whose ministers are appointed by the president. Their legitimacy is derived from a relationship of 'trust' with him; although the majority of ministers originate from parties which support the government in the legislature (as we will attest further), the president can dismiss and substitute them at any time and for any reason if his trust in them is lost.

The legislature—called the National Congress (NC)—is composed of two houses: the Chamber of Deputies and the Federal Senate (Silva,1988, 508). The former proportionally represents the population of the 26 state-members and the federal district, while the latter is formed by three representatives of each state-member and the federal district. There is also an auxiliary body responsible for assisting both houses on issues of inspections and control of the federal public system, named the National Account Court.

The Brazilian legal system works in a pyramid-like fashion, with the written Constitution[5] as the peak and the statutory instruments at the base, following the Bobbio's hierarchical model of legal order (1960, 17). Brazil has adopted a legalist system, which means that public policies need to be based on laws, or at least on general principles set up by laws.

[5] The last, and that currently in force, is the 1988 constitution.

Figure 1. Brazilian legal hierarchical order



Constitution – The major law and the presumption of the other laws' validity. It determines the rules of the policymaking process.

Statutory Laws – The ordinary and complementary laws approved by National Congress. This law has permanent validity.

Provisional Measures – Temporary laws enacted by the president. Same effects as the Statutory Laws. By the peculiar Brazilian system, provisional measures become definitive statutory laws after approval of the National Congress.

Statutory Instruments – Administrative acts (with imperative force) enacted by the president of the republic and the ministers, and regulatory agencies, but not submitted for Legislative approval. Statutory instruments must be supported by the system of laws (the upper part of the pyramid above).

In fact, in the national government, the policies and government bills are developed by the secretaries of state, which are divided into departments. Ministers, who manage the Secretaries, enjoy a level of discretion to design policies through statutory instruments, but other more complex or comprehensive policies demand new legal arrangements. This implies a new bill submitted for legislative approval (Di Petro, 1999, 175). For instance, the public-private partnership (PPP) policy implementation required the enactment of law[6] whereby the main

[6] Law n. 11.079 of 30th December 2004.

PPP's principles were established after major participation by the National Congress, and resulted in a profound alteration of the original text proposed as by the executive.

The first part of policy designing is usually triggered in the executive on the proposal of a bill. Yet it is in the legislative arena wherein the second stage of the building of policies should unfold. However, conflicts between the two powers may affect the policymaking process. Scott Mainwaring (1997, 56) sharply summarize the institutional Brazilian context:

> In brief, the combination of presidentialism, a fragmented multiparty system, undisciplined parties, and robust federalism is often difficult. Presidents can succeed in this institutional context and several have, but the system makes it difficult for presidents to establish reliable bases of support.

Unlike the UK, a presidentialist system, such as the Brazilian one, implies that the head of the executive will be elected independently of those representatives elected by the legislature (Silva, 1998, 15). Furthermore, the Brazilian executive and legislative representatives have not always had strong political connections. In other words, the president of the republic will not necessarily have a majority in the National Congress during a four-year mandate. Unlike the subservient Mexican legislature, the Brazilian one has been hardly controlled by the executive (Cox, Morgenstern, 2002, 448).

The current Brazilian government is proof of this, since President Lula received an impressive number of votes—57 million, 66 per cent of the total—although his party achieved less than 1/5 of the seats in the Brazilian Chamber of Deputies (Tribunal Superior Eleitoral – TSE, 15.07.05). For this reason, the president is compelled to form a majority by sharing of governance; this entails the appointment of key members from other parties to strategic positions in important public bodies (for example, secretaries of state and public utility companies), and represents multiple party involvement in the policy process.

Consequently, Brazil's president has to 'produce' a majority, amalgamating a very diverse and contradictory multiparty system (Pereira *et al*, 2005, 178; Samuels, 2000, 496; Cheibub, 2002,

285). Even when such a majority has been achieved, it has hardly been solid as the legislators are not always disciplined.

The Brazilian fragmentary partisan system in fact plays a decisive role in the construction of weak and recalcitrant legislative majorities, or the formation of minority governments (Amorim Neto *et al*; 2003, 577). According to Amorim Neto *et al* (2003, 569), Fernando Henrique Cardoso's government (1995–1998 and 1999–2002) was the only one since the re-start of the democratic era in 1985 which achieved and maintained a compliant majority in the legislature (also Morgenstern, 2002, 443). Those scholars claim that there was consistency in the 'design of the cabinet (partisan), presidential policymaking strategy (statutory/constitutional), and a strong cartel in project and agenda-setting votes'.

On the other hand, all remaining presidents from 1985—Jose Sarney (1985–1990), Collor de Melo (1990–1992), Itamar Franco (1992–1995), and Ignacio Lula (2003-)—ran minority governments, i.e., they just achieved occasional majorities on voting on specific issues (Amorim Neto *et al*; 2003, 569). Table 1 in the next page displays an updated map of the sixteen main parties represented in the legislature, out of the twenty-seven parties currently registered in the country.

Table 1. Brazilian parties with representation in the National Congress.

Party	Chamber of Deputies	Federal Senate	Stance
PT Party of the Workers	90	13	left
PMDB Brazilian Democratic Movement Party	86	23	centre
PFL Liberal Front Party	59	15	right
PP Progressist Party	55	1	right
PL Liberal Party	51	3	right
PSDB Brazilian Social Democracy Party	50	12	left-centre
PTB Brazilian Labour Party	45	3	right
PSB Social Brazilian Party	20	3	left
PPS Popular Socialist Party	15	-	left
PDT Democratic Labour Party	14	4	left
PCdoB Brazilian Communist Party	10	-	left
PV Green Party	7	-	left
PSOL Socialism and Liberty Party	-	2	extreme left
PRONA Rebuilding National Order Party	2	-	extreme right
PSC Social Christian Party	2	-	right
PRP Republican Progressist Party	1	-	right
Legislators without party	6	2	-
Total	513	81	

Source: SILEGIS (Data Legislative System of the Chamber of Deputies) and Federal Senate's legislative system. 25.07.05

Table 1 shows that the Brazilian system entails several medium-sized parties, contrary to the USA and the UK, that also have multiparty systems but just two or three parties assure a decisive majority in the legislature. In contrast, the participation of many expressive parties in the political game in Brazil hinders the negotiation of agreements with the government as long as they are in constant struggle to increase their size and influence.

Besides the fragmentary nature of Brazilian partisan system, the chronic indiscipline of their members also affects governmental support in the legislative houses (Amorim Neto *et al*; 2003, 571; Morgenstern, 2002, 427). According to the electoral legislation, there is only one basic restriction for a member of a party to change his or her affiliation: the politician must join another party at least one year before the next election to be allowed to participate. Thus, it is very easy to change one's party, and, traditionally, it has frequently happened in the last few years. For instance, fifty-one party affiliation changes occurred in the post-election period from 1 October 2002 to 16 February 2003 in the Chamber of Deputies. The legislature started 16th February of 2003. The Deputy Pinheiro Landim, for example, changed parties twice during this short period. The Deputy João Caldas is a record-breaker. He changed parties six times in his whole political career (SILEGIS, 27.07.05).

As many parties dispute public funding and political participation in the power-sharing, and, furthermore, because there are not great consequences for moving from one party to another, a considerable number of politicians have been undisciplined. This indiscipline is someway stimulating to the partisan system since the parties are always competing to gain more members, reflecting in the quantity of positions gained in the Chamber of Deputies and Senate. The distribution of positions, such as the presidencies of committees, is proportionally allocated[7]. The biggest party, i.e., that one which has more deputies affiliated, for instance, will occupy the most powerful positions in the respective house, such as the presidency of the Chamber of Deputies or the presidency of the Committee on Constitution, Justice and Citizenship, regardless the politician's stance related to the government. And the second-biggest party tends to take charge of the presidency of the Committee on Financial Affairs and Taxes, for example, which is

[7] Art. 58 of the 1988 constitution

also strategic to the legislative work on the second level of relevance.

Mainwaring and Liñan (1997, 474) point out that undisciplined party systems are always related with a high rate of individual autonomy. These authors assert that in Latin America countries such as Venezuela, Uruguay and Argentina have more disciplined parties than Brazil, for instance. Indeed, many instruments of legislative individual participation are offered to legislators in the Brazilian model. This excessive freedom creates distortions in the legislative institutions. This problem will be tackled a little later (topic 3.2).

Such an entrenched indiscipline, however, conspires against the president yet can go in his favour as well. The indiscipline factor means that the Brazilian system stimulates or at least does not restrict individual participation. Certainly, this system comes as a sequel to the repressive dictatorship which lasted twenty years. One of the main features of the 1988 constitution, which marked a new era of democracy in Brazil, was the aggrandizement of individual freedom which was also reflected in the legislature. Thus, the work of obtaining approval in the last Brazilian governments has been made by individual negotiations for specific proposals, a typical minority government attitude. Consequently, the president, who suffers a lot with the lack of party discipline, also takes advantage of this, seducing individuals of the opposition parties to achieve their temporary and topic support (Amorim Neto *et al*; 2003, 572).

Federalism is also other crucial aspect which affects the legislative support of the president. There are three levels of administration in the Brazilian state: national, regional and local. The national level is represented by a central body (Union) which entails the whole national administration. The regional level is composed of twenty-six states and a federal district, where the headquarters of the national state is located (see map below). And the 5,565 Brazilian cities and towns comprise the local administration, each one with its own mayor (Tribunal Superior Eleitoral – TSE, 20.07.05). All the federation units (Union, state-members and towns) within the three levels of administration have their own prerogatives and political, financial, administrative and legal autonomy (Meirelles, 1992, 58). This means that there is no hierarchical relationship between the units of federation. Only in

extreme cases, as allowed by the constitution, can the Union interfere in a state, for instance, in the event of great social, economic and political disorder.

