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Horizontal accountability in Brazil: Congressional oversight of the executive branch

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Abstract

Legislative oversight over administration, though an important feature of modern democracies, has received little attention in Brazilian legislative studies, which have been far more concerned about legislative output. Analysts often assume that horizontal accountability does not play an important role, following O'Donnell's formula on new democracies (1998). In this paper, I question this assertion by analysing a dataset with 3,114 oversight cases performed by the Brazilian legislature over the executive branch from 1988 to 2004. My argument is that we should investigate how individual preferences, institutional constraints and external context shape Congress' oversight performance. In this paper, I review the formal institutions for legislative oversight in Brazil, as well as provide an assessment of how the amount (N) and type of oversight (alarm and oversight, cf. McCubbins and Schwarz, 1984) are affected by: a) political party and/ or ideological preferences; b) electoral cycles; c) bicameralism; d) internal legislative organization; e) coalition size; f) presidential support; and g) honeymoon effects.

Keywords: horizontal accountability; Congress; legislature; parliament; Latin America; Brazil; democracy; oversight.

Resumo

O oversight horizontal, especialmente aquele exercido pelo poder legislativo sobre o poder executivo, apesar de ser um aspecto importante das modernas democracias, é pouco estudado no Brasil. Ali, os estudos legislativos centram-se na produção de leis e o oversight horizontal é tomado como ineficiente ou inexistente, segundo a fórmula de O'Donnell (1998) para as novas democracias. Nesse paper, eu questiono essa asserção com uma base de dados que contém 3.114 casos de oversight exercidos pelo Congresso brasileiro sobre o poder executivo, de 1988 a 2004. Argumento que é preciso demonstrar se e como o Congresso desempenha seu papel de "overseer"; e analisar como preferências individuais, constrangimentos institucionais e dados conjunturais influenciam esse desempenho. Na primeira parte do trabalho, descrevo quais são as instituições formais para o oversight legislativo no Brasil e dados gerais sobre o oversight. Na segunda parte, avalio como o volume (N) e o tipo de oversight (alarme ou patrulha, cf. McCubbins e Schwarz, 1984) podem ser afetados por: a) partido político e/ ou preferencias ideológicas; b) ciclos eleitorais; c) bicameralismo; d) organização interna do legislativo; e) tamanho da coalizão do governo; f) apoio presidencial; g) efeito de lua-de-mel.

Palavras-chave: accountability horizontal; Congresso; legislativo; parlamento; América Latina; Brasil; novas democracias; oversight.

The proper office of a representative assembly is to watch and oversee the government; to throw the light of publicity on its acts; to compel a full exposition and justification of all of them which any one considers questionable; to censure them if found condemnable [J. S. Mill, 1981: 104].

1. Introduction

Horizontal Accountability is a relevant variable for understanding how assemblies and presidents interact in modern democracies, and therefore a key element for assessing the quality of democracy. In spite of its importance, this is not a central area of legislative studies in Brazil, where scholars have been far more concerned with legislative output¹. It is also taken for granted that horizontal accountability does not play an important role in the Brazilian Congress, following O'Donnell's prediction on new democracies. These regimes would lack horizontal accountability due to historical background conditions in many so-called "delegative democracies", where the executive would eliminate, co-opt or neutralize formal agencies designed to generate oversight (O'Donnell, 1998:117). Other arguments abound in Latin America about powerful presidents with great legislative prerogatives, agenda power, informational advantages and expertise (Mustapic 2000, Loureiro, 2001; Siavelis, 2000; Schedler, Diamond and Plattner, 1999). In this case, "institutional schemes," rather than historically given conditions, would militate against Congress (Samuels, 2000; Figueiredo, 2001 and 2003).

Though seductive, these arguments lack strong empirical evidence.² As noted by Ogul (1977), there is no existing model of democracy that boasts a sophisticated and all-inclusive oversight system. Countries like Japan, Italy, United States and Germany have been dealing with systematic political corruption and low accountability.³ Also, as much as the ongoing debate about Latin America, the 1960s and 1970s debate about oversight in the advanced democracies was a normative one. Authors pointed to the nonexistence or inefficiency of the oversight framework, and "negligence" was a frequently used word (Schlesinger, 1998; Bibby, 1966, 1968; Dodd and Schott, 1979; Fiorina, 1977a, 1977b, 1982; Hess, 1976; Huntington, 1973; Mitnick, 1980; Ogul, 1976; Ripley, 1978; Scher, 1963; Woll, 1977, Lees, 1977; Pearson, 1975). Nevertheless, two decades later, theoretical and methodological shifts led to a new diagnosis, pointing to active systems (McCubbins and Schwartz, 1984; Aberbach, 1990; Sánchez de Dios, 2000; Raunio and Wiberg 2000).

¹ Some studies have been carried out on accountability performed by judicial institutions (Citaddino, 2002; Sadek, 2000; Arantes, 2002).

² Some exceptions are Azevedo and Anastasia (2002) and Figueiredo (2001; 2003).

³ In the U.S., some examples are systematic state repression towards Afro-American, Latin and peace movements in the 1960s, lack of transparency in the Iran-Contras case in the 1980s, and, after September 11, the increase of presidential discretionary powers (Fox, 2000; Mayer and Price, 2002).

In this paper, I firstly describe the formal instruments that the Brazilian Congress has to perform its oversight role, and the significance of oversight as a share of the total Congress workload. Secondly, I analyze trends on how individual preferences, institutional constraints and context influence this performance. I work with two dependent variables — the *amount* (N) and *type* of oversight (fire alarms and police patrol, cf. McCubbins and Schwarz, 1984) — and seven independent variables: a) political party and/ or ideological preferences; b) electoral cycles; c) bicameralism; d) internal legislative organization (floor-committee labour division; e) coalition size; f) presidential support; and (g) honeymoon effects. The dataset incorporates 3,114 cases of oversight occurring from 1988 to 2004.

What do horizontal accountability and Congressional oversight mean? Horizontal accountability encompasses oversight performed by an infra-state set of institutions designed to constrain illegitimate or arbitrary power, and to discourage abuses and illegalities perpetrated by the state itself. These institutions would provide barriers against the tyrannical exercise of power, a central concern of modern political theorists,⁴ and would eventually provide punishment of authorities' mismanagement or abuses (O'Donnell, 1998).⁵ They would include inter-branch oversight, the power to investigate, an independent judiciary, and federal arrangements. Horizontal accountability must also address three elements: who conducts oversight (state agencies); in what forms (sanctions, impeachment, *oversight*); and over which particular actions or omissions (O'Donnell, 1998).⁶

This is a supplementary element to the first and most fundamental idea of oversight in democratic theory: that of *vertical accountability*, performed by voters through secret, regular and competitive elections⁷. Normatively, this combination should result in the depersonalization of power (Bentham, 1960; James Mill, 1937). Horizontal accountability has been present in the classical direct democracy (Sartori, 1987a; Held, 1998; Elster, 1999), in pre-modern systems (cf. Machiavelli, 1994), and

⁴ To mention a few and important authors deeply concerned with oversights: Locke (1994); Montesquieu (1995); Madison (1787); Tocqueville (1977), John S. Mill (1991) all pointed to the need of close oversight of the bureaucracy.

⁵ The *Oxford Dictionary* defines "oversight" interchangeably with *accountability*, *checks and balances*, *responsibility*, *answerability*, essentially defined one by the other (Elster, 1999:255). For the origins of the word *accountability*, see Kenney (2003), in which he reminds us that *accountable* and *accountableness* date from the sixteenth and seventeenth centuries, and *accountability* first appeared in Samuel Williams' work *The Natural and Civil history of Vermont*, 1794. Dunn (2003) makes a distinction between *accountability* and *responsibility*: the former would be vertical accountability and the latter would refer to the obligation bureaucrats would have to report to elected officials.

⁶ Other conceptions would rely on the separation of powers – with "ambition to counterbalance ambition" (Madison, 1788) –, that introduces competition as a deterrent to corruption; or different rules for the composition of powers, that would result in heterogeneity and increased competition (Morgenstern and Manzetti, 2003).

⁷ In spite of some arguments that electoral democracy is more about voters' choices than vertical accountability between voters and elected officials (Przeworski, Stokes and Manin, 1999).

is a fundamental part in model of liberal representative democracy (Bobbio, 1988).⁸ Even when the concept of democracy shifted in a more procedural direction, some sort of multiplicity of command and power diffusion was preserved in the definition.⁹

This paper focus on the horizontal accountability that the Brazilian Congress performs vis-à-vis the executive branch. In this case, I focus on “oversight” as a key feature of executive-legislative relations, in which the executive branch owes to the legislative branch certain obligations and/or information (Fox, 2000). This oversight can be performed *ex ante* — during the design and implementation of a program — as well as *ex post*, after its implementation (Ogul and Rockman, 1990; Harris, 1964).¹⁰

“Oversight” or “control” are often preceded by a number of adjectives: horizontal, parliamentary, legislative, political, etc. These all correspond, at some level, to the supervision and oversight of administration’s actions, for which *legislatures can count on mechanisms such as hearings, summoning of ministers, resolutions of inquiry, special investigatory committees, and confirmation process, among others* (Oleszek, 1995; Mustapic and Llanos, 2005; James, 2002; Aberbach, 1990 and 2001; Sartori, 1987a:189).¹¹ I will be referring most frequently to legislative or horizontal oversight, to refer to that supervision which is done via these formal instruments.

As such, this definition does not comprise only cases of abuses and corruption. Rather, it includes the possibility of gathering information to boost transparency, to correct the informational asymmetry between the branches, or to advocate for preferred policies (Scicchitano, 1986; Aberbach, 2001). The definition also excludes “informal” oversight, often performed via meetings, phone calls and correspondence between officials from the two branches,¹² as this is far more difficult to measure.

⁸ As it would have more to do with power contention than with power distribution.

⁹ “(...) the old and recurring lesson of polyarchies is that excessive independence is oppressive” (Dahl, 1997: 205).

¹⁰ Formal sanction is not essential in this definition, though some authors believe this would mean a diminished form of accountability (O’Donnell, 1998; Kenney, 2003; Morgenstern and Manzetti, 2003). But non-sanctioning accountability brings other benefits for internal and external agents. One of them is publicity, which favours organized interests, social movements, media and even state oversight agencies (Schedler, Diamond and Plattner, 1999; Smulovitz and Peruzzoti, 2003). Besides, if the purpose of oversight is also identifying problems and promoting better management, non-sanction oversight might be very helpful.

¹¹ This definition does not correspond to Sartori’s “legislative oversight” concept (1987), which encompasses proposing, approving, changing, and rejecting legislation. For legislative oversight related to legislative changes in Brazil, see Amorim Neto and Tafner, 2002; in Argentina, see Morgenstern and Manzetti, 2003; in Peru, Venezuela, Italy, France and the U.S, see Carey and Shugart, 1998.

¹² Ogul’s (1976) latent and manifest (informal or formal) distinction broke down the dominant formalism that held rigid conventions about limits of legislation and oversight, but nevertheless made the definition so broad that it would make almost anything look like oversight – speeches, bills, meetings, letters, etc.

In the 1990s, the debate on horizontal accountability grew in vigor. The debate centered on two issues: the validity of horizontal accountability and the preferred institutions for oversight.

The first debate had some scholars siding with the argument that vertical accountability is the only possible oversight. Independent powers have different vertical accountabilities, due to distinct mandates, and by definition, such independent powers could not be accountable to each other. Besides, if they work properly, there is no need for horizontal accountability (Moreno, Crisp, and Shugart, 2003; Shugart and Carey, 1992). I do not dispute the precedence of vertical accountability, but, given its limitations, the simultaneous existence of horizontal accountability institutions can contribute to the improvement of vertical ones (Przeworski, Stokes and Manin, 1999; Anastasia and Melo, 2002). The limitations of vertical accountability relate to: a) the periodic nature of elections (the substitution of elites does not occur all the time, but only at certain intervals) b) the size and complexity of the state apparatus; c) and the behaviour of the bureaucracy, which remains insulated from vertical accountability insofar as it is only responsible to the head of the executive branch itself (Przeworski, Stokes and Manin, 1999:21).

There is also another advantage of horizontal accountability: secondary institutions benefit from the “wisdom of insiders.” That is, those who have worked for or within the administration know more about policy processes, loopholes and inefficiencies in the bureaucracy, and how to muddle through to find information. This expertise might not be routinely available outside of the state apparatus.

