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## The Evolving Executive: Provisional Decrees and Their Impact on Brazil's Executive-Legislative Relationship

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THE EVOLVING EXECUTIVE:  
PROVISIONAL DECREES AND THEIR IMPACT  
ON BRAZIL'S EXECUTIVE-LEGISLATIVE RELATIONSHIP

By

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Honors Thesis submitted in partial fulfillment  
for the designation of Department Honors

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## ABSTRACT

By Lance L. Arberry

Comparatively, the lawmaking process in presidential systems is often comprised of negotiations between a legislative body, tasked with authoring and legislating laws, and an executive, who must authorize and administer the enactment of the law. While executives are often empowered with certain constitutional powers to help influence the lawmaking process, these powers are typically constrained and supervisory in nature. Presidents are rarely given broad-and-discretionary legislative powers, since lawmaking is ultimately the responsibility of the legislative body; however, this does not hold true for the case of Brazil.

Following the adoption of Brazil's 1988 Constitution, Presidents were empowered with the power of *Media Provisória*, or provisional decree. Conceived as emergency power to address national crises, provisional decrees provides Brazilian presidents with the ability to issue orders, rules, and laws that possess the immediate full effect and force of the law upon issuance, completely independent of the legislative process and the Brazilian National Congress. While these decrees carry the full effect of the law, they ultimately require Congressional approval within 45 days of passage. As an emergency power, provisional decrees ought to be used sparingly; however ideal, this has not been in the case in Brazil, where presidents have used provisional decrees extensively.

Rather than work with Congress, Brazilian presidents have historically issued decrees to legislate their policies. In attempt to limit the provisional decrees and regain legislative control, Brazilian legislators adopted Constitutional Amendment 32, which drastically curtailed and reformed the usage of decrees. This has led Brazilian legislators,

political scientists, and constitutional scholars to believe that the use of provisional decrees has impacted the regular lawmaking process in Brazil, granting Brazilian executives extraordinary power and influence over the legislature.

This paper sought to understand how the executive-legislative relationship in Brazil has changed as a result of provisional decrees and Amendment 32. This paper examined the issuance of provisional decrees, their reissuance, the number of decrees converted into law, and the number of laws passed under the traditional legislative process. The research and analysis in this paper indicates that while decrees have become a dominant tool of Brazilian executives, Amendment 32 has not completely reversed executive dominance in the executive-legislative relationship of the country.

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## CHAPTER ONE

### INTRODUCTION

#### On the Presidential System

Throughout the history of the United States, no other institution has represented the power, the unity, and the influence of the nation more strongly than the President.

Departing from the traditional systems of monarchy and parliament, the Founders of the United States created a new system of government that diffused power among three different branches, each containing a unique system to check and balance the power of each respective branch. Unbeknownst at the time, the Founders institution a unique forever shape domestic politics, international relations, and constitutional theory in unexpected ways, through the expansion of the United States' power and through the emulation of their creation.

As the head of state, the head of government, and Commander-In-Chief of the United States Armed Forces, the president has changed broad powers; through the President's constitutional role originally concerned matters of foreign affairs (Powell 1472), the scope and responsibilities of the President has expanded to cover almost every aspect of domestic policy during the 19<sup>th</sup> and 20<sup>th</sup> centuries (Marshall 506). As the President's power evolved over time, so too did that of the United States; as the country began to rise as a global influence and power, many observers attributed the country's economic, political, and military success and dominance, in part, to its use of the presidential system. With this belief in mind, societies from across the world began to model and organize their governments after the U.S. system. There are 64 countries in the world that



have adopted the presidential system (Mandelbaum 7), which suggests the popularity of the U.S. model.

In order to address their own unique needs and to ensure the continuity and success of their governments, many countries have altered their systems to provide differing powers, including a wider-array of powers to the president. One of these numerous powers is the ability of executive decree, the process through which a president is empowered to enact legislation and policy without the prior consent of the independent legislature. Rather than submit their policies for consideration by legislatures, executives can effectively issue decrees to achieve their preferred outcomes. Although it could be argued that this popular adoption represents the strength and reliance of American democracy, the expansion of executive decree powers in presidential systems has been called into question by some keen observers, as countries have adopted this facet of intuitional design to varying success.

#### Approval vs. Leadership: Two Types of Legislative Powers Afforded to Presidents

A distinguishing characteristic between presidential and parliamentary systems is the diffusion of executive and legislative powers. In a parliamentary system, the executive leadership of the government remains within the power of the legislative body; conversely in a presidential system, the president maintains executive powers and is elected independently from the legislature, and often possesses limited legislative powers (Linz, Mainwaring 4). Within the study of presidentialism, the literature has devoted considerable attention to the executive-legislative relations of presidential systems; and more specifically, the trend towards empowering presidents with the ability to influence

legislation and the legislative processes. These legislative powers have traditionally defined into two distinctive categories: reactive and proactive (Carey and Shugart 5).

As a preventative measure to halt an action of the legislature, reactive powers allow a president to prevent the adoption of legislation or policy, despite any institutional preferences or inclinations to support it; and they are considered to be more “conservative” powers, due to their ability to halt any alteration of the status quo (Carey and Shugart 6). The most common and widely known reactive presidential power is the veto. In the United States, the President is able to use the veto, or threat of use, to block pieces of legislation that does not reflect the position of their administrations or of their law-making priorities. Absent an override from both chambers of Congress, the veto represents a power tool at the disposal of executives. While reactive powers are far more common amongst presidential systems; many presidential democracies provide their executives with abilities that enable them to more actively shape the legislative process.

Proactive powers cover a wide array of tools and mechanisms that empower presidents to better control the outcomes of the legislature; and these abilities are often realized through two types of power: agenda-setting and decree authority. The agenda-setting power is the ability for an executive to control which areas of policy a legislature is able to debate and the manner through which the legislature considers a policy (Carey and Shugart 6; Pereira, Power and Rennó, From Logrolling to Logjam: Agenda Power, Presidential Decrees, and the Unintended Consequences of Reform in the Brazilian Congress 3). This power is realized through the American president’s ability to convene a special session of Congress to consider a certain policy, or where the executive possesses

the exclusive responsibility to introduce policy, as in the cases of budget policy in Argentina, Chile, and Taiwan (Haggard, McCubbins and Shugart 322). Although agenda-setting powers represent a dynamic tool at the disposal of executives, the power of executive decree represents a far more dynamic and complex mechanism in the formation of public policy.

Whereas agenda-setting power allows a president to influence and direct a legislature to consider certain policy, the decree power empowers an executive to directly create and enact laws without the prior approval of the legislature (Carey and Shugart 9). While the complete definition and strength of decree powers varies across systems, executive decrees, to varying extent, are subject to the consent of the legislature. In Russia and the Ukraine, presidents are able issue decrees covering economic, political, and societal policy areas; in effect, the only restriction is that the decree cannot be in violation of their respective constitutions and national laws (Protsyk 645; Carey and Shugart 10). In Colombia, the president is able to issue effective executive orders during times of economic crises, where they have emergency powers to restore economic stability (Carey and Shugart 10). Often, the nature of presidential decrees can be vague, such as case with Peru. Here, the president is empowered to issue decrees when they are germane to the country's national financial and economic interests (Carey and Shugart 10). Historically, executives have used their decree authority to initiate military actions, to enact budgetary or organizational reforms, and even to create new governmental departments and programs. While decrees have a broad range, an important aspect to consider in observing decree powers is the immediacy and longevity of the policies.

Carey and Shugart describe decree powers in terms of their immediacy: emergency powers and traditional constitutional decree authority. In the times of national emergencies, executives are often vested with broad and extreme discretionary powers, such as declaring martial law and to curtail civil and political liberties. However, executives are only authorized to use these emergency powers for the limited duration of the crisis (Carey and Shugart 15). While these powers are defined in terms of emergency response, numerous governments and academic researchers have witnessed leaders exploit, abuse, and routinize emergency powers to their own prerogatives regularly. In order to curtail and prevent the abuse of these powers, some systems utilize traditional constitutional decree authority powers that provide the legislative or judiciary bodies with mechanisms to check the decree powers of an executive.

Although executive decrees are immediately effective upon issuance in the cases of Argentina, Brazil, Colombia, and Italy, they are ultimately subject to legislative oversight and approval (Carey and Shugart 11). Known as provisional decrees, the legislative body, within a certain time frame, must ratify these decrees; or they become null-and-void. Objectively from a separation of powers perspective, provisional decrees represent a compromise between the desire to provide an executive with the ability to actively shape and administer government policy and the desire for a legislature to maintain oversight over the executive. However ideal, the practical application of executive decrees have been subject to criticism, as executive decrees have been used to effectively circumvent the legislative process; thus, representing a shift towards executive dominance in both presidential and parliamentary systems.

In Russia, for example, the number of bills passed through the constitutionally defined legislative process has greatly outnumbered by decrees. Following the failed coup d'état against President Mikhail Gorbachev and the dissolution of the Soviet Union, newly elected President Boris Yeltsin urged the drafters of the new Russian constitution and citizens to empower the president with an overriding decree power to better address the immediate circumstances and the needs of the Russian people (Parrish 78). Gaining an almost absolute executive-decree power, the Russian President can issue decrees that are effectively immediately, and are not subject to legislative oversight, granted that they do not violate the constitution (Parrish 78). A powerful tool, this decree power dynamically transformed the legislative process in Russia. During his first term, President Yeltsin endorsed 5,072 decrees that became law while the legislature passed a meager 425 federal laws during the same period (Parrish 82). These decrees covered a wide-range of subjects, such as executive appointments and military promotions to the privatization of state-owned assets and budget policy, the latter of which is traditionally a responsibility and prerogative of the legislature (Parrish 90).

Historically in Italy, a parliamentary system, the Prime Minister had been constitutionally empowered with provisional decree powers; however, leaders found little recourse to exercise the ability. In their study, Sala and Kreppel examined the total number of legislation adopted via the legislative process and compared it to that of the number of decrees issued by the Prime Minister and the decrees ratified by Parliament, from 1948 to 1992. From the founding of the country in 1948 to 1976, Prime Ministers worked with Parliament to affect public policy, relying upon the decree very sporadically; however Sala and Kreppel found this trend to reverse drastically after 1976,

when the number of decrees issued began to exceed the number of ordinary bills (Della Sala and Kreppel 189). In the first session of Parliament between 1948-53, the body approved 2,015 bills and 29 decrees; by the eighth session of 1979-1983, the Parliament approved 769 bills and 275 decrees. By 1992, this trend was further solidified as Parliament approved 292 bills while the Prime Minister issued a total of 409 decrees (Della Sala and Kreppel 190).

The scope and reliance on executive decrees in the Russian presidential system and the Italian Parliamentary system demonstrate that decrees can dynamically affect the legislative process of a country, whether it is a presidential or a parliamentary system. Within the scholarship of executive decrees, one country that presents an interesting case to study the historical use of decrees by presidents and the attempts by the legislature to constrain executive dominance in the legislative process is Brazil.

