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**Agenda Power, Presidential Decrees, and the Unintended  
Consequences of Reform in the Brazilian Congress**

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# **From Logrolling to Logjam: Agenda Power, Presidential Decrees, and the Unintended Consequences of Reform in the Brazilian Congress**

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## **Abstract**

This paper examines the reform of presidential decree authority in Brazil. From 1988 to 2001, presidents were able to reissue decrees indefinitely and thus had substantial legislative power. However, in September 2001, Congress amended the Constitution so as to restrict presidents to a single reissue of a lapsed decree. This reform has had surprising results: rather than limit presidential reliance on decrees, it has apparently induced presidents Cardoso and Lula to use more decrees than previous executives. In analyzing patterns of presidential initiatives from 1995 through 2005, we examine the causes and (unintended) consequences of this constitutional reform.

## **Resumo**

Este trabalho visa examinar a reforma das medidas provisórias (MPs) no Brasil. De 1988 a 2001, os presidentes brasileiros podiam reeditar MPs praticamente sem limite, e assim acumulavam poderes legislativos consideráveis. Mas em setembro de 2001, o Congresso Nacional promulgou uma emenda constitucional que restringiu os presidentes a uma única reedição de uma MP. Essa reforma tem mostrado resultados surpreendentes: em vez de reduzir a dependência dos presidentes nas MPs, aparentemente a reforma induziu aos presidentes FHC e Lula a assinar mais decretos do que seus antecessores. Ao analisar os padrões de iniciativas legislativas oriundas do Executivo entre 1995 e 2005, nós examinamos as causas e as (surpreendentes) conseqüências dessa reforma constitucional.

In September 2001, Brazil's national legislature celebrated an apparent victory over executive dominance. Nearly thirteen years earlier, the Constitution of 1988 had given Brazilian presidents, in situations of "urgency and relevance," the power to issue "provisional measures with the force of law" for up to 30 days. Many in the Brazilian Congress regretted that decision of the constitutional convention, and a few numbers explain why. Some 4723 days into the life of the new Constitution, four Brazilian presidents had issued 2230 decrees, of which 619 were original measures and the rest renewals of expiring decrees. Counting only the 619 original initiatives, on average presidents had been invoking the criteria of "urgency and relevance"—and initiating new laws unilaterally—*once a week for 13 years*. Given that more than 75% of all of Brazil's laws originated in the executive branch during this period, many parliamentarians concluded that Congress had effectively ceded control over the legislative agenda to the president. However, on September 11th, 2001, as the attention of the world lay elsewhere, the Brazilian Congress promulgated Constitutional Amendment No. 32, which ostensibly rolled back the power of the president to initiate legislation unilaterally. The aim of the reform: to recover Congress' agenda-setting power by limiting the use of presidential decrees.

This reform did not restrain the executive branch. In the years after 2001, presidents' reliance on decree authority actually *rose* in Brazil. After Amendment 32, the monthly average of decrees issued by then-president Fernando Henrique Cardoso more than doubled. In 2003, Cardoso was succeeded by Luiz Inácio Lula da Silva of the PT. Lula the candidate had spend most of the 1990s railing against "government by decree," but Lula the president has signed *medidas provisórias* at a rate almost 50% higher than the average for his predecessors in the 1988-2001 period (data through December 2005). By early 2006, frustrated Congressional leaders were back to the drawing board, examining another proposed constitutional amendment that would change the rules of decree authority yet again.<sup>1</sup>

Why was Congress unable to constrain presidential use of decrees after 2001? What were the unintended consequences of the limitations on decree authority imposed by Amendment 32? And what explains the counter-intuitive outcome of the reform—in other words, how did presidents succeed in threading a greater number of decrees through a narrowing gap in the Brazilian Constitution? These are the questions we examine in this paper, which proceeds in five sections. First, we revisit the evolution of presidential decree authority in Brazil since 1988. Second, we explain how the nature of that authority was

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<sup>1</sup> This is constitutional amendment proposal no. 72 (known as PEC 72), introduced in 2005, which would require decrees to be approved by the Justice Committees of each house before circulating in Congress. This effort to improve "gatekeeping" was approved in two rounds by the Senate in February 2006 and is now before the Chamber of Deputies. The current status of this proposal can be checked by visiting <http://www.senado.gov.br/sf/atividade/Materia/> and searching for PEC 72 of 2005. For further analysis of the proposal, see our op-ed comment published in *Valor Econômico* on March 6, 2006.

modified by the introduction of Amendment 32. Third, we generate hypotheses based on the reform of 2001. Fourth, we test these hypotheses using visual, bivariate, and multivariate analysis of the data on decrees. Fifth and finally, we present our conclusions about the unintended consequences of decree reform.

### **Background on Presidential Decree Authority in Brazil**

Since October 1988, Article 62 of Brazil's Constitution has allowed presidents, in cases of "urgency and relevance," to decree "provisional measures with force of law" (*medidas provisórias com força de lei*, or MPVs in Brazilian legislative terminology). Based on a similar feature of the Italian constitution, the original version of Article 62 stipulated that these decrees would have immediate legal effect but would expire after 30 days if Congress did not convert them into law. As Amorim Neto (2006: 14) describes it, "this is a strong form of legislative authority because it allows chief executives to overrule statutes altogether and move the policy status to the desired position." However, due to ambiguity in the constitutional language, presidents launched paraconstitutional initiatives to expand decree authority even further. One such initiative was for the executive to interpret unilaterally the constitutional requisite of "urgency." A second was to observe very few limits as to what types of policies could be initiated or altered via decree. A third, controversial precedent was to reissue decrees that Congress did not consider within 30 days (after several legal challenges in 1989 and 1990, the Supreme Court established that reissues were acceptable as long as presidents did not try to reintroduce any decree that Congress had specifically rejected). In this way, José Sarney, Fernando Collor, Itamar Franco, and Fernando Henrique Cardoso—the four presidents who governed between 1988 and the reform of 2001—gained impressive agenda-setting powers in the legislature and were able to establish literally hundreds of public policies via the constant issuing and re-issuing of decrees (Table 1)

**Table 1: Use of Decree Power by Brazilian Presidents, 1988-2005**

<i>President</i>	<i>Original MPVs</i>	<i>Monthly Mean</i>	<i>Reissued MPVs</i>	<i>Monthly Mean</i>
José Sarney, 1988-1990	125	5.2	22	0.9
Fernando Collor, 1990-1992	89	2.9	70	2.3
Itamar Franco, 1992-1994	142	5.3	363	13.4
Cardoso first term, 1995-1998	160	3.3	2449	35.4
Cardoso second term, pre-reform (1999 - 9/10/2001)	103	3.1	2587	78.4
Cardoso second term, post-reform (9/11/2001 - 2002)	102	6.8	N/A	N/A
Lula, 2003 through 12/31/2005	171	4.8	N/A	N/A

Notes: After Constitutional Amendment 32 limited presidents to one reissue of a decree, statistics on reissues were no longer kept.