The second debate in the 1990s centered on which should be the ideal institution for the exercise of oversight: internal systems, the judiciary, or the legislative branch? Although some authors privilege the judiciary (Shapiro, 2003), I believe that *legislative bodies* have more incentives to perform oversight, as well as more legitimacy. Firstly, because oversight is a constitutional or statutory function of parliament. Secondly, legislatures are subject to vertical accountability, whereas judiciary and internal agencies seldom are. Thirdly, legislatures are more inclusive and plural, reflecting cultural diversity, and carry out more transparent and less insulated decision-making processes (Carey, 2003).¹³

¹³ Though I privilege legislatures, I understand oversight to be a complex product of interacting institutions (Kenney, 2003), that can include not only the judiciary and internal agencies, but also other arrangements. One might be transnational actors. Another might be federalism, in which decentralization looks vertical but can be understood as a horizontal checks and balances system (O'Donnell, 1998; Fox, 2000).

Having highlighted the relevance of horizontal accountability and the preference for legislatures as key players in the process, I wish to make two methodological comments on the dependent variable before proceeding to the data analysis.

The first comment concerns the dependent variable “amount of oversight,” or the number of oversight cases performed. I focus on four instruments: summons of ministers to Congress; resolutions of inquiry; hearings¹⁴; oversight and oversight bills. The dataset comprises the sum total of oversight and oversight bills, ministerial convocations, hearings in the Senate and the Chamber of Deputies (the latter with cases from 1995 to 2004) and a randomly generated sample of twenty thousand resolutions.¹⁵ What were the criteria for selecting these particular instruments? They were selected on the basis that they were *formal* and devoted to overseeing the administration from either an *investigative* perspective or an *informational* perspective. These instruments are regularly used and represent what Congress itself does in order to follow up on the actions of the executive.

The second comment concerns the dependent variable “type of oversight.” Here I use McCubbins and Schwarz’s (1984) typology of “police patrols” and “fire alarms.” Police patrols are self-motivated, centralized, active, and direct oversight actions taken by Congress in order to assess the administration’s activities, programs, and capacities on a “routine” basis. The costs of police patrols fall on Congress itself. Fire alarms, on the other hand, are event-driven, immediate, more decentralized, and would demand less direct and active intervention. The information cost falls on the different agents that bring information to the attention of Congress, including the administration.

I assume that all formal oversight instruments can be used for either type of oversight.¹⁶ Disentangling the facts is not an easy task - e.g., routine oversight might have been driven by a whistleblower, or a fire alarm might be in fact inserted in a more complex and long-term supervision of a program. I adapted my decision rules from Balla and Deering (2001) and based them on stimulus rather than on procedures. A “fire alarm” occurs when: a) the resolutions asking for the oversight procedure referred to media coverage; b) there is a visible connection with special events (e.g. violent deaths in rural areas, disease epidemics); or c) specific, non-generic issues or localities were mentioned in the resolution (e.g., education

¹⁴ Excluding the 882 held only for the confirmation of officials from 1988 to 2002.

¹⁵ Margin of error: 5%. Sample size in the Chamber: 453. In the Senate: 469. Sources were historical archives, transcription notes, annals, speakers’ reports, and the electronic databases of both houses.

¹⁶ Aberbach (1990) refers to hearings always as patrols, but in reality many hearings can be event-driven (Cameron and Rosendorff, 1993). Figueiredo (2001; 2003) refers to parliamentary committees of inquiry (CPIs) as police patrols as well, but the same argument could stand here.

spending in city X). Regular, mandatory or routine reports or testimonies were classified as “police patrols”.¹⁷

The paper is divided into seven sections. Section 2 covers literature on the independent variables; Section 3 offers a description of the Brazilian formal system for oversight. The subsequent sections review the empirical evidence on the influence of individual-level, institutional, and contextual variables on the exercise of oversight. Section 4 gathers evidence on parties and electoral cycles; Section 5, on bicameralism and the division of labour between the floor and the committee; and Section 6, on coalition size, presidential support and honeymoon effects. Section 7 offers conclusions.

2. What can affect Congress’ oversight of the administration?

Quite as important as legislation is vigilant oversight of administration. It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents. The informing function of Congress should be preferred even to its legislative function.

Woodrow Wilson (1885:297)

Legislative oversight is a complex and dynamic activity that can hardly be understood under a single aspect (Ogul, 1976; Aberbach, 2001). I combine arguments from three different theoretical perspectives. Preceding scholars have done the same, in an effort to identify patterns that are hardly broad and consistent (Ogul, 1976 and 1977; Ogul and Rockman, 1990; Scicchiatano, 1986; Huber and Shipan, 2000 and 2002; Aberbach 1990 and 2001; Balla and Deering, 2001). As Khrebiel (1998) points out, combining different theories may paint a more realistic picture of the political process. The theories which I combine here are rational choice, in which reelection plays a central role; neo-institutionalism, where rules and procedures are relevant¹⁸; and a presidential-centred perspective, which allows space for coalition dynamics and context.

¹⁷ For example, the mandatory hearings that accompany the Central Bank’s publications of its quarterly reports.

¹⁸ The new Institutionalism differs from the “old school” in which the latter was concerned with the government’s formal or legal aspects. The new approach gives more autonomy to political institutions, and politics becomes the convergence of institutions, individuals and events (Gameiro de Moura, 2003).

Individually, each theory has its fragilities. Electoral connection theory cannot apprehend the interests of bureaucracy, institutional expertise, the centrality of parties in organizing political life, and political trends. The institutionalist framework lacks individual incentives or the context incentives for political change. Context matters, but not in isolation: there are individual agents playing within a given set of institutions. In the following pages, I describe the relevant variables necessary for understanding when and why Congress exercises oversight.

Individual Preferences.

The basic statement of the rational choice perspective is that politicians, as strategic actors, are vote-oriented: their main motivation is electoral maximization, or reelection. As legislators face periodic elections, and votes are territorial, they have strong incentives to please specific interests in their own districts (Mayhew, 1974; Fiorina, 1977a, 1977b and 1982; Khrebiel, 1991; Hinich and Munger, 1997) while fulfilling the vertical accountability principle of democracy [Mayhew, 1974:6].

Therefore, instrumental legislators behave as the well-known rational choice theory predicts: a) they have a set of preferences, though limited; b) they are capable of transitively ordering their preferences, goals, values and strategies (if they prefer A to B, and B to C, then they prefer A to C); c) they make consistent choices (always opt for the same choice when confronted by a similar set of alternatives, under similar circumstances); d) they choose that which maximizes one's satisfaction, within a limited and fixed set of alternatives; e) follow a cost-benefit rationale; f) they have their individual actions affected by the nature of the good (public or private), the timing of incurred costs and benefits, and and by the uncertainty of costs and benefit dimensions (McKenzie and Tullock, 1985; Green and Shapiro, 1994; Elster, 1989; Przeworski, 1988; Riker, 1990; Knight, 1992; Hinich and Munger, 1997)¹⁹.

As mandates are the venue through which members can maximize other preferences –power, good policies, interests or others – it would be rational to seek reelection. Therefore, any opportunity to reassure voters of one's commitments, especially at low costs, will be welcomed (Mayhew, 1974). Besides pork-barrelling and legislating, oversight may be one of these opportunities, especially if it transfers the costs to third parties. Also, oversight – differently from legislation – does not necessarily alter the results of public policies, so Congress cannot be blamed for unfortunate impacts, something the risk-averse legislators values. This leads to the

¹⁹ Reelection is the main goal but, when it is not threatened, members have room for policies that are not oriented not exclusively to their constituencies (Arnold, 1990). This argument explains why there are policies other than purely parochial ones.

hypothesis that *any member, independently of party preferences or ideology, will perform oversight (H1)*, because it can maximize individual ambitions of reelection.

Two corollary hypotheses derive from the impact of electoral cycles on the amount and type of oversight. The members' priority is their constituency, as district trips, letters, casework and pork barrelling show (Cain, Ferejohn and Fiorina, 1987; Hamilton, 1992; Johannes, 1995; Jacobson 2001, 30-35; Ames, 2002). For obvious reasons, constituents become even more central during election periods, when members must report accomplishments or sort out promises for the next term. Time is a valuable commodity and has to be spent on the main goal – reelection. Similarly to legislative production – there is a clear decrease of bills proposed and approved in these periods (Lemos, 2001) – we can expect a downturn of control initiatives. In other words, *the amount of oversight will decrease during electoral periods (H2)*.

One can also predict that, during busy electoral periods, members (if they act at all) will opt for a less time-consuming form of oversight. Members will not initiate supervision of the administration, unless it is a major concern of the constituents or a last-minute event has triggered some supervision. Police patrols (self-motivated routine oversight) demand too much time and effort during electoral periods when time and energy are precious. In contrast, fire alarms, by definition, address urgent issues, and the costs of alarms can be transferred to outsider agents (McCubbins and Schwartz, 1984). Given that alarms are event-driven, they may get closer to voters' preferences and be more suitable in a compressed year (routine, long-term oversight would get less attention from voters in an election year). Some theoretical perspectives claim that members of Congress can benefit from *both* types of oversight – alarms and patrols – depending on existing incentives and conditions (Lupia and McCubbins, 1994), but this is still a disputed question (Balla and Deering, 2001; Cameron and Rosendorff, 1993). The lack of research into this question in Brazil calls for the testing of a third hypothesis, which claims simply that *fire alarms will outnumber police patrols in electoral periods (H3)*.

A counter-argument would be that electoral years can feature more intense supervision of the executive, given that oversight initiatives could become increasingly partisan. Nevertheless, the predominant evidence suggests that this is incorrect, as elections induce members to forego their institutional roles in order to spend more time with voters.

The role of institutions.

A second theoretical perspective – neo-institutionalism – claims that institutions are the framework for individual behavior, that institutions have an autonomous role, and that they tend to equilibrium. Institutions matter, and structural features of a political system have a critical role in explaining both political outcomes and the viability of the overall political system. Also, preferences must be attributed to institutions if we wish to understand the complexities of reality (Khrebiel, 1991; Hinich and Munger, 1997). This is a shift from away from the “old institutionalism” (which was more descriptive of norms and procedures) toward newer accounts of the interactions between institutions and individuals.

Institution-oriented theories assert that results are predictable, and institutional arrangements and rules facilitate gains. There are intentional asymmetric arrangements that generate intentional biases in the provision of political goods (Khrebiel, 1991). As far as oversight is concerned, this means oversight might depend on aspects as legislative and executive power veto, legislative organization, bicameralism, collective versus individual access to rights etc (Anastasia and Melo, 2002; Figueiredo, 2001; Lemos and Llanos, 2006; Scicchiatano, 1986).

My analyses will address two institutional features: bicameralism and the internal organization of Congress. Bicameralism is an important aspect of contemporary politics, as one third of existing legislatures are bicameral (Tsebelis and Money, 1997; Tsebelis, 2002). Nevertheless, many studies focus on the lower chamber only or treat bicameral legislatures as unicameral (e.g. Shugart and Carey, 1992; Linz and Valenzuela, 1994; Ames, 2002; Cox and Morgenstern, 2001; Figueiredo and Limongi, 2001; Mayhew, 1991). There are few studies about Senates (Binder, 1999; Binder and Smith, 1997; Backes, 1999; Sanchez, Nolte and Llanos, 2005), but these show that bicameralism has an impact on the approval of legislation (e.g., Hiroi, 2005; Tsebelis and Money, 1997; Binder, 1999; Bottom et al. 2000; Ricci, 2003). As different chambers have different levels of congruence and symmetry (Lijphart, 1984), incentives to perform in the legislative or in the oversight arena may vary according to the chamber²⁰. Different term lengths and nature of representation – e.g., proportional or majoritarian – can have an impact on member’s choices, as well as on the distribution of rights between senators and deputies.

²⁰ Symmetry refers to constitutional prerogatives, and chambers can be symmetrical or asymmetrical (same formal powers, different formal powers). Congruence refers to electoral rules that govern the selection of legislators, and chambers can be congruent or incongruent (be subjected to the same electoral rules, or to different rules). Brazil is a case of symmetrical and incongruent bicameralism. For further discussion, see Lijphart, 1984.

