

RESUMO

Este relatório apresenta os resultados iniciais de uma pesquisa de longo prazo sobre a presidência Brasileira e os outros poderes da federação. Várias pesquisas realizadas separadamente enfatizam a crescente importância do executivo, legislativo, e judiciário na política Brasileira desde a Constituição de 1988. Este relatório argumenta que, tomadas como um todo, estas pesquisas mostram um processo decisório mais complexo mais contestado, e mais democrático. Uma resenha das bibliografias recentes sobre as relações entre os três poderes no Brasil e nos Estados Unidos mostra a necessidade de mais pesquisa comparada sobre a separação dos poderes nestes dois países. O relatório também comunica os passos iniciais na organização de um banco de dados sobre sobre tendências de gastos entre os poderes da união a partir de dados oficiais sobre o Orçamento federal de 1995-2002.

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Política; Presidência; Democracia; Separação de Poderes.

ABSTRACT

This report presents the initial results of a long-term research program on the Brazilian presidency and its relations with other branches of government. While scholars have found empowerment in the executive, legislature, and judiciary in Brazil since the 1988 Constitution, these findings taken as a whole suggest that a more complex, contested, and positive-sum policy process has emerged in the country. Review of recent scholarship on the legislature, judiciary, and executive in Brazil and the United States suggests the need for further comparative analysis of the separation of powers in these two countries. The report defines themes for future

research by identifying the concepts, methods, and theories from analysts of U.S. political institutions that appear most relevant in understanding the Brazilian experience. Progress is also reported in the organization of a database on inter-branch spending trends in Brazil since 1994 from existing government budget data.

KEY WORDS

Politics; Presidency; Democracy; Separation of Powers.

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A PRESIDÊNCIA BRASILEIRA E A SEPARAÇÃO DOS PODERES*

THE BRAZILIAN PRESIDENCY AND THE SEPARATION OF POWERS*

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I. INTRODUCTION

Scholars of Brazilian political institutions have presented substantial evidence of empowerment in the federal *legislature* and *judiciary* since the transition from military rule in 1985 and the establishment of the political rules of the game in the 1988 Constitution. Far from necessarily reducing the power of the presidency, this report argues that the separation and diffusion of powers in Brazil since 1988 has created an increasingly complex, contested, and positive-sum policy-making process. Although Brazilian political institutions still differ from the congress-centered U.S. system, evidence suggests that the policy process in Brazil now tends to involve all three branches in a variety of formal and informal ways. A central argument of this report is that these new patterns in Brazil are “most similar” (Martz, 94) to the U.S. experience and that comparative analysis based on core concepts about U.S. politics such as divided government and the separation of powers may provide new perspectives on Brazilian political institutions. This report communicates the initial and necessarily tentative results of this comparative analysis through a bibliographic review of research on U.S. and Brazilian political institutions. The central goal of this report is to develop concepts, categories, and

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comparative referents for understanding the emergent relations between the executive, legislature, and judiciary in Brazil.

This broader inter-branch perspective is possible because scholars of Brazilian political institutions have provided new insight into the shape of democratic politics in Brazil by focusing on one or another branch of the federal government. A series of recent analyses of the federal congress and senate argue that the Brazilian legislature has increased its influence in the policy process, expanded its legal prerogatives, and taken a central role in politics since the 1988 Constitution (Figueiredo & Limongi, 99; Santos, 99) Recent analyses of federal Brazilian courts also suggest that the judiciary as well has increased its role in decision making and redefined the content of democracy. Indeed, recent scholarship on Brazilian courts suggests that a *judicialization* of Brazilian politics and society has emerged (Vianna et.al. 99; Castro, 95; Sadek, 98; Arantes, 99).

Significant empirical and conceptual work on executive-legislative relations now exists, for example through the work of the Political Institutions Group of the Associação Nacional de Pós-Graduação e Pesquisa em Ciências Sociais (ANPOCS). Scholars have been able to exchange work that focuses on particular branches in Brazil and discuss recent trends in the comparative analysis of inter-branch relations. The bulk of this first report to the NPP is a bibliographic review of recent scholarship on the judiciary, legislature, and executive – both in international political science and Brazilian scholarship since the 1988 Constitution. Two central arguments emerge from this review. First, shifting the focus of empirical research from the presidency proper to the character of relations between the presidency and other branches of government has been central to improved understanding of Brazilian political institutions and questions of democracy. Second, analysis of inter-branch relations in Brazil can gain much from sustained comparative analysis of the separation of powers in the U.S. and the Brazilian experience.

Among recent work on the relations between the executive and legislature in Brazil, the work of Charles Pessanha, Octavio Amorim Neto, Fabiano Santos, and Maria Helena de Castro Santos stand out for their combination of bibliographic review, empirical analysis and conceptual innovation. Indeed, comparative analysis of executive decrees in Argentina and Brazil suggest that processual details matter, and that the separation of power and diffusion of policy making occurs even in these difficult situations of post-transition politics (Vasconcelos, 01). Fabiano Santos also describes the expanding powers of the Brazilian congress through focus on emergent patterns of organization, contestation of the executive in the media, internal rules, and leadership (Santos, 99).

What are the implications of these trends in the legislature and judiciary for Brazilian democracy? While recent analysis in comparative political analysis tend to portray the dispersion and separation of powers in negative terms, both comparative glances to the U.S. policy process and recent work in Brazil suggest that a more positive-sum account of relations between the branches of government. Contrary to recent accounts that emphasize problems of governability and an increased number of veto players in presidential institutions, (Tsibelis, 98), this research relies on theories of decision-making and the policy process in the U.S. pluralist tradition that emphasize complexity and contestation among the branches of government as essential for effective democratic government (Jones, 94; Mettenheim, 97). Presidential institutions (as well as federalism and multi-party systems) do indeed separate and diffuse power. And this implies, not only an increase in the number of veto-players, but also an increase in the opportunities for political initiative, negotiation, and conflict resolution.

