Legislative Oversight: Interests and Institutions in the United States and Argentina

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‘The prevalence of charges of corruption and of actual corruption in American politics is not of itself proof of our inferiority in political morality to the other great nations of the world.’ (Brooks 1909: 21)

‘The age of Walpole was marked by corruption greater and apparently more irremediable than any which we have yet known in American political life. Who could have predicted that… the administrative side of British government, instead of becoming hopelessly incapable under the increasing strain, would have become the purest and most nearly perfect mechanism thus far known in political history?’ (Howard 1899: 240)

Introduction

The concept of oversight is based upon the notion that, while government is necessary for democracy to prosper in an orderly fashion, its institutions and the people who staff them must be accountable for their actions. Doing otherwise invites people in official positions to abuse their discretionary power in order to pursue particular interests rather than the public good. The United States was the first democracy to espouse this concept, by creating checks and balances among the executive, legislative, and judicial branches of government to keep public officials in line. Yet, an effective oversight system did not develop overnight just because the United States Constitution called for it. Such systems have
still failed to fully develop in most Latin American countries, in spite of their adoption of United States-style presidential governments.

Our goal in this chapter is to explain how similar institutions in the 19th century ended up producing widely different results in terms of oversight enforcement by the end of the 20th century. Drawing from North (1990: 101), our research question is ‘What happens when a common set of rules is imposed on two different societies?’ Thus, our study is one in institutional development.

We take as our case studies the United States and Argentina. At the turn of the 20th century these two nations shared three notable features. They had similar constitutional arrangements, were among the fastest growing economies in the developing world, and their polities were very corrupt. While we do not claim a direct link between corruption and development, during the 20th century the two countries diverged both economically and in terms of government accountability. To this day Argentina and many other Latin American countries are still plagued with corruption and are troubled by a pernicious form of democracy in which presidents are seldom held to constitutional limits on their power. In the United States, on the contrary, people have come to expect public officials to act honestly and government institutions to prosecute and punish those who engage in unlawful behavior.

However, it was not always so in the United States. Indeed, the situation must have seemed as hopeless to the United States citizens of the late 1800s, or the British at the time of Walpole, as it does to Latin Americans today. The United States society at the end of the 19th century was riddled with corruption, political fraud, and business collusion. Big business trampled on workers as local and federal governments, far from able to control the problem, were implicated themselves. The spoils system had become a source of inefficiency and corruption and had led to the assassination of President Garfield; emerging giant corporations were seen as eating away at democracy, in part by buying politicians; antidemocratic and fraud-plagued machine governments took hold of our biggest cities; and elections, the very base of democracy, were plagued with fraud.

As the quotations above reminds us, there were large doubts about whether remedy was possible, given beliefs in the cultural roots of the problem. Beginning around the turn of the 20th century, however, change did occur. In this chapter we focus on three important changes. First, the adoption of the secret (Australian) ballot and direct primaries had great impacts in limiting electoral
fraud and winning the legislators’ independence from machines and parties. Second, civil service reforms helped end the rotten spoils system and professionalize the bureaucracy. Third, the legislature’s own professionalization led them to create and control a budget and accounting office to monitor and verify the workings of government services.

We argue in this chapter that these specific changes as the overall move to a more transparent government came about, over time, as a result of the conjunction of several factors. First, the United States citizens began screaming from the ballot boxes for social and economic change. The Populist and Progressive movements were expressions of discontents of multiple societal groups with regard to the corrupt political machines and corporations that had purportedly stolen our economic liberalism and political democracy (Hofstadter 1955: 5). As a result, third parties gained new heights and traditional parties moved to adapt the movements’ reformist platforms. Further, the legislature gained greater independence from the executive, as a result of Johnson’s impeachment and frequent situations of divided government. The political competition led to a number of significant institutional changes—upheld by the courts—which collectively helped set the course for transparent, and thus clean, government. In addition, we follow Mayhew (1974) and Fiorina (1977, 1989) in arguing that legislators independence from their parties (which are the result of the single-member district combined with primaries) motivated them to professionalize their workplace. Among other changes, this instigated their interest in creating a budget and accounting office controlled by the legislature.

Unfortunately, the democratic process has hardly shone through in Latin America. As a result, even well-intentioned reforms have been hindered or sullied. For example, during the 1990s, the wave of market reforms that rolled across Latin America succeeded in addressing unprecedented economic crises, but democracy and the economic gains were often undercut by blatant violations of the legal process and corruption, even at the highest level of government. With a focus on Argentina, we argue that the lack of reform has resulted from the lack of independence among the three branches of government, as well as the continual interruptions of the democratic process. Further, the short legislative careers and strong party system worked against the professionalization of the legislature.

Still, the successful reform process in the United States leads us to conclude that reform is also possible in the Latin American
societies. In light of the dramatic investigative popular-press books about corruption in Argentina (Verbitsky 1991, 1993), Chile (Matus 1999), and Mexico (Gomez 1996) concomitant with impeachments or resignations of presidents in Brazil, Venezuela, Ecuador, and Peru on corruption charges, we may well be witnessing the inauguration of their "age of reform".1

The chapter is organized in the following manner. In the second section we define oversight and present our theoretical argument. We focus on the degree to which the legislative branch has developed the technocratic institutions necessary for ensuring the financial and administrative accountability of the presidency and executive-controlled bureaucratic agencies. Our analysis will include, but will not be limited to, corrupt practices of the executive. In the analysis we will also discuss the judiciary, which can play a crucial role in limiting or allowing corruption or reigning in executive abuses.

The third section explores the development of oversight institutions in the United States. Keeping in mind the strong public demand for reform, to which the assassination of President Garfield and the muckraking press were important contributors, we first discuss the motivations that have led the United States legislators to develop the institutions that have aided their oversight role. There we look into the United States history to explore the electoral changes and frequent experiences of divided government that helped establish the legislators’ independence from party bosses and the legislature’s independence from the executive branch. We then argue that the conjunction of these and some contextual factors aided the development of the civil service reforms and the Congressional Budget Office, two of the many innovations that have played important roles in ending widespread political corruption in the United States.

In the fourth section, we turn to the Argentine experience. Our focus there is on the failed attempts to develop oversight of the budget process and an explanation about why the Argentine Congress has been much less effective than its United States counterpart. Our argument is based on the infrequent control of the Congress by the opposition, the economic crises that have reinforced presidential control, and the frequent military governments that suspended any attempts by the legislators to professionalize their institution and develop effective oversight mechanisms. In

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1 This term comes from Hofstadter (1955). We discuss the resignation of Argentine President de la Rúa below.
the concluding section, however, we note that aided by the long retreat of the militaries to their barracks, the legislatures in Argentina and other Latin American countries have begun to take much more active political roles than in times past. In Argentina this has led to what appears on paper as an impressive set of oversight institutions. If given enough time, these institutions could prove to be the first important steps on their road to reform.

**Oversight and a Theory of Reform**

This chapter was not spurred by an interest in corruption per se, but by the issue of ‘delegative democracy’ described by O'Donnell (1994). In that well-known paper, O'Donnell argues that Latin American presidents operate with general impunity, seldom slowed by the constitutional stipulations of legislative procedures. While others argue that the legislatures are not supine, it is clear that the Latin American legislatures frequently fail to curtail executive excesses (Cox and Morgenstern 2001).

Oversight is the monitoring and control of one person or institution (generally termed the agent) by another (the principal), such that the agent acts in the principal’s interest. Agency slack implies the ability of the agent to pursue his or her own interests. This slack may or may not be illegal. Only when it crosses a clear legal line is the agency slack termed corruption. Oversight, therefore, encompasses, but is not limited to, corruption. As such, effective oversight implies the principal’s ability to both verify actions and sanction wrongdoers or correct an agent’s objectionable decisions. As noted earlier, in an effort to understand the feasibility of effective oversight in Latin America, we focus primarily (but not exclusively) on legislative control of the executive branch in the United States and Argentina.