My hypothesis is that *the amount of oversight will be greater in the Senate than in the Chamber of Deputies (H4)*, because:

- a) senators have longer terms – 8 years, contrasted with 4 years for deputies – which leads to a less intrusive election calendar;
- b) there is less incentive for cultivating a personal vote in the Senate (which uses first-past-the-post rules), whereas in the Chamber members are selected according to an open-list proportional system²¹;
- c) senators participate in more committees than deputies, thus having broader jurisdiction over a variety of issues (Deering and Smith, 1997; Lemos, 2002);
- d) senators have more expertise and hold more professional careers (Lemos and Ranincheski, 2003; Tsebelis and Money, 1997);
- e) senators have jurisdiction over presidential appointments (confirmation powers) and over the levels of indebtedness for federal, state and local governments.

A related question is: can bicameralism affect the choice of fire alarms or police patrols? There is a general assumption that “Congress” prefers fire alarms, because these address more immediate and problematic issues (McCubbins and Schwartz, 1984). In contrast, I downplay “Congress” and emphasize cameral differences to suggest that — for the same reasons listed above — the Senate will be more *police patrol-oriented*, whereas the Chamber of Deputies will be more *fire alarm-oriented (H5)*. The lower chamber will be more event-driven.

The second intra-institutional aspect I will address is the division of labour between committees and the floor. Standing committees are the most common feature of modern legislatures (Strom, 1998), and organizational principles, especially the level of decentralization and hierarchy, may impact policies²². In some countries — Brazil is one — committees can have a great capacity for blocking or pushing legislation (Fenno, 1973)²³. Committees foster the participation of organized groups and minorities, ease information gathering and distribution, lower decision costs, and can provide negotiation and commitment (Ricci and Lemos, 2004). On the

²¹ See Mainwaring (1999), Shugart and Carey (1992), and Desposato (2006) on the incentives for the personal vote.

²² Distribution of power among committees is not symmetric, and indeed there is generally a hierarchy in committee systems (Eulau, 1984). Also, the division of powers between floor and committees may vary a lot: in the U.S., for instance, committees are the very centre of legislature activity, whereas in the United Kingdom, decisions are firstly taken in the floor and committees cannot alter them (King, 1997).

²³ For the role of committees in shaping policies, see distributivist theory (Weingast and Marshall, 1988); party-centred theory (Cox and McCubbins, 1993); and informational theory (Khrebiel, 1991; 1998).

other hand, they can also acquire too much autonomy and disproportionate legislative influence from specific leaders, lobbyists and pressure groups.

In Brazil, both the floor (*plenário*) and the committees have prerogatives of oversight. Theory built on evidence from legislative output states that the floor is more important, given that the president's power to interfere with the legislative agenda – especially with “urgency resolutions” (*pedidos de urgência*) and executive decrees – has turned committee into a more informational nature (Bernardes, 1996; Pessanha, 1997; Figueiredo and Limongi, 2001; Pereira and Muller, 2004).

Though some indicators point to a relevant role for committees – noting a higher amount of approved legislation (Lemos, 2001), the great importance senators attribute to committees (Sanchez, Nolte and Llanos, 2005),²⁴ and the amount of professional work committees demand from legislative specialists²⁵ - I hypothesize that *there will be a larger amount of oversight performed in the floor than in committees* (H6), as anticipated in the literature on floor precedence.

As far as the type of oversight is concerned, it is reasonable to think that committees, which possess more specialization and resources than the floor, should opt more for police patrol oversight rather than for event-driven fire alarms. A busy floor that absorbs bills from all committees, that receives executive orders and other urgent legislation, would necessarily have to deal with more event-driven, low-cost and time-constrained forms of oversight. Therefore, I predict *there will be a predominance of police patrols in the committees, and a predominance of fire alarms on the floor* (H7).

Executive-centered theories.

Three variables are at the core of executive-centered explanations. These are: the distribution of political parties represented in Congress and their relationship to the president; the presidential support rate; and honeymoon effects.

There is a significant literature dealing on how divided government – when the party of the president is not the majority party in at least one of the two chambers – negatively impacts the approval of legislation and other aspects of governing. Divided government can increase gridlock in legislation and in confirmations of presidential appointments (McCarty and Razaghian, 1999; Shipan and Shannon, 2003, Binder and Maltzman, 2002 and 2004; Binder, 1999 and 2003), can lead to a more intense

²⁴ Some 91% gave a grade of 7 to 10 in rating the importance of committees (1-10 scale) and 82% affirm they are effective (7-10 grades). *Institut für Iberoamerika-Kunde survey, 2005.*

²⁵ In 2001, 69% of the total number of reports were committee-oriented.

use of executive decrees (Amorim Neto and Tafner, 2002), and can generate more lengthy legislation (Epstein and O'Halloran, 1994 and 1999). On the other hand, divided government can favour increased oversight, as it tends to elevate the level of interbranch conflict (Kenney, 2003).

Nevertheless, these views are not undisputed²⁶. Mayhew (1991) demonstrated that between 1875 and 1993, relevant legislation and investigation in the US were unaffected by divided government, and an array of subsequent studies supported his thesis (Aberbach, 2001; Balla and Deering, 2001; Khrebiel, 1998).

The divided government perspective is not suitable for analysing the highly fragmented Brazilian version of coalitional presidentialism (Abranches, 1988)²⁷. Even if a given executive can build a majority coalition in the legislature, this in itself does not imply unified government (Samuels, 2000), as the coalition size can vary. This is why I employ a measure of “coalition size”, which corresponds to the percentage of seats held in Congress by the parties participating in the propresidential coalition (Amorim Neto, 2002). In parliamentary studies throughout Europe, coalition size has been a variable positively correlated with public debt and with tepid responses to fiscal crises (Roubini and Sachs, 1989). In Brazil, Amorim Neto and Santos (2003) detect a positive correlation between coalition size and higher rates of legislative approval. Therefore, the goal here is to determine how coalition size affects the amount of oversight. I hypothesize that *the larger the coalition size, the less legislative oversight will be exercised by Congress (H8)*.

Why? Because being part of the propresidential coalition means: a) having special access to resources that would obviate the need for oversight; or b) having ties of political loyalty with the government, meaning more hazard-protection than hazard-promotion. A smaller coalition size can be less efficient — more time necessary to approve bills, lengthier legislation, more negotiated decisions, etc. —, but can also represent an increase of watchfulness and/or protest, translating into a larger pool of oversight initiatives.

The two context variables centered on the executive itself are presidential support (popularity) and honeymoon effects. Though they do not belong to a proper theory about legislative-executive relations, these variables are frequently combined in efforts to understand Congressional behaviour.

Presidential popularity is used in interaction with legislation approval rates (Khrebiel, 1998), where it is pointed out that popularity does matter. It is also used in

²⁶ Most disagreements focus on how methodological choices lead to divergent conclusions.

²⁷ Average number of effective parties in Brazil is 6.70, more than double the regional average: 3.29 (Payne et al., 2002).

studies of unilateral action (presidential orders and decrees) by the executive, with contradictory results that point to: a) an increase of unilateral measures by unpopular presidents, as a way to bypass uncooperative Congresses (Moe and Howell, 1999); b) no correlation between presidential popularity and the number of executive orders (Krause and Cohen, 1997); c) a decrease of unilateral measures by unpopular presidents (Pereira, Power and Rennó, 2005), as happened during Collor's government in Brazil, just before impeachment²⁸.

As contradictions persist, and there is no study on how popularity affects oversight, I will test whether *presidents with high support rates face less oversight* (H9)²⁹. My rationale is based on the idea that members are rational and attentive to the context, especially to the president's prestige. As risk-averse agents (Arnold, 1990), members will not be willing to face their constituents' displeasure if they criticize a popular president, and therefore the legislators will avoid doing so. Alternatively, presidents with lower support rates would face a more strident and aggressive Congress, as a response to public disapproval.

The second contextual variable – honeymoon effect - represents the first six months of government after elections, or the *beginning of presidential terms*. This is a most favourable time to approve legislation (Mayhew, 1991:176-177), and it is also statistically relevant to explain the length of confirmation processes in the Senate (Martinek, Kemper and Van Winkle, 2002). Because of electoral-induced political homogeneity (Khrebiel, 1998), legislation is approved with less radical opposition, a phenomenon Mayhew (1991) refers to as *alternative variation* (Mayhew, 1991). Processes are cyclically repeated, following the ups and downs in Congress, due to the tension between governing and being reelected. The first two years of terms would be devoted to policy making, whereas the last two years would be devoted to the electoral agenda. Note that this is different from the thesis of high popularity rates (Neustadt, 1965; 1980). Rather, a "honeymoon" would simply represent a period of initial political harmony (Khrebiel, 1998: 55).

If elections can induce preference homogeneity and favour policy making, these phenomena can hardly boost supervision of the administration, at least in terms of politically-oriented oversight. If that is so, one can expect that *there will be less oversight during honeymoon periods* (H10).

Sections 4, 5 and 6 will introduce data concerning these hypotheses. However, section 3 will first provide a description of the formal instruments the

²⁸ That is a contrast with the Franco and Cardoso governments, which issued executive orders intensely while experiencing high popularity.

²⁹ President support is defined here as the difference between approval rates and disapproval rates.

Brazilian Congress has at its disposal for the exercise of oversight, and of their use between 1988 and 2004.

3. Legislative oversight in Brazil – institutions and outcomes

The Constitution of 1988 is *the* landmark of legislative oversight in Brazil. Indeed, it specifies (Art. 49) that the National Congress will have the exclusive prerogative of overseeing the executive. The standing orders (*regimentos internos*) of the Senate and the Chamber of Deputies merely flesh out the details oversight procedures and instruments set up by the Constitution³⁰. The only exception is the Oversight Initiative Bill (*Proposta de Fiscalização e Controle*), the introduction of which is permitted in each chamber. This tool allows the permanent *Comissão de Fiscalização e Controle*³¹ to conduct strict inspections or auditing of the administration, and can be very useful for addressing informational asymmetries, as well as qualified policy evaluation³². Since 1988, the system has remained basically the same. The only important innovations were the Budget Offices (*Consultorias de Orçamento*), created in each chamber in 1993 after a corruption scandal concerning budget amendments in Congress³³.

The 1988 Constitution lays out many oversight procedures and instruments. These include provisions for the impeachment of the president, vice-president and ministers (Arts. 51 and 52)³⁴; Senate confirmation processes for a number of key office holders (Art. 52, III)³⁵; temporary parliamentary investigation committees (*Comissões Parlamentares de Inquérito* or CPIs), which can also be configured as

³⁰ The standing orders of the Senate date back to 1970, but they were readapted in 1989 and have been amended several times since. The *Regimento Interno* of the Chamber of Deputies dates from 1989.

³¹ This Committee recently had its jurisdiction broadened to include consumer rights and environmental protection. Thus it was renamed *Comissão de Meio Ambiente, Defesa do Consumidor e Fiscalização e Controle* in March 2005. It has strong gate keeping powers, as showed elsewhere (Lemos, 2002): in the Senate, its viscosity rate is the highest of all committees, with only 0.2% of bills being reported to the floor.

³² Once the bill is approved, the permanent committee works as a Parliamentary Committee of Inquiry (CPI), with broad investigative powers, though not with the same public visibility. It has a stable membership, differently from CPIs, whose *ad hoc* appointments favour outlier preferences.

³³ The Budget Offices generate fiscal and budget reports at the request of deputies and senators, as well as provide technical support to the Joint Budget Committee during the budgetary process. Their employees are skilled professionals selected through public exams.

³⁴ The Chamber of Deputies authorizes presidential impeachment, and the subsequent trial is conducted in the Senate. This has happened once, in 1992, when former President Fernando Collor de Mello was convicted (even after resigning his office) and stripped of his political rights for 8 years.