#### Media Provisória: Provisional Executive Decrees in Brazil

Brazil, one of the world's largest and most populated countries, has a government that is unique in that it is a presidential system, modeled highly off of the United States, which has empowered its president with a powerful and dynamic provisional decree power (Carey and Shugart 24). A republic since 1886, Brazil adopted a new presidential-based constitution in 1988 that provided the President and the National Congress with wide-range of new abilities, including Article 62; which establishes provisional measures (Vajda, de Queiroz Carvalho Zimbres and Tavares de Souza 32).

Excluding matters of criminal prosecution, the Brazilian Constitution empowers the President to issue decrees that immediately possess the force of law; however the decree's effectiveness is only temporary, as decrees must receive the endorsement of

Congress within 60 days (32). While Article 62 specifically mentions that provisional decrees are to be used in “important and urgent cases”, presidents have often relied upon this emergency power as an indispensable tool to shape the legislative process. Pereira, Power, and Rennó found that over the first 13 years under the new constitutions, Presidents issued a decree every single week, and that this represented more than 75% of all the laws passed during those years (71, 75). While these decrees ultimately require Congressional approval, Brazilian Presidents were able to indefinitely reissue these decrees, regardless of any attempts of Congressional oversight (76) (Parrish 40). Brazil’s constitution empowered the executive and legislative branches to both influence and control the legislative process; however through the use of provisional decrees, it has allowed the executive branch to exert tremendous influence over the legislative agenda (Pereira, Power and Rennó, *From Logrolling to Logjam: Agenda Power, Presidential Decrees, and the Unintended Consequences of Reform in the Brazilian Congress*; Carey and Shugart; Della Sala and Kreppel).

Realizing that Article 62 weakened Congress’s oversight and lawmaking prerogatives, the Brazilian legislators adopted Constitutional Amendment 32 in an attempt to exert its power over the executive branch by constraining the President’s ability to issue decrees. (Pereira, Power and Rennó, *From Logrolling to Logjam: Agenda Power, Presidential Decrees, and the Unintended Consequences of Reform in the Brazilian Congress* 71). Following the adoption of Amendment 32, Presidents were no longer able to issue decrees indefinitely; rather, decrees can only be reissued once, and only if Congress did not consider the decree within the 60-day timeframe (Vajda, de Queiroz Carvalho Zimbres and Tavares de Souza 156). Additionally, Amendment 32

provides the Congress with a more direct mechanism for decree oversight. If either chamber of Brazil does not consider the measure's Congress within 45 days, then that decree is advanced to the top of legislative agenda and supersedes all other matters (Vajda, de Queiroz Carvalho Zimbres and Tavares de Souza 156). Despite their intentions to regain power, Pereira, Power, and Rennó found that the application of Amendment 32 actually further strengthened the executive's power. Since Congress must consider each-and-every decree once it has passed the 45-day mark, the legislative agenda became increasingly slowed and gridlocked. Known as "trancamento da pauta", or the lockdown of the agenda, it represents another hurdle of the legislative branch (Pereira, Power and Rennó, From Logrolling to Logjam: Agenda Power, Presidential Decrees, and the Unintended Consequences of Reform in the Brazilian Congress 71).

#### Purpose of Study and Summary:

Featuring an exceedingly fragmented multi-party system, a unique federal system representing a diverse population, and a vibrant presidential system, Brazil offers a unique opportunity to study executive-legislative relations by examining the factors that influence the relationship (Mainwaring, Multipartyism, Robust Federalism and Presidentialism in Brazil 89); however, the literature has not discussed the impact of *media provisória* or constitutional Amendment 32 as extensively.

This study seeks to understand how the dynamics in the relationship between Brazil's executive and legislative leadership evolved through the implementation of the 1988 Constitution, the use of provisional decrees, and the attempt to reform the power through Amendment 32 of the Brazilian Constitution. Beginning with a historical overview of Brazil and its presidential system, I study the country's executive-legislative relationship



by analyzing the use of provisional decrees during the administrations of Presidents Cardoso and Lula and the amount of legislative oversight the Brazilian National Congress had over these decrees. In order to measure the use of provisional decrees and Congressional oversight, this study utilized descriptive process tracing to account for each institution's activities. Using data gathered from the Brazilian National Archives from 1996 to 2007, I track the issuance of provisional decrees issued, reissued, converted into law, and those rejected by the Congress and compare that data to the number of ordinary legislation passed through the traditional legislative process in the legislature. To analyze the dynamics in the system's executive-legislative relationship, I describe executive legislative success as the number provisional decrees issued, reissued, and converted into law; conversely, I measure legislative oversight by examining the number of provisional decrees, impaired, nullified, and otherwise rejected by the Congress.

Using these data, I concluded overall that while Amendment 32 reformed and constrained Presidents Cardoso and Lula's ability to exercise their provisional decree ability, the Amendment did not allow for the Brazilian National Congress to completely regain its oversight and lawmaking responsibilities. Additionally, I compare my findings to the established literature on provisional decrees in Brazil; and found that my data supports both prevailing theories that describe the motivations behind executives issuing provisional decrees and the legislature's overwhelming approval of these measures. I conclude by discussing some relevant implications of provisional decree usage on public policy, articulating some weakness and limitations of my study, and finally by suggesting some future areas for study.

In order to comprehend and understand the environment in which provisional decree usage arose in Brazil, I will first review the relevant literature on the systematic foundations and key differences between the presidential and parliamentary systems. Next, I will briefly provide a general overview of the Brazilian federal government, and then discuss the numerous factors that contribute to the legislative environment in Brazil. Lastly, I discuss the two predominate interpretations of how and why provisional decrees are used.

## CHAPTER TWO

### LITERATURE REVIEW

#### Introduction

In order to better understand provisional decree usage in Brazil, I will first review three areas of literature that provides insight to form a working foundation of knowledge for this study. First, I review the literature on the presidential and parliamentary systems. While the former system is more popular, some scholars believe that the latter is much better suited for the majority of presidential countries. I articulate the major differences between the two, and then describe how presidential systems have the capability and increased risk to become burdened with legislative gridlock. This discussion is relevant as Brazil adopted provisional decrees in an effort to avoid and counter legislative gridlock due to the unique intricacies of their presidential system.

Next, I provide an overview of the Brazilian system. I begin with an overview of the constitutional underpinnings of the system. An open-list multiparty proportional representation system, Brazil is often characterized as having a weak centralized party system. I discuss the Brazilian party system in more detail, and then review the literature on the legislative process in Brazil. This system's legislature is unique in that it is highly transient, its legislators and parties lack discipline, and that there is very little institutional knowledge and experience maintained through each successive congress. Furthermore, I assess a peculiarity in the legislative electoral process; by which politicians decisively attempt to seek out local officials and gubernatorial candidates, instead of presidential candidates, for support. Taken together, these factors contribute to the unique system through which provisional decree usage has flourished. As a result of this system's

foundations, the academic community has sought to understand why presidents rely upon provisional decrees and how their usage impacts the legislative process and relationship in Brazil.

Among the study of provisional decrees in Brazil, the established work has been articulated into two disparate conclusions. I analyze these conclusions to provide a foundation of what has been established, and I will later use my data and compare my findings to these established theories.

### The Question of Régime Type: Presidential v. Parliamentary Models

Within the study of political science, the academic community has devoted considerable effort to discuss, debate, and analyze the intrinsic differences between the two methods of government organization. The scholarship seeks to examine the distinguishing characteristics of the two systems, their relative advantages and disadvantages, and how both systems are able to withstand and adapt to the various events and issues that impact governance. Inherent to any functioning régime is the principle of survival and stability. A country's decision to adopt a certain method can influence the survival and stability of the government; historically, "between the years of 1946-1999, one in every twenty-three presidential régimes died, whereas only one in every fifty-eight parliamentary regimes died" (Cheibub and Limongi 1). While there are numerous factors those impact régime survival and performance, the two models are able to adapt to these factors in different ways and with varying success; and thus, the choice between the two models becomes increasingly important.

### Powerful, Popular, and Perplex: Defining the Presidential System

A defining characteristic of the presidential system is the division of executive and legislative powers; within this system, the legislative branch exists separately and independently from the executive branch of the president. While the President of the United States, and its relationship between the legislative and judicial powers, serves as the exemplar of this model, presidential scholars have noted three primary characteristics of this system: first, the president is constitutionally bound with a limited mandate to lead (Linz; Lijphart); second, the president is elected upon a popular, “winner-takes-all”, basis that is independently from the legislature (Linz; Mainwaring); and third, the president is exclusively responsible for administering the laws and regulations of the government and is responsible for the regular operation of the national government (Shugart and Carey; Mainwaring).

While the literature generally recognizes these three distinctions, Shugart and Carey distinguish a fourth feature of the presidential system that is important to mention: fourthly, a president is empowered with some form of power, some measure that enables the executive to influence the formation of legislative language, policy, and law (21). As the head of government, the president is often tasked with the enforcement of the law; typically, presidents are not granted sweeping legislative powers. Despite this, Shugart and Carey note that often, a president is granted the power of the veto to shape legislative policy.

Constitutionally, a president and his or her administration are elected to govern on a limited and temporal mandate; additionally, a president is subject to re-election upon the competition of the term, and is often further confined by term limits. In contrast to

parliamentary systems, where a ruling government is dependent upon the constant support of the electorate, a president, while elected popularly, is not reliant upon popular support; and this characteristic provides certain advantages and disadvantages. Whereas a parliament would have to seriously consider the immediate implications of policy decisions and outcomes, a president would be able to introduce more difficult and comprehensive policies without being subjected to the often shifting beliefs and the opinions of the electorate. In terms of régime stability, this characteristic has often been described as a unique advantage of the presidential model; however, these mandates have also been the source of corruption, manipulation, and failure of numerous presidential governments.

Throughout recent political history, the American form of government and the successes of the American presidency have served as models of emulation for many democracies; however, the subsequent adoptions have not always yielded the same results in promise. Indeed, within states that adopted a presidential system, the literature has noted several characteristics and negative consequences of adopting and managing a presidential system poorly. Among the many aspects of the presidential model, the literature has focused on the undesirable outcomes of: governmental gridlock, resulting from irreconcilable differences in opinion and policy decisions between the executive and legislative powers (Mainwaring; Linz, *The Perils of Presidentialism*; Cheibub and Limongi); because of the winner-take-all electoral system and potential for gridlock, presidential systems often have a higher-risk of deteriorating into authoritarian régimes (Cheibub and Limongi; Linz); the scholarship has also described how a presidential

system possess the capability to intensify to ethnic tensions within a state, ultimately resulting in ethnic conflicts (Linz).

As witnessed through the recent difficulties between the Obama administration and the divided Congress, presidential systems are susceptible conflicting political opinions and are also susceptible to governmental gridlock. While the American system has been able to sufficiently overcome this obstacle, other governments have not been as successful. If governments are unable to overcome gridlock and irreconcilable difficulties, these systems are more prone to state failures; Cheibub and Limongi found that during presidential systems of the third-wave of democratization, one out of every 26 presidential system perished as a result of gridlock while only one out of every 31 parliamentary systems failed as a result of gridlock. The literature has attempted to articulate the reasoning for the disparate results during the same time period; and one prominent answer points towards the ability of parliaments to order new elections, and this mechanism allows these systems to better adapt to gridlock (Tsebelis).