Maria Helena de Castro Santos provides two fundamental advances toward understanding Brazilian political institutions: the importance of focusing on the policy process as a whole; and the need to include questions of policy-making in recent debates about the consolidation of democracy (Santos, 95). Castro de Santos reveals a central lacuna in recent debates about post-transition democracy. Although

once central to comparative political analysis and Dahl's eighth condition for polyarchy (Dahl, 71), the content and character of the policy process has often been dropped from most recent analyses of the transition to and consolidation of democracy.

In contrast to this glaring omission, Charles Pessanha's work reminds us that scholars conducted systematic empirical and conceptual analysis of the separation of powers before the behavioral revolution. Referring to Karl Lowenstein's *Theory of the Constitution*, Pessanha argues that the the following mechanisms of control and contestation predominate in the relations among branches of government:

- Legislature over Executive

Political influence over execution of functions, Defeat of Legislative Proposals, Commissions of Investigation, Commissions of Inquiry, Administrative Nominations (parliamentary government), Removal of Government by Vote of Confidence (parliamentary government), Removal of Government by Impeachment (presidential government).

- Executive over Legislature

Legislative Powers, Exceptional Powers, Powers to Dissolve Legislature (parliamentary government), Veto Power over Legislature (presidential government).

- Judiciary over Executive

Decide constitutionality of laws, Decide concordance actions/laws, Rule on administrative law, Rule on jurisdiction of administrative law, Rule on conflicts between powers and exercise of functions.

- Judiciary over Legislature

Rule on constitutionality of laws approved by legislature, Rule on conflicts between powers and exercise of functions.

This list of mechanisms of control and contestation extends traditional debates about the separation of powers in political theory by providing a more comprehensive typology of how branches of government interact.

Pessanha also refers to the work of Duverger on the tendency of cooperation between branches of government to occur in terms of a functional separation of power on the one hand and a mutual organic dependency between legislature and executive on the other hand. For Duverger, the formal separation of powers in functional terms (wherein the legislature legislates and the executive implements) is countered by a series of political processes such as: policy debates; inter-branch working groups on legislation; testimony by executive staff in standing legislative committees; the formation of special commissions of inquiry; and the interpolation of ministers and senior executive staff by legislators. Pessanha suggests that Duverger's distinction between functional and organic patterns in executive-legislative provide open-ended categories for empirical research on the separation of powers.

To this researcher, such an open-ended approach to executive-legislative relations appears preferable to most existing comparative measures that tend to

overemphasize executive dominance. For example, the more complex interactions between branches of government emphasized by Pessanha (and most observers of Brazilian and U.S. politics) fail to show up on the scale designed by Shugart and Carey to measure the legislative capacities of presidents. If one measures the legislative capacities of presidents in terms of veto power (total, partial), decree power, legal initiative, and budget process, the significant variety of relations emphasized by observers of presidential-congressional relations in Brazil and the U.S. remain unexplained within the excessively broad category of "legal initiative."

Pessanha also reminds us that the 1988 Constitution differs considerably from previous Brazilian Constitutions in terms of defining the terms of executive-legislative relations. Instead of designing system skewed either to legislature (1946-1964) or executive (1967-1988), the 1988 constitution according to Pessanha "innovates by establishing an equilibrium between three empowered branches of government, plus a powerful Ministério Público..." Pessanha, p. 92). In addition to the variety of relations between branches of government, Pessanha emphasizes the new role of the Federal Accounting Courts (Tribunal de Contas da União, TCU) and the transfer of federal prosecutors as central to the changes ushered in by the 1988 Constitution. Contrary to the General Accounting Office located in the executive branch of the U.S. government, the Federal Accounting Courts (TCU's) in Brazil have been assigned jurisdiction to a permanent commission in Brazilian congress. This permanent commission contains nine members, six nominated by congress, three by president (approved by senate).

Indeed, Pessanha argues that the 1988 Constitution also designed a legislative process that is considerably more open and more complex than past Constitutions. The various types of legislation defined by the 1988 Constitution includes: Constitutional Amendments, Complementary Laws, Ordinary Laws, Laws of Delegation, Provisional Measures, Legislative Decrees, and Resolutions. Openness is an attribute encouraged by the variety of sources for initiating legislation defined by the 1988 Constitution. Proposals of Complementary and Ordinary Law can be made

by individual members or commissions of the Federal Chamber, Senate, or united Congress, president, Supreme Court, Regional Supreme Courts, procurador-geral of the republic, as well as citizens at large. Formal models that place legislature, executive, and judiciary in linear and functional order clearly fail to describe the permeability and flexibility of the Brazilian policy process encouraged by the 1988 Constitution. On the one hand, granting legislative initiative to federal prosecutors responsible to the judiciary suggests a considerable dispersion of power among the branches of the federal government. And the extension of legislative initiative directly to citizens is clearly designed to encourage popular participation in Brazilian political institutions.

Among the legal recourses that appear central in the relations between the Brazilian presidency and other branches of government are the use of provisional measures and requests for urgency in congressional votes. Indeed, the widespread use of provisional measures by presidents has attracted considerable attention from scholars, the bulk of legislation passes through a considerably complex process of dual votes in a bi-cameral system. According to the 1988 Constitution, approval of ordinary and complementary legislation requires *two* floor votes in both the senate and house. And while provisional measures have been used increasingly presidents since the 1988 Constitution, these measures can be overturned by a simple majority in either house.

Pessanha also argues that while the Brazilian legislature over the executive has occurred from 1946-1964 (and that the period of military rule shifted policy making to the executive), inter-branch relations since the transition from military rule require further research. In this respect, Figuereido and Limongi have made a landmark contribution by arguing that the Brazilian presidency has predominated over the legislature: through use constitutional provisions for provisional decree power; because of the overwhelming percentage of laws originating in the executive (in terms of constitutional, ordinary, and complementary legislation); and rules

similar to fast-track provisions that favor executives such as requests for urgent consideration of legislation.

This report now turns to a review of the general trends and debates in scholarship of inter-branch relations in the U.S. to provide comparative referents for the analysis of emergent patterns among the Brazilian executive, legislature, and judiciary.