³⁵ Confirmation process involves not only questions about the appointee's skills, but also provides an opportunity for debating over policies and programs, as well as preferences (James, 2002). During 1988-2004, some 882 nominations were submitted to confirmation in the Senate, which included appointees to the Central Bank board, the Supreme Court and high court judges, as well as 36 other offices. The approval rate was 97%, with 1.1% rejected and 1.5% withdrawn by the president. Differently from the U.S. or Argentina, military commanders, foreign service career employees, cabinet members and federal judges do not undergo a confirmation process. For rules, procedures and a comparative perspective on the confirmation process in Brazil, see Lemos and Llanos, 2006.

joint committees (Art. 58)³⁶; permanent oversight committees, which can receive requests from any citizen (Art. 58)³⁷; resolutions of inquiries (Art. 50); compulsory testimony by public officials (Art. 50); as well as public hearings (Art. 58). In addition, Congress has a higher auditing court known called the *Tribunal de Contas da União* (TCU), defined as the “main auxiliary agency for the external oversight of the administration” (Arts. 70 and 71). Despite the name (which implies that it is an organ of the judicial branch), the TCU is in fact a Congressional institution that performs auditing and/ or *ex post* evaluation of government programs and expenditures, either under direct Congressional orders or by its own initiative. Its jurisdiction covers 2,500 public administrative units, and it is intended to be independent and non-partisan³⁸.

Therefore, formal oversight in Brazil involves budgetary oversight (configured as legislative veto power over the presidentially-proposed budget); oversight over elected officials, either via impeachment or via the confirmations process; fiscal and accounting oversight, mainly via the TCU; investigatory powers, which would include also hearings and summoning of ministers (mandatory testimony by Cabinet members in Congress); and other exclusive powers that would include war authorization, media concessions, treaties, initiatives relative to nuclear power, water, mineral and land resources.

Although all oversight instruments are powerful, I focus on only four of them: oversight initiative bills (*Propostas de Fiscalização e Controle*), resolutions of inquiry, summoning of ministers, and public hearings. Three reasons led to me to this option. First, data collection and organization – of the entire universe of possibilities — would not be feasible. Secondly, several studies already exist on some of these prerogatives: CPIs (Figueiredo, 2003; Calcagnotto, 2005); confirmation processes (Lemos and Llanos, 2006); and initial studies on TCU’s performance (Pessanha, 2005). None of them concentrates on the aforementioned selected instruments.

Thirdly, and most importantly, my goal was to investigate how Congress performs its oversight prerogatives in the most broad, ongoing and consistent ways. I

³⁶ The wording is unaltered from the 1946 Constitution, which was in force before the coup of 1964. CPIs might be used for various purposes besides investigations: for electoral purposes or as a response to interest groups; as an opposition means of changing government image; for bargaining concerning other CPIs or government actions. Senate and Chamber of Deputies have an average of a CPI every 2 months, but the Senate installs the committees more than the Chamber (86%, as compared to 77%) and brings them to conclusion more effectively (71% vs. 53% conclusion rates) Collor’s government (1990-1992) had the highest rate of CPIs and Fernando Henrique Cardoso had the lowest rate of initiated CPIs (60%), with a high veto against the investigations. See Figueiredo, 2003; Calcagnotto, 2005.

³⁷ See also Article 96 of the Federal Senate Statute and Article 35 of the Chamber of Deputies Statute.

³⁸ The TCU is composed of nine ministers, one third appointed by the president, subject to Senate confirmation, and two thirds by Congress itself. It has to send quarterly and annual reports of its activities to Congress and it is also responsible for offering legal opinion on the Presidential Accounts Report, which has to be approved every year by Congress. The number of TCU employees is 2,120, of whom 1,260 are technical experts (TCU, 2003).

was interested not only in executive abuses or notorious scandals – which might mean looking only at Congress’ investigatory responses with CPIs and TCU’s auditing. On the contrary, I was concerned about everyday activities that put Congress’ eyes on the government, during or after the formulation and implementation of programs. This would necessarily exclude impeachment and confirmation processes, CPIs and TCU performance, even though these institutions, procedures and instruments might be fundamental aspects of executive-legislative relations.

Having the formal prerogatives does not necessarily translate into action, though, as O’Donnell has stated. Nevertheless, Table 1 shows that there is an intense use of formal oversight instruments, and an increase in its use, especially after the early days of the new democratic system.

On average, the share of oversight activity as a percentage of the total Congress workload was 36% in the 1988-2004 period. This is an estimate, as purely committee-based activities (CPIs, investigations, and testimony) are excluded from this calculation. This 36% share has been roughly stable since the early 1990s. Oversight reached 50% of the total Congressional activity under President Itamar Franco, as well as under President Fernando Henrique Cardoso in the final year of his first term (1995-1998).

Therefore, at the very least we can say that there have been attempts to keep abreast of what the executive is doing, thus fulfilling the legislature’s constitutional role of deterring or preventing abuses. But other interests are also in play when it comes to oversight. Arnold (1990) points out that members are risk-averse and will do as much as they can to be re-elected. Oversight might be used simply to signal to the electorate: “I care about this issue”. Moreover, oversight can bring information into the member’s office and help to build expertise necessary for good performance, thus assisting with the reelection goal.

Table 1 - Legislative Output and Oversight Output, Brazil, 1988-2004³⁹

| Year | Legislative Propositions* | Oversight Initiatives** | Total (N) | Oversight Share (%) |
|--------------|----------------------------------|--------------------------------|------------------|----------------------------|
| 1988 | 1286 | 109 | 1395 | 7.8 |
| 1989 | 3745 | 406 | 4151 | 9.8 |
| 1990 | 1902 | 381 | 2283 | 16.7 |
| 1991 | 3099 | 1347 | 4446 | 30.3 |
| 1992 | 1318 | 1089 | 2407 | 45.2 |
| 1993 | 1125 | 1114 | 2239 | 49.8 |
| 1994 | 646 | 649 | 1295 | 50.0 |
| 1995 | 2215 | 1825 | 4040 | 45.2 |
| 1996 | 1824 | 1276 | 3100 | 41.2 |
| 1997 | 1896 | 1368 | 3264 | 41.9 |
| 1998 | 1173 | 1190 | 2363 | 50.4 |
| 1999 | 3383 | 2089 | 5472 | 38.2 |
| 2000 | 2244 | 1641 | 3885 | 42.1 |
| 2001 | 2647 | 1608 | 4255 | 37.8 |
| 2002 | 1964 | 855 | 2819 | 30.3 |
| 2003 | 3837 | 2016 | 5853 | 34.4 |
| 2004 | 2551 | 1664 | 4215 | 39.5 |
| Total | 36855 | 20630 | 57485 | 35.9 |

Source: Adapted from Lemos, 2005.

*All proposed constitutional amendments, ordinary bills, and complementary bills.

**Includes 17 joint initiatives: 4 during Collor's government; 5 during Cardoso I; 8 during Cardoso II.

The first three years after the promulgation of the Constitution had a low oversight rate. This implies both a learning curve for the new rules and a transitional period for new political leaders to emerge onto the legislative stage. The following years were quite stable, pointing to a significant share of oversight in the total workload. There are several possible explanations for these trends.

Firstly, democratization itself can explain the increase from 8% to 40% of the workload share. In the presence of free and frequent elections, of freedom of association and speech, an elected body facilitated not only the manifestation of social plurality but also more interest, more freedom and more resources to examine the performance of the executive. Moreover, organized interests discovered that Congress can be a good way to obtain information they cannot get otherwise, or would take longer to get. This promoted partnerships intended to access privileged information. Also, freedom of speech enhanced the role of the media, which has been raising fire alarms on poor administration, abuses and frauds.

³⁹ I measure number of oversight propositions, instead of days of oversight which is Aberbach's indicator (1990; 2001).

Democratization also led to a more heterogeneous legislative branch, with new leaderships and more opposition members coming from parties whose leaders were repressed during authoritarian rule. Take, for instance, the Worker's Party (PT): in 1987, there were 16 deputies and no senator from this party, but in 2003, there were 93 deputies and 14 senators. As an organized and growing opposition caucus, the Worker's Party certainly played a significant role in the oversight of the executive branch. This will become more explicit in section 4, when data on political parties and oversight are analyzed.

Another explanation for the increase of the oversight workload is related to the decrease of proactive legislative powers. As several studies indicate, most approved legislation in Brazil originates in the executive branch, and presidents frequently resort to decrees (*medidas provisórias*)⁴⁰. Nevertheless, delegation to the executive branch does not preclude oversight of or negotiation with the legislative branch. As the share shows, Brazilian Congress has been heavily involved in pressing the administration for information about its activities.

The vast majority of oversight propositions were *requerimentos de informação*, or resolutions of inquiry, the preferred instrument of Congress to address the administration. From 1988 through 2004, 15,341 resolutions of inquiries were introduced in the Chamber of Deputies and 3,097 in the Federal Senate, for a total of 18,438⁴¹. They were followed by committee hearings, with a total of 1,495⁴²; and Oversight Initiatives (N=344) and summons of cabinet ministers (N=353) (table 2). What can account for the more intense use of some formal instruments?

I believe there are two factors that can account for the intense use of inquiries: cost and opportunity. With regard to cost, resolutions of Inquiry are low-cost instruments, performed individually and with short-term results. The burden of providing the information – within 30 days - falls on the executive branch. If the information is not provided, the executive branch has committed a “crime of responsibility”. Also, resolutions of inquiry do not interfere directly in public policy results, thus avoiding a backlash against the initiator. It is a handy, user-friendly instrument that can be inoffensive or very powerful, depending on the agency or agency in demand. With regard to opportunity, resolutions take little time to be written – usually the task of an assistant –, and it is voted upon with no need for an extraordinary majority. Because resolutions are proposed by individual legislators,

⁴⁰ Figueiredo and Limongi, 2001; Pessanha, 1997.

⁴¹ Sources: Information Office of the Federal Senate; Prodasen.

⁴² Important note: the years 1988 to 1994 include only Senate committee hearings, due to lack of reliable data.

there is no need to negotiate within committees, parties, leaderships, or caucuses. Inquiries can be introduced at any time, which also increases their appeal.

The second most used instrument is committee hearings, which might have different goals. They can promote legislative expertise or oversight opportunities, as well as advocate or block policies. Committee hearings have become a very common practice in the last ten years, as Table 2 demonstrates.

Table 2 - Number of Resolutions of Inquiry, Committee Hearings, Summons of Ministers, and Oversight Bills, by government, Brazil, 1988-2004

| | Resolutions of Inquiry | | | Committee Hearings | | | Cabinet Members' Calls | | | Oversight Bills | | | Total |
|-------------------------|------------------------|-------|--------|--------------------|-----|-------|------------------------|-----|-------|-----------------|----|-------|-------|
| | CD | FS | Total | CD | FS | Total | CD | FS | Total | CD | FS | Total | |
| Sarney* (1988-1989) | 401 | 67 | 468 | Missing | 21 | 21 | 19 | 14 | 33 | 0 | 2 | 2 | 524 |
| Collor * (1990-1992) | 2260 | 396 | 2656 | Missing | 28 | 28 | 23 | 21 | 48 | 57 | 0 | 57 | 2789 |
| Itamar (1992-1994) | 1369 | 322 | 1691 | Missing | 22 | 22 | 7 | 11 | 18 | 46 | 1 | 47 | 1778 |
| FHC 1 (1995-1996) | 2173 | 624 | 2797 | 136 | 58 | 194 | 27 | 26 | 58 | 57 | 0 | 57 | 3106 |
| FCH 2 (1997-1998) | 1891 | 288 | 2179 | 250 | 55 | 305 | 18 | 13 | 31 | 42 | 1 | 43 | 2558 |
| FHC 3 (1999-2000) | 2870 | 323 | 3193 | 306 | 148 | 454 | 22 | 8 | 38 | 43 | 3 | 46 | 3731 |
| FHC 4 (2001-2002) | 1944 | 245 | 2189 | 57 | 118 | 175 | 44 | 12 | 56 | 39 | 4 | 43 | 2463 |
| Lula 1 (2003-2004) | 2433 | 832 | 3265 | 116 | 180 | 296 | 41 | 20 | 61 | 53 | 5 | 58 | 3680 |
| <i>Total**</i> | 15.341 | 3.097 | 18.438 | 865 | 630 | 1495 | 201 | 126 | 344 | 337 | 16 | 353 | 20630 |

*Sarney: from October 5th, 1988 on; Collor: until 29th September, 1992.