The road to reform began in the United States in the latter half of the 19th century with public demands for restraining executive abuse. These demands were (eventually) met by legislators who had personal interests in responding to constituents as opposed to the executive. The United States legislators also have had a long period of uninterrupted democracy to develop and adapt institutions, such as the Civil Service, the Government Accounting Office and the Congressional Budget Office. Laws such as the Freedom of Information Act have also allowed legislators to get a handle on the monstrous and changing federal government. In contrast,
Legislative Oversight

Argentine legislators have had relatively short periods of democracy in which to work and have had limited levels of expertise as a result of their short congressional careers. This, combined with ties to the president or party leaders that are generally stronger than to constituents, has limited the legislators’ interests in developing effective oversight institutions.

Thus, our thesis in this chapter is that the particular conjunction of factors that led the United States legislators to develop their own capacity to fulfil their oversight role has not yet come together in Argentina, and as a result, oversight has been rather undeveloped and ineffective in that country. Specifically, we argue that the development of legislative oversight of the executive requires legislators who are motivated by

a. a public outcry for reform (which generally implies the existence of a free and independent press) and
b. career or other interests in confronting, rather than supporting, the executive.

It may also be advanced, as we explain below, by legislators who are relatively independent of their party leaders.

In order to pursue their interests, the legislators require means, which are a function of:

a. a high level of professionalization of the legislature,
b. a long-lived democracy to continue developing the institutions for vigilance among which an independent judiciary is paramount, and
c. sufficient constitutional authority to pursue their interests.

Admittedly, this is an inductive theory based on the United States’ relatively successful experience in creating a functioning system of checks and balances. However, since our interest concentrates in presidential models of oversight as found in the United States and throughout Latin America, we think that our comparison is meaningful and can shed light on the divergence of institutional development of other countries sharing similar features.

The means and motive are not independent of one another—in particular, if the legislators have a strong interest in conducting oversight, they are likely to develop (or at least attempt to develop) the tools necessary to undertake the task. Our primary argument, then, is that while the majority of Argentine legislators have generally been beholden to their president and lacked the other incentives that could have led them to create effective oversight mechanisms, the majority of the United States
legislators have often been opponents of the president and have seen benefits for promoting reform (or anti-executive) policies.

Leaving aside public demands for vigilance (which, as we mentioned above, have been present in both countries), interests in oversight first require that the legislature take an opposition stance. The earliest institutionalist, James Madison, saw the necessity of having competing branches of government to prevent the corruption of power. He therefore proposed strong motivations for each side to keep watch over their rivals. To this end, the constitution that Madison and the other United States founders created provided for legislative houses with members elected\(^2\) from different constituencies and at different times, and theoretically, the executive was to be relatively uninvolved in legislative elections. Partisan politics, however, can threaten the barrier between the houses and branches. Following this logic, effective oversight is more likely to develop where the legislative majority opposes the president.

Aside from the inter-branch issues, there seems a reasonable case for the proposition that legislators will be more collectively interested in oversight when they are relatively independent of their party leaders.\(^3\) Where rank-and-file legislators are sycophants, the burden for pursing policy initiatives, and hence oversight, falls to the party leaders. A leader-led model is plausible theoretically and would probably be effective in exposing some crimes or abuses. Still, for several reasons it seems less likely to lead to a comprehensive and institutionalized oversight system. First, though opposition leaders can certainly gain from exposing government excesses, they may wish to avoid institutionalized mechanisms of oversight that could hinder their own future government. As a result, oversight processes might be more political than technocratic.

Second, party leaders may oppose creating technocratic oversight institutions in order to retain control. If oversight is conducted by technocratic institutions, by definition the party leaders must cede power to the technocrats. Many strong leaders will surely oppose such a dispersion of their powers. Thus, while strong party leaders can use oversight to gain advantage over current

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\(^2\) Senators were originally elected indirectly, through the state legislatures.

\(^3\) Collective action problems could come into play, but the potential payoffs to the political entrepreneur who wrote the legislation or organized the legislators should override these concerns.
governors, they might resist implementing an impartial and comprehensive system.

For similar reasons leaders of strong parties may also resist developing the legislature into a professionalized organization, preferring to use the party that they control to undertake their political operations. But where legislators are interested in re-election and relatively independent of the executive and their party leaders, Mayhew's and Fiorina's analyses suggests that legislators will be motivated to professionalize their organization. Professionalization implies a level of specialization and expertise that by itself should aid the legislature in understanding, reviewing, and investigate the executive branch. If there were also a demand from constituents that the legislators rein in executive abuses, the re-election—seekers should direct this professionalization process towards institutions of oversight.

The other aspects of the legislature's capacity to develop effective oversight are based on the constitution and time. While all Latin American constitutions are modeled on the United States system, many grant their presidents powers—such as the line item veto, decree and urgency powers, and limitations on the legislature's ability to modify the budget—that upset the balance prescribed by the founders of the United States democracy. While the Latin American constitutions do not prescribe oversight per se, centralizing power in the executive can circumscribe legislative attempts to increase vigilance.

Finally, a long period of uninterrupted democracy is unquestionably crucial to oversight. Time aids the development of a free press, which is necessary to help generate and maintain public demands for clean and responsive government. A significant period of time is also needed to develop the complex accounting and information-sifting institutions. These control mechanisms then require constant tinkering to close different loopholes and deal with new government issues and agencies. To do so requires a professionalized legislature, the development of which is also a slow process. Lastly, it takes time to beat back the entrenched interests that resist oversight of their actions and instill a culture in which politicians act as if their abuses will be exposed.

The next section discusses how this conjunction of factors has aided the United States in developing its oversight institutions. This is contrasted, in the subsequent section, with the Argentine experience.
Developing Oversight in the United States

The theory that we presented suggests that in addition to a long uninterrupted democracy, developing legislative oversight of the executive and limiting government corruption has required properly motivated legislators who are relatively independent of both their parties and the president, along with public pressures for reforms. The public pressures, as mentioned above, grew to a crescendo after Garfield’s assassination. Citing a 1904 article, Heidenheimer (1997) explains that political virtue became a great value for political challengers. Further, ‘the half million of individually elected local and state politicians...can...enhance both their personal reputation and the public interest by calling for or expanding investigations (576).’

The legislators’ independence from the party bosses, as well as increased separation of the legislature from the executive, were the result of two institutional factors and one landmark event. The event was the impeachment of President Johnson in 1868, which was caused by what legislators saw as an attempt by the President to usurp power. Though Johnson narrowly escaped conviction, the attempt returned the Congress to ‘political supremacy’ (Van Riper 1958: 67). Illustrative of this new position, Van Riper notes that the Congress did not repeal the law that was the center of the impeachment quagmire, the Tenure of Office Act,4 until 1887.

Though the impeachment helped establish the legislature’s potential, institutional oversight mechanisms required that legislators gain independence from their bosses and the executive. These breaks were assured due to frequent divided government and electoral reforms, both of which were inaugurated at the end of the 19th century.

Until 1875, the United States federal government (as well as many big city governments) were frequently under the control of single parties.5 Not only were a majority of legislators and the president of the same party, the legislators were under the direct control of the bosses and leaders that controlled the nominations. This helped generate machine politics, irresponsible government,

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4 The law forbade the president from removing appointees without congressional approval.
5 From 1800 to 1834 a single party generally held the presidency and dominated the legislature. Divided government was then common until 1860, until the Republicans gained and held unified power for 14 years.
and corruption. Writing of his own times, Cleveland rants against political bosses who controlled elections and avoided responsibility for their actions. He scowls that after elections, voters’:

slumbers have been disturbed the odor of stink-bombs and the coarse gossip of scandal-mongers, the insidious methods of a hungry and disappointed clientele of the ‘organization’ through which bosses work to weaken the confidence of the people in the many who has had the courage to take a stand against the bosses. (Cleveland 1919: 249)

Others concur about the pernicious effect of unified party control. Discussing the United States states and city governments in the United States, Benson (1978: 169) argues that ‘most electoral fraud occurs in areas of one party dominance’. These pernicious effects have been countered in the post-civil war period by the frequent divided government (Figure 5.1).

In spite of the evident pressures and motivations, the changes have taken many years to implement, and new loopholes are continually dealt with. While the secret ballot was introduced in the 1880s, the GAO was not founded until 1921, other important reforms took effect much after the ‘age of reform’. The Administrative Reform Act in 1946 forced agencies to announce their consideration of issues with enough advance warning to allow the legislature and other interested parties to respond, and the Freedom of Information Act (first passed in 1966) has allowed the public, the prosecutors, and the Congress to access information on government dealings. Further, the office of the independent counsel, created in 1973, gave teeth to the investigations. Still today we

![Graph showing divided government in the United States, 1875–2000](http://clerk.house.gov/histHigh/Congressional_History/partyDiv.php)
are witnessing fights about how to fix corrupting influences of campaign finance and issues of executive privilege. Overall, however, the United States is recognized as relatively clean government (see, for example, Kaufmann, Kraay and Zoido-Lobatón 2002), and the United States Congress’ role in oversight of the executive is unsurpassed.