Figure 2. Brazilian geographical map

Although the twenty-seven state-members have administrative autonomy, most of them are still financially dependent on the central government. Moreover, the most important policies are developed by the national government, with their effects being felt throughout the country. For instance, the current national Program ‘Fome Zero’ envisages tackling the main focus of hunger in the poorest towns of Brazil. The policy is coordinated by the Presidency of the Republic and includes the involvement of other national and local bodies, besides the participation of communitarian agents (Presidency of the Republic, 2005).

The senators represent the interests of the state-members. Therefore, in the Senate, the representation is equalitarian: three Senators to each state and the federal district, regardless of population or area, comprising a total of eighty-one senators. The state-members are considered equally important to the Federative Republic and there cannot be any distinction or privileges among them. Consequently, election to the Federal Senate is not

proportional but obeys the majoritarian principle. The candidate with the most votes gets the seat for an eight-year mandate. In contrast, the coalition of forces that compose the Chamber of Deputies is proportionally formed according to the population in each unit of the federation, entailing a minimum of eight representatives (Acre, for example) and a maximum of seventy representatives (São Paulo) for four-year terms, reaching a total of 513 deputies in this house (Araujo and Nunes Junior, 1998, 243-244).

Therefore, the major force of the southern states in the Chamber of Deputies is compensated by the predominance of the northern states' representation in the Federal Senate. The São Paulo state, the most populous and richest, has more seats (70) in the Chamber than the eight least populous (65); all of them belong to the central-north region: Tocantins (8), Alagoas (9), Sergipe (8), Acre (8), Amapá (8), Roraima (8), Rondônia (8) and Amazonas (8). Nevertheless, these eight entail twenty-four seats in the Senate while São Paulo has only three (Tribunal Superior Eleitoral – TSE, 25.07.05). Indeed, the federalist representation in the legislative houses brings great balance to the economical and social differences between Brazilian states. Hence, the president also must consider this 'federalism' factor in dividing the positions of the cabinet. Ames (1987, 218) summarizes this point:

> Brazilian presidents have always been conscious of regional balance in the appointment of federal ministers, and cabinet positions have long been rewards for state and local leaders delivering important blocs of votes. At the same time, states represented in the president's cabinet were more successful in attracting budgetary largesse than states without such representation. Executives strengthened their coalitions by parcelling out ministries as regional rewards, but coalition building carried an inevitable budgetary cost.

Indeed, this institutional confused context to a great extent influences the legislators' behaviour. Thus, the representatives are elected by local constituencies but deliberate and decide upon national issues. As the Brazilian electoral funding system has been based on private sponsorship, the representatives are supported by interest groups which fund the representatives' electoral campaigns. Once in the Congress, the legislators are forced to take stances for or against the government as well. Moreover, their

own individual and party ideologies are also important aspects. Thus, these have been several variables which inevitably tend to work against each other in the pressure of deliberative moments, affecting the legislators' behaviour and often generating ambiguous attitudes. Other times, the legislators find themselves representing interests which they had previously opposed (Desposato, 2004, 263).

A hypothetical—but typical—example to illustrate this situation concerns a pro-government and farmer deputy (Alfa) who is supported by land owners. As an important board member of the Brazilian Federal Farmers Union, Deputy Alfa received its financial support for his campaign. He also represents the state of Bahia, located in the northeast of Brazil. It is not a representation by determined area (districts) as in the UK, but by state (Souza, 1992, 157), i.e., Deputy Alfa defends the interests of the whole population of the Bahia state. His party supports the government, having appointed party's fellows for three secretaries of state in the cabinet. He has also indicated one local fellow to work in the Bahia branch of the board of a national public electric company. It happens that the government launches a bill to increase the large land tax. Deputy Alfa tends to vote against the government in this matter because his connection with land owners supersedes his affiliation to the government, regardless the damages that he might suffer. Indeed, it naturally depends on the degree of intensity of his relationship with the government. Where the Deputy Alfa has lots of influence in the government, he will naturally bargain with the government for his vote.

2.2. The mechanisms of negotiation between the executive and legislature

The mission of achieving and maintaining legislative majority in this intricate institutional environment has markedly been the main challenge for any democratic Brazilian president. The president is usually forced to apply a sophisticated political mechanism of bargaining to consolidate legislative support. There are basically two main instruments in the negotiation: the positions in the public administration and the release of budgetary funds to local constituency benefits.

Each party which comprises the government tries to achieve more power within that government, regardless of the party's size. This can be reflected by more positions (Ames, 2001, 162-167;

Amorim Neto, 2002), not only at the top level (secretaries of state) but at the second and third levels of public administration as well, such as the presidency of any public companies or the leadership of departments.

Furthermore, positions in the proper National Congress are also pursued since they play an important role in the formulation of policies. For instance, the President of the Committee on Constitution, Justice and Citizenship, as was pointed out before, is a very strategic position because almost all bills must be submitted to constitutional guillotine, i.e. a bill can be definitively rejected by this committee if it infringes on any clause of the constitution[8].

Besides the negotiation with party leaders, an effective government should also coordinate the bargaining process directly with backbenchers[9], who have historically been undisciplined in response to their leaders' commands, as asserted in the last topic. Any major deliberation, such as proposals of amendment to the constitution, necessitates huge government coordination. One method of doing this is the provision for the appointment of backbencher nominated individuals to lower level positions in government. Besides the nomination of secretaries of state and other highly ranked positions by the party leaders themselves, a process fundamentally important to the aspirations of any party of achieving power, this represents an opportunity for backbenchers to personally increase their influence in the public administration (Kramer, 2005, 1).

Indeed, most civil servants are permanently established in careers, following approval in national public contests. Nevertheless, some strategic positions are available to patronage, i.e, political nomination of departmental deputy-chiefs and highly-skilled advisers to 'trust' positions, 'trust' because they depend on a trusting relationship with ministers and superiors (Di Petro, 1999, 202). These positions can be at secretaries of state, public

[8] Art. 54, I of the Chamber of Deputies' Internal Procedure Statute (Resolucao n 17/89).

[9] Backbencher in this context means the majority of deputies, pro-government or oppositionist, who do not occupy important positions or do not have a more relevant role in the Congress or in the government. In sum, a backbencher is the less-individually influential politician in the Brazilian state, albeit backbenchers form the majority of the Congress.

companies or public banks[10]. Thus, politicians take non-personal but political advantage of those positions. They spread their influence in the public administration, thereby facilitating the achievement of political benefits at the sub-national level, such as the release of funds for local constituencies, the guarantee of a loan from a public national bank to the mayor of a town in order to build a bridge or the priority of federal support to the implementation of a policy in the constituency.

There are currently 21197 positions of 'trust' in the Brazilian federal administration,[11] available to political indications (Folha de São Paulo, 22.07.05). Nevertheless, although most of those positions have been used as political appointments, most of these positions are occupied by civil servants hired for technical reasons. In fact, only the most strategic positions have been dominated by politicians.

Moreover, the second instrument used in the negotiation with the government concerns the amendments to the national budget. Every Brazilian legislator can present annual amendments to the budget focusing on local issues, to build a bridge or a hospital in the legislator's constituency, for example. First, the executive proposes the budget, predicting potential revenue with the allocation of provisional funds. Legislators supplement the budget with pork-barrel amendments and then approve the budget, passing it back to the executive branch. Yet the president is allowed to veto individual items. Even if the amendment is not vetoed, the release of funds cannot be guaranteed because the President has discretional powers on authorizing the release. Hence, during the budgetary period, Brazilian deputies spend a major part of their time trying to convince the president to 'release funds that they want directed to their constituents' (Samuels, 202, 315). This hinders the process of achieving a solid majority because the executive is forced to bargain releases in exchange for favourable votes in each legislative deliberation.

Another relevant aspect of this negotiation mechanism is the way the executive bills are proposed. As the bill can be altered

[10] Brazil has two public banks, the Banco do Brasil and the Caixa Econômica Federal.

[11] Those positions are called DAS (supervision and superior consultancy)

during its passage by National Congress, the government rarely launches a bill that is complete. It is more useful to propose only partially elaborated bills. Actually, the government tends to go to the National Congress 'very hard', looking for more than the government really intends to achieve. Gaetani (2003, 337), for instance, asserts that the constitutional amendment which allowed the new public management policy implementation in Brazil was approved in December of 1998 after huge changes in the original text. The initial government position initiated the process with a proposal of a constitutional amendment that resulted in the severance of several of the rights of civil servants which had previously over enhanced the allocation of recourses to the public administration. Nevertheless, legislative 'concessions stripped the project of most of its important aspects, such as limits to public wages and tenure removal' (Gaetani, 2003, 3378).

2.3. Provisional measures

After examining this map of the Brazilian institutional framework, we can delve further in more topic problems. Certainly, the main executive instrument to launch major policies, the provisional measure, has been largely utilized since its creation by the 1988 constitution. This issue deserves special comment due to its considerable damage in the relationship between the executive and the legislature. In the first twelve years of existence, the executive enacted and re-enacted 5,702 provisional measures (Presidency of the Republic. Civil House. Sub-secretary on Juridical Affairs, 2005). Provisional measures have served to create public organizations, define careers in the public service, design health and education national policies, and so on. In the original 1988 form, provisional measures could encompass any subject. Their only limits were two: to be used in the 'urgent and relevant' cases.