1. THE COGNITIVE THEORY OF GOVERNMENT AND THE SEPARATION OF POWERS

Contrary to notions about the zero-sum character of government, cognitive models of liberal-pluralist government from the U.S. are consistent with recent findings of empowerment in all three branches of Brazilian government -- executive, legislature, and judiciary. Finding that all three branches of government (as well as state and municipal government) have expanded their prerogatives and political capacities is counter-intuitive only as long as one clings to a conception of inter-branch relations in zero-sum terms. Instead of placing one institution or level of government against the other, cognitive theories of government in the liberal-pluralist tradition shift the focus to their interactions as a whole. In a broader sense, the U.S. tradition of pluralism and pragmatism relate to a tradition of open government that as most recently been articulated by Karl Deutch in *Nerves of Government* (Deutsch, 68). That is to say that the separation of powers doctrine was restated as cognitive theories of government influenced by cognitive theories of organizations. Herbert Simon's *Organizations* remained the central reference to those analyzing the U.S. policy process and government (Simon, 57).

2. 50TH ANNIVERSARY OF THE APSA REPORT AND U.S. REFORMISM

The positive characteristics of the separation of powers presented in this research stands in contrast to a persistent bias of a particularly American liberal-reformism. Indeed, the "Roundtable on Contemporary American Parties: 50th Anniversary Commemoration of the APSA Responsible Parties Report" at the 2000 Annual Meeting of the American Political Science Association suggests that liberal-reformist prescriptions for a more responsible party system still bring strong biases to comparative models of inter-branch relations. Although I have discussed the biases of liberal-reformism behind the responsible party model and their relevance to debates about Brazilian political institutions in previous research reports, a few comments about the debates among U.S. scholars are in order.

The panel commemorating the 50th anniversary of the Committee on Political Parties analyzed a variety of developments during the latter half twentieth century such as television, campaign consulting, and the decline of partisanship among voters and representatives that clearly require a reassessment of the responsible party model. For Maisel & Bibby, election laws and party rules have also changed U.S. politics in terms unexpected by Schattschneider and other political scientists involved in the 1950 document. In particular, the emergence of television and the rise of campaign consultants also challenge the central assumptions about the need for a more responsible party system, given the different level and character of information through political marketing (Magleby, 00). Even the virtues of partisanship are cast in doubt by Pomper, Weiner, and Weisberg, given the recent tendency to cross party lines in congress and among voters. Instead of the greater clarity and simplicity providing a more streamlined policy process envisioned by the Committee on Political Parties in 1950, the increasing complexity and diversity of alliances suggest that the liberal-reformist assumptions erred (Pomper & Weiner, 00; Weisberg, 00).

The place of presidential nominations also draws fire from liberal-reformists. Since the observations about presidential nominations to executive offices by Bryce and Weber, scholars have recognized the importance of the capacity of executives to distribute jobs to supporters for the alternative trajectory of political development in the U.S. (Hoogenboom, 68; Ingraham, 95; Johnson; 94). And while reforms of the U.S. civil service (in the 1910's, 1970's, and 1990's) reduced the number of appointments presidents can make to administrative posts, nominations in presidential systems clearly distinguish these polities from the traditional autonomy of executive staff in parliamentary systems (Schultz & Maranto, 98; Stewart, 89; Skowronek, 82). Recent research suggests that the U.S. President nominates approximately 3,000 individuals to posts of executive administration upon taking office (Michaels, 1997, Dolan, 00).

II. EXECUTIVE AND LEGISLATURE

Recent research on the relation between the U.S. president and other branches of government continue to emphasize the separation of powers and the gradualist tradition of negotiation, compromise, and muddling through that are central to the pluralist tradition of government. Fred Greenstein alludes to the classic liberal notion of the hidden hand to capture the minimalist conception that most U.S. scholars have of their presidency (Greenstein, 1982). Take, for another example, one of the founding empirical and conceptual works on the presidency in the U.S., Richard Neustadt's *Presidential Power*, that described American political institutions as "separated institutions sharing powers," and persuasion, bargaining, reputation, prestige, and compromise as the characteristics responsible for the success or failure of presidents. The persistent appeal of Neustadt's research on the presidency is not only his definition of a typology that explains presidential success in passing legislation (prestige, reputation, persuasion, bargaining, and compromise), but the particularly liberal and pluralist conceptions of open

government and diffusion of power among U.S. political institutions that inform his work.

Recent research on the relations between the U.S. presidency and other branches of government still retain this empirical focus and pluralist framework. From David Mayhew's *Divided We Govern* and Charles Jones *The Separated System*, through comparative analysis of presidencies in a collection by the present author *Presidential Institutions and Democratic Politics*, the separation of powers remains a central theme in contemporary political analysis. Mark Peterson follows this tradition by analyzing the complex patterns of cooperation between the U.S. presidency and congress during the development, debate, and voting of central pieces of legislation. The patterns of cooperation between executive and legislature are seen as the central empirical developments in U.S. politics since the Eisenhower presidency.

The following sections review the central themes in research on relations between the executive and legislature in U.S. politics and explore their relevance for understanding new patterns among Brazilian political institutions.

1. EXECUTIVE AND LEGISLATURE IN U.S. HISTORY

Historical analysis of the executive and legislature in the U.S. are central to the field of political science. Brief review of these historical analyses suggests 1) that in addition to the the separation and diffusion of power designed to keep the federal government minimal, the founding fathers sought to place the U.S. congress at the center of the U.S. polity 2) that congress retained this predominance throughout most of the 19th century 3) that progressive-era reforms and the New Deal of Roosevelt increased significantly the administrative autonomy and power of the presidency and 4) that despite the emergence of an activist supreme court and

reformist presidency, complex patterns of collaboration and conflict characterize the relations between congress and president.

Regarding works that adopt a historical perspective on the evolution of the branches of government, the scholarly landmarks remain those of Palsby's argument about the institutionalization of the U.S. congress (Palsby, 68), the idea that U.S. political development differed from the European experience (Hartz, 55; Lipset, 63; Huntington, 68, cap.2), Henry Brady's analysis of the critical junctures of the U.S. congress in response to broader party and electoral realignments (Brady, 88), and Skowronek's research on the emergence of federal administrative agencies during the late nineteenth century and "The Politics Presidents Make" (Skowronek, 82; Skowronek, 98).