Source: Presidência da República, Casa Civil, Subchefia para Assuntos Jurídicos ([www.planalto.gov.br](http://www.planalto.gov.br)).

The evolution of the decree game after 1988 made Brazil a favorite case study in the emerging literature on the legislative powers of presidents. Abranches (1988) memorably portrayed the basic institutional matrix of Brazilian democracy, which he called *presidencialismo de coalizão*, and illustrated the challenges to governability posed by permanent minority presidentialism. Power (1998) noted that the continuity of executive dominance from the 1964-1985 military regime, best encapsulated in Article 62, was an attempt to solve the governability equation in Brazil. In the late 1990s emerging cross-national perspectives on executive decree authority cast Brazil in a new light. Both Huber (1996) and Carey and Shugart (1998) argued against the “usurpation interpretation” of decree authority, claiming instead that legislatures often prefer to *delegate* authority to presidents in order to strengthen coalition management, to escape responsibility for unpopular policies, and to extract concessions and material resources for electoral gain. In contrast, Cox and Morgenstern (2001) argued that decree power is often a way for embattled presidents to bypass uncooperative legislatures and legislate *unilaterally*.

From the delegation perspective, it is popular and more politically secure presidents who are more likely to resort to their decree powers. From the unilateral action perspective, the expectation is exactly the opposite: it is less popular and more politically insecure executives who will try to legislate “over the heads of Congress.” Delegation theory has

been the more influential perspective in studies of Brazil: first applied by Figueiredo and Limongi (1999), it was later amplified by authors such as Reich (2002) and Negretto (2004). A claim shared by these scholars is that the availability of decree authority affords the president impressive *control over the legislative agenda*. The centralization of agenda-setting powers allows the executive to overcome alleged obstacles to governability in Brazil (for example, a fragmented multiparty system), but this in itself does not necessarily imply that the president is usurping the powers of the assembly. Rather, Congress delegates carefully and strategically, and does not issue blank checks to the executive. For example, Amorim Neto and Tafner (2002) claim that Congress monitors presidential action closely, and moves to constrain executive authority whenever societal “fire alarms” are activated. Advocates of delegation theory deny the frequent journalistic claim that the Brazilian Congress has abdicated its legislative powers to the president: rather, they portray an *entente cordiale* between the executive and the legislature, with the latter retaining veto and bargaining powers that can be used to hold presidents at bay.

Unlike Reich (2002), who suggested that the willingness of legislators to delegate policymaking authority to the president was more or less a constant feature of Brazilian political life, Amorim Neto and Tafner (2002) were the first to show empirically that the willingness of Congress to tolerate decrees depended on shifting political variables such as coalition management, cabinet formation, and electoral cycles. This led Pereira, Power, and Rennó (2005) to incorporate these variables—along with controls for economic performance and presidential popularity—into a fully specified, multivariate test of the rival delegation and unilateral action theories in the 1988-1998 period. They found that the usage of decree authority in the first government of Fernando Henrique Cardoso (1995-1998) corresponded closely to the predictions of delegation theory, but for the entire post-1988 period the evidence was mixed: there was no one-size-fits-all theory of decree reliance that could explain the behavior of all four presidents in this period.

Following Carey and Shugart (1998), Pereira, Power, and Rennó (2005) drew a distinction between delegation to the *presidency* and delegation to individual *presidents*. The first phenomenon is a form of institutional design and is more rigid, while the second phenomenon is a form of political process and is more fluid. When framers of Brazil’s 1988 Constitution adopted Article 62 creating decree authority, they made a delegation of the first type: they delegated legislative power to the chief executive. However, according to Pereira, Power, and Rennó, post-1988 executive-legislative relations have demonstrated that the limits to which presidents can actually *use* this authority (delegation of the second type) are highly contingent upon shifting political and economic factors. Thus, any model of presidential decree reliance in Brazil must take into account not only the president’s impressive agenda-setting powers, but also the ever-changing political relationships

between key actors—not to mention the possibility that Congress can, at any time, amend the Constitution to rewrite decree authority. This is in fact what occurred in 2001.

### What Changed: The Rules of the Decree Game

Almost from the first day of the Constitution of 1988, legislators began to propose restrictions to decree authority, but successive presidents were able to evade or neutralize these initiatives (Power 1998). Over the course of the 1990s, legislative opinion began to turn against the need for decree authority: from marginal support in 1993 (a year often considered the nadir of the post-1985 democracy, when talk of a “crisis of governability” was widespread), opinion shifted toward a consistent 60% opposition in the next three legislatures.

**Table 2: Legislators’ Views of Constitutional Decree Authority, 1993-2005**

*Survey Statement:* “In Brazil, it is necessary to give to the President of the Republic the power of *medidas provisórias*.”

<i>Legislature/Survey Year</i>	<i>49th, 1993</i>	<i>50th, 1997</i>	<i>51st, 2001</i>	<i>52nd, 2005</i>
Agree (strongly or somewhat)	51.9	36.2	40.1	40.7
Disagree (strongly or somewhat)	48.1	63.8	59.9	59.3
<i>N</i> responding	185	162	139	123

Notes: the 2001 survey was conducted in May and June, prior to the promulgation of Constitutional Amendment 32 in September.

Source: Surveys of National Congress carried out by Power.