At first glance, it is not difficult to conceive of 'urgent and relevant' situations. For instance, a major flood in the south-eastern big cities, such as São Paulo and Rio de Janeiro, is a typical public calamity which normally occurs at summer time. In this sort of event, the president may enact a provisional measure allocating extraordinary budget resources to assist those cities with flood damages. According to the 1988 constitution, any extraordinary public expense, i.e., not approved in the annual national budget, must be authorized by the National Congress.

Yet, in this case, the president might introduce a provisional measure that would have full legal effect from the first day of enactment.

Nevertheless, the provisional measure instrument has not solely been enacted under 'relevant and urgent' situations. Indeed, this boundary has been somewhat disrupted by all presidents since 1988 (Valle, 2004, 9), due to the subjectivity of the 'relevant and urgent' meaning. The law did not objectively define the expression 'relevant and urgent', firstly, because it depends upon human diverse interpretation. Although there are some basic situations which may be consensually accepted as relevant and urgent, such as the flood event described above, another many might start up long discussions from different point of views. Hence, the legislators agreed that the law would not clarify this.

The second point is, if the law cannot establish the 'relevance and urgency' of a determined situation, who would do it? The National Congress, the president, or the judiciary? The Supreme Court decided[12] that the president might evaluate those aspects on enacting provisional measures, yet the National Congress is allowed to disagree with the president and neglect the provisional measure for this reason.

A real example should illustrate this aspect which in practice is very complicated. President Fernando Henrique Cardoso enacted the PM n. 28 in 2002 restricting the rights of criminals—as an extra-punishment—who committed other crimes in prison. At that time, famous and dangerous organized crime leaders kept commanding bandits from prison. One of the most drastic measures launched by PM 28/2002 was the extension (for 120 days) of the permanence in 'solitary'—an isolated jail in the prison where the prisoner cannot have contact with anyone and must not see the sunlight during the period. At that time, the rates of criminal activity had grown in Brazil. Local and national authorities were under pressure to stop with increasing power of drug dealers. Although relevant, the situation was not urgent to an extent that it could spend some months of deeper debate in the National Congress inasmuch as the theme was very polemic and complex.

[12] STF – (Plenary) – ADIn nº 162-1/DF – Relater: Minister Moreira Alves.

The punishments of the PM 28/2002 comprised restrictions of the most important human rights such as the right to freedom. Human rights groups questioned the provisional measure. The National Congress in fact rejected the provisional measure on that merit (on 1 April 2002), albeit President Cardoso had the majority in the National Congress at that time (SILEGIS, 04.08.05). In the last seventeen years, the National Congress has preferred to refuse a provisional measure for merit reasons, not appraising whether it is actually relevant and urgent. However, the National Congress should reject any provisional measure which does not fulfil those preliminary requisites, albeit it seems politically offensive to the president.

Furthermore, the last presidents of the republic did not show interest in clarifying 'urgency and relevancy'. They inclined towards ignoring such an intricate question, besides the criticism upon the spreading use of an authoritarian tool in a new era of democracy. In this way, the president had major freedom to enact provisional measures since he could assert whether a certain subject was urgent and relevant. In fact, it is more a political decision rather than a technical interpretation.

The provisional measure is derived from the decree-law, a strategic dictatorship tool utilized during the army-controlled governments from 1964 to 1985 in Brazil (Abreu Junior, 2002, 26). As it has been very intricate to achieve workable or compliant legislative support to the executive demands in democratic periods, the Brazilian presidents have historically governed by unilateral policymaking instruments, in special, provisional measures (Amorim Neto *et al*; 2003, 568), even more so because Brazil has been a very legalist country, i.e., the main issues of the policymaking process must be clearly expressed in written laws, in opposition to common law.

Both the decree-law and its variation, the provisional measure, were based on the Italian *decreto-legge* (Ferreira Filho, 1992, 132). Similarly to Italy, the Brazilian presidents have exceeded the use of provisional measures. See Table 2 below.

TABLE 2. Provisional measures' figures from 1988 to 2001

Presidents / Status	Sarney (16 months)	Collor (31 months)	Itamar (27 months)	FHC I (48 months)	FHC II (26 months)	TOTAL
Original	125	87	141	160	71	584
Re-enactments*	22	73	364	1750 (699)***	2076 (137)***	5121
Approved	109	66	121	82	74	452
Refused	9	11	-	1	1	22
Others**	7	10	20	54	17	108
TOTAL	147	160	505	2609	2281	5702

Adapted from Valle (85, 2004) *Medidas Provisórias: O Procedimento Legislativo e seus Efeitos Jurídicos* . Primary source: Presidency of the Republic. Civil House. Sub-secretary on Juridical Affairs

* The re-enactment was allowed until 11.09.01 when a new constitutional amend (32/01) forbad it.

** Other cases such as revocation by the president, lost of efficacy for judicial order and ongoing provisional measures at this period.

*** Re-enactment of provisional measures of previous governments

As Italy promoted an overhaul of the *decreto-legge* in 1997 to avoid its disproportional use, Brazil did the same in 2001. Unlike Italian reform which has limited the enactment of *decreti-leggi* on specific subjects (national security, public calamity and financial affairs), the Brazilian changes focused on the opposite, i.e., the settlement of a roll of subjects prohibited for treatment through provisional measures. For example, the president is not allowed to decree upon nationality, citizenship, political rights, political parties, criminal affairs, and so on (Valle, 2004, 47). Besides this list, the president can enact provisional measures upon anything else.

The reform also extinguished a harmful effect: the re-enactment of the same provisional measure. Previously, provisional measures were only valid for thirty days. Thus, the president might re-enact them continuously, keeping their effects but often altering the text. Indeed, before the reform, most of the re-enacted provisional measures had remained un-appraised by the National Congress. This was somewhat comfortable for legislators because they did not need to vote on certain unpopular provisional measures, such as the national minimum wage

increase which is defined every year through provisional measures to diminish the devaluing effects of spiralling inflation on wages. This increase tends to be set up lower than the population normally expects, that is the reason this provisional measure has always been unpopular. The president is eventually forced to enact disliked provisional measures such as that one. Hence, under the old rule, the re-enactment of provisional measures had political advantages for the legislators, as could be seen in this case.

Moreover, the new editions of provisional measures came with suggestions presented by legislators. Thus, this previous system was also convenient and useful for the president for not, in fact, submitting the provisional measures to the National Congress' appraisal as long as the president accommodated the legislators' criticisms and suggestions on the text (Abreu Junior, 2002, 61). However, although provisional measures were not previously important items of the legislative agenda, they became important after the change of the provisional measures' procedures.

Under the new rule, provisional measures are valid just for 60 days, and then could be extended for an additional 60 days. After these 120 days without the Congress' deliberation, the provisional measure is considered automatically refused, losing all effects until then. Furthermore, if the measure is not appraised within forty-five days, it becomes the first priority in the legislative agenda. None of the other legislative proposals may be analysed before that provisional measure. In sum, the 2001 rules forced the immediate insertion of the provisional measures in the legislative agenda. Formerly, as the president could re-enact the provisional measures, the legislature rarely appraised them, even more if the government had achieved reliable legislative majority—as was the case of Fernando Henrique Cardoso in the period 1995–2002. Nevertheless, the current situation is different. After 2001, the government has dominated the political agenda with the incessant enactment of provisional measures. In 2002 and 2003, 126 provisional measures were introduced (SILEGIS, 22.07.2005). They have always ranked at the top of legislative agenda due to the 45-day deadline before their compulsory appraisal by the floor.

Indeed, the imperial provisional measure instrument has markedly damaged the delicate relationship between the executive and legislature. Indeed, the most relevant provisional measures are previously bargained with the Collegium of Leaders, that is a

body of discussion and political negotiation in the legislature. This body, composed of all the party leaders (including supportive government parties as well as opposition parties) and the government leader (who is responsible for coordinating the government's activities within the Congress), conciliates the diverse interests of the groups and categories represented at the National Congress. (Amaral, Geronimo; 2003, 14).

A preliminary Collegium of Leaders' concordance with a determined subject proposed by the government does not mean that the measure will be approved in the Congress, even more because the media and popular pressure might influence the legislators' behaviour during the deliberative process. Thus, the first bargain between the government and the Collegium of Leaders is only the first part of a major bargain which will happen in several stages in the committees and on the floor. The more complex the provisional measure, the more complex its negotiation.

The National Congress does not appreciate the continuous settlement of the legislative agenda by the president. Congressional leaders imply that the executive should have certain discretion with decree measures. And, as has been asserted hitherto, the legal system requires written laws to allow new measures. However, the president is still dependent on the legislature approval concerning his proposals.

In the last few years, the provisional measures have caused particular unbalance in the relationship between the legislature and the executive for two basic reasons. First, there has been evident excess of the provisional measures' use. A reduction of the number of hypothetical situations that call for the use of provisional measure is desirable in a manner that mirrors the current Italian *decreto-legge*. Thus, the change would be focused on the exchange from the current role of **prohibited** hypotheses—that allows the enactment upon wide range of subjects—toward **allowed** hypotheses. Such a change would force the president to enact provisional measures only upon real, relevant, and urgent matters, such as national security, public calamity, financial affairs, and urgent extra-budget allocation.

The second reason is related to the complexity of certain subjects that thereby should not be tackled through provisional

measures. The major overall policies invariably demand long discussions in the legislative arena. Nevertheless, the normal pace of a provisional measure appraisal in the both legislative houses, the Chamber of Deputies and Federal Senate, is very fast: forty-five days after the measure's enactment, it assumes priority in the legislative agenda and must be decided immediately. A provisional measure in the Congress can spend up to 120 days, as has been asserted previously. Yet the provisional measure rarely reaches this entire period because a huge pressure increases after forty-five days as long as the legislative agenda cannot be blocked by one matter for long time. The country has many priorities. There are always other important matters—other bills and provisional measures—queuing in the agenda.