### The Parliamentary System

Where the sharp division between executive and legislative powers marks presidential systems, parliamentary systems possess no such difference; rather, the authority and responsibility for the administration of the government lies solely within its legislative body (Linz, *The Perils of Presidentialism*; Lijphart). The most prominent example of this system is the power held by the two houses of the British Parliament. Known as the Westminster model, the British Parliament is a bicameral legislature composed of the Houses of Lords and Commons; and this form of government has been adopted by numerous democracies. Within this system, constituents elect representatives

to national legislatures; who in turn, select executive leadership from the legislature's membership. Where presidents govern on a specific and often time-limited mandate, parliamentary leadership is subject to the shifting and moving confidences of elected representatives and the electorate itself.

Founded upon the idea of legislative confidence, these systems are defined by a fundamental requirement of a "majoritarian imperative", where a ruling regime existence is tied to the support of the legislative body; and if a majority is not achieved, new elections must be scheduled to support a functioning government (Cheibub and Limongi 4). For parliamentary systems, the center of government is created or dissipated by support. Within the deliberative bodies, legislators elect a representative, often called the prime minister, whom establishes a cabinet to represent and administer the government. Throughout the adoption of this form, much of the academic literature has found that these systems, subjected to the will of the people's representatives, offer substantial advantages, such as: state stability, as parliamentary systems can utilize inherent mechanisms to replace a weak or inefficient administration; government efficiency, as governments are often formed based upon a legislative coalition that seeks to advance a specific régime; and the potential for more accurate representation, as parties and individual representatives are able to reflect the diverse constituencies of the populations (Cheibub and Limongi; Shugart and Carey).

Realizing that state stability and gridlock are essential to a functioning government, decrees can serve as a bridge between the two systems. In an effort to maximize the government's ability to act given harsh division in a legislature, decrees allow presidents to temporarily circumvent the legislative process. A strong presidential



system, Brazil represents one such bridge, as their presidents are able to issue provisional decrees. With provisional decrees, presidents are able to control the legislative agenda and rationalize decisions, very similar to how a prime minister would. Before an analysis of how provisional decrees can proceed, an understanding of the cultural and political history of Brazil is necessary.

República Federativa do Brasil:

### Historical Overview of the Federal Republic of Brazil

Gaining its independence from Portugal in 1822, Brazil is a culturally diverse country that has a rich political, social, and economic history. Politically, Brazil is a federal presidential republic, encompassing 27 subnational states, which features a strong multi-party system and proportional representation. Central power is diffused into three different branches: the executive, led by the President and its cabinet; the legislature, embodied by the National Congress of Brazil; and the judicial, represented by the Supreme Federal Court and Superior Court of Justice.

A strong presidential system, Brazilian presidents are empowered with a wide-range of constitutional abilities at their disposal. Excluding provisional decrees, the President possess a strong veto power, including standard, pocket, and a partial line-item veto. These vetoes, however, are often subject to override, as both chambers of the Brazilian Congress only require a simple majority to nullify the President's veto.

Additionally, the President is empowered with the exclusive right to initiate and introduce legislation, covering a range of policy areas including: defense and matters of national security, creation of federal departments and control over salaries, direction and funding of the criminal-justice system (Vajda, de Queiroz Carvalho Zimbres and Tavares

de Souza 40). In his study of presidential systems, Mainwaring found that there are only six presidential systems that provide executives with this power; and in Brazil, this represented a sweeping power that grants the President an inordinate amount of power over Congress (61). Objectively, the President and Congress each have unique constitutional powers that enable them to jointly work together to bring about policy; historically, however, the President has had more success at influencing the legislative process due to the tendency for the National Congress to be institutionally gridlocked.

A bicameral legislature, the National Congress of Brazil is composed of the Federal Senate, the upper chamber, and the Chamber of Deputies, the body's lower house. Similar to the United States, each of the 27 sub-national states is provided equal representation with three Senators, elected on a plurality system. Another unique facet of Brazil, the Chamber of Deputies differs by utilizing a proportional-representation system to allocate seats to each sub-national state, based on population. While the multiparty system in Brazil allows for the inclusion of different political parties and more diverse representation, it also allows for certain unusual political occurrences and unfavorable outcomes.

#### Multiparty System in Brazil

Characterized by “notorious party underdevelopment, the most distinctive feature of Brazilian political parties are their fragility, their ephemeral character, their weak roots in society, and the autonomy politicians of the catch-all parties enjoy with respect to their parties” (Mainwaring, *Brazil: Weak Parties, Feckless Democracy* 354), a major source of influence over executive-legislative relationship in Brazil is its unique party system. Where most presidential systems contain smaller parties, Brazil's multiparty system is

often a cause of gridlock and debate; because of this factor, Brazil is cited as a state where the state is far more dominant influence than individual parties (Mainwaring, Brazil: Weak Parties, Feckless Democracy 387; Samuels and Zucco, The Power of Partisanship in Brazil: Evidence from Survey Experiments 4) Throughout the country's history, Mainwaring notes that there have been seven distinct party systems; essentially, the country has observed one-party, two-parties, and multiparty system since its foundation (361). While it is important to underscore the systems and transitions the country has undergone, the current multiparty system, founded shortly after the adoption of the 1988 Constitution, is the only system germane to this study.

Under the current system, Mainwaring defines three archetypes of political parties, each with their own advantages and disadvantages: “disciplined and programmatic parties, moderately disciplined parties, and loosely organized parties that have comparatively weak programmatic commitments” (376). Among these three archetypes, there are over 27 registered political parties; however, the most prominent parties are Partido dos Trabalhadores (the Worker's Party, or PT); Partido da Social Democracia Brasileira (the Party of Brazilian Social Democracy, or PSDB); and, Partido do Movimento Democrático Brasileiro (the party of the Brazilian Democratic Movement, or PMDB) (Samuels and Zucco, The Power of Partisanship in Brazil: Evidence from Survey Experiments 2). While the PT and PSDB have been the only successful parties in obtaining the presidency, Brazil's party system is far more complex due its numerous parties and electoral volatility (Samuels, The Gubernatorial Coattails Effect: Federalism and Congressional Elections in Brazil 5). Weak and numerous, the strongest hurdle for

political parties is ensuring party cohesion, unity, loyalty, and strength; however, this is difficult due to how Brazilian politicians see and associate with political parties.

Unstable and fluid, the composition of Brazilian political parties is constantly subjected to the changing beliefs and membership of politicians. In Brazil where political parties are often weak and disorganized, campaigns for political offices are highly individualistic; here, politicians often rely on their own individual talents, staff, and fundraising abilities to win elections. For Brazilian politicians, they do not see political parties as practical entities that provide them with resources or opportunities; rather politicians view parties as “*a partido de alugue,*” or rentals (Samuels and Zucco, *The Power of Partisanship in Brazil: Evidence from Survey Experiments* 159). In terms of party membership and composition, this forces many politicians to conduct an impact calculus on their identification; from a rational self-interest perspective, Brazilian politicians use parties as a vehicle to advance their agendas (Mainwaring, *Brazil: Weak Parties, Feckless Democracy* 376; Samuels and Zucco, *The Power of Partisanship in Brazil: Evidence from Survey Experiments* 157). Parties are known as “rentals” because when the party no longer suits or advances a politician’s interest, he or she will switch to one that provides better opportunities. From the perspective of legislative stability and efficiency, this can cause chaos on the legislative process, and has happened numerous times throughout the history of the country. In 1987, 72 Congressmen loyal to the Bête Noire (Arena or the PDS) party became members of the PMBD overnight (Mainwaring, *Brazil: Weak Parties, Feckless Democracy* 378). In 1978, a body of 78 MBD elected mayors jointly changed party identification to PDS (Mainwaring, *Brazil: Weak Parties, Feckless Democracy* 378). Additionally from 1991-1998, Desposato found that 474

Congressmen and over 17 Senators switched parties during the time period (7). In these instances, the large number of politicians changed parties because it served their self-rational interests; and while this attributes to some political conversions, another prominent reason is because of the Brazil's catchall parties.

Historically, ideology has influenced party unity and cohesion of Brazilian political parties; more specifically, Mainwaring and Perez Lifian found that ideologically left parties have historically been able to better control and discipline their members. By analyzing roll-call votes of Brazilian Congressmen and comparing those against party directives, they found that members of the PT were strongly cohesive and unified; PT legislators voted against the party 2% of the time and scored a 98.0 on their party discipline scale (Mainwaring and Perez-Linan, *Party Discipline in the Brazilian National Congress* 14). Here, the PT's party cohesion, discipline, and loyalty is not representative of the all political parties; and Mainwaring and Perez Lifian found that party switching, while influenced by ideology, is ultimately influenced by the party to provide power and benefits to the individual legislator (18). Additionally, catchall political parties have also contributed to the phenomena. As a result of Brazil's multiparty, proportional representation system, some political parties seek to rationalize power through numbers rather than belief; catchall parties mobilize along multiple ideologies to acquire support (Mainwaring, *Brazil: Weak Parties, Feckless Democracy* 380). Gathering behind numbers rather than belief, it is not surprising that catchall parties are highly undisciplined; most notably, the PMBD, a catchall party, has historically scored lowed in terms of discipline, 65 out of 100, and has seen numerous party defections (Mainwaring and Linan, *Party Discipline in the Brazilian Constitutional Congress* 467). As a whole,

the nature of the various parties have led to legislative issues, such as members of political parties defecting to other parties, the inability to ensure that each representative votes along party lines, and the style of representation that prevent the President's party from electing a congressional majority. Given the highly individualistic nature of political campaigns, observers have noted that rather railing behind a national political party and presidential campaigns, many politicians have turned to governors for electoral support.

Known as the "gubernatorial coattails effect," Samuels found that due rather than national parties and national figures, candidates for state governorships possess far more influence and clout in congressional elections (Samuels, *The Gubernatorial Coattails Effect: Federalism and Congressional Elections in Brazil* 241). He cites the relative weakness of national political parties at the state and local levels as reasons why congressional candidates often shape their political campaigns around the platform of a gubernatorial candidate (Samuels 241-242). Samuels cites four distinct factors as to why candidates are more likely to align themselves with gubernatorial candidates: (1) the fragmented and pathetic state of national parties, (2) the relative strength of the diverse state governments, (3) the prevalence of electoral rules, and (4) the sheer fact that state elections are often held at the same time of congressional elections (Samuels 241-245). Shugart's research on Brazilian political parties lends support the Samuel's position; except for a select few parties, national political parties in Brazil are relatively weak at the subnational level (Mainwaring, *Brazil: Weak Parties, Feckless Democracy* 380). Due to the fact that the relative strength and organization of national political parties are weak the state level, Samuels states that on average there are up to four candidates, from different parties, in each gubernatorial race and these candidates attempt to assimilate

other candidates, from the various municipal, state, and local campaigns, into their stronger gubernatorial campaign in order consolidate power, consolidate resources and to gain political momentum (243). The combined effort of the multiple campaigns provides better odds of winning the election on the coattails of the gubernatorial candidate. The second and fourth factor, that is the strength of states and the timing of the elections, support Samuels' theory. Due to their proximity to local issues and the electorate, candidates for Congress are more likely to align with a potential governor for access to resources and perks, than the distant federal executive (Samuels 243).