Although the rich variety of analyses by historians and political scientists of the historical evolution of U.S. political institutions are beyond the scope of this report, a few brief comments about the particular historical experiences in presidential-congressional relations are in order. First, scholars emphasize the original intent of the framers of the U.S. constitution to reduce the power of government through the separation and diffusion of powers across the branches of government and states. Indeed, the central characteristic of presidential institutions today - that of separate and direct popular elections for executive and legislature - differ from the view of founding fathers and others that decried the dangers of directly electing the president since the Constituent Congress. Notes Mezey:

They (the founders) believed a system in which the executive was selected by the legislature would result in one of two undesirable situations; either the executive would be manipulated by the legislature, or the executive would attempt to stay in office by corrupting legislators with bribes and other favors." Mezey, "Congress within the U.S. Presidential System," p. 256.

And citing Madison in Federalist Papers no. 37, Mezey continues to emphasize the dispersion of powers and the reduction of terms in congressional office to two years as part of a minimalist conception of government:

The genius of republican liberty seems to demand on one side not only that all powers should be derived from the people but that those entrusted with it should be kept in dependence on the people by a short duration of their appointments; and that even during this short period, the trust should be placed not in a few but in a number of hands. *Ibid.*, p. 257.

The utility of executive power for federalists such as Hamilton was restricted to the continuity and clarity of the presidency in terms of foreign policy and other administrative matters that required continuity and independence from the direct pressures of factions and social anarchy:

An independent executive would be characterized by energy, and an energetic executive would be able to “protect the community against foreign attacks,” provide “steady administration,” and secure “liberty against the enterprises and assaults of ambition, of factions, and of anarchy.” *The Federalist Papers*, p.34.

The rift between Madison and the federalists at the constitutional convention defined a series of pros and cons toward both executive and legislature that remain important until today among political scientists. Charles Jones recently argues that scholars must take the original design of the U.S. Constitution seriously, and that the debates among the founding fathers reveal a series of shared concerns about the virtues of separated powers and contested policy-making processes (Jones, 94; 97).

During the span of time between the debates about executive and legislature among representatives to the Constitutional Convention and the events of the Progressive-Era and New Deal in the twentieth century lies a series of developments during the nineteenth century involving populism, critical elections, civil war and

reconstruction. Meanwhile, the predominant focus on U.S. political institutions remained the legislature. Indeed, consensus among U.S. political historians remains that the power remained in the hands of legislators, and that a series of populist surges produced critical elections, party-electoral realignments, and new periods of consensus about the parameters of federal government policies (Key, 55; Lowi, 78).

Theodore Lowi argues in *The End of Liberalism* that the emergence of central bureaucracies during the late nineteenth century shifted the center of power from the legislature to the executive, and the administrative autonomy of the presidency represented the end of the traditional liberal theory of representative government centered in the congress. And despite the classic contribution of Woodrow Wilson entitled *Congressional Government*, the reality of progressive-era reforms in the U.S. was to shift power away from the legislature (and the political machines of new immigrants) toward the executive and independent administrative agencies (Wilson, 08). Recent historical analysis by scholars such as Stephen Skowronek and Theda Skocpol confirm the importance of the increasing power of the presidency and federal bureaucracies in the late nineteenth and early twentieth century U.S. (Skowronek, 82; Skocpol, 97).

From President Roosevelt's New Deal to 1980, the predominance of the executive stood, for a half century, as the victory of political liberalism over economic liberalism and the major extension of social rights to the popular classes in U.S. history. This shift of power from the congress to the presidency was achieved through a variety of measures that ensured administrative discretion in the executive as well as a series of reforms designed to increase the ability of presidents to pass legislation through the resistance of congress. Indeed, the classic statement on the administrative centralization of the presidency remains the Brownlow Report, commissioned by President Roosevelt in 1938 to modernize the administration of the executive branch of government.

And despite warnings about the emergence of an "Imperial Presidency" during the 1960s, most scholars of U.S. political institutions see congress, not the presidency, as dominant in Washington. The most-cited and recognized contributions on U.S. political institutions emphasize the centrality of the congress (Fiorina, 79; Mayhew, 74). In contrast, most analyses of the U.S. presidency in the post-World War II era conclude that executive leadership in congress remains marginal to the partisan and congressional dynamics of U.S. politics (Edwards, 89), or that understanding the U.S. political system requires focusing on the patterns of collaboration between the two branches of government (Peterson, 90).

The following sections of this report review lines of empirical inquiry and conceptual innovation among U.S. political scientists that offered new perspectives on the relations between presidents and congress.

2. PRESIDENTIAL POPULARITY AND LEGISLATIVE SUCCESS

Perhaps the most important tradition of empirical research on presidential-congressional relations is that which explains presidential success in congress based on general public perception of the president. Since the pathbreaking work of Richard Neustadt, the general public approval of presidential performance as indicated by commercial opinion polls has been seen as critical for presidential success with legislators (Neustadt, 60). Popular presidents avert defections at critical votes, gain political space for bolder proposals, and are more likely to be reelected. Another landmark work is that Mueller's *War, Presidents, and Public Opinion* that provided the first empirical and conceptual analysis of the impact of an unpopular war with Vietnam on presidential popularity and governance. His conclusions (that still provide the framework for analysis today) were: that presidents face linear declines in popularity during their terms and that "unpopular

and unjust wars' and economic downturns exacerbate this tendency of presidential popularity to decline.

Scholars of the American presidency since Mueller have developed more sophisticated models of the relationship between presidential popularity, economic and political trends, and brought the importance of critical events such as election campaigns, speeches, public appearances, domestic and foreign crises, and major policy achievements to the center of the analysis of presidential-congressional relations (MacKuen, 1983; Ostrom and Simon, 1989). Recent analyses have continued to emphasize the increasing complexity of executive-legislative relations by disaggregating both the categories used to measure popular evaluations of presidents and differences among social groups in these perceptions. In this respect, classics on the relation between presidential popularity and presidential influence over other branches of government remain: Brody, 1991; Brace and Hinkley, 1992; Kernell, 1997; King and Ragsdale, 1988; Rivers and Rose, 1985; Simon and Ostrom, 1989.