Unlike provisional measures, statutory bills are appraised in the committees before going to the floor. The legislative procedure of statutory bills allows legislators to present an unlimited number of amendments during several stages of the appraisal. Moreover, the legislators can participate in the debate in all the arenas that comprise at least two standing committees. However, this does not happen to provisional measures. Albeit the new constitutional text[13] decrees the creation of temporary committees to appraise each provisional measure, they have rarely worked in practice (Valle, 2004, 56). Most of these committees have never been installed. Thus, the only arena of provisional measure debate tends to be the floor, that offers very limited participation to deputies and senators.

In sum, legislators barely participate in the appraisal of major policies enacted by provisional measures, although the Brazilian legislature has often amended the executive's proposals, whereby they may contribute to policies amelioration. The entire process of elaborating law entails time of absorption that provisional measures' legislative process does not allow. Therefore, the most important policies should be treated and discussed in the Congress through statutory instruments, and not imposed by provisional measures. The use of statutory instruments would enhance the interaction between the legislature and the executive in the policymaking process.

[13] Art. 64, §§s 5º and 9º.

3. Legislative institutional factors that affect policies

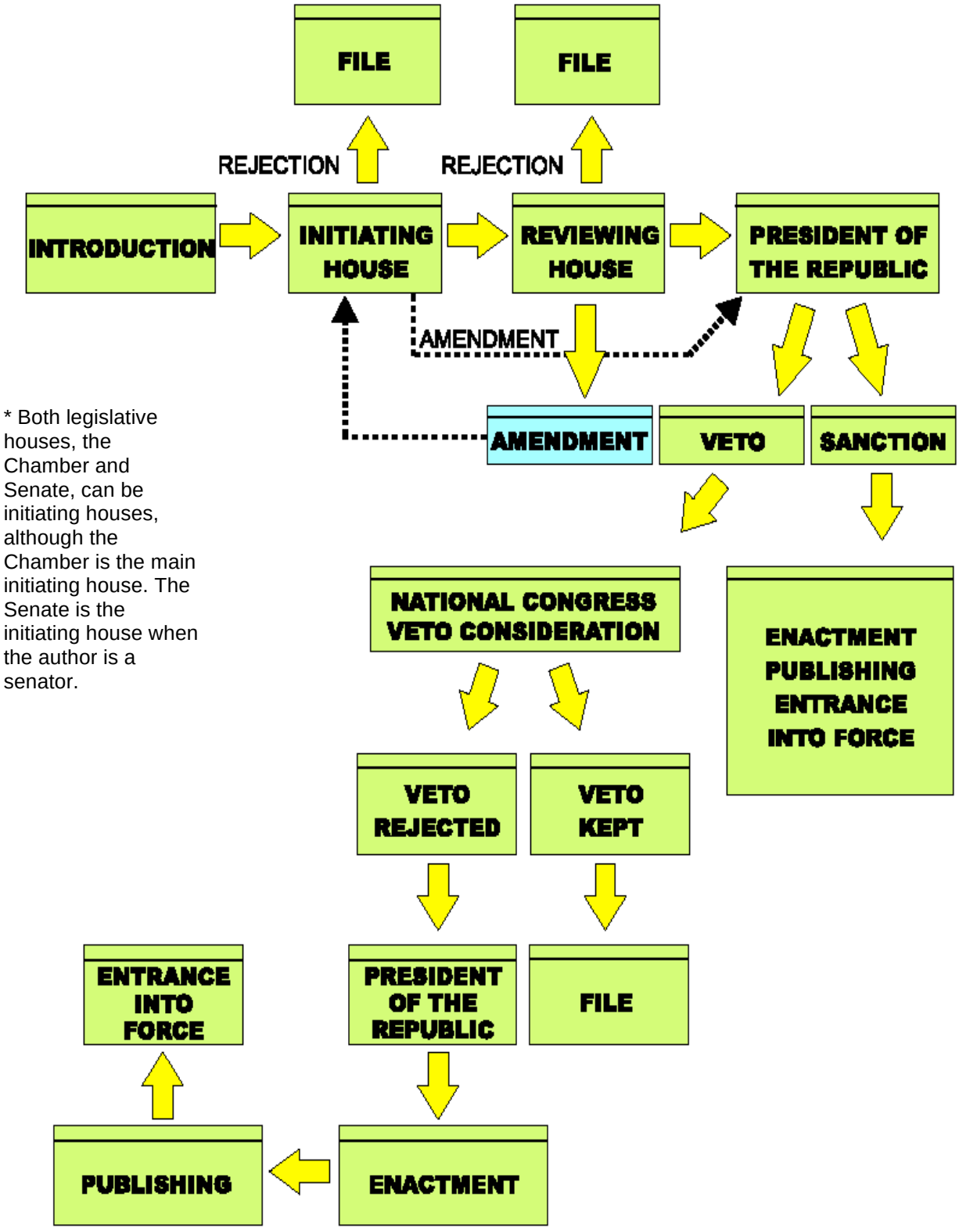
3.1. The role of the Brazilian legislature in the legislative process

Despite institutional aspects such as the presidentialism system, the fragmented multiparty system, undisciplined parties, and robust federalism (Mainwaring, 1997,56), other institutional factors, now focusing on the legislative framework, affect the way in which the Brazilian policies are built and their consequent efficacy in the implementation stage. The excess, aimless private members' bills ongoing in the Congress, the disruption of the work of committees, the flexible management of the legislative procedures and the last-minute amends certainly contribute to hinder the efficiency of policies. We will tackle these points in-depth from now on.

Even when holding a majority, the government leaves some part of policies to be constructed by the legislature. Legislative participation in policy design is a condition of its approval in both legislative houses. Indeed, the Brazilian legislature has an important role to play in the policymaking process in two different ways.

First, the legislature direct participates whenever a government bill is submitted for Congress' appraisal. Traditionally, a bill is not approved without some form of amendment—the primary method of direct participation—which might be topical or substantial (Araujo, Nunes Junior, 1998, 259; Reich, 2002, 26-7). We can see in Figure 2 below a statutory bill's path from its initial proposal to the final enactment. Thus, the president either proposes a bill or enacts a provisional measure, that will be appraised by the Chamber first and the Senate afterwards. Both houses are allowed to change the bill completely. Finally, the president should enact it after Congress' approval, or the president might partially or totally veto the bill. The veto situation is one rare case in which the Congress has to deliberate in joint session with the two houses (both floors). To overturn the veto, the Congress must vote against it with a special majority, a minimum of the half of whole composition of each house plus one vote against the veto. On doing so, the president is forced to enact the bill, including the part vetoed.

Figure 2. Brazilian legislative process



Furthermore, the Congress might propose bills by itself. This is the second way that the Congress participates in the policy process: original elaboration of policies (Ferreira Filho, 2002, 197-8). In this case, the government will detail and implement the bill following the principles set up by the bill transformed in law. Thus, there are government bills and National Congress bills, both destined to achieve policies, albeit the government has privative power to propose certain sort of policies, such as those which demand the creation of new public bodies or the redefinition of federal civil servants' careers[15]. Following the bill's approval, the executive will implement the respective policy. And the Congress will be responsible for controlling whether the policy has been executed and operated according to its original design.

However, the Congress has also offered excessive individual proposals and disrupted the legislative process the last few years. Cheibub (2002, 305) asserts that the control of isolated acts and the individual legislator's preferences is essential to the maintaining of governability in presidentialist regimes. The next topic will focus on the private member's bills or individual bills (they are the same) which have caused overload and chaos in the legislative houses.

3.2. Individual proposals

The Brazilian legislative process allows deputies and senators several instruments of individual participation. While the British system has historically stimulated the collective government-support function of the legislature, Brazil's National Congress is marked by a diversity of legislative tools which enable legislators to influence the legislative process, either through pro-government or opposition attitudes. The Brazilian legislature is more focused on individual rather than collective work. The main individual legislative act is the bill proposed by a legislator. It will be asserted that the great number of private members' bills has led to rather negative than positive effects on the Brazilian policy process system.

In addition to the executive, the National Congress might introduce bills through individual deputies or senators or

[15] Art. 61, §1º, II of the 1988 Brazilian constitution.

committees. Unlike committee bills, private members' bills are very common in the Brazilian National Congress. Actually, they represent the majority of current ongoing bills. As shown in Table 3 (below), deputies proposed 94 per cent of the statutory bills in 2003 and 2004.

Table 3. Number of statutory bills proposed during 2003 and 2004 in the Chamber of Deputies

authors	Deputies	Committees	Other authors*	Total
number	3878	70	174	4122

Source: SILEGIS (Data Legislative System of the Chamber of Deputies). 01.08.05
* Including bills that came from the Senate and other powers, such as executive and judiciary.

Different from British private members' bills whose approval has been very rare (Norton, 1981,100), many individual Brazilian bills are converted into law as long as they meet government interests. In general, the bills' authors belong to the base of government. Therefore, the great majority of legislators usually introduce many private members' bills concerning different issues and then just wait for an opportunity to insert the bills into the political agenda and receive their approval in the National Congress.

A bill can sometimes be launched by different authors with diverse perspectives. Diniz (2002, 147) highlights an example, concerning three bills on new reproductive technologies presented over a period of six years. While bill A (1993) was superficial and more focused on the medical class, bill B was more scientific (1995). Finally, bill C was more advanced (1995). But none of them was complete. In this kind of case, they tend to be amalgamated into one bill.