** Includes 17 summons before the National Congress, meeting in joint session.

From 1995 on, there is an average of 86 committee hearings every year, more than twice a week during non-recess periods. On the Senate side, there is a visible change in the use of committee hearings after 1995. It has almost quintupled, from a yearly average of 12 committee hearings before 1995 (one every three weeks), to a yearly average of 56 since then (1.5 per week). The largest proportion of committee hearings took place during the first two years of Lula's government. The Senate alone held 180 hearings, an average of 2.25 hearings per week. That is a sharp contrast with the experience of the Sarney, Collor, and Itamar periods, of one hearing every three weeks, though the contrast is not as clear with the Cardoso era (Figure 1).

Committee hearings are a very democratic institution – in the sense this is a tool that can be called by either legislators or civil society organizations, unions, and associations (Constitution of 1988, Art. 58).

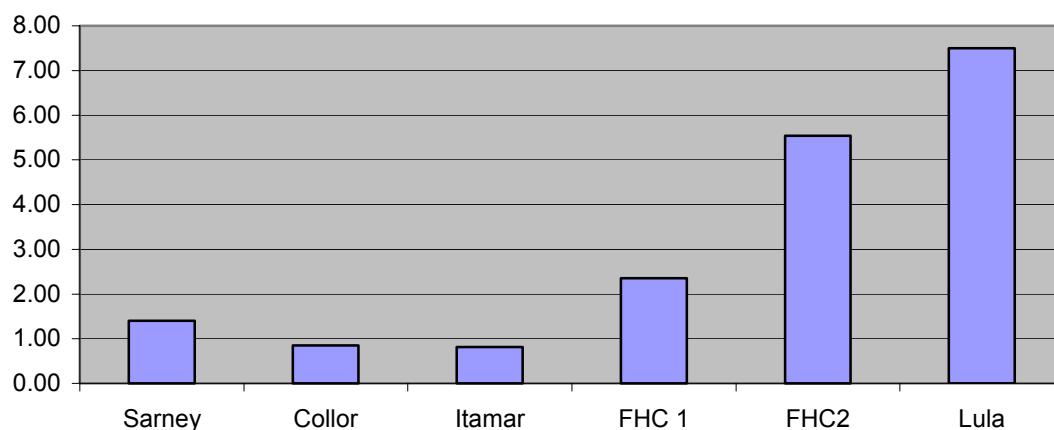


Figure 1 – Monthly Average of Senate Committee Hearings, by Presidential Administration, Brazil, 1988-2004

The costs of committee hearings are also relatively low. They include passing a resolution at committee level by a simple majority; the organizational costs related to scheduling and setting up the hearing (which would fall on staff); and the meeting time itself (usually a couple of hours, or sometimes an entire day for the more disputed issues or combative officials). Deputies and senators usually prepare questions. For that, they can count on legislative career experts, party and personal staff, as well as on their own expertise derived from previous experience in the legislative or executive branches.

Committee hearings can also address a variety of issues, as demonstrated in Table 3. Economic ones are at the core, and are responsible for 17% of the total hearings held. Interestingly, economic management is the main issue on which Congress tends to delegate to the executive, while the legislature prefers to get involved with social welfare, defence, foreign relations and infrastructure issues (Figueiredo and Limongi, 2001). But as far as hearings are concerned, 48% focus on economy, agriculture, industry, infrastructure (energy, transportation and telecommunications), foreign relations (including debates over economic integration). Only 30% of hearings focus on education, healthcare, environment, indigenous peoples, pensions, labour and social assistance. The Senate is even more inclined towards economic issues, due to rules that grant specific powers to senators on confirmation processes and public indebtedness.

Table 3: Committee Hearings, Chamber of Deputies and Senate, Brazil, 1988-2004*

| | CD | % total | Senate | % total | Total | % total |
|------------------------|------------|--------------|------------|--------------|-------------|---------------|
| Missing | 5 | 0.33 | 10 | 0.67 | 15 | 1.00 |
| Pension system | 8 | 0.54 | 9 | 0.60 | 17 | 1.14 |
| Housing | 10 | 0.67 | 8 | 0.54 | 18 | 1.20 |
| Indigenous peoples | 16 | 1.07 | 3 | 0.20 | 19 | 1.27 |
| Social Assistance | 15 | 1.00 | 18 | 1.20 | 33 | 2.21 |
| Judiciary | 5 | 0.33 | 31 | 2.07 | 36 | 2.41 |
| Land | 32 | 2.14 | 5 | 0.33 | 37 | 2.47 |
| Science and Technology | 20 | 1.34 | 21 | 1.40 | 41 | 2.74 |
| Defence | 22 | 1.47 | 22 | 1.47 | 44 | 2.94 |
| Public Administration | 28 | 1.87 | 20 | 1.34 | 48 | 3.21 |
| Public Security | 40 | 2.68 | 11 | 0.74 | 51 | 3.41 |
| Industry | 42 | 2.81 | 11 | 0.74 | 53 | 3.55 |
| Labour | 37 | 2.47 | 16 | 1.07 | 53 | 3.55 |
| Civil Rights | 49 | 3.28 | 7 | 0.47 | 56 | 3.75 |
| Foreign Relations | 31 | 2.07 | 44 | 2.94 | 75 | 5.02 |
| Agriculture | 69 | 4.62 | 8 | 0.54 | 77 | 5.15 |
| Environment | 62 | 4.15 | 17 | 1.14 | 79 | 5.28 |
| Education | 57 | 3.81 | 82 | 5.48 | 139 | 9.30 |
| Healthcare | 88 | 5.89 | 51 | 3.41 | 139 | 9.30 |
| Infrastructure** | 116 | 7.76 | 80 | 5.35 | 196 | 13.11 |
| Economy | 113 | 7.56 | 156 | 10.43 | 269 | 17.99 |
| Total | 865 | 57.86 | 630 | 42.14 | 1495 | 100.00 |

*Chamber of Deputies: 1995-2004; Federal Senate: 1988-2004.

** Transportation, energy and telecommunications.

This evidence reinforces the hypothesis of a Congress that behaves strategically and find ways to cope with informational and power asymmetries (Morgenstern and Nacif, 2002). It delegates first, and checks up later on the results.

Oversight Initiative Bills (*Propostas de Fiscalização e Controle*) and summons of cabinet ministers are the least used oversight tools. The lower number for ministerial convocations can be explained by a preference to hear testimony in committee settings. Summoning a minister to the floor requires a larger majority to approve the resolution, and the ministerial appearance has to be squeezed into a busy schedule. Given that committees have the same power but have fewer members, they can summon a cabinet member or other authorities in a timely fashion to a hearing, which in the end has the same mandatory aspect as floor testimony. That is what committees often do, sometimes via joint meetings of several committees⁴³.

Propostas de Fiscalização e Controle stand in contrast to resolutions of inquiry. They are high-cost initiatives and demand time, expertise, collective action, and persistence. The burden of producing information about the government's performance falls on Congress, especially on the author and the *rapporteur* of the Oversight Initiative Bill. This demands a plan of work, investigations, debates, and meetings in the medium to long term. Lula's administration faced the highest numbers of this kind of bill.

Overall, the purpose of this section was to list the existing instruments for oversight and control in Brazil, as well as to introduce some data on their use. The data suggest evidence that new democracies are not hermetically sealed off against legislative oversight, as implied by O'Donnell (1998), though the deepness, broadness, effectiveness and other qualitative measures of oversight have yet to be evaluated. It is clear that: a) there are constitutionally and statutory designed institutions for oversight in Brazil, with operational support agencies; b) oversight can be performed via processes – e.g., confirmation hearings or impeachment – or punctual instruments – e.g. committee hearings, oversight bills, ministerial summons and resolutions of inquiry; c) there is an increasing use of these instruments; d) there is a special preference for the low-cost resolution of inquiry.

Nevertheless, if compared to more powerful legislatures, as in the U.S., the Brazilian Congress lacks some fundamental prerogatives that affect its capacity to conduct a more operative and in-depth oversight. The missing powers are twofold: the power of the purse and the authorization power. That means the Brazilian Congress cannot allocate budgetary resources compulsorily nor can it create,

⁴³ There is also an informal practice in the Brazilian Congress not to resort to the compulsory summons of ministers but, instead, "invite" cabinet members as a "courtesy" to make an exposition on some issue. These invitations are not mandatory and do not appear in the system as resolutions, therefore making it impossible to identify and count them, both on the floor and committees. Still, there is an average of 22 cabinet members presenting formal floor testimonies per year, about one every ten days during ordinary sessions.

change, or interfere with the operational functioning of the administration (agencies, personnel, careers and goals)⁴⁴. Congress' lacking of these two capacities puts the executive branch in a very dominant situation, in which negotiation is necessary only on the margins⁴⁵ and the administration does not need to cooperate very much to have its policies implemented⁴⁶.

In other words, the oversight weaknesses of the Brazilian Congress are related to its low capacity to choose where to allocate budgetary resources (choices about public policies) and to tell the government how to operate (choices about administration). On the other hand, it does have some instruments to follow the administration's activities and, as a last resource, ask for results. But due to the scarcity of resources, oversight is of a more short-term nature.

The following sections will address how the amount and type of Congressional oversight in Brazil are affected by different variables.

4. Do parties and electoral cycles matter for the legislative oversight?

The first hypothesis on legislative oversight is that *independently of party preferences or ideology, members will perform oversight* (H1). Individualistic assumptions on reelection-oriented behaviour imply that Congressmen and women will seek support for reelection at a low cost. Oversight might be one of those activities that help to clarify political positions without affecting real policies – and burdens of unsuccessful changes.

This set showed that members/ senators from all parties along the ideological spectrum, independently of the size or organizational resources, took part in oversight activities. Nevertheless, left parties were more active: 28% of the initiatives came from the ideological centre, 49% from the left, and 22% from the right (figure 2)⁴⁷.

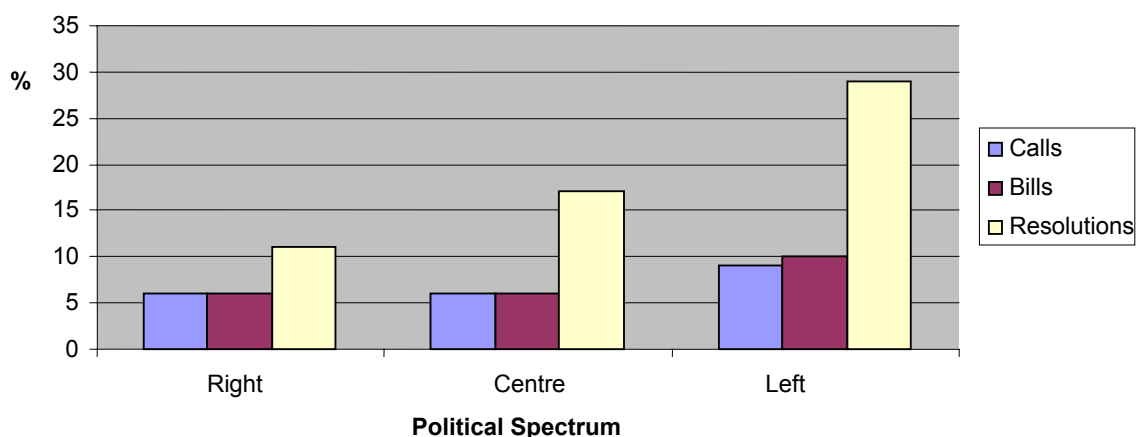
⁴⁴ Article 61 of the Constitution gives the President the sole authority to create or rearrange agencies and address career and personnel issues.

⁴⁵ Though some research suggests that budget amendments are pork-barrelling instruments (Ames, 2002; Samuels, 2002; Pereira and Rennó, 2003),

⁴⁶ It is true that the amendment prerogatives that Congress has nowadays represent a step forward when compared to the military dictatorship of 1964-1985, when Congress could only reject or approve the entire budget, with no changes. Moreover, any change in the budget law has to be approved in Congress – e.g., new funding and relocation of expenditures.

⁴⁷ Ideological party labels are controversial, as rules concerning party membership are very flexible and members change parties with no punishment, especially in the first and the last years of terms, when political accommodation takes place. Nevertheless, some analysts have insisted that party switching happens mostly inside each of the three ideological families, and not across them (Melo, 2000). The right includes the PFL, PL, PP, PPB, PTB, PDC, PRN, PMN, PPR, PST, PSC; the centre is composed of the PSDB and PMDB; and the left comprises the PT, PDT, PPS, PSB, PCdoB, PCB, PSTU, and PV.