However, no significant change in presidential decree authority occurred until 2001 when Congress approved and promulgated the 32nd Amendment to the Constitution of 1988, significantly rewriting the infamous Article 62. Amendment 32 had several important consequences. One was to limit presidents to a single reissue of an expiring decree. Under the previous system, decrees were issued for 30 days but could be reissued indefinitely; after the reform, decrees are valid for 60 days, and can be reissued only once. Another consequence was to reduce constitutional ambiguity by specifying a list of issue-areas in which the executive may not resort to decrees. These include political rights, electoral law, the penal code, budgetary matters, and seizures of bank accounts (such as occurred in the Collor Plan of 1990). A final requirement of Amendment 32 is that Congress *must* take a position on a *medida provisória* prior to its expiration date. If Congress does not vote on the decree within 45 days, it goes automatically to the top of the Congressional agenda and overrides any other item of assembly business (Art. 62, new paragraph 6). This



phenomenon is known colloquially as *trancamento da pauta*—literally, the lockdown of the agenda, or figuratively, the “jamming up” of the bill flow.

The intention of Amendment 32 was clearly to generate a set of mutually reinforcing disincentives to the use of decrees. Presidents could no longer issue them indefinitely: only once. Because a lapsed or rejected decree cannot be reintroduced in the same legislative session, presidents would only have one chance to “get it right”—they would have up to 120 days, maximum, in which to form a majority around some version of the decree. These rules, along with the restrictions on various types of content, were intended to “raise the bar” for the use of *medidas provisórias* and redress the imbalance in executive-legislative relations. Given that all of the above were longstanding demands of key legislators, why did it take 13 years to achieve an overhaul of Article 62? The reform of decree authority in 2001 in Brazil emerged from a unique combination of long-term and short-term factors. A *background* condition was the ongoing dissatisfaction of federal legislators after 1988, but three *proximal* conditions in 2000-2001 have been frequently cited to explain the approval of Amendment 32.

First, the sitting president, Fernando Henrique Cardoso, ceded on the reform only after his own party (the PSDB) won the presidency of the Chamber of Deputies for the first time in January 2001. Not only was this a “safer” situation for him—he had a good relationship with the new Chamber president, Aécio Neves—but Neves had based his own suprapartisan campaign for the Chamber presidency on a proposed reassertion of Congressional prerogatives. The emergence of contested elections for the presidency of the Chamber (which dates only from the early 1990s) had generated a new set of incentives for candidates. In the 1990s, aspirants to this office began to play to the dissatisfaction of the median legislator and to portray the Congress as unfairly marginalized in national politics. Specifically, candidates to the *Mesa* (the governing board of the house) began to advocate the rollback of executive agenda-setting power and a reduction in the number of presidential decrees. In making these arguments, Neves echoed other candidates but with a key difference: he was personally and politically close to the president. His surprise victory in January 2001 (the PFL was expected to inherit the Chamber presidency) put him in the position of having to move forward on decree reform.

A second condition was that Cardoso only accepted the reduction of decree power as he was approaching his eighth and final year as president, when he had already either attempted or achieved the bulk of his economic reforms. As a lame duck, Cardoso had more of an incentive to compromise on decree reform: if had resisted the reform too strongly, it is conceivable that he might have gotten a less acceptable deal from Congress. As it was, the reform contained some attractive elements for both sides: the legislature reduced the constitutional basis for decree authority, while the executive preserved the ability to issue

decrees on issues of urgency and relevance. Moreover, Cardoso fought for and obtained a “grandfather clause” under which decrees introduced prior to the reform would be treated under the old rules and not the new ones—they would enjoy a special status, remaining in effect indefinitely until Congress voted on them (Sampaio 2004). Employing this transitional mechanism, Cardoso issued a blizzard of decrees in the final days before Constitutional Amendment 32 took effect: he signed 58 *medidas provisórias* in the month of August 2001 and 14 more in the first ten days of September. The president foresaw, correctly, that many of these decrees would survive well into 2002 and the final days of his administration.

A third condition, floated in journalistic circles and verging on conspiracy theory, was the specter of a victory by Luiz Inácio Lula da Silva in the upcoming 2002 elections. According to this interpretation, the center-right majority in Congress believed that the left-leaning PT would win the presidential elections of 2002 (which it did) and reverse many of the neoliberal reforms implemented in the 1990s. Thus, the PSDB and the conservatives preferred a weaker presidency in the future and opted to dilute decree powers. This conspiracy theory has parallels dating from 1993, when Lula was also leading in the polls and Congress reduced the presidential term of a office to a single four years with no reelection (rules changed under Cardoso in 1997), and also from 1961, when Congress hastily adopted a semipresidential system in order to emasculate the incoming leftist president, João Goulart. Like most conspiracy theories, the hypothesis of a preemptive strike against a future president Lula is nonfalsifiable, so we will not deal with it at length here. But we are highly skeptical that *Lulafobia* played much of a role in the adoption of Constitutional Amendment No. 32. The problem with the conspiracy theory is that it suggests that government forces were a group of defeatists armed with a crystal ball—they “knew” they would lose the upcoming elections and acted accordingly. In fact, Cardoso fully expected the PSDB to be competitive in the presidential election of 2002 (which it eventually was, advancing to the runoff) and would have no rational interest to weaken a copartisan successor beyond what was politically necessary. Moreover, decree reform was a longstanding demand of federal legislators, with or without Lula on the horizon.

This account of the 2001 reform package is necessarily incomplete and will likely change as more of the key players reveal details of the negotiations in the future. For the present purpose, however, the causes of the reform are less important than its consequences. Did it work?