Together, this discussion of the theoretical foundations of presidential power, the overview of Brazil's federal government, and the unique multiparty system contributes to the utilization of provisional decrees by Brazilian presidents. Afflicted by weak political party cohesion and discipline, burdened by ever-changing party composition, and weakened by the gubernatorial coattails effect, there are numerous factors that shape the relationship Brazilian presidents have with the Congress. While there has been considerable research analyzing the impact of political parties and their impact, there has been little research to describe the impression provisional decrees have had on Brazil's separation of powers.

#### Literature on Provisional Decrees and its Impact on Brazil's Separation of Powers

Of what work has been done, there is a debate concerning the extent of the legislature's lawmaking power is diminished as a result of provisional decrees. Abstractly an argument concerning the strength and tenacity of Brazil's separation of powers between the executive and legislative branches of government, most of the literature on provisional decrees in Brazil has defined decrees as representing an erosion of legislative

power at the bequest and advantage of the president. With each decree issued and passed, these observers view it as the executive gaining more power. Where most have seen provisional decrees as an erosion of legislative power, others have found that provisional decrees serve the interest of individual legislators and the legislature, as a whole. This belief is founded upon the idiosyncratic characteristics of Brazil's system, and that this is the only manner through which meaningful and substantial policy can come into existence.

Supporting the argument that decrees represent an erosion of legislative power and the strengthening of the executive, Pereira, Power, and Renno's most strongly support the notion that the executive-legislative relationship has shifted. Analyzing the monthly issuance of provisional decrees from 1995-2005, Perira et al. concluded that provisional decrees and the intentional results of Amendment 32 have provided the power with extraordinary power to control the legislative agenda (Pereira, Power and Rennó, *From Logrolling to Logjam: Agenda Power, Presidential Decrees, and the Unintended Consequences of Reform in the Brazilian Congress* 74). Their research was composed of multivariate regression and descriptive statistics analyzing the provisional decrees, the levels of presidential popularity and legislative support, and other variables. While they found that provisional decrees were used extensively throughout the timeframe, they conclusions focused Amendment 32 and the extent to which the legislature limited the use of decrees and regained legislative control. Following the adoption of Amendment 32, Congress is required to consider each provisional decree within the first 45-days after issuance; if Congress does not, then it is immediately placed at the top of the legislative docket for urgent consideration. As a result, Perira et al. found that Presidents have used



this ability to stall the legislative process. In 2005, their research concluded that the executive decrees accounted for 65% of all the Federal Senate's legislative sessions (Pereira, Power and Rennó, *From Logrolling to Logjam: Agenda Power, Presidential Decrees, and the Unintended Consequences of Reform in the Brazilian Congress* 71). Additionally, after Amendment 32, the conversion rate of executive decrees was in fact higher than post, equaling 79%. They cite these two factors as evidence that the president has exerted considerable influence over the legislature.

While the work of Perira et al. lends support to the executive dominance interpretation of provisional decrees, their research does not take into account some crucial factors. They concluded that Amendment 32 further weakened Congress's power through the automatic consideration provision; however, they did not consider the impact of Congressional approval and disapproval of decrees, and they did not consider the ability for legislatures and political party to support their individual legislation in their analysis. While it important to underscore the use of provisional decrees, there are many more factors that define Brazil's lawmaking process. In contrast to the work of Perira et al., the work of Reich supports an alternative interpretation of Amendment 32 and provisional decrees.

Rather than representing erosion of power, Reich found that provisional decrees in Brazil are more strongly identified as a rational delegation decision to outsource certain lawmaking to the executive (14). To support this conclusion, Reich considered how the countries diverse and unique party system impacts lawmaking. From an American perspective, it is quite perplexing why a legislature would provide a president with such considerable power; however, Reich makes an important distinction in this

assumption. Political turnover in the legislature is much higher in Brazil's Congress than in the United States; Reich compared the 10% turnover in the U.S. House of Representatives to that of Brazilian Chamber of Deputies average of 50% (Reich 14). Additionally, Reich supported his argument that Congress is voluntarily willing to succeed power to the President because the executive branch possesses far more institutional knowledge and experience at creating and administering laws. He supported this contention by examining the committee structure within Congress, which has historically been weak and disorganized.

In the United States, legislators seek to gain policy experience by specializing on a few key interests and use the committee structure to further enhance their experience; however in Brazil, this is not the case. In Brazil, legislators are unable to gain significant policy experience because of the legislature's framework. Institutional rules of both the Chambers of Deputies and Federal Senate mandate that the executive leadership of committees change every two years, and that legislators cannot be reelected to serve consecutive terms within the same committee; as a result, this has led to a lack of policy experience and development (Reich 15). Thus, Reich interpreted the use of provisional decree data to represent an expressed will of the Brazilian Congress to enable the bettered prepared and experienced executive with responsibility of drafting some laws. Additionally, Reich also disputed Perira et al.'s contention that instead of limiting provisional decrees, Amendment 32 increased the number of decrees that were converted into law. While the conversion rate was higher in the post-Amendment 32 period, Reich argued that legislative oversight was not diminished because of legislative amendments. Reich found that 65.4% of all converted decrees during this period contained

amendments that either reformed the use of the decree and added pork and other earmarks for social policy (17). Reich ultimately concludes that amendments to provisional decrees, prior to conversion, represents legislative oversight and weakening Perira et al.'s argument (22).

### Relevancy of Literature

The review of literature concerning the presidential and parliamentary systems, the constitutional organization of Brazil's federal government, its party system and structure, and the competing theories on provisional decree usage draws an interesting illustration about the nature of Brazil's legislative process. Initially modeled highly after the United States' system of government, Brazil represents an interesting case to study the effects one presidential power has on the lawmaking process and on the country's separation of power.

With numerous political parties vying for leadership, the weak and undisciplined nature of some political parties, the lack of any institutional knowledge and experience due to the committee structure, the literature review tends to support Reich's conclusion concerning provisional decree usage. Realizing that institutionally Congress does not have the experience or means to enact substantial policy or legislation, Congress voluntarily and willfully allows the president to create policy through provisional decree; and once it has been enacted, Congress is able to exercise its oversight prerogatives by either rejecting the decree from consideration or by adopting the text of the provisional decree with various amendments individual legislators might offer.

If Reich's conclusions are true, it would be expected that after the adoption of Amendment 32, which reformed the use of provisional decrees, that a much larger

portion of provisional decrees would be either rejected or amended before converted into law; this would be expected because the executive would no longer be able to indefinitely issue their provisional decrees. Additionally if Reich's interpretation is accurate, there would be no substantial increase in the amount of original decrees issued either before or after Amendment 32. Amendment 32, while restricting the reissuing of decrees, did not impact Congress's ability to provide oversight to provisional decrees; as a result, Amendment 32 would have no impact on the continued use of decrees by Presidents or the number of decrees issued per year. While the literature tends to support Reich's contention that the usage of provisional decrees and the subsequent conversion of those decree in law is a rational choice and decision of Congress, the literature also supports the competing interpretation that decrees represent an erosion of separation of powers and Congress's legislative prerogatives.

Pereira, Power, and Renno's research supports the notion that provisional decree usage has allowed the executive to effectively dominate the legislative process in Brazil. Pereira et al. hold that, due to the various dynamics in the relationship between the two organizations and the factors that influence the legislative process, the use of the provisional decrees have become a regular ability that presidents exercise to enact their legislative agendas. If their findings are valid, it would be expected that the number of provisional decrees issued would continue to increase per year, and that Amendment 32 would not have an impact on usage of decrees. Furthermore, Pereira et al. believe that Amendment 32 further weakened Congress' ability to provide oversight of provisional decrees by mandating that both chamber address each and every provisional decree. If

this contention holds true, I would expect that the number of provisional decrees rejected or nullified by Congress to be lower than prior to the adoption of the amendment.

While the two competing interpretations of provisional decree usage provide compelling arguments and inferences for Brazil's legislative process, Reich and Pereira et al.'s work does not resolve all of the questions regarding decrees. Pereira et al.'s contention that Amendment 32 weakens Congressional oversight does not address, and is in fact at odds with, Reich's findings. Additionally, Reich's work does not address Pereira et al. opinion that provisional decrees have represented a large component of all new laws created in Brazil.

My research seeks to provide an understanding of the two prevailing theories on provisional decrees and their conclusions. In the following chapter, I describe how I use descriptive process tracing to test two hypotheses linked to Pereira et al. and Reich's findings. First, I hypothesize that if Pereira et al.'s beliefs are true, Brazilian presidents have routinize provisional decree usage. I expect that if it has in fact become routinized, then the number of provisional decrees issued should increase in each subsequent year. If it has not, then I expect the number of decrees issued will fluctuate from each year and with each president. My second hypothesis focuses on Congressional approval of provisional decrees and Reich's work. I hypothesize that after the adoption of Amendment 32, Congress was able to provide more oversight over provisional decrees and was able to regain some control over the legislative process. To measure Congressional oversight, I examine the number of provisional decrees that were rejected, impaired, and found ineffective by Congress. Additionally, I examined Congress's role in the legislative process by measuring how many ordinary pieces of legislation Congress

passed both before and after Amendment 32. If Pereira et al.'s conclusions are true, I expect the total provisional decrees converted to be higher after Amendment 32 and that the total number of ordinary legislation to be lower during the same time period.

## CHAPTER THREE

### METHOD

#### RESEARCH QUESTION

As demonstrated in the previous two chapters, the use of provisional decrees by Brazilian Presidents has been widely discussed and studied, both from Brazilian legislators and by international and comparative political scientists. Commonly representing a trend towards the executive dominance of the legislative process, this study focused on articulating *how the use of provisional decree has impacted the legislative process in Brazil*. In a presidential system, there is a competing struggle for power between that of a president, who must represent the interests of country as a whole, and that of the legislative body, whose members represents the divergent and diverse interests of the various constituencies. Although there are traditional influences of elections, political parties, and political interests common to all systems, there are numerous factors that can shape and alter the relationship between the executive and the legislative powers in Brazil; and this study sought to address how both the president and the Congress have reacted to these influences.

This study focused on assessing the legislative success of Brazil's presidents by examining the issuance of provisional decrees and how these were converted into law, and Congress's ability to provide effective oversight over these provisional decrees by examining how many decrees were either supported or rejected by Congress. To accomplish this, the study compared two central components: first, how many provisional decrees were issued, how many were subsequently reissued, and how many provisional decrees were successfully converted into law. Secondly, this study examined Congress's

legislative oversight capabilities by measuring how many provisional decrees were either approved or otherwise rejected by the legislature. Additionally, this research sought to understand Brazil's legislative process by examining the total number of ordinary legislation passed through Congress and comparing this data to provisional decrees. Provisional decree powers were formally introduced in Brazil's 1988 Constitution; however, this study sought to measure the impact Amendment 32 had on the issuance of decrees and on the executive-legislative and lawmaking relationship. Adopted in 2001, this study tracked the provisional decrees and traditional laws passed over a ten-year period, beginning with the presidency of Fernando Henrique Cardoso in 1997 to 2003 and ending with presidency of Luiz Inácio Lula da Silva from 2003-2010. Using these data, the research concentrated on two hypotheses.

#### HYPOTHESES

H1: Conceptualized as an emergency power, Brazilian presidents have routinized the use of provisional decrees by regularly issuing provisional decrees.