Corruption Reform 1: Electoral Reforms

As noted above, machine politics were an important source of corruption in the United States government. Not unrelated to the dirty electoral processes, the ties between the legislators, the bosses, and the executive limited the development of technocratic oversight mechanisms. It is no coincidence that the first United States advocate for the Australian ballot—a single ballot printed by the government and listing all candidates—was a member of the Civil Service Reform Association (Evans 1917: 18). Thus, by itself the legislators’ winning of their independence from their parties aided later attempts at developing oversight. The legislators’ independence has meant that at least some elements of the executive’s party will join the opposition in support of reforms. It is therefore important to consider the electoral reforms as a contributor to both the cleaning of government and the development of future oversight mechanisms. The electoral reforms were largely accomplished at the state level, and thus their source falls somewhat outside of our general theory. Still, the process shows how two of our variables, time and the courts, were important to the development of cleaner government.

Cain, Ferejohn, and Fiorina (1987) argue that the source of the United States legislators’ independence from their parties, their ‘personal vote,’ has been the single member district electoral system, combined with presidentialism. The legislators, however, have not always been such independent operators. Part of this independence has been owed to the nominating system, in which candidates collect signatures and pay a relatively small sum to register their name on primary ballots. Earlier in the United States history candidates were named in backroom deals, leaving candidates beholden to party bosses. Thus, key to the development of legislative independence was the weakening of boss rule.

To put the situation briefly: In place of the people controlling their service organization—the government—we have had ‘boss rule’. Utilizing the lack of popular appreciation of the essential features of an effective mechanism of popular control and taking advantage of the absence of respon-
sible leadership, the designing few, who look upon government as an institution for the grinding of their own grist, have so operated the electoral system that there should be no course open to electors except to elect men picked out for them by the ‘boss’... The power of the boss has been developed through his ability to build and operate a machine that converts the political campaign and the election into a marionette show. (Cleveland 1919: 248–249)

Thus, the reforms that ensured fair elections and an end of negotiated outcomes or imposed candidates were not only a direct step towards cleaning up government, they had an indirect effect by counteracting political machines. Further, since politicians unaffiliated with the machines could now participate, there was a growing chance that anti-machine politicians could ride a reformist platform to victory.

The reformers pushing the electoral reforms had two primary goals, only the first of which was arguably accomplished (and only some credit is owed to this change). The successful goal was to diminish political machines’ control over candidates and thereby legislatures. Among the tools available that aided the machines in controlling elections were the caucus (as opposed to an open primary) and the less-than-secret ballot. Before the Australian ballot was adopted it was common for parties to print their own ballots, often on brightly colored paper, so as to distinguish themselves from other parties. This, however, compromised the secrecy of the vote (see Evans 1917). By simply imposing white paper ballots, reformers hindered ward leaders’ ability to verify who voters were choosing.6 By itself this did not end the continual vote buying or other abuses such as the falsification of ballots or the rolling together of numerous ballots, thus leading Harris (1934) to conclude that elections were simply shows without public accountability. It was, however, a first important step towards a clean electoral process.

Perhaps the machines were more severely wounded by the cleaning up of the primary system, which greatly limited their ability to name candidates. Prior to the reforms, the primary elections had not been governed under the same laws as general elections.

6 Opponents, alternatively, argued that bosses would then have to pay off only the few ballot judges instead of multiple voters—thus secrecy would be an impediment to an end of corruption. Their argument is summarized by a quote in a parliamentary debate record: ‘Nothing was supposed to prevent misconduct and robbery at night so effectually as gas lamps’ (Lord Claud Hamilton, in Hansard Parliamentary Debates CXCIV, 1505, cited in Evans 1917: 21–22 n. 4).
Bribery of voters in an elections, although subject to severe penalties under the law, did not constitute an offense in a primary or caucus and was not punishable. Voters might be bought and sold with no pretense of concealment, for there was no remedy or penalty at law. Another device was the manipulation of the count of the votes. Where the issue was determined by a mass meeting of voters, an autocratic chairman might easily decide the controversy, and from his ruling there was no opportunity for appeal. There was no guaranty that a vote by ballot would be permitted; or if sufficient progress had been made to provide for a written or printed ballot, then the temptation to trickery and fraud was found irresistible. The ballot-box might be stuffed, the count of the ballots might be falsified, and any one of a hundred ingenious devices might be employed to insure the result desired. (Merriam and Overacker 1928: 6)

In response to these problems, almost every state enacted primary legislation by 1917, though many states did not mandate primaries for all elections (Merriam and Overacker: 61). This struck directly at the local bosses, since they could no longer monopolize the nominating process. After the change, potential candidates did not have to rely on backroom dealings to win a spot on the ballot; they merely had to collect signatures and pay a small registration fee.\(^7\)

The second goal for the reformers, about which it would be hard to credit them with much success, was to reduce the influence of money in elections. The idea here was that by transferring the cost of printing ballots from the candidates to the states, the reform was expected to reduce the cost of campaigns and, as a result, the level of corruption. This reduced cost was also supposed to help outsider candidates, which would further dilute the machines’ power. The reforms may have eliminated the printing costs, but ambitious politicians—and donors seeking influence—have continued to find new needs for money.

The success of these reforms shows the importance of time and the courts, since the movement took about 40 years to accomplish the electoral reforms and required the courts to uphold the new laws. In the United States, the Australian ballot was first proposed in the early 1880s in a series of pamphlets and magazine articles.\(^8\) The first votes on the reform were defeated (in 1885 and

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\(^7\) See Merriam and Overacker (1928: 77) about the fees.

\(^8\) Harris (1934) and Evans (1919) both discuss how Australian ballot was adopted in Australia, United Kingdom, and then the United States (mostly between 1887 and 1900) after long debates and many political obstacles. It was first advocated in Australia in 1851. Its advocate became a member of the South Australia government in 1857 and the proposal was adapted there and later in other provinces.
1887 in Michigan), but by the late 1880s, however, reformist leagues pushed several states to adopt it. By 1900 most states had passed similar legislation, though it was not universal until much later. It took another 20 years, however, for most states to regulate primaries, and even then many states did not mandate primaries for all elections (Merriam and Overacker 1928: 61).

The reforms were difficult to implement and sustain, since they sought to beat back entrenched and strong political interests. A New York Times editorial noted that: ‘the opposition of the Democratic members of the legislature to the Saxton bill [which introduced the Australian Ballot in New York]...were for the most part small city politicians who owe their chances in politics to the methods which that bill was intended to destroy’ (cited in Evans 1917: 20 n.4). The conflict over the primary legislation manifested itself in violent factional struggles in California. In New Jersey, the Democrats opposed reform, but the Republicans were so divided that it was loudly debated at the state convention in 1927. In other states several reform attempts failed before winning approval, and in many states politicians fought for long periods to circumvent or reverse the laws. (See Albright 1942; Merriam and Overacker 1928: 100–103.) The new system was also challenged in court, with opponents contending that the Australian ballot ‘embarrassed, hindered, and impeded the electors in exercising their constitutional right of suffrage, that it established physical and educational qualifications for voting in violation of the Constitution, and prescribed restrictions upon the eligibility to office’ (Evans 1917: 57). The courts, however, upheld the constitutionality of this reform.

In short, a lengthy period was required to counteract entrenched and corrupt interests, and it was necessary that the courts sided with the reformers. Once implemented, the newly independent legislators, many who had won election on platforms of cleaning up government, had greater interests in overseeing the executive. Their independence probably also increased their motivation in building legislative careers. These factors, then, contributed to the professionalization of the legislature, and its development of oversight institutions.

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9 Some states, such as North and South Carolina, however, did not implement the Australian ballot until much later.