### **Hypotheses and Data**

We now proceed to derive hypotheses about presidential decree behavior based on the introduction of Amendment 32 on September 11, 2001. We are interested not only in the absolute numbers of presidential decrees issued but also in the relative *choices* that

presidents make. Presidents can opt between ordinary means of legislative initiative (routine bills) or extraordinary means (decrees). To capture the strategic calculus of executives, our main dependent variable is a *decree reliance ratio*. This is expressed as the ratio of *medidas provisórias* to the sum of all legislative initiatives sent by the executive to the Chamber of Deputies.<sup>2</sup>

Based on our discussion above, we hypothesize two main effects of the reform of decree authority in 2001. First, by creating disincentives to the use of *medidas provisórias*, Amendment 32 should lead to a decline in the decree reliance ratio. Presidents should alter their strategy to introduce a relatively higher share of ordinary bills. Second, the use of decrees after the reform should be closely linked to ongoing support for the president in Congress. Because Amendment 32 prohibited the indefinite reissuing of decrees, it is now riskier to use them: the cost of failure is high, because a lapsed decree cannot be reissued in the same biennial legislative session. Therefore, we expect that measures that capture overall Congressional support as well as management of the pro-presidential coalition should be reliable predictors of the executive's willingness to resort to a more circumscribed version of constitutional decree powers.

We have assembled data here on the eleven years from 1995 to 2005, a period that includes the presidencies of Cardoso and Lula. We do not use data from the earlier phase of Brazilian democracy, for three reasons. First, while it took several years and several court decisions to establish the limits of decree authority in Brazil, by 1995 the formal and informal rules of decree authority were firmly in place. Second, the earlier phase of Brazilian democracy, especially the 1988-1993 period, was a time of extreme macroeconomic instability with at least five failed stabilization plans. Presidents relied heavily on decrees for anti-inflationary measures and shock treatment, whereas after July 1994 inflation was under control and there were no further changes in the currency regime. Day-to-day economic management by decrees could bias our results. Third, as many observers have noted, after 1995 the conditions for governability and coalition building in Brazil improved considerably. Both Cardoso and Lula were directly elected, legitimate presidents with broad multiparty coalitions that were remarkably similar in size (roughly 60-70% support from Congress) and even in composition. Therefore, we restrict ourselves to a period in which economic and political conditions are far more stable and in which the two presidents thus more comparable, *but* which is punctuated by a change in the rules of decree authority, thus affording us a quasi-experimental research design. Our units of analysis are months. All of

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<sup>2</sup> This measure is the inverse of Amorim Neto, Cox, and McCubbins' (2003) Standard Lawmaking Index, which is a ratio of reliance on ordinary means of legislation (*projetos de lei* and *projetos de lei complementar*). Our study focuses only on *original* (first-time) decrees and not the many reissues prior to 2001 (see Table 1), because to use the latter would seriously distort our results.

our variables are measured for each of the 133 monthly units between January 1995 and December 2005.<sup>3</sup>

Our key independent variable of interest is the initiation of Amendment 32 (the reform of decree authority), a binary measure that is coded as zero until September 11, 2001 and then as one thereafter. Recall that because of the special protocol governing the transition from the old decree rules to the new ones, President Cardoso issued a staggering 72 new decrees between August 1 and September 10, 2001. We therefore include a second dummy variable for this transitional period, because to do otherwise would severely bias our results.

To control for the shifting political context we introduce a number of independent variables, most of which we lag in the analyses reported below. The first is *presidential popularity* (see Appendix for descriptions of all variables and sources). The second is *legislative support for the president*, expressed as the percentage of legislators following the floor voting recommendation (*encaminhamento*) of the leader of the progovernment coalition (*Líder do Governo*) in the Chamber of Deputies.<sup>4</sup> This variable expresses the level of ongoing preference congruence between the president and Congress as a whole. To tap into the president's ability to manage his own coalition on the floor, we use Amorim Neto's (2002) measures of *cabinet size* and *cabinet coalescence*. Cabinet size is the percentage of Chamber seats held by the ministerially represented parties, whereas cabinet coalescence is the degree of proportionality between the pro-presidential parties' share of seats within the government's floor voting coalition in the Chamber and their share of ministerial portfolios. We also include a variable that we call *cabinet management*, which is operationalized as the product of the size and coalescence variables. This interaction term assumes that for presidents, the payoff of the nominal size of the coalition is in fact conditional upon its degree of internal satisfaction, measured as proportional access to executive power.

To capture temporal effects, we include four additional controls. Because election campaigns are associated with reduced legislative activity and the potential for either delegation or abdication of Congressional prerogatives, we include a binary variable for the *general election effect*: months of presidential and legislative campaigning are coded as 1. We also include a control variable for *presidential honeymoon*. This is scored as 1 for the first three months of the administrations of Cardoso and Lula, and zero otherwise. Another important control variable is the *reelectability of the president*, which strengthened the

<sup>3</sup> We count September 2001 as two months, with the first 10 days assigned to the pre-reform period and the final 20 days to the post-reform period.

<sup>4</sup> In cases where the executive recommends a NO vote, the denominator is the total of votes cast in the house. In cases where the executive recommends a YES vote, the denominator is the total number of seats in the house. We use the higher denominator on YES votes in order to capture the ability of the pro-presidential coalition to marshal its forces on the floor and pass legislation of interest to the executive.

presidency after June 1997 by removing the ban on immediate reelection. A similar dummy variable is the *lame duck effect*, scored as 1 for the second term of Cardoso.

We have already noted that after the *Plano Real* was implemented in July 1994, presidents no longer used decree authority for stabilization plans and shock treatments. The concern of presidents in macroeconomic management shifted from inflation control to defense of the new currency. We therefore include a control for currency fluctuation, measured as month-on-month change in the value of the Real vis-à-vis the U.S. dollar.