H2: Introduced to further clarify and refine the use of provisional decrees, the adoption of Constitutional Amendment 32 empowered Congress to exercise its oversight prerogatives, as measured by the number of provisional decrees rejected by the legislature.

#### DESCRIPTIVE PROCESS TRACING

Qualitative in nature, descriptive process tracing was selected for the method of this study. Within the study of political science research, the use, expansion, and definition of process tracing has progressed over the past decade. Described as a



“fundamental tool of qualitative research”, it enables a research to answer questions through “systematic examination of diagnostic evidence selected and analyzed in light of research questions and hypotheses posed by the investigator” (Collier 823). Process tracing allows for researchers to form inferences and conclusions from data that is often too difficult or ambiguous (Collier 1). While process tracing is a typical method of political science research, there has been a lack of a centralized standard for the method; and this has led to various misperceptions about the central tenants of process tracing (Barnes and Weller 3); however for the purpose of this study, descriptive process tracing was used.

Descriptive process tracing enables a research to “make decisive contributions to diverse research objectives, including identifying novel political and social phenomena and systematically describing them, evaluating prior explanatory hypotheses, discovering new hypotheses, and assessing these new casual claims, and gaining insight into casual mechanisms” (Collier 824). Central to this study was examining how the dynamics of the executive-legislative relationship has changed, and thus process tracing provides a capable method of explaining the gradual dynamics in the relationship. Additionally, descriptive process tracing enables a research to overcome a major hurdle of quantitative research: casual analysis.

When using process tracing, investigators are often presented with numerous variables and “infinite number of intervening casual steps between any independent and dependent variables” (Mahoney 125). Indeed, as this study has focused on examining the legislative success of two parties, there are numerous variables that can overwhelm the

researcher; however descriptive-process tracing is able to overcome this fault through focusing on one core aspect: time.

“As a tool of causal inference, process tracing focuses on the unfolding of events or situations over time” (Collier 824), process tracing represents an ideal method for analyzing data concerning the number of bills passed each year. It is able to accomplish this analysis through the discovery of casual-process observations, or CPOs, are “insights or pieces of data that provide information about context, process, or mechanism, and that contribute distinct leverage in casual inferences” (Brady, Collier and Seawright 277). While process tracing examines history, how events have evolved over time, it can provide more detailed analysis and inferences, “A process-tracing explanation differs from a historical narrative, as it requires converting a purely historical account that implies or asserts a causal sequence into an analytical explanation couched in theoretical variables that have been identified in the research design” (Bennett and George 3).

## MEASURES

This study analyzed data derived from the official website of the Brazilian Federal Government, Planlto.gov.br. A government archive, the website contains an expansive record database of official government documents, from the Constitution, to common and supplemental laws, and all executive decrees issued since the establishment of the 1988 Constitution. Using Google Translate and translation from a Portuguese speaker, this study examined two aspects of law: provisional decrees and common laws. These two aspects were of the law were measured using the following descriptions.

### Provisional Decrees Issued

This measure refers to the number of provisional decrees issued per year by presidents.

### Provisional Decrees Converted

This measure tracks the number of provisional decrees that were successfully adopted by the Brazilian National Congress, and subsequently was converted into permanent laws.

### Provisional Decrees Reissued

This measure tracks the number of provisional decrees that were subsequently reissued by a president after failing to be converted into law. Prior to Amendment 32, presidents were allowed to indefinitely reissue decrees. Following Amendment 32, presidents are only allowed to reissue the decree once, within the same session of the legislature.

### Provisional Decrees Rejected

This measure tracks the number of provisional decrees that were not converted into law by Congress, and were subsequently declared null and void.

### Provisional Decrees Impaired

This measure refers to the number of provisional decrees which legal status were compromised through legislative action. For instance, a provisional decree can be impaired when a legislative act alters the specific body of law the decree addressed.

### Provisional Decrees Ineffective

This measure refers to the number of provisional decrees that were not converted, reissued, revoked, or rejected, and thus expired after its respective effectiveness date.

### Common Laws Passed

This measure refers to the number of laws that were passed through the traditional legislative process and that were subsequently signed into law by Brazilian presidents.

### Common Laws Vetoed

This measure refers to the number of laws, passed through the traditional legislative process, that were vetoed by Brazilian presidents.

## ANALYSIS PLAN

The following chapter contains the results of the research conducted for this study. Examining legislative data over the period of ten years, the results have been summarized by examining the total number of provisional decrees issued, reissued, and converted. The results are separated by time: the first measuring the total scope of the study, from 1997-2007; the second measuring the total from the beginning of the study to the adoption of Amendment 32, from 1997-2001; and finally, the totals following the adoption of Amendment 32, from 2001-2007. Additionally, the totals of common laws passed and vetoed were separated using the same convention. Next, conclusions about how the executive-legislative relationship evolved as a result of provisional decrees and Amendment 32 were reached after both hypotheses were analyzed. Finally, I address the impact of legislative support Presidents Cardoso and Lula possessed during their administration, and measured its influence on the usage of provisional decrees.

## CHAPTER FOUR

### RESULTS

While presidential systems are defined by the separation of administrative, legislative, and judicial powers, most systems empower their executives with abilities to help shape the legislative process. In order to avoid a presidential veto, it is generally expected that legislatures will work with presidents to ensure that legislation is reflective of their administrative and legislative priorities. Although this provides presidents with the unique ability to shape and influence the legislative process, it is the ultimate responsibility of the legislature to pass, amend, and repeal laws.

In Brazil, it is clear that the use of provisional decrees has affected the method through which presidents influence the legislative process. After analyzing the data compiled from the official website of the Brazilian Federal Government, Planalto, I reached the conclusion that presidents have routinized their use of provisional decrees; in effect, it has allowed Presidents Cardoso and Lula to circumvent the prerogatives and responsibilities of Congress to initiate the legislative process.

Issuing a total of 1,116 provisional decrees from 1997 to 2007, Brazilian Presidents Cardoso and Lula effectively created over 33% of all new laws, independent from the traditional legislative process. Found in table 4.1, this data suggests that Presidents Lula and Cardoso held considerable power over the legislative and policy agenda of the Brazilian Congress.

<b>Provisional Decree and Common Laws Totals from 1997 to 2007</b>	
Decrees (Issued + Reissued)	1,116
Bills Passed	2,242
Total	3,358
Percentage Decrees (((Decrees Issued + Reissued)/Total))*100)	33%
Percentage Bills (Bills Passed/Total)	67%

Table 4.1: Provisional Decree and Common Laws Totals from 1997 to 2007

Under President Cardoso, his 806 provisional decrees accounted for 40% of all new laws adopted from 1997-2002. During this same time period, the Congress passed 1,209 common laws under the traditional legislative process, as demonstrated in table 4.2. While the number of laws during this time period was predominantly laws passed by the legislature, it is still important to underscore that President Cardoso was still able to have his legislative initiatives enacted through provisional decrees. In a presidential system, it is expected that an executive have some influence over the legislative process; however, it is not expected that this influence would comprise 40% of all new laws passed.

<b>Provisional Decree and Common Law Totals Under President Cardoso (1997-2002)</b>	
Provisional Decrees Issued	353
Decrees Re-Issued	453
Decrees Converted	257
Total Decrees Issued	806
Percentage of Decrees Converted ((Converted/ Total Issued)*100)	32%
Common Laws Passed	1,209
Total Laws Passed (Total Decrees Issued + Common Laws Passed)	2,015
Percentage of Law as Decree ((Total Decrees/Total Laws Passed)*100)	40%
Percentage of Law as Common Laws ((Total Common Laws/Total Laws Passed)*100)	60%

Table 4.2: Provisional Decree and Common Law Totals under President Cardoso (1997-2002)

While the total number of provisional decrees issued under (420) President Lula was much smaller because of the reforms set into effect by Amendment 32, the conclusions and data remained largely the same. Although Lula's provisional decrees accounted for 19% of all new laws passed during his presidency, his provisional decrees were nonetheless converted into law at a high rate, approximately 87%. This data is

found in table 4.3. Designed as an emergency power, Presidents Cardoso and Lula historically used provisional decrees to impact the policy agenda and to control the national legislative process; and thus, this data supports hypothesis 1.

<b>Provisional Decree and Common Law Totals under President Lula (2003-2010)</b>	
Provisional Decrees Issued	420
Decrees Re-Issued	0
Decrees Converted	366
Total Decrees Issued	420
Percentage of Decrees Converted ((Converted/ Total Issued)*100)	87%
Common Laws Passed	1773
Total Laws Passed (Total Decrees Issued + Common Laws Passed)	2193
Percentage of Law as Decree ((Total Decrees/Total Laws Passed)*100)	19%
Percentage of Law as Common Laws ((Total Common Laws/Total Laws Passed)*100)	80%

Table 4.3 Provisional Decree and Common Law Totals under President Lula (2003-2010)

It is important to underscore the importance behind the total number of provisional decrees issued and the subsequent number of those degrees converted into law. For the time frame measured, Presidents Cardoso and Lula effectively issued a total of 1,116 provisional decrees, bringing into existence new federal departments, established new regulatory measures, and directed federal funds without the oversight and duties of the Congress, as demonstrated in chart 4.1.

Constitutionally, these decrees are provisional and subject to legislative approval; however in practice, very few were challenged by the legislature. Under Cardoso, Congress rejected only 1 of his decrees and converted nearly 60%, or 257 of his decrees; and because Amendment 32 was not yet adopted, Cardoso was able to reissue his decrees without limit for the majority of his presidency. Of his 251 decrees prior to the adoption of amendment 32, he reissued those decrees over 453 times. Under Lula, where

Amendment 32 restrained him, Congress rejected a total 10%, or 43, of his 420 provisional decrees. Additionally, Congress converted 87% of his decrees, a total of 362. Given the data, it becomes clear that Congress adopted Amendment 32 in an attempt to curtail the use of provisional decrees; however, the effect was not as strong as the intent of the amendment.