10 Evans extracted this specific criticism from the veto message of the governor of New York.
Corruption Reform II: Civil Service

While the fights over electoral reforms largely took place in the states, at the federal level corruption was fought by the implementation of a meritocratic civil service. This policy resulted from divided government (or the threat of electoral losses) and a public outcry for reform that was spurred by a tragic event. The reformers, again, required a significant period of time to see the realization of their ideas. This conjunction of events, partisan divisions, and continual democratic rule has not been fulfilled in much of Latin America and as a result, few Latin American countries have completed civil service reforms (Geddes 1991).

In the United States, presidents and others who were involved in the process recognized that the ‘virus of the spoils system’ (Perry Powers 1888: 278) contaminated all aspects of the federal (and local) government. Most directly, the spoils system prevented the professionalization of the bureaucracy, since experience was not rewarded and qualifications were secondary to cronyism for awarding jobs. The system also helped breed irresponsible government and widespread corruption associated with machine politics. Wheeler, for example, citing another book on the spoils system, linked the terribly corrupt Indiana hospitals to the ‘incompetence of the political hacks that were put in charge of them’ (Wheeler 1919: 486). This problem did not go unrecognized. Several high-level reports in the 1820s through the 1840s severely criticized the system (Perry Powers 1888: 247) and helped generate support for change, but reform attempts failed.

Many analyses of the progressive period suggest that the public outcry about corruption finally led to policy changes. Geddes (1991), however, argues that political competition is also necessary for reform, since those who benefit from the spoils system—the current incumbents—will be predisposed against change. For her, incumbents will only vote for reform if the opposition can capitalize on a reform agenda and the change will not mean unilateral disarming of electoral resources. Thus, they only vote for a meritocratic system if: (a) reform is an important campaign issue; and (b) access to patronage is split relatively evenly between the incumbents and the challengers, so that incumbents and challengers are equally affected. Thus where there has been little competition, as

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11 Specifically the reports criticized a 1820s law that mandated four year terms for bureaucrats, ostensibly to allow rotation of office. The reports called for the repeal of that law.
in Argentina during much of the 20th century, we would not expect reform. Geddes, however, does not address this question but focuses on the cases which have had extended periods of democratic government since 1930. She finds that Uruguay, Venezuela, and Colombia approved reform of the civil service at times when the opposition had an important claim to power (such as control of the legislature) and a good chance of winning the presidency. In contrast she finds that legislators in Brazil and Chile had few incentives to vote for reform, and as a result, reform efforts floundered.\textsuperscript{12}

This theory is also consistent with the United States experience. The spoils system had been attacked since the 1830s, but between the 1820s and 1840s the incumbent party was reasonably secure, as the Democrats held control of both houses and the presidency for that whole score of years, except 1826–28.\textsuperscript{13} After the Civil War the ‘exploitation of the spoils of office...became more and more blatant’ (Van Riper 1958: 67) and there were more demands for change. Even these increased concerns were insufficient to generate reform, until President Grant (1869–77) began to introduce reform projects in the 1870s. His first efforts failed, in large part because important parts of his own party, which controlled both houses of Congress until 1875, opposed the reforms.\textsuperscript{14} But the Republicans lost 96 of their 203 seats in the 1874 election. Only thereafter, as a ‘sop to reform’ (Van Riper 1958: 75) did the congress approve a bill making it an ‘indictable offence to demand, pay or receive assessments from office-holders “for political purposes”’ (Wheeler 1919: 488).\textsuperscript{15}

The next major reform, the Pendleton Act, also followed a large change in the composition of the Congress, and again initiated a

\textsuperscript{12} In discussing the case of Chile, Geddes adds an additional variable to the analysis: the open list system. In these systems, she argues, legislators are more concerned with battling co-partisans than cross-party rivals. For this reason minority parties cannot band together to pass reforms that would work against the executive.

\textsuperscript{13} Until 1824 the Democrats were known as the Democratic Republicans. The Democrats were then formed in 1828. The president’s supporters were labeled simply ‘administration’ for 1824 and 1826 (Stanley and Niemi 1995).

\textsuperscript{14} Van Riper notes that Grant was dependent on the ‘patronage minded conservatives’ of the Republican party, and did not have the full support of the liberals either (1958: 69). Therefore in spite of formally calling for reform and creating a civil service commission, Grant dropped the issue.

\textsuperscript{15} In 1871 the congress did pass a bill authorizing President Grant to reform the system, but they failed to authorize any funds to set up the necessary commission (Wheeler 1919: 488).
period of divided government. By the 1880 election, the Republicans had built back their legislative majority, and the party also held the presidency in the name of James Garfield. But, in spite of increasing the size of the House by 32 seats in 1882, the Republicans lost 33 seats in the election, giving the Democrats a solid 200–119 advantage. Garfield was murdered shortly thereafter by a spurned spoils-seeker, and only six months later a colorful commentary in the *New York Times* noted in the Republicans the ‘active zeal of these converts preaching the blessed truth that those who are in ought not to be put out’ (12/14/1882; cited in Van Riper1958: 94). The Congress then quickly approved the Pendleton Act—which had been proposed but shelved before the election—thereby inaugurating our merit based bureaucracy.

Finally, it is important to again note the lengthy period that was required to fully implement the civil service policies. Though the Pendleton Act is cited as a path-breaking reform, Perry Powers (1888) argued that it did not cover enough workers to end the spoils system. Further, later reforms did not always advance the effort. Writing at the time of Woodrow Wilson’s presidency, Wheeler (1919) gave great credit to Theodore Roosevelt for advancing civil service reforms, but chided Wilson for using riders to approve exemptions to the laws. Geddes (1991) offers the more general finding that there was retrenchment during periods of unified party rule, and notes that when the Republicans gained political dominance after 1896, President McKinley began to disassemble the system. She adds that if it were not for McKinley’s assassination, the United States system might today look much more like those found in Latin America. In short, full implementation of the civil service reforms required many decades, as reformers continually faced politicians with interests in reversing the reforms.

*Reforming Oversight of the Executive*

One of the most important moves towards facilitating legislative oversight of the executive was the approval of the Budget Act of 1921. This reform required the legislators’ independence of the executive and a good dose of legislators’ interest in developing the technocratic capacity of their institution, the latter of which came with the combined increases in the time that legislators began spending in their posts and the complexity of the legislative process. Polsby (1968) and Marx (1945) suggest that the improving professionalization of the legislature was a reaction to the govern-
ment’s increased reach and budget that came with WWI. The other—arguably related—change at the time was the increasing propensity of legislators to seek long legislative careers. The legislators were thus motivated to develop technocratic oversight institutions by (a) their independence from the executive, (b) their desire for a professional workplace, and (c) the growing complexity of the legislative task.

Until the 1920s the budget had been dealt with through a very decentralized system. Each executive agency was greatly independent as the executive lacked a central office to collect budget requests and synthesize them with expected revenue. It was not the president, however, that took the lead in creating the centralized budget agency. Led by Iowan Representative James Good, the Congress moved to counteract ‘extravagance, inefficiency, and duplication of service…[for which] no one is made responsible’ (Marx 1945: 657, citing the Congressional Record). The new Bureau of the Budget (renamed Office of Management and Budget in 1970), therefore, helped identify a responsible agent and create the transparency necessary for congressional oversight. Thus, while an important part of the legislative debate over the reform turned on whether the centralization would give too much power to the executive, Rep. Good, successfully argued that the reform actually enhanced Congress’ power by assuring them more information and a method for acting more efficiently (Stewart 1989: 202). Further, the agency was required to assist legislative committees and turn over any information the Congress requested (Marx 1945: 669).

In addition to facilitating the congressional oversight, the congressional reformers saw the new executive budget agency as a tool for facilitating the executive’s ability to check on his own team members. Some of the most corrupt administrations were not headed by corrupt presidents. Ulysses Grant, for example, was known as uncorruptable and other presidents apparently were unaware of their appointees’ shady dealings. Thus the new bureau, which could demand to see any documents from any bureaucratic agency, was meant to allow the president the information necessary to control the multi-tentacled administration (Marx 1945: 662, 669).

Reforming the executive branch, however, was insufficient, as the legislators were also interested in advancing their own ability to watch the federal purse. The Budget Act thus also created the Government Accounting Office (GAO) which was under legislative control. Though its role has changed over time, in its early years
the main role of the GAO was to audit government spending (Petrei 1998). In a further effort to gain control over the budget process, the legislators centralized their own approval structure for government expenditures within the Appropriations Committee (Marx 1945: 659).