According to the Chamber's internal rules, any deputy is allowed to present statutory bills upon any subject. As asserted before, the constitution only prevents legislators from proposing bills related to the president's set of privative functions, such as the definition of the Secretary of Education's functions, for instance[16].

[16] Art. 61, §1º, II of the 1988 Brazilian Constitution.

Only the president is able to propose bills upon this kind of issue. Yet, once bills are proposed, legislators are allowed to amend them.

Some Brazilian newspapers, such as *Folha de São de Paulo*, publish evaluation reports on the legislators' performance every year. These reports have to some extent certain impact on the voters' opinion. Nevertheless, reports usually comprise erroneous criteria, e.g., the attribution of major value to those legislators who deliver a high number of bills. The problem with this criterion is the linkage between the quantity of proposals proposed and the performance of the legislator, supposing that the main legislator's function should be the launching of bills in series, similarly to the Fordist production of cars in a factory. In fact, the legislative activity entails several other functions, such as the acts related to government support or the opposition strategy, the executive scrutiny, the overall debate, amendments, and so on.

Yet the aggrandizement of the number of individual proposals introduced has compelled a significant sum of legislators to propose bills compulsively, without technical support, either financially or constitutionally impracticable, or without chances to be politically approved. This phenomenon has overloaded the agendas of the standing committees which devote most of their efforts appraising aimless bills, by disrupting the discussion of more potentially effective policies. The normal path of a bill starts at a thematic standing committee appraisal, thereby resulting in a favourable or contrary technical report. Depending on the complexity, two other standing committees (in the minimum) should appraise the bill before its conclusive approval on the floor of each legislative house (Pacheco, 2002, 118). Thus, the standing committees are the bodies most affected by this problem because the great majority of individual bills will pass through them, causing diffusion and hence confusion of the legislative focus.

Moreover, the volume of individual bills (above 90 per cent last year) is not proportional to the number of individual bills which become laws. For instance, 57 per cent of the laws enacted during the period 2001–2005 (July) originated from bills proposed by the president, not by deputies (SILEGIS, 14.07.05).

A more responsible and efficient approach would entail the limitation of this excessively permissive system. First, a minimum

number of subscribers might be required for the presentation of any statutory bill as currently happens with the proposals of amendment to the constitution that demand at least one third of endorsement of the entire composition of the Chamber to be considered initially valid. The creation of a maximum quote for individual proposals would also be useful. For instance, each deputy might propose only five bills per year. With these simple measures, the legislators certainly would have to concentrate on the proposals of more important issues.

Besides private members' bills, committees also may propose bills. The proposal of committees' bills usually derives either from suggestions or complaints sent by voters or from debates or scrutiny carried out in the committees' sessions. The standing Committee on Legislative Participation, for example, proposed a statutory bill (1.971/2003) drawing on an educational policy (SILEGIS, 25.07.05). The bill touches upon the stipulation of credit to poor students who have been inserted into private colleges. Access to Brazilian public universities is very limited and disputed because, besides their usual better quality, everything on the campus is subsidised, and the students do not need to pay tuition fees. Thus, as the achievement of a vacancy in the public colleges has been restricted to those who succeed in a public contest, most Brazilian students seek the alternative, private colleges. But, some of them cannot support the onus of the fees and abandon the course. This bill provides scholarships—funded by their own private colleges—to the high-mark students who prove to be poor.

Policies built by committees, such as the one described above, tend to be more solid because they have involved major legislators' participation through several debates which allow certain maturation on the subject. Moreover, the policy necessarily entails the staff of advisers' influence, that means more technical elaboration of the proposal, as opposed to individual proposals which, in general, are prepared for a legislator's particular political consultants without greater technical rigor. The committee's proposals still have more chances to be considered in the political agenda because the proposals are politically more relevant as long as they have been made by a body, instead of by individuals. Thus, the proposal of committees' bills, instead of individual bills, should be stimulated in order to agglutinate individual wills around more structural and effective proposals. For this, the

empowerment of the committees is necessary. The next topic will further explore this issue.

3.3. Committees

3.3.1. Standing committees

Each one of the legislative houses comprises standing committees and temporary committees. The latter will be tackled in next topic. The standing committees entail both properly legislative functions, such as the debate upon a bill, analysis of amendments, elaboration of technical reports, and executive scrutiny function, besides the control of the policies' implementation. Thus, the Brazilian standing committees to a certain extent accumulate the functions of the British select and standing committees. It is relevant to highlight that standing committees have a significant role in the building of the policies because the standing committee is where the main technical points are set up and the debates usually delve further into the policies' details. According to the standard rule of the Brazilian legislative process, bills are submitted for standing committees' appraisal first and for the floor's final decision afterwards (Moraes, 2004, 555). Some exceptions, such as urgent bills, apply to this path; yet this will be viewed further.

Despite being technical-oriented bodies, the standing committees are obviously composed of politicians who are to a great extent affected by political variables. Political decisions are sometimes ambiguous, disrupting the force of some technical evidence. Nevertheless, the most technical and data-based debate are put forward in the standing committees. They become an important arena to those legislators—a minority in the Brazilian legislature—who choose to look deep into specific areas in the National Congress, seeking a certain level of professionalism in legislative work. It must be highlighted, however, that there is a linkage between the degree of professionalism in the legislative committees and the electoral-legislative ambitions of the politicians. We realize this when comparing the Brazilian and American electoral systems.

Although the Brazilian legislative system has been shaped on the basis of the American model, there are some crucial differences between one and the other, in particular the one related to the political ambition of the deputies. According to

Morgenstern (2002, 416), 94 per cent of the American congressional representatives who stood for re-election (88 per cent of the total) in 1996, actually achieved this, contributing to the maintenance of a historical low turnover rate: 17 per cent in that year. In contrast, the Brazilian turnover rate in 1995 was 57 per cent, one of the highest on the continent. In that year, from the 70 per cent of the Brazilian legislators who sought re-election, just 62 per cent of them actually achieved it (Morgenstern, 2002, 416).

In this line, Samuels (2000, 494; 2002, 316) points out that there are two distinct notions of political careerism: *static* ambition and *progressive* ambition. The member of Congress who exhibits the former ambition intends to build a career within the legislature, i.e., seeking successive re-elections. On the other hand, a *progressively* ambitious deputy tends to leave the legislature after one or two terms to continue his or her political career at the state and/or municipal level.

Besides legislative re-election in Brazil being difficult and costly to achieve, Brazilian politicians have traditionally been rather involved in sub-national issues so it has been hard to reach prominence at the competitive national level. Moreover, as a city mayor, a state governor, or a secretary of the state, Brazilian politicians might exercise more direct power (Amorin Neto and Santos, 2003, 450). In this way, they stand out individually rather than in the legislative function which demands more collective activity, centred in political negotiation.

According to Samuels, the lack of incentives to invest in specialization also affects the motivation of deputies to work in the committees and is due to the weak internal hierarchy in the Brazilian legislative houses which, in fact, offer few posts to the congressmen. Without posts within the committees, the legislators disregard electoral benefits of dedication to committees' work (2003, 45-46).

Instead, the American members of Congress tend to retire from political life after failing to achieving re-election. However, the great majority (more than 80 per cent) who remain in the Capitol to build a long-term career tend to specialize and professionalize in few subjects (Schwartz, 1969, 87). Thus, the American members of Congress are likely to consider the technical elements of the committees' appraisals, often bringing certain level of expertise to

the debate. Epstein (1997, 293-4) claims that influential American committees might have ‘gatekeeping power’ in certain areas, by decisively putting forward bills through the Floor or even blocking their passage. This professionalism is a result of the legislative re-organization implemented in 1945 as an attempt to professionalize legislative work. The number of standing committees in the House of Representatives was reduced from 48 to 19, in addition to reducing the number of members in each committee. Keefe and Ogul (1981, 227-229) also point out that the long-term work in American committees makes them cohesive, stimulating more commitment and consensus between their members upon basic issues. Keefe and Ogul still assert that motions of the most cohesive committees of the Senate have more chance to succeed on the floor.

In Brazil, something similar should be adapted to Brazilian context in order to mitigate the excessive diffusion of legislative work caused by the great increase of the number of committees created in the last few years. In July 2005, seventy-one temporary committees were operating in the Chamber (SILEGIS, 20.07.05). The unviable running of several standing and temporary committees at the same time has systematically disrupted them. Consequently, the entire legislature is affected once the committees are, in fact, the main forum where the legislators debate and bargain upon the most of the bills and other proposals. This point will be delved into further in the next topic.

Besides the *progressive* ambition of Brazilian legislators and the excessive diffusion of legislative committees, there is another relevant factor that weakens the committees’ work: the lack of tenure as a member of committee (Mueller, Pereira; 1999, 48). In the Chamber of Deputies, every deputy must be a member of just one standing committee. There are currently twenty standing committees in the Chamber. Nevertheless, albeit every deputy is a committee’s permanent member, he or she might be suddenly allocated to other standing committee by his or her party leader in the house.