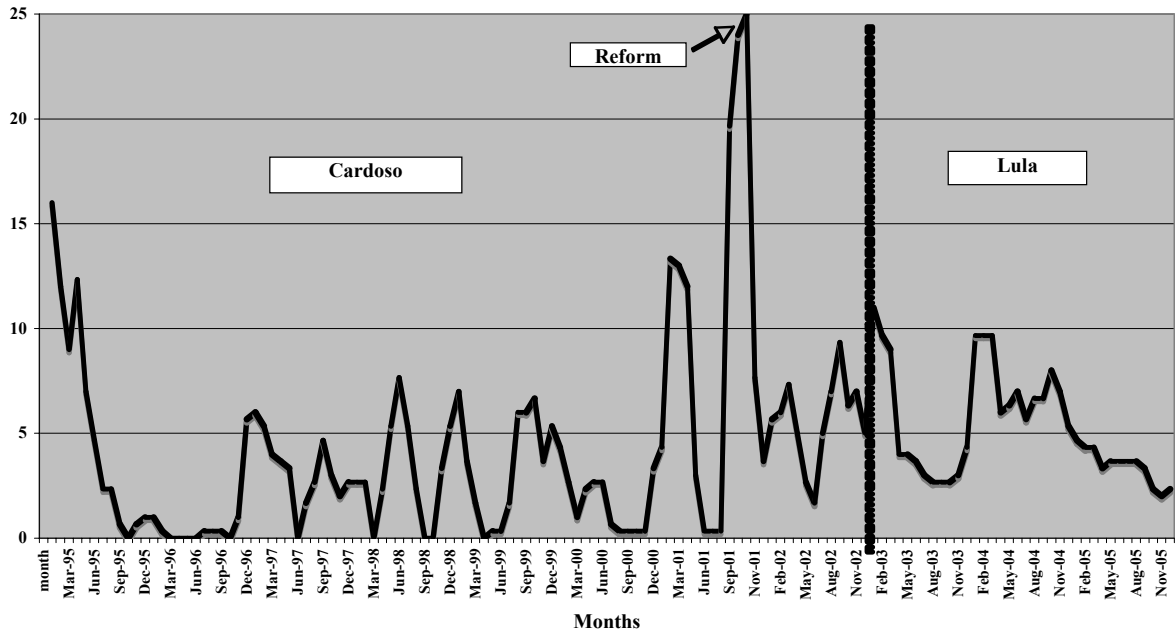
Finally, we expect that there are differences between presidential administrations (e.g. leadership and governing style) that are not captured by any of the foregoing variables, so we include a binary variable for the Lula government.

### **Empirical Testing**

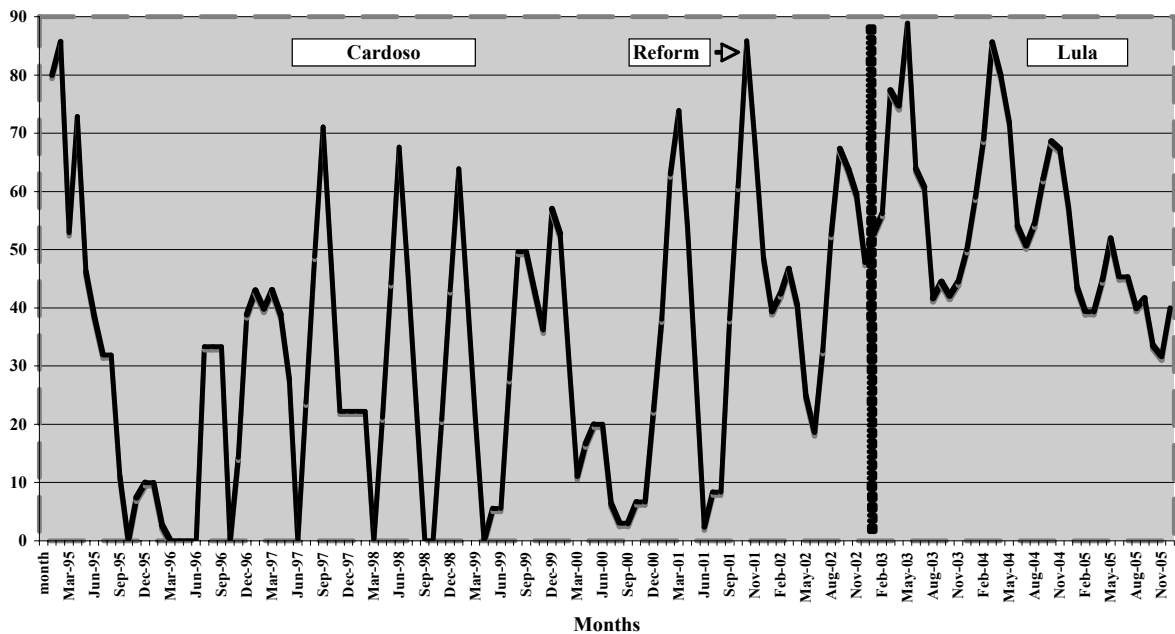
In order to test our hypotheses we adopt various strategies. First, we analyze some simple descriptive evidence from before and after Amendment 32 to examine whether the executive branch has reduced its reliance on decrees. Second, we use multivariate analysis to test whether legislative support and coalition management have an effect on decree reliance and to further isolate the impact of the reform from other confounding factors.

Table 1 contains the raw monthly averages for decree usage by presidents, while Figures 1 and 2 illustrate the trends visually. Because there are months with no decrees and/or no legislation introduced at all, line graphs show zig-zag patterns unless the data are transformed. To “smooth” the data for improved visual interpretation in Figures 1 and 2, we opted for 3-month moving averages. Figure 1 suggests that Amendment 32 had no depressing effect on the absolute number of decrees, while Figure 2 clearly shows an increase in the decree reliance ratio after the reform. Both figures also illustrate the spike of August and September 2001, when Cardoso issued a barrage of decrees in the final days of the old rules.

**Figure 1: Presidential Decrees 1995-2005 (3-month moving average)**



**Figure 2: Decree Reliance Ratio 1995-2005 (3-month moving average)**



A simple test of means for the periods before and after the reform indicates that there was a statistically significant *increase* in the monthly reliance on decrees after Amendment 32. Prior to the reform (that is, from January 2005 through September 10, 2001) the average monthly reliance on decrees is of 28%. After the reform (September 11, 2001 through December 31, 2005), the mean jumps to 52%. That is, after the reform, there is a 23

percentage point increase in the share of overall presidential initiatives that are introduced by decree. This difference is statistically significant at the .000 level. This simple analysis already provides powerful evidence that the decree reform of 2001 did not attain its stated objectives. Instead of curbing reliance on extraordinary means of introducing legislation, it appears at first glance as if Amendment 32 simply whetted presidents' appetite for issuing decrees.