The origins of the budget reforms can be traced to divided government, or at least a clear separation of powers, and William Howard Taft’s administration (1909–13). Taft argued for the need for Presidential control over the budget in order to make the government ‘more responsive to public opinion and responsible for its act[ions]’ (cited in Stewart 1989: 184). The Congress, where the President’s Republicans only controlled the Senate, was wary of strengthening the President and would not even fully support a commission that Taft set up to develop the idea of reform and promote it (Stewart 1989: 185–186). Taft and the Democratic Congress continued to spar over the reforms. When Taft issued an executive order demanding that all bureaucratic agencies pass to him budget requests, the Congress passed a bill abrogating this order (Stewart 1989: 187). The president’s budget that year (1912) was not even considered by the Congress—and only the Republican Senate, not the Democratic-controlled House printed Taft’s budget requests (Stewart 1989: 188).

The unified government and focus on the war that came with Wilson’s election in 1912 delayed the reforms. The Democrats’ loss of control of the Congress in 1919 is often credited with stifling the development of the League of Nations, in spite of Wilson’s well-known plea: ‘Dare we reject it and break the heart of the world?’

The divided government, however, did result in congressional approval of the Budget and Accounting Act. Wilson vetoed the bill during his last year in office (1919) due to what he perceived as too much legislative control. His particular objection was to the provision that allowed the Congress, by a joint resolution, to remove the comptroller-general. He argued that he supported the object of the bill (concentrating the budgeting authority for the executive) but that the president, not the Congress, should have the power to remove the head of the GAO (Stewart 1989: 208). The Congress was unable to revise the bill before the end of the term, but then brought the same bill back up after the 1920 election, and President Harding signed it into law. Harding did not face a divided government and the bill was passed with little dissent.

This thus shows that in addition to partisanship, interests in professionalization and the independence of the branches were important ingredients to the reform.

In sum, the reform of the budget process shows the Congress reasserting its authority, which had been waning since the accession of Theodore Roosevelt (and later Wilson). The near unanimous vote on the Budget and Accounting Act helped later presidents consolidate power, but the act also created a more transparent system and allowed the Congress more access to information. Armed with their new internal organization, as well as their own auditing agency, the legislature laid a foundation for effective control of their political counterweight.

**Developing Oversight in Argentina**

In this section we provide a historical narrative with a focus on the weaknesses of the institutions entrusted with oversight, as well as the array of incentives and penalties used by the Argentine executive to deter effective control since the 19th century. As we shall see in a moment, the legislators and the courts have been too cowed or disinterested to allow any true scrutiny into its actions. As a result, the type of congressional oversight developed in the United States failed to materialize in Argentina. Civil service recruitment was too often tied to political allegiance, rather than merit. The courts, after enjoying some prestige at the beginning of the 20th century, progressively retreated into a subsidiary role as the fear of retaliation from civilian and military leaders alike, made job security everything but safe. Public disgust with government, legislative, and judicial corruption could not find any institutional outlet, thus producing a widespread sense of cynicism among Argentines with regard to accountability issues. Not surprisingly, some strata of society came to support military coups hoping that at least the armed forces could clean up what was perceived as being rampant corruption plaguing civilian administrations, regardless of the party that controlled them (O’Donnell 1988).

**Low Motivation, Limited Time, and Weak Courts**

First, in spite of a constitution that is relatively similar to that of the United States, the Argentine legislature has generally failed to develop an independence from the executive. Argentine democracy
inaugurated in the early part of the 20th century, but power was solidly held by the Radicals between 1916 and 1930. At times they did not hold a full majority in the Congress, but no other party approached the size of Radicals. Since that time, control of the legislatures that have met has seldom been in the hands of partisans standing in opposition to the executive.\textsuperscript{17}

In addition to the lack of inter-branch partisan rivalries, the electoral system does not motivate legislators to act independently of their leaders (who for many is the president). The Argentines moved in the early part of the 1900s to impose a secret ballot,\textsuperscript{18} but because they have almost always used a closed list system of proportional representation,\textsuperscript{19} legislators have been dependent on the party leaders who draw up the list. The Argentine legislators have thus lacked the motivation and autonomy that led the United States legislators to develop oversight institutions and generally professionalize their institution.

Perhaps even more important than the institutional hindrances to oversight, the legislature has been frequently closed by military governments. These authoritarian interludes have had several negative impacts on oversight. First, these governments turned decree legislation into the norm, and probably heightened the legislature’s cautionary approach to overseeing executive actions. Second, they have slowed or curtailed the development of legislative institutions. Reform efforts required constant tinkering in the United States, as early attempts left important loopholes. Thus, the democratic interruptions alone may have been enough to explain the Argentine legislators’ failure (even if they had wanted to pursue reform) to build the necessary institutions to counteract the constantly increasing executive complexity or abuse of power.

A final piece of the institutional puzzle regards the judiciary, which has consistently supported executive dominance in Argentina. This stands in contrast to the experience in the United States, where the courts played a crucial role in upholding legislation that, for example, broke the party bosses’ power or in later years has forced various presidents to turn over private records.

\textsuperscript{17} The exceptions are Frondizi (1958–62) who only had majority control of the House, Illia (1963–66) who never had majority support, and Alfonsin, who controlled the House between January 1983 and September 1987, but never had control of the senate.

\textsuperscript{18} The Sáenz Peña law of 1912 guaranteed a secret and obligatory vote.

\textsuperscript{19} The Argentines did use single member district elections for a brief time in the 1950s.
Legislative Oversight

In Argentina, prior to the 1930 coup, the Supreme Court was generally regarded as a rather professional and independent institution. Indeed, according to Miller (1997: 232), between 1860 and 1929 the Court was a ‘stabilizing political influence and a soother of political passions in a way that even the U.S. Supreme Court probably did not.’ Yet, the 1930 Argentine Supreme Court’s decision to treat the authoritarian government created that year as one whose credentials could not be judicially questioned began to erode its prestige, as well as showing that the court was unwilling to counter executive abuse.

Even if the court had been willing to challenge the executive, constitutional limitations would likely have prevented it from playing a serious mediating role. Similar to the United States Constitution, the Argentine Constitution of 1853 does not explicitly state that the Supreme Court can exercise judicial review. The Argentine Supreme Court tried to emulate its United States equivalent by establishing a tradition in this sense but for several reasons it has had much less success. Unlike many European countries where specific constitutional courts exist, any federal Argentine judge can perform judicial review. But, the Argentine judiciary is severely limited in this power, since the applicability of a ruling remains confined to the plaintiff and the defendant, instead of constituting a precedent. Previous decisions from the Supreme Court and the Courts of Appeal can be used to adjudicate a similar case debated later in lower courts, but there is no obligation to abide by them. As a result, the Supreme Court and Appeal Courts’ clout in developing binding jurisprudence in Argentina is far more limited than in the United States and imposes smaller restrictions on the executive and the legislative branches.

While these institutional factors have greatly aided the presidents in subordinating the legislatures, the Argentine legislature has not always failed to assert itself. Indeed, below we discuss several examples in which the legislature has been influential in the policy process. Our basic conclusion, however, is that the institutional framework, the fragility of democracy, and the political and economic crises have generally left the Argentine Congress as considerably less than a co-equal branch of government.

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20 Like in the United States, a federal judge cannot issue opinions of constitutional significance unless a case exists.
Early Attempts at Administrative Reform

Early attempts at reform substantiate the importance of the role of the opposition in instigating reform. They also show however, that the opposition’s willingness to use non-democratic means to address short-term demands (at least until the 1980s) has curtailed the development of effective oversight institutions.

Detailed reports of widespread government corruption date back to the colonial period (Rock 1985). The anarchy that followed the independence from Spain added to the abuses of power and cronyism by local strongmen. Starting in the 1880s, the oligarchic governments that ruled Argentina until 1916 made an effort to create a professional civil service mixing elements of the French (line ministries) and British (Central Bank) models. Nonetheless, the executive retained ample freedom to interfere in recruiting standards to ensure the political allegiance of the public administration.