Since Brody's *Assessing the President*, many scholars have shifted the focus of research from the presidency proper to understand how the media and press coverage determine broader public perceptions of the president. Indeed, the recent presidencies of Reagan, Bush, and Clinton all contributed to a more complex picture of the relationship between presidential popularity and presidential influence in Congress. President Reagan was dubbed the "teflon" president for his capacity to shed critical events and maintain exceptionally high levels of popularity. Once again contrary to the common wisdom that links the conduct of war to executive popularity, President Bush's rapid rise then severe drop in popularity occurred despite the Gulf War against Iraq. Finally, President Clinton has maintained unprecedented high levels of popularity as president despite widespread disapproval of his personal life (Aldrich et al., 1999; Moore, 1999; Schneider, 1998; Berke, 1998).

3. PRESIDENTIAL COATTAILS

Another central theme in research on executive-legislative relations in recent political science is the apparent decline of presidential coattails. Since Weber's observations about the importance of national electoral campaigns for the presidency to negotiate broad alliances with legislators, the extent to which presidents get congressional representatives elected has been a focus of empirical and conceptual analysis. And while Lyn Ragsdale criticized the popular notion of coattails (Ragsdale, 80; Campbell, 93), Gary C. Jacobson places the often reduced electoral influence of the president alongside patterns of collaboration after the election with representatives of the opposition during the periods of divided government that have prevailed in the U.S. in the later half of the twentieth century (Jacobson, 90).

4. PRESIDENTIAL STAFF

Given the reality that presidents without partisan majorities in congress fair as well or better than presidents with majorities in terms of passing legislation, scholars of U.S. political institutions have examines other influences that account for presidential success or failure with congress (Asher & Weisberg, 78). One such factor is presidential staff. The organization, behavior, and implications of human and material resources brought to bear on congress by the president has been a central concern in the analysis of executive-legislative relations in the U.S. The organization, beliefs, partisan and regional origins, and a series of demographic and political characteristics of presidential staff have received the attention of scholars. Perhaps the central concern about staff and U.S. political institutions generally is the tendency of groups of policy experts to emerge across executive and legislature, involving permanent congressional committees, testimony by White House Staff, and lobbies.

5. PRESIDENTIAL VETOES

Another critical dimension of relations between president and congress in the U.S. is the use of vetoes. While the constitutional parameters of presidential vetoes appear set, new practices such as Pocket vetoes -- which occur if Congress has adjourned and the president fails to sign a bill within thirty days -- introduce a more executive centric policy process given that these vetoes are not subject to congressional override. Indeed, congressional concession of line-item veto power to the president has also been central to debates about government spending and fiscal responsibility.

The use of vetoes by Brazilian presidents is another theme of central interest, given the use of vetoes by presidents since the 1988 Constitution. Further research will be needed to clarify the contexts and consequences of veto usage for the relations between congress and the president.

6. THE DECLINE OF AMERICAN PARTIES THESIS

The variety of factors that determine presidential success in the U.S. Congress suggests that past conceptions of clear guidelines for legislation in terms of ideology or party discipline tend to falter as explanations for congressional voting patterns. In this respect, the debate surrounding Martin Wattenberg's thesis about the decline of parties and the rise of candidate-centered politics provides further comparative references for the analysis of executive and legislature in Brazil. For, if presidents no longer push legislation through congress through the traditional mechanisms of party discipline and favors, then other factors such as the influence of media coverage, the impact of lobbies, and the ideological proximity among representatives of opposing parties must be explored to understand the fate of presidential initiatives.

7. CONGRESSIONAL COMMITTEES, EXECUTIVE OFFICIALS, AND POLICY COMMUNITIES

A central theme in the analysis of relations between the presidency and congress in the U.S. is the emergence of policy communities composed of congressional committee members and high level officials from the relevant executive offices. While permanent committees are seen as central to the institutionalization of the U.S. Congress (Polsby, 68), recent research takes on a more critical tone suggesting that lobbyists, senior executive staff, and congressional committees tend to monopolize the policy process and exclude partisan and public influence. Indeed, the thirteen policy-specific appropriation subcommittees hold hearings with extensive appearances by executive staff. The politics involving permanent subcommittees, executive staff, and lobbyists tends to draw the criticism of American political scientists (Ripley and Franklin 1991; Shick, 1995; LeLoup, 1977 Tomkin, 1998) And in an apparent exception to Wattenberg's decline of parties thesis, Cox and McGubbins emphasize the importance of parties in congress, but this time from a critical perspective of legislative cartels involving the committee system, senior executive officials and interest groups that predominate in a series of policy areas.

Explaining legislative reforms and the reorganization of committees is also a central concern among political scientists in other national settings. Scholars have noted that the empirical tendency among existing legislatures is to adopt permanent committees that mirror executive agencies and ministries. Mattson and Strom note:

... most law-making committees have jurisdictions, which parallel to the ministerial organization. It is, thus, possible to talk of correspondence between committees and ministries. In so far as committee jurisdictions are defined by subject matter, they tend to parallel the structure of administrative agencies. (Mattson and Strom, 1995;270)

Olson and Mezey provide an optimistic argument about the impact of this tendency of legislative committees to mirror executive agencies:

When committee systems are organized in such a fashion that each administrative agency has a specific committee that legislates in and oversees its policy area, committees are more likely to become sources of expertise for the legislature and the activities of the bureaucracy are likely to be subjected to more careful scrutiny. (Olson and Mezey, (1991:15)

Hazan concurs, claiming that:

Cross national experience has proven this to be the best working arrangement, especially when a long-standing relationship between the elected representatives and the bureaucracy is established due to congruence of functions.” (1998; 178-179)

Once again difference between comparative analysts and observers of U.S. political institutions appear to differ. While comparative analysts see the rings of interest groups, senior executive staff, and legislative committees as positive because they streamline government and professionalize policy debates, observers of the U.S. fear the reduced role of public opinion and open debate in the face of the same pattern among congressional committees, lobbies, and senior executive staff. Indeed, this argument about the emergence of policy communities has been extended to analyses of political institutions in other countries and the state level in U.S. politics, with research focusing on how executive branch reorganization tends to lead state assemblies to change their committee system. (Hedlund, et.al., 00).