When we examine only the *absolute numbers* of presidential decrees (as opposed to the decree reliance ratio) the transformation may not appear as dramatic. From 1995 to 2001 (a period entirely under Cardoso), the mean number of decrees per month was 3. After the reform of September 2001 (15 months of Cardoso and 36 months of Lula), the mean number rose to 5. This difference of means is statistically significant at the .10 confidence level. Hence, there was not a tremendous nominal increase in the number of decrees sent to Congress each month (although the increase from 3 to 5 does represent a 67% increase in percentage terms), but after 2001 there was a significant change in the degree to which the executive relied on decrees in contrast to other forms of initiating legislation (introduction of ordinary bills and enabling legislation).

How should we interpret this contrast? Recall that our dependent variable is a ratio in which the numerator represents decrees and the denominator is the sum of all three types of presidentially introduced legislation that can be approved with simple majorities (ordinary bills, enabling legislation, and decrees). It could be that changes in the ratio are explained less by the phenomenon of decrees than by changes in the two "ordinary" components of the denominator: if the president simply introduces fewer regular bills, the decree reliance ratio will rise even if there is no change in the monthly rate of decrees. A simple *t*-test indicates that the number of complementary bills (*projetos de lei complementar*, or PLCs, which activate provisions of the Constitution) declined after the reform.<sup>5</sup> Before the reform, the mean number of PLCs was of 0.33; after the reform this number falls to 0.19. The difference of 0.14 is statistically significant at the 0.09 level. However, the number of PLCs is substantively small. For ordinary bills (*projetos de lei ordinária*, or PLs) the results are virtually identical before and after the reform. In both cases, the monthly average is of four PLs. The difference is not statistically significant. Our conclusion, then, is that *changes in the decree reliance ratio after 2001 are driven predominantly by the upturn in the absolute number of decrees*. Although the increase from an average of 3 to an average of 5 decrees

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<sup>5</sup> Because PLCs are used to implement the non-self-executing provisions of the Constitution of 1988, their number should be expected to decline over time as more and more of the Constitution is enacted into legal force. This is exactly what we find here.

per month appears small, it does represent a rather momentous shift in the overall legislative strategy of presidents.<sup>6</sup>

However, descriptive statistics leave out a range of other factors that may affect the issuance of presidential decrees. A full picture of the changes after 2001 can only be obtained via a fully specified model that contrasts various possible explanations for the variation in decree reliance. We report our multivariate regression in Table 3.

**Table 3: Modelling the Reliance on Decrees by Brazilian Presidents, 1995-2005**

<i>Variables</i>	<i>Decree Reliance Ratio</i>
<b>Reform of 2001 (Amendment 32)</b>	<b>19.744</b> <b>(1.69)*</b>
Transition to Reform (Aug/Sep 2001)	61.575 (8.21)***
Presidential Popularity ( <i>lagged</i> )	0.157 (0.51)
Legislative Support ( <i>lagged</i> )	0.336 (1.30)
Cabinet Size ( <i>lagged</i> )	-2.334 (0.55)
Cabinet Coalescence ( <i>lagged</i> )	-3.011 (0.74)
Cabinet Management ( <i>lagged</i> )	0.045 (0.59)
Currency Fluctuation ( <i>lagged</i> )	0.219 (0.33)
Lula	-8.566 (0.37)
Reelectability effect	18.689 (0.92)
Honeymoon effect	32.414** (1.84)
General Election effect	-3.711 (0.31)
Lame Duck effect	-9.606 (0.49)
Constant	151.599 (0.68)

Notes: Entries are Prais-Winsten regression coefficients with robust standard errors (*t* statistics in parentheses).  $N = 130$  (months),  $R^2 = 0.25$ . Significance levels: \* < .10, \*\* < .05, \*\*\* < .01

<sup>6</sup> One other interesting finding is that the size of the executive branch's overall legislative agenda increased after the reform. Before the reform, the sum of all legislative initiatives (MPV, PL, and PLC – see Appendix) by the executive was of 8 monthly proposals. After the reform the average is of 10 and the difference is statistically significant at the 0.09 level. This increase in the agenda was solely caused by a greater reliance on decrees.



The results confirm our expectations and the findings of the t-test regarding the impact of the reform. The dummy variable for Amendment 32 is positive. The coefficient points to an increase in 20 points in the decree reliance ratio and is statistically significant at the 90% confidence level, even when we control for the many other factors thought to affect decree reliance. In this equation, the only other statistically significant variables are the controls for the transition period to the reform (August-September 2001) and the honeymoon periods, both of which have positive effects on decree reliance. None of our political control variables have significant effects—not even the most intuitive ones, such as presidential popularity, the size of the president’s coalition in Congress, or the ongoing levels of support he has been receiving from the assembly. Nor does currency defense have any predictive value. The dummy variable for Lula, intended to control for differences in presidential administration that are not captured by the other variables, is also not significant. Although the descriptive statistics in Table 1 suggest that Lula relied more on decrees than Cardoso, when we introduce appropriate controls into a multivariate analysis there is no statistically significant difference between Lula’s and Cardoso’s behavior.

We note that the control variable for “Transition to Reform” simply captures a one-time period effect with no theoretical consequence. Leaving this factor aside, the only variables that have statistically significant impacts on decree reliance are presidential honeymoons and *the legislature’s attempt to curtail presidential decree authority* (Amendment 32), and both are in the positive direction. The former effect is unsurprising: any newly inaugurated president who can introduce his first batch of policies as law should logically be expected to do so.<sup>7</sup> But the latter effect is highly counter-intuitive. What could account for this unintended consequence of reform?

### **Conclusions: Unintended Consequences**

We have found that a reform that tried to roll back presidential decree power was associated with increased use of the same. Could our results be spurious? One alternative explanation for the rise in decrees after 2001 could be constructed from a Neustadtian perspective, stressing presidential personality, leadership style, or other individual-level variables. We find this explanation unconvincing since we detected a radical change in the behavior of *a single president* (Cardoso) after the reform was passed (Table 1), and in our multivariate models we found no significant differences between the two presidents impacted by the reform. Another alternative explanation would claim that something changed in Brazilian public policy after 2001 that somehow necessitated a higher number of decrees than before. This hypothesis is also not credible. Our time series is from 1995

<sup>7</sup> For example, upon taking office in January 1995, Cardoso sent 3 ordinary bills, 1 complementary law, and 16 decrees to Congress. The decree reliance ratio for that month was therefore 80% (16/20).

through 2005, and the key issue-areas of governance in this period have been characterized by continuity rather than change. The first-order executive priorities of Cardoso and Lula have so far been interchangeable—defending the Real with similar monetary policies, pursuing social security and tax reform with similar goals, and combating poverty and inequality with similar social programs. In fact, from November 1998 through December 2005 (two dates that book-end the reform of presidential decree authority) an unbroken series of IMF agreements homogenized Brazilian macroeconomic management to a significant degree, so much so that Lula’s government has been referred to as “the third term of President Cardoso.”