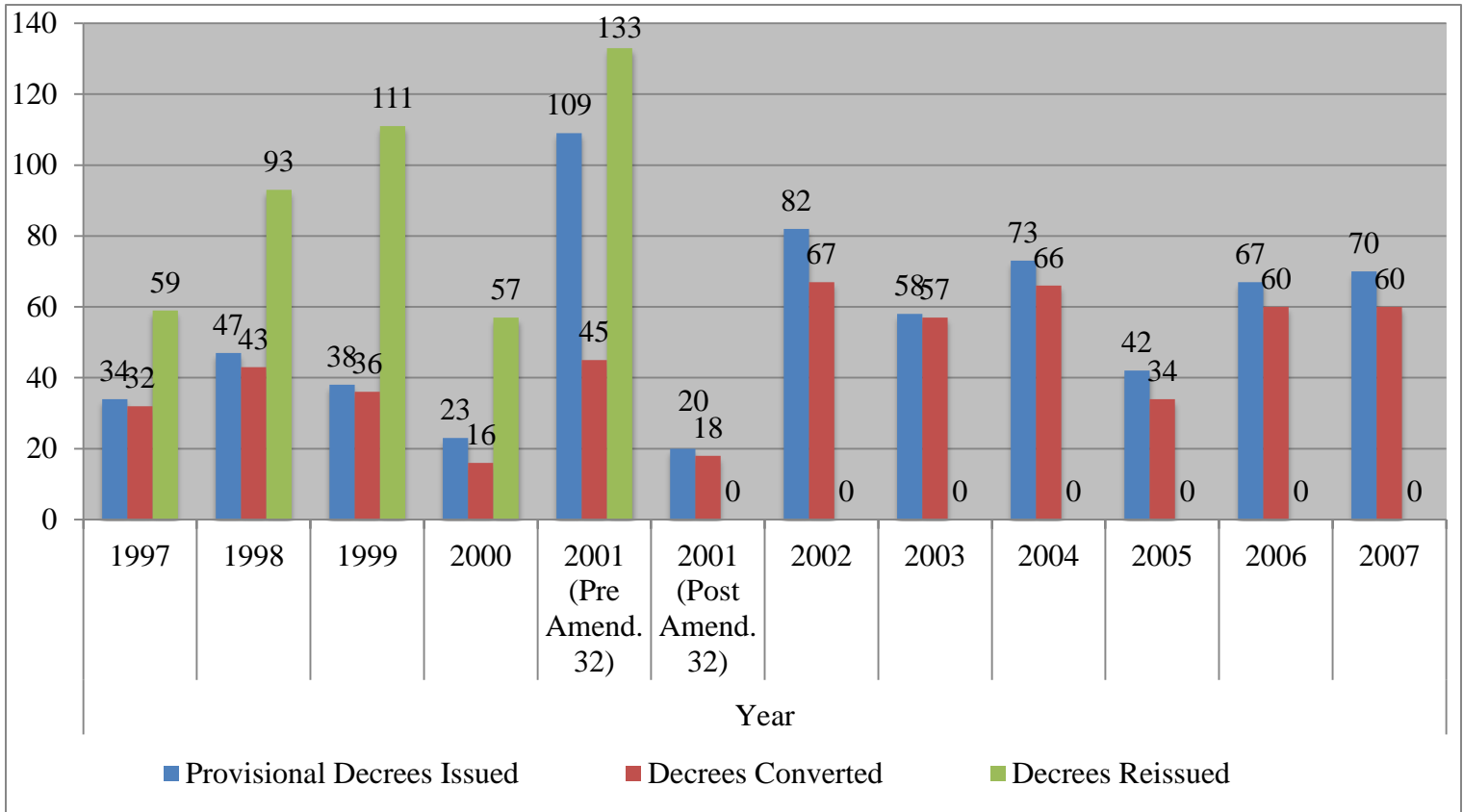


Chart 4.1: Provisional Decree Issuance and Conversion from 1997-2007

After adopting Amendment 32, the Brazilian National Congress was able to regain some power and oversight over the executive by limiting the ability to reissue provisional decrees. Prior to Amendment 32, Cardoso reissued decrees over 453 times; under Lula



and Amendment 32, the number of reissued decrees dropped to zero, according to the data, as represented in table 4.3.

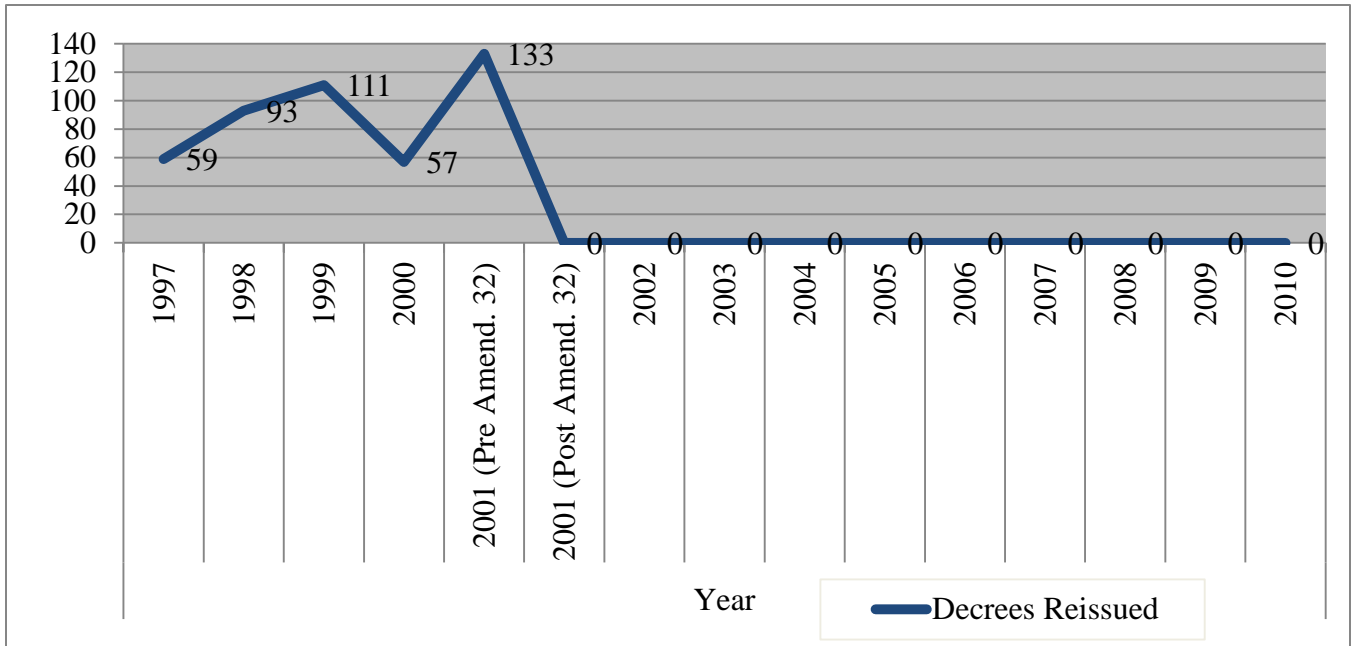


Table 4.3: Provisional Decrees Reissued from 1997-2010

Unable to permanently legislate through decree, Presidents Cardoso and Lula were forced to seek Congressional approval of their decrees. Moreover from 2002-2007, Congress exercised its ability to invalidate and rejected decrees far more often. Under Lula, a total of 42 decrees were either rejected by a vote of Congress, were overturned via a new law passed by Congress, or impaired by Congress; conversely under Cardoso, only one of his decrees was rejected. After the adoption of Amendment 32, moreover, Congress was able to enact more laws through the traditional legislative process than before. Under Lula, 1,773 ordinary laws were passed by Congress and signed into law by the President, with only 154 being subjected to veto. Under Cardoso, this number was lower: 971 laws to 83 vetoes. Additionally, the total number of provisional decrees also

fell after Amendment 32. Prior to Amendment 32, Cardoso issued 806 provisional decrees; Lula issued 420 decrees, a 52% net decline. While this data supports the contention that Congress was able to curtail the use of provisional decrees and regain its oversight responsibilities, it does not fully support the notion that Amendment 32 fundamentally altered the existing executive-legislative relationship. If the relationship changed, the data would be reflective of more Congressional oversight, as measured by the increase in provisional decrees found ineffective, impaired, or rejected; however, it does not, as observed in chart 4.3.

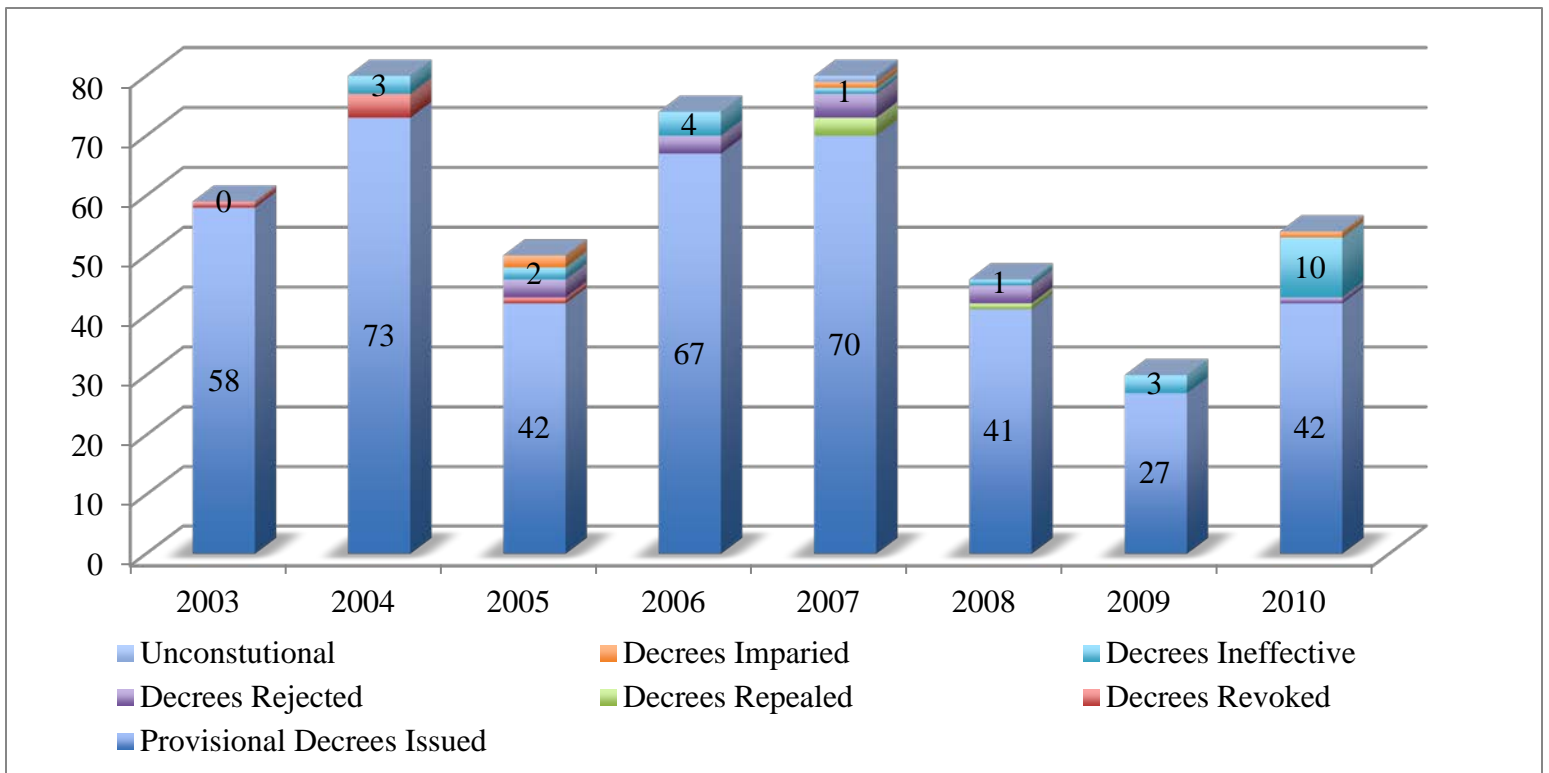


Chart 4.3: Congressional Oversight of Provisional Decrees

After adopting Amendment 32, the percentage of decrees that were converted into law actually rose. Under Lula, nearly 88% of his decrees were issued against 68% of

Cardoso's. Although Congress rejected a higher percentage of decrees following Amendment 32, it nonetheless ratified a large percentage of Lula's decrees. While suggests that by-and-large, Congress supported the Presidents Cardoso and Lula's agendas, the two Presidents exercised their veto authority more dynamically. Under Cardoso, he vetoed 83, or 8.5%, of the total 971 bills presented to him; whereas Congress rejected 1, or less than .01% of his decrees. Lula, moreover, vetoed a higher percentage of the 1,271 bills presented to him, 13%, or 154 total vetoes. Comparing the data, Lula rejected a higher percentage of bills passed through Congress than the percentage of provisional decrees congress rejected: 13% of laws were vetoed compared to 10% of decrees that were rejected. Taken as a whole, the data confirms the initial aspect of hypothesis 2, where Congress attempted to limit the use of provisional decree usage; however, it does not support the contention that Amendment 32 dynamically shifted the executive-legislative relationship towards more legislative oversight. If there were more oversight, there would have been an increase in the total number decrees rejected, impaired, repealed, ineffective, and revoked. While Amendment 32 impacted Presidents Cardoso and Lula's ability to issue provisional decrees, it is also important to address each president's respective legislative support in Congress and its impact on provisional decrees.