After the extension of suffrage in 1912 that inaugurated formal Argentine democracy, the Unión Cívica Radical (UCR) took control of both the presidency and the legislature and during their 15 years in office (1916–30) the Radicals continued their predecessors’ practice of using government jobs and contracts as a way to reward their supporters. To discipline the resistance of recalcitrant governors of conservative leanings, President Hipólito Yrigoyen (1916–22; 1928–30) often used the right of intervention by the federal government in local affairs in ways that outraged the conservatives in the Congress. Since their minority position kept them from blocking the president’s initiatives, the conservative bloc supported the 1930 military coup arguing that it would put an end to the rampant corruption and executive abuses. Once the conservatives gained power, however, they not only did much of the same, they also overtly practised electoral fraud as a way to keep the hated Radicals out of power.21

This problem of legislative minorities turning to the military has continued. During his first two terms in office Juan Perón (1946–55) escalated even further the politicization of the civil service. Scores of bureaucrats, as well as university professors who had enjoyed a fairly independent status up until then, were purged or forced to resign. Claiming that they were responding to the arbitrary political power and corruption, the military took over in 1955. Again, military-sponsored authoritarian governments were

21 The military withdrew from active participation after 1932 and did not play an active political role until the 1943 coup.
Legislative Oversight

even more inclined to abuses since they appointed to the highest ranks of the public administration ‘technocrats’ responsive only to them. The military also closed the congress, and used censorship to mute any opposition outside institutional settings. These experiences all point to the importance of competitive branches of government, which Argentina has usually lacked in times of democracy, and always during authoritarian interludes.

Reforms of the budget and accounting procedures offer an example of the failed efforts. Argentina developed a series of laws, starting with the Accounting Act of 1870 (Law 428), to establish clear procedures regulating the budget process. However, it was not until 1956 that an external oversight agency was created in the Tribunal de Cuentas de la Nación (National Accounting Tribunal; TCN). Noticeably, the government that created it resulted from a military coup, albeit one that was reacting to Perón’s heavy-handed rule. The TCN was entrusted with the authority to review the legality of the executive’s legislative and administrative initiatives using an ex-ante approach at the time typical to similar institutions in Europe. The TCN, therefore, was supposed to exercise preventive controls over executive decrees and pursued account judgments and accountability proceedings all of which were reported to the Congress. Yet this practice was inconsistently applied during civilian governments and ignored under authoritarian ones, clearly showing the importance of an active and opposition legislature in ensuring effective oversight.

Another related reform also seems to indicate the importance of the legislature’s lack of professionalization. In 1963, during one of the brief periods when the president (Arturo Illia) lacked majority support in the legislature, the Argentines created the Oficina Nacional de Presupuesto (National Budget Office; ONP). Like the United States Bureau of the Budget discussed above, the ONP was supposed to help the executive rationalize the budget process. But unlike the United States Congress, the Argentine legislature failed to concomitantly develop their own controls, and the new office proved to lack any real control over governmental decisions. In point of fact, the budget process was so distorted and out of control that no budget was signed into law by the legislature from 1954 until 1990.

Congressional Oversight Under Alfonsín (1983–89)
The first two post-dictatorship presidencies exhibited distinct patterns in terms of oversight of executive powers. Consistent with
what we argued earlier, the administration of Raúl Alfonsín of the UCR (1983–89) faced a situation of divided government that allowed both the congress and the courts to exercise a considerable role in restraining what were believed to be questionable initiatives by the executive. Conversely, President Carlos Menem could count for most of his two terms in office (1989–95 and 1995–99) with both a working majority in the Congress and a docile Supreme Court, which in turn allowed him to undercut most checks and balances. As a result of this different inter-branch balance, as well as the apparent difference in the two presidents’ respect for democratic institutions, congressional oversight was relatively important during Alfonsín’s period but its development stagnated (or reversed course) during Menem’s two terms.

The inauguration of President Alfonsín in December 1983 put an end to the most violent military dictatorship in Argentine contemporary history that lasted between 1976 and 1983. It also ushered in an era of unprecedented political freedom in the country. The widespread human rights violations and catastrophic economic policies inherited from the military regime created a new political climate. Among the important thrusts of Alfonsín’s effort was to create public confidence in the three branches of government by abiding by the basic principles of democracy and having the judiciary prosecute human right violations.

This system did not always work to Alfonsín’s advantage. At the beginning of his administration Alfonsín sent a bill to the Congress that would set the tone of his presidency. It consisted of a new labor code aimed at enervating the labor unions that had traditionally been the backbone of the Partido Justicialista (Peronists; PJ). In 1984, the Radicals had an absolute majority in the Chamber of Deputies but not in the Senate where a group of small parties from the interior of the country held the balance. The Radicals were unwilling to compromise with these small parties, thus derailing this important piece of Alfonsín’s program. Especially after the Radicals lost their legislative majority in 1987, the opposition in the Congress further asserted its prerogatives, for example by effectively using its veto powers on controversial government plans (Torre 1993).

Alfonsín also met with considerable scrutiny from the courts. Upon being elected, the Radical president persuaded the Supreme Court justices who had served under the military to resign. He then appointed a court made up by five new justices whose members, in general, enjoyed good standing within the legal profession (of these, two were openly Radical, one was Socialist, one Peronist,
and the last one independent). The result was a court that acted rather independently from the government wishes (Verbitsky 1993: 21). For example, in 1987, much to the president’s dismay, the Supreme Court refused to take over all the pending judgments concerning military officers in order to avoid a lengthy and politically dangerous trial process in federal courts, which had triggered an Army uprising (Acuña and Smulovitz 1995; Verbitsky 1987). The court reasoned that doing so was tantamount to undercutting the jurisdiction of the federal courts. This, and concern with military uprisings, prompted the administration to send to the Congress and push his party (and the PJ) to support a very unpopular Due Obedience Law, which voided most cases but tarnished the Radical’s commitment to prosecute human right abuses.\footnote{Passage was aided by the UCR’s majority in the House and the support of small parties in the Senate. Further, some members of the PJ were close to the military and the party did not actively oppose the bill in the Congress.} As Alfonsín became a lame duck president after the 1987 electoral debacle, the Supreme Court showed an even greater willingness to strike down governmental decisions in the last two years of his mandate (Helmke 1999).

Though these factors could have been a positive step in the direction of effective checks and balances, Alfonsín and later Menem worked to undermine the inter-branch controls. Partially in response to his lack of a legislative majority, together with the majority’s opposition to the Radical administration’s economic policies, Alfonsín waivered from his support of the democratic process and began to resort to decrees of ‘necessity and urgency’ (decretos de necesidad y urgencia or DNU’s). Previous presidents had very rarely used this type of decree power (which was not specified in the constitution)\footnote{Between 1853 and 1983 presidents had used about 20 DNU’s, and then only under circumstances of political and economic emergencies that could potentially endanger the very existence of the nation (Ferreira Rubio and Goretti 1998).} and so when Alfonsín opened this Pandora’s door by issuing ten of them,\footnote{The most important of which created a new currency, the Austral, in mid-1986, which was eventually ratified into law by the Congress a year later.} he inadvertently legitimated the process for his successor.

**Congressional Oversight Under Menem (1989–99)**

President Carlos Menem (1989–99), apparently unburdened with appearances of democratic structures, acted quickly to either eliminate or make ineffectual any type of oversight, and due to his
almost unhesitating reliance on decree powers, he is often cited as the archetypal dominant executive. He succeeded in doing so primarily for four reasons. First, owing to the depth of the economic crisis, the general public was more interested in economic progress than democratic ideals, and the congressional opposition wilted. Second, Menem could count either on a working Peronist majority in Congress supported by small parties (1989–91) or an absolute majority (1991–97). He gained further advantages by skillfully dispensing incentives and punishments to exploit the congress’ traditional weaknesses. Third, through the packing of the Supreme Court with sympathetic justices, Menem assured the support of this key institution against challenges from lower courts and the opposition in Congress to his policies. Finally, he successfully purged the oversight institutions within the public administration of those officials who raised questions about the legality of the executive’s reforms.

In spite of these advantages and Menem’s general success in circumventing democratic controls, there is another side of the story. As we explain below, Congress’ oversight role, while clearly weak, has varied over time as a function of changing socioeconomic situations, the saliency of specific bills, and the partisan composition of the legislature. Further, in the post-Menem years, though excesses have not disappeared, there are signs of the legislature’s growing oversight capacity and general policy influence.