We are confident that neither political-psychological factors nor public policy analysis can account for the recent increase in decree reliance by Brazilian presidents. In our multivariate analysis we controlled for the political, coalitional, and temporal variables that have been shown to influence decree reliance in other longitudinal studies (Amorim Neto and Tafner 2002; Pereira, Power, and Rennó 2005). Eliminating rival explanations forces us to return full circle to the reform itself—Amendment 32—as the motor driving the change in presidential behavior. Adopting an institutionalist perspective, we argue below that the reform changed the structure of incentives for presidents, leading them to shift a larger percentage of their legislative proposals into the category of *medidas provisórias*. The key issues for presidents were (1) agenda power and (2) the probability of success in approving legislation. We address each in turn.

Even prior to the recent upturn in decrees, most analysts of the Brazilian Congress had stressed the degree to which an external actor, the executive, was able to control the agenda of the assembly. Consider the following description of the national legislature:

The most salient feature of the Brazilian Congress is the ability of the executive to pursue its preferences in the legislative process. Amongst other powers, the executive is able to initiate legislation, discharge the committees, veto legislation in whole and in parts, affect the committee selection process, influence the choice of committee presidents and rapporteurs and even create temporary committees (Pereira and Mueller 2004: 38).

This has been a consistent finding in recent studies of legislative agenda power in Brazil: from different angles, authors such as Figueiredo and Limongi (1999), Amorim Neto and Santos (2001), Santos (2003), Amorim Neto, Cox, and McCubbins (2003) and Pereira and Mueller (2004) have all shown that the arm of the Brazilian president is long. The tools that executives use to control the legislative agenda are several. Using the distinction made by Shugart and Carey (1992), these mechanisms involve not only constitutional powers (legislative initiative, decree authority, budgetary authority, special convocations, etc.) but

also partisan powers (influence over the president's own party and others allied with it). Of the former type, decree authority, urgency petitions for bills, and the president's prerogative to authorize budgetary disbursements have been the most important; of the latter, coalition management through the political allocation of ministerial portfolios and the election of friendly congressional leaders has been crucial. With regard to the internal politics of the assembly, presidents have had broad success in influencing leadership and committee selection within Congress: only once in recent memory has the executive failed to win the election of its preferred candidate for president of the Chamber of Deputies (Severino Cavalcanti in 2005, who was replaced 9 months later). Notably, the joint committees used to evaluate presidential decrees upon their arrival in Congress are usually dominated by the executive and have posed virtually no obstacles to the admissibility of decrees since 1988.<sup>8</sup> The literature is quite clear in demonstrating that in the 1988-2001 period, executive power combined with centralized legislative rules gave the president substantial control over the assembly's agenda.<sup>9</sup>

Amendment 32, while intended to curtail the use of presidential decrees, in fact increased the agenda powers of the executive even further. The main reason is the feature of the reform known as *trancamento da pauta*—the freezing of the agenda. If Congress has not voted on a decree within the first 45 days after its publication, it goes automatically to the top of the legislative agenda and overrides all other business. In this way, presidents can now *compel* Congress to take a position on a *medida provisória* within a relatively short time, whereas prior to 2001 decrees could be reissued indefinitely without Congress ever having to vote on them. Under the old decree regime, the indefinite time horizon enhanced the bargaining power of legislators—presidential policies were held in limbo for long periods of time while legislators sought to extract benefits from the executive while simultaneously not revealing a position on the decree. This improvisational give-and-take is consistent with delegation theory, which claims that legislators may desire certain policies without ever having to vote in favor of them. Shortening the time horizon favors presidents. Why? Because Congress (1) is forced into a rapid decision and (2) has less time to observe the policy in force and stake out bargaining positions around it. Moreover, the *trancamento da pauta* gives the executive even more authority to determine exactly what the legislature will be talking about 45 days from now—something not possible with the more fluid decree regime prior to Amendment 32. In 2005, for example, the agenda of the Senate was

<sup>8</sup> Hence the current gatekeeping proposal outlined in footnote 1, in which the Justice committees of each house would be expected to provide higher-viscosity barriers to the circulation of decrees.

<sup>9</sup> There is greater consensus in the literature on the issue of agenda control than on the equally important issue of whether the executive actually gets what it wants in the end, either wholly or partly. For the latter debate, compare Figueiredo and Limongi (2000) with Ames (2001).

blocked by presidential decrees in 65% of legislative sessions.<sup>10</sup> To put this a bit differently, thanks to Amendment 32 the Senate determines its own agenda only a third of the time. The increasing legislative logjam suggests that presidential agenda-setting power has been magnified by the decree reform of 2001.

Amendment 32 has also changed the way presidents define legislative success. Prior to the reform, because presidents could reissue decrees indefinitely without Congress expressing itself, the executive was not overwhelmingly concerned with getting decrees converted into permanent laws. Presidentially introduced policies would remain in effect as long as Congress did nothing. After the reform, however, it is necessary for the executive branch to have decrees approved and converted within 120 days. Did establishing a deadline “work” to get decrees converted into law? To examine this question, we calculated the success ratio of decrees before and after the reform. Our numerator was the number of decrees approved or under consideration, and our denominator was the total number of decrees in the month. Before the reform, the conversion rate was of 43% of all decrees per month. After the reform, the conversion rate rises to 79%. The difference in 36 points is statistically significant. The conclusion is quite stark: Amendment 32 has greatly speeded up the process by which presidential decrees become permanent.