#### Presidential Support in the Brazilian National Congress

In any presidential democracy, the level of institutional support a president has in the legislature is a strong potential influence on the relationship between the two branches, and is an indicator of how an executive's legislative agenda will be acted upon. In the United States and other presidential democracies, legislative support is relatively

easy to quantify as the number of political parties is quite often few. This does not hold true for Brazil.

Elected through an open-list proportional representation system, the number of parties and legislators represented in the Brazilian National Congress's changes frequently with each individual election for the 81 seats for the Federal Senate and 513 in the Chamber of Deputies. Additionally, there are over 28 registered political parties that all compete for seats in Congress; as of the 2010 legislative elections, 22 parties have members represented in either chamber of Congress (Political Database of the Americas). Due to the various influences discussed in chapter 2, such as the weak and poorly disciplined parties, the frequent trend of legislators switching political parties, and Samuel's gubernatorial coattails effect, Brazilian presidents often struggle to rally legislative support in Congress. Specifically for provisional decrees, the level of legislative support a president possesses could be a relevant factor and influence in either the issuance of certain provisional decrees or a president's decision to use decrees in general. Additionally, the level of support provides insights into the motivations behind political decree conversion or rejection by the legislature. Thus, it is important to measure this factor during the timeframe to see what effect—if any—it had on the issuance of provisional decrees. To measure legislative support, the preferable way is to identify the number of legislators that are affiliated with the president's party. Using data obtained from Georgetown University's Political Database of the Americas, I analyzed election data in the Chamber of Deputies from the 1994, 1998, 2002, and 2006 legislative elections in order to see how much party support Presidents Cardoso and Lula possessed during their administrations; the data were compiled into charts 4.4 and 4.5 below. I was

unable to find accurate data concerning the party composition of the Federal Senate; however, I believe that the Chamber of Deputies can serve as a barometer of Presidents Cardoso and Lula's each respective legislative support.

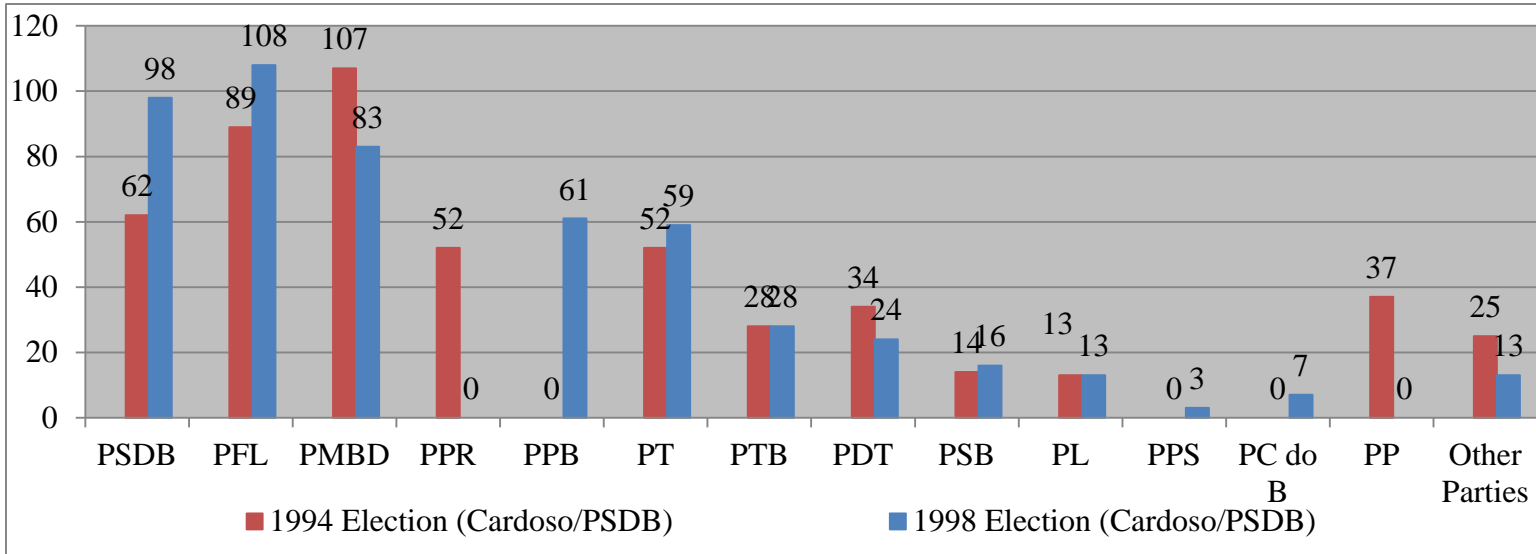


Chart 4.4: Composition of the Chamber of Deputies during President Cardoso's Administration from 1995-2003

During President Cardoso's two terms as President, his party, the PSDB, never possessed a plurality of the seats in the Chamber of Deputies, as demonstrated in figure 4.2. Of the 513 seats in the Chamber of Deputies, his party held approximately 13% and 19% of the 513 seats, from 1995-1999 and 1999-2003 respectfully. Overall, there were over 20 parties that were competitive in the lower house during the Cardoso administration, and could serve as a factor that would motivate the president to use provisional decrees. While the PSDB never possessed a plurality of the seats in the Chamber of Deputies, President Cardoso was still able to create a relatively large governing coalition, comprised of the PSDB, the PFL, the PMDB, the PP, PPS, and PTB parties; his coalition possessed 381, or 74%, of the total 513 seats combined in both chambers of Congress (Pereira 2). Whereas Cardoso's PSDB party never possessed a

plurality of the seats in the Chamber of Deputies, President Lula and the PT party followed in a similar trend.

Throughout his administration, President Lula was forced to create governing coalitions in order to effectively administer the government, although it proved to be more challenging than during the Cardoso administration. During his first term as President, Lula’s PT party possessed 91, or 17%, of the seats in the Chamber of Deputies, the largest out of any party, as demonstrated in table 4.3. However due to the large membership of the Chamber and the number of parties represented within it, Lula needed additional support. Plagued with scandals and internal conflict within the PT concerning Lula’s agenda, Lula struggled to maintain a minority coalition during his first two years as president (Raile, Pereira and Power 5). However, Lula adapted to his mistakes and managed to establish a working governing coalition between the PT, PMDB, PPS, PTB, Pcdob, the PL, PSB, PV, and independent legislators to control 318 seats and 62% of the Congress (Raile, Pereira and Power 5).

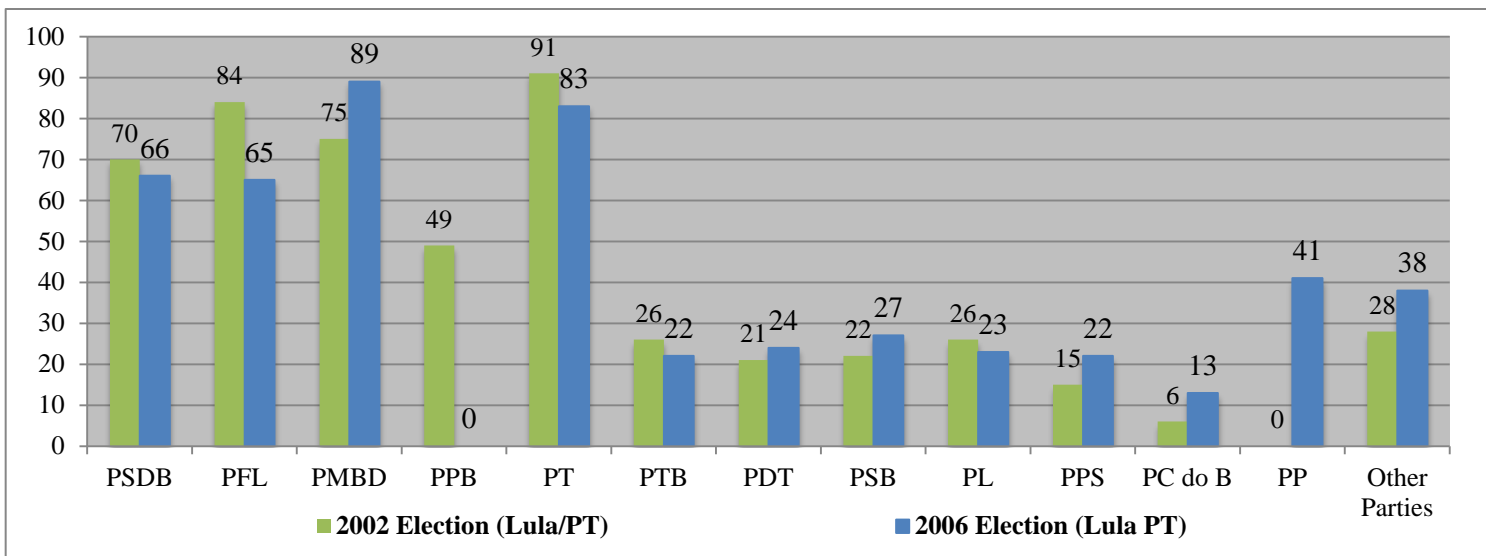


Chart 4.4: Composition of the Chamber of Deputies during President Lula’s Administration from 2003-2010

Within the study of provisional decree issuance and usage in Brazil, it appears that the relative strength of the president's party does not have a substantial impact on a president's decision to exercise his decree authority. Comparing the party representation of the PSDB and PT in the Congress with the number of decrees issued, rejected, and converted into law, no relevant inferences or conclusions can be reached. During the Cardoso and Lula administrations, both of their parties' representation in the Chamber of Deputies varied throughout. Yet, this does not provide any insights into why both increasingly used provisional decrees or why Congress continued to support and/or reject their decrees. If the party composition in the Chamber of Deputies was not correlated to my data, the relative strength of their governing coalitions did not also provide any additional insights.

From the data compiled by Raile, Pereira, and Power concerning governing coalitions, I also found that the strength of Cardoso's and Lula's coalitions did not impact the use, conversion, or rejection of provisional decrees. During Cardoso's administration, his coalition effectively controlled 74% of the seats in Congress; and yet, the number decrees converted during his administration was actually lower than Lula's, whose coalition was neither as large nor cohesive. Of Cardoso's 353 provisional decrees, the Congress converted 73% of his total decrees; conversely under Lula, Congress converted 87% of his 420 decrees into law. I acquired this data by measuring the number of provisional decrees issued and converted, as observed in tables 4.4 and 4.5.