Why are members across the ideological spectrum willing to perform oversight? Either members/ senators have a highly institutionalized behaviour, in which the separation of powers plays a major role, or they have individual incentives – reelection seeking – that motivates them. Certainly, their behaviour can be the result of a convergence of both, but I believe that, when institutional roles and the reelection imperative enter into conflict, members would opt for choices that favour reelection.



N=1619. Hearings excluded for lacking of author information.

Figure 2 – Legislative oversight across the political spectrum, Brazil, 1988-2004.

On the other hand, there is a stronger activism on the part of left parties. But these parties won executive power only in 2002, along with the PT presidential victory. That means, for 14 out of the 16 years under study here, the PT was in the opposition and thus had more incentives to keep administration under surveillance. Do left parties change their behaviour when they are in power? Is legislative oversight a vocation of left-wing parties, or is it part of the struggle to bring political opponents under scrutiny and thus win elections?

Due to the coalitional nature of the Brazilian system, it is hard to compare right and left behaviour when they are in power or not, as cross-ideological alliances are commonplace in the building of Congressional majorities. Nevertheless, a contrast between the PSDB (Party of Brazilian Social Democracy) and the PT can be insightful. Both parties have had held the presidency, but have never made political alliances with each other at the federal level. The PT clearly was in opposition during the PSDB's eight years in power (1995-2002) just as the PSDB has clearly opposed the PT in its two years in power (2003 and 2004, when the coverage of the dataset ends).

As expected, both parties change behaviour when they are in government. Some 75% of PSDB's legislative oversight was initiated when it was sitting in the opposition, and only 25% when it occupied the presidency. As for the PT, 94% of its legislative oversight initiatives took place during its years in the wilderness, and only 6% during Lula's government (2003-2004). Nonetheless, when controlling for years in power, the PT is 2.5 times more proactive in challenging its own government than the PSDB; and, during opposition years, it was twice as active than PSDB in terms of the number of initiatives introduced (Table 4)

Table 4 - Number of legislative oversight initiatives per year, PSDB and PT, Brazil, 1995-2004

| | PSDB | PT |
|---------------|-------|-------|
| As government | 6.25 | 16.00 |
| As opposition | 19.88 | 37.93 |

Even if being in government changes partisan behaviour, it is apparent that some parties are more active than others when it comes to oversight. This is, nevertheless, a conclusion that cannot be generalized to other parties in the Brazilian system.

The second hypothesis states that *the amount of oversight will decrease during electoral periods (H2)*. Some indicators demonstrate the importance districts have in a member's life – district trips, number of letters, pork etc. (Jacobson 2001, 30-35; Ames, 2002). If the electoral schedule takes the member to his/her district on a regular basis, it is reasonable to expect that legislative oversight will also be affected, as time ought to be spent in campaigns. There is a slowing down of oversight within each legislature on electoral years (1994, 1998, 2002), with the exception of the 1989 and 1990 elections, when oversight is lower and the presidential and legislative elections occur separately (1989 for president, 1990 for Congress). Nevertheless, looking exclusively to the amount of oversight performed in election years hides the relevant fact that *all activities* slow down during election periods. The important question then is if oversight slows down as a share of total activity. As Table 5 shows, it is not true that electoral years have a negative impact in the *relative* amount of oversight. In 1990, there is even an *increase* in oversight; 1994 does not look different from 1993, a non-electoral year. The year 1998 sees a 20% *increase* of oversight activity during election years; and in 2002 there is a *decrease* of oversight during election periods.

That is: in election years, the legislative agenda is less busy in general, but the oversight share remains elevated. A subsequent question is what the incentives are for members of the parliament to perform oversight. A viable hypothesis is that political disputes can keep the high interest in overseeing the executive branch, a hypothesis that will have to be tested in future research.

Table 5 – Oversight and Electoral Years, Brazil, 1988-2004

| Year | Oversight Initiatives* | Oversight Share (%) |
|--------------|-------------------------------|----------------------------|
| 1988 | 109 | 7.8 |
| 1989 | 406 | 9.8 |
| 1990 | 381 | 16.7 |
| 1991 | 1347 | 30.3 |
| 1992 | 1089 | 45.2 |
| 1993 | 1114 | 49.8 |
| 1994 | 649 | 50.0 |
| 1995 | 1825 | 45.2 |
| 1996 | 1276 | 41.2 |
| 1997 | 1368 | 41.9 |
| 1998 | 1190 | 50.4 |
| 1999 | 2089 | 38.2 |
| 2000 | 1641 | 42.1 |
| 2001 | 1608 | 37.8 |
| 2002 | 855 | 30.3 |
| 2003 | 2016 | 34.4 |
| 2004 | 1664 | 39.5 |
| Total | 20630 | 35.9 |

In short, during recent elections, the oversight function shrank in absolute terms, but not in relative ones. Does the *type* of oversight change during election periods? The hypothesis is that there will be a *larger number of fire alarms than police patrols in electoral periods* (H3). This idea is supported by the argument that when politicians face too many demands, they will opt out of initiating oversight except when strictly necessary. This idea of a preference for fire alarms over police patrols (McCubbins and Schwartz, 1984) is a disputed notion, as both types can be beneficial (Lupia and McCubbins, 1994). Nevertheless, the hypothesis of a preponderance of fire alarms is a reasonable one to test, as alarms are immediate and do not demand as much preparation or performing time.

The hypothesis, however, is unsupported here. During election periods, police patrols were four times more frequent than fire alarms, but in non-election years members performed up to five times more patrols than alarms (Table 6). That is, both types of oversight were attractive to legislators (Aberbach, 1990, 2001; Balla

and Deering, 2001) and patrols prevailed over event-driven alarms. What does this imply? Does it mean that members do not care about events? Probably not. Members may just be so heavily involved in information gathering and general oversight that event-driven oversight does not represent a large part of their job. But that is a question of volume, and event-driven oversights do take place and are closely covered in the media.

Table 6 - Election years and type of oversight, Brazil, 1988-2004

| | During Election Period | Out of Election Period | Total |
|--------------------|------------------------|------------------------|-------|
| Fire Alarms (N) | 49 | 476 | 525 |
| (%) | 1.6 | 15.3 | 16.9 |
| Police Patrols (N) | 198 | 2391 | 2589 |
| (%) | 6.4 | 76.8 | 83.1 |
| Total (N) | 247 | 2867 | 3114 |
| (%) | 7.9 | 92.1 | 100.0 |

5. How do bicameralism and internal organization affect legislative oversight?

The first hypothesis on bicameralism states that *the amount of oversight will be greater in the Senate than in the Chamber of Deputies (H4)*. Distinct rights and distinct election rules for each chamber – reflecting the symmetry and congruence features of bicameral systems (Lijphart, 1984) - can affect legislative oversight. Senators have longer terms (8 years, in contrast with 4-years term for deputies), and are less subject to electoral schedule constraints; they participate in more committees than deputies (Deering and Smith, 1997; Lemos, 2002), and develop more expertise (Lemos and Ranincheski, 2003; Tsebelis and Money, 1997). In Brazil, although bicameralism is largely symmetrical (similar prerogatives for both houses, with broadened rights for the Senate), there are different electoral rules for each chamber. The lower house is elected under an open list proportional system, whereas Senate the senate is elected via a majority system. These differences alone may influence the results.

This hypothesis was confirmed. The Chamber of Deputies undertook 81.39% of the total amount of oversight in the period, due to its far larger size. But members averaged 47 initiatives in the Senate and 33 in the Chamber. The yearly averages in the 1988-2004 period were 2.91 for each senator and 2.01 initiatives for each deputy: therefore senators conduct more oversight, 50% more than deputies (Table 7). Moreover, the chambers exhibit distinct preferences in their use of particular

instruments. Senators, although they prefer resolutions of inquiry (the lower cost instrument) also resort to hearings and to summoning ministers with some frequency, as shown below:

| | | | | | | |
|------------------------|---|----------|---|--------------|---|--------------------------------|
| Resolutions of Inquiry | > | Hearings | > | Min. Summons | > | Oversight and Oversight Bills |
| 15.05 | | > 2.87 | | > 0.61 | | > 0.08 (% of total) |
| 80.88 | | > 15.41 | | > 3.29 | | > 0.42 (% of Senate oversight) |

The Chamber, on the other hand, shows a more intense use of resolutions of inquiry, fewer hearings, with its preferences ranking as:

| | | | | | | |
|------------------------|---|----------|---|--------------|---|-------------------------------|
| Resolutions of Inquiry | > | Hearings | > | Min. Summons | > | Oversight and Oversight Bills |
| 74.57 | | > 4.20 | | > 1.64 | | > 0.98 (% of total) |
| 91.62 | | > 5.17 | | > 2.01 | | > 1.20 (% Chamber oversight) |

The second hypothesis on bicameralism is about the type of oversight: *the Senate will be more police patrol-oriented, whereas the Chamber of Deputies will be more fire alarms-oriented (H5)*, following the same reasoning – senators are under less electoral pressure, participate in more committees, and have more expertise.

This hypothesis is also rejected. The overall numbers show that both chambers share a preference for police patrols. The Chamber performed more police patrols than fire alarms: 298 fire alarms and 1,558 police patrols, whereas the Senate performed 211 alarm and 1,029 patrol initiatives. Nevertheless, although both houses are patrol-oriented, the Senate is more willing to execute the patrols. Controlling for year and for the number of members of each house, senators perform four times more police patrols than deputies (Table 7).

Cameral differences, therefore, do not explain the preference for one type of oversight over another, but do explain the intensity with which Senate approaches oversight. What accounts for the similar choices of type, but different intensities? I believe both chambers perform patrols intensely because they have a largely symmetrical design – and they therefore tend to choose the same instrument for oversight. Having basically the same rights, they will use them in a similar manner. The incongruent electoral systems, on the other hand, with longer terms and a majoritarian style for Senators, might lead to more professionalized mandates. The greater relative levels of electoral security and insulation would reinforce the intensity of oversight.

Table 7 – Average of alarm and patrol initiatives, by Chamber, Brazil, 1988-2004

| | Chamber of Deputies | Senate | Total |
|---------------------------|---------------------|--------|-------|
| Fire alarms per member | 0.58 | 2.60 | 0.86 |
| And per year | 0.04 | 0.16 | 0.05 |
| Police patrols per member | 3.04 | 12.70 | 4.36 |
| And per year | 0.19 | 0.78 | 0.27 |
| Total per member | 3.62 | 15.31 | 5.21 |
| Total per member/ year | 0.22 | 0.94 | 0.32 |

The third hypothesis in this section is related to the division of labour between the floor and committees: *there will be a larger amount of oversight performed on the floor rather than in committees* (H6). Committees vary in their relevance and prerogatives across all systems, be they parliamentary or presidential, ranging from the more decentralized ones (Dodd and Oppenheimer, 2001; Deering and Smith, 1997; Polsby, 2004) to more centralized ones (as the Brazilian system is claimed to be) with the floor playing a key role (Bernardes, 1996; Pessanha, 1997; Figueiredo and Limongi, 2001; Pereira and Mueller, 2004)⁴⁸. If the Brazilian Congress is floor-oriented on legislative issues, as several scholars have pointed out, it is reasonable that oversight should originate there as well.

This hypothesis was confirmed: the floor is responsible for 91.21% of oversight activity (N=20,573). This preference holds for both the Chamber and the Senate, although the Senate has a committee activity three times more intense than the Chamber. Committees have a yearly average of 7.48 initiatives per senator, in contrast with a yearly average of 2.34 initiatives per deputy (Figure 3). That indicates that senators are far more devoted to committee oversight (and maybe general legislative activity) than their colleagues in the lower house.

There is a bias, however, with the predominance of floor oversight. This is due to the intense use of resolutions of inquiry, which poses many problems related to:

⁴⁸ In spite of committees' gatekeeping powers (Ricci and Lemos, 2004).