Note that this should not necessarily be the case. From a purely institutional perspective, theoretically speaking there is no *a priori* reason why putting pressure on Congress to vote quickly should increase the success rate of decree conversion. The time pressure could just as easily provoke Congress into rejecting more decrees than before. But the latter hypothesis ignores the many other weapons, both constitutional and partisan, that the executive has at its disposal to influence the behavior of Congress. Agenda-setting powers are paramount in any assembly: they confer a first-mover advantage. But without a full picture of executive dominance over the legislature in Brazil (Pereira and Mueller 2004), one cannot understand why the first-mover advantage was so decisively magnified when the decision frame was shortened to 120 days.

To sum up, we have emphasized both agenda powers and probabilities of legislative success. We stress that decree authority is only one form of presidential agenda-setting power, but since 2001 presidents have been able to use it more efficiently than before. The main reason is Amendment 32. Congress’ attempt to create disincentives to decree authority was fruitless, because by forcing itself to take a rapid position—and allowing the *trancamento da pauta* to become a routine part of legislative life—Congress reduced its own bargaining power and ceded further agenda control to the executive. Additionally, the probability of a decree becoming rapidly converted into law has risen since 2001. Rational

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<sup>10</sup> From press appearances by Senate (and Congress) president Renan Calheiros in early February 2006.

executives who discover that they can (1) determine precisely what Congress will debate next month and (2) obtain rapid legislative results from decrees should logically be expected to shift a growing percentage of their legislative initiatives into the category of decrees. This is exactly what we find in our time-series analysis since 2001.

The *trancamento da pauta* has begun to produce a “paper jam” in Congress, leading to renewed calls for decree reform. Legislators should justifiably be concerned, but they should also be wary of reformist solutions, since their last attempt—Amendment 32 of 2001—had such powerful unintended consequences. Shortening the game of decree consideration has enhanced the agenda power of presidents and made it more likely, not less, that they will attempt to legislate via extraordinary means.

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## Appendix: Variables and Sources of Data

**MPV:** Number of original *medidas provisórias* (presidential decrees) by month. Source: Câmara dos Deputados.

**PL:** Number of *projetos de lei* (ordinary bills) introduced by the executive, by month. Source: Câmara dos Deputados.

**PLC:** Number of *projetos de lei complementar* (bills enabling or regulating provisions of the Constitution) introduced by the executive, by month. Source: Câmara dos Deputados.

**Decree Reliance Ratio:** Ratio of presidential decrees (*medidas provisórias*) to all forms of presidentially initiated legislation. Expressed as  $MPV/(MPV+PL+PLC)$  and calculated monthly, January 1995 through December 2005.

**Reform of 2001 (Amendment 32):** Dummy variable representing the amended version of Art. 62 of the Constitution of 1988 defining presidential decree power. These powers were changed by the 32nd Amendment to the Constitution, text available at [https://www.planalto.gov.br/ccivil\\_03/Constituicao/Emendas/Emc/emc32.htm](https://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc/emc32.htm). Scored as 1 from September 11, 2001 onwards.

**Transition to Reform:** A dummy variable identifying the final weeks before Amendment 32 took effect, a period in which President Cardoso issued 72 new decrees. Scored as 1 for August 2001 and the first ten days of September prior to the promulgation of the amendment.

**Presidential Popularity.** The data are drawn from the three main Brazilian polling institutes: DataFolha, Vox Populi, and CNI/Ibope. Popularity is measured intermittently by all three institutes, generally 6-8 times per year, so first we interpolated missing values to create full monthly series for all three. We then averaged the three full series to create a single value for popularity for each month in 1995-2005. In Brazil, respondents are asked to rate presidential performance as *ótimo* (excellent), *bom* (good), *regular* (average), *ruim* (bad), or *péssimo* (awful). We calculate presidential popularity by subtracting the negatives (*ruim/péssimo*) from the positives (*ótimo/bom*) and ignoring the intermediate (*regular*) category. Source: web site of political journalist Fernando Rodrigues, available <http://www.uol.com.br>.

**Legislative Support:** Monthly average of the percentage of legislators following the floor recommendation (*encaminhamento*) of the leader of the Government in the Chamber of Deputies. In cases where the executive recommends a NO vote, the denominator is the total of votes cast in the house. In cases where the executive recommends a YES vote, the denominator is the total number of seats in the house. This variable captures legislative support for executive initiatives. In months with no floor votes, we carry forward the previous value. Source: Banco de Dados Legislativos, CEBRAP.

**Cabinet Size:** Nominal size of the cabinet's political "coverage." This is expressed in terms of the percentage of legislative seats held in the Chamber of Deputies by the parties represented in the presidential cabinet. Source: CABSIZ variable in Amorim Neto 2002.

**Cabinet Coalescence:** Similar to measures of electoral disproportionality, this is a measure of the amount of deviation between the share of cabinet ministries and the share of intra-coalitional legislative seats held by parties supporting the president. The coalescence rate for a given cabinet is arrived at by adding the absolute value of the difference between the percent of portfolios and percent of legislative seats for all parties joining the cabinet (whether or not these parties have seats in the Chamber) and for all ministers (whether party

members or not), and then dividing the total by 2. Subtracting the result from 1 produces the coalescence rate. The index ranges from 0 (no correspondence between legislative seats and ministerial payoffs) and 1 (perfect correspondence). Source: CABINET variable in Amorim Neto 2002.

**Cabinet Management:** An interaction term multiplying the previous two variables (cabinet size\*cabinet coalescence).

**Currency Fluctuation:** Month-on-month percentage change in the value of the Real vis-à-vis the U.S. dollar (valuation or devaluation).

**Lula:** Dummy representing the Lula administration, scored as 1 from January 2003.

**Reelectability Effect:** Dummy where 1 represents the change to allow consecutive reelection of presidents in Brazil. June 1997 onward equals 1, the rest 0.

**Honeymoon:** A dummy where 1 represents the first 3 months of each first-term presidential administration.

**General Election Effect:** Attempts to gauge the disruption to normal parliamentary activity caused by an impending presidential or legislative election. Scored as 1 for July, August, September, and October. in the years of 1998 and 2002.

**Lame Duck Effect:** A dummy representing second-term presidents (Cardoso from 1999 through 2002).