This has usually happened when a government’s deputy, for example, has previously announced his or her contrary vote on a certain ongoing executive’s bill in a standing committee. In the Brazilian legislative context, this deputy can technically vote against the executive’s bill. The deputy’s executive-supporter party

leader would try to convince the deputy to vote for the government's position. Not achieving this, the leader might temporarily transfer the deputy to another committee just to avoid his or her negative vote on that deliberation. In other words, the leader naturally would substitute this deputy with another more resilient deputy, but just for that deliberation. This situation occurred recently, for instance, when the leader of the Progressist Party (PP) ordered the substitution of Deputy Ivan Ranzolin for Deputy Mario Negromonte in the Committee on Constitution, Justice and Citizenship because the former had announced his vote for the creation of a Parliamentary Investigation Committee potentially prejudicial to the government. As the PP belongs to the government's base, his leader managed the substitution to support the government in this case (Jornal da Câmara, June 2005). This sort of unpleasant and disrespectful attitude certainly affects the professionalism and the potential technicality (as possible with political decisions) which should be applied to the committees on the basis of the American model.

While this legislative practice has weakened the committees' work the last few years, the 1988 constitution, on the contrary, sought to strengthen the role of committees by endowing them with the prerogative to enact bills under limited circumstances without reporting them to the floor (Amorim Neto *et al*; 2003, 557). For instance, there was a bill that regulates the workers' right to at least thirty days of holiday per year. This circumstance is only allowed for those bills which treat upon more simple policies or whose impact will not be widespread. Financial issues and criminal policies, for example, must necessarily be appraised by the floor.

Urgency is another aspect which has mitigated the power of the standing committees. This occurs mainly due to the party leaders' urgency petitions which accelerate the pace of the bills requesting appraisal directly by the floor without the normal committee appraisal (Amorim Neto *et al*; 2003, 558). This is the first type of urgency, made by the leaders.

The second type of urgency, the executive's urgency, means that the bill must be approved within forty-five days in both legislative houses[17]. If it does not happen, nothing else would be

[17] Art. 64 of the 1988 constitution.

appraised in the National Congress before this, i.e., the bill becomes the number-one priority on the legislative agenda. Such urgency only might be applied to the executive's bill. Thus, in addition to provisional measures, the president has this prerogative to put forward the executive's bill in the legislature. Nevertheless, instead of being an exception, as it was supposed to be, the urgency has become a rule. According to Figueiredo and Limongi (1999, 62-63), 53 per cent of the executive-initiated bills approved and enacted by the legislature from 1989 to 1994 were urgently considered in the lower chamber. They still assert that, of the 514 laws enacted by the Congress during the period 1989–1994, 282 (55 per cent) were urgently conducted in the legislature (Figueiredo, Limongi; 1999, 58).

When a certain bill has been stamped as urgent, it basically means that the bill will be analysed directly by the floor. In the Brazilian legislative system, the bills should be necessarily analysed by the thematic standing committees until the final judgment by the floor. Thus, the most technical aspects are considered before the floor's political decision. The analysis of the Committee on Constitution and Justice, for instance, will guillotine unconstitutional bills. This appraisal, nevertheless, should be overruled by the urgency applied once the bill is immediately submitted to the political floor's decision. The floor might, and usually does, consider constitutional, legal and other technical aspects; however, it is not guaranteed. Hence, some unconstitutional bills can be enacted with ontological defects caused by the urgency and its consequent rushed appraisal.

Some of the most relevant bills are traditionally introduced by the president, who invariably tends to stamp the urgency pace on them. Moreover, the most important bills proposed by the legislators also tend to run fast with the leaders' petition of urgency. Consequently, the most essential bills will not be appraised by the standing committees. It is very disruptive to the work of the committees and the minimum professional activity which should be expected from the legislators (Amorim Neto *et al*; 2003, 558). On the floor, legislators have just a few opportunities to participate once the time of the debate and amendment is too restricted.

3.3.2. Temporary committees

The temporary committees are in the centre of the distortion of the Brazilian legislative process. Three kinds of temporary committees exist: Parliamentary Investigation Committees, External Committees and Special Committees[18].

The Parliamentary Investigation Committees (PIC) investigate a certain fact of relevant interest to public life and to the judicial, economic and social order of the country. This committee type has been a strong and useful legislative instrument to the Brazilian democracy. In 1992, a PIC investigated the former President Fernando Collor de Melo. It concluded that the president committed corruption. The PIC's finding was fundamental to start the trial of impeachment. The Chamber of Deputies with more than two-thirds of the votes authorized the trial which was conducted by the Supreme Court, leading to his impeachment.

External Committees permit the performance of specific parliamentary duties outside the building of the Chamber of Deputies. The EC is a very common body in the examination of important political facts *in loco*, such as the health conditions of prisons over the country after widespread rebellions, for example.

Special Committees are designed to issue opinions on the analysis of the following special proposals: amendments to the Constitution; law codes; alterations of the Chamber Rules; authorization to charge the president of the republic, vice-president of the republic or ministers of state on responsibility crime; and complex bills, within the scope of more than three merit standing committees.

Most of the special committee cases concentrate on the analysis of proposals of amendments to the constitution (25) and complex bills (30). After twenty years of repression of the Brazilian social order, the 1988 democratic constitution was formulated with excessive rules. The rights were set up in the constitution's text to guarantee their commitment. Some of them have been incompatible with the even more dynamic Brazilian society in the nineties. For instance, former president Fernando Henrique Cardoso started up the process of privatization of the main state companies in 1995. At that time, the public enterprises of

[18] Art. 33 of the Internal Rules of the Chamber of Deputies.

monopolistic sectors such as telecommunications, oil, water, gas, electricity and others were not allowed to be privatized by the 1988 constitution (Giambiagi *et al*, 11, 2001). Several constitutional amendments, and, consequently, several special committees were put forward for doing so. Since then, the number of proposed constitutional amendments has increased. There are currently 926 ongoing proposals of amendments to the constitution in the Chamber of Deputies (SILEGIS, 26.07.05).

Complex bills have been other high source of special committees. The Chamber's Internal Rules determine the creation of a special committee to analyse any complex bill whose subject entails more than three standing committees' merit[19]. This is in fact a smart rule because the special committee's analysis would substitute four or more standing committees' successive appraisal. It saves time and effort. Unlike standing committees, that must be created by law, the installation of a new special committee just depends on the simple President of the Chamber of Deputies' order. The notion of special committees for complex bills' analysis implies, however, that special committees would be applied only to exceptional cases. Instead, the special committee has become very common. There are presently thirty complex bills' special committees operating in the Chamber (SILEGIS, 27.07.05). This excess has been related to the abuse of president's discretion on appointing which bill is complex or not.

Two main factors have historically influenced the incessant legislative presidents' behaviour on creating special committees. First, the Congress always intends to respond to problems highlighted by the grand media. Thus, any important theme, or result from any relevant social happening, tends to trigger immediate legislative attitudes. The rapid creation of special committees usually works quite well, as a way to please the public opinion. It means that the Congress 'is doing something'. Although some of the special committees execute their institutional task of elaborating bill reports before the definitive floor's decision, most of the special committees end up forgotten and kept off the political agenda. This fact has profound cultural and political elements based on the politics of the short-term. Hence, the Congress has created this kind of immediate-response mechanism to satisfy

[19] Art. 34, II, Internal Rules (Resolução) n. 17/1989.

public opinion. Mainwaring stresses that Brazilian politics stimulates ‘policy formulation excessively oriented toward immediate political objectives’ (1997, 106).

In contrast, the legislature does not tackle some important structural issues which should bring major benefits to the whole country, such as the tax reform, for example, but which is not so attractive to the media, or, at least, do not have immediate impact on public opinion. Moreover, opportunist politicians take advantage of the topic problems which might interest their voters and give them more credit to seek re-election (Amorin Neto and Santos, 2003, 450). Thus, the politicians prefer participating actively in a ‘hot’ special committee for few months than attending standing committees for building structural policies.

The second aspect which stimulates the creation of special committees is the party leaders’ interests. They should indicate the members to compose each special committee (Mueller, Pereira; 1999, 61). Thus, the composition and the positions on the board of the special committees are instruments of negotiation, whereby they can accommodate backbenchers’ pressure for positions and furthermore bargain with other leaders or the government.

Hence, the final result of this permissive system for the creation of committees is diffusion and inefficacy. There have been fifty-five special committees working at the same time in the Brazilian Chamber of Deputies (SILEGIS, 20.07.05). If we add this number to the other temporary committees in operation, i.e., four PICs and twelve external committees, plus the twenty standing committees, the total is **ninety-one** legislative bodies currently operating in that house.

Moreover, albeit the deputies are not allowed to join more than one standing committee, this limitation is not valid for the temporary committees. Hence, most of the deputies have systematically been members of several temporary committees, thereby affecting the quality of these committees’ reports because the deputies cannot actively participate in many committee sessions at the same time.

Thus, the excess of bodies within the Chamber and the possibility of diffuse participation generate uncontrolled dispersion of attention. Although this phenomenon confirms a higher level of democracy reached after years of dictatorship and restriction of

freedom, this extreme situation now confuses the legislative process. It is the case in which abuse of liberty causes inefficiency.

The limitation of the number of operating temporary committees should be the most viable solution for the problem of diffusion in the Chamber. The possibility of the creation of special committees to deliberate upon complex issues is in fact a useful instrument, yet the excess of this instrument has caused disorganization in the legislative process. Thus, a limit of five special committees operating simultaneously should be determined, for example. In the meantime, any extra complex bill should be appraised by the standing committees at the ordinary pace. The excess of special committees dislocates the debate of greater subjects from the standing committees, thereby damaging the functionality of these bodies and hence withdrawing their political importance. Furthermore, other cuts should apply upon the special committees destined to deliberate upon proposals of amendments to the constitution. It is not justifiable that a 'young', seventeen-year-old constitution has been altered for any minor—sometimes circumstantial—reason. Only major issues justify changes in the constitutional text that is the basis of the whole political, economical and social Brazilian order.