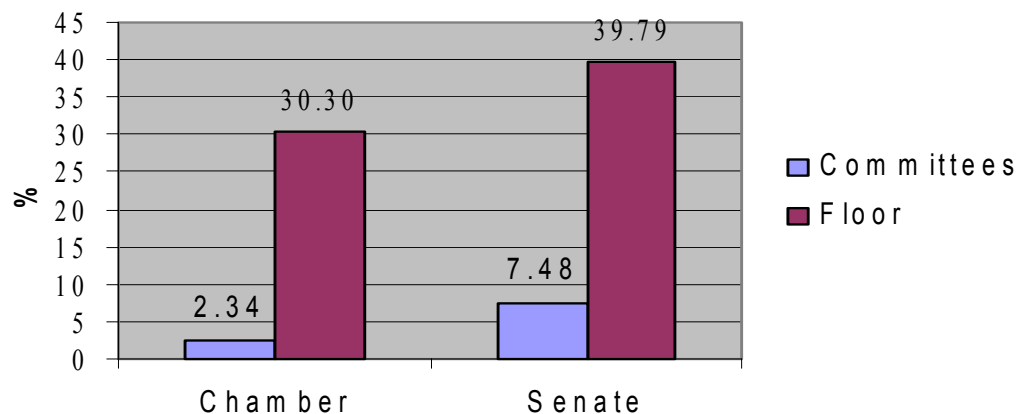


Figure 3 - Floor and Committees Oversight, Brazil, 1988-2004

a) *Transparency*, as the administration's responses to inquiries are not publicized, but rather sent directly to the resolution's sponsor (author). Therefore, the result of this oversight instrument is not public, differently from hearings and ministerial testimony, which are open to the public and recorded in print. That is, Congress' main oversight activity - resolutions of inquiry – has limited publicity and the information is used privately by members;

b) *Selectivity*, as the inquiry has to ask for specific documents and/ or information about a program. There is no direct or live interaction between agents, and incomplete or dubious responses from the administration cannot be immediately replied to, but only via yet another resolution, meaning more delays and extra-costs;

c) *Quality of information*, as in incomplete or dubious information, especially if the demand comes from a different party from the president, cabinet member or agency director. It can be hard for opposition members to get sufficient or satisfactory information, as responses to resolutions can be more protective of the administration than other instruments. The costs of delivering incomplete, dubious or doubtful information before a committee may impose a burden on the administration both from the public opinion and its own coalition in Congress.

The fourth hypothesis in this section, on the division of labour and the type of oversight, stands that *there will be a larger amount of police patrols in the committees, and larger amounts of fire alarms in the floor (H7)*. Because the floor

has a much busier agenda, it will be more alarm-oriented, whereas committees will have better conditions (time, size and expertise) to perform ongoing patrols.

But this hypothesis was unsupported. Some 79% of the total oversight in committees was patrol-oriented, but the floor showed an even higher percentage of patrol activity: 85.5% (Table 8). Again, the data reinforce the argument that legislative oversight is not exclusively event-driven and that there are rewards in patrol oversight as well. So, what we have learned up to now is that patrols prevail even in electoral years; that the Senate performs more patrols than the Chamber; and that the floor performs more patrols than committees.

Table 8 – Types of legislative oversight by Committees and Floor, Brazil, 1988-2004

| | Fire alarms (N) | % | Police patrols (N) | % | Total (N) | Total % | Patrols as % |
|------------|--------------------|-------|-----------------------|-------|--------------|------------|-----------------|
| Committees | 245 | 7.87 | 937 | 30.09 | 1182 | 37.96 | 79.27 |
| Floor | 280 | 8.99 | 1652 | 53.05 | 1932 | 62.04 | 85.51 |
| Total | 525 | 16.86 | 2589 | 83.14 | 3114 | 100.00 | 83.14 |

This preference for patrols reveals a legislature concentrated on more general issues. Controversial events, although they might get attention from Congress, are not the individual member's major concern. Members show a persistent involvement in following up on routine issues and programs. This interest in routine, ongoing oversight can derive from the activism of interest groups' activism, from matters that directly affect constituents, or even from purely personal preferences concerning politics and policies.

6. Do coalition size, presidential support, and honeymoon effects matter for legislative oversight?

These variables have been used in the literature on legislative output to explain why bills are approved, amended, and rejected. In the first place, I will examine whether there is a relation between the coalition size and the amount of oversight: *the larger the coalition size, the less legislative oversight will be performed in Congress (H8)*.

The coalition size represents the nominal size of the political coverage of the cabinet, expressed as the total number of seats in the Chamber held jointly by the ministerially represented parties. This varies from a low of 26% (third Collor cabinet, with the support only of the rightist PFL and PDS) to a high of 93% (the first Sarney cabinet). This is not a precise measure, as members' loyalty to their floor leaderships ranges from 70 to 100% (Figueiredo and Limongi, 2001), and the measure is based exclusively on the lower house. Also, the measure ignores other possible tools for negotiating a legislative majority, such as pork barrelling, personal loyalties and policy preferences. Nevertheless, this is the best and most objective indicator of coalition size and it has been used widely in recent studies on coalitional presidentialism in Brazil (e.g., Amorim Neto and Tafner, 2002; Pereira and Rennó, 2003; Pereira, Power and Rennó, 2005).

In Brazil, 38% of oversight was proposed by deputies and senators who were part of the government coalitions, and 60% by opposition members and senators⁴⁹ (N=1,619) (Figure 4). This amount excludes hearings, because their abstracts in the Speaker's Reports omitted the authorship of resolutions.

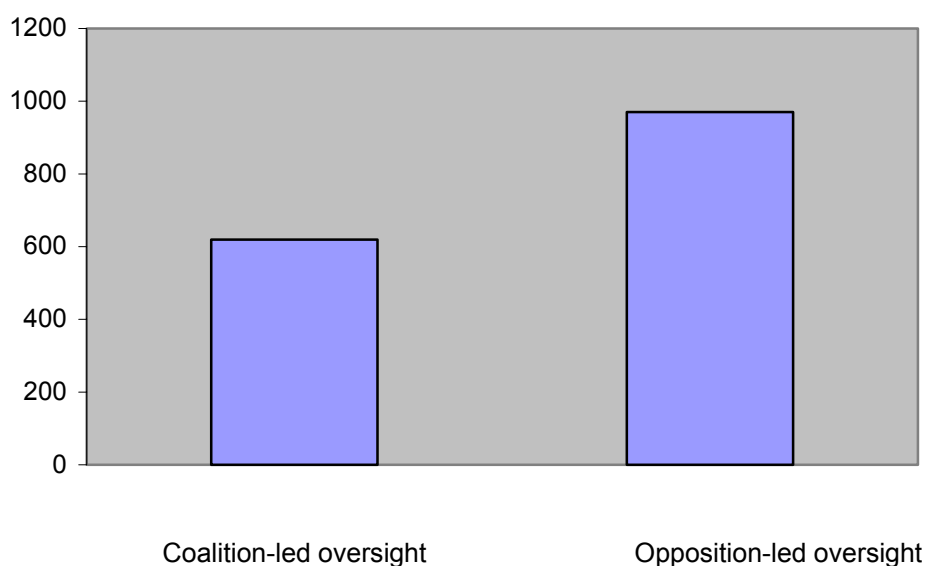


Figure 4 – Government coalition and legislative oversight in Brazil, 1988-2004.

Table 9 brings data organized according by presidency in two-year brackets, with percentages of oversight conducted by friends and foes. Collor's administration, which had the most modest coalitions (29.6% of the Chamber in 1991, and 34.6%, in 1992) was the most closely controlled, with strong opposition oversight (83%). The

⁴⁹ See Figueiredo and Limongi, 2001; Amorim Neto, 2002 for the classification of government and opposition parties during the 1988-2004.

first two years of Cardoso's second administration (1999-2000) were also closely watched: 62% of the oversight initiatives came from opposition parties, even as the government enjoyed 68% support in Congress. The only president who had more oversight from allies than from opposition was Itamar Franco in aftermath of Collor's impeachment. That is: all administrations were more subject to oversight by their opposition than by their allies. But does this all depend on coalition size, i.e., the larger the coalition, the less oversight a president will face?

The answer is no. There are no clear cycles or tendencies, or any predictable behaviour, except the very obvious phenomenon that the opposition will supervise more than the progovernment coalition. A significance test showed no correlation (Pearson's $r=0,24$).

Table 9 – Government coalition, opposition and legislative oversight, Brazil, 1988-2004

| | Coalition Size | Govt. Coalition Initiatives (A) | % | Opposition Initiatives (B) | % | Difference % (B-A) | Total* | %* |
|--------------------|----------------|---------------------------------|----|----------------------------|----|--------------------|--------|-----|
| Sarney (1988-1989) | 53.30-69.30 | 49 | 39 | 74 | 58 | 19 | 123 | 97 |
| Collor (1990-1992) | 26.20-50.30 | 39 | 16 | 207 | 84 | 68 | 246 | 100 |
| Itamar (1992-1994) | 55.30-67.40 | 81 | 57 | 61 | 43 | -14 | 142 | 100 |
| FHC 1 (1995-1996) | 56.30-76.60 | 116 | 43 | 147 | 55 | 12 | 266 | 98 |
| FHC 2 (1997-1998) | 76.60 | 75 | 45 | 88 | 53 | 8 | 163 | 98 |
| FHC 3 (1999-2000) | 68.20-74.30 | 72 | 34 | 130 | 61 | 27 | 202 | 95 |
| FHC 4 (2001-2002) | 45.10-68.20 | 75 | 39 | 111 | 58 | 19 | 186 | 97 |
| Lula (2003-2004) | 49.30-62 | 112 | 42 | 152 | 57 | 15 | 264 | 99 |
| Total | 26.20-76.60 | 619 | 38 | 970 | 60 | | 1595 | 94 |

*Differences related to missing information or committee proposals (24 cases. Total 1,619).

The most striking feature is not the oversight by the opposition (which is reasonable in a pluralist and competitive system) but the amount of oversight coming from government allies, which is highly counter-intuitive. I believe there are two

possible explanations: either progovernment members are engaging in highly institutionalized behaviour (deputies and senators fulfilling the constitutional premise of checks and balances) or government coalitions are highly fluid and fragmented. The large amount of oversight by allies would then reflect weak party cohesion.

Both explanations downplay the role of political parties in Congress. The first one points to a more *informational* role of oversight – the assembling of information that might be used for building expertise, for policy design, or as an asset for the constituency-oriented representative. It also points to a more individualistic approach. The second explanation lies in the argument that coalitions in Brazil is are improvised and ad hoc, and that “Congressional behaviour” or “party behaviour” are meaningless expressions, given that individual careers matter more than coalitions. And it is plausible to conceive of oversight not only as a management-supervising or abuse-preventing instrument, but also as way of signalling to and/or bargaining with the executive — even for the government coalition members in Congress.

A second variable analyzed in this section is how presidential support (measured as presidential approval rates minus presidential disapproval rates) affects oversight. The hypothesis is that *presidents with high support rates will face less oversight* (H9)⁵⁰. Legislators are strategic actors and will not warm to the idea of eroding their own positions by criticizing a very popular president. But when facing presidents with low public support, legislators may have more incentives to oversee and criticize the administration.

Nevertheless, this hypothesis is rejected: there is no correlation between high presidential support and low oversight (Table 10). Sarney had the weakest public support, with the lowest scores (-59% and -57.5%, for 1988 and 1989, respectively), which means disapproval rates around 80%. Still, his was the least overseen administration: 515 initiatives, in about two years. The first Cardoso government had very high popularity rates, and still was subjected to high oversight. In short, other explanations besides presidential support have to be sought to explain the amount of oversight Congress conducts, in spite of the key role executives have in the presidentially centered Brazilian system.

⁵⁰ Presidential support is a monthly percentage measure of presidential approval (survey ratings of *ótimo, bom*) minus presidential disapproval (ratings of *ruim, péssimo*) and is a president-centred, instead of government-centred, measure. I used Pereira, Power and Rennó (2005) data for 1988-1998 period; Datafolha for 1999-2002; Datafolha and CNI/ Ibope averages for 2003-2004.