Menem was first elected when Alfonsin failed to overcome Argentina’s hyperinflation. To prevent the country from collapsing into total chaos, Alfonsin offered to step down six months ahead of schedule.\textsuperscript{25} But, in accepting the deal, Menem forced the Radicals to make major concessions, including a pledge to withdraw a sufficient number of their 113 members in the Chamber of Deputies when crucial legislation was introduced. In so doing, the 97 Peronist representatives became de facto the largest bloc in the legislature and could pass the president’s emergency measures (Vidal 1995: 53).

The Radicals also agreed not to oppose two laws that granted Menem broad emergency powers, which helped him create the cornerstone of his market reforms. The first one was the State Reform Law, which gave the executive the authority to privatize 32 state owned enterprises immediately and put in charge of the trustees accountable only to the president for a period of 180 days and

\textsuperscript{25} The election was held in May 1989, but the inauguration had been expected in December.
renewable for another 180. The second piece of legislation was the Economic Emergency Law. This law gave the president the authority to change the budget, eliminate subsidies for industrial promotion, modify tax collection, end any legal discrimination against foreign investors, alter the payment system of federal bonds, and reorganize the social security agency. In short, through these laws the legislature delegated to the presidency discretionary powers to legislate via decree on a wide range of matters that, according to the Constitution, were solely ascribed to the Congress for a set amount of time (Ferreira Rubio and Goretti 1998). Eventually, the Congress later expanded the extension to three years in the case of the State Reform Law. In short, the combination of economic crisis and electoral losses led Radical legislators to grant Menem sweeping powers.

In delegating such broad authority, the congress opened the door to Menem’s usurpation of even greater powers. As Ferreira Rubio and Goretti (1998: 34) explain, Menem indiscriminately used DNUs ‘as a policy-making device, whereby the executive present [ed] legislative facts accomplis that circumvent[ed] the principles of checks and balances, [replacing] the rule of law with presidential fiat.’ The number and scope of DNUs he issued was unprecedented. Prior to Menem the Argentine executives had generally abided to the rule that DNUs were to be limited to situations when the congress was not in session or the regular legislative process could not be used due to an impending national crisis that demanded a quick response. Regardless, DNUs by law had to be submitted for legislative approval at a later date in order to retain their effectiveness. Menem regarded all these requirements as mere formalities—and the legislature appeared powerless to react. Indeed, in 51 per cent of the DNUs issued, the government itself did not identify them as such but nonetheless they were used to repeal or enforce laws without any clear legal ground or congressional delegation. The executive failed to inform the congress as mandated by the Constitution on another 25 per cent of the DNUs issued in the 1989–92 period (Verbitsky 1993: 169). This high frequency of decrees also allowed Menem to make credible threats. He therefore could intimidate the congress into approving legislation by threatening to decree objectionable laws.

Menem’s strong partisan support, and the economic crisis go far in explaining why the congress put up little resistance to the president’s steam-rolling legislative initiative, especially during Menem’s first term (1989–95). The hyperinflation crisis of mid-1989 and early 1990 put the Radicals on the defensive, and public
opinion polls showed strong support for decisive government action to fight inflation and promote structural reforms (Mora y Araujo 1991, Palermo and Novaro 1996). Menem skillfully exploited this popular malaise. Any time the Radicals tried to mount some opposition, the president used an effective media campaign charging them of stalling his effort to remedy the chaos that Alfonso had left behind. This blunted opposition from the Radicals. Without the high level of party unity and majority status of his party, however, it seems unlikely that Menem could have gained so much power.

Support for these suppositions comes from the changes during Menem’s presidency. First, as the economic crisis was brought under control, the legislature, in spite of its image as a supine onlooker to the governmental process, began to experience some success with overturning vetoes and resisting some executive initiatives, particularly after 1994. The constitutional reform passed that year aimed at limiting executive discretionary powers in several important ways. Not all the stipulations were implemented and Menem did continue to bend the rules, but the constitutional changes (or at least the debate that led to them) did lead Menem to issue fewer decrees in the second half of his reign (Ferreira Rubio and Goretti 1998).20 The Congress also successfully repelled some of Menem’s policy initiatives and forced important compromises on issues, such as the privatization of the oil, gas, and electricity companies, a bill dealing with labor issues, and the patent law. In addition, Eaton (2002) describes the legislature’s role in shaping the tax reform in the early 1990s. A final indicator of the legislature’s power, was the resignation in mid-1995 of the powerful minister of the economy, Domingo Cavallo, who left office citing his inability to force legislation through the congress as a primary cause of his decision.

Interviews with members of the Ministry of the Economy and Public Works first under Minister Domingo Cavallo (1991–95) and then under Minister Roque Fernández (1995–99) also support our view about the importance of partisan competition between the branches. Ministry’s staffers complained that though the congress was usually cooperative until 1994, it became more and more self assertive, particularly after the Fall of 1997 when the Peronists lost their majority in the Chamber of Deputies. To stylize the facts, it seems that the Congress was keenly aware of its weakness in

20 Importantly, the congress even failed to appoint the commission called for in the constitution that was to oversee the DNUs.
dealing with the executive during Menem’s first term. Accordingly, legislators avoided challenging Menem on matters dealing with market reforms that were top priority to his administration and chose to hold their ground mostly on bread-and-butter issues where there was greater room for compromise. Conversely, the interviewees indicated that after the PJ lost its congressional majority in 1997, Menem’s ability to bypass the Congress diminished appreciably.

Supreme Court

The Supreme Court’s inability or unwillingness to address executive abuse is a final factor contributing to the weakness of legislative oversight. This inability or unwillingness, in turn, has resulted from Menem’s anti-democratic strategies and the weakness of the congress in upholding democratic procedures.

Aware of Alfonsín’s problems in having the Supreme Court assent to controversial presidential initiatives, Menem proceeded from the start to make sure that the high court would be squarely in his camp. In doing so, Menem resumed Alfonsín’s original idea of enlarging the Supreme Court. The attack on the Court’s independence started a few weeks after Menem took office. The strategy behind it was exposed by Minister of Justice Jorge Maiorano later on who candidly stated that by electing Menem the people had voted for a new project to transform Argentina. This meant that it was ‘absolutely necessary that there be a court that understands the [administration’s] policy and be addicted to the program that the [Argentine] society had voted’ (Ambito Financiero, 11 November 1992). As was the case under Alfonsín, four out of the five members of the court denounced Menem’s packing attempt. But on 5 April 1990, the Chamber of Deputies voted in favour of increasing the number of justices to nine. The Radicals charged that, as happened later in the privatization bill of Gas del Estado, impostors cast the decisive votes (Verbitsky 1993: 49). When they requested a recount, the Peronist president of the Chamber overruled their request. One of the five justices, Jorge Bacqué, quit in protest before the measure became effective, giving Menem the opportunity to nominate not four but five new justices. Three weeks later the Judiciary committee in the Senate approved in only seven minutes the new justices proposed by the executive. The remaining four justices, likely concerned with Menem’s threat of impeachment proceedings that could surely be approved in a Peronist-dominated Senate, reversed their initial hostility and
decided to lend their support for the controversial government initiatives. In the end, the full Senate put the final seal on the matter as representatives of small provincial parties joined the Peronists by granting the two-thirds majority needed to ratify the candidates.

The packing of the Supreme Court played a pivotal role on the one hand in giving the executive a legal justification for its dubious reforms and, on the other, in thwarting any challenges coming from the congress, lower courts, and civil society. Within this context, three decisions were key in helping Menem overcoming legal opposition to his authoritarian decision-making style.

The first of such decisions was the *Peralta* decision issued on 27 December 1990. This ruling is fundamental since it legitimized the executive’s authority to legislate without congressional approval. Further, it established that the executive could legislate through DNUs and restrict constitutional rights as long as the causes that created the crisis continued. Of course, the Supreme Court left to the executive the determination of whether or not the country is an emergency situation. As a result, even the lack of enough televised soccer games became the subject of ‘emergency’ decrees. In short, this decision allowed Menem to justify his continual rule by emergency powers.