3.4. The scrutiny function

Besides properly legislating, the legislature's other relevant prerogative is the executive scrutiny which has been put forward with the assistance of the National Account Court (NAC), a sort of autonomous auxiliary legislative body. The NAC has institutionally tackled the more intricate cases of suspicious irregularity occurring at the federal level or related to federal public spending.

Indeed, the National Congress scrutiny comprehends the same facts encompassed in the competence of the NAC (Araujo, Nunes Junior, 1998, 266). Nevertheless, the former tends to focus on the most politically relevant facts. Moreover, as the latter has been technically better structured to scrutinize tasks, the National Congress seeks to examine only the central aspects of some questionable acts of the executive. The principal National Congress' accountancy forums are in fact the standing committees. Any of the twenty current standing committees can scrutinize the executive, similar to the British select committees. The instruments for doing so are the requirement of information from the public bodies, the request of public documents, the

inquiry of authorities and auditing. The standing committees, however, are limited to the scrutiny of the acts related to their specific competence (Amaral, Gerônimo, 2001, 48). For example, the Committee on Agriculture, Animal Industry, Supply and Rural can only scrutiny the acts of the Secretary of Agriculture and public bodies related to these themes. As stated before, the Brazilian standing committees perform both the role of legislative proposals' appraisal and the scrutiny of the executive.

Nevertheless, the scrutiny function of the standing committees has not been as effective as it should be. The standing committees have actually focused on primary legislative activity, i.e., the appraisal of bills because it has brought more media attention rather than the ordinary executive scrutiny. However, there is an oversight instrument very usual in the standing committees: the questioning of ministers (or secretaries) of state—or any public officer entitled with the direction of government units and subordinated to the president of the republic—about their acts (Faria, Valle, 2005, 8). The public officer called by any of the houses of the legislative branch shall release all the requested information; otherwise, he or she can be dismissed or temporarily removed from civil service. Yet, in general, in-depth oversight activities do not interest Brazilian legislators.

Furthermore, the oversight upon the executive has been concentrated in one standing committee. The singular Committee on Financial Oversight and Control (CFOC) has effectively operated on the control of the executive spending and contracting procedures. Unlike the other standing committees, the only CFOC function is to scrutinize the executive. The CFOC cannot appraise legislative proposals as a typical British select committee. Thus, the most sophisticated or technical scrutiny tends to be operated through this committee, that provides more substantial tools to handle with oversight, such as the Oversight and Control Proposal (OCP) whereby the CFOC may promote examinations, auditing and inspection of any office or unit of the executive, including direct administrative units. Despite the OCPs which might be put forward by any standing committee, the CFOC concentrates the major number of them, i.e., forty-six OCPs in a total of 127 current are ongoing there (SILEGIS, 27.07.05). The other eighty-one are dispersed in the other sectors of the Chamber.

It means that, for instance, a suspicion upon the scholarship policy expenditure, for example, is likely to be appraised by the CFOC and might be observed by the Committee on Education and Culture as well. However, this fact tends to be asserted in the former because the CFOC is better equipped to this task, and the committee members have specialized in scrutiny, although a few deputies have joined it more recently—one-quarter of the seats are currently available (SILEGIS, 28.07.05), that indicates the lack of interest in this committee.

Therefore, the value of the CFOC is ambiguous because, on one hand, it offers structural conditions to efficient scrutiny, but, on the another hand, it disrupts the scrutiny activities in the other committees. Consequently, the members of the other nineteen standing committees have never attained the professionalism necessary to deal with a high level of scrutiny in the mode of the American legislature.

In sum, besides all the problems which affect the professionalism in the standing committees observed in the last topic (3.3), there has been other related to the Committee on Financial Oversight and Control that overloads the scrutiny function. Thus, the elimination of this committee certainly would add to the set of positive measures in order to guarantee more well-structured work in the standing committees and force legislators to operate more intensively the scrutiny instruments in those committees.

Moreover, other forceful oversight instruments are settled in other bodies as well, such as the Parliamentarian Investigation Committee (PIC). The problem of the PICs is the different nature of the CFOC's, albeit it reflects in the legislative work as well. This issue involves more political aspects. The competence of PICs is restricted to the investigation of one 'nationally relevant' fact upon the suspect of federal public funds' misuse and/or irregularities committed by federal authorities.

The investigation committees have attracted great attention from public opinion and the media since the 1992 PIC which gave rise to the impeachment of former president Collor de Melo and the 1993 PIC which disclosed the politicians' corruption scheme involving the national budget (Veja, 2005). Indeed, the investigation committees have been effective in examining major

political facts which would not be tackled by the judiciary's technical judgement (Araujo, Nunes Junior; 1998, 269). Thus, this committee type is a relevant legislative tool to assure the checks and balances between the three powers.

Nevertheless, the PICs, likewise special committees, often dominate the political agenda in periods of turbulence. There have been since the second trimester of 2005 two forceful PICs: one related to corruption in the post office, that is a public company, and the other has investigated the involvement of several pro-government Congress members in a scheme to receive an illegal extra 'wage' in order to vote favourably on government policies. The facts under the PICs' investigations are linked. These facts are related to the problem of keeping a majority in a minority government, as asserted in topic 2.3. The government has been accused of bribing members of Congress to assure support for its issues (Folha de São Paulo, may-august 2005). As those PICs have disclosed evidence of the implication of various key pro-government politicians, the National Congress has been extremely focused on this investigation.

Consequently, the policy appraisals have practically ceased, and the situation reached a deep political deadlock. Although the PICs have been a useful process of maturation for Brazilian society, they also disrupt the functionality of the legislature that tends, in this case, to concentrate major time and effort on the scrutiny activity rather than the legislative function for a period of time. This also happened in 1992 and 1993 during the aforementioned PICs, and in other moments since then. In this kind of deadlock, major basic political pacts of governability should be made so that the scrutiny does not overpass the legislative function in the periods of crisis.

3.5. The flexibility of the legislative procedures

Initially, the peculiarity of the British legislative procedures suggests a useful starting point to this subject. British parliamentary rules have been consolidated by centuries of tradition and practice whilst Brazil has experienced several periods of abrupt shifts in the political order which have affected legislative practice. Actually, the last seventeen years have been the most important in the establishment of the legislative procedures, ever since the 1988 constitution, which heralded a new era of democracy in Brazil. The legislative procedures can be easily

changed by a simple majority. The Chamber of Deputies' Internal Rules[20] have been altered thirty times since their enactment in 1989 (SILEGIS, 15.07.05). Any recent legislation demands adjustments and complementation in its application to the reality. Albeit this is necessary supplementary work, it sometimes provokes disruption of the original rules.

The government and the opposition normally struggle upon interpretation of the Internal Rules. As they are relatively recent (only sixteen years), doubts and ambiguity have emerged in the most intricate legislative situations. Thus, hours of procedural debate normally precede any appraisal of a major government bill.

In the Brazilian system, the Internal Rules comprises a set of rules systematically organized (Amaral, Gerônimo, 2001, 11). The President of the Chamber of Deputies and the equivalent chairmen of each committee enforce the application of the rules on the floor and the committees, respectively. Any deputy may have either doubts upon the procedures or disagreement with their enforcement. On happening this, the deputy can present a Question of Order to the president or the Committees' chairmen. The president must answer it and explain his decision.

The decisions of the president related to the Questions of Order fulfil the lack of rule to new situations, or solve possible contradictions between the rules. A Question of Order normally occurs because, as any law, the Internal Rules (IR) are not complete and there are inevitably facts that the Internal Rules could not predict. Thus, the president entails major power in interpreting it and, consequently, defining complementary rules of the legislative process.

Nevertheless, in the case of Questions of Order, the legislative president tend to interpret the Internal Rules favouring the government once the election for the presidency of the legislative houses has normally been supported by the government. Actually, the legislative presidencies depict strategic positions for the government. The President of the Chamber, for example, has great discretion to set up the legislative agenda (Samuels, 2003, 43). The 'order of day'—the part of the ordinary

[20] Internal Rules (Resolução) n. 17/1989.

sessions in which the bills are analysed and voted—is defined by the President, after a consultancy of party leaders (Faria and Valle, 2005, 11, 16). The president normally includes bills in the order of day according to the government will.

There is an important 1997's case which highlights the existent flexibility of the interpretation of the Internal Rules to adequately address the interests of government that at that time assured solid majority. After the appraisal of the proposal of amendment to the constitution which treated upon the administrative reform, the text was submitted to a temporary committee's exam in order to correct problems of redaction only. In other words, the text passed to the final stage and just superficial changes, related to its form and accuracy, were allowed, not alteration in merit. Yet the government intended to withdraw some issues of merit from the text. Pro-government Deputy Moreira Franco proposed an apparent redaction's amendment which, in fact, modified the merit of the text. In response to Deputy Maria Laura and Deputy Miguel Rossetto's Question of Order which contested the acceptance of this amendment, former president Michel Temer did not consider the amendment invalid. The amendment was approved afterwards, and the government was favoured[21].

Similar to this case, many other have occurred since the implementation of the Internal Rules in 1989. Some attempts to avoid circumstantial interpretations which disrupt the real meaning of permanent rules were taken but without positive results. For instance, the Committee on Constitution, Justice and Citizenship is competent to re-evaluate the president's decisions upon the interpretation of the Internal Rules, but the committee's decisions are also affected by political influence of occasional majorities, hindering any more technical appraisal.