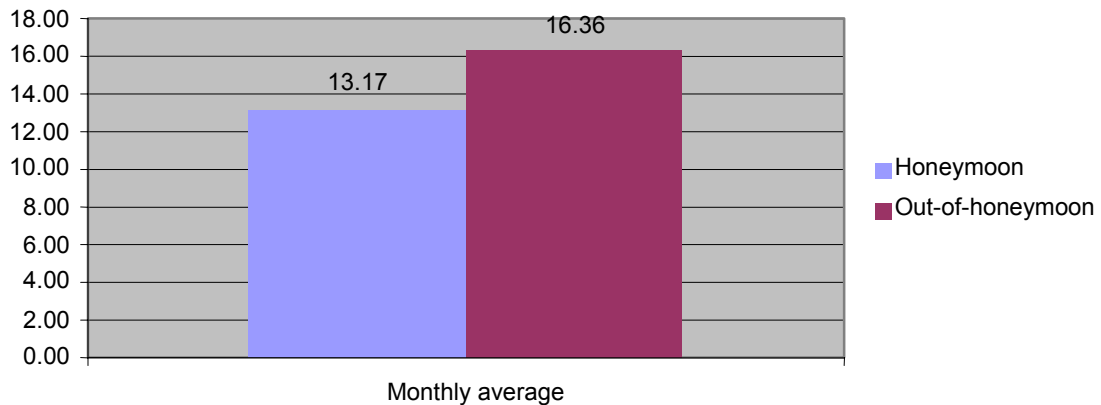
Table 10 – Presidential Support and Oversight, Brazil, 1988-2004

| | Oversight | % |
|-------------------------------------|-----------|-----|
| Very negative (under -19) | 5.295 | 26 |
| Negative (between -18.9 and -12.01) | 3.304 | 16 |
| Regular (between -12 and 1) | 5.968 | 29 |
| Positive (above 1.01) | 6.006 | 29 |
| Total | 20.573 | 100 |
| Pearson | 0.36* | |

The third hypothesis tested in this section concerns the effect of honeymoon periods on oversight, and predicts that *there will be less oversight during honeymoon periods (H10)*. Studies show there is a legislative accommodation during honeymoons, a bargaining model between legislative and executive (McCarty, 1997). The honeymoon effect may mean not only the result of high presidential popularity that would ease relations with Congress and induce a “grace period” in interbranch relations (Neustadt, 1980); but also the result of election-induced “homogeneity of preferences” (Khrebiel, 1998:55). Therefore, the administration would face less oversight during honeymoon periods.⁵¹

Some 10.5% of the total oversight initiatives were initiated during honeymoon periods. But the monthly average of oversight – as there were only 24 months of honeymoon and more than 100 non-honeymoon months – shows that oversight is less intense during honeymoon periods, with out-of-honeymoon periods showing a 20% increase in legislative oversight (Figure 5).

⁵¹ The honeymoon period is the six first months of the presidential terms. I did not consider a honeymoon effect for second terms, when presidents were reelected, as there is no new agenda – assuming there will be continuity. In practical terms: I refer here to the first six months of Collor, Itamar, Cardoso I (1995-1998) and Lula.



N= 3114

Figure 5 – Honeymoon effect and legislative oversight, Brazil, 1988-2004.

This supports Mayhew's findings in the U.S. on the relevance of initial periods of the government to explain legislation approval rates and the amount of oversight (Mayhew, 1991:176-177). In the Brazilian system, in light of the extremely fragmented representation in Congress, the start of the presidential term is perhaps the best moment for coalition-building. Also, it is a time for individual members to define their mandates, both in terms of their relation to the administration and to their own constituents.

7. Conclusions

This paper has intended to provide some insight into the conduct of legislative oversight in a new democracy, Brazil. This oversight corresponds to the supervision of the administration's actions — for which legislatures can count on many mechanisms such as public hearings, summons of ministers, resolutions of inquiry, special investigatory committees, and confirmation processes, among others.

I addressed questions such as: is there legislative oversight in Brazil? What are its frailties? What can affect its amount and oversight? The purpose was to verify if some well-known propositions about legislative output — based on individual, institutional, and context variables — also apply to oversight. Two general assumptions underlie this work: a) horizontal accountability is a fundamental feature of democracy, supplementary to the vertical one; b) legislatures are the institutions *par excellence* to watch over the executive branch, as they are more transparent,

pluralistic and responsive to electoral control. The analysis covers 16 years of democratic rule in Brazil, from 1988 to 2004.

The first question this paper addressed was: is there any legislative oversight in Brazil? The answer is yes. Oversight represents a share of thirty to fifty percent of the Congressional workload in any given legislative year. The first three years of the new Constitution (1988-1990) were the only ones in which oversight was not a main activity of Congress, which is understandable given delayed learning effects pertaining to the rules of the game. The data demonstrated that there are every year, thousands of propositions initiated by members for the purpose of correcting informational asymmetries. There is no negligence, at least as far as the number of propositions is concerned. This is an important sign of legislative vitality, though more qualitative work must be done in order to clarify how deeply committed legislators really are to close supervision of the administration — including elected and non-elected officials, programs, and agencies.

This evidence challenges O'Donnell's theory about the lack of horizontal accountability in new democracies, which I consider rather normative. It also challenges research which sees Latin American assemblies as weak bodies, due to strong presidents. I believe there is a point to be made here: legislatures may play a secondary role as policy-makers, but still have a fundamental role, according to its limitations and possibilities, in overseeing the activities of the executive. Strong presidents (who may in the end get most of what they want) still have to provide information, documentation and explanations to assemblies that have some level of expertise, resources, and political will to perform oversight.

A subsequent issue this paper addressed was: is this system good enough? This is a normative question, but one still worth exploring. In spite of having a number of instruments to perform oversight, the Brazilian legislature still lacks two key powers: the power of the purse and the power to organize the central state administration. Both prerogatives are exclusive to the president. As a consequence, Brazil has many *ex post* types of oversight, and the majority of oversight events are, in fact, attempts to correct informational asymmetries, (e.g., via resolutions of inquiry). Because these requests are not made public, questions of transparency and expertise building are dealt with behind the doors of Congress. The intense use of resolutions, however, cannot conceal that other instruments are often used. Instruments such as parliamentary committees of inquiry (CPIs) are fundamental, even if parsimoniously used, as they can probe deeply into specific issues. There are, thus, many aspects in which Congress can improve, such as broadening its

powers, boosting transparency of inquiries, and investing in more technical staff and resources. But one cannot say this is a system without accomplishments.

The third issue addressed in this paper was: what affects the amount and type of oversight? Using four instruments — resolutions of inquiry, Oversight Initiative Bills (*Propostas de Fiscalização e Controle*), summons of cabinet ministers, and public hearings — I examine some trends over time and across chambers. “Amount of oversight” corresponded simply to the number of cases of oversight. “Type of oversight” corresponded to a differentiation between event-driven oversight (fire alarms) and routine, self-motivated oversight (police patrols). The results are summarized as follows:

- a) Parties: members of all parties throughout ideological spectrum were willing to perform oversight, but there were different intensities, with leftist parties having a stronger performance than centre or right parties. The PT in government proposed as much oversight as the PSDB in the opposition, for instance.
- b) Electoral periods:
 - a. Electoral campaigns affect negatively the amount of oversight, but this is just an operational problem, as elections impact the entire legislative agenda. There is a general decrease in attendance, legislative production and, inevitably, oversight;
 - b. Campaigns do not affect the *type* of oversight. I expected that electoral years would have more event-driven oversight, as members would lack time for activities. This hypothesis however was rejected, as members continued performing their routine oversight;
- c) Bicameralism:
 - a. The Senate is more oversight-oriented than the Chamber, due to its more stable profile which encourages the development of expertise. Senators performed about 45% more oversight than deputies;
 - b. The Senate performs more routine and self-motivated oversight – more police patrols – than the Chamber, though patrols stand as the preference for both. That is, cameral differences do not explain the preference for patrols, they explain only the higher activism of the Senate.

- d) Division of labour between the committees and the floor:
- a. The floor performs more oversight than committees. It is the central locus for oversight, just as it is for legislation. This is due to the intense use of resolutions of inquiry. There is also a cameral difference: the Senate *plenário* performs 6 times more oversight than its committees, while the Chamber's *plenário* performs 12 times more oversight than its committees.
 - b. The preferred type of oversight is patrol, be it in the floor or in the committees. But the floor is more intense about the use of patrols: in committees, the proportion is 3.8 patrols to each alarm; in the floor, the proportion is 5.9 patrols to each alarm.
- e) Coalition size: the size of the pro-presidential faction in Congress did not have an impact on the amount of oversight. That is, presidents with lower support did not necessarily face more oversight, and presidents with larger coalitions did not face less oversight. But the overall pattern shows that opposition parties tend to perform more oversight than parties that support the president. It is interesting, however, that members of parties located in the presidential coalition do propose a significant share (38%) of the aggregate oversight initiatives. This illustrates the very fragmented nature of the party system, and possibly supporters of the president initiate oversight in order to bargain over issues. From a perspective which emphasizes incentives, one can state that parties do not generate enough incentives for the performance of oversight — rather individual preferences (and instruments) prevail.
- f) Presidential support: presidents with high popularity are not necessarily less subjected to oversight than presidents with lower support rates;
- g) Honeymoon effect: the beginning months of presidential terms have less oversight than non-honeymoon periods.

Regarding the quality of oversight, these trends show that Congress is pretty much oriented towards routinely and self-motivated oversight, even when there is a time constraint, as during election periods. This goes against the conventional wisdom, which usually portrays Congress as media-reactive. It is not that Congress does not react – it might, but numerically speaking, there are far more routine oversights than event-driven ones. This is a strong trend in the data that holds up

even when one considers organizational aspects such as the floor-committee division of labour.

Regarding the amount of oversight, it is clear that oversight is an important share of the workload in Congress, and that it remains so during election time. All parties engage in oversight, and this is unaffected by membership in the progovernment coalition. The use of oversight instruments reinforces the idea of Brazilian Congress as a highly centralized institution which takes most of its actions on the floor. Also, my findings point to different levels of interest and incentives with regard to oversight, given that the Senate is more active than the Chamber. Finally, coalition size and presidential popularity do not seem to impact the amount of oversight Congress performs, whereas honeymoon periods offer a good opportunity for presidents to have more freedom and face less supervision.

There are some limitations to the research design employed here. Firstly, its quantitative nature leaves unexplored certain variables such the *intensity* of conflicts, the *strategies* the executive or the legislative branch resort to in particularly controversial matters, or the relative *importance* of each case. Regarding this last aspect, it can be misleading to lump together highly visible or sensitive cases with more prosaic ones. In-depth case studies would afford us excellent opportunities to examine at the micro-level what is going on in the oversight arena.

Secondly, the distinction between police patrols and fire alarms does not capture the evolving nature of oversight. Alarms, though event-driven, can evolve into patrols over time; similarly, alarms can also begin as routine patrols. An example: after a major environmental disaster, the issue might get onto the agenda and be constantly revisited as part of the routine actions of a committee or even an individual legislator. Likewise, patrols can have their courses changed by events. Imagine, for example, a routine hearing on education programmes that turns into a debate on the current budget constraints faced by a specific city. McCubbins and Schwarz (1984) do not allow for these possibilities, as do few of the authors that have adopted their influential typology. Also, their definition is not parsimonious. They take into consideration three variables which then yield two broad types of oversight: motivation (self-initiated or event-driven), costs incurred (if on Congress or on third parties), and degree of routineness (ordinary or extraordinary initiative). Nonetheless, if combines all the possibilities, one could have a number of different types of oversight. This was an issue during the research, and that is why I have chosen to adopt *motivation* as the distinctive mark of alarms or patrols.

A necessary subsequent step on this research is to test how my independent variables operate in combinations, e.g. via multivariate models. Multivariate analysis can demonstrate what the significant variables are that can affect the type and amount of oversight. This will lead to more questioning and more hypotheses, as well as further findings about oversight standards in Brazil.

To conclude, with this project I hope to have developed some new data and a new approach to address a neglected issue that is fundamental for assessing the quality of democracy in Brazil: do institutions actually fulfill the function of their original design? I believe that the Brazilian Congress still has a long way to go in the use of existing instruments, as well as in the adoption of reforms to expand its powers. But Congress is undertaking some efforts to accomplish some oversight, and it is indeed making government more transparent and accountable. Though the results can be far from the normative ideal, they are also very far from the real world of authoritarianism and bureaucratic insulation that Brazil experienced from 1964 to 1988. As democracies evolve, so do institutions and actors. As Sartori said, “the real enemies of democracy are in the extremes of each field; they are the hyper-realists that deny all ideals; or are the hyper-idealists that deny all the facts” [Sartori, 1987:116]. Identifying the negative and positive points of a system facilitates the task of strengthening democracy. This was my underlying purpose in conducting this research, which itself has some way to go in terms of gaining a better understanding of democratic accountability in Brazil.

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