The Court justified its decision by stating that situations of ‘high social risk’, required the application of ‘swift measures whose efficacy were not conceivable through other means’. The ruling thus justified the executive’s usurpation of legislative powers. It went still further, adding that although the constitution established the division of power among the three branches of government, this should not be interpreted in a way to allow the ‘dismemberment of the State so that each of its parts acts in isolation to the detriment of national unity’. Ironically, this implies that under emergency situations (which the executive could define) not only the Congress, but also the Court should subordinate itself to the executive.

One other point was key in this decision. The only condition the court imposed on the executive’s use of decrees was that the executive inform the Congress and that the Congress not express its disapproval. But, to explicitly express its disapproval of a DNU, the court forced the Congress to pass legislation revoking a decree. These bills, however, would be subjected to an executive veto.

The delegation of powers doctrine was reconfirmed in a later case, known as the *Cocchia* case in which the court reiterated the importance of delegation. A third case took a different tack in affirming Menem’s power.
In *Fontela versus the State* the court deprived legislators the use of the court system in their attempts to hold the Menem administration accountable for its policies. In July 1990, Congressman Fontela filed an injunction before federal judge Oscar Garzón Funes to stop the sale of the national airlines (Aerolíneas Argentinas) until an investigation could ascertain the legality of the transaction. Garzón Funes, who was known as an independent-minded judge, accepted the case and ordered Minister of Public Works Roberto Dromi, who was in charge of the privatization programme, to restructure Aerolíneas according to Law 19.550. In response, Dromi pleaded for the Supreme Court to take up the case. The Court accepted the minister’s request less than an hour after Garzón Funes had issued his order. This move was in open violation of Art. 257 of the Civil and Commercial Procedural Code which allowed appeals to be filed only to the tribunal that had issued the sentence regarding the case. Using an obscure legal procedure called *per saltum*, the Supreme Court claimed the case for itself due to the ‘institutional gravity’ of the matter without actually specifying what was so critical about selling a state-owned enterprise from a constitutional standpoint. However, Menem needed this ruling badly. Aerolíneas was his first privatization. Had it failed, the whole privatization process could have collapsed. It took only a few minutes for the Supreme Court to rule void Garzón Funes’ injunction, paving the way for the airline transfer a few days later. The court justified the *per saltum procedure* by explaining that the United States Supreme Court had ruled on cases without previous sentences. Thus, Menem obtained what he wanted. The message behind the sentence was clear: the Supreme Court was squarely behind the president and could not be counted on to challenge his initiatives (Verbistky 1993: 140).

**Conclusion**

To summarize, this paper was motivated by the diverging paths taken in the fights against corruption and the development of oversight institutions in the United States and Argentina. Though the two countries shared similar problems with corruption in the 19th century, the United States Congress eventually developed laws and institutions that have helped the legislature serve its Madisonian roles, while the Argentine Congress has generally failed to do so. We have argued that the divergent tracks taken by these two countries is largely the result of the difference in the two
legislatures’ motives and the courts’ willingness to check and counter executive action. We have further argued that the divergent motives explain the differing development of legislative capacity, but that the long continuous period of democratic rule has also been necessary to the development of institutions and the attack on corrupt practices. The uninterrupted democratic system in the United States has given time for institutions to mature and strengthen checks and balances. Moreover, over time the members of the three branches of government have developed formal and informal practices leading to the and the importance of an entrenched democracy. A main difference with the United States, however, is that at least until the 1980s, the professionalization of their membership and the respect of the rule of law.

While Argentina’s progress towards institutional development has taken a different and often erratic direction, there are some propitious signs of progress, and it is important to recall the hopeful note with which we began this chapter. First, a free press has helped create a public disgust with executive abuses. While Menem was admired for his economic achievements, his abuse of power has become widely known and resented. Second, since the end of the dictatorship in 1983, Argentina has now held four presidential elections, three of which have resulted in a change of power among parties. Third and relatedly, the military has ceased to be a central political force, and even during the crisis of December 2001 when President de la Rúa resigned amidst an economic collapse and its resulting social chaos, disgruntled Argentines did not look to the military for answers as has been the case in their history (or in Venezuela in April 2002). This positive step, along with the now 20 years of the continual operation of the legislature (even if it has been chastened at times), has contributed to a growing role and professionalization of the legislature.

This change is evident in the development of institutions that may well begin to rein in the corruption and executive abuses. A primary example regards the budget which we noted had not, until 1990, even passed through the legislature for over 30 years. The budget process has now become much more regularized, and though this has not always meant careful scrutiny of the president’s proposals, the legislature is clearly more involved than in previous years. A second example regards the development of the Anti-Corruption Office (ACO) in December 1999. The ill-fated de la Rúa continued his predecessor’s practice of circumventing the legislature by issuing numerous DNU’s, but in response to the perceived corruption during the Menem presidency, de la Rua also
took some important steps in creating independent institutions to promote greater oversight. The ACO has been praised both at home and abroad as one of the most significant innovations in the developing world to pursue. Staffed by independent judges and technocrats, the ACO has rapidly gained respect for its active role by bringing more than 500 cases to the courts. The fact that President Eduardo Duhalde (who, by means of a legislative vote, succeeded de la Rúa, albeit after the legislature had first installed several caretakers who lasted just a few days each) has decided to retain such an institution, is a positive sign.

We began this chapter on a somewhat hopeful note, explaining that although it took a significant period of time, the United States has experienced tremendous improvement in spite what at one time seemed a hopeless level of government corruption and lack of accountability. While the changes in Argentina do not provide clear signs of a linear movement towards the development of clean government and functioning checks and balances, they show important parallels with the institutional development in the United States. If Argentina’s democratic institutions can continue to survive the tremendous challenges that it has faced in recent times, the United States experience suggests that their institutions will incrementally take hold and overcome the many hindrances to their functioning.

This conclusion can be extended to other countries in Latin America, most of which have also suffered from a lack of democratic time, low professionalization, and strong ties between the president and the congress. Some legislatures must also overcome constitutions that limit their influence. For example, the constitutions of Brazil, Chile, Uruguay, and others prohibit the legislature from increasing expenditures from the executive budget ‘request’. Other constitutions allow the legislatures only a very short time to debate the budget bill, or allow the executive to veto line items, adjust the legislative agenda, and issue decrees. These powers unbalance the inter-branch relations, thus hampering the legislature’s efforts.

In spite of these hindrances, many countries in Latin America, like Argentina, appear to be on the road to reform. Though the events in Venezuela remind us that the military can still kick over the democratic playing field, the militaries appear much less willing to do so than in previous times, and the legislatures thus have a chance to develop their technical capacities. Further, though often scorned for the brakes it puts on government policy, the now common situation of presidents facing legislatures where
they lack a majority may well encourage the development of legislature-controlled oversight systems. Further, parties in many countries are now experimenting with internal democracy, which will help the legislators develop independence from their parties. Especially if this happens to lead to higher re-election rates (which, in Argentina are just 20 per cent and across Latin America they are very low in comparison with the United States) the legislatures may well begin to professionalize. Indeed, we have seen great leaps in the last decade, with the formation of professional staffs, the computerization of legislative operations, and the development of other legislative resources such as libraries and data banks. These new resources will limit the legislatures’ heretofore reliance on the executive branch for the information necessary to perform oversight functions or analyse policy options.

As a result of these changes legislatures have begun to take a much more active role in policy and oversight. In addition to their central role in the process in which Argentine President de la Rua resigned and was replaced, in the 1990s three Latin American presidents were removed by the legislature, two for alleged corruption and a third for ‘mental incapacity’. Further, the presidents that have stayed in their posts, including those traditionally seen dominant, have had to offer important policy concessions to the legislatures. In Brazil, for example, Ames (2002) explains that not a single executive initiative went through the Brazilian Congress without modification. Since 1997 in Mexico, when the PRI lost control of the Chamber of Deputies, the legislature has fought with the president over budget outlays, the bank bailout, the pension scheme, and the peace arrangements with the Zapatistas.

These examples suggest that the legislatures have become more independent of the executive. Assuming they are allowed to continue exercising their constitutional duties, the independence should breed an interest in expanded capacities. While these expanded capacities will undoubtedly lead to inter-branch conflict, it is precisely that conflict that can ultimately motivate the development of effective oversight institutions.

References


Author Queries

[Au1]  Au: Are there two paras epigraphs?
[Au2]  Au: The year in Ref List is 1917. Is it change OK?
[Au3]  Au: Is the additions ok?
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