Have similar policy communities (cartels?) emerged around congressional committees in Brazil since the 1988 constitution? A central goal for future research will be to focus on the Congressional Committees in the federal Chamber of Deputies to assess the degree to which Brazilian congressional committees mirror

executive agencies and serve as sites for the emergence of policy communities involving senior executive staff and lobbies.

Permanent Committees in the Brazilian Federal Congress

CAPR, Agriculture
CCJR, Constitution and Justice
CCTIC, Science, Technology and Information
CDCMAM, Consumer, Environment, and Minorities
CDUI, Urban Development and Interior
CECD, Education, Culture, and Sport
CFFC, Financial Monitoring and Control
CFT, Finance and Taxation
CTASP, Labor and Public Administration
CVT, Transportation
CEIC, Economics, Taxation, and Commerce
CSSF, Social Welfare and Family
CREDN, National Defense and Foreign Relations

In addition to the standing committees, special attention must also be brought to the emergence of special parliamentary commissions of inquiry involving federal prosecutors, legislators, and the media. An additional goal for research during the next semester will be the organization and tenure of special parliamentary commissions of inquiry (Comissões Parlamentares de Inquerito, CPI). Future research will focus on their approval by congress, funding levels, and policy concern.

8. ARE LEGISLATURES CONSERVATIVE?

“Legislatures tend to represent all over the world, more conservative and parochial interests than executives, even in democratic politics.” (Robert Packenham, 70; 35)

The great majority of scholarship on political institutions tends to characterize their object of study as indeterminate with regard to their ideological or distributive biases. Themes and debates such as Presidentialism vs. parliamentarism; federalism vs. unitary government; proportional representation or electoral district; the jurisdiction of executive, legislative, and judiciary largely ignore substantive questions about their social impact. One of the few exceptions to this tendency is Robert Packenham and others who studies political development before the round of military interventions in Latin America during the 1960s and 1970s. The epigram above forcefully stated a widely held assumption among analysts of political development that legislatures tended to be conservative.

While most observers of the U.S. see it as more conservative and more averse to foreign policy issues, several recent works about Congress and broader processes of political change have recently emerged. In historical perspective, David Brady argues that the U.S. Congress occasionally votes significant policy changes in response to critical elections and partisan realignment. When critical elections nationalize political issues and create new leadership and new policy agendas, the entrenched system of committees and hierarchy that impedes change can be overcome temporarily. David Mayhew's *Divided We Govern* extends Brady's observation about the tendency of Congress to act during major periods of change through critical elections and partisan realignment to an analysis of executive-legislative relations during periods of minority or divided government. Indeed, by comparing presidents and major pieces of legislation since 1945, Mayhew argues that, contrary to the assertion that presidents facing an opposition majority in Congress produce gridlock, these periods of divided government pass more and more important laws.

That idea that legislatures retained this conservative bias was shared by most empirical observers of political development in the post- World War II era. Classics of comparative analysis such as the series on political development published by Princeton University Press from 1962-1975 and analysts such as Samuel Huntington and Robert Packenham argue that legislatures in developing countries tended to reproduce oligarchy during transition to modernity (Huntington, 68; Packenham, 73). While the conservative character of legislatures reflects a minimal conception of government in the U.S. tradition, the place of legislatures in political development and interventionist states calls for a more careful analysis of legislatures and questions of democratic transition and consolidation.

9. A CONGRESS-CENTERED POLITY: THE U.S. EXPERIENCE

The power of the U.S. congress is the central difference between Brazilian and U.S. political institutions. A long tradition of U.S. political analysis has preferred to focus on the legislature and continues to assert its predominance in terms of the other branches of government. Designed so by the framers of the constitution, the predominance of congress continued through the nineteenth century and emerged in the latter half of the twentieth century despite the increasing independence of administrative and executive agencies. And while recent work in comparative politics tends to describe the power of legislatures in terms of their capacity to fulfill the role of principal in the process of representation through elections and delegation to the executive (described as agent charged with the implementation of law), the empirical work on the U.S. congress focused on a series of characteristics that defined its role and relations with other powers.

Another important difference between comparative political analysis of legislatures and observers of the U.S. congress is their level of analysis. Comparative analysis tend to focus on the legislature as a whole, attempting to describe structural,

organizational, or contextual factors that explain the place of the legislature in the broader political system. In contrast, Michael Mezey recently argues that analysts of legislatures in the U.S. tend to focus and define their research in terms of the behavior of individual legislators, rather than generalize about the institution as a whole, and tend to conduct field research in the district, not in the corridors of political institutions in Washington.

This different level of analysis is significant to the extent that analysts of legislatures in the U.S. tend to focus on the behavior of representatives, emphasizing the structure of incentives at home in their districts and in Washington, both within congress and in relation to the other branches of government. In this respect, until recently the widely accepted model of congress tended to emphasize a "textbook Congress characterized by strong committee system, powerful committee chairs, a rigid adherence to the seniority system, and to other unwritten rules of the legislative game." (Mezey, 87; 243)

Political scientists still see the U.S. system as congress-centered. Richard Fenno argues not only that the U.S. Congress is the primary locus of power in American politics, but also that the primary focus of legislators is not the presidency but the residents and voters of their district. Hence, the empirical and conceptual focus of Fenno is the political behavior of representatives in their district: their travel, speeches, contacts, local offices and organization, and the myriad of contacts that define the reelection chances of representatives every two years in the U.S. Congress.

Another characteristic of empirical analyses of the behavior of U.S. representatives is the predominance of particular revindications in the relation with voters in their district. While observers of Brazilian politics have lamented the persistence of personalism and particularism as patronage, clientelism, Coronelismo, and a series of other patterns at odds with ideal patterns of political representation, observers of the U.S. congress focus on often similar patterns of behavior with less normative

disapproval. For example, Morris Fiorina and Richard Fenno focused on congressional behavior in terms of particular service to constituency through interventions into bureaucratic procedures and preferences for law based on the disbursement of federal funds to their district (Fiorina, 96; Fenno, 74).