In fact, the Brazilian model represents an opposite to the non-discretional system of other countries. Epstein *et a*l (1997, 991) emphasise that legislatures which possess stable members, such as USA and Japan, tend to develop nondiscretional internal

[21] Question of Order n. 10443 proposed at 09.10.1997.

rules. In the Brazilian context, the Internal Rules are actually very recent (only sixteen years), and only the time and experience will consolidate the force of the rules. As Brazil has had several constitutions in almost 200 years, the changes of the constitutional order also reflect on changes in the 'rules of game', i.e., the internal legislative procedures. The experience which will be achieved in the next years is the main factor in the process of maturation of the Brazilian legislative institutions on the application of the procedures.

3.6. The amendment

As has been attested hitherto, the process of amendments in the Brazilian legislature is very open to all legislators, i.e., they are offered several opportunities to amend the policy proposals (Ferreira Filho, 2002, 209-10). Any deputy can propose an unlimited number of individual amendments without a minimum number of subscriptions. There are basically two moments of amendment in the Chamber of Deputies. It depends on whether the bill will be appraised by the committees and the floor afterwards, in this order, or only by the committees (Mueller, Pereira; 1999, 46).

Nevertheless, an ordinary-paced bill can abruptly be turned into an urgent bill if a party leader's petition of urgency is in the meantime approved. Thus, the legislative procedure to ordinary-paced bills is obviously longer than to an urgent one. The main feature of the urgent pace is that the bill will overtake the committee stage, being appraised directly by the floor only. In this case, the amendment process will be developed on the floor during the debates, exactly before the voting stage (Pacheco, 2002, 84). By contrast, the amendment phase of an ordinary-paced bill would occur in the committee stage, wherein the amendments and their effects on the text of the bill are better evaluated. This is another distortion caused by the urgency: the disruption of the amendment process.

The second case of amendment regards those bills which will pass only through the committees, not being reported to the floor. This is normally applied to the simplest policies, or that do not bring greater social, economic and political impact. In this hypothesis, the amendment will happen in each committee and will refer only to the matter of that specific committee (Paulo, Alexandrino, 2003, 57). Any deputy, even the non-members of the

committee, can propose amendments which will be evaluated in the committees[22]. In this second case, the amendment process works reasonably well as long as the committees have normally operated with a functional range of time and enough organization.

Nevertheless, it is in the first case during the floor's appraisal that the amendment problems affect the structure of the policies appraised. In recent years, most of the bills and provisional measures set up on the floor's agenda have been passed with the urgency stamp. The provisional measures are naturally urgent, but from the 409 statutory bills deliberated on the floor during the period from 2001 to 2005, about 87 per cent had urgent pace (SILEGIS, 29.07.05). Furthermore, the most complex policies tend to receive plenty of amendments. The passage of urgent bills on the floor might be done in few hours, thereby hindering in-depth analysis of their amendments. This has happened because the Internal Rules allow that in case of urgency the amendments should be proposed and appraised immediately.

Moreover, amendments are strategic instruments on unlocking the negotiation process. The opposition, for instance, can accept to vote favourably on a government proposal since some opposition's amendments might be included in the final text. As the process is very fast and the amendments might be proposed just hours, sometimes minutes, before the deliberation, formal and material mistakes may occur in the text, bringing about future problems in the implementation of the policy. The analysis of the content of the amendments and, hence, their impact on the text is often an elaborate task, even when it is used to being done under political pressure.

As a result, it must be asserted that all the internal procedures which allow the rapid presentation of amendments and their quick appraisal of them should be modified to grant a minimum period for doing this (at least twenty-four hours, depending on the complexity of the amendment). Albeit useful to the government for achieving last-minute agreements, this fast-track pace might cause disruption in the policies.

4. Policy system in crisis: Overall analysis

[22] Art. 119, Internal Rules (Resolução) n. 17/1989.

After the analysis of several topic problems, we are now able to link all of them in order to achieve an overall perspective of the legislature role in the Brazilian policymaking process. Several factors indeed cause disruption in the Brazilian policymaking system, comprehending the nature of the executive relationship with the National Congress, as well as the institutional legislative framework.

In fact, there is no necessary political connection between the election of the president of the republic and the election of the members of the Congress, although the both occur at the same date for a four-year mandate. This consequence of Brazilian presidentialism, as well as the segmented multiparty system, the entrenched party indiscipline and the intricate peculiar federalism have given fragile legislative support to the last presidents in the recent Brazilian history.

As the principal public policies depend on the legislative approval, according to the Brazil's legalist system, the government is compelled to assemble a majority in the legislature through a complex and continuous process of negotiation which comprises proportional division of strategic federal administration and legislature's positions between allies, the release of pork-barrel funds to satisfy legislators' local interests and participation in the policy designing process.

We did not intend to 'solve' these problems which depend on deeper structural analysis upon the electoral, political and party system. Nevertheless, the map of those factors is indispensable to understanding the National Congress framework upon which more profound examination has been done, resulting in suggestions of possible solutions for the problems stressed.

In order to compensate for the difficulty of governing in such an instable legislative situation, the 1988 constitution conferred to the president the use of provisional measures, a power of decreeing laws without previous legislature approval. Nevertheless, the excessive enactment of provisional measures and their application to complex policies have blurred the mechanisms of negotiation between the executive and the legislature. The legislators have not participated in the provisional measure's amelioration due to the unique summary pace. Our

recommendation is to limit the hypotheses and the depth in which the president might use this instrument.

Other major problems more specific to the institutional legislative framework also interfere in the policymaking process. First, the overload of aimless badly-elaborated private members' bills has hindered legislative work. A possible solution to diminish the impact of this factor would be the limitation of individual proposals and the stimulation of the committees' bill proposals instead.

Secondly, another important legislative dysfunction involves the committee action. Some aspects have weakened the standing committees, that are the heart of legislative process. The 'progressive' ambitions of the Brazilian legislators (which keep their focus on the sub-national issues) and the high turnover rate damage the professional commitment which should be expected of the members of the National Congress on the standing committees. The lack of tenure as a member and the excessive use of urgent pace applied to the bills which dislocate them directly to the floor's approval also contribute to the legislators' disinterest in the standing committees' work.

Moreover, the scrutiny function of the standing committees has been concentrated in one committee, the Committee on Financial Oversight and Control. The elimination of this committee should empower the scrutiny function in the standing committees, that, added with other measures such as the limitation of urgent petitions and the guarantee of minimum tenure to members, would stimulate more active participation in those committees. Furthermore, the necessity of basic political agreements between several political forces of the National Congress and the government is extremely necessary whenever the investigations led by the parliamentarian investigation committees are overcoming the appraisals of policies.

The overabundance of temporary committees, that have been easily created to satisfy the short-term culture and the party leaders' necessity on accommodating political demands for positions, divert the attention of legislators and causes diffusion and inefficacy in the legislative work. We recommend the definition of solid criteria to stipulate limits on the creation of temporary committees.

Other two last issues are also relevant to the understanding of the legislative system's problems. The first is the excessive presidents of the houses' discretion in the application of the Internal Rules. This attitude has affected the functionality of the legislative process to benefit the circumstantial majorities. Second, the last-minute amendments to relevant and complex bills in the floor's stage of appraisal have caused distortion of meaning, contradictions and incoherence in the text of laws, disrupting the implementation of the respective policies. The solution would be the guaranty of a minimum period of time for the amendments' analysis.

After this overall perspective, some last points should be asserted. The public choice theory, that has Tullock, Downs and Niskanen as some of its main heads, highlights the role of self-interest in public institutions (Parsons, 1995, 307). Public choice economists assume that, although people acting in the political sphere have some concern for others, their main motive, whether they are voters, politicians, lobbyists or bureaucrats, is self-interest. Some scholars of this theory transfer the logic of microeconomics to politics and think that, whereas the maximization of self-interest leads to "benign results in the marketplace, it produces nothing but pathology in political decisions" (Starr, 1988,16).

It is evident that the current Brazilian institutional framework has catastrophically favoured the maximization of politicians' self-interest. They become what Starr claimed as "free-riders" or "rent-seekers". The overall analysis of the political-legislative structure made so far discloses such an individual-motivated action in several moments: the negotiation mechanisms based on patronage of positions and pork-barrel, the major volume of individual legislative bills, the excessive number of political parties and so on. It is invigorated by the disruptive way in which the press evaluates the legislators' performance, focused on individual quantitative issues instead of the assessment of collective participation. Hence, using Hardin's terms (1982, 72), the 'narrow rationality of self-interest' of politicians which have benefited only themselves in the political 'market', also brings irrationality to the policy system, causing increasing maladjustment of the institutional legislative functions.

5. Conclusion

The fragile executive-legislature relationship and the diffuse legislative mechanisms are the main reasons for the recent crisis situation in which the executive took charge of the legislative functions through instruments such as provisional measures, and the legislature does not cohesively exercise its institutional mission. While the executive-legislature relationship is underpinned in further political, electoral and partisan complex aspects, topic rearrangements of the legislative framework might offer positive effects upon the conjuncture which affects policies.

Indeed, the Brazilian institutions contribute to the maximization of legislators' self-interest and the formation of individual cells, such as the incessant creation of short-term committees, for instance. This attitude causes diffusion, incoherence and inefficiency of the collective legislative work which has been damaging a relevant state goal: the improvement of the public policy system.

Therefore, changes in the institutional framework are indispensable to diminish the individual instruments of the National Congress's members, the excess of legislative bodies and other distortions of original functions which confuse the legislative process rather than putting it forward. For instance, the strengthening of the committees' work would stimulate legislators to participate more productively in the building of policies. Thus, the action of the legislators would be better coordinated and the executive action in the legislatives bodies more efficiently organized, thereby guaranteeing the reestablishment of the institutional order.

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