President Cardoso (1997-2002)	
Issued:	353
Reissue:	453
Converted	257
Rejected	12
Percentage Converted ((Converted/Issued)*100)	73%

Table 4.4: Provisional Decrees Issued, Reissued, Converted, and Rejected Under President Cardoso

President Lula (2003-2011)	
Issued:	420
Reissued:	0
Converted:	366
Rejected	6
Percentage Converted ((Converted/Issued)*100)	87%

Table 4.5: Provisional Decrees Issued, Reissued, Converted, and Rejected Under President Lula

### Summary of Findings

After evaluating my research as a whole, my findings support three broad conclusions. First, provisional decrees have become fairly routinized in Brazil, and that Presidents Cardoso and Lula utilized them regularly. Throughout the ten years that I analyzed, Cardoso and Lula issued a total of 1,116 provisional decrees that possessed the full force and effect of the law. Originally created as a measure to address important and urgent cases, provisional decrees have become a regular tool for Brazilian presidents to influence and control the legislative process. As a reaction to this regular use of provisional decrees, the Brazilian National Congress adopted Amendment 32 in an effort to curtail the executive's reliance on these measures.

Second, although the adoption of Amendment 32 has had an impact on the usage of provisional decrees by executives, it has not completely restrained Brazilian presidents. While Amendment 32 effectively restricted presidents from reissuing their decrees indefinitely, it did not impact Presidents Cardoso or Lula's decision to usage decrees. Following the adoption of Amendment 32, the data reflects an actual increase in



the total number of provisional decrees that were issued over the course of the five years I measured. Under President Cardoso, he issued a total of 354 original provisional decrees; where as President Lula issued 420. Additionally, percentage of provisional decrees that were converted into law subsequently rose as well, 87% under Lula and 73 for Cardoso. The research and data supports the conclusion that Amendment 32 itself was clearly correlated with the rise in provisional decrees and the conversion rate, and that it was not clearly influenced by other factors.

Finally, the research found that other sources of influence, such as the number of seats controlled in the Chamber of Deputies by the president's party or the size of the president's governing coalition, were not clearly associated with the variation over time in the number of decrees that were issued and subsequently converted into law. During the two terms of both Cardoso and Lula, each president's party held a large percentage of the seats in the lower chamber of Congress and their governing coalitions were comprised of more than 60% of the total Brazilian National Congress. It can be expected that the more institutional and legislative support a president had, it would be more likely that Congress would support the executive's legislative agenda and provisional decrees. However, this did not hold true. During Cardoso's administration, his party possessed 20% and 31% of the Chamber of Deputies and his governing coalition accounted for 74% of the legislature. Yet for all his support, Congress supported Lula's provisional decrees to a much larger extent than Cardoso's. If party composition or the size of the president's governing coalition were correlated to provisional decree usage and conversion, President Cardoso would have been more successful than President Lula.

In the final chapter, I will discuss the general implications of my findings, how my research is relevant to the established literature on provisional decrees, and finally discuss the limitations of my study and suggest some proposals for future research.

## CHAPTER FIVE

### General Discussion

The literature on provisional decrees has generally supported two disparate conclusions. Within this discussion, the research of Pereira, Power, and Renno support the conclusion that provisional decrees represent a strong executive that has able to exert and draw considerable power from the legislature. Conversely, Reich found that provisional decrees do not necessarily represent a diminishment of legislative power, as decrees are a rational expression of Brazil's National Congress; additionally, he holds that Congress is able to exercise considerable oversight via adopting amendments to provisional decrees prior to conversion. Conclusively, my research and data generally supported both interpretation concerning provisional decrees.

My research supported Perira et al.'s conclusions that Amendment 32 has provided the President with more power to control the legislative agenda. They concluded that the objective of Amendment 32 was to constrain the effectiveness of the provisional decrees; and by mandating that the legislature must consider these decrees, it would empower Congress with more independent oversight of the executive (Pereira, Power and Rennó, *From Logrolling to Logjam: Agenda Power, Presidential Decrees, and the Unintended Consequences of Reform in the Brazilian Congress* 17). Rather than providing more oversight, they found that it actually limited and constrained the legislature's own power and legislative agenda (19). While my findings support their data demonstrating that the use of provisional decrees and their subsequent conversion to law increased following Amendment 32, my data and interpretation is not consistent with their overall conclusions. Perira et al. argued that Congress has "reduced its own

bargaining power and ceded further control to the executive” (19); however, they did not examine Congress’s successful rejection of decrees and passage of their institution’s own legislative outcomes. Following Amendment 32, Congress in fact exercised their oversight prerogatives much more extensively than in prior to the adoption. Before Amendment 32, Congress rejected 1 of President Cardoso’s provisional decree from 1995-2001; however after 2001, Congress rejected or impaired a total of 378 provisional decrees. Additionally, Perira et al. did not consider the ability of Congress to use its own lawmaking prerogatives and ratify laws through the institution itself.

In the five years after Amendment 32 was adopted, Congress was able to pass a significantly larger number of bills under the traditional legislative process than during the first five years of this study. From 2002-2007, Congress legislated a total 1,271 laws, with 154 being subjected to presidential veto. From 1995-2001, Congress passed 971 news laws, with 83 being subjected to a veto. Institutionally, this data does not support Perira et al.’s conclusion that Congress succeeded power to the executive. If this were true, I would expect that Congress would have produced fewer bills and a subsequently lower number of vetoes; however, this was not supported. While my findings supported some of Pereira, Power, and Renno’s conclusions, my findings equally provided support to the Reich’s interpretation of provisional decrees usage as a rational expression of the legislature.

In contrast to Perira et al.’s finding, Renno contends that due to the unusual institutional and constitutional arraignments, he research suggested that Congress delegates some lawmaking authority to the executive. The primary reason being that due to high turnover and a weakened committee structure, Congress lacks members that

possess sufficient experience to author and introduce substantial legislation; thus, the institution allows the executive to exercise provisional decrees, with Congress having final oversight over the passage or rejection of the bill. While Renno observed the number of provisional decrees converted into law with amendments attached, my research nonetheless support his conclusion that Congress still possess substantial oversight authority over the executive. Returning to the data concerning provisional decrees rejected and impaired, there is a strong increase of the number of times Congress rejected a decree, from 1 to 378. If Congress's oversight power was diminished, we would expect that the number of rejections to be low or nonexistent; conversely, my research did not support this.

Moreover, my research neither supported nor weakened Renno's contention concerning the adoption of amendments to provisional decrees. From a legislative oversight perspective, Renno's data does not support Perira et al.'s conclusion that provisional decree conversion was actually higher following Amendment 32. My data supported Perira et al.'s conclusion, with nearly 88% of provisional decrees being converted to law. However, I could not analyze whether or not the various decrees possessed any amendments.

#### Limitations of Research and Suggestions for Further Research

To summarize, this study sought to add to the research and discussion of how Brazil's executive-legislative relationship has changed as a result of provisional decrees and Amendment 32. I would have liked to observe Samuel's "gubernatorial coattails effect's" impact on the dynamics in the legislature. If more Senators and Congressmen rallied behind gubernatorial candidates, I would then expect this to further constrain a

president's legislative support and would expect to see a rise of provisional decrees. Additionally, it would have been ideal to follow specific provisional decrees and analyze them from a media and public opinion background. I believe that if the media and the electorate's opinion towards a specific decree was favorable, it would influence a president's position and help enhance the probability that the decrees would have passed. However due to my limited understanding of Portuguese and limited resources, I was not able to conduct this research. Ideally, I would have liked to track the process through which Presidents Cardoso and Lula enacted their primer and more prominent pieces of their legislative agenda. An analysis of how the two branches interacted would have provided additional insights into their relationship. Lastly, I would have preferred to analyze the individual text and scope of each individual decree, and measure the importance of each. I would expect that more ceremonial decrees would have a higher conversion rate; likewise, it would also be expected that decrees of a more substantial and controversial nature to have a much lower conversion rate.

Taken together, I believe that an examination of the effects of the legislative support presidents had in Congress, Samuel's "gubernatorial coattails effect", and the media's and public's reaction to provisional decrees would provide a more accurate representation of the evolution of executive power and the effects of provisional decrees. By studying these facets more clearly and in greater detail, I believe that it would add more to the body of knowledge concerning provisional decrees.

### Conclusion

Brazil proved to be an excellent case study to study not only the effects of provisional decrees, but also how the executive-legislative relationship can vary across

different systems. Dynamic, fluid, and ever changing, the executive-legislative relationship of Brazil's federal government has in fact been influenced by provisional decrees; however, the effects of which are certainly not clearly defined. Traditionally, the rationale behind provisional decrees observes their usage as a gradual erosion of legislative power and oversight over the executive. While this research supports the conclusion that provisional decree usage has increased, the extent to which the legislature's oversight prerogatives have been diminished is not as clear.

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## Appendix 1: Additional Provisional Decree Measures

### Provisional Decrees Revoked

This measure refers to the number of provisional decrees that were withdrawn by presidents.

### Provisional Decrees Found Unconstitutional

This measure refers to the amount of provisional decrees whose effectiveness was found unconstitutional through the judicial review power of the Brazilian judicial system.

Appendix 2: Provisional Decree Data

	Year							
	1997	1998	1999	2000	2001 (Pre Amend. 32)	2001 (Post Amend. 32)	2002	
Provisional Decrees Issued	34	47	38	23	109	20	82	
Decrees Converted	32	43	36	16	45	18	67	
Decrees Reissued	59	93	111	57	133	0	0	
Decrees Revoked	2	1	1	7	1	0	0	
Total Decrees Issued	93	140	149	80	242	20	82	
Decrees Repealed	0	0	0	0	11	0	0	
Decrees Rejected	0	0	0	0	1	2	12	
Decrees Ineffective	0	0	0	0	0	0	1	
Decrees Impaired	0	0	0	0	0	0	0	
Decrees Unconstitutional	0	0	0	0	0	0	0	

	Year								
	2003	2004	2005	2006	2007	2008	2009	2010	
Provisional Decrees Issued	58	73	42	67	70	41	27	42	
Decrees Converted	57	66	34	60	60	35	24	30	
Decrees Reissued	0	0	0	0	0	0	0	0	
Decrees Revoked	1	4	1	0	0	0	0		
Total Decrees Issued	58	73	42	67	70	41	27	42	
Decrees Repealed	0	0		0	3	1	0	0	
Decrees Rejected	0	0	3	3	4	3	0	1	
Decrees Ineffective	0	3	2	4	1	1	3	10	
Decrees Impaired	0	0	2	0	1	0	0	1	
Decrees Unconstitutional	0	0	0	0	1	0	0	0	

Note: Red shading denotes the Cardoso administration and green denotes Lula's presidency.

Appendix 3: Ordinary Legislation Data

	<b>Years</b>													
	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<b>Ordinary Laws Passed</b>	169	178	175	219	230	238	201	271	184	179	198	259	290	191
<b>Veto</b>	2	4	15	31	31	24	30	26	25	22	27	35	46	27

Note: Red shading denotes the Cardoso administration and green denotes Lula's presidency.