Mayhew argues that the congressional-centric character of U.S. political institutions and the district-level focus of representatives has led to excessively local orientations of legislators, conflicting electoral cycles, a decentralized committee system, and weak party leadership that, as a whole produce slow, inefficient, and ineffective public policy making favoring the status quo or at most incremental change. (Sundquist, Mezey, Brady, 88; Fiorina, 96) Echoing the classic work by Lowi on types of policy, Mayhew also argued that the U.S. congress tended to pass laws with specific distributive benefits and general costs (hence “universalism”). Legislators therefore tended to bring specific benefits to their district through laws such as entitlements and formula grants and logrolling arrangements to approve legislation that tended to produce near consensus.

Arnold builds on this "district-level" focus, explaining moments of relative independence of legislators in terms of their congressional voting patterns due to the lower salience of particular issues among constituents. From this perspective, if voters in a representative's district fail to express interest in opinion polls and other means of communication, then the representative will tend to follow party, factional, ideological, or presidential suggestion more directly. This 'home style' that is characteristic of U.S. representatives relates to charges of their greater provincialism, both in terms of national issues and matters of foreign policy (Fiorina 1984).

Bond and Fleisher extend this consensus that the primary concern of representatives is the voters in their district to the relations between congress and the president. For Bond and Fleisher, if individuals are elected to Congress whose local interest and preferences coincide with the president's, then the president will enjoy greater

success. If, on the other hand, most members of Congress have preferences different from the President's, then he will suffer more defeats, and no amount of bargaining and persuasion can do much to improve his success. Indeed, popular opposition to congressional dominance in the U.S. remains strong. Recent referenda within states have moved to impose term limits on legislative service to reduce the incentives and preoccupation of representatives with reelection.

III. EXECUTIVE AND JUDICIARY

For political scientists such as Marcus Faro de Castro, Maria Tereza Sadek, Luiz Werneck Vianna, and Rogerio Bastos Arantes, the Brazilian judiciary has become a political actor of central importance since the transition from military rule and the 1988 Constitution. Luiz Werneck Vianna et.al. argue that politics in Brazil after the 1988 Constitution meant primarily party-electoral politics. However, after an initial period during the organization or, in Rokkan and Lipset's classic phrase, freezing of social and electoral cleavages into a party system, the judiciary became increasingly the focus of governors, parties, labor unions, interest groups, and citizens in general. Furthermore, given the domestic impact of economic liberalization since 1990, the judiciary has increasingly become the preferred mode of political access by those seeking to seek redress or justice in terms of universal norms and values.

The 1988 Constitution provided a new framework for the *judicialization* of politics and society, and a particular trajectory of conflict and cooperation between the branches and levels of Brazilian government. Two innovations in the 1988 Constitution merit attention in this respect; the redefinition of the *Ministério Público* (public prosecutor) and the creation of *Juizados Especiais* on the state and local level designed to facilitate popular access to the judiciary.

Regarding the *Ministério Público*, the 1988 Constitution changed the traditional relation between branches of government by subordinating federal prosecutors to

the legislature and creating a new legal office designed to protect the interests of the executive (Advocacia Geral da União). In comparative perspective, the delegation of federal prosecuting powers to the legislature is a rare event of constitutional engineering. As Vianna notes, "The new institutional design of the Federal Prosecutor by the 1988 Constitution reveals the intent by its framers to democratically reorder Brazilian society." 83. Unlike the delegation of federal prosecution to the executive in other countries and in Brazilian history, the 1988 Constitution breaks with this executive-centric tradition in the attempt to disperse power and promote contestation among the branches of government.

Luiz Werneck Vianna also argues that the particular characteristic of the *judicialization* of politics since the 1988 Constitution is the definition of a community of legal interpreters empowered by the constitution to pursue charges of unconstitutionality. Not only the president, congress, and senate, but governors, federal prosecutors, the federal council of Brazilian lawyers, political parties, labor unions, or national-based interest groups all have the right to challenge the constitutionality of laws. Both Marcus Faro de Castro and Ariosto Teixeira studied the use of constitutional appeals following the 1988 Constitution as an important new development in Brazilian democracy.

For Vianna, the legislative activism of the executive is epitomized by the use of provisional measures, especially concerning matters of political economy. However, instead of the legislature formally or informally delegating its powers to the executive, the policy process that produces provisional measures reflects the collaboration between parties and branches of government that is typical of "coalition government" within Brazilian presidentialism. Citing recent work by both Amorim and Taffner as well as Figueiredo and Limongi, the political dynamic behind provisional decree measures reveals unexpected patterns of cooperation and collaboration between political parties and representatives in the legislature, and ministers and presidential staff in the executive.

Given the collaboration between legislature and executive in Brazilian politics, the judiciary has been described by scholars as an important alternative means for the articulation and representation of interests, minority and otherwise. Indeed, comparative analyses suggest similar trends in other polities.

Regarding empirical analysis, several research projects have identified important new trends in the *judicialization* of Brazilian politics since the 1988 Constitution. During the years immediately following the 1988 Constitution, ADIMS were used primarily by governors and state prosecutors to contest designs by state assemblies for state constitutions. This initial period of contestation that centered on the design of political institutions as followed by the increased use of constitutional challenges by opposition political parties, labor unions, and others contesting a variety of policy problems. Vianna argues that the broader process of judicialization in Brazil emerged in part because of the political leadership of governors and state prosecutors that first used constitutional challenges and paved the way for other actors such as political parties, labor unions, and social organizations.

Vianna et.al. argues these developments centered in the Brazilian judiciary have created a new political arena that differs from the traditional circuit of political representation involving civil society, political parties, majority rule, and popular sovereignty in the legislature. In this new alternative arena of politics centered in the Brazilian judiciary new patterns of direct appeals by individuals, social groups, and even political parties and representatives present a new dynamic based on legal language, universal and abstract norms, and material rights that surround judicial proceedings. Indeed, Vianna et.al. argue that magistrates and federal prosecutors now compose a new class of intelligentsia, intellectual-political leadership that has become widely recognized in Brazilian politics as an alternative recourse in politics.

And while many observers of this new role of magistrates and federal prosecutors suggest that new legal theory has opened a new avenue for popular participation in politics, the empirical analysis of judicialization conducted by Vianna et.al. suggests

that the political elite and organized sectors of society have been the primary innovators in the use of Adins and other measures created by the 1988 Constitution. Regarding the participatory perspective, Cittadino argues that "it is, therefore, via political-judicial participation that the link between basic rights and participatory democracy occurs."(Cittadino, 99)

Vianna et.al. focus more on the emergent use of direct appeals of unconstitutionality (ações diretas de inconstitucionalidade, Adins) among branches of government since the 1988 constitution. Specifically, the judicialization of politics in Brazil has emerged less from broad patterns of popular participation and more from disputes between governors and state assemblies during the writing of state constitutions, and later organized interest groups seeking redress. Indeed, Vianna et.al. emphasize the impact of the traditionally vertical character of Brazilian federalism that produced the first surge of Adins used by state governors contesting state constitutional assembly decisions, especially concerning tax distributions. The second surge of Adins use has been associated with the new place of federal prosecutors since the 1988 Constitution. Instead of the traditional place of prosecutors under the Ministry of Justice, the framers of the 1988 Constitution shifted public prosecutors office to the judiciary.

In sum, contrary to theories of participatory democracy and new legal theory that emphasize direct transformations of citizens through judicial proceedings, the judicialization of Brazilian politics appears to have emerged from the contestation among branches and levels of government, that is to say within Brazilian political institutions. The central argument to be pursued in this respect is that relations between the executive and judiciary in Brazil since the 1988 Constitution reflect an increasing separation of powers and increasing contestation between the two branches of government.

IV. DATABASE DEVELOPMENT

This initial period of research also began the development of a database on inter-branch spending trends in the federal Brazilian government. After reviewing a variety of sources that provide data on government spending such as the IBGE and other government sources, this research decided to focus on data provided online by the Sistema Integrada de Análise Financeira (SIAFI) organized by the Divisão de Informações Contábeis of the Secretaria do Tesouro Nacional (Ministério da Fazenda). The data provided by SIAFI are preferable for the purposes of this analysis because they separate federal government spending according to the branches of government (executive, legislative, and judiciary) and the relevant subdivisions within these branches.

Unfortunately, it is not possible to simply download data from the SIAFI (Demonstração de Execução das Despesas por Unidade Orçamentaria) into *Word* or *Excel* formats on disk. Instead, a much more laborious process is required: first scanning the image; then correcting by hand errors in the scanned file by comparing the original printed copy and electronic file produced by scanner; then finally organizing the data into similar categories across each year. In this respect, considerably less progress in organizing the database was achieved during this first semester of research than originally proposed and further work will be required to incorporate the data from fiscal years 1995 and 1996. Furthermore, the SIAFI data from 1995 and 1996 are reported in images of a quality too murky and poor to scan. Therefore, require additional efforts will be required to transcribe the most relevant spending categories from these earlier years, and expand the data base from the files presented herein for fiscal years 1997, 1998 and 1999.

V. CONCLUSION

This report presents the initial results of a longer-term research project on the presidency and the separation of powers in Brazilian federal government. The first conclusion from review of recent analyses of Brazilian, U.S., and comparative political institutions is that a gap has emerged between, on the one hand, new processes of empowerment found by scholars in all three branches of Brazilian government since the 1988 Constitution and, on the other hand, dated or wrong conceptions about the need to concentrate power to improve governance and perfect policy-making. Finding empirical evidence of empowerment in all three branches of government in Brazil remains an apparent paradox only if one retains erroneous assumptions about the zero-sum character of relations between the executive, legislature, and judiciary. On the contrary, this research develops an alternative perspective based on the pluralist and cognitive traditions of government among U.S. scholars that see inter-branch conflict and contestation as essential parts of an open, ongoing, and contested policy-process.

The second conclusion from this review is that further comparative analysis of the Brazilian and U.S. experiences with the separation of powers is needed. Specifically, the vast bibliography on congressional-presidential relations in the U.S. provide a series of references of central importance, given that the similarity of political institutions in the two countries present a series of opportunities for the design of controlled comparisons and most-similar cases. While most comparative analyses focus primarily on historical experiences from Northwest Europe, the type of in-depth comparison between U.S. and Brazilian politics begun in this research may well avert what Guillermo O'Donnell has called "illusions about democratic consolidation" (O'Donnell, 98). This research argues that the tradition of in-depth, open-ended analysis of relations between branches of government in the U.S. provides more relevant, more focused, more open-ended, and more appropriate methodologies for analysis of Brazilian inter-branch politics than the euro-centric

and idealized benchmarks used to evaluate Brazilian democracy by most comparative political analysis.

Review of research on congressional-executive relations in the U.S. suggests that the following foci appear most promising for further analysis of relations between the presidency and congress in Brazil: historical analyses of executive-legislative relations; analyses of the impact of presidential popularity on legislative success; analyses of the decline of parties in the age of television and the rise of complex coalition behavior; analyses of the professionalization of presidential staff; studies of the variety and context of executive vetoes, research on whether exclusive policy communities have emerged in Brazil involving legislative committees, executive branch staff, and interest group lobbies. The initial review of research traditions on U.S. political institutions presented herein provides an overview of theories, concepts, and research methods developed in these analyses and a brief discussion of their relevance for empirical research into Brazilian politics.

The third conclusion from this research is to emphasize the implications of the recent separation of powers among Brazilian political institutions for broader questions of governance and democracy. In this respect, this research criticizes the formal, idealized, and often euro-centric categories of comparative analysis and suggests the value of the more in-depth research on U.S. political institutions for analyses of Brazilian democracy. The liberal-pluralist tradition in U.S. political analysis remits to origins in the constitutional design of the U.S., has been articulated in cognitive theories of government that see contestation and conflict between branches as part of a continuing process of open government; and provide recent examples of innovative analysis that emphasize the effectiveness of divided government and the “separationist” character of the U.S. system. These perspectives share an alternative conception of governance and political institutions in the U.S.; one based on the accumulated weight of generations of empirical and conceptual research on U.S. politics that also rejected the formal euro-centric categories of comparative political analysis. In this respect, research on Brazilian political

institutions is favored not only by the similarity of U.S. and Brazilian presidential, federal, and party-electoral politics, but by this tradition of political science in the U.S. that remits to classic theories of the separation of powers, incorporates contemporary empirical analyses of the policy process, and restates pluralist theories of open and contested government.

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